

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-sixth Session
April 12, 2011**

The Senate Committee on Transportation was called to order by Chair Shirley A. Breeden at 3:58 p.m. on Tuesday, April 12, 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
Senator Elizabeth Halseth

GUEST LEGISLATORS PRESENT:

Senator Joseph (Joe) P. Hardy, Clark County Senatorial District No. 12
Senator James A. Settelmeyer, Capital Senatorial District

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Neal Tomlinson, Ace Cab Inc.; Airline Limousine Corp; Las Vegas Limousines;
Union Cab Company; Vegas-Western Cab, Inc.; Virgin Valley Cab
Company; Frias Transportation
James Wisniewski, Frias Holding Company
Mark Gordon, Yellow Checker Star Transportation

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Shirley Stevens

Caleb Cage, Captain, U.S. Army, Executive Director, Office of Veterans' Services

Rhonda Bavaro, C.P.M., Administrator, Motor Carrier Division, Department of Motor Vehicles

Kimberly Maxson-Rushton, Livery Operators Association of Las Vegas

Andy J. MacKay, Chair, Nevada Transportation Authority, Department of Business and Industry

Jeff Richter, S.S.M., M.S.B.A., Administrative Services Officer, Nevada Department of Transportation

Wayne Seidel, Motor Carrier Administrator, Motor Carrier Division, Department of Motor Vehicles

Terry K. Graves, Scrap Metal Processor Group

Kyle Davis, Nevada Conservation League

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

Ed Gobel, Director, Gowest Institute

Amber Joiner, Nevada State Medical Association

Denise Selleck Davis, Executive Director, Nevada Osteopathic Medical Association

Keith Lee, Nevada Board of Medical Examiners

VICE CHAIR SCHNEIDER:

We will open the hearing on Senate Bill (S.B.) 321.

SENATE BILL 321: Revises provisions governing taxicabs. (BDR 58-997)

NEAL TOMLINSON (Ace Cab Inc.; Airline Limousine Corp; Las Vegas Limousines; Union Cab Company; Vegas-Western Cab, Inc.; Virgin Valley Cab Company; Frias Transportation):

This bill is necessary to keep the taxicab industry and its regulators current with technology. Each cab has a numbered plate called a medallion affixed to the side of the vehicle that can be read electronically or by radio frequency. The definition of two-way radio, already in statute, is further defined for clarity.

Anytime the Taxicab Authority (TA) needs to change the taxicab meter, the seal must be broken, the meter calibrated and a new seal affixed. Section 2, subsection 4, is to permit use of an electronic port for a laptop computer for password protected reading of the meter.

The daily trip sheet would be updated to allow use of an electronic version. The advantage is greater accuracy, timely reporting and saving on accounting time and storage space. Currently, 400,000 trip sheet-related documents are generated each year that have to be maintained for three years, requiring a lot of storage space.

Section 4 updates the disciplinary statute for improved enforcement should someone improperly use a taxicab medallion or an improper medallion. We support S.B. 321 and urge the Committee to do the same.

BRUCE DAINES (Counsel):

I would like to ask a question on behalf of Chair Breeden who is not present at the moment. In your new definition of communication, you are providing for writing, signs and pictures. Senator Breeden was concerned that this definition would permit you to avoid the ban on texting while driving that she is working for in S.B. 140. We need to get clear on what you are intending to accomplish with your new definition.

SENATE BILL 140: Prohibits the use of a cellular telephone or other handheld wireless communications device while operating a motor vehicle in certain circumstances. (BDR 43-45)

MR. TOMLINSON:

That section of the bill has nothing to do with using a cell phone in the vehicle. It is addressing the messages sent through the equipment installed in the taxicab, such as the meter and radio. The definition used is already in *Nevada Revised Statute* (NRS) 200.610, subsection 3.

JAMES WISNIEWSKI (Frias Holding Company):

That definition is to clarify what a two-way radio actually means so everyone understands. There was no intent to link that definition to text messaging, but as a definition of ways of transmitting signals from one device to another.

SENATOR MCGINNESS:

Is there a mandate to use the electronic devices? Is it all right if one taxicab company wants to do it and another one does not?

MR. TOMLINSON:

Use of electronic devices is a permissible alternative the TA could allow, but it is not mandated.

MARK GORDON (Yellow Checker Star Transportation):

We support S.B. 321 because we think it makes a lot sense. It will give us practical solutions for our company.

