

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Third Session
May 17, 2005**

The Committee on Transportation was called to order at 1:41 p.m., on Tuesday, May 17, 2005. Chairman John Ocegüera presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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 Ocegüera, 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:

None

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Linda Ronnow, Committee Attaché

OTHERS PRESENT:

Bryan Gresh, Legislative Advocate, representing ATC Vancom of Nevada
Jacob Snow, General Manager, Regional Transportation Commission of
Southern Nevada
Jim Wolf, General Manager, ATC Vancom of Nevada
Fred Hillerby, Legislative Advocate, representing the Regional
Transportation Commission of Washoe County
Zev Kaplan, Legal Counsel, ATC Vancom of Nevada and Regional
Transportation Commission of Southern Nevada
Richard Myers, Attorney, Crockett & Myers, Las Vegas, Nevada

Chairman Ocegüera:

[Meeting called to order. Roll called.] We will do a work session on S.B. 481.

**Senate Bill 481 (1st Reprint): Makes various changes relating to Civil Air Patrol.
(BDR 32-1348)**

Marjorie Paslov Thomas, Committee Policy Analyst, Legislative Counsel Bureau:

[Distributed [Exhibit B](#).] Senate Bill 481 makes various changes relating to the Civil Air Patrol. It was sponsored by the Committee on Taxation and was heard on May 3, 2005. Senate Bill 481 allows the Civil Air Patrol to use aviation fuel tax revenues allocated to the Civil Air Patrol account for homeland security and narcotic interdiction missions. The measure eliminates the provision that prohibits the use of funds in the account to purchase fuel for vehicles or aircraft used in an official mission of the United States Air Force. The bill allows the Legislature to appropriate money from the State General Fund to the Civil Air Patrol to support federal, state, and local law enforcement agencies in homeland defense and narcotic interdiction missions. There are no proposed amendments.

Chairman Ocegüera:

It seems to me that the Civil Air Patrol does a yeoman's job of helping out, especially in the rural areas, where they do search-and-rescue-type activities. Now they are expanding those activities to look for narcotics and help with homeland security.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS
SENATE BILL 481.

ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Ocegüera:

We will go to S.B. 181.

Senate Bill 181 (1st Reprint): Authorizes certain counties, upon approval of voters, to impose additional taxes on certain motor vehicle fuels. (BDR 32-596)

Marjorie Paslov Thomas, Committee Policy Analyst, Legislative Counsel Bureau:
Senate Bill 181 authorizes certain counties with a population of less than 400,000, upon a majority vote of the people, to index motor vehicle fuel taxes to inflation. This was sponsored by the Committee on Taxation on behalf of the Nevada Association of Counties, and it was heard last week.

The measure provides that a county must first seek to implement the maximum optional county fuel tax and requires that in a county with a population of less than 100,000, the voters must reauthorize the tax every eight years. There is one proposed conceptual amendment by Edgar Roberts, Administrator of the Motor Carrier Division for the DMV [Nevada Department of Motor Vehicles]. It would amend the bill and require that in counties with a population of less than 400,000 that have approved indexing motor vehicle fuel taxes to inflation, the amount which is collected during any month by the DMV must be transmitted each month by the DMV to such county. As part of the reimbursement for the cost to the DMV for rendering its services, the DMV can charge the county 1 percent of the portion of the tax imposed for indexing motor vehicle fuel taxes. Behind Tab A ([Exhibit B](#)) is a copy of Mr. Roberts' proposed language.

Chairman Ocegüera:

The indexing seems to have worked in some counties that have approved that. The indexing in this bill is only done by a vote of the people. We are not actually voting to index. We are voting to let the people decide if they would like indexing. It seems like a reasonable approach to index and then not raise your gasoline tax 5 or 10 cents at a time, when you could have been doing it by a quarter of a cent increase along the way. This allows the voters to make that decision, one way or the other.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO
PASS SENATE BILL 181.

ASSEMBLYMAN SHERER SECONDED THE MOTION.

THE MOTION CARRIED, WITH ASSEMBLYMAN MANENDO AND
ASSEMBLYWOMAN OHRENSCHALL VOTING NO.

Chairman Ocegüera:

We will open the hearing on S.B. 475.

**Senate Bill 475 (1st Reprint): Limits liability of certain private operators who
contract with regional transportation commission. (BDR 32-1081)**

Bryan Gresh, Legislative Advocate, representing ATC Vancom of Nevada:

Senate Bill 475 extends limited liability protection to local governments, to an independent contractor, and to an RTC [regional transportation commission]—in this case, the operators of the transit system.

