

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-sixth Session
May 10, 2011**

The Senate Committee on Transportation was called to order by Chair Shirley A. Breeden at 5:19 p.m. on Tuesday, May 10, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Shirley A. Breeden, Chair
Senator Michael A. Schneider, Vice Chair
Senator John J. Lee
Senator Mark A. Manendo
Senator Dean A. Rhoads
Senator Mike McGinness

COMMITTEE MEMBERS ABSENT:

Senator Elizabeth Halseth (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblyman Pat Hickey, Assembly District No. 25
Assemblywoman Melissa Woodbury, Assembly District No. 23

STAFF MEMBERS PRESENT:

Kelly Gregory, Policy Analyst
Bruce Daines, Counsel
Laura Adler, Committee Secretary

OTHERS PRESENT:

Carole Vilardo, President, Nevada Taxpayers Association

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Steve Holloway, Executive Vice President, Associated General Contractors
William Hoffman, Assistant Director, Engineering, Nevada Department of Transportation
Russell Rowe, American Council of Engineering Companies of Nevada
Ryan Bauman, Nevada Contractors Association
Jack Mallory, International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council; Brotherhood of Locomotive Engineers and Trainmen
Richard J. Nelson, P.E., F.A.S.C.E., Assistant Director, Operations, Nevada Department of Transportation
Bernard F. Carter, Dacole Company
Mimi Premo, Student of Transportation
Neal Tomlinson, Regulatory Counsel, Frias Holding Company
Jay F. Palchikoff, Frias Holding Company
Michael Hillerby, MasterCard Worldwide
Chris MacKenzie, American Express
Charles Harvey, Administrator, Taxicab Authority, Department of Business and Industry
Kelly Kuzik, Taxicab Authority, Department of Business and Industry
Andrew J. MacKay, Chair, Nevada Transportation Authority, Department of Business and Industry

CHAIR BREEDEN:

We will open the hearing on Assembly Bill (A.B.) 212.

ASSEMBLY BILL 212 (1st Reprint): Revises provisions relating to design-build contracts entered into by the Department of Transportation. (BDR 35-851)

ASSEMBLYWOMAN MELISSA WOODBURY (Assembly District No. 23):

This bill proposes to decrease from \$20 million to \$10 million the threshold at which the Nevada Department of Transportation (NDOT) is authorized to enter into a design-build contract for a project. The bill would also change the limitation on the number of smaller projects, between \$5 million and \$10 million. The NDOT authorization to enter into design-build projects in a fiscal year is increased from one project a year to two a year.

In my written testimony ([Exhibit C](#)) I cover what is design-build, provide a brief history of design-build contracts in Nevada, a press release on success stories

of design-build projects in Nevada, and the Spending and Government Efficiency (SAGE) Commission and SAGE Implementation Blue-ribbon Panel's recommendations on more cost-effective and efficient use of design-build for specific projects.

There is no fiscal note on this bill. It will speed up the process of getting people back to work on important transportation-related projects.

CAROLE VILARDO (President, Nevada Taxpayers Association):

I support A.B. 212 not only from the Nevada Taxpayers Association's perspective, but because I was on the SAGE Commission and the SAGE Blue-ribbon Panel. Also, I chaired the SAGE Implementation Blue-ribbon Panel, created by then-Governor Gibbons' Executive Order, which originally came up with the \$1 million threshold. Unfortunately, I did not realize how many people were impacted by design-build and neglected to notify engineers and architects who had a problem going that low. As a compromise, knowing it was important to get the threshold reduced from \$20 million, all agreed to \$10 million. For now, that amount is universally accepted as a base from which to expand the tools of NDOT.

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors):

We support A.B. 212 and the compromise setting the floor at \$10 million. We first worked on this bill in 1999. Since then, it has proven a good method of delivery on larger projects.

SENATOR LEE:

In the construction industry, \$10 million does not buy much when working on roads. What would \$10 million get us?

MR. HOLLOWAY:

In a difficult or congested area, a design-build contract would build an overpass, such as in Las Vegas. Other examples are bridges and widening roads in congested areas like the current Interstate Highway 15 project in Las Vegas, which, of course, is going to be more than \$10 million.

WILLIAM HOFFMAN (Assistant Director, Engineering, Nevada Department of Transportation):

The NDOT agrees with A.B. 212 as written in the first reprint. A lot of the projects we foresee using this delivery method are intelligent transportation

system infrastructure projects like ramp meters and dynamic message signs. Other projects could be those that help expedite the process for technical projects, certainly, operations type of projects. We agree there are some complex urban bridge overpasses that could use this type of delivery method where the designer and contractor work together in the early stages of a project.

RUSSELL ROWE (American Council of Engineering Companies of Nevada):

The design-build process is kind of a love/hate relationship. There are aspects of the process we like. Obviously, anything to get projects done more quickly and save money is good. For engineers, the process is difficult because we have to pre-design a major portion of a project at our own cost before we are awarded the bid. It can be a costly endeavor if we do not get the award, especially for a smaller engineering firm when working on larger projects that run \$100,000 to \$1 million in pre-design costs. This is why we support A.B. 212 and the \$10 million threshold.

Our support is also contingent on the process of construction-manager-at-risk being extended to NDOT. As you may know, there are efforts to clean up that process in Chapter 338 of the *Nevada Revised Statutes* and provide a temporary pilot to allow that process to go to NDOT. We tie that process into design-build, because our understanding is if NDOT does not have the ability to do construction-manager-at-risk, design-build will become the default more often. Then it becomes a concern to us. That being said, I do not want to throw cold water on what could be a good bill. It is just cautious optimism.

RYAN BAUMAN (Nevada Contractors Association):

Our association consists of some the largest and oldest contractors, employing tens of thousands of Nevadans. This bill is good for getting more of our construction workers back to work. It will also be a quick and efficient way to get the jobs done. We support A.B. 212.

JACK MALLORY (International Union of Painters and Allied Trades, District Council 15; Southern Nevada Building and Construction Trades Council; Brotherhood of Locomotive Engineers and Trainmen):

We support A.B. 212. We are concerned that even though the threshold has been reduced, there may be a reduced number of contractors willing to pursue a project that small under the design-build model, particularly because of the amount of up-front costs that go into designing a project. However, we believe it is a strong model and worth expanding for more utilization.

CHAIR BREEDEN:

We will close the hearing on A.B. 212 and open the hearing on A.B. 374.

ASSEMBLY BILL 374 (2nd Reprint): Revises provisions governing the purchase of certain mobile equipment by the Department of Transportation. (BDR 35-852)

ASSEMBLYWOMAN MELISSA WOODBURY (Assembly District No. 23):

In the interest of time, I will summarize my written testimony ([Exhibit D](#)) which has more detail and explanation on the issue leading to A.B. 374. The SAGE Commission Recommendation No. 40 ([Exhibit E](#)) was that NDOT should commission a study to develop decision factors for outsourcing roadway maintenance rather than providing it using NDOT maintenance crews. In 2010, the Nevada Taxpayers Association Recommendation No. 41 ([Exhibit F](#)) was to maximize the use of existing dollars and minimize the need for new revenues. Specifically, the recommendation suggested determining whether leasing, renting or purchasing is the most cost-effective manner to acquire equipment, with emphasis on heavy equipment, particularly for building, maintenance and roads.

