

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

**Seventy-Fifth Session
February 12, 2009**

The Committee on Transportation was called to order by Chairman Kelvin Atkinson at 1:33 p.m. on Thursday, February 12, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chairman
Assemblyman Mark A. Manendo, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblywoman Marilyn Dondero Loop
Assemblyman Pete Goicoechea
Assemblyman Joseph M. Hogan
Assemblyman Ruben J. Kihuen
Assemblywoman Ellen B. Spiegel
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County Assembly District No. 9
Senator Shirley A. Breeden, Clark County Senatorial District No. 5

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Marlen Schultz, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Martha Barnes, Administrator, Division of Central Services and Records,
Department of Motor Vehicles
Thomas J. Fronapfel, P.E., Administrator, Division of Field Services,
Department of Motor Vehicles
Michael Geeser, Media/Government Relations, California State Automobile
Association, Las Vegas, Nevada
Laurel Stadler, State Director, Mothers Against Drunk Driving of Nevada,
Carson City, Nevada
Tom Conner, Chief Administrative Law Judge, Administrative Services
Division, Department of Motor Vehicles
Toni Boone, Administrative Law Judge, Administrative Services Division,
Department of Motor Vehicles
David F. Kallas, Detective, Director of Governmental Affairs, Las Vegas
Police Protective Association Metro, Inc., Las Vegas, Nevada
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs'
Association, Mesquite, Nevada
Paul J. Enos, Chief Executive Officer, Nevada Motor Transport
Association, Reno, Nevada
Tony Almaraz, Major, Deputy Chief, Nevada Highway Patrol, Department
of Public Safety

Chairman Atkinson:

[Roll taken.] I would like to welcome those in our audience and those in Las Vegas. Also, I am extending a welcome to any of those who might be listening over the Internet. We do have three bills before us: Assembly Bill 25, Assembly Bill 28, and Assembly Bill 109. We have a few people who want to testify. It is my pleasure to recognize Senator Breedon who is appearing before our Committee today, and prepared to speak. I believe we have a solution for her and she may be withdrawing one of her bills after we finish. We are going to take the bills out of order and start with A.B. 109 so the Senator and Assemblyman Segerblom will not need to sit here the entire afternoon.

Assembly Bill 109: Revises provisions governing special license plates.
(BDR 43-958)

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:

Thank you for having us here. Two years ago when Assemblyman Kihuen and I were both freshmen, we had a constituent come to us who was a member of the American Legion Riders. She wanted to see why she could not have a personalized license plate on her motorcycle. Of course the Department of Motor Vehicles (DMV) said it was impossible. The Chairman recommended she give it to him, let him work on it for two years, and he could get it accomplished. So we are happy to be back. Mr. Chairman, we recognize you have done everything you could, but we are determined to get our motorcycle license plates, too. I thought the funny part of the story was the person who brought it to us is now a senator. She became so excited by the political process and felt herself capable to handle the job. Shirley Breeden can thank the Assemblyman and this Committee for her political career.

Senator Shirley Breeden, Clark County, District No. 5:

Mr. Chairman, members of the Committee, thank you for allowing me to be before you this afternoon. As Assemblyman Segerblom indicated, I am supporting this bill on behalf of the veterans in Las Vegas and all of Nevada who ride motorcycles. Yes, I am a member of the American Legion Riders and I also ride motorcycles a bit. This is a very important issue to them and, hopefully, you will be able to recognize their service to our country and allow this bill to pass.

Chairman Atkinson:

I want to refresh the Committee's memory from last session, since most of our members are returning. Assemblyman Hogan and Assemblyman Kihuen had a bill to examine the feasibility of putting specialty license plates on motorcycles. We debated the issue back and forth, and determined the bill should have gone in front of the Commission on Special License Plates, which I also Chair in the interim. The DMV worked with us and I think we found a solution. Does the DMV want to say anything on behalf of this issue?