**Jacob Snow, General Manager, Regional Transportation Commission of
Southern Nevada:**

About thirteen years ago, we started the Citizens Area Transit (CAT) system. We did our own analysis internally and determined that if we were to contract out the service, we could put approximately 50 percent more bus routes out into the community. That was one of the reasons they decided to go with a contracted service. We have since reviewed the analysis and found that we would only be able to put out an additional 33 percent of service because of the services contract. The primary reason that figure has contracted from 50 percent to 33 percent is the growth in insurance and the liability issues that have come to pass in the last few years. There is a direct correlation in the amount of service hours, the amount of bus routes we can put out into the community, and this liability issue. For the public and us, this would be a good thing, because it would allow ATC Vancom to lower the annual rate they charge us to provide that service for the community. Because of that, we are supportive of this bill.

Assemblyman Goicoechea:

Is it any RTC in any county or city under 100,000 in population that this bill pertains to? [Chairman Ocegüera indicated that many heads were nodding affirmatively at the witness table.]

Jim Wolf, General Manager, ATC Vancom of Nevada:

I am here to testify in support of S.B. 475. ATC operates the fixed route service, as well as other services under contract to the Regional Transportation Commission. We have been doing this since 1992, the inception of the CAT system.

The CAT system has been around for 13 years, and during that time we have seen tremendous growth. We started off the first full month carrying about 575,000 passengers; now we carry close to 5 million passengers per month. The CAT system carries about 150,000 people per day and over 50 million people in a year. We will travel about 18 million miles this year within the Las Vegas Valley. The CAT system is ranked in the top 40 largest transit systems in the nation, and that is based on the number of buses that they operate. Per bus, the CAT system carries more passengers than any other transit system in North America, with the exception of New York City. Of the top 40 transit systems, the CAT system is the only transit system that is not covered by some sort of protection like the tort that we are looking at here.

The CAT system has been recognized by the American Public Transit Association as the safest system in the nation in three out of the last six years. That is ranked against all other transit systems. During that same time frame, our accident frequency went down. From 2003 to 2004, our accident frequency went down 25 percent. From 2002 to 2004, our accident frequency went down between 40 and 50 percent. We have improved year over year, even since we won those system safety awards.

During that same time frame, we have seen the opposite happen with our cost of insurance and our claims. While our frequencies are dropping, our costs of insurance and claims have skyrocketed. When I started with the system about eleven years ago, our insurance deductible was about \$10,000. In these last eleven years, I have seen it go from a \$10,000 deductible to \$100,000; from \$100,000 to \$200,000; from \$200,000 to \$1 million; and from \$1 million to \$2 million. Today, our deductible is \$11 million. We are basically self-insured, and it is because of the cost of claims, the cost of insurance, and because of things like frivolous lawsuits.

I will give you an example. Most of you have heard of a tragic accident that occurred about five weeks ago in Las Vegas, on Smoke Ranch Road near Rock Springs Drive. There were three high school kids and an adult killed. There was no bus at the scene. ATC does not decide where the bus stops are, and ATC does not maintain the bus stops. We had no vehicle at the accident, nor were we related to this tragedy, yet we have been named in the lawsuit. It is because the City of Las Vegas, Clark County, the RTC [of Southern Nevada],

and the CAT system are covered by protection. Obviously, they are looking for deep pockets. Again, we do not manage the stop or maintain the stop, yet we are named. Now we will have to defend that lawsuit.

[Jim Wolf, continued.] You could argue that ATC is a private company and that we are just looking for protections for ourselves. Some of the contracts that ATC has will end in about a year; one contract has less than a year, and another will end at the beginning of 2008. No matter if it is ATC or any of our competitors, our costs eventually wind up being the RTC's costs, and eventually, they become the taxpayer's costs. If our costs of claims or defending lawsuits goes up, and if insurance goes up, all of those go back to our service-hour rate that we are going to charge. Whether it is my company or another company, they are going to look historically at the cost of insuring these vehicles, and that has to be put in a service-hour rate. That forces the RTC into a couple of different options: they can take the service internally themselves, and they would have to cut about 30 to 35 percent of the services that they provide to the community. They can look at raising the passenger fares, or they can cut services and continue privatization. Either way, the public is affected.

In 2001, the average cost of insurance for a vehicle and the claims cost was about \$5,000 per vehicle. In 2002, it was about \$16,500, and in 2003 it was \$31,500 per vehicle. At the same time we have seen accident frequency go down 50 percent, we have seen the cost of insuring our vehicles go up 500 percent. Of the 6,000 claims that we have had over 4 years, the vast majority of those claims had a zero value and have been settled or taken care of for less than \$1. At 75 percent, that represents about 4,381 claims. An additional 600 claims—about 10 percent—have been settled for \$1 to \$500, and that is basically the cost of defending those claims without any payout. Of those 6,000 claims in the last 49 months, only one half of 1 percent of those claims, including medical expenses, has gone over \$50,000. Yet, those costs represent about 75 percent of our total costs of insurance and claims.

