

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

**Seventy-Sixth Session
March 29, 2011**

The Committee on Transportation was called to order by Chair Marilyn Dondero Loop at 3:21 p.m. on Tuesday, March 29, 2011, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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:

Assemblywoman Marilyn Dondero Loop, Chair
Assemblyman Jason Frierson, Vice Chair
Assemblyman Kelvin Atkinson
Assemblywoman Teresa Benitez-Thompson
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblywoman Olivia Diaz
Assemblyman John Hambrick
Assemblyman Scott Hammond
Assemblyman Joseph M. Hogan
Assemblyman Randy Kirner
Assemblywoman Dina Neal
Assemblyman Mark Sherwood
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County Assembly District No. 9
Assemblyman Pat Hickey, Washoe County Assembly District No. 25

STAFF MEMBERS PRESENT:

Jennifer Ruedy, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Janel Davis, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

P. Michael Murphy, representing Clark County
Ed Gobel, Southwestern Regional Director, Chapel of the Four Chaplains;
and Director, Go West Institute
John Madole, Executive Director, Nevada Chapter, Associated General
Contractors of America
Rod Cooper, Branch Manager, Nevada Operations, Granite Construction
Incorporated
Gary Milliken, representing Las Vegas Chapter, Associated General
Contractors of America
Rob Bagley, General Superintendent, Q & D Construction Incorporated
Patrick T. Sanderson, representing Local 872, Laborers' International
Union of North America
Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director, Operations,
Department of Transportation
Bernard F. Carter, Private Citizen, Reno, Nevada
Jack Mallory, representing International Brotherhood of Teamsters and
Brotherhood of Locomotive Engineers and Trainmen
Greg Ferraro, representing Clark County
Dennis Johnson, Private Citizen, Carson City, Nevada

Chair Dondero Loop:

[Roll was called. Rules and protocol were stated.] We will hear two bills today, Assembly Bill 275 and Assembly Bill 384. We will have a work session on Assembly Bill 151. I will open the hearing on Assembly Bill 275.

Assembly Bill 275: Requires private contractors, under certain circumstances, to remove from freeways and highways devices for the temporary diversion of traffic. (BDR 35-555)

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

This bill arose out of frustration from driving around my district. Oftentimes, there are cones blocking off the right lane right before a stoplight; they sit there for months on end. There is never anyone working or a reason why the cones are there. No one bothers to remove the cones. In urban areas, it especially drives people crazy, and it inhibits traffic flow to have these cones sitting around for months while no work is done.

As a legislator, I thought it would be simple to make a law, fine the violators, and make the problem go away. The bill says when a project is done the private contractors have an hour to get the cones removed. If there is an extended period of time when no work will be completed, the cones should be removed. I am not sure how we can enforce it. It would be convenient if we had a 1-800 number to call and report the cones.

Chair Dondero Loop:

Are there any questions from the Committee?

Assemblyman Hammond:

I like the bill. I get tired of seeing cones around when work is not in progress. Sometimes I think the road looks fine to drive on if only they would remove the cones. I know you said the private contractors have to remove the cones within one hour after finishing work. Should they remove the cones if the road is actually passable at the end of every day, or do they remove them at the completion of the project? There are some days I wonder why they do not remove the cones. What is the intent?

Assemblyman Segerblom:

Ideally the private contractors would take them down daily. The reality is, for some reason, they seem to put the cones up during rush hour and the cones sit there with no one working, which does not make any sense. The cones should be removed at 4 p.m. and put back up the next morning. We are flexible, but it seems they go out of their way to inhibit traffic. We should be the drivers of this situation as opposed to what is convenient to them. I am sure the reason they do it is because it is the cheapest way, but we spend a lot of hours in our cars because of this situation; our time should be valuable too.

Assemblyman Hammond:

I have not had anyone come into my office and say this is a bad bill. Nobody has talked about it at all. Maybe someone has talked to you. Do you know how much this might increase the cost of a project?

Assemblyman Segerblom:

No one has been specific, but I know there are people here who will tell you the world will be destroyed if this bill passes.

Assemblyman Sherwood:

I see under the summary of the bill it says, "Requires private contractors, under certain circumstances, to remove from freeways and highways devices for the temporary diversion of traffic." Who would be excluded from this bill that would have those dastardly cones? I would hate to do a half measure. If we are going to do it, we should include everybody.

Assemblyman Segerblom:

The cities, counties, water districts, et cetera probably have cones as well. So this law, by definition, would not fine them, but maybe we could make it illegal and they would have to do public service.

Assemblyman Sherwood:

If the scope of the problem is 100 violators and 92 of them are not private contractors, then it seems that we are being unfair and we do not want to be unfair.

Assemblyman Segerblom:

I would agree. In Las Vegas there are a handful of primary companies that do this work with private contractors. I am sure the telephone and power companies do it too.

Chair Dondero Loop:

Thank you. Are there questions from the Committee?

Assemblyman Hambrick:

I have a comment. I like the bill, particularly the suspension aspect. After the first fine, the private contractor would realize it would be expensive to continue violating; it would prevent him from continuing a contract life. It has a unique aspect and I appreciate it.

Assemblyman Segerblom:

I am not wedded to the fine structure, but there have to be consequences. Everybody makes mistakes, but at some point, they are intentional. The problem is the private contractors are going to do what is cheaper for them, so we have to have a penalty so they do what we want them to do.

Chair Dondero Loop:

Are there any other questions?