**Martha Barnes, Administrator, Division of Central Services and Records,
Department of Motor Vehicles:**

The Department did not submit a fiscal note for A.B. 109 to identify the programming costs in the hopes the DMV would be able to address this in our own timeline. If we were to submit a fiscal note, it would be approximately \$2,700 for 200 hours of programming costs. Based on the existing schedule of our information technology staff, we would be able to absorb these

programming costs to implement the motorcycle plates providing we postponed the work until July 1, 2010, if this is agreeable with the Committee.

Chairman Atkinson:

Your answer to the problem sounds like we need an amendment. I do not want to ask the Committee if they have any questions or a comment because Mr. Claborn is indicating somebody's microphone was not on.

Assemblyman Claborn:

This sounds like a good deal to me. Anytime we see a fiscal note it is considered taboo because of the present money predicaments we find ourselves in. I do not see the possibility of passing anything with a fiscal note tied to it, especially out of our Committee. I do think Ms. Barnes' suggestion is a good idea and I would certainly support it.

Chairman Atkinson:

Are you finished with your comments, Mr. Claborn? Okay, Mr. Segerblom.

Assemblyman Segerblom:

This could be a great source of revenue for our state because it is necessary to pay extra for these plates. Even though we are representing the veterans, it could be applied to any of the specialty plates once the DMV agrees to this proposal. I had hoped they would try to speed up the process and increase revenues, as opposed to waiting until 2010. However, if the only alternative is to attach a fiscal note, then this is not the time or place for considering this issue for the reasons already mentioned.

Chairman Atkinson:

Assemblyman Segerblom, I am not sure the DMV would actually receive the additional funds. I believe the organizations themselves are the ones to benefit from the revenue. It does not produce money for the state, and we need to be mindful of this fact.

Ms. Barnes were you going to say that?

Martha Barnes:

I wanted to let you know I brought copies of all of the plates with me. We made samples and we worked it out so the design fits the smaller version. The reason we would like to work it into the timeline is we are also working on a redesign of our insurance verification program. We would like to complete it before we do the programming work if the Committee finds our suggestion agreeable.

Chairman Atkinson:

Are there any other comments from the Committee members?

Assemblyman Hogan:

It sounds to me like a situation where a bird in the hand is better than one in the bush. It is probably a good idea to accept the willingness of the agency to handle this matter in a reasonable time, instead of the uncertainty of trying to get this through with a fiscal note. As I look out over the group, I see a very young and vigorous group of surviving veterans who will be able to wait out the year in order to have a distinctive license plate for their motorcycles, which will be a first-time-ever achievement. I think this is a good solution.

Assemblyman Claborn:

This is my sixth session, and I have probably had a license plate bill in every one of them. When my term-limit is up and I walk out of here, I will leave without a signed bill. Therefore, I concur with my colleague, it would be wise of you to take the promise offered at this session.

Chairman Atkinson:

Are there any other questions or comments at this point from any of the Committee members?

Assemblyman Goicoechea:

Any special plate could be used as a motorcycle tag, is that correct?

Martha Barnes:

Yes, that is correct.

Assemblyman Kihuen:

Would the license plates be made at the Nevada State Prison, as well? The reason I brought the question up is because we toured the prison with the Corrections, Parole and Probation Committee last week. It is my understanding the workload is low for making new license plates. Potentially, this could create more jobs within the prison to prepare inmates for returning to the workforce.

Chairman Atkinson:

Are there any additional questions or comments from the Committee members? Seeing none, I will recap what has been decided at this point. We will change the bill to 2010, and I want to make sure the two sponsors and the Senator are satisfied with this result. I believe alleviating a fiscal note for this session is the best way to handle the matter. We are going to have to wait and amend the bill from July of this year to July of 2010. Are there any other individuals in this

room or in Las Vegas who would like to testify in favor of A.B. 109? Is there anyone in Carson City or Las Vegas who would like to testify in opposition to this bill? Is there anyone who is neutral on A.B. 109? I will close the hearing on A.B. 109. We can move it, if someone offers to amend the bill.

ASSEMBLYMAN KIHUEN MOVED TO AMEND FOR THE PURPOSE OF CHANGING THE DATE TO JULY 1, 2010 AND DO PASS ASSEMBLY BILL 109.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Atkinson:

We are going to move on to Assembly Bill 25. Mr. Thomas Fronapfel will present the bill to the Committee.