VICE CHAIR SCHNEIDER:

We will close the hearing on S.B. 321 and open the hearing on S.B. 154.

SENATE BILL 154: Provides for the issuance of special license plates for family members of persons who died as a result of injuries sustained while on active duty in the Armed Forces of the United States. (BDR 43-700)

SENATOR JAMES A. SETTELMAYER (Capital Senatorial District):

I finally met a persistent citizen with a specific concern who eventually became a constituent. I contacted all of Nevada's Congressional Delegation to resolve the issue, and all confirmed she had contacted them about her unique issue. The constituent, Shirley Stevens', son passed away from wounds received while in the military. Because her son passed away a year after his discharge, Mrs. Stevens cannot be considered for the American Gold Star Mothers, Inc. license plate. This is not an easy fix as the rules to qualify have been set by the Gold Star Moms in all states. The Gold Star Moms' reasoning is that they never had the opportunity to say goodbye to their children who died in combat away from them. This is a federal organizational issue and I looked to other states for guidance.

Other states addressed the issue with "departed soldier" plates, because there are a few individuals who fall through the cracks of these rules. This bill is designed to allow the Department of Motor Vehicles (DMV) to create a different plate for this purpose. The plate would be exempt from the rule of meeting a certain number because there would not be that many people interested in the plates.

Individuals have come forward, including fathers, saying they would like a special license plate as a way to honor their deceased child. Another reality is there are not enough Pearl Harbor survivors to fill the dais seats, let alone who can still drive a car, but I would still want to make sure they can continue to

have that special license plate. A lot of people would argue that we have too many special license plates. From 1916 to 1965, Nevada sent everyone a new license plate every year when registration was renewed. Under a law Nevada passed a while ago, a person with a vintage car from 1916 to 1965 has the right to request a plate be made for the year of the vehicle, meaning there are already 50 different plates authorized. In that respect, I am asking the Committee to consider allowing a plate for a special class of citizens who are unique and deserve our respect and honor.

VICE CHAIR SCHNEIDER:

Instead of presenting this idea to the Commission on Special License Plates, why did you come here?

SENATOR SETTELMAYER:

The Commission requires a certain number of people to sign up for a special plate, which is not simple when dealing with a narrow category like this one. This is not a large group of individuals; yet they are worthy of being honored.

VICE CHAIR SCHNEIDER:

Are we looking at less than a half-dozen?

SENATOR SETTELMAYER:

I left the plate open-ended enough that if they qualified for the Gold Star license plate, they would also qualify for this plate instead. There were fathers who contacted me expressing a desire to do something along the lines of a departed soldier license plate, because the Gold Star Mom license plate refers just to the mother.

VICE CHAIR SCHNEIDER:

I understand why this license plate is different; it is unique. Hopefully, there will never be the adequate number to qualify for a regular license plate.

SENATOR SETTELMAYER:

That would be all our prayers that we never have enough people to qualify for this special license plate.

SHIRLEY STEVENS:

I did not know the meaning of a Gold Star license plate when I first started this. I was informed the individual had to die on the battlefield to be eligible. My son

contracted amyotrophic lateral sclerosis from smoke inhalation in the 1991 Persian Gulf War. It was not diagnosed until the military forced his retirement. He died two and half years after that. I thought there should be a special license plate to recognize people like my son, because with the wars going on now, there will be a lot of people who did not die on the battlefield, but their injuries will result in death.

VICE CHAIR SCHNEIDER:
Do you happen to know a number?

MRS. STEVENS:
No, I do not.

VICE CHAIR SCHNEIDER:
How many people in Nevada would fall into this special license plate category?

CALEB CAGE, CAPTAIN (U.S. Army, Executive Director, Office of Veterans' Services):

To be honest, I would not have a clue. It might be found through the U.S. Department of Veterans Affairs (VA) health system determining combat related or service connected in their verbiage. I know the VA in Nevada serves 238,000 veterans. We would project there are approximately 330,000 veterans in Nevada. Projecting the number of those veterans who would qualify, it would be a small fraction of them.

VICE CHAIR SCHNEIDER:
This would be an exemption to produce a few plates. Hopefully, it would not be more than a few. Based on the limited number of people, would that be a consideration in the limited number of plates?

CAPTAIN CAGE:
That is the intent of the bill.