The CAT bus system is a very safe system. We have been the safest system three out of the last six years, and we will probably get that award again next year. We continue to improve on our safety year over year, but the cost of claims has skyrocketed. The current system just is not working.

Assemblyman Hogan:

Regarding the data you provided with respect to claims and insurance costs, are you giving us numbers that are the claims payout, or the total insurance costs including premiums?

Jim Wolf:

It includes both the cost of insurance and the cost of claims. As I indicated, we are basically self-insured with catastrophic insurance. Claims of up to \$11 million are paid out of our own company.

Assemblyman Hogan:

Can you describe to us the change in the cost you would incur if the responsibility for claims, other than direct medical expenses, were shifted back to the agency? Would your total premium costs diminish?

Jim Wolf:

Approximately one half of 1 percent of the last 6,000 claims over a period of 48 or 49 months have gone over \$50,000, but those claims have resulted in costs of about 75 percent of our total insurance in claims coverage costs.

Assemblyman Claborn:

Have your injuries leveled off, or are you having more injuries at the present time?

Jim Wolf:

In the last several years, we have implemented several safety programs, such as a DriveCam system. It is a camera system that is on board the coaches, and it is activated by G-force events. If an operator makes a sudden movement, like a quick stop, an acceleration, or going too fast through a turn, it will trigger this camera to record the event 10 seconds prior to and 10 seconds after. We download that information every night and we review it. That is a behavior-modification tool that we have had on the system for a year. ATC spent close to \$1 million putting this system on the coaches, and we have seen a reduction in accidents. Our record has improved almost 50 percent in the last two years, and 25 percent from last year. In the last two years we have had fewer and less severe accidents.

Assemblyman Claborn:

Does the insurance continue to rise?

Jim Wolf:

Yes. In the last two years, accidents have declined approximately 50 percent. The cost of insurance in the last three years—our coverage, including claims—has gone up 500 percent.

Assemblyman Hogan:

In the insurance market that you are working with, do you find that there is any effective competition? Can you shop around for more reasonable rates of coverage?

Jim Wolf:

Yes. ATC is owned by an international firm. It is called NEG [National Express Group], and it does business all over the world. They run trains and buses, and they search the global market for insurance. The cost of insurance has gone up so much that we have had to go to a self-insured program. To find first dollar coverage or even \$100,000 coverage, the cost would be astronomical. With these costs, it would be virtually impossible for a small provider or disadvantaged provider to do business with the RTC, because it would be cost-prohibitive for them to get insurance. There are probably only four or five companies currently providing transportation services that have that ability.

Assemblyman Atkinson:

It sounds like you are saying that you are self-insured, so I do not understand how the cost is rising so high in spite of the decline in accidents.

Jim Wolf:

We are basically self-insured; our deductible is \$11 million. That means that anytime ATC is involved in an issue or named in a lawsuit, we have to defend it ourselves. We have to hire the attorneys and investigators. Whatever those costs are, whether through a settlement or a jury award, comes out of our bottom line. Eventually, it relates back to the cost of doing business as a provider to the RTC. Every three or five years, the RTC goes out for bid, and all of our competitors will look at the loss-run ratio, and they will factor in those costs as well. Eventually that affects the service-hour rate to the RTC. The current rate is about \$50, and a portion of that is directly related to the cost of insurance and claims.

Assemblyman Atkinson:

When you say your deductible is \$11 million, what does that cover? For instance, if I am in an accident, my deductible is \$250, and that is what I have to pay.

Jim Wolf:

It is the same. I have a \$500 deductible on my personal automobile, and if I am involved in an accident, that is the maximum that I am going to pay up to a certain point of what my insurance covers. It is the same with the transit system. When I started with the system it was \$10,000, meaning that our insurance wouldn't kick in until we paid the \$10,000. The cost of having that

protection became too great, so it was raised to \$100,000, then \$200,000, and so on. Even at \$1 million, the cost to buy insurance coverage was too great, and we eventually went up to \$11 million. So before any insurance kicks in, ATC would pay out up to that amount, and then the insurance would provide the coverage.

Assemblyman Atkinson:

What gets you to that \$11 million?

Jim Wolf:

What it means is that we have no insurance coverage or protection until we reach the threshold of \$11 million. If we have an accident and the cost of the claim ends up being \$40,000, then ATC pays the \$40,000. If it ends up being \$200,000, ATC pays the \$200,000. If it's \$5 million, then ATC pays \$5 million. Only after it reaches the \$11 million threshold would we have any coverage or protection from an insurance provider.

Assemblyman Claborn:

When you view the tapes that you have in the transportation vehicles, do you catch many cases that are fraudulent? Do you have a percentage on that?