Assembly Bill 25: Authorizes the waiver of certain examinations of applicants for a Nevada driver's license who are licensed in another jurisdiction. (BDR 43-343)

Thomas Fronapfel, P.E., Administrator, Division of Field Services, Department of Motor Vehicles:

[Spoke from prepared testimony, ([Exhibit C](#)).]

Assemblywoman Woodbury:

In the interest of preventing inexperienced or poor drivers on the road, what procedures do you have in place to focus on those types of drivers regardless of age?

Thomas Fronapfel:

Any time an individual is either cited or convicted of a moving violation, possession of a controlled substance, or driving under the influence, the courts will send the Department the information and we can suspend or revoke those licenses, and require additional skills testing of those individuals on a case-by-case basis. We have the ability to determine their driving record based on whether they are in-state or out-of-state, or coming in from out-of-state to surrender a license.

Chairman Atkinson:

Are there any other questions from the Committee members? In short, we are removing the age limit of 25. Are we talking about testing everyone?

Thomas Fronapfel:

We would test only the problem drivers. This section of the bill specifically addresses individuals who come from out-of-state to surrender their license in order to obtain a Nevada license. If anyone is found to be a problem driver, we will administer all three tests.

Chairman Atkinson:

Why is the DMV not willing to test everyone?

Thomas Fronapfel:

Currently, we are doing it only for age 25 and under because of our drive test backlogs and the number of Nevada customers we have taking the written tests in our offices. This would eliminate approximately 7,000 to 8,000 out-of-state surrenderers from having to take the written test in our offices.

Chairman Atkinson:

Is there a fee the customers would pay to take these exams?

Thomas Fronapfel:

No, currently the only fee we charge is for the actual license itself, which is \$22.

Chairman Atkinson:

An individual comes to our state who has not paid any Nevada taxes, and we give him the 200-page booklet, allow him to test as many times as he wants until he passes, and there is no charge.

Thomas Fronapfel:

Currently, there is no charge for the written test. That is correct.

Chairman Atkinson:

Would your answer be the same for behind the wheel testing as well?

Thomas Fronapfel:

We do not charge for non-commercial licenses or exams. We do charge a fee on commercial licenses. If it requires a skills test, we charge \$84. If it does not require a test, we charge \$54 for the license. Basically, there is a \$30 fee for the combination of skills tests we administer.

Chairman Atkinson:

If they pass the test on the regular Class "C" license, then they pay only for the license, which is \$22. I think Ms. Dondero Loop has a question.

Assemblywoman Dondero Loop:

How do our rates compare with other states?

Thomas Fronapfel:

All states have a driver's license fee for the license itself. Some states charge an additional fee. The only one among the western states is the state of Washington. To all first-time Washington drivers' license holders, they charge a \$20 fee, plus the fee for the license.

Assemblywoman Dondero Loop:

They go in to get the booklet to study for the test, but are they required to pay for this in Washington State?

Thomas Fronapfel:

I do not know if they have to pay for the booklet. The only information I was able to find was the actual fee for the license in addition to the \$20 fee.

Assemblywoman Dondero Loop:

So they would have to pay \$42 to receive a license compared to the \$22 we charge in Nevada?

Thomas Fronapfel:

It would actually cost them \$45, but you are essentially correct.

Assemblywoman Dondero Loop:

I would like to add one more thing. Is there a way we can find out what the cost is in other western states? I do not want to limit it to other western states, because the fact is we get many people from all over the United States moving to Nevada. Also, is there a way for us to implement an access fee?

Thomas Fronapfel:

It would be a policy decision from the Legislature. I could obtain the information for the Committee on what other states charge for their licenses.

Chairman Atkinson:

Our staff, Marjorie Paslov Thomas, will do the research for us, and we will distribute it to the entire Committee when it is available.

Assemblyman Carpenter:

What is the age requirement for a Commercial Drivers License (CDL)?

Thomas Fronapfel:

We have a 21 year-old threshold for CDLs.