In October 2008, the Division of Internal Audits, Department of Administration, commenced an audit focused on NDOT's usage of heavy equipment to enhance fleet efficiency. The final report from this audit was issued in September 2009 ([Exhibit G](#)).

MR. HOLLOWAY:

The NDOT has hundreds of millions of dollars in heavy equipment. A road grader costs from \$300,000 to \$400,000 and a sand truck nearly \$200,000. This bill presents a systematic way to determine whether the work that piece of equipment is doing should be contracted out. If not outsourced, then there is a

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systematic way to decide whether the economic action is to lease or purchase. We believe A.B. 374 will result in long-term savings for the State.

SENATOR LEE:

The bill says before we purchase more than \$50,000 worth of equipment, the board shall make that decision, not NDOT. Who comprises the NDOT Board of Directors?

MR. HOLLOWAY:

As I understand, the NDOT Board of Directors are appointed by the Governor, plus citizen appointees, people from the construction industry and NDOT representatives.

RICHARD J. NELSON, P.E., F.A.S.C.E. (Assistant Director, Operations, Nevada Department of Transportation):

The members of the NDOT Board of Directors are the Governor, Lieutenant Governor, State Controller, Attorney General, and one appointed representative from each of the three engineering districts—Reno, Elko and Las Vegas.

SENATOR MCGINNESS:

What is the definition of mobile equipment?

MR. NELSON:

We define mobile equipment as anything with a wheel that requires a license plate. A sign trailer is mobile equipment as well as a dump truck, motor grader or an excavator.

MS. VILARDO:

I am in support of A.B. 374. The bill is important, not only for mobile equipment, but for all equipment. A lot of money gets spent on equipment that is not utilized to the extent it should be, which takes money away. We look at the NDOT first because of the amount of equipment. If it is better to lease needed equipment because of short-term use, then that would allow more money for building roads. We support anything that maximizes the assets and use of revenue, particularly in this economy.

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CHAIR BREEDEN:

Assemblywoman Woodbury, we have a proposed amendment ([Exhibit H](#)) to A.B. 374 to add Assemblyman Kelvin D. Atkinson as a primary sponsor of this bill.

ASSEMBLYWOMAN WOODBURY:

Yes. I would like to do that, as he worked with me on the bill.

CHAIR BREEDEN:

We will close the hearing on A.B. 374 and open the hearing on A.B. 384.

[ASSEMBLY BILL 384 \(1st Reprint\)](#): Revises provisions governing certain duties of engineers who drive locomotives. (BDR 58-978)

ASSEMBLYMAN PAT HICKEY (Assembly District No. 25):

Reno is known for its trains. For many of us, the sound of trains and their whistles is a quaint reminder of a bygone time. However, for people who live close to the tracks, the whistles are not only loud, but annoying, and for some, dangerous to their hearing.

The City of Reno prepared a feasibility study ([Exhibit I](#)) to establish quiet zones, which are federally regulated. Upon establishment of those zones, there could be fewer train whistles blown in those areas. This legislation does not require conductors to stop blowing their whistles at any point now. However, if Reno should move forward with future plans to establish these federally regulated quiet zones, then A.B. 384 would enable conductors and train personnel to comply with those federal regulations, and not have to use train whistles to the same degree they are now. This is enabling legislation and we have the assistance on the Assembly side.

BERNARD F. CARTER (Dacole Company):

The Code of Federal Regulations (CFR), June 24, 2005, contained a final rule regulating use of locomotive horns at public highway-rail grade crossings. The regulations are referred to as Title 49 CFR Part 222. The purpose was to provide for safety by requiring a locomotive horn be used at a public highway-rail grade crossing, excepting established and maintained quiet zones. Part 222 provides under certain circumstances the establishment of quiet zones. Quiet zones means a segment of rail line which is situated in one or a number of consecutive public railway crossings at which locomotive horns are not routinely

sounded. Part 222, in several instances, states that state law is not to be preempted. *Nevada Revised Statute* (NRS) 705.430 passed in 1911, provided that an engineer who drives a locomotive is guilty of a misdemeanor if he or she fails to ring the bell or sound the whistle of the locomotive at least 80 rods from any place where the rail crosses a traveled road or street.

The request is to amend NRS 705.430 to allow the cities, counties and people of Nevada the ability to meet the requirements of the CFR, particularly those establishing quiet zones, and not be in violation of State law.

SENATOR MANENDO:

Who regulates this? Who currently watches this?

MR. CARTER:

As far as Nevada, the Federal Railroad Administration (FRA), U.S. Department of Transportation, controls the trains and railways now. That is why this law was enacted in 2005, so the FRA can control the trains that go across public highway-rail grade crossings. The provisions in the law say that state law is not to be preempted. Nevada's law says the train's horn has to be blown, so horns are blown. I do not know who in Nevada monitors that or issues violations.

SENATOR MANENDO:

Where do you envision these quiet zones would be? I am concerned about safety issues.

MR. CARTER:

Safety is a major concern with us also. That is why the 64 pages of regulations addressed that specifically. There are also certain guidelines to allow the making of these crossings. In Reno there are five crossings on the west side for tracks that go between Reno and the California state line. That is what Reno used in the study. Reno eliminated eleven at-grade crossings when the train trench was installed, which would have been affected by the quiet zones.

SENATOR MANENDO:

I would like to do further research before moving forward on A.B. 384.

CHAIR BREEDEN:

I do not think you do, but might you have any information on Clark County?

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MR. CARTER:
I do not.

ASSEMBLYMAN HICKEY:

In response to Senator Manendo's concern, the quiet zones are typically configured with mechanical crossing devices. It is not an arbitrary area where whistles are not blown. The federal regulations contain a whole process whereby those quiet zones are created that are considered to be safe, which allows the blowing of whistles to be tempered.

Quiet zones exist in many places across the Nation—this is not something new. We heard of a problem in Illinois and subsequently learned that Chicago had exempted itself from the CFRs. That would not be the intention of Reno, should they move forward with quiet zones.

SENATOR MCGINNESS:
Exactly how long is 80 rods?

MR. CARTER:
Eighty rods is approximately one-quarter of a mile. This regulation is something that came out of meetings with Assemblyman Hickey and constituents living along that railroad right-of-way, which led to the study. This would also affect anyone along the railways with public at-grade crossings. That would be Lovelock, Winnemucca, Elko, Elko County, Wells and everyone along that corridor. I am sorry, but I do not know where the effect would be in Las Vegas.

SENATOR MCGINNESS:
What is the use of the rod? Is that an old English measurement?

MR. CARTER:
It is.

MIMI PREMO (Student of Transportation):
I am speaking in support of A.B. 384.