Jim Wolf:

Yes. We have several trained people on our staff who view these videotapes on a daily basis. We operate on the Las Vegas Strip, and everyone knows the environment on the Strip with pedestrians and traffic. A lot of the incidents and claims we have are the result of sudden stops. A bus might have to stop suddenly because a car pulled in front of it or someone stepped off of a curb. The DriveCam system not only focuses outside the front of the vehicle, but it also views the inside of the vehicle. That has enabled us to find out what truly happened on the bus. In some occasions, you might have 20 people on the bus that barely move, and one person rolls down the aisle. I am sure that there are a certain number of claims that we are going to be able to stop because of that surveillance system.

Assemblyman Claborn:

Do the passengers wear seatbelts?

Jim Wolf:

There are no seatbelts on the CAT fixed route service. I have been in transportation for about 25 years, operating 5 or 6 different systems across the nation, and I do not know of an inner-city transit system that has seat belts on the coaches.

Assemblyman Claborn:

On an aircraft you have to buckle up. They have a light that comes on that tells you when you can move around. Maybe that should be an idea for the future; maybe it will cut down on expenses from injuries.

Assemblywoman Gerhardt:

You have not had many accidents, so there have not been a whole lot of claims paid out. Your insurance cost is relatively low because you have an \$11 million deductible, but we still need to limit liability?

Jim Wolf:

In the last 48 months we had roughly 6,000 claims. The vast majority of them had zero value, or less than \$1. Another 600 claims were settled or taken care of for less than \$500. If you look at one half of 1 percent of 6,000 claims, that is 35 or 36 claims that have gone over the \$50,000. It is those claims that have resulted in the major costs. They represent about 70 to 75 percent of the cost of having coverage, or the cost of actual payouts.

Assemblywoman Gerhardt:

Can you give me some idea of what those claims entailed?

Jim Wolf:

There is a confidentiality that is associated with those settlements or the jury trial, and I am reluctant to give specific information in terms of the type of claims.

Assemblywoman Gerhardt:

I am not asking for confidential information, but it sounds like we are getting different information. On one hand, we have safe buses with cameras on them. Then we have some large claims, which are the reason you want to limit liability. However, we are not getting any information on what kind of accidents occurred.

Jim Wolf:

The CAT system operates about 18 million miles per year in intra-city traffic, carrying 150,000 people per day. I am not saying that we are never at fault concerning an accident. When you carry 50 million passengers operating in any transit system, there are going to be accidents. This coverage happens in transit systems all over the nation, whether they are operated by a public agency or by a private company. Of the 40 largest transit systems, this is the only transit system that does not have that protection. In terms of our peers, we have been rated the safest transit system in America three out of the last six years. Our

focus is safety, but that is not to say we will not have an accident or that somebody could not get injured.

[Jim Wolf, continued.] The tort coverage that we are looking for excludes medical expenses—medical expenses would be outside that—so it is additional protection. If the RTC decided that they were going to take the service in-house, it would be covered by a tort, and medical expenses would not be excluded. It would not be a soft cap; they would have the same protection. What we are looking at is in addition to that. It would provide the medical expenses that somebody could incur as a result of an accident.

Assemblywoman Gerhardt:

Then what are you limiting? You make it sound like we're adding things, where we're limiting the liability. Is that right?

Jim Wolf:

You would be limiting the liability in terms of pain and suffering, attorney's fees, and things like that.

Assemblywoman Gerhardt:

I guess I am focusing on the victims, those few bad accidents that might occur, and ensuring that those people are compensated if they are badly injured on a bus.

Jim Wolf:

The CAT system is a publicly provided service. The drivers may not work for the county, but it is a publicly provided service. This coverage would be above and beyond what any of the other public services would provide.

Assemblyman Carpenter:

What did you say the premiums are for your insurance?

Jim Wolf:

I do not know what the cost of having the \$11 million deductible catastrophic insurance is. I know it would be cost-prohibitive to have a \$10,000, \$100,000, or even a \$1 million deductible. We wouldn't be able to purchase that insurance and still operate within our service-hour rate.

Assemblyman Carpenter:

So you don't have insurance from any other outside company, right?

Jim Wolf:

We only have the one insurance policy, and that is for anything that could go over \$11 million.

Assemblyman Carpenter:

What is the cost for that?

Jim Wolf:

I do not know the answer.

Assemblyman Carpenter:

If you don't know the answer, then who writes the check? What is the total of the claims paid out over the \$50,000?

Jim Wolf:

In the last 49 months of those 6,000 claims, there were 36 or 37 claims that went over the \$50,000, and those were varying amounts.

Assemblyman Hogan:

If RTC contractually limits the responsibility of the operator of your system, presumably the liability for things that are no longer the responsibility of the operator find their way back to the agency. Is there any savings to the taxpayer? It seems to me that the operator is part of a large corporation and has access to the best rates available. How can RTC handle those responsibilities any cheaper than the operator did?

