

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION AND HOMELAND SECURITY**

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

The Senate Committee on Transportation and Homeland Security was called to order by Chair Dennis Nolan at 2:50 p.m. on Tuesday, May 17, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dennis Nolan, Chair
Senator Joe Heck, Vice Chair
Senator Maurice E. Washington
Senator Michael Schneider
Senator Maggie Carlton
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
James Puffer, Intern to Senator Nolan
Joshua Selleck, Intern to Senator Nolan
Lee-Ann Keever, Committee Secretary

OTHERS PRESENT:

Edgar Roberts, Administrator, Motor Carrier Division, Department of Motor Vehicles
Daryl E. Capurro, Nevada Motor Transport Association
A.R. Fairman, Nevada Transportation Coalition
Michael D. Hillerby, Chief of Staff, Office of the Governor
Don Soderberg, Chairman, Public Utilities Commission of Nevada

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Sandra Lee Avants, Chairman, Transportation Services Authority, Department of
Business and Industry
Herb Tobman, Western Cab Company
William Bible, Nevada Resort Association
Frank A. Schreck, Nevada Resort Association
Virginia (Ginny) Lewis, Director, Department of Motor Vehicles
Michael P. Mersch, Senior Deputy Attorney General, Office of the Attorney
General

The Chair opened the hearing on A.B. 505.

ASSEMBLY BILL 505 (1st Reprint): Revises provisions relating to registration of
certain motor vehicles and reorganizes Transportation Services Authority.
(BDR 43-973)

Chair Nolan stated that A.B. 505 was the only substantive piece of legislation
which the Committee had to consider before the May deadline. The bill would
reorganize the Transportation Services Authority (TSA). He added the
Committee had been asked to look at policy issues and restructuring issues
concerning the TSA.

Chair Nolan told those present that over the course of the past several weeks,
there had been discussions with Governor Guinn's staff and the Assembly
Committee on Transportation regarding the best means by which to restructure
the TSA. The individuals involved with the restructuring process wanted to
alleviate some of the issues facing the TSA. The Committee would receive a
restructuring proposal from the Governor's staff during the hearing.

Chair Nolan said the Committee would first hear testimony regarding the TSA's
restructuring and then take testimony on the issues concerning that agency. He
added A.B. 505 would be used as a vehicle to amend with the intent of
rereferring the bill to the Senate Committee on Finance as its amendments
required rereferral. By rereferring the bill, it would become exempt from the
legislative deadline and the Committee would have time to work out the details
of the reorganization.

Edgar Roberts, Administrator, Motor Carrier Division (MCD), Department of
Motor Vehicles (DMV), spoke from prepared text ([Exhibit C](#)).

Daryl E. Capurro, Nevada Motor Transport Association, said the bill had been a cooperative effort to provide for staggered registration of heavy-duty vehicles. He noted that the registration for light-duty vehicles had been staggered approximately 20 years ago. Staggered registration had been designed to eliminate the spikes in registration for light-duty trucks at the end of the calendar year.

Mr. Capurro stated that the bill would provide the same benefits when registering heavy-duty trucks as had been provided for light-duty trucks. He added the DMV would have to adopt regulations which provided for the staggered registration of heavy-duty trucks if A.B. 505 were enacted. Such regulations would allow fleets to register their vehicles over a period of time.

Mr. Capurro said he wholeheartedly supported the bill. He added that the bill, in its original form, only contained sections 1, 2 and 3. As such, his comments were directed only at those sections. The balance of the bill had been added as a floor amendment and addressed the reorganization of the TSA.

Chair Nolan asked A.R. Fairman, Nevada Transportation Coalition, whether he supported the bill, the amendment or both. Mr. Fairman said he would not know his position on the bill until he had a chance to review it after it had been amended and discussed at a work session.

Chair Nolan said he did not see any objections or questions to the basic tenets of A.B. 505. He added those issues would not be a problem regardless of the bill's outcome. The bill had to be used as a vehicle by which to address problems related to the transportation industry and would be used due to the upcoming legislative deadlines. Chair Nolan told those present that the bill would be rereferred to the Senate Committee on Finance while the Committee continued a policy discussion on the issue.

Michael D. Hillerby, Chief of Staff, Office of the Governor, stated the reorganization of the TSA and its operation was a serious issue. He said there had been a number of bills introduced during past Legislative Sessions which addressed the TSA's reorganization. Those bills included eliminating the TSA entirely; reducing the number of commissioners who served on the TSA or moving the TSA's jurisdiction from the Department of Business and Industry to another agency.

Mr. Hillerby said the bills had been requested due to legislative interest based on constituent input. Representatives from the different areas of the transportation industry were interested in finding better means of regulation while meeting public-safety needs.

Mr. Hillerby stated his office received suggestions and comments regarding the reorganization of the TSA. The Governor's Office would recommend a solution which it thought would be the best means by which to resolve the TSA's problems.

Mr. Hillerby began with a brief history lesson regarding the Public Utilities Commission of Nevada (PUCN). He said the TSA previously had been a division of the PUCN when the PUCN was known as the Public Service Commission of Nevada (PSCN). The Governor's Office thought it made sense for the TSA to again be part of the PUCN. The PUCN was a well-respected body with extensive regulatory experience. Mr. Hillerby said the PUCN also had a strong administrative and management team. Mr. Hillerby stated the PUCN had strong management of its law enforcement function.

Mr. Hillerby said because of the strong management and administrative teams, the PUCN commissioners were untainted when matters came before the PUCN for consideration by that body. Additionally, the PUCN commissioners were well prepared. Mr. Hillerby stated that putting the TSA back under the auspices of the PUCN made sense based on the history he shared with the Committee. He added there was a strong desire for action to be taken regarding the TSA and its reorganization.

Senator Carlton asked why the TSA had been originally removed from the PUCN. She also wanted to know, if the bill passed, if the TSA and its employees would be placed in the organizational structure of the PUCN or if there would be employee-management issues associated with the reorganization.

Mr. Hillerby said the current makeup of the TSA would remain intact. The only significant change would be the addition of another commissioner. The new commissioner would sit whenever the PUCN considered a transportation matter.

Mr. Hillerby stated that the reorganization of the TSA might be one of the few instances where the State treated one industry with different regulatory bodies

based on geography. The TSA dealt with taxicabs, limousines and buses which were more prevalent in southern Nevada than in northern Nevada. He added that the reorganization was based, in part, on the personalities of those involved.

Don Soderberg, Chairman, Public Utilities Commission of Nevada, said he had served on the PUCN when it was the PSCN, a body whose jurisdiction included both utilities and transportation. When he was appointed to the PSCN in 1995, he heard complaints from representatives of the transportation industry that the PSCN was not giving that industry its due diligence.

The 1997 Session divided the PSCN into two separate entities, the PUCN which regulated utilities in Nevada and the TSA which regulated transportation in Nevada. Mr. Soderberg said the key mistake made when the agency was reorganized had been creating two similar agencies from one agency. He stated the PUCN's utility function was designed to and worked as a utility function should. The PUCN was similar to many other utility regulatory bodies in operation throughout the country. However, the TSA, a transportation regulatory agency, had been designed along the same lines as a utility regulatory agency.