Assemblyman Carpenter:

If someone came from another state, possessed a commercial driver's license, and was 21 years old, would he be able to obtain the same thing in Nevada?

Thomas Fronapfel:

Yes, that is correct.

Assemblyman Goicoechea:

Technically, with a CDL you would not require a Nevada License. Is that correct?

Thomas Fronapfel:

If someone had a CDL from another state, he would not need a Nevada CDL unless he planned on becoming a resident. Likewise, the same provisions would apply for a non-commercial license.

Assemblyman Claborn:

What is the definition of residency in the State of Nevada?

Thomas Fronapfel:

We have a residency definition in Chapters 482 and 483 of the *Nevada Revised Statutes* (NRS). I do not know what it is, but we can provide the information to you.

Assemblyman Claborn:

Yes, please do that for us. I am interested because I live in a neighborhood where approximately 90 percent of the people are driving around with out-of-state plates on their vehicles. When asked, they say they actually live in another state, like Montana. However, I have seen them for the last 12 years. So, I am not sure when they live there. They also tell me they have dual residency, and I have never heard of such a thing. We have a street address where we live, and maybe we should change the law to reflect this definition. In my opinion, we are losing millions on people who are not paying their vehicle's registration fees. We have so many loopholes we really do need to address these issues.

Assemblywoman Dondero Loop:

I want to add to Mr. Claborn's comments because I do agree. Is there some method to track people who receive driver's licenses to guarantee they obtain Nevada plates?

Thomas Fronapfel:

Assembly Bill No. 30 of the 72nd Session in 2003 partially addressed this issue. Those provisions are currently in effect. The Department's responsibility is to provide the Nevada Highway Patrol a monthly report of all individuals with driver's licenses versus registered vehicles. In this circumstance, it would be a law enforcement issue.

Assemblywoman Dondero Loop:

If I go in to get a driver's license and I am driving a car, then it must have a plate. Therefore, if I happen to have a California driver's license and want a Nevada license instead, could the DMV insist I obtain a Nevada plate as well?

Thomas Fronapfel:

Currently, individuals from out-of-state are provided with the information from A.B. No. 30 of the 72nd Session, which indicates there is a 60-day time limit after becoming a Nevada resident to register your vehicle. If they do not comply, then they are subject to certain penalties. Once this information is provided to those customers, the burden is on them. We have no means of invalidating an out-of-state plate, unless they are actually applying for a Nevada registration as well.

Chairman Atkinson:

The topic Mr. Claborn brought up will be dealt with by this Committee at a later time during this Session. I believe Ms. Spiegel has introduced a bill addressing this issue.

I am wondering if we can table this bill until we can determine whether there is a viable method for initiating a new revenue stream. I am concerned because we are a transient state, and we have numerous people coming here using our testing services until they pass. There is also data showing a large percentage of these newcomers leave after four to six months, at which time they must surrender their licenses. Most of those drivers do not turn in their Nevada licenses. We have allowed someone to obtain a Nevada license for \$22, and utilize our resources at the DMV, including staff and services. The DMV's staffing is already minimal and it seems to me we need to find a way to recoup our expenses by charging these customers. It would be appropriate for some of the potential monies to go to the DMV to help them hire additional people.

I did ask what the retake fees are in other states, and I think California charges \$6. Assemblywoman Dondero Loop just added it all up and said it was \$45 to obtain a license in this state. This does not sound unreasonable to me. We need to look at this in its entirety, and I would like the DMV to explore this possibility for me.

Assemblywoman Spiegel:

You mentioned this bill would bring down the backlog and save the state a significant amount of money, I wondered whether you had any numbers to support your statement.

Thomas Fronapfel:

The backlog is within our written testing area, and is approximately 4 to 6 weeks depending upon the location. We do not have any information on how much we would be saving per se, but we certainly know what our backlog is for the written test. We can investigate the exact dollar amounts for you.

