

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

**Seventy-Fifth Session
March 17, 2009**

The Committee on Transportation was called to order by Chairman Kelvin Atkinson at 1:39 p.m. on Tuesday, March 17, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, 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 Joseph (Joe) P. Hardy, M.D., Clark County
Assembly District No. 20

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Marlen Schultz, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Rhonda Bavaro, CPM, Administrator, Motor Carrier Division, Department of Motor Vehicles
Dawn Lietz, Supervising Auditor, Motor Carrier Division, Department of Motor Vehicles
Peter D. Krueger, representing Nevada Petroleum Marketers & Convenience Store Association, Reno, Nevada
Paul Enos, Chief Executive Officer, Nevada Motor Transport Association, Reno, Nevada
John P. Sande, Attorney, Jones Vargas, Attorneys at Law, representing Western States Petroleum Association, Reno, Nevada
Jason Geddes, Ph.D., Environmental Services Administrator, Public Works Department, City of Reno, Reno, Nevada
Russell Rowe, Attorney for Biodiesel of Las Vegas, Nevada
Martha Barnes, Administrator, Central Services and Records Division, Department of Motor Vehicles
Wesley Lujan, Director of Public Affairs, Union Pacific Railroad, Sacramento, California

Chairman Atkinson:

[Roll call taken.] We would like to welcome our audience members and Assemblyman Hardy who will be making a presentation in cooperation with Assemblyman Goicoechea. There is only one bill on our agenda and it is Assembly Bill 235. Then we will go into a work session to discuss a few bills.

Assembly Bill 235: Makes various changes to provisions governing the taxation of certain fuels and special fuels. (BDR 32-897)

Assemblyman Joseph (Joe) P. Hardy, M.D., Clark County Assembly District No. 20:

This presentation will be shorter than my co-sponsors had planned. I have been told what to say, but I may go off script a little. The genesis of Assembly Bill 235 is about responsible people who are already doing responsible things. It is also about those people who are not as dependable and require

help in choosing the right course of action. The purpose of this bill is to include ethanol in the definition of a motor vehicle fuel and add the definition of a special fuel manufacturer. The insertion of ethanol in the definition will ensure it is subject to state and county excise taxes in addition to clean-up and inspection fees upon importation. Including the definition for special fuel manufacturers will ensure biodiesel and biodiesel blends are taxed at the same rate as other petroleum-based diesel fuels. Representatives of the Department of Motor Vehicles are present to answer any technical questions. This bill was initiated because a suspected evasion from paying the appropriate fees occurred. The Department of Agriculture performed an inspection of the gas station in question which resulted in shutting the station down. Also during a routine inspection, another station was found to be inappropriately blending fuel which resulted in closing this station as well.

The Highway Fund is in need of additional monies, and one of the purposes of A.B. 235 is to allow the necessary collection of fees. This will help replenish the account and we will be able to repair, construct, and maintain highways. There will be an amendment proposed addressing the methodology of exposing the people who have opted not to pay the required fees. Refining the methodology will help prevent the circumvention of the current process.

Chairman Atkinson:

Thank you, Assemblyman Hardy. Does anyone have any questions for Dr. Hardy before we proceed?

Assemblyman Hogan:

I wanted to provide a perspective on the reasons for adding these fuel types in the tax base. I believe we have a tradition of encouraging the development of new fuels and energy sources. Initially, the potential addition will benefit the public by not burdening the special fuel manufacturer with taxes which might prohibit their ability to compete in the open market. Therefore, it is considered good policy until these new fuels become established and can carry their own weight as far as taxation and supporting the government of the state. Is there a possibility it is too early in the development and availability of ethanol, that by enacting this it may tend to suppress the development of ethanol as a viable competitor in the fuel markets? Is it in the consumer's better interest to allow it more time to get a decent foothold, in view of its environmental superiority? I have not heard anyone suggest this argument, and I wonder if you see this as a factor we need to take into consideration.

Assemblyman Claborn:

Do you know if we can use ethanol only during certain times of the year?

Assemblyman Hardy:

My first experience with ethanol fuel was in 1979 in South Dakota, and the impetus probably came from the corn production in that region. Ethanol burns and there are some advantages to burning. One of the disadvantages, however, is the reduction in miles per gallon. By the time you have people who are good at evading the payment of fees or falsifying the fuel mix, the consumer demand has probably reached the point where it is standing on its own. This would not put something new and different into regulation as much as defining the existing process. This would allow people already on the playing field to maintain parity with those who do not consider it their obligation to pay the appropriate clean-up fees, instruction fees, import fees and taxes. The short answer is ethanol has been around an adequate period of time, it is a good fuel, and people can use it the entire year. There are E-85 stations, but only for flexible fuel vehicles. The blend of E-10 fuel can be used all the time, but a marked decrease in gas mileage can be observed at the pump when ethanol is added to the fuel mix in the winter months.

Chairman Atkinson:

Thank you, Dr. Hardy and Mr. Hogan. Does that answer your question Mr. Claborn?

Assemblyman Claborn:

Yes, Dr. Hardy gave a thorough response to my concerns.