Mr. Soderberg told those present that if the PUCN took over the administration of the TSA, it had to be open-minded enough to realize it could not make the administration of the TSA another function of its utility-regulatory duties. Doing so would compromise the utility industry and be unfair to the transportation industry.

The PUCN believed it had to reinvent the TSA's function within the PUCN's organization and that it could not have any preconceived ideas of how the TSA should function within the PUCN. The PUCN identified the two criteria which the PUCN would need to correct in order to properly administer the TSA's operations. The TSA's significant administrative support including three commissioners and the support mechanism needed to support those commissioners diverted resources away from the TSA's investigatory function. The investigatory function was the nuts and bolts of the transportation industry. The transportation function had been underfunded due to the drain on resources and funding controversies. Mr. Soderberg added that many of the industries regulated by the TSA did not pay their fair share for regulation. He said the TSA had done a phenomenal job with the two handicaps he mentioned.

Mr. Soderberg stated that the PUCN's belief that for the TSA to function as a part of the PUCN, the PUCN needed to use those operations which worked successfully for the PUCN, while keeping in mind the TSA's jurisdiction. Those considerations would be kept in mind while the PUCN attempted to make the TSA function more efficiently as a part of the PUCN.

Mr. Soderberg explained that by more efficiently, he meant spending less money on commissioners while focusing more attention on fine-tuning the enforcement-investigatory function. The draft legislation for the TSA's reorganization would be completed as soon as the PUCN understood the deadlines facing the Committee.

Mr. Soderberg stated that the draft legislation retained a three-member commission for the PUCN while creating a transportation commissioner whose sole function would be to focus on the transportation industry. The transportation commissioner would not work or vote on utility matters. The three-member commission would bring in the transportation commissioner to vote only on transportation matters. This staffing arrangement would allow the utility side of the PUCN to focus on utilities and the transportation side to focus on transportation issues. The PUCN's administrative staff would manage the day-to-day administration of the TSA. The savings realized by the reorganization would be used to refine and improve the TSA's enforcement capabilities.

Mr. Soderberg said a proposed amendment to the bill contained fee increases. The proposed fee increases would not be enough to permit the TSA to become self-sufficient, but would be a step towards self-sufficiency. The amendment would permit the up-front payment of an in-depth investigation when the investigation was requested by a person appearing before the TSA. This would prevent the TSA's resources from being drained by one applicant.

The 1997 legislation granted the TSA the statutory authority to hear appeals on decisions rendered by the Taxicab Authority (TA). Mr. Soderberg said he understood the TSA had used that statutory provision infrequently and requested that the Committee eliminate it.

Mr. Soderberg said the PUCN was considering a review of all industries regulated by the TSA in an effort to determine whether or not those industries required regulation.

The PUCN's amendment did not make changes to those industries regulated by the TSA. However, the PUCN had been talking conceptually about which transportation-related industries required regulation and to what extent the regulation would be required. There had been talk about a higher level of regulation for taxicabs and for buses operating in Washoe County and at Lake Tahoe. The taxicab and bus industries operating in those two locations were more akin to the same industries in southern Nevada. The PUCN had not worked on such regulation but, would do so if directed by any legislative committee.

Mr. Soderberg said the PUCN believed the TSA's reorganization was the PUCN's responsibility and that it needed to consider the best means to approach and complete that job. He stated the PUCN did not want to provide a Scotch-tape remedy to the TSA's reorganization. Mr. Soderberg added he thought the PUCN's approach to the TSA's reorganization would work in the long run, while saving the public money.

Senator Carlton said Mr. Soderberg discussed the three existing PUCN commissioners and had proposed adding an additional commissioner to serve as a transportation specialist. The new commissioner would not be involved in utility-related matters, while the utility commissioners would be involved and have input on transportation matters. She stated she was still learning about transportation even though she had served on the Senate Committee on Transportation and Homeland Security for a number of sessions.

Senator Carlton told Mr. Soderberg that his staff was experienced with utility-related matters and wanted to know how the PUCN staff would be able to understand transportation-related matters. She said she was concerned with the PUCN's staff not having sufficient background and experience to interact with the transportation commissioner.

Mr. Hillerby said Senator Carlton raised an important question. He said there were a couple things to consider. When talking about the PUCN staffing, the TSA staff would still provide the expertise Senator Carlton worried about. Whenever a new commissioner was appointed to serve on the PUCN, that person was experienced in utilities regulation. The new appointee had to bring him- or herself up to speed on matters pending before the PUCN and was assisted by the PUCN's competent staff which prepared new commissioners.

Mr. Hillerby said the appropriate staffing with the right management structure would prepare the PUCN staff to deal with transportation issues. Mr. Hillerby stated that due to the professional staffing structure, he had confidence in the PUCN to carry out its duties regardless of changes in commissioners.

Senator Carlton wanted to know, in case of a tie vote, what would happen with four commissioners on the board.

Mr. Soderberg told the Senator that two of the three PUCN commissioners had transportation experience. He said the PUCN looked at whether it would be better to have more commissioners or an enhanced staff. He said he believed it was better to have an enhanced staff and added that it was very rare for a regulatory agency to have three, five or seven full-time members serving. The good work was done at the operational level where staff did not deal with policy issues.

One of the PSCN's flaws had been that the transportation division had to use resources from the different utility divisions. The staff of the utility divisions did not want to staff the transportation division as they had spent their professional careers working on utility-related issues, not transportation-related issues.

Mr. Soderberg stated the resources he talked about removing from the commissioner level and the redundancy on an administrative level would make the TSA a stronger, separate group within the PUCN. That would allow the TSA to focus on transportation-related issues. He added that in a perfect world, the PUCN would have sufficient money for three PUCN commissioners plus all the budget line items the PUCN wanted on an operational level.

Mr. Soderberg told the Senator that the PUCN wanted an odd number of commissioners voting on matters. Therefore, when the PUCN heard a transportation-related matter, one of the PUCN commissioners would not vote, while the TSA commissioner would. This meant that only three votes would be cast. He stated that the enforcement capabilities of the TSA needed to be increased and the PUCN administrative staff was a good place to begin increasing those capabilities.

Senator Horsford wanted to know whether the Governor's staff's proposed amendment to A.B. 505 had been reduced to writing.

Mr. Soderberg replied that Governor Guinn had been given a draft of the proposed amendment. The Governor had been told that the PUCN wanted to finalize the draft amendment by May 18, 2005. The PUCN had not discussed the proposed amendment with TSA Chair, Sandra Lee Avants.

Mr. Soderberg said he would feel much more comfortable when he could tell the Committee that the reorganization document was complete. He based his statement on his participation in the 1997 reorganization of the PSCN. Mr. Soderberg requested the Committee give him a 2 p.m. deadline on May 18, 2005, for submitting the proposed amendment.

Senator Horsford asked Mr. Soderberg whether moving the TSA back under the jurisdiction of the PUCN would require a statutory change. Mr. Soderberg replied, "Yes, sir." Based on Mr. Soderberg's answer, Senator Horsford asked what the PUCN wanted from the Committee.

Chair Nolan told those present that the Committee would have a public hearing on A.B. 505 which he anticipated would be held May 19, 2005. That hearing date should give Mr. Hillerby and Mr. Soderberg time to contact all interested parties. The hearing date would also allow the PUCN time to address all concerns and answer any questions raised by the Committee prior to a hearing on the Governor's staff's plan for reorganizing the TSA.