CHAIR BREEDEN:
Would someone from DMV explain the fiscal note on S.B. 154?

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RHONDA BAVARO, C.P.M. (Administrator, Motor Carrier Division, Department of Motor Vehicles):

We do not have a fiscal note on this bill. If it is a one-plate style, it would be of minimum impact to the DMV.

CHAIR BREEDEN:

We will close the hearing on S.B. 154 and open the hearing on S.B. 320.

SENATE BILL 320: Revises provisions governing certain motor carriers.
(BDR 58-1051)

KIMBERLY MAXSON-RUSHTON (Livery Operators Association of Las Vegas):

The Livery Operators Association (LOA) is a professional trade organization comprised of taxi and limousine operators in southern Nevada. I have submitted proposed amendments for consideration with a cover letter explaining the amendments listed in specific detail and a list of the members of the LOA ([Exhibit C](#)). Additionally, I have submitted prepared testimony ([Exhibit D](#)) explaining the objective of S.B. 320 is to bring parity between the Nevada Transportation Authority (NTA) and the Taxicab Authority (TA) relative to the oversight of commercial drivers to provide the NTA with the regulatory tools necessary to assure the safe transport of the traveling public. Lastly, the bill will close loopholes in the law allowing individuals to provide commercial transportation services to passengers for a fee without anything more than a driver's license.

In discussion with legal counsel prior to this hearing, there were questions relative to the definition of a "chauffeur for hire." I will read into the record the proposed definition of "a chauffeur for hire" to be defined as "a person hired to drive paying passengers," as outlined in my handout ([Exhibit E](#)). This definition is based on various government standards from the U.S. Department of Labor, Bureau of Labor Statistics; and the U.S. Department of the Treasury, Internal Revenue Service. Should the bill pass, this would help clarify any ambiguities in the NRS.

CHAIR BREEDEN:

Does the \$50 fee for renewal of a driver's permit not include the cost of the background check? Would the driver be responsible for paying for the background check?

MRS. MAXSON-RUSHTON:

The fee associated with both the original as well as the renewal would be consistent with what the TA does. I believe the fee does include the background check with respect to a renewal of the driver's license.

CHAIR BREEDEN:

For every chauffeur currently working in this area needing a background check, if something came back outlined in this bill, would they automatically be released or fired from employment?

MRS. MAXSON-RUSHTON:

That is not the objective. The objective is to give the NTA the discretion to determine whether or not to issue the permit. If they did not issue the permit for a reason enumerated in the proposed bill or based on the determination of the NTA that the individual was otherwise unfit, then that person would not be permitted to operate as a commercial driver in Nevada.

CHAIR BREEDEN:

Mr. MacKay, I do understand having the background checks. I am wondering how the employee would be notified. Should this bill go forward, is there a notice of the new procedure saying you may lose your job if this, this or this exists? Another question is on the original application. Is there the question, "Have you ever been convicted of a sex offense?" Because if there was no background check when they were originally hired and they answered honestly, then under this new process would they be deemed to have falsified their application?

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

I will answer your last question first to be sure I understand correctly. Is the question that it is contemplated, or if the application is filed and then that individual discloses that he or she may be a convicted sex offender? Is it based on the law or if the bill were to become law?

CHAIR BREEDEN:

There is an application process for people to be hired. I do not know if the application asks whether the applicant has ever been arrested or convicted of a sex offense. Let us say the applicant answered truthfully with yes, and was still hired under the process. If this bill passes with the new process, and the

background check confirms the applicant's arrest or conviction, then would that individual lose his or her job? I am not sure if this bill is a clearinghouse or protecting the public as well. I can see both parts applying here.

MR. MACKAY:

The NTA is neutral on this bill. To answer your question, first I will give the requirements to be a limousine or taxicab driver for a carrier regulated by the NTA. In essence, if the individual has been convicted of drunken driving, had a reckless driving offense or failed to appear at a hearing in a court of law within the last two years, that individual is not permitted to become a driver. That being said, a lot of carriers do their own background investigations on their drivers. The carrier is not required by law to do a background check. As I read this bill, if, for instance, an individual is a convicted sex offender and to your example, Madam Chair, is employed, then ultimately has to apply pursuant to the provisions of the bill and its requirements, I would assume that individual would then be considered unemployable in this industry. If that were to occur, I would assume the numbers would be diminished. With respect to notification; if this bill were to become law, the NTA would notify all the companies the bill would impact. They would be directed to notify their employees they must get a background check.