Assemblyman Kirner:

I understand where you are trying to go with this bill, but I am thinking about where I live on Mt. Rose. They were building a roundabout so they put cones out, but it provided a safety measure so people did not start driving in the wrong direction. There were weeks at a time when no work was being done because of the weather. From a safety perspective, we need to have cones out for a while. What is your take on that?

Assemblyman Segerblom:

I agree, but that is a different situation. If the cones are there for safety, and construction stopped, the private contractor wants to prevent you from being in an unsafe area. The kind of situation I am talking about is if the weather is bad and they cannot work for a month, the cones are not serving a purpose. The private contractors leave the cones there for a month because it is cheaper, knowing they are not going to be back. They could pick them up or put them on the side of the road. It is frustrating when it is obvious the cones are not needed, but they are sitting in the road blocking traffic.

Assemblyman Kirner:

I understand what you are saying, but that is not what the bill says. The bill says every day the cones go up and come down.

Assemblyman Segerblom:

It is after the completion of the work. In other words, if there is a project in progress for a month, the cones can sit there for the whole month the project is in progress. If they are going to stop work for a month, they would need to remove the cones.

Assemblywoman Diaz:

Is this bill targeting highways and freeways, or does it include streets?

Assemblyman Segerblom:

The intent is streets, highways, and freeways.

Assemblywoman Diaz:

I did not see the street language in the bill. I was wondering if it was exclusive to highways and freeways.

Assemblyman Segerblom:

I apologize. I am not a transportation connoisseur, so I did not know there was a difference between a highway and a street. My intention would be for streets as well.

Assemblywoman Diaz:

Would we need to amend the language to also include streets?

Assemblyman Segerblom:

Yes, that is my intention.

Chair Dondero Loop:

Thank you. Are there any additional questions from the Committee? [There were none.] Is there anybody who would like to speak in support of this bill? Mr. Segerblom, would you like to go through the amendment?

Assemblyman Segerblom:

Clark County has submitted an amendment ([Exhibit C](#)). I have no opposition to it. Mr. Murphy is here to present the amendment.

P. Michael Murphy, representing Clark County:

Our amendment in section 4 of the bill is straightforward. During this process we are more than happy to not utilize contractors who have been barred as a result of not complying with this particular statute. The only thing we request is to be notified of who those barred contractors are. It would be onerous for us to try and figure out who has been barred and who has not. Our amendment says that the Department of Transportation shall "notify any public body for which the private contractor is disqualified from being awarded a contract for any public work." We consider that a friendly amendment.

Chair Dondero Loop:

Thank you. Are there any questions from the Committee? [There were none.] Is anyone in support of this bill?

**Ed Gobel, Southwestern Regional Director, Chapel of the Four Chaplains; and
Director, Go West Institute:**

This bill is a godsend. Everyone in Clark County appreciates this bill. There is a tremendous cost to leaving the barrels and cones out when there is no work. It is not just the inconvenience and profane language that occurs when sitting in traffic for no reason. The cost of the barrels and cones runs into the millions of dollars each year for the time in which construction does not occur and the barrels and cones are sitting on the street.

The only concern we have is that the bill should include all public thoroughfares, not just highways and freeways. I am sure it was a mere oversight, and it was meant to include all public thoroughfares. We think the bill should be changed to read, "two days prior to commencement of any construction work" as well as "two days afterward." The private contractors might need two days to pick

up all of the barrels and cones because some of the projects are quite significant and cover quite a bit of distance. We would also like it to read that the barrels and cones could not be placed more than two days in advance of a project because we have seen, in Las Vegas on Interstate 215 and a number of streets, barrels and cones placed six weeks prior to commencement of any construction. I am combining my testimony with that of my sister, Linda West Myers. We wanted to add our thoughts. Thank you for your time and indulgence.

Chair Dondero Loop:

Are there any questions from the Committee? [There were none.] Is anyone opposed to A.B. 275?

John Madole, Executive Director, Nevada Chapter, Associated General Contractors of America:

I would like to point out sometimes these laws have wonderful ideas, but there are unintended consequences that come with them. There are some terms in the bill that we will not know what they mean until regulations are adopted. For example, the language "extended period." We do not know what that is. If it rains for two days, is that an extended period? What is good cause? It might have to do with weather, or there could be extenuating circumstances. On page 3, it says, "may adopt such additional regulations as the Director determines to be necessary" We are regulated as it is. I would suggest, as we pile more and more of this on, we do not have enough money to fix the roads right now. We have a deficit of about \$5 million in this state, and passing a piece of legislation like this is very likely to increase the deficit substantially. We are opposed to the bill and ask that you not process it.

Assemblyman Hammond:

There is language in this bill that is not clear. In your mind, what would you consider an extended period?

John Madole:

Please do not misunderstand my statement. If this Committee attempted to define "extended period," you would be micromanaging even further because it is not any easy thing to determine right now. We do not know the definition. If you define this, we are going to miss something and then the Legislature goes home, and we are stuck in between sessions trying to fix it. I am saying this is an example of something that is very well intended. People who follow me will tell you there are already adequate regulations of enforcement that will force private contractors to pick up their cones. If there is a problem with that, there are other ways to address it rather than passing this legislation.

Assemblywoman Neal:

Mr. Madole, you said there are other ways to regulate this problem. If that is so, why do they continue to leave the cones on the road?

John Madole:

I am not a construction person; perhaps other people can answer the question better than I can. I think we are looking at isolated incidents. I am not saying it has never happened, but I drive through construction projects everyday, and I am not seeing a problem. Perhaps there is an isolated case. If so, we need to talk to the public agencies that are having this work done. I am told there is adequate language in the contracts to make the private contractors comply, and perhaps that is the solution. People who deal with this problem on a day-to-day basis could answer the question better than I can.