The bill would be rereferred to the Senate Committee on Finance as the conceptual amendment created an inherent fiscal issue. The bill would stay in the Senate Committee on Finance with the intention that the Senate Committee on Transportation and Homeland Security address the policy issues needed to amend the bill.

Chair Nolan said he was considering holding a joint hearing with the Assembly Committee on Transportation. He was basing the need for a joint hearing on upcoming legislative deadlines. A joint hearing would allow both Houses to hear the bill at the same time and have answered any questions which the Committee members might have.

For the record, Senator Horsford stated:

I appreciate that Mr. Chairman. Again, I see value in the recommendation. Like the earlier hearing in the Senate Committee on Judiciary, I like to know what I am doing before I vote on it. I do not think that is an unreasonable request based upon a very significant policy change. To pass a bill in concept which then goes to the Senate Committee on Finance, a bill that I have no ability to add to, is a little concerning to me. Again, I think that there is some value in what is being proposed here. I am not against it, but there are a lot of details which need to be worked out. The problems that we have with the TSA, in part, in my opinion, have come out of the fact that the original reorganization was done hurriedly. Let's not create that same situation when we reincorporate the TSA back into the PUCN.

Chair Nolan stated that he echoed Senator Horsford's sentiments, adding it was incumbent upon the Committee to thoroughly review the proposed reorganization. The Committee had additional time as the bill would be exempt from the upcoming deadlines.

The Chair noted there was a proposed amendment to A.B. 505 in which the authors of the bill said they would include the \$50-per-year medallion fee. The bill could be amended with that provision and then be rereferred to the Senate Committee on Finance. The \$50-per-year medallion fee also carried a fiscal note which permitted the Committee to move the bill to the Senate Committee on Finance. When the bill was returned to the Senate Committee on Transportation and Homeland Security, the members would have an opportunity to address any policy issues connected to it.

Senator Horsford asked for and received clarification from the Chair on the procedure by which the bill would be rereferred. Chair Nolan said the bill would be rereferred to the Senate Committee on Finance with the understanding that the Committee would work on a policy amendment. The Senate Committee on Finance would then rerefer A.B. 505 to the Senate Committee on Transportation and Homeland Security.

Senator Washington stated he thought it would be better to obtain a waiver on the bill instead of a fiscal exemption. The Senator added that legislative tenure

played a part in sound legislation and policy; he said he remembered when the TSA had been a part of the PSCN and the reasons why the TSA had been removed from the organizational structure of the PSCN. During the original reorganization, elaborate plans for reorganizing had been submitted to the Legislature which had to deal with personality and finance issues.

Senator Washington said he thought A.B. 505 gave the Legislature an excellent opportunity to reorganize the TSA and return that agency to the jurisdiction of the PUCN where it belonged.

Senator Washington told those present that Mr. Soderberg had been hesitant about the reorganization. He said he thought that it was good that the Governor's Office wanted the TSA to be part of the PUCN. Senator Washington stated he favored the amendment because he knew the TSA's history. The Senator added that by placing the TSA under the PUCN's jurisdiction, the Committee would be providing a service to Nevada's transportation industries.

Senator Carlton stated she agreed with Senator Washington. She said she would be more comfortable with a waiver instead of a fiscal exemption. The Senator stated she thought the bill and its amendments were significant policy issues. She added she understood the reason for the exemption, but did not want to hide the bill in the Senate Committee on Finance as it was an important piece of legislation. Senator Carlton told those present that she thought the Committee should retain control over A.B. 505 from the beginning to the end of the legislative process.

Chair Nolan said he appreciated Senator Carlton's remarks. He told her that his intention had been to take care of the ongoing issues concerning the TSA's reorganization, which was a serious public-policy matter, and not to play games with the reorganization. The bill needed to be exempted which would be the only reason it would be rereferred to the Senate Committee on Finance. An exempt status would allow the Senate Committee on Transportation and Homeland Security sufficient time to discuss the policy issues and process the amendments. The Committee would then make a decision to either forward the amendments to the Senate Committee on Finance or ask that Committee to rerefer A.B. 505 back to the committee of origin.

Sandra Lee Avants, Chairman, Transportation Services Authority, Department of Business and Industry, asked for clarification on the bill and its effects upon the

transportation industry. Chair Nolan told her that the proposal which had been discussed earlier in the meeting was an amendment for A.B. 505.

Currently, the amendment was not part of the bill. The Committee would consider the amendment at another time. The amendment proposed that any certificate holder subject to the allocation by the TA would pay the TA a \$50-per-taxi fee for each taxicab the TA allocated to a certificate holder. Under the amendment, the fee set by the TA could not exceed 20-cents-per-trip per vehicle and could be added to the metered charge. The proposal was designed to address and eliminate the medallion system. The Chair stressed that the amendment had not yet been brought forward. The Committee would consider the amendment when it reconsidered A.B. 505.

Herb Tobman, Western Cab Company, said the Chair answered his question. He asked whether or not the Committee knew how much a taxicab owner paid to the TA for medallions. He stated he paid the TA approximately \$29,000 per month for his company's medallions. Mr. Tobman wanted to know what the TA did with the approximately \$7 million per year it collected from taxicab owners as it seemed that the TA was always short of funds. Mr. Tobman stated it was not the \$50 fee which had him upset, but rather the fact that the TA was bleeding the taxicab owners.

Chair Nolan said he appreciated Mr. Tobman's concerns regarding the medallion issues. However, the Committee was currently discussing the reorganization of the TSA. Those issues concerning the TA would be brought forward and discussed when the Committee reconsidered A.B. 505. He told Mr. Tobman that if he wished to comment on the reorganization of the TSA, the Committee would accept that testimony.

Mr. Tobman said the TA should not use the excuse of insufficient funds. He said programs should not be implemented when governmental agencies did not have sufficient funds to fund those programs. Mr. Tobman stated he did things to save his business money and wanted to know why government agencies did not save money. He urged the Committee members to give the \$50 fee more thought than a 2-hour meeting allowed. Mr. Tobman said the TA's problem was its employees, not its administrator.

The Chair thanked Mr. Tobman and promised him he would be notified when the Committee reconsidered A.B. 505. The Chair said the Committee

demonstrated its intention on the bill to the public and to the Governor's staff. The bill and its proposed amendment would be reconsidered by the Committee. Chair Nolan stated he would coordinate a joint meeting with the Chair of the Assembly Committee on Transportation to consider the bill.

Chair Nolan closed the hearing on A.B. 505 and opened the hearing on A.B. 504.

ASSEMBLY BILL 504 (1st Reprint): 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)

William Bible, Nevada Resort Association (NRA), provided the Committee with a proposed amendment to the bill ([Exhibit D](#)). He said the issue he wanted to address was contained in the *Nevada Administrative Code* (NAC) 706.147, a copy of which was page 1 of [Exhibit D](#).

Mr. Bible referred to the NAC 706.147, subsection 1, paragraph (d), which caused the resort-hotel industry problems as it limited the flexibility of a hotel to appropriately direct in-house transportation services in order to meet the needs of their customers. He said a resort hotel obtained limousine service in one of three ways: it owned and operated limousines using its hotel-casino employees as the drivers; it had an exclusive arrangement or a series of arrangements with regulated carriers to provide limousine service or a combination of both privately owned and publicly regulated vehicles to provide limousine service.