MR. MALLORY:
At the original hearing on the Assembly side, we testified in opposition to A.B. 384. There was further discussion with the bill's sponsor and supporters regarding a potential modification of the original bill, which was to do away with

the entire State's standard, and fully rely on the federal standard. What resulted was a hybrid. In areas where they are going to continue to sound a whistle, bell or horn, the standard to which the train conductors will have to adhere is higher than the federal standard. It does create an increased potential for safety. We are neutral on the bill, mostly out of concern for safety. There are potentials for those additional safeguards to fail. The last thing anyone wants is a catastrophic injury or death because one of these systems failed.

SENATOR MANENDO:

I am a little hung up on the safety issue. I remember reading an article not too long ago about railroad deaths of 200 to 250 from either 2008 or 2009 statistics. How was the standard of 80 rods, one-quarter mile, determined?

MR. MALLORY:

I have no idea about why the rod standard. I would imagine that for a train traveling at full speed and sounding its horn when approaching an intersection, that distance would allow for a certain amount of advanced notice of the train's approach. There are questions about audibility, such as if the line were further out than 80 rods, could the whistle, bell or horn be heard. That is purely speculation on my part.

Regarding your other question about safety, in the last couple of years there has been an increased number of incidences regarding fatalities and trains. The reason for that—it is difficult to come up with specific reasons why people get hit by trains. But, a number of the fatalities in the last couple of years have been attributable to suicide by train. People run in front of a moving locomotive to have a relatively quick and painless end to their existence.

CHAIR BREEDEN:

We will close the hearing on A.B. 384 and open the hearing on A.B. 351.

ASSEMBLY BILL 351 (1st Reprint): Revises provisions governing certain motor carriers. (BDR 58-1049)

ASSEMBLYWOMAN MAGGIE CARLTON (Assembly District No. 14):

In my travels, I have noticed it is difficult to use a credit card when taking a taxicab. It is an option I should have. If I do use my credit card for a taxi, my cost to do so should not be borne by other people. There is no reason, in a

regulated industry such as taxicabs, that convenience to me for using a credit card should increase the rate for other travelers, working people, senior citizens and people with disabilities. It is my choice, a convenience for me, and I am willing to pay whatever fee is associated with using a credit card. When I choose to use an automated teller machine (ATM) for a transaction, and it is not one of my bank's ATMs, then I would pay the associated fees. We make these choices as consumers, and I see this as an issue of fairness. I may decide to pay for a taxicab with a credit card so I have a record of the transaction on my statement for reimbursement, when applicable. There is no reason for others to bear the cost of my using a credit card to pay for the taxi. When this issue was brought to my attention, I saw A.B. 351 as an issue of fairness.

You may have an amendment ([Exhibit J](#)) that was discussed with me a while ago. I am not in favor of that amendment, I did not agree to it, and I want this on the record.

VICE CHAIR SCHNEIDER:

When you go to the grocery store and use your credit card, there is no fee added. When I pay with cash, the store does not give me a discount.

ASSEMBLYWOMAN CARLTON:

They should.

VICE CHAIR SCHNEIDER:

I shop mostly at Smith's Food and Drug Stores, Inc.; sometimes New Albertsons, Inc.; and sometimes Sunflower Market, and they do not give me a discount.

ASSEMBLYWOMAN CARLTON:

I understand, but they are not a regulated entity. There is no hearing process and tariffs involved. Now if they had an ATM not of my bank at the store and I chose to use it, I would be charged \$5, \$6 or \$7 for that transaction.

VICE CHAIR SCHNEIDER:

So no matter where I shop in Las Vegas, I would pay the same for an item whether I used a credit card or cash. I could go to Coronado, California, and get the same item for the same price whether I use a credit card or pay with cash. They pay a lot of taxes that we do not have in Nevada. Can you address that and shoot a hole in my theory why businesses should pay taxes in Nevada?

ASSEMBLYWOMAN CARLTON:

I wholeheartedly agree with you. We have had this discussion many times. We have compared flyers from all over the country for the same stores. We see the same prices charged for the same items no matter where you are. Yet, in some states people pay taxes and in other states people do not. If you were to make the choice to pay with a credit card, and your fee was shared by other people, I do not think that would be fair. That is what this bill is about, my choice to use a credit card to pay for a taxi, knowing there is a sticker on the window showing the fee. Other people using the taxi should not bear the burden of the cost for my convenience.

NEAL TOMLINSON (Regulatory Counsel, Frias Holding Company):

The Frias group of companies includes ANLV Cab, Ace Cab, Union Cab, Virgin Valley Cab, Vegas Western Cab, Las Vegas Limousines and Airline Limousine Corporation.

This bill is necessary to provide disclosure of the rates, charges and fares to the traveling public, because that is what the Taxicab Authority (TA), Department of Business and Industry (DBI), requires from the regulated taxicab industry. In response to the question about the groceries, you are paying that fee in the cost of the goods. The difference is taxis are a regulated industry and cannot raise the price of what they are selling without permission. That cost is there, imbedded in the price of an item. In fact, in the Assembly, the credit card companies testified they were in favor of it being imbedded in the cost, just as it is at the grocery store.

VICE CHAIR SCHNEIDER:

I understand about imbedding the cost, whether it is cash or credit card. They pay corporate tax, income tax, inventory tax and warehousing tax; yet in California the price of boneless, skinless chicken breast is the same, and they pay a lot of rent there. Are the taxes they pay also imbedded?

MR. TOMLINSON:

I cannot speak to that as I am not familiar with Coronado, California.

VICE CHAIR SCHNEIDER:

I will just say that it is all of California.

JAY F. PALCHIKOFF (Frias Holding Company):

I am in support of A.B. 351. In addition to being about fairness, this bill allows the TA and the Nevada Transportation Authority (NTA), DBI, to do their job of looking after the traveling public. Beyond that, the bill allows the passenger to make an informed and transparent choice whether to bear the cost of using his or her credit card. Within its existing authority, the TA determined it is in the best interest of the traveling public for taxicab operators to be able to accept credit cards and for the operators to recover the cost of doing so. It is simple; if a merchant cannot recover the cost of accepting credit cards, the merchant is not going to accept the cards.

All this legislation does is prevent the private rules of large credit card networks from short-circuiting the TA's and NTA's public purpose. Specifically, the private contractual rules of the credit card networks purport to prohibit merchants from receiving any direct cost recovery when they use credit cards or debit cards. This is called the "no-surcharge rule." It does nothing but hides the cost of credit card acceptance from the consumer and requires merchants to raise their prices on everyone to recover the costs.

In my written testimony ([Exhibit K](#)) I extensively go into why A.B. 351 makes sense for the taxicab and limousine industry. Also for your consideration are the weaknesses of credit card network arguments and the background on credit card transactions and the no-surcharge rule.

Everyone agrees that accepting credit cards improves passenger convenience, especially for the large majority of passengers who are business travelers or tourists. Experience shows that payment by credit card puts additional money in the taxi drivers' pockets in the form of increased tips. Credit card acceptance also serves to increase taxicab usage, which is good for drivers, the taxicab industry and good for Nevada's economy, as well as for the credit card companies. Another benefit of accepting credit cards is that passengers will have less need to carry cash, which should make them less attractive targets of crime. Drivers, too, will be safer from robbery and violent crime since they will carry smaller amounts of cash. Just recently, a driver was shot and killed over the \$250 he was carrying.

