

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Sixth Session
April 13, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:27 p.m. on Wednesday, April 13, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/76th2011/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, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Sharon McCallen, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Cheryl Blomstrom, representing the Nevada Dietetic Association
Susan Martinovich, Director, Department of Transportation
Tom Skancke, President, The Skancke Company, Las Vegas, Nevada
Bob Hazlett, Senior Engineer, Maricopa Association of Governments,
Phoenix, Arizona
Jacob Snow, General Manager, Regional Transportation Commission of
Southern Nevada
Roger Tobler, Mayor, City of Boulder City
Michael Dayton, representing NAOIP Southern Nevada Chapter and
Nevada Hotel and Lodging Association
Neal Tomlinson, Regulatory Counsel, Frias Transportation
Jay F. Palchikoff, representing Frias Transportation
Fred Hillerby, representing Mastercard Worldwide
Chris MacKenzie, representing American Express
Michael Hillerby, representing Mastercard
Bill Uffelman, President and CEO, Nevada Bankers Association
Michael Hackett, representing The Hartford Life Insurance Company
Marty Bibb, representing Retired Public Employees of Nevada
Ron Dreher, representing Peace Officers Research Association of Nevada
and Washoe County Public Attorneys Association
Rex Reed, Chairman, Committee on Deferred Compensation for State
Employees
Tara Hagan, Executive Officer, Committee on Deferred Compensation for
State Employees
Brian Davie, Member, Committee on Deferred Compensation for State
Employees
Louis Roggensack, Executive Director and Chairman of the Board, Nevada
Life and Health Insurance Guaranty Association

Chair Atkinson:

[Roll was called. Committee protocol and rules were explained.] We have quite a bit of business before the Committee today. We will begin our work session. We are pulling Assembly Bill 441 from the work session document and hope to bring it back by Friday.

Assembly Bill 141: Revises the frequency with which certain volunteer firefighters must submit to physical examinations to receive workers' compensation coverage for certain occupational diseases. (BDR 53-567)

Marji Paslov Thomas, Committee Policy Analyst:

There are ten bills in the work session today. The bill before you is Assembly Bill 141. This was heard on February 21, 2011, and was sponsored by Assemblyman Goicoechea.

[Read from work session document and gave a summary of one proposed amendment mock-up submitted by Assemblyman Goicoechea ([Exhibit C](#))].

Assemblyman Ocegüera:

This will end up costing us more in the long run. We are going to miss getting guys physicals and possibly miss ailments we could have caught with a physical. However, I understand the struggle these communities go through to retain these volunteers, and the money that it costs, so I will be supporting it. I hope that my good friend Mr. Goicoechea will help to watch this as they check this active list of volunteers. I would like to see it followed up on, that they get their physicals every two years, that they follow up, that they are active and not just on the list. In a spirit of bipartisanship, I am going to support it, but I am worried that we are going to cost ourselves more money in the long run.

Assemblyman Pete Goicoechea, Assembly District No. 35:

As we worked through this bill, especially with the insurance carriers, one of the key changes is that they now have to be on an active roster. That was where there was a lot of flexibility before. People were enrolled in a volunteer fire department, they were not really active, and bottom line, they were not getting their physical. If they do not get their physical, and they are not actively enrolled, there is a break in service.

The other key point is that volunteers have the heart/lung coverage accessible to them only when they are on the scene. They are completely different than the professional firefighters. If you have a heart/lung issue, you have to be at the fire.

The carriers are fairly comfortable with tightening it up, as far as the roster requirement and the additional year.

I agree with you that we want to make sure it keeps working. I think we will actually have better coverage and because it will be a little more affordable, maybe the volunteers will get more physicals than we are presently seeing. Right now, they are skipping them.

Assemblywoman Carlton:

With all due respect to the Speaker, I disagree. My husband is under heart/lung coverage, and at the beginning of the session he went in for a test and ended up spending the night and subsequently a week in the hospital with a double bypass. We got the bill last week and it was over \$175,000 for a five-day stay in the hospital. Thank goodness he had that yearly test, because if he had not, there would not have been a baseline for his cardiologist to compare to, to make sure he got in to have his test in an expedited manner. He was a walking time bomb.

I have real concerns that these volunteer firefighters are going to go two years without a test, and then they will go to a very stressful scene and something could possibly happen. The whole idea behind these tests is to make sure that everybody is healthy, to ensure they have the monitoring, and to help keep down the cost of that catastrophic event happening on scene for these volunteer firefighters. These are not professional firefighters, and I believe if you take the test to get workers' compensation, to get a very generous benefit from heart/lung, you should still have to take that yearly test.

I understand where the Speaker is coming from; I just cannot quite get comfortable with this. I am still opposed to it, Mr. Goicoechea.

Assemblyman Goicoechea:

I appreciate your position. Unfortunately, it becomes a question of basic economics, and that is what we are dealing with in almost every meeting here this year.

ASSEMBLYMAN GRADY MADE A MOTION TO AMEND AND DO
PASS ASSEMBLY BILL 141.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

Chair Atkinson:

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED. (ASSEMBLYWOMAN CARLTON
VOTED NO.)

Assembly Bill 267: Revises provisions governing representation of injured workers in hearings or other meetings concerning industrial insurance claims. (BDR 53-611)

Marji Paslov Thomas, Committee Policy Analyst:

The next bill is Assembly Bill 267, sponsored by Assemblyman Ohrenschall and heard on March 21, 2011. [Read from work session document and a proposed amendment submitted by Ronald P. Dreher, Government Affairs Director, Peace Officers Research Association of Nevada ([Exhibit D](#)).]

Chair Atkinson:

Is there any discussion?

Assemblyman Ohrenschall:

I think this is already being done. It simply gets rid of the full-time employment requirement. The only opponent is the State Bar of Nevada, and as I recall its representative's testimony, with the amendment his opposition was much reduced. I urge everyone's support.

Chair Atkinson:

So you did work with them and this amendment is from them?

Assemblyman Ohrenschall:

No, Mr. Chairman, the amendment is from Ron Dreher. He presented it, but the gentleman from the State Bar of Nevada only became aware of it that day when he came to the hearing.

Chair Atkinson:

And you have worked with him as well? Is that what you said?

Assemblyman Ohrenschall:

No. His concerns were, for the most part, alleviated by this amendment.

Assemblywoman Carlton:

Are we voting on the original proposal, or has that proposal we heard that day amended since then?

Assemblyman Ohrenschall:

On that day Mr. Dreher presented an amendment to the bill that deleted that language. The attached amendment is the same amendment he presented at the hearing.

Chair Atkinson:

What he is saying, Ms. Carlton, is that the amendment is the one that is attached to the work session. There was some concern, but it has been taken care of. There is no additional amendment, just the one that was presented that day.

Are there additional questions or comments? [There were none.]

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 267.

ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there any discussion on the motion? [There was none.]

THE MOTION PASSED UNANIMOUSLY.

Assemblywoman Carlton:

I reserve the right to change my vote on the floor.

[Assembly Bill 289:](#) Enacts provisions relating to the practice of dietetics.
(BDR 54-871)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 289 was sponsored by Assemblywomen Mastroluca and Carlton. It was heard on March 28, 2011. [Read from work session document and summarized the proposed amendment submitted by Cheryl Blomstrom, representing Nevada Dietetic Association ([Exhibit E](#)).]

Chair Atkinson:

Are there any questions or comments?

Assemblyman Hickey:

I would like to ask Assemblywoman Carlton about the amendments. In general, there were opponents to this bill. The amendments are rather detailed and numerous, and I was wondering if you felt, from your point of view, that they address the concerns we heard from health food store owners and others in the first hearing.

Assemblywoman Carlton:

I think when we first heard the bill, they did have concerns, but as we reiterated, this is taking the registered dietician to a licensed level. Health food store owners and employees are not registered dieticians, so therefore they would not be required to become licensed dieticians. Anytime you do a board bill the toughest part is scope of practice. I do not believe this will inhibit them in any way from furthering their business as long as they do not try to practice something that they should not practice. I hope I answered your question.

Chair Atkinson:

And if not, we certainly can get Cheryl Blomstrom up here.

Assemblywoman Carlton:

There was never any intent to make people who run health food stores, or provide this type of advice in that setting, become registered or licensed dieticians. That was never the intent of the bill, and I believe the original bill and the amendments do address that concern.

Cheryl Blomstrom, representing the Nevada Dietetic Association:

As Assemblywoman Carlton states, it is not our intention to impact health food stores, the supplement stores, the General Nutrition Centers (GNC), or the herbalists. We are trying to move registered dieticians, who are a key component of the health care community, to licensure status in the State of Nevada. So long as the people who were opposed are not practicing registered dietetics, which includes a medical component and is a part of the health care delivery team, they are fine. That is our intention and we hope that is what we said.

Assemblyman Daly:

In the proposed amendment, where Assemblywoman Mastroluca and Assemblywoman Carlton wanted to add a legislative declaration, is that where you would put the intent that we are trying to narrow it to just these people? That was my understanding of what the declaration was supposed to partly cover. It should be fixed there.

Cheryl Blomstrom:

Yes, sir. That is a large piece, and that declaration was added, at the request of both Ms. Carlton and Ms. Mastroluca, to expressly state that dietetics are learned professionals in the State of Nevada.

Chair Atkinson:

Are there additional questions or comments? [There were none.]

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 289 WITH THE AMENDMENTS NOTED.

Assemblywoman Carlton:

I will give you my commitment that I will go through this bill extensively to make sure everything is correct.

Chair Atkinson:

Okay. Ms. Carlton has made a motion to amend and do pass Assembly Bill 289 with the amendment attached from Nevada Dietetic Association.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

Chair Atkinson:

Is there any discussion on the motion? All of those in favor say, "Aye."
Opposed?

THE MOTION PASSED. (ASSEMBLYMEN GOEDHART AND
KIRKPATRICK VOTED NO.)

[Assembly Bill 292](#): Revises provisions governing real estate appraisal.
(BDR 54-803)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 292 was sponsored by Assemblyman Horne and heard on March 28, 2011. [Read from work session document and the proposed amendment submitted by Brian C. Padgett, Attorney ([Exhibit F](#)).]

Chair Atkinson:

Are there questions or comments?

Assemblyman Segerblom:

I am not sure if that was to go with the amendment. Mr. Padgett did not really explain it. It seems as though this is more of an evidentiary issue than it is something to do with licensed appraisers, as far as this amendment goes.

Chair Atkinson:

Was that a question?

Assemblyman Segerblom:

I guess I was asking the question of the sponsor.

Chair Atkinson:

The sponsor is here.

Assemblyman Segerblom:

I was asking if you were proposing to go with the amendment.

Assemblyman Horne:

I was proposing to go with the amendment proposed by Mr. Padgett. That was agreed upon by the opposition when we were having the hearing and it was read; they were saying they were fine with that.

Assemblyman Segerblom:

I am not opposed to it; I was just making a comment that the amendment kind of changes the total bill.

Chair Atkinson:

Are there any additional questions or comments? Mr. Horne, was this the only amendment? [It was confirmed as the only amendment.]

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 292.

ASSEMBLYMAN DALY SECONDED THE MOTION.

Chair Atkinson:

Is there any discussion on the motion?

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 331: Makes various changes concerning the use of consumer reports. (BDR 52-831)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 331 was heard on April 4, 2011, and was sponsored by Assemblymen Conklin, Kirkpatrick, and Smith. [Read from work session document ([Exhibit G](#)).] There were no amendments.

Chair Atkinson:

Is there any discussion?