Chair Dondero Loop:

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

Rod Cooper, Branch Manager, Nevada Operations, Granite Construction Incorporated:

As this bill relates to traffic control devices and the safety of the traveling public, our concern in the industry and certainly in our company is to send our workers home at the end of each shift, safe and in the same condition they showed up at the beginning of the shift. We also want to provide free-flowing access for the traveling public.

I have read the proposed bill, and I believe it is full of ambiguities and subjectivity. It provides no consideration to the cost of the taxpayer in performing the daily cost of setting out and picking up traffic control devices for a construction project. Section 1, subsection 1 is very clear that private contractors have to pick up traffic control devices each and every day, within one hour after the shift ends. That is virtually impossible. I can appreciate the frustration people have in regards to traffic control devices being in the roadway for long periods of time. Some projects require traffic control devices to be in the roadway for a longer period of time due to the curing of concrete and asphalt, open cuts in the road a car can fall into, and a lot of safety considerations. Occasionally, lanes are closed. I have sat in traffic during construction projects and wondered why the cones and barrels are not picked up.

The bill is vague in providing a definition of events that trigger fines, possible debarment, and disqualification from bidding or being awarded subsequent projects. I question why this is a legislative matter and not a contract specification established by the department or the agency. Mr. Madole was

asked a question about what recourses there are currently for the removal of cones and barrels. The drafter of the bill made it sound as if the cones are supposed to be removed when the job is finished. The Nevada Department of Transportation (NDOT) specifies that the cones are required to be picked up within ten days after the project is complete.

As an employer in an industry where unemployment is at an all-time high, I find it disheartening that we are spending time finding additional ways to regulate a contractor versus finding ways to build and repair our highway system. That is the real way to increase employment. Picking up barrels and cones every day is not an effective way to increase employment. I have heard the word "cheap" used; the cost of this would be included in the bid, and if it is a state project, the cost would ultimately go back to the taxpayer. We experience short seasonal projects, so we need to be ready to go to work as soon as the sun comes up in the morning or sometimes during the night. When you consider the word "private contractor," does it mean a publically traded contractor does not have pick up cones? There are a lot of ambiguities, and that is one of them.

Chair Dondero Loop:

Thank you. Are there any questions from the Committee?

Assemblyman Hammond:

I agree that there are a lot of ambiguities in this bill. At the same time, you also said it clearly states that cones and barrels must be picked up every day. It is funny because the first question I asked Mr. Segerblom was regarding when the cones and barrels needed to be picked up because I could not find where it was clearly stated. You can understand this bill was brought forward out of frustration. In urban, congested areas people driving around feel these barrels are left out in the roadways for no reason at all. Where did you see in the bill it stated clearly every day?

Rod Cooper:

In section 1 it says ". . . the contract must include a provision requiring the private contractor to remove from the freeway or highway any device for the temporary diversion of traffic that the private contractor has placed thereon, within 1 hour after" Then it lists several items including when the maintenance is completed. I used the word "clearly" and I apologize for that.

Assemblyman Hammond:

It goes back to the other thing you said. We need to give language to this bill before we set it in stone. I do not know if anything is clear right now.

Rod Cooper:

That is for certain.

Assemblywoman Benitez-Thompson:

In your testimony you mentioned this could potentially be resolved through contractor specifications. I am not familiar with the contracting process. Can you speak more about what they are, and why you think they would be a good potential avenue?

Rod Cooper:

A contract is a contract. If you bid a project and the contract states certain rules that must be followed and you sign that contract, then you must comply. I believe it could be handled through contractual matters versus a legislative, regulatory matter.

Chair Dondero Loop:

Thank you. Are there any other questions from the Committee? [There were none.]

Gary Milliken, representing Las Vegas Chapter, Associated General Contractors of America:

We have two main concerns with this bill. The first concern is safety, which has come up several times. Just because cones are in the roadway and no construction is going on, there are still many times when there could be obstructions alongside the road. If there is a crane involved, there must be a safety zone. Even though you might drive by a lane that is closed off and you see no construction, it has to be considered.

The second concern is the confusion of wording in the bill. I agree with Assemblyman Hammond in that section 1 it says, ". . . within 1 hour after . . . The construction, reconstruction, repair, improvement or maintenance is completed." Does this mean at the end of the entire contract? When is the completion of a contract? Is it when the punch list is done and NDOT has signed off on it? What if the private contractor comes back for testing? There are a lot of questions, and we are confused about what the word "completion" means.

Chair Dondero Loop:

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

Rob Bagley, General Superintendent, Q & D Construction Incorporated:

One thing we need to talk about is public safety. When our construction company enters into a contract with any entity for road construction or road

rehab in live traffic, the number one concern is public safety. The next concern is the safety of our workers and the people we put on the road. When I left a project we are currently working on with NDOT, I was on Interstate 80, west of Wadsworth, where the traffic speed limits are 70 miles per hour. We had not put our traffic control devices up yet because we are not allowed to take a live lane during the day, but we have to do preliminary work in the medians. While I was standing in the median, cars were driving by at 70 and 75 miles per hour. It is nerve-racking to say the least.