A resort hotel's in-house limousine services were subject to the TSA's jurisdiction. Mr. Bible said the most commonly used option by the resort hotels was a mix of privately owned and publicly regulated vehicles to provide limousine service. Most resort hotels owned their limousines and contracted with a limousine service when additional vehicles were required to transport their guests.

Mr. Bible stated the NAC 706.147, subsection 1, paragraph (d), caused a number of problems in terms of flexibly operating those limousines which were not subject to the TSA's jurisdiction. Under this NAC, a resort hotel had to comply with the point-to-point requirements of the regulation. Mr. Bible said the section prohibited a resort hotel from transporting its guests off premises and

who might want to make several stops at sites which were not a part of the resort hotel's operations before returning to the resort hotel.

Mr. Bible reported that the resort-hotel industry first looked at the legal underpinning of the regulation. [Exhibit D](#) included a legal opinion issued by one of the NRA's attorneys regarding the regulation and its effect on the resort hotel industries. The exhibit also included a letter from the NRA's attorney, Frank Schreck, who had reviewed the memorandum and evaluated the legal opinion it contained.

Mr. Bible explained Mr. Schreck would present the Committee with a brief overview of the issue. Mr. Bible said he thought A.B. 504 clarified existing law.

Frank Schreck, Nevada Resort Association, stated he represented the NRA and supported A.B. 504. He said the purpose of the bill was to clarify the issue of whether or not the limousines owned and operated by resort hotels in order to transport their patrons on a complimentary basis were common carriers as defined by *Nevada Revised Statutes* (NRS) 706.051 and therefore, subject to the jurisdiction of the TSA. The clarification became necessary as the TSA approved a change to the NAC 706.147, subsection 1, paragraph (d), which required a provider of "free shuttle service to passengers" to limit its trips for passengers to those that have the provider's place of business as the point of origin or the point of destination.

As an example, Mr. Schreck said it would be acceptable for a limousine belonging to the Mirage Hotel and Casino to transport a guest from the Mirage Hotel and Casino to the Shadow Creek Golf Course and then back to the Mirage Hotel and Casino. The reason for this being, the Mirage Hotel and Casino owned the golf course. Deviation from the required route meant the Mirage Hotel and Casino could be considered a common motor carrier. If the Mirage Hotel and Casino were considered a common motor carrier, it would violate the TSA regulations every time it transported its guests to facilities it did not own.

Mr. Schreck continued by saying that the NRA had been told that limousines which were owned and operated by resort hotels and used solely to transport their patrons on a complimentary basis would be subject to NAC 706.147, subsection 1, paragraph (d). He said his office had reviewed the memorandum contained in [Exhibit D](#) and that he concurred in the analysis and legal conclusions which the memorandum contained.

Mr. Schreck said the memorandum stated that the NRS 706.041 defined a motor carrier of passengers. He explained the provision applied to any person or operator who held himself out to the public as willing to transport all passengers by motor vehicle and who made himself available to all who might choose to employ him. The limousines owned and operated by the resort hotels were used to provide complimentary transportation for their customers and were not held out to the general public as being available to transport passengers or property.

Mr. Schreck stated as such, those limousines were not common carriers as defined in the NRS 706.041. The TSA's jurisdiction was limited to fully regulated common carriers as defined in the law. As the limousines owned and operated by the resort hotels were not fully regulated carriers, the TSA had no jurisdiction over them and could not promulgate regulations governing their operation.

Mr. Schreck told the Committee that the legal conclusions contained in [Exhibit D](#) were supported by Attorney General's Opinion No. 426 issued in 1958 and by a 1993 decision issued by the Nevada Supreme Court in the case of *Ruggles v. Public Service Commission of Nevada*, cited at 109 Nev. 36. He noted that in both instances, it had been determined that in order to be a common carrier, a person had to hold him- or herself out to the general public as willing to transport for a fee, any person requesting transport.

Mr. Schreck stated that resort hotels were not in the business of transporting the general public for a fee; that resort hotels did not hold themselves as being in the business of transporting the general public for a fee and limousines owned and operated by the resort hotel-casinos were not available for hire by the general public. Based on those reasons, the limousines owned by the resort hotels were not common carriers as defined by the NRS 706 and would not be subject to the TSA's jurisdiction. Mr. Schreck added the TSA's jurisdiction covered only fully regulated carriers.

Mr. Bible stated that the bill codified the statutory provisions Mr. Schreck discussed, even though the NRA did not feel its members fell under the TSA's jurisdiction. Mr. Bible discussed section 1 of [A.B. 504](#), which indicated that an owner or operator of a motor vehicle which was used for the transportation of passengers or property would not be subject to the provisions of the NRS which governed the fully regulated carriers. However, the owner or operator of a motor vehicle owned by a resort hotel must hold a nonrestricted license.

Mr. Bible addressed the statutory provisions which defined a resort hotel in Nevada. One of the provisions mandated that an establishment in Washoe County or Clark County needed to have a minimum of 200 hotel rooms in order to be called a resort hotel-casino. Additionally, a resort hotel could not be in the business of transporting passengers or property and could not charge a fee for transporting passengers or property.

Mr. Bible suggested amending A.B. 504, section 1, subsection 1, paragraph (a), subparagraph (4) by expanding it and clarifying the language which the Assembly approved. That provision currently read, "Provides transportation only to its customers, officers and directors" Mr. Bible suggested using the wording, "... Provides transportation only to its customers, guests, officers, directors, key employees and casino hosts ... ," as that would include a wide range of individuals whose responsibilities were supervisory in nature and who had responsibility within a resort hotel from an employment standpoint.

Mr. Bible said he distinguished between a customer and guest as a customer already had an economic relationship with a resort hotel in one of its main venues while a guest did not necessarily have an economic relationship with a resort hotel.

The resort hotels would be required to mark their vehicles with the name of the owner or operator. The provision that the markings had to be at least two inches high had been added by the Assembly and allowed an enforcement officer to distinguish between a limousine owned by a resort hotel and one owned by a fully regulated carrier. Additionally, the vehicle had to be related to one of the businesses of the resort hotel for which the nonrestricted license had been issued.

Mr. Bible talked about section 1, subsection 2 of the bill which required annual inspections of vehicles and detailed the inspection records which the owner or operator were required to keep. Mr. Bible said section 1, subsection 3 contained the definitions of nonrestricted license and resort hotel.

Mr. Bible requested that the bill become effective upon passage and approval. He said he believed the passage of the bill would resolve those issues which caused it to be drafted. Mr. Bible encouraged the Committee to pass A.B. 504.

Senator Carlton stated she was pleased to see the key-employee language added to the bill. She added she was concerned about the size of the markings on the vehicles owned and operated by a resort hotel. The Senator said she was not sure whether or not 2-inch-high lettering would be large enough for people to read from 50 feet away. She stated she understood why the NRA wanted the provision in the bill and added she agreed with it.

Senator Carlton said the drivers would be industry employees and she wanted to know who would hold the drivers of the vehicles accountable if they broke a state law or regulation.