The TA's action on A.B. 351 results in a narrow and necessary exception to the enforcement of the private no-surcharge rule in one highly regulated industry whose merchants have no other way to recover the cost of accepting the credit

cards. Passengers would be fully protected, as they are not in other industries from paying excessive costs or cost increases. The amount of the per-transaction recovery is subject to adjustment by the TA or the NTA at any time they see fit.

VICE CHAIR SCHNEIDER:

I take from what you are saying that Frias Company, if we just blend this in, is amenable also to paying corporate tax, income tax and inventory tax on all their cabs.

MR. PALCHIKOFF:

I would have to defer.

CHAIR BREEDEN:

Mr. Tomlinson, would you tell us what prompted the bill?

MR. TOMLINSON:

This takes us back to 2004, when one of the cab companies came forward at the TA asking about accepting credit cards. In 2006, that cab company came back saying they were ten days away from accepting credit cards. They did a demonstration, and the TA said it looked good, but there was no official action. This process started in 2006, when credit cards were being accepted, and the surcharge is still the same now as then by order of the TA. In 2010, my client, Frias Company, decided they wanted to accept credit cards. They investigated the requirements and decided the best course was to return to the TA for permission to accept credit cards, as cabs are a highly regulated industry. The hearings occurred from January to April 2010. At the conclusion of the hearings, after taking evidence and supplemental evidence and hearing from the entire industry and all affected parties, the TA determined the fee imposed in 2006 was a reasonable fee. The TA issued an order saying:

It is in the public interest for the taxicab companies to allow passengers to pay fares using credit and debit card payment services, and issued an order saying, it is also in the public interest for the [Taxicab] Authority to set a uniform fee which can be charged for using such credit and debit card payment services. The current standard fee in Clark County, Nevada, taxicab industry for offering credit and debit card payment services is \$3 per transaction.

This is the same fee that has been in place since 2006. Part of the evidence was the reasonableness of that \$3, which is the current fee. The TA also looked at ATM fees in the area. At the time, the Venetian Resort Hotel and Casino's surcharge was \$4.99, and the Trump International Hotel's surcharge was \$3.50. If paying taxes online, the IRS charges \$3.95 for a debit card and for a credit card the charge is 2.35 percent of the total payment. To order a document from Clark County, the charge for cash is \$1 a page, but if paying with a credit card, there is an added \$5 charge.

We are here on A.B. 351 because we do not want the TA circumvented by saying you cannot expose these fees by disclosing them on the outside of the taxicab, because of the private contract rules.

We want to make sure there is clarity and no dispute that the TA is the sole place to do this, and they are the authority to set the rates, charges and fares. We want to make sure the disclosure the TA ordered stays in place and cannot be circumvented.

CHAIR BREEDEN:

Did I understand you to say some cab companies are already charging the fee?

MR. TOMLINSON:

There are six cab companies in Las Vegas that have been charging the fee since 2006. I think, to some extent, all cab companies are now charging a fee after the TA issued their order.

CHAIR BREEDEN:

Was Frias the only company that had not requested the fee?

MR. TOMLINSON:

Also, Nevada Yellow Cab Corporation, Nevada Checker Cab Corporation and Nevada Star Cab Corporation joined our application and were approved at the same time as Frias Company as shown in the order ([Exhibit L](#)).

CHAIR BREEDEN:

I know the answer, but will ask it anyway, because I read the minutes of the hearing ([Exhibit M](#)). Has there been any discussion on the fees being charged in restricted areas only, such as The Strip or Freemont Street?

MR. TOMLINSON:

I do not recall if there was that discussion, but the statute covering the TA setting the rates and charging the fares says they must be uniform. I know that was a consideration because any fee charged must be uniform for all cab companies. For instance, several cab companies are restricted as to where they can serve; however, their rates, charges and fares must be the same as the other cab companies.

CHAIR BREEDEN:

You mentioned in your testimony about recouping cost of the equipment, for maintenance and for staff. I agree, because I mentioned the project I completed for the school district was implementing an online registration program for teachers, and I asked for that information and have not received it. Do you have your cost information with you?

MR. TOMLINSON:

I can tell you that part of the order from the TA required the companies to report credit and debit card fee charges as revenue on their annual reports. Every year, each cab company is required by statute to file with the TA an annual report disclosing all revenue and all expenses.

CHAIR BREEDEN:

What are the types of expenses to offer the service?

MR. TOMLINSON:

It depends on the type of vehicle. Generally, the equipment for each vehicle ranges from \$800 to \$1,000. It takes three workers all day to install the equipment into ten vehicles. That is about 2.4 hours for installation. Frias has had to hire four new employees for accounting and information technology and two for vehicle technology to maintain the vehicles, install the equipment and move them around. These vehicles are on the road 24 hours a day, and there are spares to change out if there are any technology or mechanical issues.

As mentioned, there are costs involved with training the drivers. One of the rulings by the TA was that the entire transaction must occur in the rear of the cab, even though the printer is maintained in the front. This is so the cab driver never handles the credit card or debit card. The TA also requires a printed receipt which comes from the front of the cab. So, there are two places in the

cab where equipment is installed; the printer for the receipt in front, and the terminal for the passenger in back.

CHAIR BREEDEN:
How was the \$3 fee determined?

MR. TOMLINSON:
Collection of the usage fee was started in 2006. When the TA issued their order, they looked at the reasonableness of that fee. One consideration was that the fee had been imposed for four years prior to their order. The TA looked at that, at uniformity and what other businesses in the area were charging. The ATM in this building has a convenience charge of \$3.

CHAIR BREEDEN:
Mr. Palchikoff, you mentioned among the benefits was a tip to the cab driver. How do you see this happening?

MR. PALCHIKOFF:
During the check-out procedure, the terminal screen will suggest a number of tips. For example, the fare came to \$15, and the screen will ask if the card user wants to add a \$2, \$3, \$4 or \$5 tip. The experience is that tips are higher with the use of credit cards, partly because of rounding up.

CHAIR BREEDEN:
I misunderstood. I thought we were talking about the convenience fee.

MR. TOMLINSON:
That fee also shows on the terminal screen as well. The sign on the side of each taxicab discloses the fuel surcharge; per-mile fee; credit/debit card surcharge; the fee for each trip from McCarran International Airport; the waiting time per hour, which is broken out; and the charge for each additional one-thirteenth of a mile. This is how the TA has mandated the disclosure take place on all the taxicabs in Clark County.

CHAIR BREEDEN:
For the Committee's information, the NTA's taxicab industry statistics ([Exhibit N](#)) show that in 2009 there were 23,571,704 trips, and in 2010 there were 25,187,143 trips. The average amount paid for each cab fare in 2009 was \$13.74, and in 2010 it went down to \$13.52.

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VICE CHAIR SCHNEIDER:

The ATMs are different because of a stocking fee to cover maintenance and restocking the cash. Your bill requires a \$3 fee for using a credit or debit card.