When we put barrels and cones on the road, we put them up for public safety, as well as the safety of our workers and the subcontractors we have on site. If cones and barrels are on the road for extended periods of time, there is a good reason for it. In most cases, we do not want barrels on the road any longer than you do. Last year, we did a project on Pyramid Way in north Sparks. It is one of the busiest thoroughfares in the entire region. We had concrete to cure in the lanes in different areas of the roadway. It was a seven-day cure, and our cones had to stay in place to keep traffic off the concrete as it cured, and there was nobody on the job site. It may seem that there is nobody working, but there are things going on at the job site that are not always seen by the public eye.

Nevada Department of Transportation's special provisions address the timely removal of cones and barrels from projects as work or phases are completed. As sequencing is done, they are to be removed. I want to echo Rod Cooper in saying that they should enforce the special provisions and hopefully the problem will go away. All the city entities we contract with—Reno, Sparks, Carson City—and all of the county entities have provisions in their contract to deal with timely removal and placement of barrels and cones. This is not a legislative issue as much as it is a "boots on the ground" issue with the different entities and enforcing what is already in place through contracts and special provisions. Even in the NDOT *Standard Specifications and Plans for Road and Bridge Construction*, which is the bible we go by for NDOT work, these issues are addressed and can be enforced.

We mostly work in northern Nevada. The weather affects road construction, but generally, we are not on the roads when there is bad weather. We cannot do our work in bad weather; therefore, we generally do not have cones and barrels out. If there is bad weather for a short period of time, we are back on the job site as soon as the sun comes out.

Chair Dondero Loop:

When I drive by men working on the side of the road, I think it is like Russian roulette; it is just a matter of time, and it makes me crazy. Are there any

questions from the Committee? [There were none.] Does anyone want to testify as neutral on Assembly Bill 275?

Patrick T. Sanderson, representing Local 872, Laborers' International Union of North America:

I am neutral for a simple reason: safety is predominant. Our people get killed on the roads every single year, whether it is a traffic control worker, a flag woman, or just a worker. I do not like the bill as it is, but it has merits for other reasons. In the rural areas, NDOT will put barrels out for seven months at a time. Anyone who is a local knows on Interstate 80, U.S. Highway 50, and U.S. Highway 95 there are sometimes days at a time where no one is seen working on the job site. It is not because of curing concrete; it is because communication was lost between NDOT and the contractor. Pretty soon people are driving 80 or 90 miles per hour because they are late for work, they slept in, and they have to get to their job. Out of the clear blue skies a crew is working, and they did not realize. There are times when barrels should be pulled to the side, but it is the job of NDOT, the Regional Transportation Commission (RTC), the cities, the counties, and the entities who bid the job to keep on top of the contractors and tell them, for safety's sake, we need to get rid of the cones and barrels even if they are pulled off to the side. This takes common sense, and there are very few people with common sense in this world, and it is hard to get entities to work together.

I have worked for both Granite Construction Incorporated and Q & D Construction Incorporated. They are both terrific contractors, and I understand what they are up against. There is no way in the world cones and barrels can be removed within one hour. If it was a 12-hour or 24-hour period of time and the entities said they would not be allowed back out on the job site for two, three, or four weeks, then the cones and barrels should be pulled off to the side. I enjoyed working overtime; that is exactly what would happen if the barrels and cones had to be removed within one hour each day. It would make money for the working person but not for RTC or the contractor. This is a very intelligent Committee that will get the parties together and try to work something out. The safety of the people working on highway projects is important. Traffic does not slow down where the barrels are left on the roads, and when they do not see them, people get killed and that is the reason the barrels are out there: to prevent injury and death. We need to work together to protect the residents of Nevada.

Chair Dondero Loop:

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

Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director, Operations, Department of Transportation:

In reviewing this bill and listening to the testimony today, I would like to point out that this bill was directed towards NDOT. The way I read it is it would only be relevant on roads and highways that are under NDOT's jurisdiction. Across the state, that amounts to a fairly small portion of all the paved roads. We strive to reach a reasonable compromise between workers' safety, protecting the work zone, and providing warning and safety for the motorists who have to go through these areas all the time.

Sometimes it seems as if we go overboard with traffic control devices, but we follow the *Manual on Uniform Traffic Control Devices*, which sets standards for all workers across the United States. Occasionally there are errors that are made, but we try to err on the side of safety, so it may seem like we have some extra traffic control devices on the roads.

One thing that came up today in the testimony was that it looks like there is no work activity underway at some job sites. It was mentioned that sometimes we have to wait for concrete to cure, materials and supplies to be delivered, et cetera. To the motorists who travel through the work zone at the same time every day, it may seem that nothing is happening, but there are meaningful work activities underway.

There has been some discussion that specifications already exist; that is true. We have specifications that are a part of every contract we issue. In those specifications we have defined the extended period of time when traffic control devices need to be picked up as five days or during special events. We have liquidated damages assessed to noncompliance, but there is some judgment that has to be applied by our resident engineers to see if the work needs to be protected or if we have to protect motorists. For that reason, I would hope for an exception in the bill if it is necessary to leave the traffic control devices up to protect the work or the motorists in case there is unfinished work that needs to be done.

Chair Dondero Loop:

Thank you. Are there questions from the Committee? [There were none.] Is anyone else neutral? [There was no one.] Is anyone else wishing to testify on A.B. 275? Seeing no one, I will close the hearing on A.B. 275. I will open the hearing on Assembly Bill 384.

Assembly Bill 384: Repeals provisions governing certain duties of engineers who drive locomotives. (BDR 58-978)

Assemblyman Pat Hickey, Washoe County Assembly District No. 25:

For many of us, the sounds of train horns are quaint and hearken us back to much simpler times. I happen to live in such a neighborhood in southwest Reno where we hear train horns, but they are far enough away to make them seem that way. On the other hand, there are persons along the Truckee River corridor who live in communities that are 50 to 100 feet away from train tracks that go east and west along the Interstate 80 corridor.