Assemblyman Conklin:

There was one proposed amendment by Jeannette Belz. You may recall that in the testimony she was not actually opposed to the bill; it just happened to be on

the letter. I still believe that is covered under the very first item listed as an exception—which is "The care, custody and handling of or responsibility for money or other assets." However, I want to continue to explore this in the other house, because there are some activities that I think are covered, but we want to make sure. For instance, if you happen to be a franchisee or a licensee for something that is not state regulated but federally regulated, there could be a legal requirement that either people have a background or credit check or that they be bonded. However, in order to qualify to be bonded, you have to have a credit check. So anytime a subsequent franchisee requires a certain activity that requires a consumer check, I would assume they would automatically fall under subsection 1(a).

As it goes through the other house, I want to continue to make sure that when businesses need it, in order to qualify for certain instruments, they have it at their disposal.

Chair Atkinson:

Are there questions or comments about A.B. 331? [There were none.]

ASSEMBLYWOMAN CARLTON MOVED TO DO PASS
ASSEMBLY BILL 331.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion on the motion? All those in favor say, "Aye."
Opposed?

THE MOTION PASSED. (ASSEMBLYMAN HICKEY VOTED NO.)

[Assembly Bill 363](#): Revises provisions governing manufactured housing.
(BDR 43-996)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 363 was sponsored by Assemblyman Ellison and heard in Committee on March 30, 2011. [Read from work session document.] There is one proposed amendment regarding two sections that was heard during Committee ([Exhibit H](#)).

Assemblyman Ellison:

There was a small amendment at the end from James deProse of the Manufactured Housing Division and, Mr. Daly, regarding applicants showing training or experience.

Chair Atkinson:

It is in here already. It is in the conceptual amendment, paragraph 2, section 2(a), and beginning on line 6. To the sponsor of the bill, I believe you have committed to working with the Senate if this bill makes it out.

Are there any other questions or comments?

ASSEMBLYMAN GRADY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 363.

ASSEMBLYMAN KITE SECONDED THE MOTION.

Is there any discussion on the motion? All those in favor say, "Aye."
Opposed?

THE MOTION PASSED UNANIMOUSLY.

[Assembly Bill 398](#): Revises provisions relating to commercial tenancies.
(BDR 10-664)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 398 was sponsored by Assemblyman Ohrenschall and heard in Committee on March 30, 2011. [Read from work session document and summarized three proposed amendments ([Exhibit I](#)).]

Assemblyman Ohrenschall:

The testimony in the hearing went a long way to show that this is needed. One size does not fit all. Currently, we are trying to apply our residential landlord/tenant laws to commercial leases, and it is not a good fit. This is going to help the business community to get a lot of vacant spaces occupied, if we have a clear commercial tenancy statute. Testimony indicated that 20 other states have separate commercial landlord/tenant statutes.

Chair Atkinson:

Thank you for bringing this forward. It is an effort that I like.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 398.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

Is there any discussion on the motion? All those in favor say, "Aye."
Opposed?

THE MOTION PASSED UNANIMOUSLY.

Assembly Bill 433: Expands prohibition on employers taking certain actions to prohibit, punish or prevent employees from engaging in politics or becoming candidates for public office with certain exceptions. (BDR 53-63)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 433 was sponsored by Assemblyman Segerblom and heard in Committee on April 4, 2011. [Read from work session document and proposed amendment submitted by Assemblyman Segerblom ([Exhibit J](#)).]

Assemblywoman Carlton:

I appreciate the definition of "adverse employment action" in the amendment. There were some concerns on what that actually was. It gets to the heart of the discussion we had on this bill.

Chair Atkinson:

Is there any further discussion? [There was none.]

ASSEMBLYWOMAN CARLTON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 433.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Is there any discussion on the motion? All those in favor say, "Aye."
Opposed?

THE MOTION PASSED. (ASSEMBLYMEN GOEDHART, GRADY,
HARDY, HICKEY, AND KITE VOTED NO.)

Assembly Bill 537: Revises provisions governing prohibited acts for certain health care practitioners. (BDR 54-1115)

Marji Paslov Thomas, Committee Policy Analyst:

Assembly Bill 537 was sponsored by the Committee, and it was heard on April 8, 2011. [Read from work session document and proposed amendments submitted by Patrick Smith, representing Allergan ([Exhibit K](#)).]

Assemblywoman Carlton:

There were many questions about this bill. Although my questions were addressed, I was not sure if they all were. I still have some concerns, because whenever you get into pharmacy bills, you never know what they will morph into. Were there other concerns that were not addressed in this? It seems as though we are missing something.

Chair Atkinson:

Ms. Carlton, when issues come up while we are hearing bills, we do our best to address them all. I know you had a few and that we addressed them. I believe that all of them have been addressed with the two amendments that are offered here.

Assemblywoman Carlton:

Good, I just wanted to make sure, as there were so many of them.

Chair Atkinson:

And some cannot be addressed. That happens.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 537.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

Is there any discussion on the motion? All of those in favor say, "Aye."
Opposed?

THE MOTION PASSED. (ASSEMBLYMAN KITE VOTED NO.)

Assemblyman Goedhart:

I reserve the right to change my vote on the floor.

Assemblyman Ohrenschall:

I would like to reserve the right to change my vote on the floor on Assembly Bill 289 and Assembly Bill 292.

Chair Atkinson:

Mr. Ohrenschall, you cannot do that now. If you change your mind, let me know.

Bills sponsors will take their own bill floor statements. Is there any other discussion on any of those bills?

Assemblywoman Carlton:

I am well aware of the practice of the Chair handling all of the amendments; I want to let you know that on Ms. Mastroluca's bill, I will be right behind you.

Chair Atkinson:

We are going to move into our bills. I am going to present first, as we have a feed from Arizona. The Vice Chair will assume the Chair.

Vice Chair Conklin:

We will open the hearing on Assembly Joint Resolution 6.

Assembly Joint Resolution 6: Requests that Congress and the Federal Highway Administration designate a portion of U.S. Route 93 as an interstate highway. (BDR R-171)

Assemblyman Kelvin Atkinson, Clark County Assembly District No. 17:

I am here to introduce A.J.R. 6. This is one of the five bills that were requested by the Legislative Commission's Subcommittee to Study the Development and Promotion of Logistics and Distribution Centers and Issues Concerning Infrastructure and Transportation, which met during the 2009-2010 Interim. This Committee has already heard and passed another one of the Subcommittee's bills, Assembly Concurrent Resolution 4 this session. We are hoping to get the same treatment on A.J.R. 6.

As its name implies, the Subcommittee's main purpose was to look at ways to further Nevada's development as a center for the logistics and distribution. One important issue considered was the quality of our transportation system and how it relates to the state's economy. Nevada's two metropolitan areas, Las Vegas and Reno, are located near many West Coast markets and thus are well positioned to be logistics hubs.

Currently, Interstate 15 in southern Nevada is the only interstate highway connecting Las Vegas to other major metropolitan areas in California and Utah. In order for Las Vegas to continue to develop as a logistics and distribution center, we need additional transportation options. In particular, an interstate highway from Las Vegas to Phoenix would allow Las Vegas to remain competitive and provide for economic development. To this end, A.J.R. 6 urges the United States Secretary of Transportation to designate U.S. Highway 93 (U.S. 93) between Las Vegas and Phoenix as part of a future Interstate 11 (I-11). The proposed I-11 will run from the Mexican border to Las Vegas and

would eventually continue on to the Canadian border, passing through Reno on the way. Thus, it would not only connect Las Vegas with Phoenix but eventually serve as a major transportation route in the western United States.

This is exactly the kind of transportation infrastructure Nevadans need in order to spur development as a hub for logistics and distribution. Interstate 11 would also provide for additional economic development opportunities in tourism, recreation, and manufacturing.

With me today are several people who will speak in support of A.J.R. 6. With your approval, Mr. Vice Chairman, I would like to begin with Susan Martinovich, Director of the Nevada Department of Transportation (NDOT), followed by Tom Skancke, a strong supporter in these efforts; Bob Hazlett, with the Maricopa Association of Governments, who will provide information on Arizona's role in this designation; and Jacob Snow, General Manager of the Regional Transportation Commission (RTC) of Southern Nevada. Then Mayor Roger Tobler of the City of Boulder City will provide additional information.

Susan Martinovich, Director, Department of Transportation:

I am going to give a brief opening, summarize the I-11 project's background and current status, and then let the others give more details. I would like to close with a summary of what current and future actions are taking place.

Many claim to have originated the I-11 concept, as it has been discussed for a lot of years. It has only recently taken on an energy of moving forward. When the transportation experts and planners in southern Nevada became aware of discussions of I-11's feasibility, we began coordinating with Arizona's Department of Transportation and the local Metropolitan Planning Organizations (MPO) in Arizona and in Nevada.

The primary segment that was identified is between Phoenix and Las Vegas. Conceptually, it follows the U.S. 93 corridor in Arizona. The alignment in Phoenix has yet to be specified and is going through the National Environmental Policy Act (NEPA) process under Arizona Department of Transportation (ADOT) direction. The segment in Nevada is along the proposed Boulder City Bypass segment. That puts Nevada in a great position for that segment from the state line to Las Vegas, because the Boulder City Bypass has NEPA clearance, which is a process that takes many years. Once we have funding identified, we can proceed with construction.

We are also moving forward with the final design for the first segment of the Boulder City Bypass, in that we are trying to acquire right-of-way, get utilities relocated, and hopefully, soon, move forward with construction.

When the Hoover Dam Bridge opened in October, it brought to light the need to complete the bypass and bring it to a priority in tying it to I-11, and that it complements that effort. Because we have some challenges there, in the interim, we are looking at addressing existing challenges, working with Boulder City, and our partners at the Regional Transportation Commission of Southern Nevada to develop strategies. We must be careful that the strategies do not jeopardize or eliminate the need for a bypass.

I will turn this testimony over to the others, and as indicated, I will provide additional information on what is happening in moving this resolution and action forward for a future I-11.

Tom Skancke, President, The Skancke Company, Las Vegas, Nevada:

I am here today representing the Interstate 11 Alliance, for which I serve as Executive Director. The I-11 Alliance is a group of business owners in Phoenix and Las Vegas who are advocating for I-11. The corridor has been labeled by the Alliance as the "Can Do Coalition," which is connecting Arizona and Nevada and developing opportunities.

I am going to focus on global sustainability, and why this project is important to southern Nevada and the state as a whole, regarding economic diversification as well as economic sustainability.

The corridors of development are growing across the country, particularly in the western part of the United States—Las Vegas, Phoenix, Salt Lake City, and Denver—where the I-15 corridor goes from Southern California and through Las Vegas to Salt Lake City. Our corridors are reaching capacity, but more importantly, our growth is developing throughout the Desert Southwest.

The integrated global network is interconnected throughout the world via telecommunication satellites, shipping lines, freight lines, and airlines. If you send an email or a fax or make a cell phone call, you are on the global network every day. However, we never look at the hubs and how goods are moved. Goods are moved throughout the world on an hourly basis.

We have broken down the economies of the world as they relate to geographic areas. I want to focus on the amount of goods coming through the Suez Express and Transpacific 7 (TP7) water route through the Panama Canal

and then what is coming in from the Far East. The United States has become an import nation; there are not a lot of exports leaving our country.

We have broken down trading zones and economies in gross domestic product (GDP) around the world. In 2000 and 2005, the United States GDP was 32 percent, Europe was 34 percent, and the Far East was 21 percent. People ask why that is important. If our projections are correct, by 2050 that shifts and the No. 1 economic superpower in the world would be the Far East. That would put the United States third to India and China at 22 percent. That is important because we have to monitor and look at goods movement as a whole and the impacts on our nation. As the United States continues to become more of an import nation rather than an export nation, the ports are going to become more vital, as is the mobility of those goods as they come through our community.