MR. TOMLINSON:

Assembly Bill 351 does not require a fee. The bill says that the NTA and the TA will approve whatever convenience fee is appropriate.

VICE CHAIR SCHNEIDER:

In addition to showing the credit/debit card fare charge, does the terminal automatically add the usage fee?

MR. TOMLINSON:

I do not know the technology.

VICE CHAIR SCHNEIDER:

Of course, you do want to be reimbursed for this additional cost to the taxicab company by the TA? It is an additional cost you did not have before.

MR. TOMLINSON:

That is right. We never had this cost before, because we were not offering payment by credit card. The TA felt it was in the best interest of the riding public to have paying by credit card available.

VICE CHAIR SCHNEIDER:

Because you are regulated, any additional cost the cab company has is then taken to the TA and discussed. That would also have to do with taxes. If all of a sudden the cab company had to pay taxes, would it go to the TA and ask to be reimbursed for the taxes paid to the State?

MR. TOMLINSON:

Theoretically, we could. By statute, we have an annual review where all these issues are discussed. I assume that could also be discussed.

VICE CHAIR SCHNEIDER:

Even though Las Vegas has the eighth highest taxicab fare in the Nation, would you probably still do that?

MR. TOMLINSON:

I guess we could, but the annual review is set by the TA every year. One more point; the bill also prescribes that each year in our annual report filing with the TA and NTA, we must include the cost required for equipment and installation, the administrative cost of processing and the fees paid to the issuers of the credit and debit cards.

MR. MALLORY:

I support A.B. 351 and the concept of facilitating an easier method of payment for the consumer. Additional questions have been raised, but at the same time I have utilized the services in other major cities where paying by credit card is definitely a convenience. It is interesting to note those taxicab drivers prefer being paid in cash. I do not understand why. Ultimately, it comes down to a safety issue for the drivers. It says on the taxicab door that the driver carries no more than \$20 in cash. A driver who has been on a shift for four or five hours and having a good day probably has more than \$20. There have been too many stories over the last couple of years, particularly in Las Vegas, about taxicab drivers who have been assaulted, injured and killed by passengers robbing them. For those reasons we support the bill.

MICHAEL HILLERBY (MasterCard Worldwide):

We are in opposition to A.B. 351. Interestingly, we agree with the proponents of the bill in many areas. We would welcome all those cab companies as customers. As pointed out, there were over 25 million rides in 2010. Based on the testimony of the Frias Company's application to the TA to take credit cards, at least 5 million of those fares would be paid by credit cards. The estimates from two different companies were between 20 percent and 25 percent. We agree with the goal of making taxicabs more competitive with customers wanting to pay by different means.

Speaking only on behalf of MasterCard Worldwide, I want to make clear that we are a payment network. MasterCard does not issue credit cards to consumers; banks do that. It is called the four-party system. Issuing banks issue cards to us as consumers. The consumer picks a card that works for him or her based on annual fees, interest rates, mileage benefits or whatever reason it may be for personal and/or business use. Other merchant banks approach merchants who want to take credit cards and sign them up as customers, so the consumer can use those credit cards, and merchants can take advantage of the benefits of using credit cards.

MasterCard is a payment network system. An analogy is we are like the Internet. We are a secure payment network with a system of rules to provide security for transaction data so people get paid and all four parties in that system see value. Our network works if merchants want to take the cards, banks want to sign up merchants and banks want to issue credit cards to extend credit to consumers who want to use those cards for business travel, personal use or whatever. Part of the benefit to consumers involves consumer protection. We have an interest in being sure that all four parties see value and benefit.

For the MasterCard network, over 25 million merchant locations worldwide take the card, and hundreds of millions of people carry MasterCard. Obviously, it is of value, and that value proposition makes sense. This is not an ATM or debit card issue. At the risk of further confusing things, the ATM in this building is owned by a private party. That transaction is not carried over the MasterCard network. If you have a debit card from your bank, it likely has a Visa or MasterCard logo on the front of it so you can use it as a credit card. On the back of the card, there is Serus, Plus, Choice and any number of networks.

The fees are a separate issue that has nothing to do with the MasterCard credit card network. In many cases, it is apples and oranges in trying to compare fees, because they are different things. We would welcome these new customers, and many taxicab companies do take credit cards. For some time, there has been a company called TaxiPass acting as a third-party vendor that allows the customer to get a voucher to use for taxicabs. I do not know the details of how that system works, because I have not personally used it. One argument proponents made was there are costs involved with using credit cards and with merchants accepting credit cards, and somehow there were no costs involved with other payment methods. We disagree with that; there is an expense involved in handling cash. Cash can be stolen, lost or counterfeited. There is counting and accounting, getting cash to the bank, providing security and more. There is also an expense in taking checks. If a merchant uses a check-clearing company, that fee is usually higher than the credit card fee. There is an expense involved in any form of payment.

What MasterCard and some other payment networks have in the rules is a no-surcharge fee. We believe no customer should be discriminated against based on the payment method chosen. All payment methods have an expense to every merchant. We do not want that hidden. Anyone can go to

< www.mastercard.com > and look at merchant rates to see exactly what the interchange rate is for various categories of merchants for all the different credit cards. It is a public Website. Our rules do not, and have not, prohibited merchants from disclosing those rates, and do not prohibit merchants from offering discounts for other forms of payment. There was an inference that we preferred hidden charges or we did not allow those kinds of things to happen. Our rules do not. There was reference to the U.S. Department of Justice and potential legal actions. We clarified some of our rules to reflect our existing and previous business practices on those various issues.

One provision of A.B. 351 that has our specific opposition, and the proponents mentioned this, is the prohibition against us enforcing a part of our private contract. That is a rule merchants know they have going in; you do not surcharge. You can disclose that fee to any customer you want. You can offer the customer discounts for other things. What we do not want to see is our customers who carry MasterCard credit cards issued by their banks discriminated against based on that fee. Every payment method has a cost and a merchant will weigh the benefits of using a particular payment method over another, and decide which ones they will honor.

With credit cards, taxicabs are likely to carry less cash. Testimony of taxicab drivers at last year's hearings said their tips go up with credit card use, and we have heard that from other markets. There are accounting advantages, all of which are part of that merchant fee. If, at any time that fee does not seem reasonable to a merchant, they can renegotiate with their bank, they can find another merchant bank or they can decide not to honor a particular form of payment.

In Frias Company's original filing and in their testimony, they said the TA has the ability to regulate this, and we agree. In the testimony on March 21, 2010, the applicant said they prefer this not be a rule-making issue at the TA, because that would take too long and they would have to go back to the Legislature. That is where we disagree. As Frias acknowledged in their testimony, it should be a rule-making issue. That would provide complete transparency, so that every year, the TA can look at the reported revenue and fees to make sure they make sense. Again, do not discriminate against one type of customer over another.

