MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION

Seventy-Third Session
April 12, 2005

The Committee on Transportation was called to order at 1:43 p.m., on Tuesday, April 12, 2005.Chairman John Oceguera presided in Room 3143 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. John Oceguera, Chairman
Ms. Genie Ohrenschall, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. John Carpenter
Mr. Chad Christensen
Mr. Jerry Claborn
Ms. Susan Gerhardt
Mr. Pete Goicoechea
Mr. Joseph Hogan
Mr. Mark Manendo
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Bob McCleary, Assembly District No. 11, Clark County (part)
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1, Clark County (part)
Assemblyman David Parks, Assembly District No. 41, Clark County (part)

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst

Keith Norberg, Deputy Fiscal Analyst
Linda Ronnow, Committee Attaché

OTHERS PRESENT:

Charles Knaus, Lead Actuary, Division of Insurance, Nevada Department of Business and Industry
Troy Dillard, Administrator, Compliance Enforcement, Nevada Department of Motor Vehicles
Edgar Roberts, Administrator, Motor Carrier Division, Nevada Department of Motor Vehicles
Dawn Lietz, Supervising Auditor, Audit Section, Motor Carrier Division, Nevada Department of Motor Vehicle
Daryl Capurro, Managing Director, Nevada Motor Transport Association, Sparks, Nevada
Berlyn Miller, Legislative Advocate, representing Nevada Contractors Association, Las Vegas Nevada
Mike Cate, President, Silver State Masonry, Reno, Nevada
John Haycock, Chief Executive Office, Haycock Petroleum, Las Vegas, Nevada
Norma McCusker, Sales Manager, Western Energetix Cardlock, Barry Hinckley Industries, Sparks, Nevada
Mark Sullivan, Legislative Advocate, representing Nevada Associated Mechanical Contractor's; and Associated General Contractor's of Northern Nevada
Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada
Mike Montero, Legislative Advocate, representing Nevada Cattlemen's Association, Reno, Nevada
William Bible, President, Nevada Resort Association, Las Vegas, Nevada
Todd Bice, Legal Counsel, Nevada Resort Association, Las Vegas, Nevada
William Vassiliadis, Nevada Resort Association, Reno, Nevada
Jeff Silver, Legislative Advocate, representing Bell Transportation, Las Vegas, Nevada
Robert Winner, Representing Ambassador Limousine, Ritz Transportation, and Nellis Cab, Las Vegas, Nevada
Mark James, Representing Frias Limousine Company, Las Vegas, Nevada
Brent Carson, Attorney, Winner and Carson Law Firm, representing On-Demand Sedan, Odyssey Limousine, and Desert Cab, Las Vegas, Nevada

Mario Lavato, representing Executive Coach and Carriage, and Executive Star Limousine, Las Vegas, Nevada
Kimberly Maxson-Rushton, Commissioner, Transportation Services Authority, Nevada Department of Business and Industry
Mike Mersch, Legal Counsel, Office of the Attorney General, representing Transportation Services Authority, Nevada Department of Business and Industry
Peter Ernaut, Legislative Advocate, representing Nevada Resort Association, Las Vegas, Nevada
Marvin Leavitt, Certified Public Accountant, Carson City, Nevada
Andrew List, Executive Director, Nevada Association of Counties, Carson City, Nevada
Russ Law, Chief Operations Analysis Engineer, Nevada Department of Transportation
Carole Vilardo, President, Nevada Taxpayers Association
Bob Ostrovsky, Legislative Advocate, representing Hertz Corporation, Las Vegas, Nevada
Jeanette Belz, Legislative Advocate, representing Property Casualty Insurance Association, Reno, Nevada

Chairman Oceguera:
[Meeting called to order. Roll called]. I will open the hearing on A.B.416.

Assembly Bill 416: Revises provisions governing Advisory Board on Automotive Affairs. (BDR 43-1264)

Assemblyman McCleary, Assembly District No. 11, Clark County, (part):
I would like to disclose that I am in the automotive industry. I saw that we needed a board to regulate ourselves. I had a bill draft prepared and in my research I found out there is one, but it has been dormant since 1997, but it still exists in statute. It is listed under insurance, the Department of Business and Industry. This bill proposes to change it from that status and put it under the umbrella of the Department of Motor Vehicles, and reactivate it. There are two changes from the existing form. It will have two representatives from the general public, and its parameters for proposing regulations are extended. Now it is extended to all automotive repair.

Chairman Oceguera:
Previously, this board existed. Then what happened?

Assemblyman McCleary:
It does exist. In 1997 it became dormant, they just stopped meeting, and I can't get a clear answer as to why. It is appointed by the Governor.

Chairman Oceguera:
Did you speak to the Governor's staff about it?

Assemblyman McCleary:
I did not.

Assemblyman Goicoechea:
What's DMV's position on this? Are they prepared to accept it?

Charles Knaus, Lead Actuary, Division of Insurance, Nevada Department of Business and Industry:
We believe that the proper place for this bill is the DMV. They are the licensing authority for some of the members of the automotive repair industry, as noted in the bill.

Troy Dillard, Administrator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:
We are signed in to testify as neutral. We regulate the businesses that are within the bill. With the changes that are being proposed, all of the businesses within there are regulated and licensed by the DMV. There is a fiscal note that we have submitted with regards to this. It is to cover the travel and per-diem allowances that were not afforded in the Division of Insurance's budget. It's a very small note, and it also comes out of a fee-funded budget. I think it is about $5,000 per year. In addition to that, this does appear to fit, however, the DMV can't go on record as supporting changing responsibilities. Just because it wasn't fulfilled by one agency, it's not necessarily the best policy to change it to another one. In this case we regulate the industry, and we will be willing to take it on.

Chairman Oceguera:
I will take a motion.

ASSEMBLYMAN ATKINSON MOVED TO DO PASS ASSEMBLY BILL 416.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE BILL CARRIED UNANIMOUSLY.

I will open the hearing on A.B. 255.

Assembly Bill 255: Revises provisions relating to dyed special fuels. (BDR 32-1258)

Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1, Clark County (part):
Assembly Bill 255 is a bill that started out very lengthy. It mandates that each piece of equipment needs to justify where the red-dyed fuel was. As the bill sponsor, I was very uncomfortable with that because I thought it would be very hard to track every individual gallon. We have made some amendments, however, there is quite a bit of opposition. The DMV has prepared a PowerPoint presentation to demonstrate the reason we need this is, because there are a lot of tax dollars that are being lost.

Edgar Roberts, Administrator, Motor Carrier Division, Nevada Department of Motor Vehicles:
The Department, working with industry, is pleased to speak to you regarding A.B. 255. I want to thank Assemblywoman Kirkpatrick, Berlyn Miller, Daryl Capurro, and the Nevada Motor Transport Association for working with the Department to submit this bill for your consideration. The Department was required to submit a fiscal note as the result of an error in the language when the bill was originally drafted. The intent of the Department in Section 17 was to clarify, pursuant to *Nevada Revised Statutes* (NRS) 366.650 (Exhibit B), all credits and refunds for exempt fuel usage would be reduced by 2 percent due to the collection allowance provided to Nevada license suppliers, not simply the off-road fuel use, as statute currently reads. When the bill was drafted the reduction was written to only apply to fuel suppliers and erroneously removed the reduction for off-road fuel use.

The fiscal note was calculated based on the loss to the Highway Fund from the differences between refunding at 27 cents per gallon should the bill pass as is, and the 26.46 cents per gallon as the statute currently reads. The Department has prepared an amendment that will correct the error and result in eliminating the loss of fuel taxes to the Highway Fund of $60,000 in FY2006, $62,000 in FY2007, and $130,000 in the future biennium. Additionally, this amendment removes a requirement as originally requested for purchasers of dyed special fuel to submit monthly reports to the Department.

After meeting with supporters of this bill and taking into consideration some of the opposition, it was decided the best way to proceed is to prohibit the sales

of dyed special fuel from cardlock and retail stations where the easy accessibility and lack of accountability is deemed to be the greatest risk. To exemplify our position, Dawn Lietz, Supervising Auditor of the Motor Carrier Division, has developed a PowerPoint program that illustrated a few of our audit team's findings regarding cardlock and retail locations.

Dawn Lietz, Supervising Auditor, Audit Section, Motor Carrier Division, Nevada Department of Motor Vehicles:

The Audit Section is pleased to show you a short slide show presentation (Exhibit C), to reveal the potential risk to Nevada's taxpayers if the accessibility of dyed special fuel is not controlled. [Reads from Exhibit C]

> Due to the significant increase in cardlock and retail sales, the Department believes untaxed dyed special diesel fuel is actually being used on the public highways in a taxable manner.
>
> This creates an unfair economic advantage for companies illegally using dyed fuel to operate on the highway.
>
> The Department has 181 licensed suppliers and only 5 out of 181 suppliers identified deliveries of dyed fuel to cardlocks in 2001, and 2002. For consistency in our statistics, we used the same five suppliers to provide you with the current figures. Additionally, the Department is unable to determine the actual number of gallons delivered to retail stations as there are no reporting requirements by retailers or cardlocks. We have no way to identify a retail location merely by the name of the company that the fuel is sold to. Due to the lack of reporting requirements, the Department does not have the ability to track other unidentified deliveries to cardlock or retail locations.
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> Since 2001, cardlock deliveries of dyed diesel have increased by more than 2.9 million gallons. This represents a 471 percent increase from 2001 to 2004. In 2001 the dyed diesel gallons reported as delivered to cardlocks totaled 618,348 gallons. You can see the gallons for 2002 and 2003 as well. During 2004, the gallons of dyed diesel reported by the same five original suppliers reporting the delivery of 618,348 now total over 3.5 millions gallons annually. In Carson City, during 2001, just over 163,000 gallons were delivered; in 2004, this number increased to 513,000 gallons, which represents a 223 percent increase. In Reno during 2001, only 40,010 gallons were delivered, in 2004 this number increased to more than 594,000 gallons, and it represents

a 1,385-percent increase. In Las Vegas during 2001, 212,550 gallons were delivered; in 2004, this number increased to 1.9 million gallons, representing a 790-percent increase. In the rural locations of Nevada during 2001, 202,531 gallons were delivered. In 2004, this number increased to 519,000 gallons representing a 156-percent increase.

[Dawn Lietz, continued.] We believe one problem is the retail stations' accessibility to dyed fuel is too easy. In this first photo (Exhibit C), you will see the island markers identify the location of the dyed fuel pump at this retail station in Las Vegas. In this next photo, the yellow circle identifies the dyed diesel island marker shown in the first photo; pump 3 is circled in orange; it's the pump that dispenses the dyed fuel. Notice that the retail station itself is actually blocked by the truck fueling in the other island. Next is a photo of pump 3, although the pump is clearly marked as dyed fuel, when this station owner was asked how he monitors the dyed fuel sales, he said he doesn't. In this next photo, you will see the dyed pump 3; notice the fuel tank of the truck in proximity to the pump.

Cardlock accessibility to dyed fuel is even easier. This photo (Exhibit C) reveals only the regular gasoline and clear diesel pumps are located at the front of the cardlock facility. This type of facility is unmanned. Next you can see the dyed pump located at the rear of the facility, behind the building, and near the storage tanks. Although the pump is clearly marked as dyed diesel, the ability to observe the activity at the pump from the highway is obstructed by the pump location. In this last photo you can see the marquee at a retail station in Las Vegas clearly demonstrates the price differential between dyed and clear fuel, and adds to the temptation of using dyed fuel instead of clear. Additionally, the marquee is advertising the fuel as off-road diesel and has no mention on the marquee of the dye that was added. On the next page of the presentation hand out (Exhibit C), there is an invoice obtained during a recent audit of a supplier providing this particular retail station with fuel. State and federal tax on clear fuel is 51.4 cents per gallon, but the base excise tax difference on this invoice between clear and dyed is only one-half of a cent. According to the price on this marquee, the retailer is selling the off-road diesel at 40 cents less than the clear diesel, providing a 10.9-cent-per-gallon incentive to this station owner on every gallon of dyed fuel sold.

[Dawn Lietz, continued.] In summary, state and federal tax on clear diesel fuel totals 51.4 cents per gallon. On a 150-gallon purchase of fuel, this equals $77.10. Retail and cardlock locations are not required to report to the Department. Potential tax liability on dyed diesel fuel sold at cardlocks alone in 2004 equals $1,816,200. As you can see, easy accessibility plus the lack of accountability equals potential evasion.

The Department recommends you enact legislation to prohibit cardlock and retail stations from selling dyed diesel fuel, impose strict penalties for knowing or otherwise distributing for use on the highway any fuel to which the tax has not been paid, and increase the penalty for any person repeatedly cited for illegal use of dyed fuel. Currently the penalty is $1,000 or $10 a gallon up to the capacity of the vehicle's tank, whichever is greater.

Assemblyman Carpenter:
I need to disclose that I do sell dyed diesel. I think we heard testimony last session from the Highway Patrol that out of the 3,000 or 4,000 checks they made on various vehicles, and they only found 3 or 4 in violation. In my area, there were 3 or 4 people who got cited for having dyed diesel in their tanks. There are ranchers and farmers that are using it on their equipment and it's perfectly legal. Drillers are using it in their drill rigs that aren't on the highway. I don't think there is any way you can prove you are losing these kinds of taxes.

Assemblyman Goicoechea:
Do you think some of the increase might be because there are more cardlocks or more people accessing the cardlock system? People four years ago didn't know what a cardlock was and we didn't even have one in some of the rural areas.

Edgar Roberts:
Yes. More and more people are using cardlocks. In regard to the dyed diesel citations from FY2000 to FY2005, to date 255 dyed diesel fuel citations were issued by the Nevada Highway Patrol for illegal use of nontaxed dyed diesel on Nevada's highways. The current administrative fine is $1,000 or $10.00 a gallon, whichever is greater.

Assemblyman Carpenter:
I would like to see those statistics—the 255—what period of time that covered, and where that was.

Chairman Oceguera:
Can you get Mr. Carpenter and Mr. Goicoechea those numbers?