By 2020, there will be 40 million containers coming through the ports of Los Angeles/Long Beach. You can probably add another 10 million to 15 million containers into Punta Colonet at probably 2030, and the impacts from the west to the east are substantial. Those goods have to move through our community as well as through the Arizona community to Memphis and Chicago.

It is important for all of us to consider the ten major container trade ports, one of which is Los Angeles/Long Beach. In fact, five of the major container ports are on the West Coast. As for connectivity, and what goes through our community, Las Vegas is a major hub as is Phoenix—a major hub for goods movement as it moves through the Intermountain West and the Desert Southwest.

Port expansion throughout the western United States will account for 67 percent of our nation's goods. The demand for the 22 Western states is 22 percent out to the year 2030. Forty-five percent of our nation's goods must move east of the Mississippi River. That is done by truck and by train—70 percent of our nation's goods move by truck, and 30 percent move by rail.

What is interesting for the southern Nevada and the Phoenix communities is that about 85 percent of our goods come to us by truck from the Los Angeles/Long Beach ports. Our rail line in southern Nevada is a pass-through rail line. We do not get a majority of our goods by rail: we get them by truck, and that is only going to increase if you look at the global trade.

It is important to note that it takes 13 days to get from China to Long Beach. What I focus on is that it takes three days to get from Long Beach to Chicago, and it takes seven days to get from Chicago to the eastern part of the

United States. That is primarily because our rail system was not designed for the amount of dual movement of goods both coming in and going out.

Important for our community and the Arizona community is the amount of goods coming through Interstate 15 (I-15). It is substantial.

It is also important to know that the route for coal movement coming out of Wyoming is going to shift over the next 30 years because the largest buyer of U.S. coal is China, so that route is going to shift more to the west and southwest. The goods movement industry will opt not to use the Mississippi River; it will use rail cars, which offer a quicker way to get to the ports of Los Angeles and Long Beach and possibly Mexico.

Going from the global view to the regional view, Las Vegas and the I-15 corridor are our regional partners. The I-15 and the Interstate 80 corridor drop into the Western High Speed Rail Alliance system plan that connects Denver, Salt Lake City, and Reno to San Francisco; Salt Lake to Las Vegas and Phoenix; and then Phoenix to Los Angeles. The Interstate 5 (I-5) corridor comes into play in Los Angeles because it is important to understand the I-5 is at capacity. In fact, for many hours of the day it is beyond capacity; the demand is exceeding the supply. With the ports movement coming in from Mexico and the impacts on Phoenix, that is going to create the demand for a new I-11. This will be one of the first interstate highways in our country in approximately 20 years. We believe that this is critical to Las Vegas's and Phoenix's sustainability.

Our Western High Speed Rail Alliance system plan for the next 20 years is important for I-11. We have to provide another modal choice for our traveling public as goods movement continues to increase on I-15, and on the new I-11 we are going to have to provide intercity passenger rail and high speed passenger rail.

Nevada is going to have 116 percent population growth. Arizona will continue to be about 109 percent. Utah will have about 56 percent growth, and Colorado 35 percent growth. It is interesting to see that California is going to drop in population growth, but the counties of Riverside and San Bernardino are going to have a growth rate of approximately 90 percent. The Intermountain and Southwest region is going to continue to grow over the next 20 years, which is another reason why we set up the case for the I-11 corridor.

What is needed? We need a long-term sustainable funding source, and that would come in the form of a fuel tax. We need private sector investment in

order to complete these projects. We need congestion management and tolling. If anyone is willing to introduce that type of bill, that would be great.

We also need to look at a vehicles miles traveled. There are several bills in the California Legislature that deal with electrification of vehicles. That will have a huge impact on our highway trust fund here because we currently do not have a way to collect that. Two bills in California require that all new vehicles must be electrified by 2020. Those vehicles must have a range of 500 miles. If they pass that in California, that is going to have a dramatic impact on our ability to collect user fees as well as our trust fund sustainability.

We have to work toward going from projects to a strategy, from granular to regional, which is why I-11 is so critical. We have to be more proactive than reactive. This regional partnership of getting governments, institutions, and businesses involved is the future.

I would close by saying that we appreciate your support of this project. Chair Atkinson, your interim committee this summer was very helpful in getting this to our delegation and getting visibility for us.

Vice Chair Conklin:

Mr. Hazlett, we have your PowerPoint presentation here on the screen.

Bob Hazlett, Senior Engineer, Maricopa Association of Governments, Phoenix, Arizona:

Sitting on my right is Mr. John McGee, the Executive Director for Planning and Policy for the Arizona Department of Transportation. We are here to make this presentation ([Exhibit L](#)) and answer any questions the Committee may have on this concept of I-11.

Slide 2: The Maricopa Association of Governments (MAG) is the Metropolitan Planning Organization for the Phoenix-Maricopa County region. We are mandated by the Federal Highway Administration and designated by the Governor of the State of Arizona.

Slide 3: We have a number of responsibilities under both federal and state law. We have about 25 committees that oversee our operations and how we move forward.

Slide 4: This is our current vision of transportation facilities throughout the Phoenix-Maricopa County valley. It is a \$17.5 billion program. We are in year five of implementation and have already constructed about 500 lane miles of this plan. It is divided into three main programs: the Regional Freeway and

Highway Program, the Regional Arterial Program, and the Regional Transit Program, which includes the construction of the first 20 miles of light rail service throughout the valley.

This program is funded in part by a half-cent sales tax in Maricopa County that helps move this program forward. As we continue to plan for our region, we do not just look internally at the needs we have for mitigating congestion and making certain that we meet the travel demands we have for our citizens; we also look at our external connections to make sure we have good gateways to the Phoenix metropolitan area.

Slide 5: Some of these slides might be duplicative of what Mr. Skancke had identified, but we are always looking at our gateways and trying to make certain that we are providing the best possible ways for people to be able to get to the Phoenix metropolitan area. We began to start looking at things like truck shipments, and we found that Arizona, much like Nevada, is a pass-through state. So, part of our economic development initiative here at MAG is to find ways we can add value to the supply chain, help improve our gateway connections, and create more jobs for our region.

Slide 6: Regarding worldwide commodity flows, we have to look at how Phoenix works within that larger scope.

Slide 7: We currently have a freight framework study where you can see a shipper's perspective. As we plan for freight and goods movement, we are always trying to learn what people are looking for. As you can see from the top 1,000 "Blue Chip" multinational shipper priorities, they are looking for a good rate, but they are also looking at their schedule reliability and consistency. With that, you have to make certain that the transportation structure is in play.

Slide 8: When you look at shipping, you look at where it all originates. A lot of it goes back to the global trade and to the world port activities. On the left, the bar graph shows the world ports, and where Long Beach/Los Angeles figures into the mix. It is the busiest port in the United States, as evident in the right-hand graph, but you can see where it ranks in terms of meeting the demands of good that are being shipped from Singapore or Shanghai and Hong Kong and Shenzhen in the Far East.

We have talked a little bit about the port of Punta Colonet, which is a port on the Pacific coast of Baja California in Mexico. It is a natural deepwater port and has the ability to handle a fair amount of TEUs (twenty-foot equivalent units), which is the measurement term they use for shipping containers. By 2030, it will be handling more freight than what New York/New Jersey

handles today. As this begins to happen on our southern border, you see that it makes a lot of sense for us to start getting involved and see where we can provide value.

Slide 9: It takes roughly 20 days to ship from Shanghai to New York via Los Angeles. The port of Punta Colonet can take it down to 19 days to get goods from the Far East the east coast of the United States. Regarding reliability, you begin to see where this port becomes important and how it can influence future activity throughout the southwestern United States as well as in Arizona and Phoenix.

Slide 10: We can see how this maps out. This is the southwestern United States. You can see that the Class 1 railroads throughout the Southwest are pointed to Los Angeles and Long Beach and the port activities there. But, with those being the busiest ports, the freeways and railways that feed them are congested. It shows a photo of Interstate 710, which is one of the principle arteries that feed out of Long Beach port. Caltrans has been trying to find a way to rebuild this interstate because it is at the end of its service life, but it does not dare to do that, as it might take down a lot of the nationwide shipping. You begin to see just how delicate this system is and how important it is to build more links and more ways to do that.

This slide also shows where the I-11 starts to figure into this plan. You can see the roads leading down to the port of Guaymas and the port of Punta Colonet and how they all start to fit together. This shift not only can help ease some of the burdens of Long Beach/Los Angeles but it can also help with some of the port activities in Mexico. Also, the Phoenix/Las Vegas connection, and the connection further north of Reno, will help our freight system throughout the United States.

Slide 11: This shows the Interstate Highway System as identified in 1956 by President Eisenhower. There are a lot of routes east of the Mississippi, which makes sense because that is where the population is. At the time, transportation planners were more interested in getting to California.

Slide 12: This shows routes that have been added between 1957 and 1992. Most of them have been in the eastern United States. The only new routes in the West were the extension of Interstate 70 from Denver to Cove Fort, Utah, and Interstate 82 in Washington State.

Slide 13: Here are some of the corridors that have been identified through the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21) as high priority

corridors throughout, mainly, the eastern United States. All of those have a freight component. Interstate 49 makes connections through the heartland of the United States, from New Orleans up through Kansas City. Interstate 73 goes from the Charleston and Savanna regions to Detroit. Interstate 69, which is the longest of those corridors, goes from Laredo, Texas, all the way to Port Huron. There has not been any real identification of a major corridor in the West.

Slide 14: When you pencil in I-11, it provides more flexibility for the West Coast. It links the metropolitan areas from Tucson all the way up to Reno. One of the interesting facts is that in 1955, when the original interstate system was conceived, the combined population of that area from Tucson to Reno, including Las Vegas and Phoenix, was about 700,000. Today it is 8 million. You can see the need for this corridor and how it not only helps with freight but also to connects communities. There are opportunities for backhaul—back toward Los Angeles, San Francisco, Portland, and Seattle. We have presented this to Canadian interests, and they are seeing how I-11 would go toward Vancouver and Prince Rupert, which are two of the big ports in Canada.

Slide 15: In Arizona, we went through a major framework process. Led by the Arizona Department of Transportation, we took a look at our long-term vision for the state in terms of transportation. The study looked at the true multi-modal component in considering inner city rail, better transiting opportunities, and addressing our freight movements. Interstate 11 is identified as Interstate X (I-X) because it has not been officially designated by Congress yet, but again, it is part of our statewide framework and was accepted by our State Transportation Board in January 2010.

Slide 16: At MAG we have formed an Economic Development Committee. It is looking at freight and inland port movements, and at, I-11 in terms of getting a designation moving forward with the environmental impact statements (EIS). As the NDOT Director indicated, our Governor has already directed the Arizona Department of Transportation to look at the very first segment of I-11, which is the Hassayampa Freeway in Phoenix between Interstate 10 and U.S. 93 in Wickenburg as an EIS project, and ADOT looks to launch that soon.

Slide 17: We are moving forward with our Freight Framework Study. Most of the information I have given you is anecdotal, but we have been finding there is a lot of ground truth behind it. This Freight Framework Study has certainly been helping us with that.

Slide 18: We are excited about our goals and objectives and how they may help our community in terms of being a better steward of the system that we have, as well as to be able to provide more value to the freight supply chain. That concludes my remarks.

Vice Chair Conklin:

Mr. Chairman, you have two more people listed to give presentations. Do you want to continue with the presentations or take questions now? [He kept going.]