This piece of legislation enables legislation that would allow train whistles not to be blown unless quiet zones are created. Online you can see the "Quiet Zone Feasibility Study" ([Exhibit D](#)) done by the City of Reno, and Washoe County had similar hearings in anticipation of possibly setting up quiet zones where there would be rail-grade crossings and safety crossings at that time. Testimony from railroad officials allowed the City of Reno to discover a law that requires train conductors and engineers to signal whenever they go by certain areas. If and when the county ever creates these quiet zones under regulations, this would be taken off the books and allow them to do that. You will hear testimony from some conductors that this is a safety matter, and they will continue to blow their whistles and should until these quiet safety zones are created.

Bernard F. Carter, Private Citizen, Reno, Nevada:

I live in Assemblyman Hickey's district. As a matter of fact, Assemblyman Hickey and I ran against each other in a primary election, and that is what precipitated this coming out about the train horns that go through our district on the railroad. I have attended several meetings, most of them held by Washoe County, some of them by the City of Reno; every single one of them was standing room only. It is important to know we could fill this room today with those people. Each one of the attendees had anecdotal information about what happened to them specifically. The City of Reno addressed this with their "Quiet Zone Feasibility Study" ([Exhibit D](#)) that was done in 2007, and Washoe County has addressed this issue as well.

The hurdle that keeps coming back is a 1911 law that provides it is a misdemeanor for a locomotive engineer not to blow his whistle within 80 rods of the crossing intersection; 80 rods is approximately a quarter of a mile. The Nevada statute does not provide for quiet zones. Quiet zones came into effect in the 73rd Legislative Session (2005) as put forth by the *Code of Federal Regulations* (CFR).

We are requesting *Nevada Revised Statutes* (NRS) 705.430, which was passed in 1911, be eliminated so we have the opportunity to work with our communities, city council, county commissioners, and the other people in our

community to establish quiet zones and meet the criteria of the CFR. If we meet the criteria, it will eliminate the horn blowing in our community.

As indicated in some of the information I have provided ([Exhibit E](#)), the volume of trains passing through the western part of Reno is expected to be up to 40 a day. They are going to go all the way through Reno, but western Reno is the part that will be affected. All 40 trains will blow their whistle four times—two long blows, a short blow, and another long blow. At 40 miles per hour, which is the regulation time period in that portion of the city, it takes roughly 24 seconds for the engineer because he has to start a quarter mile before the intersection and go through the intersection blowing the whistle. There are 17 rail crossings with this effect in our community. That amounts to about four hours a day of whistle blowing in that portion of our community.

The other thing we need to consider, and one of the reasons I think this is important, is the decibel reading for the horns is between 96 and 110 decibels; these are set up by the U.S. Department of Transportation Federal Railroad Administration (FRA). I brought an example of what a 112 decibel horn is like, but I do not think you want me to open it. [Held up horn.] It is very shrill and loud. I would ask you to cover your ears, but the building would still empty because it is so loud.

The League for the Hard of Hearing indicated that a decibel reading of 115 for 15 minutes a day creates harm. There are four parks within a quarter of a mile of the railway, which will be part of the consideration when we evaluate how we can provide for the quiet zones and eliminate the medical hardship on our children who play in the parks. Keep in mind, unless this NRS section is eliminated, we have no possibility. All we are asking is to eliminate NRS 705.430 and allow us to work with our communities in establishing quiet zones.

Chair Dondero Loop:

Thank you. Are there any questions from the Committee?

Assemblyman Frierson:

By repealing the NRS section, does it take away the ability for Nevada to address, regulate, or provide citations when conductors do not blow their horn appropriately?

Bernard Carter:

The FRA provides specific penalties for those in the CFR, which was established in 2005.

Assemblyman Frierson:

To reiterate my question, I do not know if we will have the ability to regulate locally. I do not often see federal agents or officers around the train stations or train crossings. Does the existence of a state law give us the ability to regulate it locally?

Bernard Carter:

It does; the FRA has people who enforce those laws very stringently. I have seen them in our community monitoring the train whistles and trains on a regular basis. They are responsible for the arms that come down to stop the traffic; it is all part of the railway, and it is controlled by the FRA. That is where the safeguards and the liability for the railroads come in. All of those will protect and prevent any hazards that eliminate the 1911 regulation.

Assemblyman Frierson:

It seems that the federal regulations would preempt state law anyway. Would we be able to simply, if even necessary, say "except for federally established quiet zones"? That way we still have the ability to issue a citation by our state law enforcement agencies.

Bernard Carter:

The federal law does preempt the state law with the exception in the regulation. It mentions several times that this is part of the regulation with the exception of state laws that do pertain and supersede that portion of the regulation. They allow for the state to supersede, and that is where we ran into difficulties in committee meetings with Washoe County and the City of Reno because we cannot go over the laws and we cannot eliminate them. We cannot create quiet zones with the federal guidelines.

Chair Dondero Loop:

Thank you. Are there additional questions from the Committee? [There were none.] Is anyone else in support of A.B. 384? [There was no one.] Is anyone opposed to A.B. 384?