Edgar Roberts:
Yes, Mr. Chairman. The statutory changes contained in A.B. 255 are intended to prohibit dyed special fuel from being sold at unmanned locations and retail stations. Currently, anyone is available to purchase nontaxed dyed special fuel at cardlocks and retail stations that offer that. The only oversight is when these dyed special fuel purchasers are cited for illegal use of dyed fuel on Nevada's highways, and an audit is performed on those companies. When you consider that state and federal taxes total 51.4 cents per gallon along with the current high fuel prices, using nontaxed dyed diesel is becoming increasingly attractive to special fuel users. If the Department did not address this issue, we would be helping to create an unfair and competitive advantage for unscrupulous companies, over those companies operating within the law. The Department chose to meet this challenge and protect Nevada's taxpayers who are reporting correctly.

To avoid creating a hardship on business owners by requiring additional licensing and monthly report filing, we have come up with an alternative that we believe will reduce the amount of dyed special fuel available to the general public, and still allow suppliers to deliver directly to those customers who have a legitimate need for dyed special fuel, such as farmers, ranchers, construction, mining companies, and home heating customers. As you saw by our presentation, cardlock and retail stations provide easy access to dyed diesel fuel, although some may argue that the customers must apply for a separate card to pull fuel from the dyed pump. The fact that they are unmanned makes them attractive to those tempted to evade the tax. Retailers do not even issue a card to purchase dyed fuel where available. The Department is confident this legislation will provide for long term benefits to the state's Highway Fund and Nevada taxpayers, including additional fuel taxes collected, and a reduction in evasion of Nevada's fuel tax laws.

Assemblyman Claborn:
This is the third session I have heard about this red-dyed fuel; we thought we had put it to rest. What came up every time was the port-of-entry. I wondered how many port-of-entry or truck stops we have that check for safety. It's very simple to check for red fuel at these stops.

Edgar Roberts:
Currently, Nevada does not have any ports of entry.

Assemblyman Claborn:
We have safety checks; we have them at the top of Apex, and we have them at Jean, Nevada as well. They check trucks for safety, and they check vehicles that come in. There is a sign that says, "All trucks enter here." Apparently, something is wrong regarding this fuel situation because all it takes is a light to check to see if you are using red fuel or regular fuel. I think the State should take a good look at this and put some people to work at those check points. Maybe you could save some tax money that way.

Edgar Roberts:
Currently, we do have commercial enforcement that does check motor carriers. However, of the 255 citations, 104 citations are on vehicles less than 26,000 pounds.

Assemblyman Goicoechea:
I am not sure I understand the bill. Section 6 and Section 7 of this amendment—I assume that is what we are going on.

Chairman Oceguera:
Those amendments were proposed by the bill's sponsor.

Assemblyman Goicoechea:
It talks about special fuel supplier, special fuel dealer, and special fuel user. You can't buy it in cardlocks or retail stations, but as I read this, it still requires everyone else to provide records, receipts, invoices, and other pertinent papers. Is that correct?

Edgar Roberts:
Section 6 is the current law, and no additional amendments are requested under Section 6.

Assemblyman Goicoechea:
I misspoke. Section 7 is the one I was referring to.

Edgar Roberts:
We are deleting Section 7 from Assembly Bill 255.

Assemblyman Goicoechea:
You say you are deleting from NRS 366.140, is that correct?

Edgar Roberts:
We are deleting our original language under Section 7 where it states, "and purchasers of dyed special fuel in bulk."

Assemblyman Goicoechea:
My question is where you buy it in bulk. If I can't buy it in bulk, where am I supposed to get it? You are saying we don't have to report if we buy it in bulk, but you are saying a special fuel user will report. It doesn't do me much good in the tank.

Dawn Lietz:
In our original bill the language to add "the bulk user" was put there when we made the amendment to the bill. The current law as it stands will remain; we are not making any additional changes to Section 7.

Assemblyman Goicoechea:
Reading the existing law, I don't know if I am in compliance as a user of red fuel. I don't file any special paperwork.

Dawn Lietz:
The Department requires only the special fuel users who are operating vehicles over 26,000 pounds, and the suppliers to file reports with the Department. All users of any fuel by this section of the law NRS 366.140 are required to keep the records to show what they have done with their fuel. That's what actually prompted the original bill, because a lot of taxpayers do not keep those records.

Assemblyman Goicoechea:
I believe the statement was, any vehicle over 26,000 pounds; does that mean registered vehicles? We have lots of tractors that weigh 26,000 pounds. It must be a reporting nightmare for some of these guys who are running dirt trucks off-road or in a gravel pit; they have to maintain all of those records.

Dawn Lietz:
As far as the record keeping requirements, the Department wants to see a bulk tank log, and a log provided by the purchaser of the fuel to show what piece of equipment the fuel is put into, and how many gallons was put into that piece of equipment. We will accept that. We just need someway to reconcile their total purchases with total use to ensure that the tax is paid on that fuel.

Assemblyman Goicoechea:
A lot of farm tanks wouldn't even have a meter on them. If you have a gravel operation and you were using 10 wheelers, which are not on the highway, and

just working in the pit, those people are required to file monthly, quarterly, annually?

Dawn Lietz:
They just have to keep the records. The only time you have to file the report is if you are actually using the fuel on the highway, and you are filing an in-state tax return with your mileage and fuel, or an IFTA [International Fuel Tax Administration] tax return, or if you are a supplier.

Assemblyman Carpenter:
I think the tax is paid when it comes out of the refinery or to rack; it's already paid for. We have to pay the tax when we buy a load of fuel. If the distributor has hauled it to us they are the ones who paid at rack, refinery, or here in Sparks; it's paid at the tank for them. We don't pay that tax as a retailer; it's paid by the distributor and we pay him.

Dawn Lietz:
Tax is paid at the time that the fuel is delivered to a retail station. However, we have found that there are circumstances where the tax wasn't paid to the Department, and then we have to go back and bill for that tax. On dyed fuel there is no tax, federal or state. The issue here is the dyed fuel and there is no tax on it.

Chairman Oceguera:
I think that people are buying dyed fuel and using it in an inappropriate way, so they are not paying the tax.

Assemblyman Claborn:
My concerns would be a construction job. Let's say you have 30 or 40 pieces of equipment out there, and you bring the red fuel, would they still have to comply with the logging you are talking about?

Dawn Lietz:
If they want to seek a refund on clear-fuel purchase, yes they do. If they do not want to seek a refund, and its dyed fuel, the record keeping is showing what equipment that fuel was used in. When we come out to audit, we will look at that and make sure the dyed fuel purchases are in-line with the type of equipment that is being used, and we will make sure the clear fuel purchases are enough to substantiate the operations for highway use.

Assemblyman Goicoechea:
How often would you go to a job site that was receiving both red and clear fuel and audit them? How many audits do you perform a year?

Edgar Roberts:
On the exempt fuel refund request audits, we do it at a random pick, and we may pick 40 to 50 companies to audit out of the refund requests submitted to the Department.

Assemblyman Goicoechea:
Of those that were burning red fuel and didn't request a refund because they didn't have one coming, how many do you audit?

Edgar Roberts:
Unless we are given information that someone is using dyed fuel in a taxable manner, either through somebody reporting it to the Department, or through a citation where they were caught on the road, then we would go out and audit that company. However if we are not informed of either a citation or from another taxpayer of somebody using untaxed red dye on the road in a taxable manner, we would not be auditing that company.

Assemblyman Claborn:
Would it be easier for you to go to the bulk plant where they make this fuel, and have them keep a record of who and where delivered, then you could take their log book and audit who you wanted?

Edgar Roberts:
Currently, cardlock and retailers are not reporting to the Department who they sell the fuel to.

Assemblyman Claborn:
If we make it a law, they would have to.

Daryl Capurro, Managing Director, Nevada Motor Transport Association:
This has been around for a long time. It goes back to the point in time when we didn't collect any tax, and it was all done on report. When studies were done that showed we were losing 50 percent of the tax, that's when we first went to being taxed at the pump. Later on it was then determined that we were still losing 26 percent, and the taxing was done at the terminal rack. When the distributor pulls the fuel from the terminal rack for delivery to customers, service stations, or others with bulk tanks, then the tax is collected. If it is dyed fuel, the fuel is dyed at the rack before it goes out. It comes through the pipeline clear, and it is dyed before it goes out for an order that shows dyed fuel purchase. The problem that we have is all of us are noticing that the price of fuel is continually going up and up. There is 52 cents of tax on diesel, 27.4 cents on the State level, and 24 cents on the federal level. As the price of fuel goes higher, it becomes more attractive to cut down on your costs,

because fuel is our second highest cost factor in transportation. What we do is make it more attractive for people to use red-dyed fuel on highways. We make it easier for them to get that fuel without any trail. What we are doing is creating a competitive disadvantage for those companies who do the right thing, pay the tax, opposed to those who don't. We also create a funding problem for the State Highway Fund.

[Daryl Capurro, continued.] In testing for dyed fuel they must draw a sample and put it into a machine that tells whether or not it's dyed. Some of it is not red enough to be readily discernible that it is red-dyed diesel. You cannot write a ticket and make it stick unless you have tested it in the machine. Unfortunately, at these mobile inspection sites, only part of the time do they actually dip the tank to check for the use of red-dyed fuel. It's a dirty job and a lot of highway patrolmen don't like to do it.

We have looked at alternatives for making sure that everybody pays their tax. The one thing we have said, just make sure that we are collecting all that we are supposed to be collecting on the current levy. That is all we are asking, that those who should pay, do pay. I consider the proposed amendment by the Department of Motor Vehicles to be sufficient. There is an alternative that is much cleaner that you might also want to consider, and that is to charge the tax to everyone and they can apply for a refund or credit. It is done all the time now with respect to intrastate carriers. Those who operate 100 percent intrastate can apply for a refund. The interstate carriers can apply for a refund or credit, and that is instantaneous with their report. The refunds are taking no more than 3 to 4 weeks to process, and they would apply to anyone who uses over 200 gallons in a 6-month period of time. What they are proposing does not change anything with respect to bulk tank owners. The proposed amendment prohibits the sale of red-dyed fuel from cardlocks and from retail stations. It does not change anything with respect to the bulk tank users as they exist today. You do have an audit trail then; you know who purchased the fuel, and they can be audited. In the situation where it's bought particularly at a retail service station, no one has any idea who purchased that fuel.

There are several instances throughout the state where these service stations have the pump conveniently located out of sight for observation, and, therefore, open for abuse. Some would say the people that I represent would have a problem because of the refrigeration units that are used. In many cases within our industry, those refrigeration units are being run off the main tank of the vehicle, so they are using clear fuel and they are already applying for credit or refund. Unless they have a separate tank, you have no way of knowing. The cursory inspection would not reveal to you whether or not they were operating that refrigeration unit off a separate tank. It is illegal to use red-dyed fuel on

highways. We believe there is a significant problem with the use of it. The amount of gallons that we were given was strictly with respect to 5 cardlock units in the state. It did not include any fuel from retail service stations or other cardlock facilities that were not included in the survey. If you have 5 surveys in which about 3 million gallons were sold, it's a significant problem. I think the bottom line is to charge the tax at the terminal rack on all fuel, and then the individual can apply for a credit or refund. Using electronic transfers makes it much easier than it ever was before.

Assemblyman Goicoechea:
If we are going to charge it at the rack, that would impact every industry. When we look at the millions of gallons being used everyday in the mining industry, that would represent a lot of money.

Daryl Capurro:
The ability to put that on a report as a credit or refund is available to all of those. If you don't want to go that far, then what's been proposed by the DMV is a reasonable solution to start with, and you can review it again in future sessions. We have been dealing with this issue for several sessions, and still do not have a handle on it.

Assemblyman Carpenter:
Who do you think are the biggest culprits out there? Is it the truckers over the road, cowboys, miners, drillers or people filling their cars up? Who is using this red-dyed fuel illegally?

Daryl Capurro:
I am not pointing the finger at any one group. We do know from observation in the past, that independent owner-operators, operating in and through the state of Nevada, are probably the worst culprits with respect to the use of red-dyed fuel. If they are making infrequent trips to Nevada, the chance of them being caught is low; they can save 52 cents a gallon. It's not simply restricted to those; it's a widespread problem among various user groups.

Assemblyman Carpenter:
I think there are many truckers across Nevada and we are not getting anything from them. They are buying fuel in Wyoming or someplace else, and they are not filling out the reports they are supposed to for the taxes due to Nevada.

Daryl Capurro:
Diesel is taxed differently than gasoline. Gasoline tax is paid at the point of purchase. Diesel tax is paid for point of use. No matter where they buy the fuel, if they buy in Utah and go across Nevada, the State of Nevada would still

receive the fuel tax because it is collected by the State of Utah under the International Fuel Tax Agreement, and remitted to the State of Nevada. That is not an issue. We are all required by federal law to belong to IFTA.

Berlyn Miller, Legislative Advocate, representing Nevada Contractors Association, Las Vegas Nevada:
We had an objection to A.B. 255, as it was originally submitted, because of the problems of the record keeping, reporting, cost, and the effect of that. In meeting with the sponsor of the bill and the DMV, I asked, "Where is the problem?" It isn't my members who have hundreds of pieces of diesel equipment on construction sites. We know that is not the problem, and they said they felt the problem was in the cardlocks and the retail stations where there was no check or control over who was using that fuel. That is where the idea of this amendment came up, and we are supportive of the amendment. Our objective and our only concerns are to try to collect those tax dollars and get them into the Highway Fund. We need more money in the Highway Fund; we are all aware of that problem. We were looking at trying to maximize that. That doesn't mean that any people currently buying dyed diesel in those locations wouldn't be able to take advantage when they were using it for a legitimate nontaxable reason. They can always apply for that refund.

When I was in the construction business I had over a hundred pieces of diesel equipment on construction sites. I didn't want the hassle of dealing with the dyed fuel. I bought clear fuel and applied for the refund for the equipment that I used the diesel in. I disagree with Mr. Capurro to go ahead and collect it from everyone, because then you have the problem of everyone in Nevada that uses diesel off-road going through that reporting procedure. I think that is too complicated, extensive, and expensive for reporting purposes. I know there are people who are objecting to this amendment. The members that I have talked to are supportive of the amendment, but I am told that some of my members use cardlocks, and they would object to that. If the opponents of the amendment have another solution, I would be happy to listen and work with them.

Assemblyman Goicoechea:
I am sure you represent a number of small contractors who reside in town, have 200-gallon tanks in the back of their vehicle, and use red fuel for their backhoes, cats, or whatever. Where are they supposed to get their fuel? If we force them to go to bulk fuel, then we just put another round of these 1,000-gallon tanks out there. These tanks are not required to have a catchment base, therefore, we have a few leaks; it just creates an additional threat to both the environment and the users.