Assemblyman Goicoechea:

This is more of a comment than anything. I became concerned when I heard Tom say they were looking at 7,000 on an annual basis. If you use my colleague from southern Nevada's \$20 fee, it would amount to only \$140,000. I understand DMV's predicament with long lines for a first-time driver's license. By the time you get in or are able to schedule an appointment, it could be 60 to 90 days for a Nevada resident. If an out-of-state driver walks in, turns in his license, and submits \$22.50 for a Nevada license, he could exit the door, license in hand, providing he has a clean record. Is this correct?

Thomas Fronapfel:

That is correct.

Assemblyman Goicoechea:

It is cost-effective and saves time. However, looking at the figure of 7,000 annually and adding at least two positions to your staffing level to handle the flow, it will be necessary to raise this fee significantly.

Thomas Fronapfel:

I would like to make one further comment because of discussions I had with Legislative Counsel Bureau (LCB) staff yesterday. The University of Nevada, Las Vegas used to complete manual counts of the out-of-state surrendered licenses in the Las Vegas area, and for calendar year 2007, there were a total of 74,677 licenses surrendered. That figure does not include any of the rural districts or the northern part of the state.

Assemblyman Goicoechea:

I misunderstood then, I thought you said 7,000, but you are now saying 74,000.

Thomas Fronapfel:

The 7,000 to 8,000 figure was only for the age group under 25 years old.

Assemblywoman Dondero Loop:

Is it a possibility to stagger or class those fees? In other words, if you have a clean driving record and would not like to follow this procedure, then we will charge you a higher amount. This would save the DMV time as well as the person obtaining the license, plus we would receive an added fee.

Thomas Fronapfel:

Yes, it would be another policy decision of the Committee.

Chairman Atkinson:

Are there any other questions or comments from the Committee members?

Assemblyman Goicoechea:

In response to my colleague from the south, I do not care for a scaled scenario where the person with money can buy it. I do not think it is a good policy for us to adopt. I appreciate the fact it might make money and save time, but I can see the consequences of telling the public they would have to pay more money in order to save a little time.

Assemblywoman Dondero Loop:

I was not envisioning this as a class struggle between those who had money and could afford it, versus the drivers who could not. I thought of it more as a convenience to the consumer. Maybe we should consider the reverse situation, if you have a poor driving record requiring additional testing, then you have to pay more. There are different ways to stagger those fees, and my original comment was only a suggestion made at the moment. This is not supposed to be an economic piece for the poor and the rich; it is the reality of spending more time for one or the other.

Chairman Atkinson:

Are there any other questions or comments from the Committee members? Seeing none, I want to thank and excuse Mr. Fronapfel. Is there anyone else in Carson City who would like to testify in favor of A.B. 25?

Michael Geeser, Media/Government Relations, California State Automobile Association, Las Vegas, Nevada:

We support the bill, but we would like to offer an amendment. The DMV has expressed its need for increased staffing, but in the interim there is a definite hardship, and nobody wants to wait twelve weeks for anything. If we cannot get to drivers and test them in a timely manner, then it is okay to waive this

requirement. However, it seems to contradict what we are attempting to accomplish with teen drivers in Nevada by allowing them to come to our state and not require them to look at anything, including our handbooks with our rules, unique signage, and regulations.

In previous testimony, there was mention made of a price break occurring at age 25. Insurance rates have changed a great deal since 1995. There are many more price breaks which have been added since then. If you include the new driver breaks, they start at age 16, and then trigger price breaks at the ages of 18, 21, and 25 for drivers with clean records. I would propose we continue to offer the knowledge or written tests until age 21 at the very least, so we can cover these teen-age drivers who are the most over-represented group in our country for fatal car crashes.

Chairman Atkinson:

Mr. Geeser, do you have this amendment in writing?

Michael Geeser:

I do not, but I would be happy to provide one for your review.

Chairman Atkinson:

Okay. Have you talked to the DMV before appearing before us?

Michael Geeser:

I talked to them briefly.

Chairman Atkinson:

We are going to handle procedures differently in this session, so do not think I am targeting you. If someone in this Committee has an amendment, it needs to be discussed and it needs to be given to this Committee prior to testifying. I would like these matters worked out before you come here. I totally understand what you are proposing, and I have the same concern as well. In the future, however, we would like to see some of these details addressed beforehand.