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

There has been a lot said about I-11 today. I want to show you some images. We have had some real problems associated with infrastructure, particularly in connecting the transportation systems between Nevada and Arizona. Now that the new bridge, which is known as the Hoover Dam Bypass Bridge (Mike O'Callaghan-Pat Tillman Memorial Bridge), at the Hoover Dam crossing is open, truck traffic has returned to that route. Nearly every weekend and on some weekdays, we have seen problems with congestion due to traffic coming into Nevada and then leaving Nevada on the following Sunday. [Showed slides of traffic from the week after Christmas 2010 ([Exhibit M](#)).] These are pictures of traffic coming in from Arizona, driving north on U.S. 93 just after they have crossed over the new bridge near the Hoover Dam. The road between Boulder City and Hoover Dam can be a very popular, congested corridor.

The next person to testify is my boss, Mayor Roger Tobler from Boulder City. He called me this week because he was very concerned about the problems that people had getting into and out of Boulder City. We drove out to Railroad Pass and took a picture; you can see both streams of traffic are having trouble moving forward ([Exhibit M](#)). This was on a weekday.

We had hoped this was just an anecdotal experience due to the holiday weekend and all the people coming in for New Year's and on vacation, but that has turned out not to be the case. When this corridor backs up with congestion, we have had to post regular messages to divert traffic to U.S Highway 95 (U.S. 95) ([Exhibit N](#)). With the help of the Nevada Department of Transportation we have been able to install some additional traffic cameras going through Boulder City. Sunday, March 11, 2011, you can see that the traffic on Veteran's Memorial Drive, along U.S. 93, coming into Boulder City, was backed up for many hours ([Exhibit O](#)). In other views toward Railroad Pass, at its worst the traffic backs up all the way into Henderson. I personally have made a number of attempts to visit people in Boulder City only to be turned back, thwarted by the traffic once I got on the freeway.

It really sends the message to travelers who are going home to Arizona from Las Vegas that Nevada is not "open for business." Fortunately, we have been assisted by the capable Nevada Department of Transportation responding to this challenge. All of us have been surprised at the level of traffic we have seen. The return of the trucks has been a definitive factor in the traffic flows we have here. This is having an impact on the economy of southern Nevada.

An impact study shows that about 9 percent of all visitors to southern Nevada come from the State of Arizona ([Exhibit P](#)). Of that 9 percent, almost 90 percent are driving; they are not flying. They are driving on the U.S. 93 corridor.

The economic impact associated with this issue shows that if we have a decline in tourism of just 1 percent, we see a direct annual reduction in economic output of \$12.5 million and the loss of 107 jobs. If the reduction is 5 percent, we lose nearly \$62.5 million in economic output and 535 jobs; 10 percent is a loss of \$125 million and 1,070 jobs ([Exhibit Q](#)). These are significant economic impacts. We cannot afford to send the message to Arizona tourists that we cannot provide a reliable transportation corridor for them.

As Susan Martinovich pointed out, we are ahead of the game in the sense that we have an environmental impact statement that is completed and 30 percent of the design for the first phase of I-11 in Nevada—beginning from the new bridge near Hoover Dam, going up around Boulder City, and connecting with I-15 ([Exhibit R](#)). Now we just need the funding from the federal government and, historically, matching money from the state government. The regional government, such as the RTC, also needs to come to the table and provide support financially. If we do not have the money, all of this is just talk.

Roger Tobler, Mayor, City of Boulder City:

You have heard from all the experts. I am here to explain the impacts that Boulder City has felt since the bridge has opened. We always believed that the traffic problems would move from Hoover Dam up into Boulder City once that bridge opened up. Unfortunately, we were correct and are now experiencing severe traffic backups through Boulder City. This is the only way in and out of town and it goes right through the heart of our city. As you heard, we are going to start with the widening project along U.S. 93. You have also heard other presentations talking about what is coming to Nevada as far as increased trade with the seaport in Mexico. We simply do not have an efficient route from the bridge to Las Vegas and southern Nevada. It comes through an inefficient route and through Boulder City. Even by widening U.S. 93, our main intersection simply cannot handle that volume, so we will continue to see backups unless we are more proactive and look for other long-term solutions.

Our short-term solution is to look at the widening. Our long-term solution is definitely to look at I-11 and create the bypass around Boulder City.

People ask, "What will happen to Boulder City if we build a bypass?" My simple answer to that is, "What is happening to Boulder City today, and we know the truck traffic is only going to get worse?" The businesses along the corridor are being closed down on the weekends, because traffic is at a standstill in front of their businesses and people cannot get in and out. Residents are not able to get to appointments, and if they do get out of town, it is very difficult to get back into town. A typical comment that I hear, especially from those who live toward the Lakeview corridor—which is along U.S. 93—is that they leave their home only before 11 a.m. or they will stay in their home between 11 a.m. and 4 p.m. We are feeling the impact because resources have kept us from being proactive.

The Nevada Department of Transportation has worked very hard on the bypass, as has the RTC in Boulder City. You have heard we are almost shovel-ready as far as that project goes.

All of the right-of-way, except for a small portion in the Lake Mead area, was provided by the City of Boulder City. We are now working for the procurement of the right-of-way along the Lake Mead corridor—about two or three miles.

This project is ready to go, and I echo Boulder City's support for the I-11 project. We believe that will resolve a lot of issues for the entrance into southern Nevada, so the negative economic impact that Mr. Snow talked about does not take place.

Vice Chair Conklin:

Are there questions from the Committee? [There were none.]

Susan Martinovich:

I would like to summarize on a couple of matters. We are talking with Arizona and looking at some interim improvements to help the Boulder City area, through our congressional delegation or federal highway agencies to try to minimize trucks on the bridge during construction, in May through November. We are also seeing a congressional delegation for the I-15 corridor. There are two ways to designate an interstate; it can be done administratively, or congressionally. There are two big differences between these two methods. An administrative designation could be most problematic. That means that the route would have to be complete to freeway standards within 25 years. Nevada can do that between the Phoenix and Nevada portion because our Boulder Bypass segment already meets interstate standards. But, the segment

beyond Las Vegas to the north would be problematic because segments of U.S. 95 go through Goldfield, Tonopah, and other rural towns on the way up to Reno. Freeway standards mean not only structural but also full control of access. There would be funding issues related to that with an administrative designation. A congressional designation does not have that restraint, so we are open to talking with our delegation.

The other action we are taking to move forward is to look at what the alignment will be north of Las Vegas. As I indicated, how are we going to take care of the towns that U.S. 95 currently goes through? Where will I-11 connect with I-80, and where does it go beyond? We are in the process of that evaluation.

In summary, action is being taken, we are moving forward, and we do appreciate Chairman Atkinson and his Committee for bringing this interstate into focus.

Assemblywoman Kirkpatrick:

I have a question for Mr. Snow. On a regular basis I travel the road to Laughlin and the road through Arizona. You talked about the economic problem the congestion creates. What is the difference between the congestion there and the congestion going to California? If you have ever traveled between Russell Road and I-15, you have the same type of congestion, except it is all day long. Why are we not talking about the economic impact that Laughlin has seen? They are literally dying on the vine because they have no traffic through it. I bring up the economic impact only because you did. I understand the whole I-11 long-term plan and what it does to help with importing, but we cannot forget about Laughlin, Bullhead City, Arizona, or Nipton Road to I-15. To me, economic impact is not a good argument, but I would like to hear your thoughts.

Jacob Snow:

I am sure we could bring a number of business owners from Boulder City who would talk to you about the problems they are experiencing when the traffic backs up. It is so nonmoving in nature, no one is willing to get out of line to let anybody into those businesses along U.S. 93, and no one is willing to let people out of those businesses to get on the freeway. That is a problem that is different, in scope, from the problems you identified resulting from the lack of traffic going to and through Laughlin. Certainly, when you look at the I-15 corridor, there are some serious challenges there. It is good that the I-15 Design Build South Project is under way to help deal with those problems. The State of Nevada has done an excellent job keeping ahead of that. We are hoping the state of California can rise to the occasion and deal with the problems we have seen between Barstow and Baker and on to the state line.

This Legislature does not have the control over that as we do for the portion of I-15 on the Nevada side.

On the issue of congestion, we have been trying to divert traffic to U.S. 95 and down through the Searchlight and Laughlin area when we know that there are backups through Boulder City. We have also been discussing the temporary diversion of truck traffic during the construction of additional lanes that NDOT has agreed to do this summer. If we do not have that diversion, we will see some very serious and significant backups every day in that corridor. That community has not been completely opposed to additional truck traffic, but there are some businesses in Searchlight and Laughlin that have said, "Yeah, we would like to see the trucks come back." We can study other corridors if you like, and some of those studies have been done.

Assemblywoman Kirkpatrick:

I have been traveling both those roads for the past eight years every single Wednesday, so I am familiar with the traffic issue, but the Hacienda Hotel experienced a huge economic impact during the construction. Laughlin is experiencing a huge economic impact because of the loss of traffic. Even in these pictures, there are very few trucks that are holding up the process. Anytime I have been on the road with trucks, they want a straight stretch so they can keep going—time is miles.

I do not disagree with the whole I-11, because I understand that having a port in Mexico helps expedite product that comes here. In Las Vegas, we import tons of products from Europe, and they can be 45 days on the water, another 15 days within the ports in Long Beach, and we have had testimony that it takes a long time to go from Oakland to Las Vegas or Reno. If you are trying to sell me on the need for this port, economic impact does not do it because I can see other benefits. On holding up the traffic, if we had the folks from Laughlin or Boulder City here, we could have both sides of that debate. I support I-11 if it is about helping the port and helping us expedite that.

Assemblyman Goedhart:

I agree with what is being said. We would probably get more tourism in Las Vegas if we made it easier for people to get to and from Las Vegas. I have friends in Phoenix and in the Los Angeles area who would like to come to Las Vegas more often, but one of the reasons they do not is because they do not want to be caught in a traffic jam. Anything we can do, regionally, to access or speed up the flow of traffic would have a lot of positive economic impacts for Nevada.

Vice Chair Conklin:

Are there any additional questions for any of the presenters?

Michael Dayton, representing NAOIP Southern Nevada Chapter and Nevada Hotel and Lodging Association:

I am here for two clients, the Nevada Hotel Lodging Association and NAOIP, the commercial real estate development association. On behalf of the Nevada Hotel Lodging Association I support the comments made by Jacob Snow. We support any way we can make it more convenient for our visitors to get to Las Vegas from a major market such as Phoenix, and we believe the development of this interstate will make that possible.

As far as NAOIP goes, during the interim we supported this concept, to make southern Nevada a regional distribution center, and we believe the development of this interstate will make that possible as well.

Vice Chair Conklin:

Are there questions from the Committee? [There were none.] Is there anyone else wishing to testify here or in Las Vegas in support of A.J.R. 6 at this time? [There was no one.] Is there anyone opposed to A.J.R. 6? [There was no one.] Is there anyone wishing to get on the record as neutral? [There was no one.]

We will close the hearing on A.J.R. 6.

ASSEMBLYMAN HORNE MOVED TO DO PASS
ASSEMBLY JOINT RESOLUTION 6.

ASSEMBLYMAN HARDY SECONDED THE MOTION.

Are there any questions? All those in favor say, "Aye." Opposed?

THE MOTION PASSED UNANIMOUSLY.

[The meeting was turned back over to the Chair.]

Chair Atkinson:

I want to thank the people who testified and, again, thank you to those in Arizona. We appreciate your patience this afternoon.

We will move to Assembly Bill 351.

Assembly Bill 351: Revises provisions governing certain motor carriers.
(BDR 58-1049)

Assemblywoman Maggie Carlton, Clark County Assembly District No. 14:

That is my bill, but I am not going to do an overview or presentation. I will let the experts come to the table, inform the Committee of the problem, the solution, and what the proposed amendment will do to help some of the businesses in Nevada.