Berlyn Miller:
Yes, I agree. In order to use the clear fuel, they would have to apply for the refund on the tax. They would still be available to get fuel at the bulk plant if they wanted to get the dyed fuel there, and put in the 1,000-gallon tanks. Most of my clients have 10,000-gallon tanks that they take their fuel in. All the suppliers sell the dyed fuel at their yards. It might not be as convenient as the cardlock down the street, but it would be possible for them to pick up the dyed fuel.

Assemblyman Carpenter:
If the Highway Patrol would go out and hide behind these tanks that are shown in these pictures (Exhibit C), they should to be able to catch most of these people. After they fine them $1,000, $2,000 or $3,000, if they fill their 300-gallon tank, I don't think you are going to see much of somebody filling their tanks with dyed fuel after they pay a few of these fines.

Chairman Oceguera:
I know Ms. Kirkpatrick worked hard on this bill. I would caution you not to attack her personally. She worked diligently, and she had a lot of people in her office trying to work out an amendment to this bill to make it workable. I would still like to see this work; I think the DMV is correct that there is a problem. If you think you are going to kill this bill and it's going to go away, that's not my intention. If you would like to work with us on this bill, we would appreciate it.

Mike Cate, President, Silver State Masonry, Reno, Nevada:
The part about the cardlock system is a problem for me. If I have a job in Gardnerville, do I drive back to the bulk plant to get diesel for my forklifts? I only carry 180 to 100 gallons of fuel on each of my trucks. I use it basically for a couple of Bobcats and 4 or 5 forklifts. The cardlock system is very convenient; it is convenient for my guys catching it on the way home or on the way to work. That is a definite problem for me. I understand there are people out there who use the red diesel in the wrong way. If it were me, I would say the first fine would be $10,000; that would stop it. It seems like the higher the deterrent, the less it's likely to happen. I have personally been stopped 5 or 6 times by the Highway Patrol where they have dipped my tank. These refunds are a great idea if you are Granite Construction Company; they have the accountants and the system set up for this, I don't. Maybe the larger the company doing it, the larger the fine.

John Haycock, Chief Executive Officer, Haycock Petroleum Company, Las Vegas, Nevada:
We currently sell about 156 million gallons of light fuel every year in the state. As part of our distribution channel we operate several cardlocks. The 5 cardlock

operators that the DMV referred to, I suspect, represent more than 90 percent of the cardlocks in the state.

Chairman Oceguera:
I use your facility with the fire truck. I know if I am in my Battalion Chief's vehicle, I can't put in diesel, because the card doesn't work to give me diesel. If I am an on-road trucker, why would I have the ability to put dyed fuel in my truck? Couldn't we prevent a certain percentage of them from doing that in the first place by placing a restriction on their card to get that kind of fuel?

John Haycock:
That's what a cardlock is for. Anybody can perjure themselves. We require an affidavit showing that they are using this only for off-road fuel, and we have every one of those on file. The pump says it's for off-road, so there is no question that it's meant for off-road. If you want to lie about it, you could probably fool me. We keep tight controls over it. You can't put diesel fuel in a gasoline engine because you will ruin it.

Assemblyman Sherer:
Do the cardlock dealers have those under surveillance? I have a gas station, and we see different people who do those types of things all the time.

John Haycock:
We do have video cameras on our cardlocks. It is operated through the Internet and is retrievable 24 hours a day. Some of the smaller ones, the ones that don't sell off-road diesel, don't have surveillance, but our larger cardlocks have video surveillance. That is another deterrent.

We are strongly opposed to A.B. 255. It's very difficult to solve a problem that has not been defined. As I was listening to the DMV, they assumed that every single gallon is a cheater, and it's going to cost the state $1.8 million. It is only going to cost the state about $900,000 because half of that money goes to the federal government.

The Highway Patrol's random testing indicated that less than half of 1 percent were abusing it. If 1 percent abused red dyed diesel, that probably represents about $9,000.

I doubt that the problem is as rampant as the Department believes, and I doubt that it could be corrected by eliminating the proven commercial methods of distribution that we operate. cardlocks by their very nature keep detailed and accurate records. They are electronic and high tech. Every fuel transaction is accounted for by product type, amount, time of day, purchasing entity, and

even the specific vehicle receiving the fuel in addition to the video surveillance that we have. Our typical red-dyed cardlock customer is perhaps a utility, probably a municipality, or maybe a construction company. They access red-dyed diesel into a service tank truck. They don't put it into the tank that operates their vehicle; they put it into a service tank in back of their vehicle, and that is how they fuel those vehicles that are out on a construction job, rather than setting up a fuel storage tank. Or perhaps they drag their backhoe through on a trailer and put the red fuel into the backhoe. If the objective is to defraud the State, the cardlock system is probably the least likely way to do it. cardlocks provide a specific audit trail detailing every transaction.

Chairman Oceguera:
If there is, in fact, a problem and it's not at the cardlock places, where would you say it is?

John Haycock:
The easiest way to put red-dyed fuel in my Ford F-350 is to go to my bulk plant, pull up to the dock and tell them I need two drums of off-road fuel to run in my Bobcat. Then you take it home and, with a hand pump, put it into your truck.

Chairman Oceguera:
Do you think the amount the DMV is purporting to say that is not being taxed could be done in that manner?

John Haycock:
The DMV didn't say what wasn't being taxed; they said if every single gallon bought was cheated, this is what the liability is, and they included the federal government dollars in that.

The alternative to cardlock access would be more fuel storage tanks, mostly above ground because they would be at temporary construction sites. I happen to be the Chairman of the Nevada Cleanup Fund, and more fuel storage is not in the best interest of our environmental stewardship. There will always be dishonesty and fraud; you can't legislate honesty. Assembly Bill 255 will do very little if anything to abate the misuse of red-dyed fuel, which may or may not be a material problem. It will do so at the expense of honest business people who have invested a lot of money in the infrastructure.

Assemblyman Claborn:
Can any one of those very large motor homes, the ones that use diesel, pull into a truck stop and use this fuel?

John Haycock:
I don't operate truck stops; I operate cardlocks. Relative to cardlocks, they cannot. Relative to truck stops, I am not aware of any, although there are some that sell red fuel.

Assemblyman Claborn:
You might be losing a lot of taxes there if these truck stops are available for anyone to pull in and fill up with red fuel. It is much cheaper. Has anybody taken a survey on that?

John Haycock:
Those are retail operations. I suspect that there are nowhere near the controls on those that are on a cardlock. I think a lot of those motor homes have generators that legally run off red fuel, so they probably have the nozzle out.

Assemblyman Claborn:
If they were able to do this, how would you get tax out of them? Nobody checks them for red fuel. They are the ones stealing your taxes.

Norma McCusker, Sales Manager, Western Energetix Cardlock, Barry Hinckley Industries, Sparks, Nevada:
I oversee several large contracts, including the State of Nevada contract for fuel, most of the government fleets in the North, plus the power companies. I have a tremendous understanding of taxes and of cardlocks. We have been audited in the past as a cardlock for our records, and our records have been available to the State.

We do support the DMV in looking at this. I work extremely closely with these people, and I would do nothing to injure that relationship. When I found out about A.B.255, my heart stopped because the last thing I want to do is injure my relationship with the DMV and taxation side. We were never, as a cardlock industry, consulted on these kinds of changes or how it would impact the entire customer base. Somebody said that a bulk tank lock would be better than a cardlock. We believe that we are better than anything else. We are able to track every little thing. Seventy percent of the cardlock sales in Northern Nevada are through our company. Our card (Exhibit D) says dyed diesel only. You cannot get access to dyed diesel without holding this card in your hand, and it says it on there. The other thing we require is that they have to sign this form (Exhibit E), and this is required by State law and by the federal government.

> [Read from Exhibit E] That ABC Company claims the dyed diesel fuel purchased by the above account using the special fuel cards issued will be used exclusively for off-road purposes. Purchaser

> understands that any fraudulent use of the dyed diesel fuel for anything other than off-road purposes may subject the purchaser to penalties or perjury, which may include a fine and/or imprisonment.

[Norma McCusker, continued.] Every account of ours that has dyed diesel has one of these signed and in the file, signed by the owner of the company. Out of the 15 western states that I know, every state allows dyed diesel. This would be the first to say no dyed diesel in the cardlock. By eliminating dyed diesel in the cardlock, this customer, who is primarily your small to medium construction company, cannot afford large fuel tanks and large fuel systems. They are going to pay 52 cents more a gallon immediately. That is a huge hardship with the cost of fuel where it is now. Now they are going to file two forms, a State form and a federal form. Lots of these companies are smaller. Who does the filing? The owner. Now money is going to be held up for six months. I know it takes a long time to get a federal refund. The State's eventually going to give you the money back, but it costs them money to process every invoice. In my study, the State said it cost them $125 to process every invoice for payment at the State level. That is why they went to people like us for cardlock and the purchasing cards to eliminate lots of small invoices, because it costs them so much to process an invoice. When they process an invoice or refund check, it's going to cost them money to give us the money back that was ours in the first place. If you have many refunds to process, do you need to add more staff to process all of those refunds?

I have in front of me [directed Committee's attention to a large quantity of papers on the witness table] all the transactions in our cardlock by detail, by transaction, by customer, since January 1, 2005. I have a list of all of our customers since January 1, 2005, who have bought dyed diesel. We are the largest dyed-diesel in northern Nevada. I have 320 customers. We are not talking about thousands of people; they are auditable, they are traceable, every transaction has an audit trail on it, and every customer has an audit trail on it.

We would like to talk to people about solutions to the problem, but we don't know if the solution is necessarily to put a huge burden on the small business owner; a 52-cent-a-gallon increase is what they will see. This came out of a 2003 study from Highway Patrol; 18,500 tests were made by dipping the tank. Out of 18,500 tests, 45 failed. We are going to burden these small businesses with filing the extra tax work over 45 failures. We don't even know that those were cardlock customers. They could have been a rancher, farmer, miner, driller, or a guy who bought dyed diesel in California and came across the state line. We understand there may be a problem, but we are not sure the problem has been adequately defined yet to come up with a solution.

Assemblyman Carpenter:
Why do you think there has been an increase in dyed diesel bought from cardlocks for the last 4 or 5 years as presented by DMV (Exhibit C)?

Norma McCusker:
We have added dyed diesel at some of our cardlocks, and we have found that a lot of customers didn't want to have underground storage tanks or above-ground tanks. The environmental liability of having all those tanks was huge. It made more sense to put that environmental liability on us because that is all we do; we do nothing but fuel. The responsibility for maintaining those things is on us. They don't have the worry of having a tank in their yard or at the construction site getting tipped over or vandalized. We believe it's environmentally the best thing for our customers.

John Haycock;
The increase in red-dyed sales goes along with an increase in clear diesel fuel sales, unleaded gasoline sales, and supreme gasoline. Everything we sell at a cardlock has increased at about the same level. That is commensurate with the decrease in storage tanks in the state. I know NDEP [Nevada Department of Environmental Protection] is very happy about that.

Norma McCusker:
We are also number 1 in growth as a state and as a nation, and I expect the growth of dyed diesel sales goes with the construction industry, with all the earth work, the excavation, and things with construction.

Mark Sullivan, Legislative Advocate, representing Nevada Associated Mechanical Contractors and Associated General Contractors of Northern Nevada:
I represent 350 members, union and nonunion, subcontractors, general contractors, statewide contractors, regional and international contractors. We have a willingness to work with anyone on this bill. We are more than willing to do whatever we can to try and solve the issue. Many of our members are dyed fuel users, and they are for legitimate reasons. We have talked to them about some of the issues that they have, and they have challenges with the cardlock language of limiting their ability to use their cardlocks, which is in the amendment, and the reporting requirements that were in the original bill. How do you prevent it if you have somebody dishonest? I don't think we can do that legislatively.

One of our members owns Gradex, a heavy industrial contractor which has a lot of equipment. He is going to send a letter or email to everybody on the Committee. I talked to Clark and Sullivan who are regional contractors, they

don't have a lot of dirt moving equipment, they subcontract that out. They are a general contractor but they do have forklifts, and they buy fuel in 55-gallon drums. They go to a cardlock, fill up the drums, take it over to the job site, fill up the forklifts, and utilize it in that regard.

[Mark Sullivan, continued.] Sierra Nevada Construction has been in business for 16 years, and they have been buying through a cardlock system since the inception of the company. Craig Holdt and Kevin Robertson are new owners. When they bought the company, they had about 50 employees. They are currently at about 175 employees, and they are trying to grow their business. They said it would impact them because that's what they use in all of their dirt work. If you took away the cardlock system, one of the options would be to put tanks on their locations and pay somebody who has a license to pick up and transport the fuel. Their property is next to the Truckee River in northern Nevada, and the odds of them getting a tank farm by the Truckee is so remote you can't even imagine.

The expertise in-house is whether or not they have the ability to manage that type of facility. A large contractor has an environmental specialist who works for them. Certainly they can do that, and they may not have to use a cardlock system. They think it's going to increase the costs of doing business if they have to do it from one location, such as a tank farm.

I talked to some smaller contractors. The little guy can't afford to pay the tax and then get reimbursed. Disadvantaged business owners, minority contractors, and those types of people need to keep that capital in their business to be able to grow their business. I think it would also have an effect if you were to do a blanket, where everybody just pays. Obviously, that would restrict the growth of business. I don't think that anybody is interested in doing that to these smaller emerging contractors and other types of businesses that would be impacted. To compete with larger companies, obviously, they don't have the ability to do that. The companies that do have the expertise can do on-site storage or transport fuel.

We were talking about fines. None of our contractors feel the risk is worth that reward. I don't think you are going to get anybody up here to testify that they cheat, and they don't want you to change anything. I don't think there is anybody who would oppose a higher fine. Make it where the risk that they are going to take is devastating to them. I think it's an issue of a level playing field for all of our guys. We do not want people cheating; it's an unfair advantage to somebody who's not paying that tax.

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas, Nevada:
We are opposed to this bill. We are opposed to this amendment, but we are willing to attempt to work something out even though we don't see what the problem is, and we don't think anybody else knows what the problem is.

Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada:
We are opposed to A.B. 255 as written because of the burden this type of reporting requirement would place on Nevada farm and ranch families. I understand there has been a lot of discussion about the possibility of changing the bill and moving forward with the amendment, although I am not completely certain we understand or have seen all of the details of that amendment. We have met with the sponsor of the bill to share our concerns, and we appreciate her working with us to resolve the issues that we had over the reporting burdens.