Zev Kaplan, Legal Counsel, ATC Vancom and Regional Transportation Commission of Southern Nevada:

These are publicly owned vehicles operated by a private contractor's employees. They are unlike a purely private operator, such as taxicabs, tour buses, or charter buses. These are publicly owned vehicles, owned by the RTC and the taxpayers. If the RTC were to assume that liability, there is a statutory cap of \$50,000 per person, per occurrence, just as with any other governmental entity. If that is passed back to the RTC, it is not going to reduce the cost or benefit the injured person. What we are looking for is a blend that would be a benefit to everyone, where we could continue to offer the extensive transit service that has been offered by privatizing the operation to the extent that we do, yet, at the same time, not limit to \$50,000 any award to anyone who is seriously injured. That is why S.B. 475 was drafted in such a way as to allow for recovery of the actual medical expenses that are incurred and not cap that. We think this was in the best interest, both to try to hold down costs for providing more transit services and not limit the ability to provide for those who are actually injured.

Assemblyman Hogan:

In those relatively few catastrophic accidents where you may have lifetime impairments, it would cover direct, approvable medical expenses. The effect on the lifestyle for the rest of the life would not be in any way compensable through the agency, through a lawsuit?

Zev Kaplan:

Yes. Unfortunately, that is the case. As I indicated, if it were purely public, it would be \$50,000 and that is all. We are trying to provide something more than that and also serve the greater public interest of providing transit services. It is a balancing act, but we thought it was more fair than bringing in-house, having to cut transit, and not taking care of people who are injured.

Assemblywoman Gerhardt:

Pain and suffering and lost wages would not be covered?

Zev Kaplan:

That is correct.

Fred Hillerby, Legislative Advocate, representing the Regional Transportation Commission of Washoe County:

I would like to respond to a question raised earlier: "Would any of those non-economic damages have been covered?" Yes, up to \$50,000, but that sovereign immunity cap would apply to those. However, the actual medical has no limit, as proposed by S.B. 475, so there would have been some compensation. In the case of the Regional Transportation Commission of Washoe County, we are not that different from Clark County. When this bill was first discussed, it was suggested that once you do this, you will want to extend it to any contractor. In the case of the RTC, we have a lot of them. They build our highways, but that is different. They bring their own supplies, equipment, and employees; we are not asking for that.

Like southern Nevada, we own all of the vehicles, bus stops, and service equipment. We provide the gasoline and all of the fueling stations. The only thing that is not public about that service is that we have a contract with First Transit, another company, who actually provides the drivers. It is a direct pass-through for us to pay for those drivers. They have three management people, and it is their responsibility within the contract. In almost every sense, they behave as if they were a public agency, because it is our equipment. It is different than just extending it to contractors or to governmental entities. We made the same decision years ago that it made more sense economically to contract for that part of the service, as opposed to hiring our own drivers.

[Fred Hillerby, continued.] We are different from southern Nevada in that we pay the premium for our provider. Our premiums for our CitiLift—paratransit for the disabled—are \$219,000 a year for that coverage. For Citifare, which are big buses, we pay \$350,000 a year. We are much luckier than the previous testifiers, in that our self-insurance retention is \$500,000. We are responsible for the first \$500,000 in any claim, and it only kicks in when the claim exceeds that amount. For us, if the sovereign immunity cap were in place, it would be almost \$600,000 a year.

The bottom line is that 99 percent of what we do is a public service. The only thing different are those drivers that we contract to hire. This bill is not asking for sovereign immunity across the board, because it does offer the unlimited medical benefit. If we had our own employees driving the buses, that would not be available; it would only be the \$50,000 sovereign immunity. I think a reasonable compromise has been brought forward by the sponsor of this bill, and we are pleased to be here in support of S.B. 475.

Assemblyman Hogan:

Your organization and your counterpart in the south also handle all maintenance of all the vehicles?

Fred Hillerby:

I cannot speak for down south, but yes, we handle the maintenance of the buses. We have our own facilities that do that.

Assemblyman Claborn:

If this insurance premium keeps escalating, they are going to have to park these buses. How are you planning to keep afloat?

Fred Hillerby:

I have sat through some of our board meetings. We use one of the largest brokerage firms in the United States to seek out our liability insurance. Now we have terrorism issues, and it is getting more difficult every year to find coverage. It is our hope that coverage will continue to be available to us at a price that won't price us out of business.

Assemblyman Carpenter:

If the buses belong to you and you are doing all the maintenance, what happens if a wheel falls off and causes a large wreck? Does that all come under your insurance, and then would the \$50,000 kick in?

Fred Hillerby:

Assuming the facts you just presented to me turn out to be the actual facts, and the only liability was faulty maintenance, it would be our responsibility and would be under the sovereign immunity protection that is extended to us as a political subdivision.