Neal Tomlinson, Regulatory Counsel, Frias Transportation:

The Frias Group of Transportation Companies includes, Ace Cab, Union Cab, ANLV Cab, Vegas Western Cab, Virgin Valley Cab, Las Vegas Limousines, and Airline Limousine Corporation. I appear on a regular basis for them in front of the Taxicab Authority (TA) and the Nevada Transportation Authority (NTA). With me is Jay Palchikoff, who is special counsel for purposes of this bill, and he will present the information Assemblywoman Carlton requested.

Jay F. Palchikoff, representing Frias Transportation:

I am here to speak in favor of A.B. 351 and the amendment that I have submitted ([Exhibit S](#)). Assembly Bill 351 simply allows the NTA and the TA to do their job of promoting the interest of the traveling public. Within its existing authority, the TA determined that it is in the best interest of the traveling public for taxicab operators to accept payment by credit and debit card. To do that, the operators need to be able to recover the costs incurred in accepting the cards. If a merchant cannot recover the cost of accepting credit cards, the merchant is not going to accept credit cards.

All this legislation does is prevent the rules of the large credit card networks from short-circuiting the TA and the NTA. Specifically, the private contractual rules of the credit card networks purport to prohibit merchants from receiving any recovery from customers who pay by credit card instead of cash. This is called the "no surcharge" rule. It does nothing but hide the cost of credit card acceptance from the customer and requires merchants to raise their prices on everyone to recover the fees.

While taxicab and limousine operators in Nevada cannot just raise their prices like other merchants can, their fares are fully regulated by the TA and the NTA. Therefore, the TA needed to take action within its plenary power to regulate in order to tell the operators how they can recover the costs. The taxicab operators really do not care how it is accomplished. The TA heard extensive evidence on the costs in three different public hearings over a four-month period, at which time anyone who was interested could attend and present testimony. There was no opposition from the credit card industry.

The TA considered different ways for operators to recover their costs in an equitable manner. The TA could have raised taxicab rates across the board to cover the cost, which is similar to what merchants do, ad hoc, in order to recover their costs, but that would mean all passengers would bear the cost when it is attributable only to those who pay by credit card. The TA decided to keep the fares low and let the cost recovery come from those who benefit from the convenience and who cause the cost to be incurred. Keep in mind the cost for the taxicab company includes not only the merchant fees that need to be paid to the credit card companies, but also substantial expense to install and maintain equipment in each and every vehicle. No operator would make that commitment without a practical way to recover the costs.

About the TA's action itself, I want to stress that the "per transaction" amount is required to be displayed on the outside of the taxicab so the card-paying passenger knows the exact cost of paying by credit card before he even gets into the cab. In addition, during the processing of the payment at the end of the trip, a prompt informs the passenger again and asks if the passenger wants to complete the payment by credit or debit card. If he does not, he can just pay by cash.

Make no mistake—every merchant recovers the cost of accepting credit and debit cards. The only difference here is that the recovery is not being hidden from the consumer. It is being placed where it belongs instead of on unwitting cash payers. It was entirely reasonable for the TA to conclude that passengers should have an honest choice posted on the outside of the taxicab. The TA did not need this legislation to enable it to do its work. Nevada needs this legislation to keep the private credit card network rules from circumventing the action taken by the TA in the public interest, plain and simple.

There are good reasons for the TA to encourage credit card acceptance. Everyone agrees that accepting credit cards improves passenger convenience, especially for the large majority of passengers who are business travelers or tourists. That puts more money in the drivers' pockets by increasing tips and increasing trips. There has been absolutely no passenger resistance to the TA's action and, in fact, payment by credit cards has been much higher than the experts anticipated. Furthermore, credit card acceptance served to increase taxicab usage generally because it is easier to pay for the service. That is good for drivers, of course, and the cab companies and the Nevada economy. It is also good for the credit card companies in terms of higher fees.

Another benefit behind the bill is that passengers will need to carry less cash, which should make them less attractive targets for crime. Drivers too, will be safer from robbery and violent crime since they will carry smaller amounts of

cash, especially as card payment becomes more prevalent. Just last month a driver was shot and killed for the \$250 in cash he was carrying in the cab.

Also note that the credit card network rules already allow a merchant to offer a cash discount. It is not very practical, as you can read in the literature; it is almost nonexistent except in the gas station industry. That cash discount idea is an exact equivalent of a surcharge—there is no economic difference whatsoever. There should be nothing objectionable, in principle, to the credit card networks when a cab company or limousine company receives a small cost recovery for accepting payment by credit or debit card. In fact, I am not sure the credit card companies really care much about this matter, as the TA hearings seem to have shown. It makes sense, because all that accepting credit cards will do is bring more fees to the credit card companies.

The TA's action in A.B. 351 results in a very narrow and necessary exception to the enforcement of this "no surcharge" rule, in one highly regulated industry where the merchants have no other way of recovering the cost. Passengers will be fully protected from paying any excessive costs because the amount of the "per transaction" recovery is subject to adjustment by the TA and ongoing regulation by the TA and the NTA anytime they see it will be in the best interest of the traveling public.

In conclusion, I would like to ask the Committee to support A.B. 351 as modified by the proposed amendment.

Assemblyman Daly:

If you are using a credit card, are you able to put a tip on there as well? I do not know if you are aware of a regulation the Labor Commissioner just put in that says you cannot deduct the transaction fee from tips. Are you going to do the same thing? In other words, if a waitress gets a tip at a hotel, and there is a fee on that because it has been added to the credit card, you have to give the server 100 percent of the tip absent that fee. Are you going to do the same thing?

Jay F. Palchikoff:

I should defer to regulatory counsel.

Neal Tomlinson:

Yes, that is accurate. In fact, our experience at the Frias Group of Transportation Companies has been that the driver tip is actually increased, because when he goes through the payment cycle it comes up with a selection of tip percentage, prompting the customer to decide whether he wants to tip.

The experience has been that they, in fact, tip higher when they pay by credit card. It has been a direct benefit to the drivers.

Assemblyman Daly:

I understand that, but there is a fee on that increased cost and you cannot deduct it. Is that what you are going to do, according to the regulations of the Labor Commissioners?

Neal Tomlinson:

Yes, that is correct.

Assemblyman Hardy:

Is there a dollar amount you have for this fee? Do you know what it is going to be?

Neal Tomlinson:

Actually, this has been in practice already at the TA for approximately four years. They had several hearings last year—January through March—and the TA decided on a \$3 per transaction fee.

Assemblyman Ellison:

That is \$3 plus the tip that will be included with the fare, is that correct?

Neal Tomlinson:

Yes. When the person decides to pay by credit card, all of that would be added on to the total transaction—the \$3 transaction fee and also the tip amount that he chooses. He will get a receipt for that.

Assemblyman Ellison:

How do they break down the tip portion?

Neal Tomlinson:

It is almost like a menu. There is a little screen, just like at the grocery store. The passenger keeps his card at all times—he is prompted. The company can program it however it wants, but typically people will choose 20 to 25 percent for the tip.

Chair Atkinson:

Let me get this right. Most of the taxicabs in Nevada do not have the ability to accept credit cards?

Neal Tomlinson:

They did not for a long time, until the TA decided it wanted credit card acceptance in all the cabs. Originally, only two small companies were accepting credit cards. Now Frias is the largest such fleet, with approximately 75 percent of our vehicles currently accepting credit cards. Within a few months it will be 100 percent.

The goal of the TA in approving the order was to encourage all taxicabs to have the ability to accept credit and debit cards. I believe that will happen.

Chair Atkinson:

This will allow them to have the surcharge of \$3, is that right?

Neal Tomlinson:

That is correct.

Chair Atkinson:

That is only if someone uses a credit card? If they are using cash, this does not apply?

Neal Tomlinson:

That is right.

Chair Atkinson:

Are there any additional questions or comments from the Committee members? Is there anyone else wishing to testify in favor of A.B. 351? Is there any opposition?

Fred Hillerby, representing Mastercard Worldwide:

When I went to work for Mastercard, I thought it only issued credit cards because my credit card said Mastercard and had a Mastercard logo. Mastercard has a payment network. We are called a four-party system. We have issuing banks, acquiring banks—they are the banks that enlist the merchants—and we have the merchants and the consumers. We have rules for our banks that we deal with directly. We do not deal with the merchants or you as the individual consumers. That is done by the banks. We have a set of rules in place that, over the years, we feel fairly protects all the parties, especially the customer. The customer is protected from fraud. You hear about identity theft. Many people think fraud is identify theft, as when somebody gets your credit card number and charges something to your account; under our rules, if that happens, the bank has to hold you harmless. You do not have to pay for that fraudulent activity on your Mastercard. We have set up those rules to try to be fair to everyone, so we promote the use and acceptance of credit cards.

What we prohibit in our rules—and what our banks enforce through contractual relationships with merchants—is that you cannot discriminate against our cardholders because they choose to pay with a credit card. That is exactly what this bill does. It says to the customer of a taxicab company that if you are going to pay with a credit card, you have to pay more than anyone else. That is our concern.

I could go through all the benefits of credit card acceptance, but I think the proponents of the bill did it as well as I could have. Safety for the drivers, increased tips, as well as an increase in customers, resulting from cabs accepting credit cards. There was a comment in some of the hearings that said it is clear, out at the airport, customers want a cab that accepts credit cards, and those cabs move to the front of the queue to pick them up. It is a competitive advantage also. Yet it is one they want only the customer to pay for. They are seemingly ignoring all the advantages to themselves. Although I am not a regulatory authority regarding the TA, or any other authority, I believe there is a way to recover those costs, and that is to develop the cost in the backup and go for a rate increase that would recognize that this is one of the many costs of doing business of operating a taxicab, like insurance, gasoline, tires, or the vehicles themselves. This is another cost that we think has much value to the taxicab company, which they very clearly articulated in their own testimony, so we do not understand this body's desire to impose a fee of \$3 or whatever it may be. The bill does not say that; the bill says they have to go through a process and evaluate all of the cost associated for the cab company to accept it. It does not talk about the benefits to the cab company to accept credit cards. Clearly there are a lot of benefits to the cab company, so I am not sure the \$3 is any more than what is in practice.

Assemblyman Hickey:

I assume from your comments that you would also oppose gas stations that offer credit card services; that it might fall into the category of convenience for those who might not have cash. Is it not, in effect, a pass-through charge? People elect, voluntarily, to use that service, and if they are aware going in that there is going to be a fee, is that not reasonable?

Fred Hillerby:

I am not so sure that is a freedom of choice. If I am standing in line for a cab, and all I have is a credit card to make payment, I really do not have a choice, do I? If I want to take that cab, I have to pay the fee. I am sure it is always easy to have a choice. There are times when those choices are not available to you.

Assemblyman Goedhart:

If a person who had a credit card and no cash, walked into a building and used his ATM card to get \$100 out of the ATM, he is now paying the ATM provider \$2.50 or \$3. It seems whichever way you look at it, in this day and age people pay for convenience—just as with the gas stations that charge more for a credit card than for cash. How would you respond to that observation?

Fred Hillerby:

I agree with your observation. Clearly, as you can see in this bill, we have a law in this state that says you cannot—in the credit card business—prohibit a merchant from giving a cash discount. The same thing is available to anyone.

The cab companies have recognized that their drivers have increased tips because of credit cards. It is proven time and again that people who have a credit card will buy more and bigger purchases when you are in a store than you would if you were bound by the amount of cash you have. There is a huge benefit. People do spend more money when they are using a card. It attracts business. There is a value to the taxicab company as well, not just the consumer.