Mr. Fronapfel, this matter has been discussed with you. Do you have an opinion on Mr. Geeser's proposed amendment? Or do you feel we are going backwards?

Thomas Fronapfel:

Mr. Geeser and I spoke briefly before the hearing about their intent, and what information we had available concerning the effectiveness of these written tests. We do not have any evidence one way or the other. It was just an issue where 7,000 to 8,000 customers in this age group would not be given the

written test. We can certainly work with Mr. Geeser and his insurance counterparts to develop something if he feels the need to do so. I would be more than happy to do that.

Chairman Atkinson:

Are there any other questions for Mr. Geeser? Is there anyone else in Carson City or Las Vegas who wishes to testify in favor of A.B. 25? Is there anyone wishing to testify in opposition to A.B. 25?

Laurel Stadler, State Director, Mothers Against Drunk Driving of Nevada, Carson City, Nevada:

The under-25 crowd of drivers is a high-risk group. To eliminate testing, and the written testing in particular, is to allow them to enter our state with full access to the roads prior to knowing our state laws. It also would be counterproductive to the deterrent value of the great driving under the influence (DUI) laws this body has passed. How can the law be a deterrent if they do not know what the law is? This is one of my concerns.

Another concern is for those young drivers under 21 who would not know what our zero tolerance law means. The law states they cannot have any alcohol in their system and drive on our roads. Therefore, there would be no deterrent value or educational value to those drivers if they can just obtain a license without any testing at all.

The third area for these drivers is their lack of knowledge about our school bus laws, which is a huge safety issue for the children of our state. I brought some figures with me from a report written in 2004 by the Office of Traffic Safety stating the percentage of drivers under 25 in our state is 12.4 percent of all drivers. Our group, Mothers Against Drunk Driving, presents a Victim Impact Panel for convicted DUI offenders. Last night in Fallon, 27 of the 93 convicted offenders were under 25 years old. This means 29 percent of our offender population attending this program falls in the under-25-year-old category. There is an obvious over-representation of offenders from this category. In a December Victim Impact Panel in Carson City, exactly 40 of the 160 attendees or 25 percent were under 25 years old. It is clear these drivers are over-represented in DUI offenses, and I believe you could extrapolate this percentage across the traffic safety spectrum. To eliminate any education for the under-25-year-old age group seems likely to exacerbate the problems we already have with this driving group. I strongly oppose this particular piece of legislation. Education for such a high-risk group is extremely important to the public safety of our state.

The last question I have relates back to what Mr. Geeser said. In many states in our country where the graduated driver's license laws have been implemented, including our own, some of those people who are under age 25 have a provisional license. However, in a state where a young person has a full license and then moves to our state where they are required to have a provisional license, do you give them the full license or do you put them under our restrictions? It is not clear to me, and I believe it needs to be addressed.

Chairman Atkinson:

Are there any questions from any of the Committee members for Ms. Stadler?

Assemblyman Goicoechea:

How does the DMV handle this situation presently when a seventeen-year-old comes from California to the State of Nevada? Do they give him a provisional license or do they give him a full license?

Thomas Fronapfel:

It is my understanding an individual coming into our state who has a valid license, will be given a valid license in Nevada. We issue provisional licenses only to our Nevada residents who are between the ages of 16 and 18.

Chairman Atkinson:

Are there any other questions for Ms. Stadler? Is there anyone else who wishes to speak in opposition to A.B. 25? Is there anybody who wants to speak as a neutral party in Carson City or in Las Vegas? Then, at this point I am going to close the hearing on A.B. 25, and we will bring it back to the Committee once I have had the opportunity to meet with the DMV to figure out where everyone wants to go on the bill.

We will open the hearing on A.B. 28. I believe the individuals from the DMV in Las Vegas are going to present this bill.