Not knowing what a chauffeur for hire meant at the time, there could be multiple interpretations. I am glad there will be a definition of a chauffeur for hire as guidance for the NTA. The other concern of the NTA is with respect to the effective date/implementation of this bill. If S.B. 320 were to become law, the effective date is October 1, 2011. If an individual or entity were seeking operating authority from the NTA, the principals of the company would have to undergo a criminal background investigation. We have had instances where we have not received the criminal background investigation report on the applicant from the Federal Bureau of Investigation, U.S. Department of Justice, for several months. If an individual's paperwork gets caught up in a bureaucratic nightmare because of the volume of work, that individual should not be deemed unable to continue his or her employment. Depending on whether the bill becomes law, because of the reach of the bill and the sheer numbers, perhaps a better effective date the NTA would request is January 1, 2012, to assume it is not a drop-dead date. If an individual does not have the paperwork by then, that applicant is technically not in violation of the law. From the NTA's standpoint, depending on the number of applications, if there is a quasi backlog, we do not want to fall into a trap where 80 percent of the applications are done and there

is still 20 percent to process on January 1. Initially, it was indicated there would not be a fiscal impact; there will be a fiscal impact.

Just this morning, the NTA received statistics from the largest operators we regulate with respect to the number of drivers. Now that we have a baseline on the number of drivers who would fall within this bill, we can complete the fiscal note. The fiscal impact on the State would be in terms of shop supplies and a program officer position to facilitate this new program. Although the NTA is neutral on S.B. 320, I want to put on record, pursuant to Mrs. Maxson-Rushton's comments, that the bill will enhance the ability to have influence over the drivers themselves, which we have only through the companies right now. It will also improve the NTA's ability to protect the safety of the traveling public.

CHAIR BREEDEN:
Do you have the number of drivers?

MR. MACKAY:
The information transmitted to NTA from the LOA was 1,227 drivers. There are a couple of major carriers in Las Vegas not included and a few operators in northern Nevada. To determine the number of drivers a carrier has is usually one and one-half drivers per vehicle. For obvious reasons, the NTA does not want to overestimate the number of drivers which would have an adverse effect on the revenue component of the fiscal note.

CHAIR BREEDEN:
When would you be able to provide that information to my office? We need to know the fiscal note. Thursday is our last meeting date.

MR. MACKAY:
I will have that information to you by Thursday.

We will close the hearing on S.B. 320 and open the work session with S.B. 48.

SENATE BILL 48: Revises provisions relating to permitting and enforcement of standards for oversize and overweight vehicles operating on Nevada highways. (BDR 43-485)

KELLY GREGORY (Policy Analyst):

After the hearing on March 8, 2011, the parties developed a consensus amendment submitted by the Nevada Department of Transportation (NDOT) ([Exhibit F](#)). It encompasses the previous amendments submitted by NDOT and Clark County during the original hearing.

Jeff Richter, S.S.M., M.S.B.A., (Administrative Services Officer, Nevada Department of Transportation):

This bill was introduced to reinforce the requirements of Title 23 of the Code of Federal Regulations (CFR) and the State's enforcement efforts regarding vehicle size and weight limits. One of the areas for clarification is how the State deals with farm vehicles and equipment. Another part of the bill would allow us to reciprocate in the Western Regional Permit program that enhances interstate commerce by allowing some over-dimensional truckers to travel cross-country on select routes with just one permit. My written testimony in support of S.B. 48 provides additional information on how the various elements of the bill would work ([Exhibit G](#)).

SENATOR MCGINNESS:

Does this take us back to where we were?

MR. RICHTER:

Only in the areas of farm and ranch equipment. The only addition is in the section allowing tractors and implements of husbandry up to 14 feet wide to travel without a permit on our secondary roads. There is a 25-miles-per-hour limit right now. It clarifies things we have been doing all along. We have regulations for those larger farm and ranch vehicles.

SENATOR HALSETH:

Does this amendment remove the fiscal note?

MR. RICHTER:

I do not remember the fiscal note. It must be a DMV fiscal note.

MS. BAVARO:

That fiscal note was submitted from our Motor Carrier Division. I will try to get that information before this hearing ends.