Assemblyman Ellison:

Recently I used a credit card and it was run up on a computer. When it showed the total of the amount of purchase and the use of the credit card, I had to okay the amount. That is being done now, is it not?

Fred Hillerby:

If it is, it is in violation of the rules in the contract between that merchant and its acquiring bank. They have a contract that says they are not allowed to do that.

Assemblyman Ellison:

Is this in every state? Are there any amendments to this at all?

Fred Hillerby:

I do not think I can accurately speak to everywhere, but I will find out. That is a worldwide system rule that we expect, if you are the acquiring bank who deals with a store, part of your contract is that the store will not charge a surcharge to our cardholders.

Assemblyman Ellison:

I can tell you, that practice is happening, and it is happening in Reno.

Assemblyman Kite:

Is there a difference between Visa and Mastercard?

Fred Hillerby:

Yes, they are two separate networks, but they operate very similarly. Visa is a four-party system like ours.

Assemblyman Kite:

My last trip to Las Vegas, I got a cab, and the smallest bill I had was \$100. A five- to seven-minute taxi ride cost me \$40 because the driver said he did not have the correct change. For safety reasons, I am sure that he probably did not want me to see the wad of money he had on him to give me the proper change. If the card fee is apparent outside the vehicle, you make the choice before you get in; it is like the ATM downstairs. It asks me if I am willing to pay the transaction fee before I get my money. I do not see any difference between that ATM and the taxicab. You may have to explain it to me.

Fred Hillerby:

I can only explain it this way. With the ATM, you are paying a fee to withdraw cash from your bank that you do not have access to. Whoever is taking care of and operating the ATM is going to have to do it for you. It cost money to bill your account at your bank. There is a fee associated with them withdrawing that money from my bank and getting it to me through that machine, then being able to recoup those dollars. If you use your own bank's ATM, it does not charge you.

Assemblyman Kite:

I did not understand that comparison at all, because if I ride in a cab, someone has to bear the expense of charging my card, so I do not see the difference.

Chair Atkinson:

Mr. Hillerby, I kind of see it the same way. I have friends who will run all over town to find their bank so that they do not have to pay the \$3—to me that is not convenient. People have options.

Fred Hillerby:

There is equal benefit in this discussion about taxicabs. They get a benefit from accepting the card. Why is it that I am the one who has to pay for the cost that they are deriving a benefit from? That is one of the points I would make very strongly.

Chair Atkinson:

Mr. Goedhart said the same thing. Arco does the same thing. Again, it is for the convenience of using it; you pay for using a credit card, but if you use the debit portion of your card, it is free. It is the same concept.

Chris MacKenzie, representing American Express:

I would like to reiterate many of the things that Mr. Hillerby eloquently stated. I would add that maybe the focus should not be only on consumer cost. Merchants benefit greatly from accepting these cards also. There is convenience, safety of not dealing with cash, insured payment once credit cards are accepted, and the possibility of customers spending more money while they have their credit card in hand. They also get itemized statements as to what has been received. There are definitely benefits that go to the merchants, so rather than focusing on the burden to the consumer, that is one of those things that differentiates this from the ATM. The merchants are enjoying a benefit.

Whether intentional or not, it seems the NTA and TA are being used by the taxicab companies to bypass their contractual obligations with these credit card companies, and allowing the taxicab companies to enjoy the benefits of accepting credit cards but not being subject to the same obligations that all other merchants are. It is convenient for the taxicab companies to say the NTA and TA are requiring this, but the companies are the ones that are really going to benefit because every other merchant in the state is subject to these rules. This statute would interfere with those contractual rights between merchants and credit card companies.

Michael Hillerby, representing Mastercard:

As Fred said at the beginning, Mastercard does not issue cards. Your bank issues you a card and chooses to use Mastercard's network to transfer that information from the merchant bank, where you bought something, to your bank to send you the bill. Mastercard itself does not issue the card.

Assemblyman Conklin:

Right, but it is your card. It has your label on it; it is your service. You are making money on every transaction. It is your service, your card. What I am hearing is, you are not interested in having an untold number of new customers per day in Las Vegas because of a \$3 fee. They want to put it into the cabs, and as a businessman I see there might be some prohibitive cost involved, and this is a way to make it more affordable. They will need additional equipment and additional infrastructure because currently it is a cash business.

I understand that you have a business model and that it works well. It would seem to me that this is an opportunity to expand to a substantial new market that is not currently being served in Las Vegas.

Michael Hillerby:

We would welcome that new business under the same rules that every other merchant has around the country. What this law would do is change, by statute, that private party contract only for taxicabs and limousines and card companies. It does not change for anyone else. We would welcome that business on the same terms as every other merchant that signs up for a program.

Assemblyman Conklin:

Are you telling me that you charge every customer exactly the same?

Michael Hillerby:

Again, Mastercard, as a network, does not charge the individual customer.

Assemblyman Conklin:

So you make no money?

Michael Hillerby:

I did not say that. Mastercard does not charge the cardholder a fee. The four-party system involves:

- A merchant bank, which is involved in the retail sales.
- Your bank. Mastercard sets what is called an interchange fee, the fee that goes between those two banks.
- The fee the merchant bank charges a retailer to sign up is the fee that the merchant bank gets.
- The fee you pay your bank in interest, or an annual fee, is what you pay your bank, not Mastercard.

Mastercard's business is the interchange fee between the issuing bank and the acquiring bank.

Assemblyman Conklin:

And you do not think the consumer should have a choice to use this card on its own without the fee? Consumers make choices all the time. I would like not to pay an extra fee whenever I use my debit card too, but there are places that charge me a fee to use a debit card. There are two sides to this coin and I want to make sure we understand.

You have a contract, as you said, with the bank and with the retailer who accepts your product. You have to have it with the retailer because the bank does not.

Fred Hillerby:
The bank does.

Assemblyman Conklin:
So every bank contracts with every retailer?

Fred Hillerby:
No. Only the acquiring bank that goes out and signs up a retailer to use Mastercard or Visa has the contract. Mastercard does not have a contract with the merchant, nor do we have a contract with you, the consumer. You have a contract with your bank that you signed with when you got your credit card. The merchant has a contract with the acquiring bank, or merchant bank, as we call them. The acquiring bank and the merchant have a contract saying what each of those two entities will do for their part of the contract agreement.

Assemblyman Conklin:
Let me get this straight. If I go to Target and I have two Visa cards—one from Bank of America and one from Wells Fargo—it is highly possible that Target will not accept my card from Bank of America, which is a Visa card, but it will accept my Visa card from Wells Fargo, because each bank has to have a contract with the retailer, Target? That is not right. People chose Mastercard based on the service that Mastercard provides at a rate per transaction, or a percentage rate, and it is by retailer—the larger the retailer, the smaller the rate, because of the volume of transactions that are taking place. Which goes to my earlier point—the fees that these cards charge are not a bad thing. It is just economics, depending on the volume you are doing, and certainly every retailer is going to have a slightly different contract because you are going to view every retailer as either a better or worse market. I am unconvinced by the argument here that this fee is problematic.

Chris MacKenzie:
The thing that makes this distinct in this situation is that there is a regulatory authority coming in and determining what those terms are. Typically, a merchant—or in our case, the card company—can negotiate with the merchant. If the merchant decides not to enter into that contract, that is its prerogative. There are businesses that do not accept credit cards. Whether it is through the taxicabs or the TA, they have decided not to accept credit cards. Now they are going to insert an automatic provision into those contracts that says they cannot charge the fee to the merchant as is typically required. It is a regulatory

company injecting itself into the contractual process. There is a basis for creating a distinction in this situation.

Chair Atkinson:

I agree with Mr. Conklin. We have to figure something out and the Committee is hearing that ability to charge a fee. I understand what the Hillerbys are saying, but a fee is a fee, and the customer is paying it, whether it is for convenience or whatever. In this instance, you know who is negotiating or charging the fee, but most of us do not know who is; we just pay it.

Bill Uffelman, President and CEO, Nevada Bankers Association:

Our banks are issuing banks and acquiring banks. Some of them do their acquiring through a card services program that is bigger than that bank, whether it is operated as a separate entity or whether they have contracted with another bank. Their name would be on the card, but perhaps it is a national bank they have contracted with. The merchant discount fee, which is the fee that the merchant pays for accepting the card, if it is a high volume business, is somewhere between 1.5 and 1.75 to 2 percent. The reality is that if the TA, in fact, was authorizing a \$3 up charge that presumes that most cab rides are \$150 rides. Some cab companies decided that because of recognition that it was convenient for their customers, and to them, they started accepting credit cards. The cab company was paying the merchant discount fee to the acquiring bank that had signed it up and said, "If you offer cards, here are the benefits: drivers do not have to worry about as much cash, there is a record of the day's transaction, you are not going to get any counterfeit cash, and there is no worry that the card is being used fraudulently." If it is a \$100 fare with a 2 percent discount fee, the taxicab company gets \$98.

You have been confusing this with ATM fees. Previously, if you took a paper check to a bank that you did not have a relationship with, it might charge you a check cashing fee, just as other stores do. That is what that ATM fee is about. Arco does not accept credit cards, only debit cards, and that is a completely different agreement. They can charge a fee for accepting that debit card. The law of the country specifically empowers the merchant to give a cash discount if it chooses.

The reality is that the merchant discount fee in a high volume situation is roughly 2 percent. That covers all those fraud costs we spoke of, the transactions between the two banks, the merchant—the cab company—and its bank. There are a lot of devices out there for card swipes. Some are cell phone based. Anyone can get into a cell phone credit card acceptance business at a very low rate and per transaction fee.

If you followed the financial services bill that passed Congress this past year, you may know that the Durbin Amendment that passed in the middle of the night that designated the Federal Reserve to figure out what the debit card fee should be on a national basis. The Federal Reserve came back with a proposed rule that it would be 11 cents. That is a world of difference from \$3. That is being fought over as we speak. For the convenience of the customer, the convenience to the company, and the benefit to the drivers, having the merchant—in this case the cab company—pay that merchant discount fee to the acquiring bank is a very low cost to pay. The TA certainly has the ability to authorize increasing cab fares by 2 percent. They can build it in. When they went to \$3, they were building a bonus into the system. From the banking perspective, that is what this is all about.

Assemblyman Daly:

If there is a rule that says you cannot do this and you can enforce this contract, and these things are in taxicabs now, why can you not enforce your contract? It says that they "may" enter into an agreement with a credit card to install these and make the transaction, and it says the TA "may" prescribe maximum fee. It seems that if you want to control this, do not sign a contract.

Fred Hillerby:

Again, Mastercard, in the payment system, does not have a contract with the TA. But, we have an agreement with the acquiring bank that its contracts with the merchant will not allow the merchant to charge the convenience fee. If they do, they are in jeopardy of losing their contract and their ability to participate in Mastercard's system.

Bill Uffelman:

Again, as Mr. Hillerby has said, the acquiring bank has the relationship with the merchant—the cab company. They have an agreement with me, I have an agreement with you, and I am required, to enforce the terms of the agreement.

Assemblyman Kite:

The easiest way around this is just do not have the taxicab company as a merchant.

Bill Uffelman:

That bank will have to think hard about what it is going to do, but the reality is it may say to the merchant, "It is a shame. You were doing a good credit card business, but the contract says we cannot do it, and we are done."

Assemblyman Conklin:

Why is Visa not represented?

Fred Hillerby:

I do not know.

Assemblyman Conklin:

Mr. Hillerby, maybe they are not here because they do not have a problem with the fee, or you simply do not know?