Rhonda Bavaro, CPM, Administrator, Motor Carrier Division, Department of Motor Vehicles

Dawn Lietz, Supervising Auditor, and Karen Winchell, Management Analyst, are ready to contribute additional testimony supporting the bill under discussion. [A single page handout ([Exhibit C](#)) was distributed containing prepared testimony which was read into the record.]

Chairman Atkinson:

We will not take questions at this time. I would like you to continue with the presentation before we entertain comments or questions.

Dawn Lietz, Supervising Auditor, Motor Carrier Division, Department of Motor Vehicles

I prepared a PowerPoint presentation to give you an overview of the ethanol and biodiesel fuel flow ([Exhibit D](#)). Also, I would like to discuss the risks to the State Highway Fund with the current definition of ethanol and biodiesel as a blend product, excluding them from inclusion as a motor vehicle fuel until they are blended with gasoline or diesel. It is important for the state to ensure it is capturing the revenue generated by the fuel tax while also guaranteeing the

consumers are protected. Assembly Bill 235 will assist the Department in achieving these goals. If you have any specific questions regarding the chemistry makeup of the ethanol or the different percentages, Bill Striejewski from the Department of Agriculture is here to answer any technical questions you may have.

I have gathered a few photos to demonstrate the flow of fuel through the pipeline system. [([Exhibit D](#)) does not include the photos shown to the committee. The presentation was also presented as a handout, ([Exhibit E](#)); however, additional commentary was made during the oral testimony.]

The first picture is an image of the Cal-Nev pipeline in Las Vegas. The fuel from the Wilmington/Anaheim, California area flows through this pipeline and is stored at the terminal in Las Vegas.

The next one is a picture of Kinder Morgan terminal in Sparks and it carries fuel from the Chico/Vallejo area into northern Nevada for distribution.

The next depiction are pipes transferring the fuel from the storage tanks to the terminal loading rack where the driver will then load the fuel onto the truck for delivery to the retail station.

Lastly, we have a couple pictures of some railroad spurs located on private property in Las Vegas. We believe this is the location where the ethanol was pulled from railway cars and delivered to the stations which were eventually closed by the Department of Agriculture for having ethanol content exceeding the legal limit. The chain link fence has since had privacy slats installed to block the view from the street so the activities occurring inside are no longer visible.

The current process allows ethanol and biodiesel to enter the fuel supply as a blend product. Vehicle manufacturers support the use of a 10 percent blend of ethanol added to 90 percent gasoline without affecting or voiding a vehicle warranty. Although Minnesota is testing the effects of a higher blend at this time, vehicle manufacturers do not support them. The legal limit in Nevada is 10 percent, unless it is labeled as an alternative fuel which is the E-85 blend.

Once the fuel supplier adds the 10 percent ethanol to the gasoline, the fuel is then "rebranded" to what we know as "gasohol." Both Clark and Washoe Counties have a requirement for gasohol to be sold during the winter months from October through March to reduce the winter emissions and keep the air cleaner, but as part of the Energy Independence and Security Act of 2007, the use of ethanol is increasing and it is encouraged at a 10 percent blend.

State and county taxes, as well as cleanup and inspection fees are imposed upon the ethanol when it is blended with the gas. The same process occurs with biodiesel blends.

Assembly Bill 235 will reclassify ethanol and biodiesel as a fuel, instead of a blend product. By reclassifying them as a fuel, the applicable cleanup and inspection fees will become due upon importation just like they are for gasoline and diesel. The remaining state and county taxes which will be due on the ethanol and biodiesel blends will not be remitted until the tax return is filed in the month the fuel is delivered for retail sale.

Classifying the ethanol and biodiesel fuels will help to ensure accountability and accurate third-party reporting from fuel suppliers who are importing these products. Currently, fuels off-loaded from railroad cars onto a spur are issued bills of lading by the landlord rather than the fuel supplier or the terminal.

Most railway cars are generally off-loaded at a designated terminal or fueling facility. The rest is off-loaded from rail spurs. At the terminal, the ethanol can be added through a measuring device which blends the fuel as it is pulled from the holding tank, or they can use a portable unit alongside of the railway car transferring the product into the truck. The bills of lading issued by the terminal will account for the ethanol or biodiesel product actually blended with the gasoline or the diesel.

However, when the fuel is off-loaded from a rail spur, the trucks pull alongside the railroad car and a portable generator is used to move the ethanol or biodiesel from the rail car to the transport truck. The product is not included on the original bill of lading showing the quantity of gallons pulled. The rail spur landlord issues the bill of lading identifying the number of gallons off-loaded to the customer paying for the storage of the rail car. The rail spur delivery in Las Vegas went to those service stations which we have been able to trace through bills of lading. The actual supplier providing the gasoline was getting the ethanol as a separate load and dropping it into the service station without blending the fuel before it was delivered.

In April of 2008, the Motor Carrier Division conducted a fuel analysis from the gasoline, gasohol, and ethanol reported that month. The total receipts from gasoline were 94,280,047 gallons, the net total of ethanol receipts was reported at 10,975,174 gallons, thus the net available for taxable sale into the system for 2008 was 105,255,221 gallons. The disbursements included the net reported blended ethanol of 5.2 million gallons. The DMV made adjustments for the beginning and ending inventory and the net gas/gasohol reported was slightly less than 100 million gallons.