Assembly Bill 28: Revises provisions governing hearings conducted by the Department of Motor Vehicles. (BDR 43-341)

**Tom Conner, Chief Administrative Law Judge, Administrative Services Division,
Department of Motor Vehicles:**

[Testimony entered in the record was submitted as a written document ([Exhibit D](#)) concerning the proposed provisions of Assembly Bill 28, which enables the Hearings Office to conduct hearings by telephonic, videoconference or other electronic means, and to conduct hearings at any location within the state.]

Chairman Atkinson:

Thank you, Mr. Conner. Miss Boone, did you want to add any comments before we opened it to questions?

**Toni Boone, Administrative Law Judge, Administrative Services Division,
Department of Motor Vehicles:**

I do not, Mr. Chairman, but I am here if anybody should have any questions regarding due process procedures or anything relating to how other states may or may not conduct hearings by telephone in similar situations.

Chairman Atkinson:

We are going to open up the meeting for questions from our Committee members.

Assemblyman Claborn:

When you were reading about the due process of law, did you happen to read you have the right to face your accuser?

Toni Boone:

The Sixth Amendment right of confrontation is for criminal prosecutions. There has never been a ruling by a state or a federal court, including the U.S. Supreme Court stating telephonic testimony does not meet due process in a civil hearing such as ours.

Chairman Atkinson:

Thank you, Mr. Claborn. Are there any other questions from the Committee members?

Assemblyman Goicoechea:

My only concern would be it might be difficult to really establish who was on the other end of the line. I could see where somebody, especially one of the drivers of a trucking company, might shortstop the process and try to respond to the query. You would not have any way of knowing if the person you were talking to was the person responsible for the action.

Toni Boone:

The Assemblyman's question is a common one which has arisen in most state appellate courts. Virtually all U.S. states do telephonic testimony for administrative hearings. A typical decision by a state appellate court would be illustrated by *Weekly v. Department of Licensing*, from the Washington Court of Appeals. The exact issue described by the Assemblyman was raised in the Weekly trial; the court held the prima facie evidence against the petitioner had already been established by the documentary evidence in the case which

consisted of a sworn report of the police officer and the chemical test results. Questioning of the petitioner would give the hearing officer or the judge the ability to make the determination whether the person on the phone was the individual about whom the hearing was being conducted. We could match up the information and the documentary evidence for the exhibits with his testimony. It is usually fairly easy to make a determination whether the person on the other end of the phone is who he actually purports to be. With respect to the question of how do we identify these people, the Washington Appellate Court in the *Weekly* decision said there was no due process violation even though we could not identify the individual. This decision is in keeping with all the decisions of the other state appellate courts across the nation.

Chairman Atkinson:

Are there any other questions from the Committee members for either of these witnesses? Then is there anyone in Carson City who would like to speak in favor of the bill?

David F. Kallas, Detective, Director of Governmental Affairs, Las Vegas Police Protective Association Metro, Inc., Las Vegas, Nevada:

We are here today in support of this legislation. Anything that will keep our officers out on the street as a deterrent, maintaining proactive contact, preventing crimes from being committed, and traffic offenders from violating traffic laws is good. I do have a question though, regarding interpretation of the definition of party. When I heard the DMV representative speak regarding why this would be a good piece of legislation, he talked about the availability of officers as they are often transferred from one area to another. I did not know the definition of party included the petitioner and if the petitioner was always required to attend in person at the location.

With the indulgence of the Chair, I would like to address Assemblyman Claborn's earlier concern.

Chairman Atkinson:

Before you continue, I would like to have Mr. Conner or Ms. Boone return to the microphone to respond to the point you just raised.

Tom Conner:

I can tell you from my experience, the petitioner who would be a party to the hearing, often requests he be allowed to appear telephonically. I had a case during the past couple of months which involved a manufacturer from California. They did not want to go to the expense of coming back for the hearing, so we conducted the hearing telephonically with a person who was an involved party. The company was represented through the telephonic hearing.

Chairman Atkinson:

If Mr. Conner's response satisfies your concern, then you can proceed with your clarification for Mr. Claborn.