CHAIR BREEDEN:

Mr. Richter, you mentioned your concern of losing federal dollars if some of these changes were not made. With this amendment, would you still be in jeopardy of losing federal dollars?

MR. RICHTER:

In my personal opinion, if we ever got audited very carefully, we might get some attention.

CHAIR BREEDEN:

If the amendment is made the way it is here, then there is a possibility. If the amendment is not passed and the bill stays as originally written, would that put you in jeopardy of losing federal dollars?

MR. RICHTER:

Not immediately. I do not see anything in the near term for that to happen. Our laws are scrutinized and audited in some fashion, but it has not been done so far that anybody knows about. If we continue to work in the direction we are doing, which is clarifying our rules and making sure the public knows those rules, we will be in fine shape.

CHAIR BREEDEN:

I am confused. Is it with or without the amendment?

MR. RICHTER:

With the amendment, we would still have some issues with having laws that comply with Title 23 of CFR, in my opinion. As mentioned, there are interpretations by other parties that would contradict me. But I do not see a clampdown by the Federal Highway Administration in this area because they have so many other issues they are dealing with.

SENATOR RHOADS:

Does this expand the authority on regulating farm equipment from what it was originally?

MR. RICHTER:

It does not expand, but clarifies and expands the flexibility of farm tractors and implements of husbandry to move on our secondary roads. It would now specify

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the movement during daylight hours with a 25-mile-per-hour speed limit between their fields.

SENATOR RHOADS:
Is that new language?

MR. RICHTER:
It has been part of our regulations in the past.

SENATOR RHOADS:
Do the operators have to obtain a permit every time they get on the highway?

MR. RICHTER:
They have to obtain a permit to be on our interstate highways. There are a few farmers in northeast Nevada who need to use Interstate Highway 80, and we have the capability to permit them to use that highway. We are primarily talking about vehicles over 14 feet wide that would need permits elsewhere as well. I have talked with our farmers and ranchers and explained it is not our intention to be overly restrictive; it is that we need to clarify where they are going because it is so vague right now that, essentially, they can drive on our secondary highways anywhere with any size vehicle they want. That concerns us from the perspective of safety.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS S.B. 48 WITH THE CONSENSUS AMENDMENT BY THE NEVADA DEPARTMENT OF TRANSPORTATION AND THE DEPARTMENT OF MOTOR VEHICLES.

SENATOR RHOADS SECONDED THE MOTION.

SENATOR HALSETH:
I will abstain from voting until I get the answer to the fiscal note.

THE MOTION PASSED. (SENATOR HALSETH ABSTAINED FROM THE VOTE.)

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CHAIR BREEDEN:
We will open the hearing on S.B. 214.

SENATE BILL 214: Requires the Department of Transportation to establish a demonstration project for a toll road in connection with the Boulder City Bypass Project. (BDR S-842)

SENATOR HALSETH:

On S.B. 48 that just passed, does the amendment remove the fiscal note on the bill?

WAYNE SEIDEL (Motor Carrier Administrator, Motor Carrier Division, Department of Motor Vehicles):

The only fiscal note was increasing the permit fee from \$5 to \$50. I do not know if the fee is staying at \$5 or, with the amendment, going to \$50. That would be the replacement-fee cost.

MS. GREGORY:

During the March 31, 2011, meeting on the bill, Senator Hardy presented the attached proposed amendment ([Exhibit H](#)) on behalf of the Nevada Rental Car Group intended to ensure rental car companies can comply with the requirements related to violations by renters. Also, during testimony on S.B. 214, Carole Vilardo of the Nevada Taxpayers Association, recommended deletion of the phrase "hedge agreements" in connection with the financing of a project under the bill.

SENATOR LEE:

Could somebody explain the amendment, as it does not seem germane to a Boulder City demonstration project?

SENATOR JOSEPH (JOE) P. HARDY (Clark County Senatorial District No. 12):

There was an earlier question on the Boulder City Pilot Project. Recognizing the word "pilot" had portent, it was determined it would be wise to look at a demonstration concept. Recognizing that this was a new concept for Nevada, we are probably seeking a comfort level. As a new concept, we wondered whether a legislative commission or subcommittee could have oversight as to how things were progressing and what was happening. The bottom line is, when doing a demonstration project, there ought to be a return and report. I defer to the Committee as to what they would like to do. Did I answer the question?