Although the receipts and the disbursements were short by nearly 4.7 million gallons, it equated to less than 5 percent of the total fuel supply for the month of April. Given there are Ex Tax exchanges occurring with other fuel suppliers, it is not alarming 5 percent of the gasoline was not reported in the month initially received. However, the ethanol was under-reported by 52 percent.

This means the tax risk from unreported ethanol in April 2008 alone, is \$1.8 million in tax money. Extrapolated over a 12-month period, it is \$22.5 million potentially at risk. Possible causes for the variance may have resulted from late load reporting, misreported fuel type codes or unreported transactions, and possibly, evasion.

Given the fact most ethanol is blended at 10 percent or less, anything greater than 10 percent of the total gallons which are unaccounted for is cause for concern. In April there were 4.7 million gallons of gasoline unaccounted for. Since the price of ethanol was significantly lower per gallon at that time, even if 10 percent was being blended with every load distributed to the retail market, there would only have been 470,000 gallons of ethanol added to the 4.7 million gallons we are assuming were in the fuel supply but not yet delivered to the retail markets.

Although some car manufacturers have developed "flex fuel" vehicles enabling them to run on 85 percent ethanol with no damage to the vehicle, fuel efficiency is not as good and the number of service stations providing E-85 is limited. Therefore, very little E-85 is being sold in Nevada.

Research has also shown diesel engines can handle up to 5 percent of a bioblend without any problems. However, most blenders use a 2 percent blend with diesel due to the coagulation factors when the fuel is cold. It is not recommended, but it is possible to run a diesel engine on straight vegetable oil or biodiesel if the engine is already running.

Although the risk to the Highway Fund was great last year when the price of a barrel of oil rose above \$147 and the cost of ethanol was approximately \$2.35 per gallon, it does not negate our responsibility to recognize this area of risk and take preventative measures to protect our consumers and the state revenues should the price of ethanol or biodiesel drop below the price of conventional gasoline again in the future.

In summary, reducing the potential for fuel evasion and increasing the accountability of ethanol and biodiesel is as simple as including them in the definition of a motor fuel. This definition will accomplish collecting the inspection and cleanup fees on the ethanol and biodiesel upon importation,

which will place them into our fuel supply in the same manner gasoline and diesel fuels are currently handled. This is also consistent with the Department of Energy's inclusion of ethanol and biodiesel in the National Energy Modeling System.

By enabling the Department to assess administrative fines resulting from an audit of bills of lading and delivery tickets, we can demonstrate the amount of ethanol exceeds the Environmental Policy Act (EPA) tolerance. The only exception to this is for the E-85 alternative fuel option and the pumps would be required to note the fuel contained within them is for flexible fuel vehicles only. We would disallow the mid-range blends currently sitting at 11 percent to 80 percent which would not be allowed.

We are proposing a fine of \$1,000 per load and a maximum of \$100,000 during the audit year on the first instance. For a second occurrence, we would like to propose \$2,500 and a maximum of \$250,000 and a 60-day suspension of their fuel license. If we go back a third year and they are still violating this standard, we would like to have a \$5,000 fine with a maximum of \$500,000 per year and a permanent revocation of their fuel supplier license. We would like to have the same fine structure put in place for the biodiesel. Thank you for your time, and I would be happy to answer any questions the Committee may have.

Chairman Atkinson:

Are there any questions from the Committee members?

Assemblyman Hogan:

Could you give us some information on what nearby states have done in this regard? Are we the leader or has this been decided in other states?

Dawn Lietz:

Arizona currently has a \$500 per violation code assessed if the ethanol exceeds the 10 percent tolerance. We did survey the western states and none of them have penalties in place at this time.

Assemblyman Christensen:

First of all, your presentation was extremely informative and helpful. I have never been exposed to how the fuel shows up through the fuel lines. Does Las Vegas get all of its fuel, or most of it, from the Los Angeles area? Does the process start when the fuel is hauled to the closest port where a ship dispenses its load; then by pipeline to trucks which distribute it to the retail stations?

Dawn Lietz:

You are correct. It actually goes from the port to the refinery where it is refined first. Then the finished products go through the pipeline, mostly underground and sometimes above ground, and it is delivered to the holding tanks at the end location.

Assemblyman Christensen:

In an area like Phoenix, Arizona, do they have pipes that go from southern California refineries to Phoenix in the same way? Is it a web distribution system or is it point-to-point?

Dawn Lietz:

There are different refineries in various locations, so the pipeline system is very complex. There are many areas where it will go from a refinery to a specific location. Phoenix has a couple of terminals carrying the fuel. There is also a pipeline from southern California into Phoenix, but I am not as familiar with the pipeline system in Arizona.

Assemblyman Christensen:

You were referring to a couple of stations in the Las Vegas area that exceeded the legal limits of ethanol. They were closed by the Department of Agriculture because they were putting too much ethanol into the gasoline mix. Am I stating this correctly, and could you elaborate?