Mike Montero, Legislative Advocate, representing the Nevada Cattlemen's Association, Reno, Nevada:
We have some extreme concerns with the bill as it's written today. As far as the amendments, I haven't had an opportunity to poll any of our members about what potential hardships those might cause. The problem with the original bill was particularly Section 5, which appears to be removed from the proposed amendment. If the proposed amendments become the bill, it wouldn't be the same problems.

I think the problems with monthly reporting would be unduly burdensome to our members in the cattle ranching industry. It is very difficult to track with the type of bulk tanks that are used on a lot of ranches. Many of them don't have meters on gravity feed tanks. Concerning the amendment with cardlocks, some of the members do use those cardlocks to purchase the bulk fuel or the dyed fuel. They put it into tanks and transport it back to the farm or ranch. It's convenient. You can pick that fuel up after hours if your ranch is a long way from the bulk plant. You can also halve the transportation costs involved by having it delivered in bulk.

Times of the year can be very important. I realize they can request a refund, but with some of the smaller contractors, the added costs of paying the tax and then asking for the refund can have a significant financial impact on some operators during certain times of the year. I would be happy to offer, on behalf of the Nevada Cattlemen's Association, to work with the sponsors of this bill and possibly the amendments if needed.

Assemblywoman Kirkpatrick:
I am more than willing to spend Tuesday night with everybody, and see if we can come to a compromise. I think that, from where we started, we've actually made some headway.

Chairman Oceguera:
I think there is a problem here. We have moved a long way from the initial bill; I would like to see you work on it a little bit more to see if we can come up with something that is workable for everyone. The opponents have pointed out some valid issues with the amendments. Maybe there is a solution there that we can come up with.

Assemblyman Carpenter:
It seems to me that we should do a higher fine. I know that the $1,000 fine would shut down a lot of illegal use of dyed fuel in my area. I don't know how high we can go. If the Highway Patrol can do more of these stops, I don't think we will have a problem in the future.

Assemblywoman Gerhardt:
We have all of these surveillance cameras. Is anything being done if they see an inappropriate sale on a surveillance camera?

Assemblywoman Kirkpatrick:
There are some companies that do have surveillance cameras, but in the rural areas and smaller truck stop retail centers, they do not. However, in the law, the DMV has the ability to audit you.

Chairman Oceguera:
If you were to find, through a random check on your surveillance for whatever reason, an over-the-road vehicle filling his entire tank with red dye, as a private businessman what would you do? I wouldn't think the DMV would have the ability to come in and look at your security tapes, but if you see that, do you call them?

John Haycock:
The reason we have surveillance is because it's an unattended location, and we want to try to mitigate any damage to our equipment. As an owner, I certainly would offer any video equipment or tapes to DMV for audit purposes or whatever other regulatory agency for audit purposes.

Chairman Oceguera:
For instance, there had been a nozzle ripped off, and you saw it while you were going through your tapes trying to capture that.

John Haycock:
And the guy who ripped it off happened to be a guy in a Ford F-350 putting it into his tank. Yes, I think that would be reportable.

Chairman Oceguera:
It is a touchy issue with a private business. That is a loss of revenue to you if you report every guy who takes dyed fuel because you are making money on the sale.

John Haycock:
Not only would I report it, but that is not the only remedy. I could, within 5 minutes, have his card completely invalidated without him even knowing it. Cardlocks really have some amazing technology. You can find out about the sale, who sold it, when they did, and how many gallons.

Assemblywoman Gerhardt:
How often have you actually made a card invalid under those circumstances? If you are not watching surveillance, then that probably has never happened, right?

John Haycock:
I don't know that we ever have. I have a manager who does that. I don't acknowledge it as a material problem. It doesn't mean that if I saw it I wouldn't report it. It would be very easy to send a memo out to the folks who operate that department, to report any misconduct relative to the abuse of dyed fuel needs as soon as possible. I don't know that we have ever caught anybody doing it.

Assemblywoman Gerhardt:
Maybe we could give you some incentive to do that.

Chairman Oceguera:
I will close the hearing on A.B 255. I will open the hearing on A.B 504.

Assembly Bill 504: Exempts owner or operator of motor vehicle that is used for transportation of passengers or property from provisions governing fully regulated carriers under certain circumstances. (BDR 58-1236)

We will indefinitely postpone A.B. 504.

William Bible, President, Nevada Resort Association, Las Vegas, Nevada:
In Las Vegas is Todd Bice, who is with Schreck Brignone Law Firm and has provided us some legal advice. We are distributing two packets of information about this particular piece of legislation (Exhibit F): one is a copy of the *Nevada Administrative Code* (NAC) 706.147; the other (Exhibit G) consists of two memorandums, one dated April 7, 2005, addressed to me on the letterhead of the Schreck Brignone law firm, and the other a February 4, 2005, memorandum dealing with common carriers and the jurisdiction of the Transportation Services Authority (TSA).

We have a provision in the NAC (Exhibit F) that deals with free shuttle services, and I have highlighted the appropriate portion of that particular provision within the NAC. This is a regulation that was adopted by the TSA. As you know, the casinos provide limousine services to their customers. They have essentially three ways of providing those services or acquiring those services. They will either contract with a fully regulated carrier, in which case they are using that vehicle. You will see the CPCN [Certificate of Public Convenience and Necessity] on the rear bumper. In some cases they will do a combination of contracting with a fully regulated carrier and use, in some cases where they deem it appropriate, a house or property owned and operated by the limousine service. In other cases, they will exclusively use their own in-house owned and operated limousine. Those are the three main methods of acquiring limousine services for casino customers and providing services and complimentary services to customers. It is one of the fundamental hallmarks of the industry.

The TSA adopted a regulation that indicated what a free shuttle service is. There are a number of things about whether you can advertise the business, the driver can't solicit for tips, or a variety of things. Also included is the highlighted area that says, "The transportation has to be furnished from the provider's place of business and has to be either the point of origin or the point of destination of the trip." If you own the Mirage, and your customer wants to go to the Bellagio but then decides that he wants to go down to the MGM, you now have to go back to the original property before you haul him down there. If you are taking your customer to the golf course and he decides he needs some golf balls, do you want to stop at the golf shop? You can't do that under this existing regulation. This really hamstrings the current operation.

This version of the regulation has been there for a number of years. I requested our legal people take a look at it, which is the origin of the two opinions you have before you. One, dated February 4, 2005, (Exhibit G), reads as follows: [Read from the opinion dated February 4, 2005 (Exhibit G).]

> Are limousines owned and operated by gaming establishments to transport their patrons and their luggage in certain cases, without charge, considered to be common carriers and subject to the jurisdiction of the Transportation Services Authority? If not, why?
>
> Brief Answer. No. A common carrier of passengers is any person or operator who: (1) holds himself out to the public as willing to transport passengers by motor vehicles.

Casinos do not do that. They make the selection as to whom they are going to provide transportation services to. [Read from (Exhibit G)].

> (2) makes himself available for all who may choose to employ him.

[William Bible, continued.] We don't charge for this service, and we don't make ourselves available to all people. We make a business judgment based on who we think is appropriate to receive transportation, just as we make a business judgment as to who is appropriate to receive a complimentary cocktail, a complimentary room, a ticket to a show, and in some cases, airfare, transportation, and a whole variety of services that are provided to the customer. If I had an abundance of caution, I would have had this particular legal analysis examined by the Schreck Brignone law firm. I will not put words in Mr. Todd Bice's mouth, but I will ask him to briefly speak about his analysis which you also have in front of you in a letter dated April 7, 2005 (Exhibit G).

Chairman Oceguera:
You started out your presentation by saying you don't know why you are here. I know why you are here: because you requested a bill. For future reference, if you are going to bring legal analysis to my Committee, and you have had it for a while, I would rather you give it to me first so that I have a chance to read it.

Todd Bice, Legal Counsel, Nevada Resort Association:
To give you an overview, we were asked to determine essentially whether or not the Transportation Services Authority had jurisdiction to regulate the free limousine services being provided by casino resort hotels. As an administrative agency, the Transportation Services Authority's jurisdiction is controlled by whatever jurisdiction the Legislature has given it in concurrence with the Governor. In this particular case, as specified in NRS 706.041, it defines who is a common carrier under State law. Under State law, the common carrier is someone who holds himself out to the public being willing to transport by vehicle from place to place a person or property.

[Todd Bice, continued.] There is a second, very significant element to the definition of a common carrier, and that is that they must hold themselves out to all who choose to employ them as that common carrier. That is a significant issue here because it is not what casino resort hotels do, and they do not hold themselves for all—in other words, the general public. That's really a classic definition of a common carrier: someone who holds himself out to haul the general or common public. That is what is lacking here.

These criteria have to exist in order for the TSA to have jurisdiction. If you look at NRS 706.072, which defines the extent of the TSA's authority, they have jurisdiction over what are known as fully regulated common carriers. That does not include someone who is operating in the resort casino context.

I give you the explanation that we have provided in our analysis, as well as the other analysis that we have reviewed. This is not a unique definition that exists just in Nevada. This is a very common definition. This issue was addressed back in 1960 by the Nevada Attorney General's Office, which had reviewed similar circumstances where casinos were using free bus shuttle services. It concluded that, at that point in time, the jurisdiction was invested in the Public Service Commission, and the Attorney General's analysis back in 1960 was that they didn't have jurisdiction.

You also can examine the opinion *Ruggles v. The Public Service Commission*, 109 Nev 36 (1993), from the Nevada Supreme Court, which seemed to confirm the same sort of principle, in that you have to have both of these elements present for someone to be deemed a common carrier. If they are not a common carrier, then they are not a fully regulated common carrier as defined in the statute and the TSA does not have jurisdiction.

There are three points that you draw when you examine this. The resort hotels do not hold themselves out as being in the business of transporting passengers. They don't engage in the business of transporting passengers for hire, and they are not available for hire to the general or what would commonly be considered the common public, as that term is used in the statute. For that reason we have reviewed the situation and, as provided in the written materials, do not believe that the TSA has jurisdiction over these limousines being used by the resort hotels.

Assemblyman Hogan:
In reviewing the elements of NAC 706.147*,* as the provider of free shuttle service, have you looked into the origin of this particular description of these conditions? It seems to me at first review that it was written to exclude the kind

of jurisdiction now being asserted. From a historical point of view, do we know exactly how this got written this way?

Todd Bice:
Are you talking about NAC 706.147? I cannot answer the question precisely as to how this came into existence. I do know in response to the question that you posed, it looks like it's designed to exclude this situation. Section 1, subsection (d) defines the exemption as being only in those rare circumstances where the shuttle service is either going directly to that particular resort hotel or departing from that particular resort or hotel. That is one of the principal problems with the regulation and why it is overbroad, where the TSA doesn't have jurisdiction. These limousine services are not available to the general public, and are not held out in that manner. That is why the TSA has overreached in terms of what authority the Legislature has given it and adopted a regulation that is not permissible under the jurisdiction that the Legislature has given it.

Assemblywoman Ohrenschall:
Is the motive for this bill to allow these transportation units to be able to stop at different places along the way if they need to? Is that the reason for bringing this bill?

William Bible:
This bill is to remedy the restrictions that are created by the language that I highlighted (Exhibit F).

Assemblywoman Ohrenschall:
Is that what touched off the jurisdictional dispute?

William Bible:
There has been some suggestion to perhaps increase enforcement, and the members of the association feel that this particular provision is an undue restriction on their business judgment as to how they operate their particular limousines. I am not aware that there have been any citations in this area.

Assemblywoman Ohrenschall:
I was wondering if that is one of the primary concerns.

William Bible:
It is the primary concern. It's difficult to tell your customer, no I can't drop your wife off at the Fashion Show Mall. I can take you over here, but because of some State regulation, I have to take you to the hotel first, and go back and forth three times.

[William Bible, continued.] You have before you today A.B. 504, which was patterned after the amendment that was considered and placed in legislation in 2001, it was contained in Senate Bill 576 of the 71st Legislative Session. The Legislature did consider this matter at that time. That particular bill did not pass for an unrelated reason because it contained a number of other provisions that dealt with language restrictions on drivers, taxicabs, and things of that nature. That never became law. After it failed, I did talk with the head of TSA, and he indicated to me that they would be able to solve this matter regulatorily. Last fall, I became aware that there were additional problems and felt we wanted to come back and pursue essentially the same type provision.

What you have before you today is an interesting bill. In Section 1 it says, "An owner-operator of a motor vehicle that is not used for the transportation of passengers or property is not subject to the provisions in this chapter." We don't believe we are subject to the provisions anyway. We do have some criteria, the owner operator of the motor vehicle must hold a nonrestricted license and be a resort hotel. It cannot be in the business of transporting passengers or property. They cannot charge a fee for transporting passengers or property, which means you have to meet all of the elements of the statute. You also have to obtain and place in the motor vehicle a decal sticker or other form of identification according to subsection 2.

Subsection 2 requires a payment of a $50 fee to the TSA for a decal to place on the vehicle. We had envisioned this 4 years ago as a method of identifying these vehicles so they are not subject to enforcement activity and are not being pulled over on a fairly routine basis to find out what is occurring.

I was discussing the matter today with the Governor's chief of staff, and he indicated to me that the Governor still has a hot button issue on fees. They would feel more comfortable if there was not a fee in this particular provision. I would suggest if you choose to process this particular bill that you amend that provision out of it, and instead amend into it the same provision that exists in the free shuttle regulation which is contained under Section I. It is (Exhibit F) that indicates that the vehicle used for the free shuttle service is properly marked on each side of the vehicle with the name, logo, or the provider. Such marking must be at least 2 inches high, and be visible from a distance of at least 50 feet. That would certainly give everybody notification that this is a casino operated limousine, and that they meet the criteria that would be in place if A.B. 504 becomes law.

I have asked Mr. Vassiliadis to join me today, and to read into the record a letter (Exhibit H) that we received today from Michael Gaughan on this particular issue, because this is a concern to the members of the Resort Association. It

does create a restriction on their methods of operation, and does not seem to be a good justification for that restriction.

William Vassiliadis, Legislative Advocate, representing Nevada Resort Association, Reno, Nevada:
I am not sure why we needed to have legislation to be here, and what ill was attempted to be cured that this regulation was required. I will read a letter from Mr. Gaughan (Exhibit H).