SENATOR LEE:

Not at all. We have a proposed amendment, [Exhibit H](#), and I do not know if it is a friendly amendment. One amendment is about "hedge agreements," and the other is about rental car companies. Are you familiar with them?

SENATOR HARDY:

Yes, I am. Do you have a mock-up?

SENATOR LEE:

No, we do not.

SENATOR HARDY:

The mock-up amendment deals with different things, including striking out the hedge fund, as well as inserting the U.S. Highway 93. Paul Enos and the trucking people wanted to be sure there was an alternative route that would remain free and open; that was taken care of in the amendment mock-up. All the concerns addressed in the first meeting on S.B. 214 were put in the mock-up to make it easier for you. But it does not make it easier if you do not have it.

SENATOR LEE:

Are you familiar with the Nevada Rental Car Group who amended your bill?

SENATOR HARDY:

Yes. The Nevada Rental Car Group's concern was whether they were required to pay the fine, the user fee, themselves. They did not like that, so we put in a time period in which the name of the person who rented the car could be provided to the DMV, and then we bill that person. To accomplish this, the group needed more time, so the bill was amended from 30 days to 45 days.

SENATOR LEE:

Then this is germane to your bill, because they would be using that particular roadway?

SENATOR HARDY:

Yes.

CHAIR BREEDEN:

Since this bill introduces a new concept to Nevada, we will hold it until the amendment mock-up is available. Perhaps there could be an oversight committee to work with the negotiations, so we can get an idea on how it will work.

We will close the hearing on S.B. 214 and open the hearing on S.B. 236.

[SENATE BILL 236](#): Requires the Director of the Department of Transportation to adopt regulations governing the use of recycled aggregate for road and highway projects. (BDR 35-766)

MS. GREGORY:

There are two amendments to S.B. 236. The first proposed amendment ([Exhibit I](#)) was submitted by Kyle Davis, representing the Nevada Conservation League. The second proposed amendment ([Exhibit J](#)) was submitted by Terry Graves on behalf of the Scrap Metal Processor Group.

TERRY K. GRAVES (Scrap Metal Processor Group):

The Scrap Metal Processor Group also does recycling of tires. Rubber can be recycled into asphalt for road building. We want to add that material to S.B. 236 in addition to the recycled aggregate being proposed by Mr. Davis. My amendment was based on the original bill. Mr. Davis talked to me before the hearing, and his amendment makes my verbiage in my amendment obsolete. Basically, our desire is to have recycled rubber considered as a building material for asphalt making for road building. We are not advocating any mandate or requirement to use rubber, but that it is there and can be considered.

In the original bill, there was discussion about specifications. We agree that would be important to have specifications from NDOT, so suppliers of rubber material would know what to provide. In reviewing Mr. Davis' amendment, we would be all right with it if the words "and/or recycled rubber from tires," following where it says recycled aggregate. If that is acceptable to the Committee and Mr. Davis, that would meet our objective.

CHAIR BREEDEN:

Are you looking at section 2 or section 1 wherever it says "recycled aggregate?"

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MR. GRAVES:

Sections 1 and 2, and it would also work in section 3.

KYLE DAVIS (Nevada Conservation League):

That would also be in the amendment I submitted, [Exhibit J](#).

MR. GRAVES:

That is all right, if that is also acceptable to NDOT.

MR. DAVIS:

In concept, I do not have a problem with that. Encouraging use of the recycled rubber is a good thing. The only thing is what I have done with this amendment, since my original goal with the legislation is to address the issue of aggregate as the base material for a road, as opposed to the asphalt. That is why this amendment with NDOT and Clark County to address their concerns specific to the aggregate and recycled rubber was not part of the conversation. I am concerned that it not delay the bill being passed out of Committee by Friday. I would leave it to the Committee, if they are amenable to that, then I would have no problem with encouraging using recycled rubber as well. With time running short, I am willing to work with Mr. Graves on the Assembly side to address his concerns.

CHAIR BREEDEN:

Mr. Graves, did you speak to the individuals who Mr. Davis mentioned?

MR. GRAVES:

After the last hearing on S.B. 236, we had a brief discussion with the NDOT representatives and with Mr. Davis. The NDOT people indicated they have used recycled rubber in some road applications and are not opposed to it. We also discussed it be used in an appropriate manner in appropriate design situations. That is all we are asking.