Dawn Lietz:

The circumstances involved at least one supplier and, perhaps others, pulling the fuel from the terminal and fueling their delivery trucks with gasoline. This fuel was delivered to the retail stations and then the drivers were sent back to the rail spur to load up with straight ethanol which was dumped on top of the gasoline. The fuel is supposed to be blended prior to the delivery at which time the ratio of 10 percent to 90 percent ethanol/gas occurs. In the two incidents reported, the ethanol content was actually above 18 percent. The legal limit established by the Environmental Protection Agency (EPA) is 10 percent. The Department of Agriculture's representative, Bill Striejewski, could probably provide additional information on the various steps they took to temporarily close the stations until they were back in compliance.

Chairman Atkinson:

Are there any other questions from the Committee members?

Assemblyman Goicoechea:

I am more concerned about the biodiesel fuel. How would you know, or would a jobber tell you, he had 2 percent or 5 percent blended diesel?

Dawn Lietz:

The way you know how much ethanol or biodiesel is in the fuel is by the number behind it. So if it is B-2, it is 2 percent biodiesel and if it is E-10, it is 10 percent ethanol. There is no way for us to know outside of what they report to us on their tax returns. The Department of Agriculture has some tests they can run on the ethanol, but the biodiesel is basically reported on the honor system. The proposed bill will help to get the biodiesel into the fuel supply system without hurting the fuel suppliers themselves. If we impose the tax on the biodiesel and ethanol at the current rate, it would require them to pay the tax in advance and this would create problems for the fuel suppliers. So by including it as a fuel product, we can collect the inspection and cleanup fees, which will give us the number of gallons in the fuel supply system for any given month. Then we can identify the blends at a later time.

Assemblyman Carpenter:

I have a conflict with this bill, so I will not be voting on it. However, I have some questions I need to ask. You were figuring these amounts on a 12-month basis, but I thought they only blended it during the winter.

Dawn Lietz:

The federal government has allowed blending to occur during the entire year. I pulled some spreadsheets from the Department of Energy website, but I do not know how to interpret the future projections. The information does, however, show a definite trend demonstrating the amount of ethanol being produced and sold year-round has dramatically increased.

Assemblyman Carpenter:

On my bill of lading it shows the total gallons delivered and I can read on the automatic equipment at my station the blend is correct. It is computed automatically, including the taxes, so I can tell at a glance there is no cheating.

Dawn Lietz:

It sounds like you are buying from honest suppliers, and that is a good thing.

Assemblyman Carpenter:

It is a regulation requiring a retailer to carry the blended fuel during the winter months in the Reno-Sparks area, but not during the rest of the year.

Assemblyman Hogan:

I wanted to be sure I am clear on the remarks you made concerning the tax collection and the clean-up fee. You were making an accommodation to those who deliver the products regarding the timing of when they are charged. Is the

amount the same for all of the charges, including the tax, or are you reducing their tax obligation?

Dawn Lietz:

We are not making any allowance on the fuel tax rates. The clean-up fee is three-quarters of a cent per gallon and the inspection fee is .00055, which is a very small amount. Less than a penny per gallon will be charged upfront, and this is the way it is for gasoline and diesel coming through the pipeline system. Therefore, this charge would maintain parity, or a level playing field on the blends, as mentioned before.

Chairman Atkinson:

Are there any other questions from the Committee members for Ms. Lietz? Then as long as you are at the microphone, please proceed with the amendments.

Dawn Lietz:

[Prepared testimony ([Exhibit F](#)) was entered into the record to support the proposed amendments for A.B. 235.]

Chairman Atkinson:

Thank you, again, Ms. Lietz. You provided a concise recitation of the amendments, and we sincerely appreciate your efforts. Are there any questions from the Committee?

Assemblyman Carpenter:

I am not sure what is going to happen with these fuels because many of the plants are going out of business or declaring bankruptcy. I understand they want to use corn to produce this fuel, but there is the controversy about whether the corn should be used for fuel or to feed the cattle. The price of gas is dropping, and the addition of ethanol will cause the cost to spike again.

Chairman Atkinson:

Does the Committee have any other questions for Ms. Lietz? Is there anyone in favor of the bill who would like to testify?

Peter Krueger, representing Petroleum Marketers and Convenience Store Association, Reno, Nevada:

I am representing petroleum wholesalers and retailers. We are here in support of the bill. In our judgment it is an excellent blend of regulatory authority and enforcement, and the recognition of the need for commerce to flow freely between different segments of the market. There are approximately 14 companies importing ethanol, many of which we have never heard of before.

These are not Nevada-based companies, and this bill will ensure they are properly licensed, report the amounts of ethanol brought into our state, and pay the required tax without interrupting local commerce.

Chairman Atkinson:

Does the Committee have any questions?

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

We are speaking in favor of A.B. 235 and the amendments. We do believe licensing for a fuel manufacturer is an important aspect, especially when we are talking about creating a consistent standard for blending these fuel products. Ms. Lietz mentioned Minnesota and the coagulation which can take place if you have too much biodiesel, particularly in the wintertime. There was an issue with the trucking industry in Minnesota about five years ago where they had some bad biodiesel and it ruined a number of truck engines.