Mr. Bible said the bill's language concerning the lettering size codified the existing NAC regulation. He added that most of the resort hotels maintained large, in-house security staffs whose expertise extended past the regulatory requirements in terms of investigating employees. Mr. Bible reported that one of the resort hotels in Las Vegas required its drivers to carry commercial drivers' licenses.

Mr. Bible told Senator Carlton that he believed when a property violated the statutes under discussion it would be subject to the continuing jurisdiction of the TSA.

Chair Nolan wanted to know whether or not it was a requirement for a resort hotel's drivers to carry commercial drivers' licenses. Mr. Bible said that based upon his reading of the codes, those drivers were required to carry commercial drivers' licenses when driving a class A or class B vehicle or when driving a vehicle over a specified weight. Mr. Bible said he did not think a limousine fell within the specified weight limits. He stated that the resort hotel which required its drivers to carry commercial drivers' licenses was an exception.

Chair Nolan said that the majority of the resort casinos in Nevada handled the risk-management issues appropriately and understood the potential risks associated with carrying passengers in their vehicles. However, there were some smaller properties which might not have the same level of concern.

Virginia (Ginny) Lewis, Director, Department of Motor Vehicles, said a person would be required to have a commercial driver's license if the vehicle he or she drove carried more than 16 passengers. Additionally, a person would have to have a commercial driver's license if the vehicle he or she drove exceeded a

certain weight. The decision by the resort hotels to require their limousine drivers to carry commercial drivers' licenses was not mandated by the federal Commercial Motor Vehicle Safety Act of 1986.

Mr. Schreck said the exemption in the bill was restricted to resort hotels with 200 or more hotel rooms and would not affect those properties that did not meet the statutory definition of resort hotel. The Chair said he understood and asked if the TSA currently had regulations in place which addressed limousine drivers. Mr. Bible said he did not know whether such regulations were in place and suggested that a TSA representative might be able to answer the question.

Michael P. Mersch, Senior Deputy Attorney General, Office of the Attorney General, explained that he was assigned as the TSA's legal counsel. He said the TSA, through the licensure process of the grantees of certificates from the TSA, required the company in question to provide training and to maintain driver-qualification files on each of its drivers. Those files included a background check, pre- and random-drug testing and on-the-job training to ensure the drivers knew how to properly operate the vehicles. Additionally, a driver was required to know the basic maintenance of the vehicle assigned to him or her. Those requirements were set forth in the TSA's regulations and federal regulations which the TSA adopted.

Chair Nolan said he wanted to see copies of the regulations Mr. Mersch referenced. He said it was his feeling that if the Committee allowed the industry the exemption, it could self-police. The Chair stated that the testimony provided indicated the resort hotels were already complying with the TSA regulations even though they were not required to do so.

Chair Nolan said one of the worst-case scenarios would be where an unqualified driver of a resort-hotel vehicle caused a major accident. In that case, the matter would be revisited by the Legislature in the future and regulation of the drivers employed by resort hotels would be requested.

The Chair reiterated his previous statements concerning his comfort level and stated that was the reason he wanted to review the regulations.

Mr. Bible said he understood the Chair's concerns and added he was not sure of the exact requirements placed on the fully regulated carriers. But, if those

requirements appeared to be reasonable and would protect the safety of the resort hotels' guests, the NRA would be interested in pursuing the requirements.

Commissioner Avants said the TSA was neutral on the bill. She added the TSA had been working with the NRA. Commissioner Avants referred to section 1, subsection 1, paragraph (a), subparagraph (4) of the bill which enhanced and better described those individuals who would be utilizing the services of the resort hotels' limousines. She stated the TSA thought that section was very beneficial.

Commissioner Avants said she wanted the Committee to be aware of the fact that the members of the gaming industry had an issue and concern about how to best operate their businesses and protect their special gamblers and guests. The section Commissioner Avants referred to accomplished that objective. Commissioner Avants said the fact that the resort hotels' limousines would not be competing with the for-hire limousines and taxis was reassuring to the regulated carriers.

Senator Carlton said she had heard that a resort-hotel limousine had been impounded by the TSA and asked whether Commissioner Avants could comment on that incident. Commissioner Avants said the matter was pending investigation and she could not comment on it publicly. She emphasized that the law, as currently written, had been followed during the impound process. Commissioner Avants said that if the respondent in the incident did not object, she would telephone Senator Carlton to discuss the matter further.

Senator Carlton said she was confused as she heard testimony that the TSA was neutral on the bill, yet it had impounded a resort-hotel limousine which was exempt from the TSA regulation. She added that she had heard the limousine was not an ordinary limousine, but a special limousine. The Senator stated she was hearing one version of the story in Committee, but in the real world, there appeared to be another version.

Commissioner Avants said the TSA was required to follow the law as currently written. She stated her testimony on A.B. 504 had been that the bill addressed a particular problem which had been looming over the industry for years, but which had just come to the forefront. Therefore, Commissioner Avants did not support or oppose the bill. She stressed that she was neutral on the bill as the TSA was a regulatory agency, not a representative of the industry regulated by

the TSA. Commissioner Avants said it was the gaming industry, not the TSA which wanted the exemption.

Commissioner Avants requested that the TSA's legal counsel be allowed to address the concern voiced by Senator Carlton. The Senator requested that the Chair not allow the TSA's legal counsel to comment on her concerns until further testimony was received by the Committee.

Senator Carlton said the Committee would not discuss the recent impounding of the limousine. However, she wanted to know whether prior to the 2005 Session, the TSA had impounded a limousine owned by a resort hotel for doing what the Committee was trying to fix through A.B. 504. Commissioner Avants replied, "Not to my knowledge." She said she had to confer with her legal counsel for a more definite answer.

Senator Carlton asked Commissioner Avants whether the limousines owned by resort hotels had been a problem, but the vehicles were not impounded until the bill came forward. Commissioner Avants replied, "Correct."

Mr. Mersch said the TSA and other industry representatives had testified before the Assembly regarding the current status of the law. The TSA felt that the NRS 706.147 was valid and in effect. Mr. Mersch stated the TSA did not agree with the legal conclusion presented by Mr. Bible in Exhibit D in terms of the law's current status. Mr. Mersch said the TSA felt the current status was that the NRS 706.147 required any-sized vehicle operated by any business to be operated in conformance with that statutory provision.

Mr. Mersch continued by saying that one of the points of the transportation had to be the place of business for the business providing the free transportation. The general nature of the impounded vehicle Senator Carlton referenced was that it went outside the parameters of the statutory provision. As such, it was considered a common carrier of persons within the State, which required a certificate of public convenience and necessity. The impounded limousine did not have that certificate. Until the law was changed, the TSA was obligated to follow the current law. Mr. Mersch said the TSA believed the law was codified in the NAC.

Chair Nolan told Mr. Mersch that the Committee understood that the legal opinion contained in Exhibit D was a legal opinion and would be rendered moot

if A.B. 504 were enacted. The Chair stated that the Committee and the NRA understood that in the State's eyes, the NRA would be subject to the regulation of the TSA until such time as the law was amended.

Chair Nolan stated that he agreed with Senator Carlton on the bill and that it had merit. The Chair said he had additional information on the impound incident which had been the genesis of his concerns for ensuring that the operators of the vehicles owned by the resort hotels were qualified and could operate the vehicles in a safe manner.