MR. DAVIS:

Both of those representatives are present and could settle this now, or agree to pass the bill as is. I would work with Mr. Graves on the Assembly side to make sure we take care of it.

VICE CHAIR SCHNEIDER:

You are saying you are not opposed to the rubber. You want to make sure the bill is out of Committee by Friday.

MR. DAVIS:

I am trying to be expeditious with everybody's time.

MR. GRAVES:

Maybe one of the NDOT representatives would like to comment on whether this is acceptable to them. I accept Mr. Davis' stipulation to work on the Assembly side with me. It may be helpful to find out now if NDOT does not like the idea.

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

Mr. Graves is correct in that we have used rubber in our asphalt mixes in the past and have projects now slated for that. We are a little nervous about setting specification by regulation. As far as using recycled rubber tires, that would not be a problem for us, because we already use rubber.

VICE CHAIR SCHNEIDER:

You said you did not like something in regulation.

MR. NELSON:

This original bill proposed NDOT establishing specifications by regulation. That could be an issue for us, particularly in the middle of a construction project when we need to adjust those specifications. It is much more difficult to do if they are set in regulations

MR. DAVIS:

The amendment, [Exhibit J](#), I submitted takes care of that concern.

MR. GRAVES:

That is not a problem for us either. We did not expect specifications and regulations.

SENATOR HALSETH:

On the bill there is an effect on local government and the State, but I do not see a fiscal note attached.

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MS. GREGORY:

There have been several fiscal notes submitted, but they were all in the amount of zero.

SENATOR RHOADS MOVED TO AMEND AND DO PASS S.B. 236 WITH BOTH THE DAVIS AMENDMENT AND THE GRAVES AMENDMENT.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR BREEDEN:

We will open the hearing on S.B. 303.

SENATE BILL 303: Revises provisions governing the issuance of special license plates, special parking placards and special parking stickers to persons with a permanent disability. (BDR 43-1100)

MS. GREGORY:

Mr. Gobel, the bill's main proponent, submitted the amendment ([Exhibit K](#)), which makes several changes but primarily revises penalties.

ED GOBEL (Director, Gowest Institute):

At the last meeting, it was suggested we work with Bruce Breslow, Director, DMV. We have six nonprofits that are willing to work together on the bill. Unfortunately, we were unable to communicate with Mr. Breslow in time for this hearing. Therefore, we would like to remove from the amendment "Change page 7, line 19," "Change page 8, line 22" and "Change page 8, line 40."

AMBER JOINER (Nevada State Medical Association):

Our main concern is with the additional medical evidence S.B. 303 would require be attached to the statement from the licensed physician. Medical evidence is a broad term, and we are not sure what that includes. Some places in the NRS include journal articles and justification under medical evidence. This category encompasses a large volume of information that may also contain personal information. Our concern is that personal medical information should not be transferred to DMV. Such action may violate some federal laws and, at

the very least, may become an embarrassing situation for certain patients. There are patients who would need placards, but do not apply for them because they would have to share their private medical history with a person at the DMV.

We have heard from physicians that in other certification procedures such as the Family and Medical Leave Act, a federal program, they are not required to provide this level of detail for privacy reasons. Additionally, the person at the DMV would have no medical training, so even if they were supplied with journal articles and personal medical history, we do not see what purpose that would serve.

Another concern is the removal of people with visual disabilities that is on page 2, lines 27 and 28 of S.B. 303, and people who are severely limited in their ability to walk. These disabilities often mean a need for closer parking. We do not understand the exclusion and think it is not appropriate.

We are also concerned with sections 4 and 5 regarding the fines for physicians who are found to not have adequate medical evidence. Again, I would emphasize that we do not know what is adequate medical evidence. We hear from physicians who say that if they are going to be questioned in their medical judgment in this way, they would no longer give out placards. This will have a chilling effect on people not getting placards who truly need them.