Interestingly, this is how we already do it in Nevada with limousines. This is part of the limousines' tariff. There is definitely a public protection argument. We already have examples where this is being done, and it is built into the tariff with limousines. It does not provide discrimination against one type of customer over another. It is completely transparent and regulated. We agree on many points with the taxicab companies which are regulated entities, to the extent they believe and can make the case that there are added expenses in taking credit cards which may not be outweighed by the benefits. They can make that case to TA to find the best way to make that rule.

I provided copies of a spreadsheet analysis ([Exhibit O](#)). As already mentioned, there were just over 25 million trips last year, and the average revenue was \$13.52. That \$3 flat fee is a surcharge of 22 percent on the average fare. That has no bearing or relationship to the cost of actually providing the transaction. The merchant bank charges are likely to be between 2 percent and 3 percent. That is either 27 cents or 41 cents but not \$3. We also acknowledge there may be other expenses with equipment and/or accounting. Based on testimony before the TA, at least 5 million of those fares are likely to be paid by credit cards. At the average fare of \$13.52, that is over \$67 million in revenue. The total surcharge revenue to the companies would be \$15 million. A 3 percent merchant fee of the \$67 million is \$2 million. That leaves \$13 million to pay the expenses for any wireless connection fees or equipment fees. Just yesterday, MasterCard sent me a link to a Website of a person who sells supplies to taxicab companies. Working with HSBC Bank, they offer a rate of 1.69 percent, provide a free wireless reader with the signing of a three-year contract, make a 20 cent charge per transaction and charge 10 percent for the wireless connection fee. That amounts to less than 60 cents on that \$13.52 fare.

We have concerns both about the bill itself that would void parts of a private contract between private entities, and in this case, about the amount of the fee. The \$3 flat fee already approved by the TA we believe is excessive when compared to the average fare booked by the taxicab companies in Clark County in 2010.

CHAIR BREEDEN:

You mentioned there was no surcharge. What would happen if this bill passed?

MR. HILLERBY:

As we read A.B. 351, it would prohibit us from enforcing that portion of our contract. It would prohibit the merchant banks from enforcing that portion of their contract with the taxicab companies.

There was testimony about the IRS and other public entities, and we do make exceptions. On the IRS Website, clearly disclosed, are vendors that will allow payment of federal income tax or other tax liabilities with a credit card, and they disclose the fee. We realize that government entities must, by law, collect 100 percent of the tax that is due. We have made an exception. Government entities also get the lowest interchange rate available from MasterCard. There are exceptions we make for government entities that we do not typically make for private entities. This would be an exception to that. While the taxicabs are highly regulated, there is an opportunity for them to include the surcharge in the fare for it to be transparent, to provide appropriate protections to the public, and not have the Legislature in the position of intervening in a private contract.

We would like to have the cab companies as customers and think it is entirely appropriate that credit card holders and taxicab companies both benefit from this, but we believe there is a more appropriate way to do it.

CHRIS MACKENZIE (American Express):

We are in opposition to A.B. 351. We are against the whole concept of imposing a surcharge on taxicab customers for credit card use. As proponents have pointed out, surcharges have been a point of contention between merchants and credit card providers for some time. However, to this day, there have not been surcharges in a private industry's transactional landscape. This bill would be the first surcharge allowed. Several cities have brought in taxicab acceptance of credit cards, including New York City; Chicago; Boston; Washington, D.C., and several other major cities, and all have done so without imposing a surcharge. They have been able to do that outside of what is a typical credit card transaction process. A point was made about cash discounts being the same thing as a surcharge, but we differ. Cash discounts are allowed under both State and federal law.

We would like to point out the distinctions. The main concern with the surcharges as proposed in this bill is they tend to allow for profiteering by those taxicab companies that want to impose these surcharges on top of the credit card transactions. In fact, they are not only profiting from the ride they are

providing, but also profiting from accepting credit cards. I do not know about the specific accounting in this case, particularly in an industry that has set rates with no competition between companies. There is no real incentive for the surcharge rate to go down, especially if approved by a governmental entity. This provides the opportunity for there to be profiting on those surcharges.

There is quite a benefit going to the taxicab companies, not just to the credit card companies and just the consumers who get the convenience. There is a convenience to all three parties involved. There is safety that has been addressed by the proponents of the bill. But all point out there is quite a bit of benefit going to the taxicab companies, and through this proposed legislation, they are seeking to recover all costs for the transaction, even though they are receiving benefits. They do not have an allowance accounting for all the benefits they are receiving. The drivers receive higher tips, and there is an itemization of accounting that goes along with the safety. With these new credit card transcribers, there is global positioning satellite technology to allow routing information to be provided to these credit card companies for safety issues for the drivers. All that can be used for the benefit of the taxicab companies and their drivers. With the acceptance of credit cards, more business comes to the taxicab companies through more passengers and more revenue.

There is another point about these credit card terminals. They now allow for public service announcements, and in the future, advertising time can be bought. The taxicab companies can sell advertising on these screens to recover some of the cost to implement this service. We are also of the opinion the TA and NTA are the appropriate authorities for addressing this issue. They do not need the Legislature's approval to do this. They can address it through either regulation or rate setting. It takes longer to go through the TA and NTA, and that may be the reason they came to you to get this done. It should be sent back to the TA to decide.

I proposed an amendment ([Exhibit P](#)) although I am not in support of A.B. 351. It was done on the chance that if you absolutely had to move this bill, it would make it less distasteful. The proposed amendment limits the amount recoverable by taxicab companies. It has a one-year sunset for recovery time, so, if this \$3 surcharge went on forever, there would be a large amount of money accumulated over the years for initial costs not justified under that surcharge.

VICE CHAIR SCHNEIDER:

You and Mr. Hillerby indicated your companies will negotiate fees for large users of your service.

MR. MACKENZIE:

I cannot speak for Mr. Hillerby. Typically, on the governmental side, there have been negotiations by American Express as to a discount rate. But as to private industry, I am not aware of that. I can find out for you, if you would like.

MR. HILLERBY:

Because MasterCard does not deal directly with merchants—banks do that—we do not negotiate. MasterCard sets an interchange rate which is the rate the merchant bank pays the card issuer's bank. Then, whatever additional expenses the merchant bank comes up with are subject to negotiation. These additional fees can be shopped between banks or negotiated with the merchant's own bank, depending on volume and handling of the card. For example, if the merchant is an online vendor and uses the secure card system and has a secure Website, that merchant can get a better rate because risk is reduced. Again, I want to make clear that is not done directly with MasterCard. We do not deal directly with either merchants or cardholders. Those transactions go through banks.

VICE CHAIR SCHNEIDER:

Your fee is set, and you negotiate with banks for bigger bank customers.

MR. HILLERBY:

We collect none of the interchange rate MasterCard sets. That is the fee sent from the merchant bank to the card-issuing bank, the customer's bank. The payment network MasterCard operates receives a fee each time that card is used to compensate MasterCard for running the secure network and the other services provided. It is separate and distinct from the interchange fee or the merchant discount fee that the merchant would negotiate with its bank or sign up for with its bank.

VICE CHAIR SCHNEIDER:

So Union Cab, Ace Cab or Yellow Cab can negotiate with their bank to get a better rate?