Fred Hillerby:

I know they would have a problem with the fee because their agreements with their banks are very similar to ours. They also do not allow surcharging.

Assemblyman Conklin:

This is an industry and a company that has a regulated price. They do not get to change the price. When your fee changes, they do not get to raise their price to cover the fee; they have to absorb it in their margin. I am guessing it is a very low-margin business to begin with. What I am hearing from you is instead of allowing this fee, you would rather not have the contract at all. I guess, from an owner's standpoint, I simply would not do it if it were going to erode my margin further than it already has, with the price of gas doubling, the cost of tires and paint, and the fact that everything that goes into a car is basically oil or steel related. Basically you are saying that you do not want the consumer.

Michael Hillerby:

Not at all. We have never said that. We would welcome the consumer. We think that this can be considered a regular part of doing business. For example, the TA recently allowed a fuel surcharge because it recognized that the cost of fuel was driving up the cost of doing business for taxicab and limo operators and eroding that margin. They are a regulated entity, and we think there is precedent, and an opportunity in the tariff establishment process, to say this is a cost of doing business and can be built into the tariff. The minutes from the March 23, 2010, TA hearing say that limousines have their fees embedded in the company tariffs. That is a legitimate expense. If you decide, as a merchant, that you want to offer this service to your customers, we would welcome those customers under the terms that everyone else has. We think it should be part of the business model, not as a separate add-on fee for only those customers.

Assemblyman Goedhart:

If you built it into the tariff, it would be spread over everyone even if he was a cash buyer. In that case, the cash buyer is paying for the convenience of the person who wants to use a credit card, correct?

Fred Hillerby:

That is correct, and that is what happens in the retail world as we know it. It is very important for the retailer to get the additional business, convenience, and safety of accepting credit cards. That is a cost they are willing to pay, and yes, for the few cash paying customers they have.

Assemblyman Goedhart:

For a young, upstart company that might want to go in competition with Mastercard or Visa, a good business plan would be able to offer a card where the vendor gets a chance to charge a transaction fee. I can see that card exploding in the marketplace. With the direction you guys are going, I would be less than surprised if in the next three or four years there would not be a competitor to Visa and Mastercard that offered that business model.

Bill Uffelman:

In response to Mr. Conklin's question, Visa does not have a lobbyist in the State of Nevada, but through the American Banker's Association, Visa contacted me this morning and said, "Please help."

Assemblyman Ohrenschall:

When people want a taxi in Las Vegas, their demand is probably very inelastic. Do you think, if this bill passes, this fee would cause anyone not to get a cab? Would the cab company or the bank lose any business? Or is it just a matter of how the services are going to be paid, whether it is a separate add-on or whether it is built into the price and spread over everybody, including the cash users?

Fred Hillerby:

I cannot answer that. I do not know what it is going to do. I pointed out that if all I have to pay for my cab ride is a card, then I am going to have to pay. I am required to pay the fee. I do not have a choice. I would add that the cab companies do not have to take credit cards. They are not required to take credit cards. They are making a choice because it improves their place in the competitive market. It helps their cab drivers by providing larger tips when they accept credit cards. There is a real value here to the taxicab companies that they want to pass on just to those people who use a credit card.

Chair Atkinson:

If they charge everybody, not just those using the credit card, would you be okay with that?

Fred Hillerby:

Would you repeat the question?

Chair Atkinson:

If they charge a fee to everybody, would that be better?

Fred Hillerby:

I think what would be better is if the cost of accepting credit cards was built into their tariff or fare across the board. Therefore, it would be a very minimal amount. It would be everybody. That is the way the world is now, except for when you have a choice to pay cash.

Chair Atkinson:

I think they would say it was for convenience.

Assemblyman Ohrenschall:

I do not think it would dissuade anyone from purchasing the service even if that fee was there. I do not think the cab companies or the banks are going to lose any business. If someone wants a cab in Las Vegas, he wants a cab.

Chair Atkinson:

Is there anyone else in opposition? [There was no one.] Is there anyone neutral?

Assemblywoman Carlton:

I have been sitting here quietly, knowing my name was on this bill and it is inappropriate to cross-examine the opposition from the dais. It sounds like everybody is getting a piece of the pie, but there is one person who has not been allowed to sit at the table. I welcome the bill because I think it puts everyone at the table and everybody gets their slice of this business. It is all about business and who gets to charge who. The opportunity to charge this, with any regulated entity, makes sure that those who are not utilizing it do not get part of the cost put on them.

Neal Tomlinson:

It sounded to me as if their biggest issue was the fact that they wanted this transaction cost to be put into the rate. There is one agency in the state that gets to decide that, and that is the TA. They had several hearings on that subject, and they decided that the best interest for the riding public was to have that broken out, and displayed, so there was customer choice. That is exactly what their order was in April 2010. The TA's order says:

It is in the public interest for Certificated taxicab companies to allow its passengers to pay taxicab fares using credit and debit card payment services. It is also in the public interest for the Authority to set a uniform fee which can be charged for

using such credit and debit card services . . . Such a \$3 flat fee per transaction is a reasonable and appropriate fee based on the costs of providing such credit and debit card payment services in taxicabs . . . The interests, welfare, convenience, necessity, and well being of the customers of taxicabs, as well as the industry as a whole, including drivers and certificate holders, are better served by this order.

The TA, which is the agency that gets to decide whether the cost is built into the rate or broken out, has made that decision. It made that decision a long time ago. They are trying to unwind what the TA has the exclusive jurisdiction to do. They cannot do that.

Jay F. Palchikoff:

There is an elephant in the room that never seems to be addressed—what harm is going to be done to anybody if the no surcharge rule is not enforced in a particular setting. You hear just that is a contract and that is what you want. The answer to that question is the no surcharge rule, and all the antidiscrimination rules that the industry will speak about, make the credit card company, or the merchant, accept every card no matter how expensive it is to accept. You cannot even tell a customer that you would appreciate it if he paid by cash because there are a lot of fees involved in using a charge or debit card. They all work in concert to get that person to walk into the store, buy more things, and spend more money because there is a little fee on every little bit of it. That is why it is under constant antitrust attack both at the federal level and by attorneys general across the nation. It is an anti-competition issue, and there is no further justification for it.

To add to what Neal says, public agencies in their areas of regulation impact private contracts all the time. This is normal regulatory work, and the interest of the private party needs to yield to the public.

Chair Atkinson:

Is there anyone else wishing to be heard on A.B. 351? [There was no one.] We will close the hearing on A.B. 351. If there is anything to be worked out, it will need to be done before Friday.

Assemblywoman Carlton:

It is a philosophical difference. I do not believe there are any other amendments that could be done. This is it.

Assemblyman Atkinson:

We will bring it back.

Assemblyman Grady:

As an ex-banker, my question is, if they have gone to the TA, and the TA has said, "Do it," why are they here asking us to set up a rule that would break a contract that they have signed? If they want to do it, and the TA says they can do it, let them do it. Why do we have to pass a bill to change it?

Assemblywoman Kirkpatrick:

I would bet that they could then break the contract. I do not understand what the big deal is. We use credit cards all the time.

Assemblyman Grady:

They say they have been doing it for four years; what is the problem?

Chair Atkinson:

We will entertain a motion.

ASSEMBLYWOMAN KIRKPATRICK MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 351.

ASSEMBLYMAN ELLISON SECONDED THE MOTION.

Is there any discussion on the motion?

THE MOTION PASSED. (ASSEMBLYMAN GRADY VOTED NO.)

Assemblywoman Bustamante Adams:

I reserve the right to change my vote on the floor.

Chair Atkinson:

We will open the hearing on Assembly Bill 540.

Assembly Bill 540: Revises provisions governing the Nevada Life and Health Insurance Guaranty Association. (BDR 57-1089)

Michael Hackett, representing The Hartford Life Insurance Company:

For the record, The Hartford is a provider of supplemental retirement investment options for both state and local government deferred compensation plans. With me is Mr. Marty Bibb with the Retired Public Employees of Nevada (RPEN). We are here to present A.B. 540 on behalf of The Hartford because of the request we received through RPEN's lobbyist, Mr. Steve Watson, to see if legislation could be passed this session to do what is intended by A.B. 540. My partner, Mr. Scott Craigie, and I are the government relations consultants

for The Hartford, and Mr. Watson asked if we could facilitate this bill on behalf of RPEN, and we agreed.

The intent of A.B. 540 is to bring all governmental deferred plans that offer unallocated annuity investments to their participants under the Nevada Life and Health Insurance Guaranty Association. Many states have already done so, bringing in both public and private supplemental retirement plans. By bringing these investments under the state Guaranty Association, in the event that a deferred compensation provider of unallocated annuities becomes insolvent, a participant's investment is protected up to \$100,000.

If passed, A.B. 540 will not benefit any particular provider or would it benefit any particular participant group. Again, for the record, The Hartford has been a proud provider of deferred compensation plans at the state and local level for over 20 years. Assembly Bill 540 would allow that all unallocated annuities offered by any provider, for any governmental deferred compensation plan, now and in the future, would be brought under the state's Guaranty Association.

Similarly, all participants in a deferred compensation plan are afforded the same level of protection, whether that person is retired and no longer making contributions but drawing off his investments, or whether someone is an active participant in the plan and still building his account.

If passed, A.B. 540 should not in any way affect the activities of any deferred compensation committees and boards, or their executive directors and third-party investment consultants, in carrying out their fiduciary duties and administrative responsibilities and overseeing providers' investment options.

As I previously stated, the intent of A.B. 540 is to bring unallocated annuities provided by any provider in a governmental deferred compensation plan under the Nevada Life and Health Insurance Guaranty Association. Unfortunately, the bill as drafted did not reflect that, and it is specific strictly to the state deferred compensation plan. To that end, I have brought forth an amendment, which I hope achieves what was originally intended and captures all governmental deferred compensation plans and unallocated annuity investment options ([Exhibit T](#)).

Marty Bibb, representing Retired Public Employees of Nevada:

There are 6,000 active employees and 4,000 retired employees who are involved in the Nevada Deferred Compensation Committee. It is another way that they contribute into their retirement benefits in addition to their contributions into the Public Employees' Retirement System (PERS). It is an important program from that standpoint, and RPEN does support A.B. 540, as

Mr. Hackett described it, and the additional protections it will bring to the program through the Nevada Life and Health Insurance Guaranty Association. We also support the amendment to the bill, in as much as it would expand those protections to local government deferred compensation plans that serve others besides state employees. That also makes great sense.

I wish to make a note on behalf of Mr. Watson, who was a deputy director of the Legislative Counsel Bureau for many years and who was unable to be here today. As a former Chairman of the Deferred Compensation Committee, he has spoken to a couple of other former Chairs, and they thought it was important to bring this issue forward. They have talked to the current Chairman, and he supports it. Also, Dr. Jim Richardson from the Nevada System of Higher Education, specifically the Nevada Faculty Alliance, wanted to express his and his group's support for A.B. 540.

[The Chair turned the gavel over to Assemblywoman Kirkpatrick.]

Assemblyman Goedhart:

This \$100,000 threshold is similar to the guarantee for people's bank accounts which the FDIC has now raised to \$250,000. My concern is it is like the banks at the height of the mortgage loan debacle. They could sell their loans, and they were always covered by Freddie Mac (FMCC) and Fannie Mae (FNMA), so they were taking more risky loans. If the state is the backstop, people are going to look for the riskiest, highest rate of return annuity they can, because they know all of the risk is with the state and the taxpayer. You have to have certain standards in order to be an FDIC bank, and I do not know if we have a standard in the annuity field that would show that we will not go down the road of riskier investments.