David Kallas:

Yes, it does. If you will advise me who these violators from out-of-state are, I would be happy to come over and earn my salary.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association, Mesquite, Nevada:

On behalf of the Sheriffs' and Chiefs' Association, including Las Vegas Metro and Washoe County, we support this. It would be a tremendous boon to us. I just spoke with the Under Sheriff in Lincoln County. He has officers required to travel to Las Vegas for many of these hearings. I believe the law says the petitioner can call for a hearing in his county. The US 95, US 93, and the I-80 corridors cover a significant distance, and it is feasible for someone to get a ticket in Elko and ask for a hearing in Washoe County. Overtime, per diem, and officers removed from street duty are important issues to us, and we believe it is an excellent use of modern technology to solve some of our logistical problems.

I held the administrative position responsible for DMV hearing officers, and this proposal will help balance their workload. In my opinion the bill as proposed will enhance our flexibility.

Paul J. Enos, Chief Executive Officer, Nevada Motor Transport Association, Reno, Nevada:

I am here to support A.B. 28. If passed, we believe this bill would provide greater flexibility for the public by allowing them another venue to more easily access their government.

Tony Almaraz, Major, Deputy Chief, Nevada Highway Patrol, Department of Public Safety:

I will make my comments brief, and I will be echoing what Mr. Adams said relating to law enforcement. As everyone is aware, we are like anyone else in law enforcement attempting to reduce expenditures. Fiscally, we are examining issues ranging from overtime to our fleet to how we consume gasoline. The Highway Patrol is responsible for the entire state, and currently we have three main offices. Within those three commands, we have over 25 districts. At any time, we might have only one trooper responsible for an area which is geographically so large, it takes two to three hours to cross and check for motorists requiring assistance. Taking a trooper off the road for an Administrative Hearing requires a staffing or scheduling adjustment. If there are

calls for service, and those generally happen in these isolated areas, then it has a fiscal impact on us. We want to keep those troopers on the road to perform their jobs diligently, and protect the driving public. One of the larger impacts on our resources is handling DUIs. It is a significant enforcement area we concentrate our manpower on. The Highway Patrol arrests thousands of DUI drivers every single year. In closing, we appreciate your time, and I will answer any questions.

Assemblyman Manendo:

How long do these hearings last?

Major Tony Almaraz:

It varies. At times when the hearing is contentious, it could be over an hour in duration. Sometimes the hearing might last only ten minutes. A hearing averages half an hour.

Assemblyman Manendo:

I was thinking about someone being on the telephone and driving the highways for approximately an hour. First, this would be rather dangerous and what happens if the driver loses his signal?

Major Tony Almaraz:

My understanding from the intent of this bill is the hearing would be held at a fixed location. It would not necessarily be done on a cell phone. I believe it is problematic in several areas. Certainly, as you brought up, the fact you will lose reception and obviously, there are driver concentration issues. It is my understanding these hearings would be at a substation or one of the larger command locations.

Assemblyman Claborn:

Let me get the record straight. I know you are talking about cutting corners, but I am here to see these cuts do not take away our constitutional rights. I will not support this measure, if that is the purpose. I hope I cleared the air with my comment.

Chairman Atkinson:

Are there any other questions or comments for Mr. Almaraz? Seeing none, I would like to thank you for your testimony. Is there anyone else in Carson City or in Las Vegas who would like to testify in favor of A.B. 28? Does anyone want to testify in opposition to A.B. 28? Is there anyone who is neutral on this bill? Then we will close the hearing on A.B. 28, and bring it up at one of our work sessions. Under public comment, is there anyone who wishes to be heard

either in Carson City or Las Vegas? I want to thank the individuals in Las Vegas for testifying, and we will notify you when we intend to bring this in front of a work session. If we have no other matters to come before the Transportation Committee, we are adjourned [2:45 p.m.].

RESPECTFULLY SUBMITTED:

Marlen Schultz
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: February 12, 2009

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 25	C	Thomas Fronapfel, P.E., Administrator, Division of Field Services Division, DMV	Prepared Testimony, written 4-page handout.
A.B. 28	D	Tom Conner, Chief Administrative Law Judge, Administrative Services Division, DMV	Prepared Testimony, written unnumbered handout.