MR. HILLERBY:

Possibly. I cannot speak for the banks, and I do not know the details of the particular cab companies. There is the additional rub that with the third-party vendor called TaxiPass, and there may be others who want to get into this, any revenue from the surcharge that goes directly to one of the taxicab companies would be reportable. Any revenue that went to one of these third-party entities like TaxiPass would not. There is a bit of a difference.

To your question specifically, any of those taxicab companies could shop among banks or go to their own bank, if it is a merchant bank, and talk about what kind of a rate they could obtain, and the business practices and security practices they might implement to help improve that rate with the bank.

CHARLES HARVEY (Administrator, Taxicab Authority, Department of Business and Industry):

Since I have been the administrator for two days, I will let members of my staff address your questions.

CHAIR BREEDEN:

I have a neighbor who is 76 years old and can no longer drive. When I am home, I see the taxicab pick her up to go to the grocery store once a week, the doctor once a month, to play cards with her friends once a week, and to get her hair done once a week. I added up the fees, and it alarms me for people who are dependent on taxicabs. She cannot take the bus because she is quite frail. She depends on the taxicabs. It is her choice, and I understand that. I added up the \$3 fee and the 25 million taxicab fares, and I am sure that would more than pay for the staff and equipment cost. That is why I asked if the charges would be restricted in certain areas.

SENATOR MANENDO:

My mother has macular degeneration and uses taxicabs when I or friends and family cannot be available. She is persistent and wants to do her thing. She does not like carrying much cash. She is extremely worried about keeping cash on her. She calls it date night with my nephews when they go in a taxicab to Sam's Town Hotel and Gambling Hall to watch a movie and eat. The only reason she needs cash on her is for the taxicab. I talked about this with my mother, and she feels it would be safer for her personally to not have that extra cash and use a credit card instead. Her comments were that it is a convenience and safer.

ASSEMBLYWOMAN CARLTON:

To make it clearer on the tax issue, I would add that these are Nevada companies that hire Nevada workers. They purchase cars, pay sales tax and buy business licenses. When the cars are filled with gas, they pay gas tax. They pay insurance premium tax, unemployment tax and workers' compensation. These are Nevada companies taking care of Nevadans. I will not talk about health and other issues, as I am not as well-versed on those. I have nothing against the credit card companies, but I personally do not know anyone who works for a credit card company in this State, so I will leave that part alone.

One interesting fact I came across while sitting on the Assembly Committee on Ways and Means was how much the State pays for credit card use. Nevada pays a lot of money for the convenience of Nevada residents to use a credit card at the Department of Motor Vehicles (DMV) and to pay bills. That money is coming out of the General Fund and could be used better elsewhere. I will be happy to go back through my notes and forward you the figures of the amount of money listed in the budget going to credit companies out of our General Fund so Nevada residents can have this convenience.

MR. TOMLINSON:

The Frias group of companies employs over 1,800 drivers in the Las Vegas area, and has over 2,000 employees company wide. Those employees all live and work in Nevada and all pay taxes, as does the company.

To address the senior issue as illustrated by Senator Breeden and Senator Manendo, we do have a Senior Ride Program. We have discounted rides for seniors up to 50 percent off the regular rate, and the program is approved by the TA. I will make sure you get the information.

Mr. MacKenzie, for American Express, said New York City did not have a surcharge for taxicabs, and that is not exactly true. When New York City decided to use credit cards in their taxicabs, they also raised the rates. This is what A.B. 351 is asking to be done—have the surcharge imbedded in the rate. Yesterday, I reviewed the Assembly hearing on April 13, listening carefully to everybody's testimony. In that hearing Fred Hillerby said, "I think what would be better if the cost of accepting credit cards was built into their tariff or fares across the board. This can be accomplished through a rate increase." Michael Hillerby testified, "We want the charge imbedded in the fare." The issue is whether to imbed the surcharge or to disclose it separately. The TA has made

a public policy decision that they do not want the surcharge imbedded in the fare. They want it broken out and displayed on the side of the taxicab and displayed on the credit card terminal in the taxicab before the passenger opts in. That is what the TA has decided is in the best interest of the riding public. That is the issue, whether to imbed the surcharge in the rate or whether to break it out. The TA, much like they did with the fuel surcharge recently, because of the spike in fuel prices, wants it broken out and displayed with all the other rates that are broken out.

MR. PALCHIKOFF:

The issues of fairness and transparency are so easily thrown around. There are credit card networks as described, the cardholder, the merchant bank and the other banks. The fact is the credit card network gets a tiny fee on every transaction that happens. The whole purpose is to generate as many transactions as possible. The huge fees are going to the issuing banks in interchange fees that are not regulated by anybody, except, as MasterCard said, themselves. It is whatever the market will bear. When a customer buys a \$5,000 flat screen television with a credit card, it is a bigger fee to the issuing bank. The issuing bank is not worried about \$13 fares and how much interchange they are getting on that charge. The sum total is billions and billions of dollars. It is an important amount that has been passed through to the consumer. It is not some small amount. They are not passing through the cost of doing the cash services, the collecting and settling of transactions. Yes, MasterCard is doing that, but it is their rules that are enabling merchant banks or acquiring banks and issuing banks to receive large fees.

They talk about wanting to be transparent, but the very fact of these rules is that their existence is to thwart transparency. It is the only reason the rules are there. There is no other justification for these rules. We hear about discriminating against the cardholders, but it is just words, and that is why the rules are under attack.

As for the proposed amendment by American Express, I hate to not be able to simplify it more, but this is an extremely complicated layer upon layer of rules and regulations put out by the credit card networks, all for the purpose of hiding the amount it costs people to fund all these huge rewards programs and other perks. Their purpose in encouraging these huge reward programs, while they say they do not collect any fees and only collect this tiny amount, is that the

more transactions there are, the more times they collect that 10 cents or 15 cents at the network level. It is complicated, and I cannot simplify it.

VICE CHAIR SCHNEIDER:

Excuse me, this is just millionaires fighting with each other. Section 2, subsection 1, of A.B. 351 states that "A taxicab motor carrier or an operator of a limousine may enter into a contract with an issuer of credit cards and debit cards to provide for the acceptance of credit cards or debit cards by the taxicab motor carrier or the operator" You do not have to do this if you do not want to do it.

MR. PALCHIKOFF:

That is correct.

VICE CHAIR SCHNEIDER:

So, do not accept credit cards.

MR. TOMLINSON:

The way this transpired at the TA was they made a determination that credit cards were to be offered as a form of payment. That is how this whole thing happened. You may remember, a few years ago there was the issue of whether or not to install cameras in every taxicab, and there was cost associated with that. The TA ended up not mandating it because everybody voluntarily put cameras in the taxicabs. It is almost a similar situation with the surcharge. The TA has made a threshold decision that they want credit cards offered.