> As Chief Executive Officer of Coast Casinos and a Nevada businessman for over 35 years, I would like to take this opportunity to articulate a current problem that exists with respect to the Coast Casino limousines.
>
> Current legislation restricts the use of company owned limousines from deviating from point A to point B. From a customer service aspect, this inability to provide quality guest service is both compromising and unnecessary. We are licensed in the state of Nevada with a nonrestricted gaming license, and yet prohibited from taking a customer who wants to eat at one of our other hotels to the Fashion Mall in the process.
>
> Coast Limousines are fully insured and professionally maintained in our own auto shop. In addition, all drivers are employees of Coast, and have undergone preemployment drug testing and background checks as well as carry commercial driver's license. These limousines afford us the ability to transport our customer and other potential customers that are deserving of this particular complimentary privilege. Each of our limousines is used for business promotional opportunities as well.
>
> With the proliferation of gaming in other jurisdictions, quality customer service is paramount in satisfying the guest's expectations. Current legislation is restrictive and prohibitive with respect to this issue. Passage of this bill will allow us the flexibility to accommodate the needs of our customers and is essential to provide the quality guest services they have come to expect. Michael J. Gaughan, C.E.O, Coast.

Mr. Gaughan represents the feelings of all the NRA [Nevada Resort Association] members. My day job is to be concerned with the competitive environment that Las Vegas finds itself in as we try to attract more and more tourists. One of the biggest areas of competition that we face is the premium customer, who has

many choices, and can afford to go to many destinations. One of the advantages we have had in the past is to be able to provide a custom experience to those premium customers, to be able to treat them in a certain way, whether it is being able to take them from a hotel to a restaurant, to a mall, and back to a hotel again. This seemed to work really well for a lot of years. I don't know why now we are faced with having to bring legislation to get what has been the common practice. One of the things we can do as a resort industry is to continue to bring a record number of tourists that we have brought in the past.

Assemblyman Atkinson:
If the industry has been able to do this in the past, why the need now?

Bill Vassiliadis:
It was regulations that created restrictions on what we have been able to do.

William Bible:
The regulations would be whatever the date this provision was added to the regulation. We had the flexibility before this regulation was put in place. We no longer have that flexibility. We don't think that is an appropriate exercise in the jurisdiction of the TSA.

Assemblyman Christensen:
In the beginning of the bill, Section 1, subsection 1(a)1, reads: "holds a nonrestricted license and is a resort hotel." I am not clear on nonrestricted and restricted. I imagine the big properties are nonrestricted. Can you give me an example of a restricted property?

William Bible:
These are phrases contained in Chapter 465, which is the Gaming Control Act. A restricted license is a license to operate 15 or fewer slot machines. If you go above 15 gaming devices or you have one table or more, you then get a nonrestricted license. A nonrestricted license is a higher level license. Nonrestricted licenses have been grandfathered in Clark County to supermarkets where they can operate up to 20 or 25 slot machines in a nonrestricted environment. For this particular exemption to have a nonrestricted license, you have to be a resort hotel. In order to qualify as a resort hotel in state statute, you have to have at least 200 rooms, as well as bars, restaurants, and a variety of other facilities available for your guests. In Clark County and Washoe County, you have a higher standard that has been enacted by local ordinance, where you need to have 300 rooms. The intent was to narrow this exemption down to the larger properties.

Assemblyman Sherer:
How many limousines, on the average, does each property operate?

William Bible:
It varies from property to property and also with the business model that they adopt in their business judgment. If they use their own company-operated limousines, they will have 4 or 5. They have the number of limousines that they feel is necessary to accommodate the needs of their guests.

Chairman Oceguera:
Let's say they have 30 limousines on property, are those operated all by the property or are some operated by independent contractors?

William Bible:
Some of the properties choose to have all of them company owned and operated. Others use an exclusive contract arrangement with a fully regulated carrier; some use a mix or blend, depending upon what they feel their business needs. In a lot of cases, the property will keep a relatively small number of owned and operated limousines on hand, and then, for business needs, perhaps engage a contractor to come in, so they avoid the expense of having that vehicle available at all times.

Assemblyman Manendo:
I was trying to see when the regulations were put in. It looks like something in 1998, 1999, and 2002 there was some tweaking to those regulations. Since then, has there been any negotiations between you folks and the TSA to try to come up with an agreement, and if so, what was the outcome?

William Bible:
After the legislation that contained the amendment in the 2001 Legislature did not pass, I thought the matter had been resolved. I have had conversations with the Transportation Service Authority, and I don't know if we are on completely different wavelengths. I don't want to represent what their position is in this particular matter.

They had suggested that this piece of legislation be amended to create a restriction that would establish some financial criteria for the customers that we haul, and that appeared to me to be another administrative or bureaucratic burden. I couldn't understand why the State would be interested in that. When you get in the business of hauling people to the airport, and then have them go through some financial criteria, it would make Nevada a unique state.

[William Bible, continued.] We felt that it would be quicker to seek redress through the legislative process than through the administrative process with the agency or through the court system.

Assemblyman Manendo:
That was 4 years ago. I didn't know if there was something current in the last year or two.

Assemblyman Hogan:
Can you outline for us how we can be confident that the operation of the resorts with respect to their limousines and transportation services will be maintained to at least the same degree of safety, driver qualifications, and vehicle maintenance that would be required if you were under the jurisdiction of the TSA?

William Bible:
We are not currently subject to those kinds of requirements. I think the letter (Exhibit H) that Mr. Vassiliadis read into the record is indicative of how serious these resorts take this particular matter, where he indicated that Coast limousines are fully insured and professionally maintained by our own auto shop. In addition, all drivers are employees of Coast Casinos and have undergone preemployment drug testing and background checks and carry commercial driver licenses. These vehicles represent a potential liability risk to major companies, and they are going to take whatever steps are reasonable to protect their interests.

You have companies that are risk averse and take a number of proactive steps to prevent liability exposure; they have entire departments for risk management that look at these kinds of issues. I am sure that in their operations if they encounter difficulties, it's going to subject them to litigation.

Chairman Oceguera:
Can you give me an example of an unrestricted gaming license that is one table and so many slot machines?

William Bible:
Jimmy Williams in Austin had a table and 2 slot machines. It is difficult in some of these rural areas to find staff to deal the games.

Chairman Oceguera:
You have a small property that has a nonrestricted gaming license. It has 1 table and 15 slot machines. They buy a used limousine for $18,000 and are going to try to drum up some business. How can we be satisfied that limousine is safe?

William Bible:
In your questions you have a nonrestricted license, and Mr. Williams is not a resort hotel, he is not a higher level licensee. He would not be qualified for this.

Jeff Silver, Legislative Advocate, representing Bell Trans, Las Vegas, Nevada:
There is a balance in the transportation industry between taxicabs, buses, limousines, and free shuttles which were added by the Public Service Commission back in 1992. If you alter that relationship in any way, it's going to have an impact on something else. In the case of free shuttles, these are businesses that were given a carefully crafted exemption from full licensing as a fully regulated carrier. The reason was that wedding chapels and florist shops, which were providing special services, had made a plea to the Commission at that time, perhaps to the Legislature, seeking some type of exemption. But the balance is still there, and the more opportunities that one or another of the transportation providers has to increase the size of its fleets, the more likely it is to be detrimental competition, and the remaining portion of the transportation segment will be affected. In this particular case, if there had been a legal reason that the resort hotels would not be included in NAC 706.147, they could have tested that for the last 13 years in some judicial proceeding or come before the Legislature to seek some kind of clarification. This was not done because everybody recognized that this was a limitation for the benefit of the business.

There is now a new category, and a new expansion of what that limited exception was going to be. Transportation provided by a business, be it a wedding chapel, florist shop, or resort hotel, where they take their customer from the hotel to the airport or from the airport to the hotel, is for the convenience of the business. At some point, if the customer can direct the transportation elsewhere, it's for the convenience of the customer. If a customer wants to go to Nevada Bob's or to Walgreen's on their way up to Pahrump, that's for the convenience of the customer. That should be handled under the normal definitions by fully regulated carrier.

What we have here is a circumstance where none of the pretext of the free shuttle bill has been included in A.B. 504. The free shuttle regulation talks about furnishing services to passengers who are customers. In the Resort Association bill, they don't make any reference to customers. In reality, if the general manager of a resort hotel wanted to bring 50 cars out to service a wedding, as long as they didn't charge a fee, then that service could be provided for that individual, because the word customer is nowhere to be found in the bill. Any time that you take away the ability of the licensed industry to service their market segment, you are in fact creating detrimental competition, and in some ways you are taking and affecting the economic status of that industry. In this particular case, I don't see why a type of industry that has provided this service

to these individuals over all these years, should now have that part of their business removed from them, and in so doing the cream is taken away from those companies, especially the smaller companies. It is going to be gone forever. Now those companies that would have been available to service my child's prom or my friend's wedding, are not going to be able to afford the number of vehicles in their fleet, because that segment of the market is going to be taken away by the resort industry. It will have a traumatic effect on the equilibrium of the industry.

[Jeff Silver, continued.] TSA jurisdiction provides a lot of services that are valued at millions of dollars. They provide for an examination of the safety of the vehicle, inspection of drivers' backgrounds, guarantee of insurance, and a number of things that relate to the customer's ability to be protected. Not all resort hotels are as flush as the members of the Resort Association. There are resort hotels that are very marginal. I know there are limousine companies that are marginal and would be affected by this. There is also the possibility that resort hotels, even nonrestricted resort hotels, may not be as concerned about maintaining the high standards that the TSA now requires of its certificated carriers. I can see that there is a reason why resort hotels have contracted with certificated carriers in many instances to provide their services.

A bill such as this will, in fact, impact the certificated industry. It will create the potentiality of unfettered competition by a segment that should be regulated if they want to engage in that type of business. If they have passed the scrutiny, all the checks and balances that go into getting a nonrestricted gaming license, they can apply to the TSA and obtain a certificate as a fully regulated carrier in which to operate the cars that they want to operate. To do anything less would create detrimental competition and is not a necessary aspect of their business.

Assemblyman Hogan:
You have indicated to us that there is a potential for loss of a considerable amount of business to your client and other similiarly situated providers of transportation services. We are talking about a category of potential passengers who are staying at a resort and who are eligible for unlimited transportation services locally from the resort at which they are staying. Are you suggesting that, in the event they need to make one or more extra stops, they don't make use of the service, but rather call another outside limousine service? Is that a significant part of the business that might be lost if we pass this bill?

Jeff Silver:
The bill, A.B. 504, does not indicate that the customer of the limousine service has to be a customer of the hotel. There is no indication that it's restricted to those kinds of customers. If it were restricted to those customers, how does

one differentiate as to which of those customers is going to get the benefit of that service, and which are not.

[Jeff Silver, continued.] In the case of the free shuttle service, they have to be customers of the wedding chapel, and there has to be a specific limited type of service. I can see that this business would definitely expand to other forms of business or might even be subject to attack in courts if, in fact, a particular industry were given specialized treatment while other forms of businesses were legitimate as a resort hotel are restricted and have to comply with the existing free shuttle provisions.

In this case, the answer to the question is that we don't know whether or not there will be abuses to this particular type of a program. It seems to be human nature that the drivers engage in extra services that are not permitted, and do so on a regular basis. In the limousine industry this is referred to as kellying, whereby a person on an assignment, where they are required to have a one-hour pre-arranged service, essentially goes up and down the street and cruises for customers, looking for opportunities to operate as a meterless taxi. We think if there is free rein among the hotels, employees who may not be given a great deal of compensation would look at this as an opportunity to engage in a private business activity on their own, free from the regulatory environment.

Robert Winner, representing Ambassador Limousine, Ritz Transportation, and Nellis Cab, Las Vegas, Nevada:

We do oppose this bill. The purpose of NRS 706, as set forth in subchapter 151, is to foster sound economic conditions in the industry. Transportation to the public, especially tourist, is considered a vital service, so it needs to be regulated. The ultimate purpose is to benefit the traveling public. We are regulated by insurance, vehicle age, quality, and condition, and we are inspected; driver's are inspected and drug tested. The TSA does a good job of making sure the traveling public has quality drivers and quality people in these regulated carriers.

If we have a really high-end client who wants to stop at Nevada Bob's to get some golf balls on the way, we want to be able to do that. I don't know that I have heard a legal opinion that says that isn't allowed. I have heard an example if we are taking someone up to Shadow Creek, we would like to be able to drop off his wife at the Fashion Show Mall. I don't know if that's necessarily a violation of that regulation. It sounds to me like no one from the industry has ever asked the TSA or tested it.

[Robert Winner, continued.] The reason for the free shuttle service is to balance. We are limited to how much we can charge. There has to be some type of balancing act. If you allow this bill to go through, it does have a slippery slope. While they stated that they only want to stop and pick up golf balls or drop somebody off at the Fashion Show, as long as they don't charge a fee and are a resort hotel, they can run as many vehicles as they want. They can build the cost of this industry into the price of the room. They can effectively run the smaller companies out of business. We do oppose this.

Mark James, Legislative Advocate, representing Frias Limousine Company, Las Vegas, Nevada:

The position taken by the proponents of this bill is an interesting one. They first presented a careful legal analysis, although I don't agree with it, which shows they are not subject to regulation by the TSA; therefore, NAC 706.147 is extra-jurisdictional to that agency. Instead of appearing in a court of law to take that regulation to task, which was apparently passed in 1992, they are here today with a bill that would take one large swath out of any regulation whatsoever in this area. The result of this legislation is an expansion of the unregulated limousine business. It is essentially unfair competition for those companies that have to abide by regulations, that bear the costs of that regulation, and that have invested in this business from the very beginning with the rubric of that legislation as part of their business model and part of their business costs. That essentially is unfair, and this Legislature should not allow that to occur.

I went to the Internet and looked at the Transportation Services Authority website. There the TSA explains to the public, in terms that everyone can look at and readily understand, just what the TSA does and how it protects the public in terms of safety. You can download the Transportation Services Authority's annual vehicle inspection report. That inspection report was adopted by our TSA to comply with federal laws, especially 49 CFR 396 [*Code of Federal Regulations*]. This is a long form that goes through all of the things that have to be inspected on a vehicle for it to pass muster in this state. That is one area of regulation and protection of the public. There is also protection of the public in terms of the soliciting of gratuities, the way these routes are operated, the driver qualifications, and the random drug testing. In addition to the safety of the people utilizing the limousines is the impact on the industry. There is a legislative declaration of policy in Chapter 706, which is something that you rarely see in the Nevada statutes, because the Legislature usually declines to make prefatory statements of policy, but this includes one. In there it says, "These statutes which have been adopted by the Legislature specifically provide for impartial regulation to promote safe, adequate, economical, and efficient service, and to foster sound economic conditions in motor transportation," to do

this without unjust discrimination, undo preferences, or advantage being given to any motor carrier or applicant for a certificate under the statute. To allow an area of limousine business, even though it's addended to resort casinos, to expand outside of that, runs directly contrary to that legislative declaration.