Assemblyman Carpenter:

Then, what you are asking for is half sovereign immunity for your drivers, right?

Fred Hillerby:

Yes. We are asking that our contractor be extended the same sovereign immunity. The difference—and, I assume, the reason you say half—is that there would be no sovereign immunity relative to actual medical expenses of an injured party who was injured as a result of a tort or liability on our part.

Assemblyman Carpenter:

How much have your claims been over the \$50,000 limit?

Fred Hillerby:

I can get that answer for you, but I do not have that information.

Richard Myers, Attorney, Crockett & Myers, Las Vegas, Nevada:

One of our clients is a man by the name of Charles Sappington, and I am here to testify on his behalf and on behalf of others like him in Nevada. I thought it would be helpful to the Committee to give a real-life ongoing example of the effect of this proposed change in the law.

I would like to briefly address sovereign immunity. Sovereign immunity is a concept that came from early England when the king was thought to be divine and could do no wrong, and you could never seek compensation against the king. That concept of governmental immunity was carried over with English common law and became part of the American legal system, when it was thought that the government could do no wrong.

Over the years, that concept has changed dramatically. States began to waive sovereign immunity and recognize that they could do the same injury with the same vehicle and equipment that a nongovernmental entity could do. Some states waived sovereign immunity entirely or, in many cases, waived it up to a certain amount. Nevada has waived it up to \$50,000. Nevada has either the lowest or second-lowest cap for governmental immunity in the United States today. It has not changed since its inception, though automobile repair costs and medical costs have gone up. I think it is very bad public policy, but the reality is that it is probably not going to change today in light of the fiscal

consequences of raising that limit. It is just not realistic. Plaintiffs' lawyers have not tried to increase that \$50,000 cap for over a decade.

[Richard Myers, continued.] Here comes ATC Vancom and all others who might later enter into contract with the RTC, and they want that same very low cap. It is a bit modified, because they say it will be limited to \$50,000, plus medical bills to the extent that they exceed \$50,000.

It is good public policy that individuals are accountable for their own actions and inactions. The first time I ran into the concept of individual accountability was when I was a young kid. I had my first scooter and I came down the driveway, cut the corner onto the sidewalk, and ran over the neighbor's hyacinths. I had to break open my piggy bank to pay for the neighbor's hyacinths. My mother made me go down to the store, buy the hyacinths, and plant them because I had cut the corner. I have tried not to cut corners ever since.

I ran into the concept in Sunday school—an eye for an eye—and I ran into it in law school. One professor in law school said, "Special privilege, special immunity, and special limitations of liability amount to the legal license to kill and maim." More recently, the concept of individual accountability has become very popular. No one really speaks out against individual accountability, yet companies—sometimes individuals, sometimes industries—always try to get that special privileged immunity for limitations of damages. That is what you are seeing here today.

It was November 2002 when a CAT bus ran a red light and T-boned a truck driven by Charles Sappington. I have provided some exhibits for you ([Exhibit C](#)). If you look at the police report, you can see that this took place at Tropicana Avenue and Sandhill Road. The driver of the CAT bus was a man named Rafael Leodones, and he was cited for running a red light. He came up to the intersection at speed. The light turned yellow, but he did not stop. He entered the intersection on the red light and T-boned Mr. Sappington. Mr. Sappington was on the job at the time, working for Airwest Air Conditioning and Heating. Airwest Air Conditioning and Heating is a little more than a mom-and-pop operation. They have four or six trucks, and they fix air conditioning and heating units in Las Vegas. Airwest is insured by Zurich American Insurance Company, which is also the worker's compensation provider for Airwest Air Conditioning and Heating. They paid Mr. Sappington worker's compensation benefits for his injury.

Although this was a CAT bus, this was a paratransit bus—a smaller version of the larger ones—that carries mostly disabled folks and elderly senior citizens. That contract at that time was held not by ATC Vancom, but by Laidlaw

International. Laidlaw International is a huge firm, with operating revenues last year reaching \$4.6 billion. They provide the paratransit buses in Las Vegas, they pick up the trash in San Diego, California, and they operate the Greyhound bus company.

[Richard Myers, continued.] I do not believe there is any real pre-marketplace for insurance in America today. It is the only industry that is not governed by antitrust laws. Insurance companies can and do go into small, smoke-filled rooms and fix prices. We saw it most recently at AIG [American International Group, Inc.], which is one of the biggest insurers in the world. AIG was caught rigging bids, much to the chagrin of Warren Buffett. I do not believe there is a real marketplace in insurance that is free and open. I will tell you where there is a free marketplace, and that is, hopefully, the next time RTC puts out this contract to bid. Maybe Laidlaw or some other company will come along and underbid ATC Vancom. The marketplace works in this process; there is no need to give it the immunity that governments have.