VICE CHAIR SCHNEIDER:

Section 2, subsection 2 of A.B. 351 states, "The Authority may prescribe by regulation or order the maximum fee that a taxicab motor carrier or an operator of a limousine may charge a customer" Does it say in the bill, or am I missing it, that you have to do this? Because in the first paragraph of section 2 it states you "may enter into a contract" You do not have to enter into a contract. Just because the TA says it would like taxicabs to carry a credit card payment option does not mean you have to. Is that correct?

MR. TOMLINSON:

I believe the TA made the policy decision that they want a credit card payment option offered. But it is not mandatory at this time. It is voluntary.

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KELLY KUZIK (Nevada Taxicab Authority, Department of Business and Industry):
Would Senator Schneider repeat the question so I am sure I understand it?

VICE CHAIR SCHNEIDER:
Are the taxicab companies mandated to accept credit cards and debit cards?

MR. KUZIK:
There is no mandate or requirement in the regulation, statute or by policy that taxicab companies are required to take credit cards. It is voluntary.

VICE CHAIR SCHNEIDER:
The taxicab companies only take credit cards if it is a convenience to their riders. Is that correct?

MR. KUZIK:
Yes, that is correct.

CHAIR BREEDEN:
If I remember, in reading the notes, the appropriate company submits an application for an increase of a fare or any type of a tariff. Is that correct?

MR. TOMLINSON:
There are two ways it can be accomplished. By statute, there is an annual review by the TA. Generally, that is done in the summer time. The other way is if any certificated taxicab carrier wants it addressed at another time, they can file an application.

CHAIR BREEDEN:
Is the application to just address a topic, or is it to request an increase?

MR. TOMLINSON:
It can be either. It can be to request an increase or to address a topic. It is always addressed annually. If any certificated taxicab company wants to address an issue more than annually or for a different reason, it can file an application.

SENATOR MCGINNESS:
Is the \$3 fee up to \$3, or is it mandated at \$3?

MR. TOMLINSON:

It has been mandated as a maximum fee that must be uniform.

SENATOR MCGINNESS:

So it could be lowered to \$1.50, if the TA wanted to do so.

MR. TOMLINSON:

I do not think we could without instruction from the TA, because the rates, charges and fares must be uniform in Clark County.

CHAIR BREEDEN:

By uniform, do you mean that every taxicab company has to charge the same fee?

MR. TOMLINSON:

That is correct. We are highly regulated.

SENATOR LEE:

I would like to ask Andrew J. MacKay if other agencies have encountered these issues and what they are doing to address it.

ANDREW J. MACKAY (Chair, Nevada Transportation Authority, Department of Business and Industry):

The NTA regulates all taxicabs outside of Clark County and has statewide regulatory authority and, for the purposes of this bill, the charter limousine industry. As it relates to credit card issues and charges levied by carriers we also regulate. In the charter limousine industry, those charges are generally buried in the tariff itself. For instance, a tariff rate of \$45 an hour to charter a five-passenger limousine will have associated costs like gratuities and amenities such as liquor or cell phone use or flowers. Those charges, as it relates to the credit cards, are part of the tariff rate approved by the NTA. This is not to say that a carrier currently in the NTA's regulatory construct could specifically have a line item saying \$3 per credit card charge or 2.5 percent for the merchant's fees. There is a big difference as it relates to the rates regulated by the TA and the NTA. The NTA does not set the rates, as the TA does. The NTA, as it relates to rates charged by the carriers it regulates, determines if they are compensable, if it is within an accepted range of rates and are they predatory in nature. The NTA evaluates whether there is a request for a tariff modification to make sure it meets those provisions. Under current regulatory practice, the

statutes and regulations the NTA has authority over and responsibility for enforcing, credit card fees could be delineated in the tariffs if they wanted to do so.

SENATOR LEE:

Do you regulate the limousines in Clark County, but in the north you also regulate the taxicabs and the buses?

MR. MACKAY:

That is correct.

SENATOR LEE:

The NTA is a large part of A.B. 351. Was the NTA part of the discussion? I think you are going to get swept up in this.

MR. MACKAY:

The bill is clear that this is applicable to the NTA. I have had discussions with the proponents of the bill. I want to point out in section 2, subsection 2, initially prior to the bill being amended, it said, " ... may prescribe by regulation the maximum fee that a taxicab motor carrier or an operator of a limousine may charge a customer" Two words were added: "or order" following the word "regulation" on line 9 of page 2. I had raised the issue with the proponents of the bill. We were brutally honest in saying as it relates to the regulatory aspect of it. My intent, as chair, was to have a workshop and determine whether there was an appetite to go through the regulatory process to promulgate a regulation. This language was added so if somebody submitted an application for a tariff modification, including surcharges, merchant fees or whatever relates to that, and somebody wants to use a credit card, my opinion is they can file the application. Assuming it is approved by the NTA, the NTA then would issue a formal order. Therefore, in practice, with those two words, we would be able to do this with zero impact, because it is in the due course of what we do in terms of evaluating and either approving or denying tariff modifications filed by carriers.

MR. PALCHIKOFF:

There are two distinct parts of the discussion. One part is if this fee can be set, whether it is 10 cents or \$10; that is what this legislation is about. The second part is, how much is an appropriate fee? That is a regulatory matter, and anybody with input who thinks it should be less or more can provide that input

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to the proper regulatory authority. I would like to submit a written statement about the amendment.

CHAIR BREEDEN:

Since the time is late, submit your statement to my office. Mr. Harvey, would the Frias Company be in noncompliance should this bill not pass?

MR. KUZIK:

It does not appear that they would be out of compliance because there is nothing at this point to be in compliance with. The TA did order the \$3 fee, but if the bill does not pass, the TA could still be able to implement the fee.

CHAIR BREEDEN:

We will close the hearing on A.B. 351. There being no further business before the Senate Committee on Transportation, the meeting is adjourned at 7:40 p.m.

RESPECTFULLY SUBMITTED:

Laura Adler,
Committee Secretary

APPROVED BY:

Senator Shirley A. Breeden, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 212	C	Assemblywoman Melissa Woodbury	Written Testimony
A.B. 374	D	Assemblywoman Melissa Woodbury	Written Testimony
A.B. 374	E	Assemblywoman Melissa Woodbury	SAGE Commission's Recommendation No. 40
A.B. 374	F	Assemblywoman Melissa Woodbury	Nevada Taxpayers Association Recommendation No. 41
A.B. 374	G	Assemblywoman Melissa Woodbury	Division of Internal Audits, Department of Administration Audit Report
A.B. 374	H	Senator Shirley A. Breeden	Proposed Amendment
A.B. 384	I	Assemblyman Pat Hickey	Quiet Zone Feasibility Study
A.B. 351	J	Assemblywoman Maggie Carlton	Amendment
A.B. 351	K	Jay Palchikoff	Written Testimony
A.B. 351	L	Neal Tomlinson	Taxicab Authority Order
A.B. 351	M	Senator Shirley A. Breeden	Taxicab Authority Hearing Minutes
A.B. 351	N	Senator Shirley A. Breeden	Taxicab Industry Statistics
A.B. 351	O	Michael Hillerby	Taxicab Spreadsheet Analysis
A.B. 351	P	Chris MacKenzie	Proposed Amendment