Jack Mallory, representing International Brotherhood of Teamsters and Brotherhood of Locomotive Engineers and Trainmen:

I was just brought up to speed on this issue a couple of hours ago, but I can state that the Brotherhood of Locomotive Engineers and Trainmen is opposed to removing NRS 705.430 because of safety issues. On December 31, 2010, the FRA released a report that showed highway rail crossing collisions were responsible for 229 fatalities, which is up 12.3 percent from 2009. Trespassing caused 406 fatalities, which is up 12.2 percent from 2009. Our main concern with this bill, relative to quiet zones in particular, is they would relieve some of

the noise in Reno from railroad traffic, but the cost of human life is a definite possibility. There are restrictions that go along with establishing quiet zones, and there are some concerns as well because they do not necessarily abate noise; they just change the type of noise heard. Ultimately, this is a safety issue. However, we would be more than happy to work with the bill sponsor and interested parties on trying to reach an amicable solution.

Chair Dondero Loop:

Thank you. Are there questions from the Committee?

Assemblywoman Benitez-Thompson:

Can you tell me about the history of why we have this law? I know we heard testimony and it is an old law, but I would be interested in knowing more about the specification of 80 rods. Do you know why it is 80 rods?

Jack Mallory:

I am a painter, so I am not entirely familiar with locomotive issues. However, I did provide the Committee a fact sheet ([Exhibit F](#)) from the FRA regarding train horns. From reviewing this sheet, it appears that prior to the early 1990s there was not a lot of regulation by the FRA, and the issues were largely addressed by the states.

Chair Dondero Loop:

Are there additional questions from the Committee?

Assemblyman Hogan:

I am struck by the similarity of the two bills we have mentioned. They both try to accomplish getting rid of irritating problems. Most of the public would agree the noise problem and the orange cones and barrels problem are very irritating. It seems to me both problems are able to be addressed with an overreaching law that perhaps goes too far only by the agency who has the enforcement responsibility. It seems there might be some value in a serious look at the railroad case regarding the nature of the noise problem, how it is caused, and if there are other ways of creating a signal or a warning that would not be as irritating. Maybe there are some other ways to manage the highway problems with respect to getting traffic control devices off the road as soon as possible. We are having a problem finding a focus on who are in a position to do that and by what means they could possibly do it. I do not have a magic answer, but I do think an investigation of the nature of the sound might lead to finding that somewhere else, someone else has found a much less piercing noise that is yet noticeable and would still give warning.

Similarly, I suspect among other cities they might have found a fairly efficient and not costly way of removing traffic control devices. Getting research done and getting a handle on it will somewhat relieve the problem of sound or the irritation of traffic control devices without giving up all the safety we are trying to achieve. We need to find a way to change what is bothering people without necessarily requiring the industry to change all of its practices. In terms of what they are trying to accomplish, whether it is train transportation or a building project that needs to go forward, it needs to be done efficiently at a reasonable cost for the benefit of the taxpayers. I anticipate we might make more progress looking at exactly what is bothering people in these two situations and looking for a way to relieve the irritation rather than reorganizing the entire industry.

Assemblyman Hambrick:

The Committee received material, and I am looking at [Exhibit D](#). On page 1, it reads, “. . . where safety measures can be installed to fully compensate for the absence of the warning provided by the horn.” It goes on to describe the quiet zones, et cetera. It appears to me that there are already provisions which could be utilized and should satisfy the safety issue. It appears to me the neighborhood could use the statute to suggest that the City of Reno could have a quiet zone in using their term “compensate” and increase the safety factor. Safety is an issue. I lived in a small community in Minnesota, and we could hear the train horns in the distance. It was kind of neat, but I can imagine when someone lives a block away, it is entirely different. Is there some way we can have a compromise? At some point these peoples’ lives are disrupted, and we just have to affect that.

Assemblywoman Benitez-Thompson:

I am looking at the map on page 3. You are close to my district, so I absolutely sympathize with the nonstop trains. I am concerned about the disconnect, and I know this has been talked about with the City of Reno and there might have been conversations at the local level. If we remove the laws about using the horns as they are written right now and the cities and counties do not have the money to put in the other provisions to compensate for the safety part, then we are leaving people vulnerable. I would like to see the two come together somehow where we would have assurances and the other safety measures. The funding needs to be put into place if this law was repealed; I do not want to have a gap. If you have people who want to address this, I would appreciate it.

Greg Ferraro, representing Clark County:

I would like to clarify a couple points. The Legislative Counsel’s Digest, lines 10 through 12, should make things clear for you. The federal government has

jurisdiction for railroads. The law, which has been on the books for 90 years, is, in effect, unnecessary because the federal government sets the rules for the railroads. If you remove the statute, jurisdiction does not disappear. What you have done is eliminated dual jurisdiction. This is also contemplated by the FRA in the first paragraph of the Legislative Counsel's Digest, which says it sets forth the ability for quiet zones to be created.

As a practical matter the statute is limiting or precluding quiet zones from being created. This is easy to recognize if the antiquated statute is removed; the federal government's jurisdictions are unchanged, they allow for and set forth the rules to create quiet zones, and this bill would allow quiet zones to be created. In the example Mr. Carter used, there are 17 crossings in a short distance; not all of them will qualify for a quiet zone. Some crossings, pursuant to concerns about health and safety, may still require the whistle to be blown. This is not proposing to eliminate whistle blowing. It is proposing to recognize where quiet zones should and should not be in place.

Chair Dondero Loop:

Thank you. Are there any questions from the Committee? Mr. Mallory, did you have something you wanted to follow up with?