Chairman Atkinson:

Are there any questions for Mr. Enos? Is there anyone else in the audience wishing to speak in favor of A.B. 235? Seeing none, then we will ask if there is anyone who wants to speak in opposition to the bill? Is there anyone who wants to provide comments of a neutral nature?

John Sande, Attorney, Jones Vargas, Attorneys at Law, representing Western States Petroleum Association, Reno, Nevada:

We are pleased with the amendment, and the only reason I am neutral is to make sure all of our members have an opportunity to read through the proposed revisions and check with their tax departments before they get back to me to let me know whether there are any unforeseen negative impacts. Hopefully, I will be allowed sufficient time to obtain their input before this bill is acted upon.

Chairman Atkinson:

We will give you and those you represent time to go over the bill as amended before it is put to a vote. Are there any questions for Mr. Sande?

Jason Geddes, Ph.D., Environmental Services Administrator, Public Works Department, City of Reno, Reno, Nevada:

I wanted to bring up a few issues around this topic, although I am not opposed to the bill and hope it moves forward. These fuels have a lower British Thermal Unit (BTU) content, as was described earlier by Dr. Hardy, and you do get fewer miles per gallon with these types of fuel. If your vehicle is part of a fleet or you are using this fuel, you will use more fuel to go the same amount of miles. Therefore, if these fuels are set at the same tax rate, you are actually paying

more to use an alternative fuel. Then, speaking to Assemblyman Hogan's point, you are not taking in the positive benefits of developing a fuel market from within the state, or the air quality benefits attributed to ethanol and biodiesel when the fuel ultimately is more expensive creating a disincentive for using it. In the City of Reno, we have been increasing our fleet from B-5 to B-20 causing our fuel prices to go up, plus we are getting fewer miles per gallon out of the fleet. We are doing this because the Legislature has mandated we use alternative fuels in Washoe and Clark Counties.

Another point to examine with the popularity of hybrid vehicles coming into the market, consumers will travel greater distances using less fuel. These vehicles will be driving more miles on the road and paying less in gas taxes and fees to pay for the increased roadway maintenance, repair, and replacement.

I use B-100 in my vehicle during the months of April through October, and then I use B-20 from November to April. I just learned B-100 may not be taxed, and I may have to begin reporting my usage of it. I wanted to address two additional points; the first is I believe their estimate is high on the amount of alternative fuels used annually. April is the worst time for reporting of ethanol. This is the month when we are transitioning into summer driving conditions and reducing our demands on ethanol use. The final point is concerning Assemblyman Goicoechea's comment on labeling at the pump. You are allowed to blend up to B-5 with no reporting and no labeling. Anything above B-5 would need to be labeled and meet the criteria.

Assemblyman Goicoechea:

This is exactly what concerned me. We have enough problems with cold weather in northern Nevada, and I do not think I could make it home if I had inadvertently pumped B-5 into my vehicle's tank.

Chairman Atkinson:

Are there any further questions from the members?

Russell Rowe, Attorney for Biodiesel of Las Vegas, Nevada:

I have just been retained to represent this company, and I am ignorant about the fuel, the distribution system, and how these fuels are taxed. I obviously need to sit down with Mr. Geddes and let him educate me. Our client is building a biodiesel manufacturing plant in Las Vegas, and it will employ 70 to 100 people providing a new base of economic development for southern Nevada. It will create fuels in the state of Nevada which are presently being imported. I am not sure this is the best time to apply a tax on a renewable industry. I honestly do not know the impact, and I do not know if our client is opposed to it. I simply want to make you aware of our company's plans and ask for a period of

time to work with the bill's sponsors and proponents to ascertain what the impacts might be on this new industry to our state.

Assemblyman Manendo:

Are these full-time permanent jobs you were talking about?

Russell Rowe:

Yes, full-time permanent jobs.

Chairman Atkinson:

Are there any questions from the Committee members for Mr. Rowe? Dr. Hardy is signaling me he does not wish to make any closing remarks. It sounds like there are some issues which need to be resolved, and then we will bring it back. We will now close the hearing on A.B. 235 and we will go into our work session ([Exhibit G](#)). One minute recess will be taken to allow the audience to leave.

We will take our bills in order and start with Assembly Bill 21 and Ms. Marjorie Paslov Thomas will go over our work session document ([Exhibit G](#)) with us.

Assembly Bill 21: Revises provisions governing the verification of motor vehicle liability insurance policies by the Department of Motor Vehicles. (BDR 43 437)

Marjorie Paslov Thomas, Committee Policy Analyst:

The first bill is Assembly Bill 21. This was reviewed on February 19 and was a Department of Motor Vehicles (DMV) bill. It revises provisions governing the motor vehicle insurance program. Specifically, the system must be conducted through the secure transmission and receipt of the information necessary to verify the owners of motor vehicles maintain the required liability insurance. The bill authorizes the DMV to contract with any person to provide services related to the system. There are some proposed conceptual amendments.