One of the spokespeople for ATC Vancom talked about an incident that happened at a bus stop. He said, "We didn't have anything to do with the selection of the bus stop. It's a frivolous lawsuit." All they have to do is make a motion for summary judgment and get out of it, if that is true. Their defense lawyers' insurance fees are part of that \$11 million spoken of earlier.

Let's talk about Charles Sappington, because this is not a phony injury. Most people think bus injuries are mostly whiplashes or soft tissue injuries to the neck and back. If you look on page 3 ([Exhibit C](#)), you will see the anatomy of a normal knee. The knee is a sliding and gliding sort of joint where the femur, the bone between the hip and knee, glides across and over the fibula, which goes from the knee down to the ankle. The diagram shows the kneecap off so that you can see inside. It is a great mechanism; it works really well and enables human beings to ambulate. The kneecap protects the knee in the front, and it is held in place by tendons. The patellar tendon, going up from the knee, and the patellar tendon, going down from the knee, hold the knee together up and down. The tendons that hold it to the right and the left are called the retinaculum tendons, and they hold it on both sides. They are like taut rubber bands. If everything is in sync and stable, then everything is okay, and this gliding, sliding joint works really well.

In this case, when the RTC bus ran the red light and totaled Mr. Sappington's van, although he had his seat belt on, his knee hit the steering column, and it knocked the patellar tendon off to the right. In the upper left hand corner of page 4 ([Exhibit C](#)), you can see an X-ray of Mr. Sappington's kneecap. Instead of being in the middle where it is supposed to be, it's pulled over to the outside,

the right side of the left knee. One of those tendons that holds it towards the middle has been ruptured or torn. This injury took place in November. In February, three months later, they did surgery. It was in that three-month period that he was really crippled, and the stability and balance of the tendons is now off. Even though they repaired it, it no longer glides freely, and so he is lame.

[Richard Myers, continued.] Page 5 ([Exhibit C](#)) shows the caption of this lawsuit: *Charles Sappington vs. Laidlaw Transit, Inc.* Then we see Zurich North American as the plaintiff-in-intervention. The reason is that they paid out \$82,000. That means that this small business, Airwest, paid worker's comp premiums to Zurich. Zurich has paid out \$12,000 in medical expenses and \$70,000 in disability payments and vocational rehabilitation so far, and they are still paying on this claim. In this case, and for Zurich, the laws that exist today make Laidlaw or ATC Vancom just like any other responsible party. Zurich, the worker's comp carrier, will get back every cent of that \$82,000, and hopefully, Airwest will not be charged extra for their premiums because of this accident. It was not their driver's fault; it was Mr. Leodone's—the CAT bus driver's—fault. So Zurich American will not hold it against them, and they will pay the same premiums next year if they get all that money back. That way, the individual who is responsible for this injury is accountable for it through his employer and through insurance, or self-insurance, and that's the way it should be.

If S.B. 475 is passed into law, in this case, with only \$12,000 in medical, Zurich, the worker's compensation carrier, will compete against Mr. Sappington for \$50,000. The worker's comp carrier will get back about \$16,000 instead of the \$82,000. Mr. Leodones, the driver for ATC Vancom, is going to escape responsibility for his act, except for the \$50,000. For all these reasons, I am opposed to this bill. Mr. Sappington is opposed to it, and all the other Mr. Sappingtons that will come along in the future are opposed to it.

Assemblyman Goicoechea:

I would think that any rehabilitation would continue under your medical expenses, wouldn't it?

Richard Myers:

Sure it will. That is a lifelong benefit, as are the medical expenses, so that \$82,000 will keep climbing.

Assemblyman Goicoechea:

It should be excluded out of the tort.

Richard Myers:

It is excluded under the tort in the sense that Mr. Sappington has to give back that \$82,000, and more than that, he has to give back all future benefits. If he receives \$500,000 for this injury and he keeps incurring medical expenses—this is a lifelong injury—he is going to hurt for the rest of his life.

Assemblyman Goicoechea:

I believe that S.B. 475 does not exempt the medical expenses.

Richard Myers:

It does, but only to the extent that they exceed \$50,000.

Assemblyman Goicoechea:

The company would be responsible for those outside of the tort. I am not talking about Zurich. I am talking about if S.B. 475 passes, and we have a \$50,000 tort cap.

Richard Myers:

The case will settle before the medical expenses exceed \$50,000. Under existing law, in this case, when you settle with the worker's comp carrier and pay them entirely—as you would in this case—you waive your right to future medical expenses and future rehabilitation expenses up to the amount that you settle for, and in this case, it is \$500,000. So Mr. Sappington is out of luck in that circumstance. Medicaid comes in and takes over, and the taxpayers ultimately bear that expense. The person who causes this injury ought to be accountable for the consequences of it. That is the way it is under existing law, and if ATC Vancom gets its way, they are not going to be accountable for it. Airwest worker's comp carrier is going to be responsible for it, and ultimately the taxpayers, because of Medicaid.