Chair Nolan said the Committee would review the applicable regulations and determine whether they should be applied as well.

Chair Nolan told those present that the Committee would hold a work session on A.B. 504 at its next Committee meeting. The amendments provided to the Committee would be made a part of the work-session documents. He added he would confer with Mr. Bible on the regulations regarding the training requirements for people who operated the resort hotels' limousines to see whether those requirements could be added to the bill.

Chair Nolan closed the hearing on A.B. 504 and opened the hearing on A.B. 240.

ASSEMBLY BILL 240 (1st Reprint): Revises provisions governing owners and operators of charter buses which are not fully regulated carriers. (BDR 58-55)

Mr. Fairman referred to documentation stating that the federal government felt there were problems with Nevada's regulations for charter buses ([Exhibit E](#)). Further, the federal government felt that the language in Nevada's legislation did not comply with federal laws.

Mr. Fairman referenced an October 28, 2004, letter from the Legal Division of the Legislative Counsel Bureau (LCB) to Senator William J. Raggio contained in [Exhibit E](#) which addressed the deregulation of charter buses in Nevada. Mr. Fairman explained the LCB letter outlined which changes needed to be made to the deregulation of charter buses in Nevada.

Mr. Capurro said he supported the bill and provided the committee with some suggested amendments ([Exhibit F](#)). He added that [Exhibit E](#) outlined the history of charter-bus deregulation in Nevada.

Mr. Capurro said there had been a progressive preemption of state regulation of transportation which began in 1995. He referenced the Transportation Equity Act for the 21st Century (TEA-21) which also imposed preemptions on the states against economically regulating various segments of the transportation industry. Mr. Capurro read from "Conflict Between NRS and Federal Law Preempting Economic Regulation of the Charter Bus Industry" contained in [Exhibit E](#).

Mr. Capurro said federal law was specific on the regulation of charter buses. The TEA-21 law was passed by both the U.S. Congress and U.S. Senate and then signed in 1998.

Mr. Capurro paraphrased the TEA-21 legislation for the Committee's benefit. He said the law meant that the State had no authority to economically regulate the charter-bus transportation business.

Mr. Capurro stated he was not going to cast aspersions on the TSA, but noted that the TSA had resisted abiding by the provisions of the TEA-21 legislation. The TSA eliminated the regulatory structure which it was preempted from doing.

Mr. Capurro noted that [Exhibit E](#) contained a number of federal and state opinions on the regulation of charter-bus service in Nevada. Mr. Capurro said the bill's intent was to eliminate the economic regulation of charter-bus transportation as required under TEA-21. Mr. Capurro stated it was strange for him to be saying that federal law should be followed and that he was pushing for the preemption clause. He noted the State was preempted.

Mr. Capurro said the only issues left for states to regulate, on a general basis, under the TEA-21, were stylized as matters not covered by the legislation. The TEA-21 said the law would not restrict the safety regulatory authority of a state, the authority of a state to impose highway route controls or limitations based on the size or weight of motor vehicles or the authority of a state to regulate carriers with regard to minimum amounts of financial responsibilities relating to insurance requirements and self-insurance.

Mr. Capurro said that left Nevada with the ability to regulate the routing which was done by the Nevada Department of Transportation and included the regulation of low bridges, oversized weights and the like. Nevada also regulated safety as it accepted Motor Carrier Safety Funds from the federal government. The acceptance of those funds mandated that Nevada was duty-bound to accept the federal government's regulations on safety as its own. Nevada had accepted those regulations as its own and the authority to do so was vested in the Nevada Highway Patrol (NHP) through an appointment from the Governor.

Regarding the insurance requirements for heavy-duty vehicles, Mr. Capurro noted that they were the same as for a light-duty vehicle. When a heavy-duty vehicle was registered at the DMV, proof of insurance had to be provided in order for the vehicle to be registered. When a heavy-duty vehicle was part of a fleet and there was a fleet change, proof of insurance would have to be presented to the DMV.

Mr. Capurro said there were agencies other than the TSA in Nevada which covered those provisions. Therefore, with respect to charter-bus operations, there was no additional need for the TSA to provide regulation in those areas. However, the TSA required the fully regulated carriers and tow-car operators to file a different insurance form than what was required from the federal government, the NDOT, the DMV or the NHP. The TSA required that the motor-vehicle inspection reports be filed with them even though it was not a requirement of the NHP.

Mr. Capurro said the charter-bus owners were required to inspect their vehicles at least once a year. The inspection reports had to be kept on file. The TSA required the reports be submitted to the TSA. Mr. Capurro stated the charter-bus owners already complied with federal and state regulations.

Chair Nolan asked for clarification regarding the annual inspections. He wanted to know whether the annual inspection of the charter buses was a function of the NHP or conducted internally by the bus owners. Mr. Capurro stated that under the regulations, the inspection was a self-inspection which the bus owners were required to complete and keep the inspection results on file. During an NHP audit, the charter-bus owners were required to provide a motor vehicle report (MVR) to the auditor for review. Additionally, during an audit, a charter-bus owner was required to provide insurance documentation. The NHP

pulled over random vehicles and checked the vehicle against its MVR to ensure the report was accurate.

Mr. Capurro said the inspections were already required by federal regulation, which the State adopted, or by state law and regulation. The provisions which the Assembly produced were a partial answer to the problem. For the Committee's benefit, he explained [Exhibit F](#) which detailed the state agencies and their responsibility in requiring and filing the inspection reports of chartered buses.

Mr. Capurro said one reason for the amendment was based on the fact that if the charter-bus and tow-car industries deregulated as required by federal law, then charter-bus companies would not be fully regulated and the tow-cars would no longer be categorized as tow-cars.

Mr. Capurro noted there was an optional provision to the federal preemption which allowed the State to require a charter-bus company to provide 30 days' notice on rate changes. Mr. Capurro said he did not oppose that provision and suggested that the intent of that provision was it was required but, not subject to review by the TSA.

Mr. Capurro requested that the Committee amend the bill by adding new wording for the NRS 706.072, which defined a fully regulated carrier. The proposed wording would read, "... the term does not include any person who owns or operates an intrastate charter bus service or the vehicles that are subject to that charter bus operation." That wording indicated that an intrastate charter bus was not fully regulated and substantiated what the Committee was discussing with regard to the bill. It also created faith in the federal preemption of the charter-bus regulations.

Mr. Capurro concluded his testimony by saying the net effect of passing the bill would be to deregulate for economic purposes the charter-bus operations in line with the preemption contained in TEA-21.

Before accepting questions from the Committee, Chair Nolan told those present that the Committee was supposed to consider a proposed amendment for [A.B. 239 \(Exhibit G\)](#). As the amendment was not ready, the Committee would hold the bill until its next work session.

ASSEMBLY BILL 239 (1st Reprint): Revises certain provisions relating to drivers' licenses and the control of emissions from engines. (BDR 43-566)

Vice Chair Heck referred to the amendment to A.B. 240 and asked whether the only changes to section 1, subsection 2 had been the deletion of the word satisfactory and substituting the DMV for the TA. He wanted to know whether the first instance where the TA was listed in that section should be replaced with the DMV.