The first amendment is proposed by Martha Barnes, Administrator, Division of Central Services and Records of the DMV. The proposal is to amend the bill to retain the provision authorizing the DMV to reinstate the registration of a motor vehicle if the owner establishes that his failure to have the required insurance was due to extenuating circumstances.

The second change amends the bill by deleting on page 8, section 6, the provision DMV must at least monthly verify the owners of motor vehicles maintain the required liability insurance. Testimony indicated this was an omission when originally drafted.

The third amendment contains three parts, and it was proposed by Robert Compan of Farmers Insurance Group. The first part amends the bill by requiring that a registered owner of a motor vehicle provide evidence at the time he registers that he does have motor vehicle liability insurance by a company licensed by the State of Nevada. The second is to delete the provision allowing a person seven days to obtain the liability insurance if he does not have such insurance at the time he registers. The final part is to provide these provisions become effective on February 1, 2010, to correspond with the implementation date of the new insurance verification program by the DMV.

Chairman Atkinson:

Is the DMV supportive of all of these changes as presented by Ms. Paslov Thomas? As Chairman, I am satisfied with the amendments. Are there any questions?

Assemblyman Carpenter:

I have a question about taking out the seven calendar days to allow a person to obtain the insurance. What happens if somebody comes into the state and they do not know about these requirements? If they need their vehicle to drive to work and are not given adequate time to obtain the insurance, would they have to park it and find another means of getting to work? I do not understand why we can not give them a short period of time to obtain it.

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

I believe this amendment was put in by the insurance companies, and it is my understanding they want to make sure everyone has insurance when we first register them. Currently, we will take a declaration saying they will get insurance and it is proving to be a problem because people are not obtaining the insurance they need to have. So the insurance companies asked to have this time frame eliminated from the language.

Assemblyman Goicoechea:

Now we are deleting the language saying you have to verify monthly. Is that correct? If you delete the monthly verification provision, how often will you provide verification?

Martha Barnes:

We are going to access the insurance companies' web services to verify the insurance is active. They are no longer going to report to us, we will find out directly from the insurance company. We are still reviewing the verification timeline and trying to make this determination. Our dilemma occurs when we look at someone who may have gotten caught violating the program and has

three strikes against them, and still has not acquired the proper insurance. So, we have not made a decision yet.

Assemblyman Goicoechea:

So the insurance companies would not notify you when they had a lapse, it would be DMV running the record.

Martha Barnes:

We will go to the insurance company and check their database. The requirement now is they send us all terminations and additions. We are having problems with some of them. If they fall off the DMV record, then that insurance is no longer there and we have to get that fixed.

Chairman Atkinson:

Does this answer your question as well, Mr. Claborn? Good, are there any other questions from the Committee members?

Assemblyman Carpenter:

What is the percentage of people not obtaining proper insurance?

Martha Barnes:

Most of the ones who do not obtain the insurance are people who move into the state and want to maintain the registration they had from the previous state. Let us assume they came from California and had current insurance and California registration, but there are three months remaining. They would not be eligible for a refund, and they want to use their existing insurance until it expires.

Assemblyman Carpenter:

This provision is fine if it was enforced. I see people driving around Elko with out of state plates, and nobody enforces it. I guess I have a problem, if you tell one person they need it immediately while others are allowed to drive around for years without having it enforced.

Martha Barnes:

Unfortunately, we are not the enforcement branch for this. All we can do is identify those owners who do not have the proper insurance.

Chairman Atkinson:

Mr. Carpenter, I do believe somebody on this Committee will be dealing with the issue you raised. However, we are discussing a different problem, and I think we need to support the DMV in addressing the lack of proper insurance through the provisions in this bill. You are right, though, we are not going to catch them

all in any ideal environment. This probably will affect Las Vegas more than Elko, but it will move us a step closer to helping resolve the matter.

Assemblyman Claborn:

I think this is a good deal making sure they have insurance before issuing a registration. However, I was caught violating this one time as you know. I wanted to buy a car and register it in my name. I did not want to register it for a license but I did, and I had to show proof of insurance even though the car did not run. I took it to the prison's auto mechanics workshop for remodeling. While this was being done, the insurance lapsed and I called my insurance company. They asked me where the car was and I told them it was at the prison in Indian Springs. I was told not to worry about it because it was not on the street. However, my registration was revoked, and I went down to the DMV where I was informed the penalty was \$250 since the insurance had expired. I was told the law states once the insurance has expired, it costs \$250 to reinstate your registration. I asked if I could sign an affidavit because my car was being worked on at the prison. The DMV representative ran my information on the computer, and the clerk asked me if I was on the Transportation Committee at the Legislature. I said, "Why yes, I am." Then the clerk responded, "Well, you voted for this." I then asked, "Would you take a credit card?"

Chairman Atkinson:

Thank you, Mr. Claborn. I always appreciate learning about someone on this Committee breaking the law. Next, we will have a question from Mr. Hogan, and then Mr. Manendo.

Assemblyman Hogan:

We may want to consider soliciting an amendment that would provide Mr. Claborn the opportunity to be sent to the same prison his car is being worked on.