Jack Mallory:

Yes, there were several questions in the form of statements which I would like to address. We understand there are a number of different protections that are offered along with quiet zones, but at the same time, the existing statute provides for a greater requirement when it comes to the actual sounding of a horn than what is required currently by the FRA, as I read these documents. This standard is applicable, and there is value in this standard in other parts of the state. I understand the concerns about this matter that have been voiced by Assemblyman Hickey, his constituents, and other people, and I fully appreciate them. As I have stated before, opponents to the bill are more than willing to work with the bill's sponsor to come up with a reasonable compromise that allows their issues to specifically be addressed and still maintain the highest level of safety, which in this case is provided by current statute.

Chair Dondero Loop:

Thank you. Are there any questions for Mr. Mallory from the Committee? [There were none.]

Dennis Johnson, Private Citizen, Carson City, Nevada:

I object to the bill the way it is written. The reason is very simple. On December 10, 2009, I got a phone call that every parent fears. My daughter

was killed by a train in Chicago, Illinois, which has a quiet zone. With all due respect to Assemblyman Hickey, I do not see anything in the bill the way it is written about the effect being removed as quiet zones are created. I have been working with the Illinois Commerce Commission and the Illinois Operation Lifesaver since that time. I have been in constant contact with them since the accident, doing my small part to ensure that rail safety, especially where vehicles or pedestrians are concerned, is not eliminated. This bill would accomplish that.

I am sorry that Assemblyman Hickey's constituents have to listen to train horns. Those trains have been there for 130 or 140 years. In my working life I have worked on train projects, both regular and even the ReTRAC project in Reno. I know about the trains, noise, and dangers; the dangers are there. I would hope not one person sitting on this Committee has to go through what I went through. I did not even have a child to bury because of the manner in which she was killed. I could have brought in paperwork to back up my opinions, but it would have been the coroner's report, and I do not think anybody would have been able to finish reading it. If safety requirements for blowing horns are going to be eliminated, make it very clear that only after all the supplemental safety measures have been established, and are in place and functioning, can quiet zones be created. This bill does not say anything about what happens after quiet zones are created.

Chair Dondero Loop:

I am sorry for your loss; I know that was hard. Are there any questions or comments from the Committee? [There were none.] Is anyone else opposed? [There was no one.] I will close the hearing on A.B. 384, and we will hold it for a future work session.

[Assemblyman Segerblom submitted a PowerPoint presentation on Assembly Bill 275 ([Exhibit G](#)), and Chair Dondero Loop asked it be included as an exhibit.]

We will now start our work session. Our Committee Policy Analyst will take us through the work session document ([Exhibit H](#)). We will begin with Assembly Bill 151.

Assembly Bill 151: Makes various changes concerning the use of a cellular telephone or other handheld wireless communications device while operating a motor vehicle. (BDR 43-12)

Jennifer Ruedy, Committee Policy Analyst:

Assembly Bill 151 was heard on March 8, 2011. It prohibits a person from using his cell phone or other handheld wireless communications device to engage in nonvoice communication with another person by writing, reading, or sending data messages while operating a motor vehicle. [Continued to read from ([Exhibit H](#)).]

There is a summary of the penalties as currently written in the bill. There were a lot of people who came forward and testified at the previous hearing. There were many amendments presented. The bill sponsor has provided a mock-up and proposed amendment for Assembly Bill 151. Within the work session document ([Exhibit H](#)), there is a page titled "Proposed Amendment for Assembly Bill 151 by Assemblyman Atkinson."

I would like to walk through the proposed amendment by the bill sponsor. There were two bills that were heard on March 8; one was Assemblyman Munford's bill. The first amendment proposes to amend the bill to add Assemblyman Munford as a cosponsor of the bill. Mr. Munford testified he was in agreement to doing that. The second proposed conceptual amendment is to amend the bill to delete section 1 of the bill, which removes the provision revoking a person's driver's license for three years if that person has been convicted of a felony for using a cellular phone to text while operating a motor vehicle. In the mock-up a lot of text is removed from pages 1, 2, and 3. Proposed conceptual amendment number three amends the bill to prohibit a person from using a cellular telephone for voice communications unless the device is used with an accessory which allows the person to communicate without using his or her hands, with certain limited exceptions. This is found on page 3 of the mock-up in section 2, subsection 1, paragraph (c), and it is the exact language that was taken out of Assemblyman Munford's bill in section 2, subsection 1, paragraph (b) of Assembly Bill 173.

Proposed conceptual amendment number four is to amend the bill or replace "law enforcement officer" with "any person designated by a sheriff, chief of police, or the Director of the Nevada Department of Public Safety acting within the scope of his or her assignment." This was proposed by A. J. Delap, representing the Las Vegas Metropolitan Police Department and the Nevada Sheriffs' and Chiefs' Association. This is in the mock-up on page 3. Amendment number five amends the bill to exclude self-driving automobiles, which was proposed by David Goldwater, representing Google. It is at the bottom of page 3 in the mock-up. Conceptual amendment number six amends the bill to reduce the fines for violations and allow law enforcement, through 2011, to issue a warning for such violations. This is at the top of page 4 of the mock-up. Amendment number seven amends the bill to add an exemption for

persons using radios and handheld devices in utility work vehicles that are regulated by the State of Nevada, which was proposed by Judy Stokey, representing NV Energy. That is the last amendment you will see in the mock-up on page 4.

Chair Dondero Loop:

Thank you. Does the Committee have any questions?

Assemblyman Hambrick:

Unfortunately, I was not here on March 8. The safety of our children is paramount and this bill seems to address that, but would the amendments have an effect on the fiscal side?

Chair Dondero Loop:

This is a policy committee. This bill will be referred to the Assembly Committee on Ways and Means on the floor if there are fiscal concerns. Are there any other questions or concerns?