Mr. Capurro said he would be happy to present evidence to the TSA if the Committee decided that should be done. The reason the word satisfactory had been deleted from section 1, subsection 2 was the fact that any evidence had to be satisfactory to the DMV as prescribed in the NRS 706.

Mr. Capurro said he did not believe that any evidence should be physically provided to the DMV as proof of insurance had to be presented before a vehicle was registered. That information should be kept on file by the DMV.

Chair Nolan asked what the minimum insurance requirements for a charter bus were and asked if there were additional insurance requirements beyond the state-required minimum. Mr. Fairman said the minimum-liability insurance required for a passenger bus which carried over 16 passengers, was \$5 million and for a passenger bus which carried fewer than 16 passengers, \$1.5 million. Mr. Fairman noted that coverage was on a per-bus basis.

Chair Nolan wanted to know what the limits were on a bus's uninsured coverage. Mr. Fairman said it would be \$30,000 for a bus which carried fewer than 16 passengers and approximately \$100,000 for a bus which carried more than 16 passengers.

Chair Nolan asked whether the insurance requirements were what the DMV was requesting. He added he was concerned about safety and a bus company carrying the appropriate statutory limits of insurance. Mr. Capurro said the bus companies had to present proof of insurance to the DMV when the buses were registered; the insurance had to comply with the laws or regulations governing the limits per each vehicle.

Mr. Capurro noted that a fleet proof of insurance differed from that for a private vehicle. The DMV would be provided with the insurance face sheet which

identified each vehicle that was covered by the fleet-insurance policy. Mr. Fairman added that the proof of insurance for a fleet was known as a Form F.

Chair Nolan wanted to know whether the bus companies used a standard inspection form. He asked to what standard a safety inspection would be held. Mr. Capurro said the inspection standard was set by the federal government through regulations which the State adopted. A standard inspection form was used by all bus companies to report inspection results.

Mr. Capurro reiterated that a completed inspection form for each vehicle owned by a bus company had to be retained by the company. The retention ensured the form was readily available to the NHP when that agency audited a bus company's records. The inspection forms would be checked against the actual vehicles.

Mr. Fairman reported that each bus had to carry a copy of its completed inspection report. That copy had to match the copy on file at the bus company's office. Each form had to be numbered sequentially and had to correspond to an inspection sticker placed on each vehicle after it was inspected.

Mr. Capurro said if a bus was stopped at a NHP checkpoint and the inspection report did not match the vehicle's condition, questions would be asked and tickets issued. Mr. Capurro stressed that the NHP was the only agency which physically inspected charter buses. The TSA performed what Mr. Capurro called desk audits. A desk audit required a bus company to send its MVRs to the TSA.

Mr. Capurro stated individuals inspecting the charter buses had to be certified to North American Standards which comprised an inspection procedure, no matter what level of inspection was conducted. Essentially, any physical inspections which were conducted at the request of the TSA had been performed by the NHP.

Mr. Mersch stated the TSA was officially neutral on the bill. He said he wanted to correct and clarify some of the comments made during previous testimony on A.B. 240. The TSA had an amendment to the bill which it had previously submitted to the Committee. He noted that section 1, subsection 3 of the bill was contrary to the status of the federal law under 49 United States Code

(U.S.C.) 14501, paragraph A1B. Mr. Mersch explained that provision indicated 30 days' notice was required prior to establishing or changing a tariff.

Mr. Mersch said previous testimony indicated that the net effect of the bill would be for economic purposes to deregulate the charter-bus industry. He said it would be for economic purposes as the industry was already deregulated. The net effect of every regulation in statute relating to charter buses was directly related to safety and insurance. Mr. Mersch noted that previous testimony indicated that those areas were specifically reserved to the states for regulation.

Mr. Mersch noted that the current definition of fully regulated carrier in Nevada included charter buses and under the NRS 706.291 required proof of insurance be provided to the TSA.

Mr. Mersch said he could not comment or take a position on the proposed amendment contained in [Exhibit F](#) as he did not have a copy of that exhibit and therefore had not had a chance to review the proposed amendment.

Chair Nolan told those present that staff had been given a copy of the proposed amendment. He said staff was under the impression that a TSA representative would be attending the hearing in person which would have afforded staff the opportunity to present the TSA representative with a copy of the amendment. The Chair stated that a copy of [Exhibit F](#) would be included in the work-session documents.

The Chair said anytime an industry was regulated, it was enough for the industry to be regulated once. He noted that when double coverage due to regulation was required of an industry, then government owed that industry relief. The Chair wanted to know what would be the benefit of requiring the MVRs be on file with the TSA when the charter-bus companies and the NHP conducted the inspections and maintained the MVRs.

Mr. Mersch said he had been unaware that the NHP performed a 100-percent vehicle inspection on every charter bus, as defined by law, operating in Nevada. He added he thought the NHP might perform random inspections based on manpower.

Mr. Mersch said the only agency which reviewed compliance with all vehicles regulated by the TSA was the TSA and that review began after

Commissioner Avants took office. He agreed with testimony which indicated the TSA did not physically inspect the vehicles and added such inspections were not conducted due to a lack of manpower. Mr. Mersch said the TSA physically inspected the certifications of the vehicles and whether or not the inspectors were licensed and qualified. He stated that as far as he knew, the TSA was the only state agency which inspected vehicles in Nevada. Mr. Mersch reiterated he did not know the NHP's specific role in vehicle inspections in Nevada. The TSA was the only agency in Nevada which reviewed vehicle inspections.

Chair Nolan said he understood Mr. Capurro's testimony as being the only Nevada agency which conducted physical inspections of vehicles was the NHP and that the NHP conducted 100 percent of all vehicle inspections in the State. The Chair stated he took Mr. Capurro's testimony as being identical to Mr. Mersch's and that the charter-bus owners self-inspected their vehicles and the NHP inspected the vehicles on an as-needed basis.

Mr. Mersch said the TSA looked at the driver-qualification files and drug-testing files to ensure the drivers were safe. The TSA's inspection was not limited to a physical inspection of the vehicle. Relative to charter-bus operators, the TSA reviewed a number of factors which were not covered by an annual inspection of the vehicles.

Mr. Capurro told the Committee that he had not said every charter bus would be inspected. However, the NHP was required to physically inspect every school bus in Nevada twice a year. He said his testimony had been that all other vehicles on the highways could be stopped at checkpoints and inspected. A vehicle could also be inspected at a terminal facility. The NHP was the only state agency which had the ability to physically inspect vehicles. Mr. Capurro reiterated his previous testimony concerning the physical inspection of charter buses in Nevada. He said not every vehicle was physically inspected.

Mr. Capurro said the agency provided double jeopardy to the charter-bus owners. The charter-bus owners could not register or reregister their vehicles until proof of insurance was presented to the DMV. Mr. Capurro said the charter-bus owners had no problem presenting the proof of insurance to the appropriate agency which was the DMV.

Mr. Capurro referred to the TSA's audit report, page 8, which indicated that charter-bus and tow-car operations were non-fully regulated carriers. Those

owner-operators did not fit under section 1, subsection 1 of the bill, but rather section 1, subsection 2 of the bill.