[Mark James, continued.] A report was published in December 2004 on the study of allocation of limousines. The Committee declined to undertake an allocation law. They learned in that study that a great percentage of this industry is on the economic edge of viability. Testimony was given by one of the University professors that a substantial percentage of the businesses in this industry are on that economic edge. This kind of legislation is going to result in expansion of unregulated limousine businesses and is what will push those others over the edge. It would decimate the limousine industry. A chief justice said many years ago, "The power to tax is the power to destroy." The power to regulate one portion of an industry and not regulate another portion of that industry is the power to destroy those who must abide by those regulations. I think the Legislature should look long, hard, and carefully at this and should reject this piece of legislation.

Brent Carson, Attorney, Winner and Carson Law Firm, representing On-Demand Sedan, Odyssey Limousine, and Desert Cab, Las Vegas, Nevada:
I represent On-Demand Sedan, Odyssey Limousine, and Desert Cab. We do oppose this bill. The legislative declaration of purpose is found in NRS 706.151. A few years back, this statute was called into district court, and the constitutionality of this statute was in question. My clients had the opportunity to litigate this matter. The court came back and said the State has a compelling interest in regulating the limousine industry to provide fair and impartial regulation; to promote safe, adequate, and efficient service;, and to foster sound economic conditions in the motor transportation industry.

Looking at A.B. 504, I don't see what the State's interest is in this bill. I don't think this type of a bill can sustain the constitutional muster. What's going to happen next is there will be windfalls. What about nonresort hotels? What about restricted licenses? Why are they treating these people differently, favoring one business owner over another? What we have is an equal protection argument that's going to happen, and then you are going to bring it into the florists and wedding chapels. There will be a long line of people trying to get out of the regulated industry just because the resort hotels possibly have a chance to do it.

Mario Lavato, representing Executive Coach and Carriage, and Executive Star Limousine, Las Vegas, Nevada:
We oppose A.B. 504, and I am in agreement with all the comments made by others in opposition. This bill eliminates the protections afforded by the

Nevada Revised Statutes and the *Nevada Administrative Code*. The whole point of seeking exemption from the regulatory framework is so that you don't have to abide by it. There is a public interest component here. As much as these regulations ensure that limousines provide quality service, they also protect the public from practices that may not meet Nevada standards. Executive Coach and Carriage and Executive Star Limousine are two of the most recent companies to be licensed in the limousine business. Working with Mr. Jimmerson every day, he has spent as much as half of his time working to comply with the regulatory framework and ensure that he provides a quality service to a demanding and high-class clientele. He did this with the expectation that he was going into a business where he would be competing with other regulated carriers. It is hard to see now why an investment such as that should be made just to have the company be subjected to unregulated competition from the biggest casinos in town.

[Mario Lavato, continued.] There really is no need for this bill. The current limousine companies are satisfying the demand. I haven't heard any statements to the effect that citations have been given for a simple stop somewhere. There is really no need for preferential treatment for the large casinos in Nevada. My clients have done what they can to ensure quality business.

Kimberly Maxson-Rushton, Commissioner, Transportation Services Authority, Nevada Department of Business and Industry:
Many of the concerns of the Transportation Services Authority relative to issues of safety enforcement, as well as the enabling and jurisdiction of the TSA, have been set forth in great detail. I think it's important to clarify some of the statements that were made by proponents of the bill with respect to the free shuttle provision as it applies to a nonrestricted licensee, especially those in which there are multiple properties under one single license. The TSA has always interpreted the free shuttle to apply to each of those individual establishments.

If a casino operator, such as the Mirage or MGM, wanted to utilize their personal vehicle to go from point A to point B, with either the origin or the destination being the casino, and wanted to then drop off a customer and go to another casino that is owned by that same licensee, we have always interpreted this at the Transportation Services Authority as being in compliance with the free shuttle. This is due to the fact that it's a common ownership, and it's consistent with the original intent set forth at the time the regulation was adopted. To my knowledge, and checking with our database, there have been no citations with respect to nonrestricted licensees and/or resort hotels, especially those that have multiple properties.

[Kimberly Maxson-Rushton, continued.] As recently as a year ago, a free shuttle workshop was held by the Transportation Services Authority at Cashman Field in which many of the representatives of the nonrestricted resort hotels were present, Coast Casinos in particular, in which that specific question was asked. We reiterated to them that, due to the fact that they are under one common ownership, it was interpreted by the Transportation Services Authority and set forth at an agendaed meeting that the free shuttle provision was amenable to them, and under those circumstances, they would not be in violation. I think it's important to note that has never been an issue with respect to the TSA.

The next issue is somewhat duplicative in the sense that it pertains to lack of specificity or clarification as to who these services, as proposed by the proponents of the bill, will be available to. It does not specify that it will be available to members of the casino; it does not specify that it will be amenable to people who are patrons of significant importance to the casino. What concerns me is that the very definition of resort hotel itself states that the hotel must be open to members of the general public, which is consistent with the definition of a common motor carrier, and completely runs afoul with the legal analysis set forth by the proponent and by Mr. Todd Bice, with respect to the lack of jurisdiction of the TSA in terms of this being operated as a common motor carrier.

The final issues to deal with are those of enforcement in terms of the costs associated with the transportation being provided. There is an assumption that there will not be a direct fee charged with respect to the availability of a limousine or another type of transportation, as provided by the casino. However, there are concerns on behalf of the TSA. We have seen this in other instances as they pertain to wedding chapels and other companies that are afforded the exemption of the free shuttle provision. They are wrapped into other costs—the cost of the room, the cost of a weekend package, and associated costs such as that. It would require an enormous amount of investigation with respect to enforcement to be able to determine this. It has been found in other public hearings, as evidence with respect to orders that have been set forth by the TSA, that other similarly situated companies have tried to use this as an example to get around the provisions of the common motor carrier standard.

There were some other legal issues that I wanted to bring to your attention. With your permission, I have asked that legal counsel for the Transportation Services Authority from the Attorney General's Office make a few comments.

Assemblyman Atkinson:
The TSA represents and regulates the industry. From a policy standpoint, what does the TSA really think of this bill, and where you stand with it?

Kimberly Maxson-Rushton:
The concerns are primarily with respect to safety, and enforcement. I think the opponents of the bill have set forth specifically, and in great detail, what the safety concerns are, and why common motor carriers are subject to heightened security and safety issues in order to protect the traveling public. That is the fundamental concern of the TSA. There is also, under the provisions set forth in NRS 706.151, an obligation of the TSA to ensure the wellbeing of the industry. In 2003 this legislative Body made a determination that this industry was suffering due to multiple external factors, one being the proliferation of gaming, and two being the decrease in tourism as a result of an event, such as that of September 11, 2001. As a result of that determination, a subcommittee was set up to determine whether a moratorium should be put in place. Pursuant to that moratorium and the ongoing study that took place in the interim year, there was an objective finding by Dr. Schwer from the University of Nevada, Las Vegas, that impacts on the industry that cause financial instability have direct relations and concerns as they pertain to safety.

Safety for the traveling public has always been the primary concern of the Transportation Services Authority. Look at the factors that were taken into consideration and that were testified to in 2003 and during the interim session: Financial instability, as created by an increase in competition and a decrease in services or an increase in substitute services, which is what the proponents are recommending here, has such a fundamental impact on the healthiness of the industry. Those factors are not only in terms of competition but are also relative to safety, and they do tend to suffer.

One of the biggest findings and concerns that the Transportation Services Authority has seen first hand is that the vehicles that are used are older vehicles versus newer vehicles. There is a lack of specificity on behalf of the operator in terms of the ongoing and operational fitness of the vehicle. Most importantly, the insurance is always the first thing to go. In the last 18 months, since the beginning of 2004, we have revoked a number of certificated carriers because they have failed to maintain the proper amount of insurance. Every single one of them comes in and says, “I financially cannot afford it because the market is so saturated, and there is such instability at this time.” They are primarily the smaller operators. At the same time, some of the hotels that are being referenced in the proposed bill, with respect to being nonrestricted resorts, also exist in smaller rural areas such as Wendover and Jackpot, where there is only one public transportation certificated entity. My concern would be that those

entities would be completely put out of business, and if not, they would maintain deficient standards with respect to safety and insurance.

Assemblyman Atkinson:
Do you think this is good for the industry?

Kimberly Maxson-Rushton:
My concern as a regulator is primarily with respect to safety. I cannot ignore the fact that the statistics and findings, as made not only by the objective study of a Professor of Economics at UNLV [University of Nevada at Las Vegas] but also by this Body, indicated that carriers such as limousines and the services that are provided by limousines decreased to upwards of 10.2 to 7.2 percent, respectively, from the period 2000 through 2002. There was a finding that the result of such declines creates an adverse economic impact for the limousine industry and other transportation entities such as the taxicab industry. I believe in fairness in terms of market balance. When it sways to one side to the point where it causes almost inherent deregulation of a primary part of that industry, I have concerns not only with respect to the failing industries or the industries that will suffer as a result, but also to the safety of the traveling public. As a regulator, it's important for me to be objective about this, but I would be remiss if I didn't specifically say that this will have definite impacts on the regulated market, primarily on the safety of the traveling public, and that would be of great concern to the Authority.

Assemblyman Christensen:
Does the TSA currently issue the certificates and licenses to the vehicles operated by the resort hotels?

Kimberly Maxson-Rushton:
We issue certificates of public convenience and necessity to applicants who apply for a license to operate as a common motor carrier, those being the fully regulated carriers which are the limousines; the partially regulated carriers, which are the charter buses; and we have had extensive conversations with respect to the difference between the two. If a hotel would like to apply for a certificate of public convenience in order to operate their own limousine service, we are certainly amenable to that; however, most of the casinos have a shared operation and they contract with certificated carriers. They have a few of their own private vehicles that are used in accordance with the provisions that are set forth in the free shuttle provision.

Assemblyman Christensen:
Do you certificate the private vehicles?

Kimberly Maxson-Rushton:
We don't certificate, but we do regulate them to ensure compliance with the provisions set forth under the free shuttle provision.

Assemblyman Christensen:
Do you have any idea how many certificates are out there and how many of those private vehicles you overlook?

Kimberly Maxson-Rushton:
No. It doesn't apply exclusively to the casino industry. The majority apply to wedding chapels, florists, and restaurants. Sedona hotel has called us and asked for an interpretation with respect to the use of their vehicles because they own multiple properties, and they are all under one certificate in terms of a license. That vehicle may be used to transport any of their passengers from property to property to property and to make one stop in between, as long as the point of origin or the point of destination is one of their own properties.

Assemblyman Christensen:
For those stops in between, if a limousine made four stops and you felt that was excessive, are you the citing authority over that?

Kimberly Maxson-Rushton:
Yes. That vehicle would fall outside the parameters of a free shuttle, and would be operating as a common motor carrier. It would be subject to being impounded and would also be subject to a NRS 706.386 violation and upwards of a $10,000 fine.

Assemblyman Hogan:
The information that you and some of the other witnesses against the bill have provided about the economic concerns of the industry are, in fact, concerns to the Committee members as well. You cited some specific figures, I believe, derived from Professor Keith Schwer's study indicating that there had been a very distinct and measurable decline between the years 2000 and 2002. The events of September 11, 2001, may have had something to do with that. Do you have any figures or any indication as to whether the economic health of the industry has come back as the number of visitors, both foreign and domestic, have increased during the 2002 to 2004 period?

Kimberly Maxson-Rushton:
Not specifically. I cannot offer any specifics as to the increase or decline with respect to the industry. Dr. Keith Schwer did note in the report that there were circumstances or external factors that did indicate the industry was still in a state of suffering with respect to their economic stability, but it was increasing

in terms of stability as a whole. The concern at that point was focused primarily on whether or not there should be greater regulation in the form of a moratorium. He went into great detail talking about the importance of regulation, and I think that is key to this issue because of the stability that it gives to an industry. How that relates to your question is that as you have better regulation, many of the illegal operators, the operators that would be detrimental, or substitute services to the industry are taken out of the industry due to better enforcement. The industry then prospers, or at least there is an upturn with respect to stability as a result of that. I can't say that it's attributable completely to the increase in tourism or the resurrection of tourism and the prosperity of that—as much as I would like to think it due to the good regulatory oversight that the Transportation Services Authority ensures—and the viability of the industry as a whole.

Mike Mersch, Legal Counsel Office of the Attorney General, representing Transportation Services Authority, Nevada Department of Business and Industry:

The example that was brought up earlier involving the individual wanting to go to a golf course and his significant other wanting to be dropped off at some other location was always an acceptable practice under the TSA's regulation NAC 706.147. The TSA, under its most recent clarification of this regulation, has actually made that very clear. It is not the vehicle's movement that dictates what is a trip, it is the customer's trip, and in that case, both individuals being customers. One person would be eligible to be dropped off, and another customer would be eligible to be dropped off at a different location. This happens frequently for free shuttle buses that operate for most of the nonrestricted gaming licensees, and there has never been a citation or a legal enforcement issue ever taken against a nonrestricted gaming licensee relative to this particular provision. I do think that this does raise some equal protection concerns; I do think that later on this would be challenged, and if any particular industries were to be treated differently, I think it would raise many concerns.

The actual language of A.B. 504 may be constitutionally vague. I say that from the standpoint of a prosecutor having to prosecute somebody under this. If you look at the language, it indicates an owner and operator of a gaming agency is not subject to the provisions of NRS 706. The first question in prosecuting this is: who is going to be watching this, and who is going to actually make sure that they are complying with these provisions? The TSA's jurisdiction is only limited to NRS 706. They wouldn't have the jurisdiction to investigate these particular matters, and, in that case, it may fall to the Gaming Control Board or other entities to monitor this. There are many terminologies that create some concerns in terms of being able to enforce this and ensure that, indeed, the operations are safe. Relative to the specifics of the regulation involved, I would

note that was adopted in 1992. Attorney General's Opinions from 50 years ago, which predate the existence of valid Nevada law, of course would be in opposite. The legal analysis that I have was put forth by the legal counsel for the NRA [Nevada Resorts Association]; I would have a difference of opinion as well.