Assemblyman Manendo:

Along the same lines as Mr. Claborn's question, is there a form a person could submit when his car is in a shop and it is not being used for transportation?

Martha Barnes:

There are a couple of forms you may be thinking about. One is a Non-operation form which can be used when the vehicle has not been on the road. The other is the Extenuating Circumstances form which addresses problems like Assemblyman Claborn experienced, when the vehicle was being repaired due to a mechanical issue and it could not be driven. The Extenuating Circumstances form has to be filed within the time of elapse. If you had a lapse of three

months, then the vehicle would have had to be in the hands of the mechanic for this period. You also needed to provide the DMV with information informing us of these details.

Assemblyman Manendo:

Then, according to what you have just said, this form would have to be filed prior. Is that right?

Martha Barnes:

We would ask you to bring this information with you, and we determine whether the circumstances as described were, in fact, extenuating. Then the fine would be decreased to \$50.

Assemblyman Claborn:

That is not what happened to me. As a matter of fact, I called the Carson City DMV office and told them of the problem. The clerk I talked to advised me to go down to the DMV, sign an affidavit, and the penalty would be reduced. So, I stood in line at the DMV for about four hours, and when I got up to the window, they called the person I had already talked to and my claim was turned down. I asked to speak to a supervisor, who queried the Carson City office using her computer. The clerk in Carson City who had helped me originally, denied any knowledge of ever talking to me. The process did not work, and I still had to pay the \$250 penalty.

Assemblywoman Spiegel:

I would like to change directions for a minute. If somebody changes their registration to Nevada but not their insurance, and are involved in an accident where they have to submit an insurance claim, would they be covered? Also, I wonder, does that come under the insurance fraud provision?

Martha Barnes:

I think you will have to get one of the insurance lobbyists to answer these questions.

Chairman Atkinson:

We will move A.B. 21 to the Committee and the Chair will entertain a motion.

ASSEMBLYMAN CLABORN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 21.

ASSEMBLYMAN GOICOECHEA SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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

Marjorie Paslov Thomas:

Assembly Bill 28 revises governing hearings conducted by the Department of Motor Vehicles (DMV). This was heard on February 12 and it was a Department sponsored bill. The bill allows the testimony of a party or witness during any hearing conducted by the DMV to be taken by telephone, videoconference, or other electronic means, and the hearing may be conducted at any location so long as the hearing officer allows each party and witness to testify by telephone, videoconference, or other electronic means. There are no proposed conceptual amendments.

Chairman Atkinson:

Are there any questions?

Assemblyman Claborn:

Sometimes there are limited facilities available with the equipment needed to conduct videoconferencing. Is this going to be a problem?

Chairman Atkinson:

I do not believe these hearings will be subject to the same conferencing situation. If video is not available, then the hearing can be conducted by telephone. The DMV will have the contact information for those individuals they would like to talk to, and they will have more than one means to accomplish this. The DMV will be flexible if they cannot contact someone and switch a date, if necessary.

Are there any other questions?

ASSEMBLYMAN HOGAN MOVED TO DO PASS
ASSEMBLY BILL 28.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 138: Creates a new requirement for railroad trains. (BDR 58-598)

Marjorie Paslov Thomas:

Assembly Bill 138 was heard on February 26 and was sponsored by Assemblyman Anderson. It creates a new requirement for railroad trains, providing no railroad train may be operated in Nevada without at least two

qualified employees. At least one of the employees on the crew must be a certified engineer. The measure provided the Public Utilities Commission of Nevada (PUCN) may grant an exception if the Commission determines the exception will not endanger the life or property of any person. There is one proposed conceptual amendment. The mock-up is behind the first page and attached to it is a definition of main track as referenced in the mock-up.

The conceptual amendment modifies the bill to provide no train which is operated on a main track, including a train carrying freight or passengers, may be operated in Nevada unless the train has a crew of not less than two employees in the controlling locomotive. However, this would not apply to the operation of a train in the yard where the train is maintained when switching or when the train is run on a track not connected to the general system. In addition, the PUCN may grant a waiver if the Commission determines the waiver will not endanger life or property. The bill has a new effective date of January 1, 2010.

Chairman Atkinson:

Are there any questions from the Committee members?

Assemblyman Claborn:

When we originally heard testimony on this bill, I got into a disagreement with a friend of mine in this building and I want to apologize. I have heard this bill quite a few times over a period of years, and I still think it is all about negotiations. Even with the amendment, I do not like the idea of somebody telling us how to negotiate a contract. The existing arrangement has worked for approximately 28 years, and I see no reason to change it.

Assemblyman Hogan:

I consider this bill an even choice. On one side there would seem to be a safety argument to be made if we ever allowed a train to operate with only one person controlling the engine. On the other side the principal of supporting collective bargaining is an equally important issue. Since I do not consider it likely we will create a safety threat because at least two people will be working on the train during main track operations, I will probably vote in favor of collective bargaining and against the bill.