Assemblyman Kirner:

This is one of five bills that have to do with texting and the use of cell phones. In the follow-up to this session, I received a comparison. We are acting on one bill at a time, and I am wondering if it would make any sense at all to be looking at all five bills at once and pick the one that makes most sense to the Committee.

Chair Dondero Loop:

We are combining two bills.

Assemblyman Kirner:

Which two bills?

Chair Dondero Loop:

We are combining Assembly Bill 173 and Assembly Bill 151. Assembly Bill 173 was Mr. Munford's bill, and when he presented it, he asked that it be amended into Mr. Atkinson's bill. We are combining two bills at this time.

Assemblyman Kirner:

We have not heard the other three?

Chair Dondero Loop:

The other three are Senate bills. That is why we have not heard those.

Assemblyman Sherwood:

Is this discussion about what amendments we like?

Chair Dondero Loop:

No, that is not what we are doing; we are hearing Assembly Bill 151. The bills have already been put together, and we will hear the Senate bills when they come to our Committee.

Assemblyman Sherwood:

No, I mean Assembly Bill 151 with the provisions.

Chair Dondero Loop:

Do you mean all the amendments?

Assemblyman Sherwood:

Yes.

Chair Dondero Loop:

These are proposed conceptual amendments, and when a member makes the motion, that person will decide.

Assemblyman Sherwood:

I do not want to be premature making a motion, but the thing I liked about this bill was that Assemblywoman Smith made it forceful—this is about texting. Texting is actually worse than being intoxicated, which is a powerful statement. I enjoyed the clarity, and if we proceed with this bill, I am not comfortable with amendment number three. The scope of this would become all inclusive for everything; just based on the testimony we heard, we saw how dangerous texting and driving is. The two amendments that were important to law enforcement were amendments number two and six, which did not want to be overly punitive with people. After I spoke with one of the witnesses, the father of the person who died, I would support this if we could make it a secondary offense. That would be my concern; if we do this, we would include amendments number two and six and exclude amendment number three. I do not know if it explicitly says it or not, but I would be comfortable if it was a secondary offense, so it gives the power of law but it does not open up the issues of primary offense.

Assemblyman Frierson:

I wanted to note it appears that the sponsors of this bill have reviewed the proposed amendments and put a lot of thought into the ones they thought were consistent with the intent. There are a lot of issues, but that is why we had the hearing. Today, it appears that the sponsor of A.B. 151 has reviewed all of the

amendments and come up with the ones he believes are consistent with the intent of his bill, and I intend on supporting an amend and do pass on the bill as Mr. Atkinson has included of all the possible amendments.

Chair Dondero Loop:

Are you making a motion?

Assemblyman Frierson:

We can still have discussion.

Assemblyman Hammond:

I just wanted to point out before we have a motion and vote, I mulled this bill over and over again. I understand the intent and safety of both children and adults. I think it is horrible people are out there putting other people's lives in jeopardy by texting. I still have a lot of problems with the intent. The intent is to clean up distracted driving, and making texting or talking on the phone illegal is not going to clean up the entire problem of distracted driving.

We already have a law on the books that says if you are a distracted driver and cause an accident or damage, you can be penalized. I know testifiers talked about how dangerous texting was; it was very compelling when they said it was as dangerous as drunk driving. However, they did note anytime you take your eyes off the road, it only takes two or three seconds, and you cannot brake in time to avoid accidents. The same thing can be said for when you are eating food, and you drop a French fry on the floor and go to pick it up; or your kid threw a toy on the floor, and you are trying to hand it back to him to stop him from crying; or to get change for the toll booth. Anytime you take your eyes off the road, it is dangerous. I think education is key. We need to make sure to tell everyone not to drive distracted and not sit here and point out one thing because a year from now we are going to have to talk about the next item on the list that has the highest number of accidents because people are driving distracted. Having said my peace, I will let you propose your motion.

Assemblyman Atkinson:

I do not have anything to say. We discussed all of this at the hearing; I am not sure what parts everyone does not like. I heard from Mr. Sherwood; I know what parts he does not like. I am not sure what part Mr. Hammond does not like. It sounds like he does not like it all together. We are having a hearing again, and I am not sure why.

Assemblyman Kirner:

I think the author of this bill has made a serious attempt to moderate his position to match some of the testimony. While I recognize there may be laws

already about inattention, I think it is important given the explosion of cell phones and the fact that you can use a cell phone to do everything. I think it is worthwhile to put it in the NRS. I would support the author of the bill.

Chair Dondero Loop:

I would like to entertain a motion.

ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 151 WITH THE AMENDMENTS PREPARED BY
ASSEMBLYMAN ATKINSON.

ASSEMBLYWOMAN BENITEZ-THOMPSON SECONDED THE
MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMMOND,
SHERWOOD, AND WOODBURY VOTED NO.)

Mr. Atkinson will handle the floor statement. Is there any public comment?
[There was none.] Are there any comments from the members? [There were
none.] We are adjourned [at 4:47 p.m.].

RESPECTFULLY SUBMITTED:

Janel Davis
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn Dondero Loop, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: March 29, 2011

Time of Meeting: 3:21 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 275	C	Michael Murphy	Proposed Amendment
A.B. 384	D	Assemblyman Hickey	Feasibility Study
A.B. 384	E	Bernard Carter	Testimony
A.B. 384	F	Jack Mallory	Fact Sheet
A.B. 275	G	Assemblyman Segerblom	PowerPoint Presentation
A.B. 151	H	Jennifer Ruedy	Work Session Document