Peter Ernaut, Legislative Advocate, representing Nevada Resort Association, Las Vegas, Nevada:

It seems that we are arguing two separate bills here. With all due respect to the representative of the TSA and their legal counsel and some of the legal counsel before us, most of their testimony is somewhat specious if not completely erroneous to what we are trying to accomplish here. If you understand what this was, and I think Assemblyman Christensen's question was right on point, do they do this now? Do they regulate us now? The answer simply is no, except for the provisions in NRS 706.036. We talked about safety, enforcement, and market share. Nothing in NRS 706 talks about safety or market share. It talks about the transportation being incidental to the business; it talks about point A to point B provisions; it talks about not being able to solicit gratuities; and it talks about having the vehicle properly marked. There is nothing here about safety and market share.

They do not regulate us today, except for NRS 706, and in that issue all of these things are fantasies. We are the most regulated industry in this state. We are public traded companies by and large, and why in heaven's name would we put our biggest customers at a safety risk, let alone risk the liability that would be created. This makes no common sense whatsoever. This clearly is an issue that our industry lived under one set of rules for quite some time, and a new entity—the TSA—was created and its regulators often seek other ways to regulate. We are simply saying please put us back to status-quo. Where we were there hasn't been a problem. There hasn't been a safety issue, and there hasn't been a market share issue that we've created. The market share concerns of the limousine industry are self-inflicted wounds. They have nothing to do with us. We could, as an industry, be private, or we could have before the TSA was created.

The company that I am affiliated with is Caesar's Entertainment, and 90 percent of our fleet is subcontracted, and about 10 percent of our fleet is private. We keep that back for overflow and for significantly special clients. There are companies that have fully private fleets, and there are companies that have all subcontracted fleets. It is a business decision. We are not competing with these guys; this is ridiculous. We have no motivation to take our customers and run them around town. We are in the gambling business, and we want them in the casino. We have no motivation to put our best customers in a risky situation. All

we are asking for is to take away unnecessary, duplicitous regulation on the most regulated industry in the state. I am sure there are some things we can talk about in this bill with the industry, some common sense middle ground to work this out.

William Bible:
When Mr. Ernaut said run them around town, it would be run them around town for free.

Chairman Oceguera:
Mr. Ernaut, I agree with you in certain aspects of what you are saying. However, I think this Committee is tasked with the concern for the safety of the traveling public. One of the main missions of the TSA, whether it's in NRS 706 or not, is their concern for the traveling public. Regarding the market share in question, I probably agree with you more than I disagree. I want to make sure that we can take customers and satisfy the needs of the people who come to Nevada and take part in our gaming activity. I think we all have the same goal here.

Peter Ernaut:
Whether you process A.B. 504 or you don't, nothing will change in the safety regulation of privately owned limousines by resort hotels.

Chairman Oceguera:
I have volunteered Ms. Gerhardt to work with the interested parties, but we need to do it by 2:00 p.m. tomorrow.

I will close the hearing on A.B. 504 and open the hearing on A.B. 547

Assembly Bill 547: Revises formula for distribution of revenue from tax on certain motor vehicle fuel. (BDR 32-423)

Assemblyman David Parks, Assembly District No.41, Clark County (part):
I was on the Legislative Committee for Local Government Taxes, which is a Statutory Committee that consists of 8 members of the Legislature. More importantly, it has an 11-member advisory committee consisting of the Executive Director of the Department of Taxation, as well as many individuals including Marvin Leavitt; Guy Hobbs; Mike Alastuey; Bob Anderson; Charles Chinnock, the Director of the Department of Taxation; William Horn; John Sherman; Claudette Springmeyer; Bjorn Selinder; Dawn Stout; and Terri Thomas.

In our last interim, we came up with a number of recommendations for the 2005 Legislative Session, one of which was BDR 32-423 [A.B. 547]. It was draft legislation to exclude the mileage of, and the vehicle miles traveled on, roads that are not maintained by local governments based upon the formula from distributing fuel tax revenue among local governments within a county.

Marvin Levitt, Certified Public Account, Carson City, Nevada:
In the Seventy-First Legislative Session, the Legislature passed a bill which changed the distribution of gasoline taxes to local government at the county level. One of the changes in that formula was that, in determining the amount of gasoline taxes, we would use mileage as one component of the actual miles of roads. Instead of using what had been previously done, we changed that so the roads the cities and counties were given credit for were the actual roads maintained by the counties and cities and not roads that were maintained by the State or some other local government.

That was done initially in 2001. Since then, we have a project to do what we call the second tier, which is reflected in this bill. The second tier is the distribution of gasoline taxes between counties and cities in those counties that have cities. It has no application in any county that does not have a city located within its boundaries. The formula stays essentially the same, except there are two components of the formula that are changed. The formula right now is based upon one-fourth in relation to population, one-fourth in relation to the area of the local government, one-fourth in relation to the number of miles of roads and streets, and one-fourth in relation to the number of miles traveled on those roads and streets. This bill changes that formula so that the roads, miles, and streets portion of the formula are only those roads that are maintained by the local government that is getting credit for them, and that applies also to the number of miles driven on those roads and streets. In other words, you use the same roads in determining the number of miles driven on them.

Whenever you redo a formula, there are some local governments that gain and some local governments that lose. That's always the case when we are involved in these formulas. This bill has an additional provision. It says you're never going to get less money than the amount of money you received in this current year, the one that ends June 30, 2005. That becomes the base, and then money in addition to what we are getting now will then be allocated by the new formula, including the new definition of these miles of roads and streets. The general effect of this is a benefit to cities as opposed to counties. That's not true completely, because there are certain areas of the state where it's more beneficial to the counties, but the differences are not huge in any of the counties. We are talking about relatively small differences.

Chairman Oceguera:
I am trying to picture an area like Lincoln County, where you have predominantly small cities with minimal road mileage.

Marvin Leavitt:
A good share of the roads are going to be State and are maintained by the State Department of Transportation. In Lincoln County, if you drive in on U.S. 93 from Las Vegas, that is a State maintained road. If you drive on one of the county roads that go between Pioche and Ursine, I am sure that would be a county road.

Chairman Oceguera:
So we are taking away $12,000 from Lincoln County and giving it to the city. I am trying to figure out how that works.

Marvin Leavitt:
Lincoln County is probably a good example, to see how it works that way. Right now Lincoln County would get credit for U.S. 93 as it starts at the Lincoln County line and ends at White Pine County line. They would be given credit for those miles of roads even though they don't maintain those miles of roads. We figured if you are trying to allocate gasoline taxes, and one of the factors that you are using are the miles of roads, it makes sense that those miles of roads are the ones that the government actually maintains, as opposed to the roads that someone else maintains. That is essentially the logic behind the formula change.

Assemblyman Sherer:
I know they do this a lot in Clark County between NDOT [Nevada Department of Transportation], the county, and the city. It's under one jurisdiction, and it is shared a little bit. It is kind of a blending. Are there going to be some issues with that?

Marvin Leavitt:
We considered that initially where you have a situation where NDOT does the road maintenance and a local government does street lights, but we used whoever has responsibility for the major road, and not those things along side the road. When we look at that, the difference is small enough statewide that it doesn't distort the total picture. The largest problem we had was how to treat the multilane roads as opposed to the roads that just have two lanes. How do you compare roads that go out in the middle of nowhere that are dirt roads? We finally came to the conclusion that probably the only logical way we could do it is to treat them all the same.

[Marvin Leavitt, continued.] In the first part of the formula, which distributes money from the general State level to the county level, we weighted population twice, so it's two times the road mileage. The reason we did that is we figured in urban areas. The roads are going to get used a lot more than in the rural areas, as far as daily traffic on the roads. You are more likely to have the multilane roads in the urban counties. By weighting population twice, we have sort of achieved the same thing without trying to come up with a formula so complex that even the accounting types among us will not understand it.

Chairman Oceguera:
How many times did you meet on this Committee?

Assemblyman Parks:
We met for four hearings. I know that in addition to the four hearings held by the 557 Committee, the Advisory Committee met both as an advisory committee as well as a subcommittee in which the issue of the second tier was the primary discussion of the subcommittee. The subcommittee brought its recommendations to the full committee, and the full committee met a minimum of four times and brought their recommendations to the 557 Committee.

Chairman Oceguera:
Was this recommendation unanimous on the part of the Advisory Committee and on the part of the Interim Committee?

Assemblyman Parks:
The vote was unanimous. My understanding is that out of the 8 members of the full committee, it also was unanimous.

Assemblyman Carpenter:
Is it based upon county by county, or is it statewide?

Marvin Leavitt:
Perhaps I should discuss the way these road miles are determined. Each individual local government has a responsibility to make available to the Department of Transportation the number of miles of roads that they maintain within their individual entities. Once they take responsibility for maintaining those roads, they can include them in their inventory. The State Department of Transportation has the responsibility to audit the information they submit so that we have some basis of consistency among the various local governments in the state in the way they accumulate their information.

When we think about the formula, we know the area of each of the entities, we know the area of each county, and we know the area of each city. When you

use area, it's a huge benefit to a county because the area of a county is much larger than the area of the cities. When you measure population, that can go either way depending on the individual county. It is based on the population of the county and the population of the city, and those change on a regular basis as that population is newly estimated.

[Marvin Leavitt, continued.] The next part of the formula, which deals with road miles, is based upon the miles as they have been submitted and later audited. The actual miles of travel are based on work done by the Department of Transportation, which actually conducts counts on various roads located in the entities to determine miles of travel. It is quite unique to each individual county and each individual city in the state. As you can imagine there is a huge difference between Rainbow Boulevard or Tropicana Avenue in Las Vegas in the Clark County area and the road that goes out through the middle of nowhere in the rural counties.

Andrew List, Executive Director, Nevada Association of Counties, Carson City, Nevada:

Even though I have eight counties that are going to lose money on this proposal, the Association of Counties still supports this bill. The reason we support this bill is because it came from the 557 Committee, and we believe in the work that the 557 Committee does. We think it's a great committee, and it should continue to work on these problems. The committee comes forth with some great recommendations and some great analysis year after year.

Clark County would lose about $425,000. That money isn't lost to the State or to the feds; that money is redistributed by formula to the other cities within that jurisdiction. Those other cities, like North Las Vegas and Henderson, would gain that money. Elko County would lose approximately $77,000. That money would be redistributed to the City of Elko, the City of Carlin, the City of Wendover, et cetera. In jurisdictions without cities, the amount stays the same. We would like to show our support for this bill, even though the counties would be losing revenue, because it came from the 557 Committee and it was well deliberated. The counties shouldn't take credit in the formula for roads that they aren't charged with maintaining in the first place.

Russ Law, Chief Operations Analysis Engineer, Nevada Department of Transportation:

I am here to ever so slightly support this bill. We have done a lot of the analysis work and are neutral on how the money is distributed, but this bill does affect our Department because we are the ones that come up with these statistics. In particular, on page 4, lines 13 and 18 of A.B. 547, you will see that there is a roadway system that says, "nonfederal aid primary system." This is a road

system that has not existed for over a decade, and despite that fact, our law still calls for that because we didn't want to change this distribution formula. As a consequence, we maintain a separate database of our former system that we had before the National Highway System Act of 1995 changed all these designations. There is no such thing as a primary aid road any longer in Nevada, and there has not been such a thing in over a decade. This will save us some time and will eliminate effort on our part to maintain a separate roadway system inventory for a system that is defunct.

Edgar Roberts, Administrator, Motor Carrier Division, Nevada Department of Motor Vehicles:
The Department currently has no position on this bill. However, the Department has submitted a fiscal note (Exhibit I) reflecting the added programming expenses DMV would occur should A.B. 547 pass. I am here to request that DMV's expenses incurred in performing the requested changes in the distribution pursuant to A.B. 547, should it pass, are covered in our budget.

Chairman Oceguera:
I will close the hearing on Assembly Bill 547. The standing Interim Committee has done a lot of good work. It is very technical in nature, and if they can all come to consensus like that, I don't see any reason why we should hold up their suggestions. The Chair would be willing to take a motion.

ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS ASSEMBLY BILL 547.

ASSEMBLYMAN ATKINSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

I will open the hearing on Assembly Bill 420;

Assembly Bill 420: Revises provisions governing imposition and collection of certain fees on short-term lease of passenger car. (BDR 43-557)

Assemblyman David Parks, Assembly District No.41, Clark County (part):
Following the Seventy-First Legislative Session, we had a S.B. 8 Committee that did extensive work in the various taxes that were levied as a result of S.B. 8 of the 20th Special Session as well as related issues. From that, a

number of recommendations were put forth. Among those were recommendations to deal with the fees that are charged with the lease of a passenger car for short-term rental. From that came A.B. 420. Assembly Bill 420 will clarify how the fees that are charged for the use of a rental car are actually levied. When you rent a car, you pay for a number of fees: a 6-percent fee, and a 4-percent fee. If you are renting a car in Washoe County, there is an additional 2-percent fee. There is a fee that is levied by the various airports; it's a different rate for both McCarran International Airport and Reno/Tahoe International Airport.

[Assemblyman Parks, continued.] What we want to accomplish in A.B. 420 is to standardize how all those charges are levied on the rental car fee. For example, do they apply to collision waiver, and in the wintertime, if you take snow chains, are the taxes levied in that respect? This simply is a bill that clarifies the manner in which the rental car companies will levy the additional charges that the user of a rental car would pay. There was a handout for NRS 482.313 (Exhibit J) that primarily amends that portion that starts with subsection 7. It seems to get into some degree of complicated nature, but my understanding is that all the rental car companies are in agreement and in support of this bill, and it answers some unanswered and vague aspects of the bill.

Carole Vilardo, President, Nevada Taxpayers Association:
The car rental companies have applied sales tax one way, the 6-percent tax another way, the 4-percent tax another way and the local options involving the two 2-percent taxes for the stadium issues another way. I became aware of the issue and went to SBA [Small Business Association] Committee, because we have an independent member up here, an independent car rental dealer who, when the Washoe County imposed the Stadium tax portion of 2 percent, went to his computer software provider and said, "I have to accommodate another change, is that going to be a problem?" The software provider told him no and said they would do an override so that he could accommodate this fourth variation on how the tax was being applied. What the software provider did not tell him is that when he provided the override for him, it allowed the 2-percent portion to be taxed, and overrode the other three. So his bills came out totally wrong, and until he could get a program rewritten, he had to manually have a chart for all of his employees to use. The bill is important; it provides conformity, and we need it for businesses to keep their sanity where they are trying to figure out how to apply the tax.