Marty Bibb:

I am not the technical expert in this area, but it is our understanding that the guarantee portion of this affects only the guaranteed income fund portion of the Nevada Deferred Compensation Program (NDC). This is a lower rate of return, but it would not be a guaranty against the mutual fund portion of the NDC. If I understood Mr. Goedhart's observation correctly, that is where you could see some very large swings in terms of potential rate of return or loss. It was intended to be directed toward that most secure, low-income portion of the NDC.

Assemblyman Kite:

Is the Nevada Life and Health Insurance Guaranty Association a government entity?

Michael Hackett:

We have Mr. Louis Roggensack from the Nevada Life and Health Guaranty Association here, and I would defer that question to him.

Assemblyman Kite:

Can you answer whether that is a government entity or not?

Michael Hackett:

No.

Assemblywoman Carlton:

In the interest of full disclosure, I am married to a state employee, and he does have a deferred compensation program. In participating in this program, a certain amount of money comes out of his check every month and goes into this separate account. This is actually our money; it is not state monies—it is out of our paycheck. The concern I have is with the guaranty of up to just \$100,000. If you have a 30-year employee who has strived to reach his goal of \$200,000 and planned to leave the principal and withdraw just the interest—knowing when he begins to draw the principal he will have to pay taxes on it—that employee will not be fully protected. Is there a provision that would allow that employee to split the monies to make sure he is fully protected?

Michael Hackett:

Your assumptions are correct in terms of what the limit is. Again, I will let Mr. Roggensack speak to why that limit is set at \$100,000 and whether there has been any discussion by guaranty associations on the national level to increase that limit from \$100,000 to what they feel is appropriate.

Assemblywoman Carlton:

Everything else I went through, to make sure the Committee understood, was correct?

Michael Hackett:

Correct.

Acting Chair Kirkpatrick:

Are there any other questions? [There were none.] Is there anyone else here or in Las Vegas in support? [There was no one.]

Ron Dreher, representing Peace Officers Research Association of Nevada and Washoe County Public Attorneys Association:

We are in full support of A.B. 540 for the reasons stated by Mr. Bibb.

Acting Chair Kirkpatrick:

Is there anyone else in support of this bill? [There was no one.] Neutral?

Rex Reed, Chairman, Committee on Deferred Compensation for State Employees:

It was said earlier in support of the bill, that the Chairman of the Deferred Compensation Committee is in favor of this bill. As the Chairman, I am neutral. There is an easy explanation for the confusion—I just became the Chairman. The prior Chairman is not here and I have not had a chance to speak to him, but he may be the one in favor.

Tara Hagan, Executive Officer, Committee on Deferred Compensation for State Employees:

It is important to note that the plan's governing board was not consulted during the bill's drafting, nor was it made aware of it until a week ago, when staff was notified by the Division of Insurance. Therefore, the board has not had the opportunity to hold a public meeting and take a vote on support of or opposition to the bill.

I am here today to provide testimony regarding due diligence currently being conducted by the plan in monitoring the financial health of the vendors in the program ([Exhibit U](#)). The Nevada Deferred Compensation Program currently has one investment option—it is called a guaranteed investment contract (GIC)—that would be affected by passage of A.B. 540 should the issuing insurance company become insolvent. This one investment option represents approximately 40 percent of plan assets, or about \$235 million. Of 13,000 participants, about 5,800 participate or have monies in this investment option. It is important to also note that all other investment options in the plan are separate and distinct legal entities. That means they are insulated from parent company losses.

The governing board, in conjunction with the third-party investment consultant reviews all investment options in the plan on a quarterly basis. In terms of the due diligence for this guaranteed investment contract, we do, obviously, look at the credit ratings of the insurance company, the risk-based capital ratios of the insurance company, the invested assets, the adjusted capital and surplus, and the adjusted capital and surplus as a percentage of those invested assets. Those help the board in conjunction with the consultant to monitor the financial health of the providers in the plan. During the financial crisis, the board did establish what we call a credit rating floor for the insurance company ratings. The established floor allows for the potential removal of this guaranteed investment contract should the issuer's credit ratings fall to the lowest investment grade levels.

Assemblyman Goedhart:

What would prevent your board from setting a new floor as the bottom investment grade level? Would that be within your purview to do that, or do those changes have to be made through another, independently operated board?

Tara Hagan:

No. Are you speaking of the backstop the board has in place, which it is at the bottom investment grade level? They could certainly change that at any time based on staff or investment consultant recommendations.

Assemblywoman Bustamante Adams:

You commented that the one investment option which would be affected represents about 40 percent of the plan's assets. What did that equate to in dollars?

Tara Hagan:

Approximately \$235 million.

Acting Chair Kirkpatrick:

Are there any other questions? [There were none.] Did the gentleman in Las Vegas want to testify?

Brian Davie, Member, Committee on Deferred Compensation for State Employees:

We are not authorized to oppose or favor any bills, but I am here today to speak in reference to this bill as a member of the Deferred Compensation Committee. We are neutral on this proposal because we knew nothing about it until it was introduced a week ago. I looked it up and learned it was submitted as a bill draft request on February 15, 2011, which was three days before the last meeting of the Deferred Compensation Committee. At that time, even though we had been asking both of our providers—The Hartford and ING—if they had any bills that were to be proposed during this session, this was never brought up, and we were never briefed on it. It does raise some questions about why the policy making committee members for this program were not advised or consulted. Even after the bill was introduced, no one has contacted me or other committee members about the proposal.

There are questions about who pays for the insurance if the company does go bankrupt, and it applies to only one investment option in the program. I would ask if the company thinks it needs this protection; maybe the Deferred Compensation Committee needs to evaluate the viability of this investment option further.

Assemblywoman Carlton:

When I read the bill, I looked at it as another level of protection for those who were investing in deferred compensation. I had no idea they were not working with the Deferred Compensation Committee on this issue. Are there protections in place now for members who have money in deferred compensation? Would this proposal be an enhanced protection for those monies that people have worked so hard to set aside?

Brian Davie:

The protection that the committee provides is an investment consultant who looks at that investment option every quarter and looks at the results and the correct credit ratings of the two companies.

Assemblywoman Carlton:

But there is no guarantee that I, as a deferred compensation member, will not lose money. It can be \$130,000 one month and go down to \$100,000 the next. There are not guarantees in this. It is just monitoring, correct?

Rex Reed:

If you are in the NDC, you are subject to market risk, which means you are investing your money and putting it at risk as to what the market gives you as a return. It could be a positive return or a negative return.

Acting Chair Kirkpatrick:

Are there any other questions? [There were none.] Opposition? [There was no one.] Are there any final comments?

Michael Hackett:

For clarification on some of the questions that were raised, I have received some input. In terms of Mr. Kite's question regarding the Guaranty Association, our interpretation is that it is more of a quasi-governmental agency. Providing this type of protection for participants in any deferred compensation—not specific to the state plan, but applicable to every deferred compensation committee—is just an extra layer of protection for those committees. We look at this as being separate and distinct from the role of deferred compensation boards and committees, their executive directors, and the third-party consultants that they retain to oversee the investment options that they provide for their investments. Nothing we are trying to do with A.B. 540, to provide this extra level of protection, does anything to undermine or take away from those fiduciary or administrative responsibilities of these particular boards and committees.

Further, the Guaranty Association is not an invitation to gamble, as far as investments go. This is not a question of risky annuity investments or any kind of protection for that. There are other laws in statute that already cover those types of insurer investments.

We recognize the role that Tara Hagan and the members of those committees and boards have in terms of watching out for their members, and the mechanisms they have put in place to ensure the investments of the program's particular participants are doing the job. Basically, bringing these under the Guaranty Association Fund is a backup, just in case, and provides protection to holders of these types of policies and annuities.

Marty Bibb:

We are involved in this because we like to see as many protections as possible in those plans that serve public employees. The importance of deferred compensation cannot be overstated, because people have times when they cannot afford to invest, but when they can, they need to be protected.

In the testimony that Mr. Watson was planning to give, I see he indicates that because of some legislative timing concerns, and the need to get the bill draft request together, they did not have the opportunity to take the issue to the Deferred Compensation Committee or the Chairman.

Assemblyman Hardy:

You are stating that it is another layer of protection for the employee, but is this another layer of exposure to the state?

Marty Bibb:

I am not certain I have the technical background to answer that. Mr. Hackett identified the Guaranty Association's intent, and what it wishes to do, and that cost is typically borne by the companies themselves. Those who are more familiar legally with how that exactly works would be the best people to ask. The intent simply would be to try to protect the funds.

Acting Chair Kirkpatrick:

Did you want to add some technical information?

Michael Hackett:

As I understand, in the event of insolvency by a provider of a deferred compensation program or plan, or investment options under that plan, an assessment is made upon the other members of that Guaranty Association. That is the risk of this particular option and what would happen if a provider did become insolvent.

Acting Chair Kirkpatrick:

I will tell you, from my perspective, had you just gone to the Deferred Compensation Committee and to the new people in charge, a lot of this could have been resolved.

Louis Roggensack, Executive Director and Chairman of the Board, Nevada Life and Health Insurance Guaranty Association:

As to your question regarding the risk to the state, if the company goes insolvent we assess all the life insurance association members of the state, for that amount of claim that would not have been covered, up to \$100,000 apiece. That money is then collected by us and pays all the claims.

The insurance companies that have paid that assessment may deduct it from their premium tax over the next five years at 20 percent per year. Therefore, the state would be responsible for the entire amount. For example, in 2007, a company went insolvent, and we assessed \$10 million to pay health claims. It is in its third year, and so far the state has paid, because the insurance companies did not have to pay their premium tax—it is called a premium tax offset—of 20 percent of that \$10 million each year to the state. So, the bottom line is, whatever we assess the insurance companies the state will end up paying, because it will not collect that premium tax.

Acting Chair Kirkpatrick:

Are there any other questions? [There were none.] With that we are going to close the hearing on A.B. 540.

This meeting is adjourned [at 4:50 p.m.].

RESPECTFULLY SUBMITTED:

Sharon McCallen
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 13, 2011

Time of Meeting: 1:27 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 141	C	Marji Paslov Thomas	Work Session Document with Proposed Amendment
A.B. 267	D	Mari Paslov Thomas	Work Session Document with Proposed Amendment
A.B. 289	E	Marji Paslov Thomas	Work Session Document with Proposed Amendment
A.B. 292	F	Marji Paslov Thomas	Work Session Document with One Proposed Amendment
A.B. 331	G	Marji Paslov Thomas	Work Session Document
A.B. 363	H	Marji Paslov Thomas	Work Session Document with Proposed Amendments
A.B. 398	I	Marji Paslov Thomas	Work Session Document with Proposed Amendments
A.B. 433	J	Marji Paslov Thomas	Work Session Document with Proposed Amendment
A.B. 537	K	Marji Paslov Thomas	Work Session Document with Proposed Amendments
A.J.R. 6	L	Bob Hazlett	PowerPoint on I-11
A.J.R. 6	M	Jacob Snow	Photographs, December 2010 Traffic
A.J.R. 6	N	Jacob Snow	Photograph, Traffic Camera
A.J.R. 6	O	Jacob Snow	Photographs, Traffic Congestion
A.J.R. 6	P	Jacob Snow	Chart, Arizona Visitors
A.J.R. 6	Q	Jacob Snow	Chart, Economic Impacts

A.J.R. 6	R	Jacob Snow	Map, Boulder City Bypass
A.B. 351	S	Jay Palchikoff	Testimony and Proposed Amendment on behalf of the Taxicab Authority
A.B. 540	T	Michael Hackett	Proposed Amendment on behalf of The Hartford Life Insurance Company
A.B. 540	U	Tara Hagan	Printed Remarks