Chairman Ocegura:

We will close the hearing on S. B. 475. We will go back into work session.

Senate Bill 245 (1st Reprint): Establishes provisions concerning hours of service for intrastate drivers. (BDR 58-80)

Marjorie Paslov Thomas, Committee Policy Analyst, Legislative Counsel Bureau: Senate Bill 245 establishes hours-of-service limitations for intrastate drivers. This bill is sponsored by Senator Hardy and we heard it May 5, 2005. Provided under the discussion is a copy of the bill summary for the introduced version. I will go into the proposed conceptual amendments.

Chairman Ocegüera:

He deleted the bill as a whole and went to a new amendment.

Marjorie Paslov Thomas:

You can see a copy of Senator Hardy's proposed language under Tab B ([Exhibit B](#)). He wants to add a couple of new sections. The first would provide that within any 24-hour period, an intrastate driver shall not be allowed or required to drive more than 12 hours following 10 consecutive hours off duty, for any number of hours after having accrued more than 15 consecutive hours of on-duty time, or within any period of seven consecutive days after having accrued 70 hours of on-time duty.

The second would amend the bill to add a new section providing for hours-of-service limitations for intrastate drivers. These limitations include those imposed by the Transportation Services Authority, and the DMV [Nevada Department of Motor Vehicles] or DPS [Nevada Department of Public Safety], in accordance with federal limitations on intrastate drivers.

Judy Stokey of Nevada Power Company and Sierra Pacific Power Company and Debra Jacobson of Southwest Gas proposed an amendment to allow a public utility company to create a procedure that would exempt utility drivers from federal hours-of-service regulations when restoring utility service during a public utility emergency. They define an emergency as a natural or man-made occurrence involving a public utility facility that interrupts delivery of essential services or threatens human life or public welfare.

Based on the concerns that were raised, the Legal Division suggested putting in some sort of language, such as, "The amendatory provisions do not apply to the extent that the provisions are preempted or prohibited by federal law, or violate a condition of the receipt of federal money by this state, an agency of this state, or a political subdivision of this state."

Chairman Ocegüera:

I think the amendments, as proposed, are fairly straightforward. If this would impact federal funding, we would not adopt this specific amendment that the utilities are asking for. I think Senator Hardy is okay with that language. It seems to me that this language that Senator Hardy was proposing was to rectify a certain issue, which is being able to work an amount of days.

Assemblyman Carpenter:

Do the people who testified from the different construction firms like this amendment?

Chairman Ocegüera:

That is correct. As far as I can tell, we have a majority of the folks in agreement.

Assemblyman Goicoechea:

I am looking at the proposed amendment by Sierra Pacific Power Company and Southwest Gas. Does it still require an emergency to be declared by a local official? I am looking at the portion of S.B. 245 where it says, "if the public official fails to declare and determine that a public utility emergency exists within 10 days of receipt..." I am concerned with how that really happens.

Chairman Ocegüera:

I think what they were trying to do is allow them to have a procedure to declare an emergency, and then, on the back side, ask the public official. They would be able to do it in their procedures and say, "We have a 50-million-kilowatt line down on the Austin Highway," and they would then be able to notify the public officials that they had that issue.

Assemblyman Goicoechea:

What if the local county commissioner or public works director is asleep at the switch and did not declare it? Does that put them in a different situation?

Chairman Ocegüera:

The problem we would run into would be the federal funding issue, and that is what they are trying to avoid.

Assemblyman Claborn:

We have run into this problem many times in the construction industry, in regard to 24-hour pours, 48-hour pours, and straight pours. The operating engineers sometimes work 12 and 12, the Teamsters would work 11 and 11, and there would be a couple of hours in between shifts. I think it is a good thing for the industry. You would not have a gap in between, where the employer would not get any productivity.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO PASS SENATE BILL 245 WITH SENATOR HARDY'S AMENDMENTS ON PAGE 4 OF THE WORK SESSION DOCUMENT, AND ALSO WITH THE AMENDMENTS FROM DEBRA JACOBSON AND JUDY STOKEY.

ASSEMBLYMAN CLABORN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Christensen was not present for the vote.)

Chairman Oceguera:

There being no further business, the meeting is adjourned [at 3:00 p.m.].

RESPECTFULLY SUBMITTED:

Linda Ronnow
Committee Attaché

APPROVED BY:

Assemblyman John Oceguera, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: May 17, 2005

Time of Meeting: 1:41 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B	Marjorie Paslov Thomas, Committee Policy Analyst	Work Session Document for S.B. 181, S.B. 245, S.B. 481 (14 pages)
SB 475	C	Richard Myers / Crockett and Myers Law Firm	Opposition to S. B. 475 (8 pages)