Ronald S. Levine, Nevada Motor Transport Association, said the TSA required copies of vehicle-inspection reports. However, there were two types of inspections. The inspection requested by the TSA was a self-inspection by a certified mechanic that had to be conducted on a yearly basis. The NHP was the only agency who could inspect a vehicle on the road or at a terminal for safety reasons. The TSA was the only agency which collected copies of the inspection reports. Mr. Levine stated that prior to Mr. Mersch's testimony, he had not been aware of the fact that the TSA conducted compliance reviews. He added the TSA was not certified to conduct compliance reviews.

Mr. Levine said it was not productive to keep the inspection records on file; the vehicles had to be physically inspected. The TSA would not be able to do anything should a self-inspection report indicate a vehicle was not safe to operate. As such, Mr. Levine did not understand why the TSA required the reports to be submitted to its office.

Mr. Capurro told the Committee that Mr. Levine was the deputy chief of the NHP until he retired from that agency. Mr. Levine's job title at the NHP was commander in charge of Motor Carrier Operations and he was experienced in the federal and state laws and regulations as they applied to motor transport.

Mr. Mersch said that his comments were limited to the bill as presented and were not meant to address the proposed amendment. He told the Committee that section 1, subsection 3 of the bill as written was the most important section of the bill. He asked that notice required by that section be made before any change in tariff, not after.

Mr. Capurro requested that all references to TA be deleted from the bill and be replaced with the NHP or the DMV. He said that was important based upon the proposed reorganization of the TSA and its potential incorporation into the PUCN. Mr. Capurro said the DMV and the NHP would not change their organizational structures and thus would be in a better position to administer the provisions of the bill.

Chair Nolan said the Legislature's interest in the bill was to ensure the public's safety and to shut down the fly-by-night charter-bus operators who caused

major accidents on the highways leading into Nevada. Many times, the vehicle inspections conducted after an accident revealed major safety violations. The Committee's focus was ensuring the public carriers in Nevada were safe, operated within the limits of the NRS and ensuring legitimate businesses were not unduly regulated. He told those present that the Committee would consider the bill and its amendments at the next work session.

Chair Nolan directed staff to review the requirements currently on the books and to ask the NHP for its inspection criteria for charter buses.

Chair Nolan closed the hearing on A.B. 240 and opened the work session on A.B. 550.

ASSEMBLY BILL 550 (1st Reprint): Makes various changes concerning offenses involving use of intoxicating liquor and controlled substances.
(BDR 43-832)

Patrick Guinan, Committee Policy Analyst, said the bill had been sponsored by the Assembly Committee on Judiciary and contained two distinct sections. The first portion of the bill addressed driving under the influence (DUI) and the requirements for the use of an interlock device. The interlock device prevented an intoxicated person convicted of DUI from driving his or her vehicle when intoxicated.

The second portion of the bill expanded the categories of persons who could administer a blood test in conjunction with a crime of a DUI to include a phlebotomist or a person whose specified qualifications are similar to those of a phlebotomist.

The bill also limited criminal proceedings in which affidavits and declarations of health-care professionals could be admitted to a grand jury or preliminary hearing.

Mr. Guinan referenced a proposed amendment contained in tab B ([Exhibit G](#)). The first portion of the amendment followed Senator Heck's suggestion made during the initial hearing on the bill. It revised language concerning those individuals who were qualified to draw blood in relation to a DUI arrest and all subsequent court proceedings. The amendment removed the words "licensed, registered or certified as a" from section 2, subsection 1, paragraph (a),

subparagraph (1) of the bill. Those requirements were covered elsewhere in statute.

Chair Nolan suggested the second part of the amendment, which had been accepted by the Nevada District Attorney's Association. This provision changed section 2, subsection 1, paragraph (a), subparagraph (2) by replacing the word "or" with the word "and." This change ensured that those individuals who drew blood had knowledge, skill, experience, training and education in the practice of blood drawing.

Mr. Guinan explained that [Exhibit G](#) also contained the Nevada District Attorney's Association's explanation of the proposed amendment as well as the specific language suggested by that organization.

Vice Chair Heck pointed out that the language change needed to be repeated in section 4 of the bill in order for the bill's language to be consistent throughout the bill. The Chair told the Vice Chair that the language change would be repeated throughout the bill.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 550.

Senator Schneider asked what the bill was supposed to accomplish. Chair Nolan said the bill had two parts; the most important component of the bill addressed the lack of individuals qualified to draw blood. As such, the Nevada District Attorney's Association asked that a provision allowing qualified individuals, other than phlebotomists, to draw blood be added to the bill. These qualified individuals would be allowed to draw blood under the bill, even though they were not licensed phlebotomists. Therefore, a new definition of those individuals who could draw blood had been inserted into the bill. The other amendment addressed the use of an interlock device.

Senator Schneider asked whether an interlock device was one which was installed in a vehicle and which allowed the vehicle to be operated only under certain conditions. Chair Nolan told him, "Right."

Mr. Guinan explained the bill's interlock provision allowed the courts to require those persons convicted of DUI and whose blood-alcohol content (BAC) was 0.18 or more, to install an interlock device on their vehicle. An interlock device

checked the breath of the vehicle's driver before the vehicle was started. Additionally, the device rechecked the driver's breath while the vehicle was in operation. The additional rechecking ensured that the driver did not drink and drive.

Mr. Guinan explained that previous testimony indicated that a BAC of 0.18 was an extremely high level of intoxication. The bill would not apply to all individuals who were convicted of DUI. Section 3 of the bill contained a hardship exemption which allowed a court to waive the installation of an interlock device on a person's vehicle. The person would have to prove to the court that the installation of an interlock device on his or her vehicle would cause a hardship.

Chair Nolan said he thought there was a federal requirement concerning the installation of the interlock devices. He added Senator Carlton had objected to that provision. However, she was not present to explain her objections to the Committee. He told those present that Senator Carlton was waiting to hear whether or not federal law provided for the hardship exemption. The Chair said staff had determined that such relief was provided under federal law.

Mr. Guinan said the testimony indicated that there was a constitutional question regarding the Legislature's ability to require the installation of the interlock devices without providing the hardship exemption. The Committee felt it could not require the installation of the interlock devices without providing the hardship exemption. Additionally, the Committee determined that if it did not include the hardship exemption in the bill, litigation might ensue based on constitutional issues. Mr. Guinan reminded those present that R. Ben Graham, Nevada District Attorney's Association, was present to answer any questions on the subject.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI AND CARLTON WERE ABSENT FOR THE VOTE.)

SENATOR WASHINGTON MOVED TO REREFER A.B. 505 TO THE SENATE COMMITTEE ON FINANCE WITH NO RECOMMENDATION.

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Senator Horsford said the Committee had not seen any amendments or fiscal notes for A.B. 505. Chair Nolan told the Committee the bill had a fiscal issue which is why it had to be rereferred to the Senate Committee on Finance. The rereferral would give the Committee the time required to amend the bill.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS AMODEI AND CARLTON WERE ABSENT FOR THE VOTE.)

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There being no further business, the meeting of the Senate Committee on Transportation and Homeland Security adjourned at 5:03 p.m.

RESPECTFULLY SUBMITTED:

Lee-Ann Keever,
Committee Secretary

APPROVED BY:

Senator Dennis Nolan, Chair

DATE: _____