Bob Ostrovsky, Legislative Advocate, representing Hertz Corporation, Las Vegas, Nevada:
We rise in support of this. If you rent a car on the website or go to the rental car place, you get this long list of taxes. It's all because the taxes apply to different things. It would be much easier for the customer to know that it's 21 percent, 22 percent, whatever the number is, and it applies to a consistent number on the rental agreement. It is a lot easier for the customer to understand what they are going to pay. My only concern is that it has a July 1, 2005, effective date. Just to make sure we don't have the same computer problem, we know we have to make some computer changes; we have to make our changes in New Jersey. We collect the taxes and pass them through and this would help us, as the State's agent, in collecting those taxes.

Assemblyman Sherer:
It says there is a fiscal impact on local government and also on State insurance. All we are basically doing is consolidating. Why?

Carole Vilardo:
One of the issues was because in some cases you are removing what can be taxed, and in others you are increasing it; there is an impact. The impact by the Department of Taxation has been determined to be nominal. I believe nominal was going to be around $2 million. Because of the costs relative to the audits and trying to comply, the Department will testify that really, in the overall scheme of the tax collected, it is not consequential.

The other issue was a concern that there might be an impact to Washoe County because they might have issued bonds for the stadium, and you would be changing the revenue stream. However, when Assemblyman Parks first looked at this bill, I went to John Swendseid to make sure that there would be no impairment of bonds. John tells me there were no bonds issued at this point in time; they were warrants, and so there would be no fiscal impact on those warrants by this change. Additionally, I emailed John again last night, and asked him to reconfirm that they were still warrants and not bonds. If it should turn out that I find otherwise—he was supposed to let me know today, but I didn't hear—then we would look to make the necessary adjustments on the Senate side.

Chairman Oceguera:
I will close the hearing on Assembly Bill 420.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS A.B. 420

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY

We will move that bill forward. We will now go to our work session.

Marjorie Paslov-Thomas, Committee Research Analyst:
[Read from Work Session Document (Exhibit K)] We will begin with A.B. 239.

Assembly Bill 239: Makes various changes relating to motor vehicles, drivers' licenses and certain operations of the Department of Motor Vehicles. (BDR 43-566)

This bill was sponsored by Assemblyman Hardy. As introduced, this bill would authorize a person who is 18 years of age or older to file a report with the DMV, requesting that the DMV examine the person's spouse or close relative to determine the ability of that person to safely operate a motor vehicle. The DMV may, after the examination, allow that spouse or relative to retain the license or may suspend, revoke, or restrict the license. Other provisions in this bill would remove the requirement of a physician to report cases of epilepsy to the State Board of Health.

It would require biennial emissions testing for motor vehicles manufactured in 1996 or later, and no emissions testing for ultra-low emission vehicles. It would also reduce the fee for the original issuance or renewal of a driver's license for a person who has been honorably discharged from the Armed Forces. It would also require the DMV, in cooperation with the Department of Wildlife, to examine the feasibility of placing kiosks within DMV for the purposes of renewing hunting and fishing licenses.

There are several proposed conceptual amendments. To simplify, if you look at the mockup [beginning on page 12 of Exhibit K], all the provisions would be deleted except to authorize a person who is 18 years of age or older to file a report with a physician concurring that person should be examined, and then keep the rest of those provisions.

Chairman Oceguera:
The provision, where you could have your relative to a third degree of consanguinity go to the DMV to say you are a problem, he has added in that

provision at my request that you would also have to accompany that with a letter from your physician. Basically, that is all the bill does now.

Assemblyman Sherer:
Regarding a license issued to a person 65 years or older, they struck out $14. Does that mean that the regular price is $19?

Marjorie Paslov-Thomas:
I believe that would stay there at $14 for a license issued to a person 65 years or older. The $14 that is in red would stay.

Chairman Oceguera:
The Chair would entertain a motion.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 239 WITH AMENDMENTS AS IN THE MOCKUP ON PAGES 12 THROUGH 20 OF EXHIBIT K.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Marjorie Paslov-Thomas:
Assembly Bill 315 is sponsored by Assemblywoman Pierce.

Assembly Bill 315: Enacts provisions relating to event recording devices in motor vehicles. (BDR 43-894)

As introduced, the measure would require a car manufacturer of a new vehicle equipped with an event recording device to disclose that fact in the owner's manual for the vehicle. The disclosure of the same facts must also be given orally by a motor vehicle dealer to the purchaser.

Data recorded by an event recording device may not be downloaded by a person other than the registered owner of the vehicle unless the registered owner of the vehicle allows the retrieval of the data pursuant to a court order; the data is retrieved for the purpose of conducting research to improve motor vehicle safety; the dealer or garageman is diagnosing, servicing, or repairing the motor

vehicle; or pursuant to an agreement for subscription services. A person who violates these provisions will be guilty of a misdemeanor.

[Marjorie Paslov-Thomas, continued.] There is one proposed amendment by Assemblywoman Pierce. It would delete the provision requiring a motor vehicle dealer to orally disclose that a new vehicle is equipped with an event recording device, and it would require that a motor vehicle dealer must list on the Monroney label or sticker on the vehicle that the vehicle is equipped with a data event recorder.

Chairman Oceguera:
There was another amendment given to us by the Property Casualty Insurance Association of America. That amendment was presented to Ms. Pierce, and she did not consider it a friendly amendment, although it is being passed out to you right now (Exhibit L). Would someone like to give us a 30-second explanation on that?

Jeanette Belz, Legislative Advocate, representing Property Casualty Insurance Association, Reno Nevada:
We did submit the amendment (Exhibit L) you have in front of you. We would appreciate your consideration of adding the following subsection F, and, in particular, the ability to be able to download the data for purposes of investigating fraud.

Assemblyman Sherer:
Is this going to cause our insurance rates to go up?

Jeanette Belz:
The purpose of investigating fraud is to get insurance rates to go down.

Assemblyman Goicoechea:
The owner of the vehicle still has to agree to have the information retrieved, is that correct?

Chairman Oceguera:
Jeanette, in your amendment is that the case?

Jeanette Belz:
In subsection 3, it says data recorder may be downloaded or otherwise retrieved by someone other than the registered owner. This would be added to subsection F.

Chairman Oceguera:
In this amendment by the insurance people, that wouldn't be the case.

ASSEMBLYMAN HOGAN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 315 WITH ONLY THE AMENDMENT OFFERED BY MS. PIERCE.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Marjorie Paslov-Thomas:

We will go to Assembly Bill 381

Assembly Bill 381: Authorizes use of single center lane when making left-hand turn onto highway. (BDR 43-682)

This measure provides that a vehicle must not travel more than 200 feet in a center turn lane after making a left-hand turn onto the highway before merging with traffic.

There is one proposed amendment by the Chairman to require that the vehicle not travel more than 50 feet in the center lane after making a left-hand turn onto the highway before merging with traffic.

Chairman Oceguera:
I discussed this bill with Mr. Hettrick and several members of the law enforcement community, namely Metro [Las Vegas Metropolitan Police Department] and the Nevada Highway Patrol. They were concerned that, with an acceleration zone, you might have more head-on accidents by more people coming into that center turn lane at a high rate of speed. They said they can support the bill more readily if you were able to pull into that lane and then go. Mr. Hettrick said that was all right with him. I told him I would move the bill if he would change it per what the law enforcement concerns were.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS

ASSEMBLY BILL 381 WITH THE AMENDMENT TO REDUCE THE DISTANCE ALLOWED FOR ACCELERATION FROM 200 FEET TO 50 FEET.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY

Marjorie Paslov-Thomas:
Next up is A.B. 411.

Assembly Bill 411: Requires appropriate safety restraints in school buses. (BDR 34-260).

This was sponsored by Assemblyman Atkinson. As introduced, this would require the Department of Motor Vehicles to prescribe the appropriate seat belts for each school bus that transports students. A school district, charter school, or private school must ensure that a pupil riding on a school bus wear a seat belt unless a parent provides a written statement signed by a physician indicating it is impractical or dangerous to wear a seat belt. A school bus operated on or after July 1, 2006, must be equipped with seat belts for each passenger. If a school bus is not equipped with seat belts, the buses must be retrofitted before July 1, 2006, to continue operating. The DMV is required to inspect school buses to determine whether seat belts have been installed and report any violations to the Superintendent of Schools. If the Superintendent fails or refuses to install seat belts within ten days after receiving notice, he is guilty of a misdemeanor, and, upon conviction, would be removed from office.

There are several proposed amendments. Assemblyman Atkinson proposed 8 amendments:

- To delete references to the Department of Motor Vehicles, and replace them with the Department of Public Safety. Currently, they are the ones who are performing the inspections. This is a technical clarification again from the 2001 split of DMV [Department of Motor Vehicles], and DPS [Department of Public Safety].

- To delete provisions to retrofit school buses before July 1, 2006.

- To amend the bill to require the DPS to adopt regulations concerning safety restraints on or before January 1, 2007.

- Amend the bill to add a new section providing that each school bus purchased new on or after July 1, 2007, and used to transport students in grades pre-Kindergarten through 12, must be equipped with a restraint system approved by the federal government in a number sufficient to allow each student who is being transported to use a separate safety belt or restraint system. This would only apply to new school buses, not buses that are purchased by school districts that are used and go into operation on or after July 1, 2007.

- Add a new section providing that each passenger riding on a school bus equipped with safety belts or restraint system be required to wear a safety belt at all times while the bus is in operation. However, the state, county, school district, charter school, private school, school bus operator, or an employee of a school district, including a teacher or volunteer serving as a chaperone, would not be liable for an action for personal injury by a school bus passenger solely because the injured party was not wearing a seat belt.

- This is similar and basically the same. Entities would not be liable in an action for personal injury by a school bus passenger injury caused solely by another passenger's use or nonuse of a safety belt in a dangerous or unsafe manner.

- Similar with the same entities, those entities cannot be charged for violating a requirement that a passenger to use a passenger restraint system if that passenger was not using or was improperly using a seat belt.

- To add a new section that each school district must prioritize the allocation of new buses equipped with safety belts to ensure that elementary schools within the district receive first priority whenever feasible.

Assemblyman Atkinson:
The amendments pretty much cover what some of the concerns were from the Committee. Initially, I wanted the retrofitting of the buses, which is probably the biggest expense. We decided to remove the fiscal note, and we would amend it to new buses only beginning July 1, 2006. We removed the fiscal note, hoping that will make it a little easier for people to digest.

Chairman Oceguera:
I thought it was 2007.

Assemblyman Atkinson:
Yes, 2007, that is correct.

Chairman Oceguera:
We discussed in Committee, is there an end date? Do we want to have this done by 2012?

Assemblyman Atkinson:
I didn't believe there was an end date because we were not requiring retrofitting of the current buses. I think that is why the end date was taken out. I would assume, if you are saying by 2010, that they would all have seat belts. I don't know if we can really do that or if that is reasonable, because I am not sure what the schedule is of replacing buses. I am sure that is far out, especially if they just recently bought new buses.

Chairman Oceguera:
I got the sense that the Committee felt that there was a safety issue and that kids riding school buses should have seat belts. We have moved it out until 2007, and said only in new buses when you start purchasing them. It's not currently in their budgets; it's in budgets that are going to occur in the future. We made it fairly easy for them to comply.

Assemblyman Hogan:
Have these considerable concessions brought any of the folks who had problems into agreement or modified their opposition? Did we win any converts in the process?

Assemblyman Atkinson:
I did give a copy of the proposed amendments to Rose McKinney-James who testified in behalf of the school district. I didn't hear anything back from her.

Assemblyman Carpenter:
I think there is a lot of conflicting information out there about whether seat belts work or don't work, but I think we can't compromise the safety of the children, and hopefully in the next couple of years with all the tests they do, they will come up with a definite answer.

Assemblyman Sherer:
I am in favor of the way it's amended; I just wish we could also add air conditioning.

Chairman Oceguera:
The Chair will entertain a motion.

> ASSEMBLYMAN ATKINSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 411 AS OUTLINED UNDER TAB D IN EXHIBIT K.
>
> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

We have one more bill that is not on the Work Session, A.B. 435.

Assembly Bill 435: Revises provisions governing administration and collecting of certain fees and taxes by Department of Motor Vehicles. (BDR 43-1038)

All the counties and cities came forward and said they hated it.

> ASSEMBLYWOMAN OHRENSCHALL MOVED TO MAKE NO RECOMMENDATION AND RE-REFER TO WAYS AND MEANS.
>
> ASSEMBLYMAN CLABORN SECONDED THE MOTION
>
> THE MOTION CARRIED UNANIMOUSLY.

The meeting is adjourned [at 5:56 p.m.].

RESPECTFULLY SUBMITTED

Linda Ronnow
Committee Attaché

APPROVED BY:

Assemblyman John Oceguera, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Transportation

Date: April 12, 2005 **Time of Meeting: 1:43 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A	Agenda	2 pages
AB 255	B	Edgar Roberts / Department of Motor Vehicles	Proposed Amendment on behalf of DMV, (6 pages)
AB 255	C	Dawn Lietz / Department of Motor Vehicles	PowerPoint presentation, controlling untaxed dyed diesel fuel (15 pages)
AB 255	D	Norma McCusker / Western Energetix	Copy of cardlock for dyed diesel fuel only
AB 255	E	Norma McCusker / Western Energetix	Exemption Certification dyed diesel fuel nontaxable use only
AB 504	F	William Bible / Nevada Resort Association	Copy of NAC 706.147 (1 page)
AB 504	G	William Bible / Nevada Resort Association	Letter from attorney, Re: Common Carriers and the jurisdiction of TSA (8 pages)
AB 504	H	Bill Vassiladis	Letter from Coast Casinos
AB 547	I	Edgar Roberts / DMV	Fiscal Note (2 pages)
AB 420	J	Assemblyman David Parks	NRS 482.313 (2 pages)
	K	Marjorie Paslov-Thomas / LCB	Work Session Document (20 pages)
AB 315	L	Jeanette Belz /Property Casualty Insurance Association	Proposed amendment regarding event recording devices.