Assemblyman Christensen:

I have a great deal of respect for the sponsor. I learned how close he is to this issue, especially through his family and others who worked in the railroad industry, which brought me to investigate the proposal. I always have a problem with this body or any other legislative function telling private industry how to operate. As I looked into the issue to understand the safety rating and

safety record of rail carriers as well as realizing the agreements they have with labor, I would echo the same comments as my colleagues. I support the agreements as they stand today, and I do not believe we have to pass this legislation. Therefore, I would also cast a no for this bill.

Assemblyman Goicoechea:

In the absence of similar laws in California and Utah, I have a concern about putting something in place in Nevada which might require some change at the state line jurisdictions with either or both of these entities. So, I am opposed to this bill as well.

Chairman Atkinson:

I had not planned on conducting a voice vote on this bill, but it sounds like it is becoming a voice vote anyway. Ms. Woodbury, would you like to comment?

Assemblywoman Woodbury:

I also wanted to echo the comments made by my four colleagues. I agree we could potentially have interstate discrepancies and problems, and what is currently in place is working.

Assemblywoman Spiegel:

I still am concerned about employee safety, and what might happen during employee negotiations as far as staffing goes. Union Pacific Railroad employs a large number of people in Nevada, and they have a good safety record. I am willing to move forward with the safety amendment, unless the Committee determines the safety standards would be acknowledged.

Assemblywoman Dondero Loop:

I am struggling as well. I do not believe safety is or should be negotiable. However, I believe in bargaining. Could we have a little bit of clarification on what is in place right now, rather than a lengthy discussion?

Chairman Atkinson:

We did go over this information when the bill was heard. I believe the opposition did an excellent job of going over what was in place today and what was planned for the future. Ms. Dondero Loop, I do not remember if you were present for the entire proceedings, but I will allow the sponsors to provide a brief explanation.

Wesley Lujan, Director of Public Affairs, Union Pacific Railroad, Sacramento, California:

We have a national collective bargaining agreement that covers our 23-state operating system. It is a result of the National Railway Labor Act and it is a

perpetual agreement. However, every five years it is amended, and the next time it will be up for amendment is in 2010.

Assemblywoman Dondero Loop:

Typically, in the engine room of the train, are both of these people licensed?

Wesley Lujan:

As an operating practice in Nevada, we operate with two-person crews. One person is a locomotive engineer and the other person is a conductor. They are both governed by different operating agreements. The locomotive engineer's agreement is governed by the Brotherhood of Locomotive Engineers and Trainmen, and the conductor's agreement is with the United Transportation Union.

Assemblyman Claborn:

I am satisfied there are two members on the crew. The only time you would use the other person is in the switching yard. In all reality, those switch yards are automatically controlled anyway. I did want the Committee to know my first priority has always been safety. If I thought this was a safety issue, I would definitely vote no. The safety issue I had was with having one man run the train instead of two, which is not being done.

Assemblyman Kihuen:

Are both of those crew members qualified to be conductors? If something happens to the conductor, would the engineer be able to operate the locomotive?

Wesley Lujan:

The locomotive engineer controls the locomotive, and the conductor does everything else in the cab, like arranging the manifest. In the event something happens to the locomotive engineer, the conductor puts the train on the emergency setting and stops the train. They are both qualified to handle this operation as stipulated under their respective collective bargaining agreements.

Assemblywoman Woodbury:

I had a comment to make. I believe these individuals will do everything within their power to protect lives, whether it is their own or people along the tracks. This is a priority for them as well.

Chairman Atkinson:

This decision is a difficult one for the Committee members, and we did hear this bill during the last session. Usually, at a caucus, we try to accomplish due diligence. Some people may not be comfortable with the process, and some

may not be comfortable voting today. It is your right to abstain, if that is the case. However, out of respect for the chairman of another legislative committee, I promised we would take a vote on this measure and it is understood what might happen as a result. We have three options to consider: a member can vote yes, no, or abstain. We will take one more statement.

Assemblyman Manendo:

I am torn by the decision before us and the controversy among our Committee members, but a decision is expected and I believe it is our duty to see this to a conclusion.

Chairman Atkinson:

I will ask for a motion on A.B. 138. Is there a motion to amend and do pass A.B. 138? The bill is going to fail for lack of a motion from the Transportation Committee.

Is there any other business to come before the Committee? Is there any public comment? Then the meeting is adjourned [3:12 p.m.].

RESPECTFULLY SUBMITTED:

Marlen Schultz
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: March 17, 2009

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 235	C	Rhonda Bavaro, Administrator, Motor Carrier Division, Department of Motor Vehicles	Prepared Testimony
A.B. 235	D	Dawn Lietz, Supervising Auditor, Motor Carrier Division, Department of Motor Vehicles	PowerPoint Presentation, "A.B. 235 – Ethanol and Biodiesel Overview."
A.B. 235	E	Dawn Lietz, Supervising Auditor, DMV	Prepared Testimony
A.B. 235	F	Dawn Lietz, Supervising Auditor, DMV	Amendment to A.B. 235.
A.B. 21, A.B. 28, and A.B. 138	G	Marjorie Paslov Thomas, Committee Research Analyst, Legislative Council Bureau	Document containing information and revisions on three bills, "Work Session."