DENISE SELLECK DAVIS (Executive Director, Nevada Osteopathic Medical Association):

We had several physicians voice concerns regarding those areas Ms. Joiner pointed out. We are also concerned about reporting to the State Board of Medical Examiners (BME). The scenario we foresee is employees at DMV looking at a person who is there for a placard and determining that person does not need a handicapped parking placard based on their own medical knowledge. Now they are going to report that physician to the BME who will have to spend time investigating the physician and the patient to determine if there was medical evidence, which is not well defined. This bill would make it an actionable offense for the physician. At least the amendment, [Exhibit K](#), reduces the very high fines. A \$10,000 fine caught our attention. We also wondered where these fines are intended to go. It is not determined if the fines go to DMV or the BME. Any investigation of a disciplinary action against a physician, if found guilty, becomes a reportable offense that goes to the National Practitioners Data Bank (NPDB), U.S. Department of Health and Human

Services. This affects credentialing with hospitals, insurance companies and insurance payers, and also follows that physician around. In the medical world, there is such a thing as a permanent record.

These factors are of concern, and we suggest we need to trust our physicians' medical evaluation of a patient for a placard to park in handicapped spaces.

SENATOR LEE:

I too am concerned about where the fines would go. Can we get an answer?

BRUCE DAINES (Counsel):

It was not defined in the bill. The normal method of interpreting it would be that those fines would remain with the individual boards on the same basis as any other fines those boards assess.

KEITH LEE (Nevada Board of Medical Examiners):

Since I was not at the April 4, 2011, hearing on S.B. 303, I do not know the magnitude of the problem being dealt with which you are attempting to solve with this language. I will speak specifically to section 4 of the bill from the standpoint of the regulator. As I read the bill, an untrained individual at DMV is going to pass it to the Nevada Board of Medical Examiners and let them decide if there is medical evidence to support the decision. What that means, we are not sure. When a matter is referred to us, we open an investigative file and commence an investigation conducted by one person or sometimes by two people. Right now, we are quite busy conducting an investigation in Las Vegas. Our investigative staff does not administer fines.

If an investigation found there was a probability the placard was not supported by medical evidence, and again, we do not know what medical evidence means and what standard of proof is, then a formal complaint would be filed. That action would trigger a possible reportable event to the NPDB which would have severe consequences for a physician. We would have to go through a hearing, which is both expensive and time-consuming. The physician would undoubtedly hire a lawyer, and we would go into a full-fledged hearing to determine if there is a violation. There is a problem with handicapped parking and I think there are better ways to address that than what is being suggested here. What is being proposed is an expensive and time-consuming proposition to deal with whatever is the magnitude of the problem.

SENATOR MCGINNESS:

One fact Mr. Gobel brought out in his testimony was the number of handicapped parking spaces throughout the State and the number of handicapped placards issued.

MR. GOBEL:

It depends on which number you go by, as there are three different numbers: 368,000, 434,000 and 519,000. It does not matter which number, as there are fewer than 300,000 total handicapped parking spaces in Nevada, and 1.5 times to 1.7 times those numbers for handicapped parking permits issued. Also, what was talked about regarding medical evidence is contained in NRS 482.3835, and we are not changing anything. For instance, section 2, subsection 3 of the bill, which is not on the DMV form that we have requested, says:

... restricted by a lung disease to such an extent that the person's forced expiratory volume for 1 second, when measured by a spirometer, is less than 1 liter, or the arterial oxygen tension is less than 60 millimeters of mercury on room air while the person is at rest;

There are already guidelines contained in statute; unfortunately, it is not printed on the DMV form which only says "restricted by lung disease," and so the doctor just checks it. Everything we talk about as to accountability and required medical information is already in statute under NRS 482.3835; there is no ambiguity.

There may be other important things, but this is the medical evidence already specified in law.

SENATOR MCGINNESS:

I will ask the Chair to hold S.B. 303 until we can get more information. If nothing else, awareness has been raised by folks like you who are confined to a wheelchair and have a real problem getting around.

CHAIR BREEDEN:

Mr. Gobel, we will hold this bill for now. If you would like to talk to the individuals who came forward today, please feel free to do so. We can provide you with contact information through my office. As mentioned, you have brought forward important information.

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We will close the hearing on S.B. 303 and open the hearing on S.B. 322.

[SENATE BILL 322](#): Revises provisions governing motor vehicles. (BDR 43-1008)

MS. GREGORY:

This bill was first heard in Committee on March 29, 2011. Senator Settelmeyer has submitted a conceptual amendment ([Exhibit L](#)) to address the concerns expressed by the Department of Public Safety in relation to its Weigh-in-Motion system.

SENATOR SETTELMAYER:

I am fine with the amendment to S.B. 322.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 322.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR BREEDEN:

We will now open the hearing on S.B. 406.

[SENATE BILL 406](#): Requires the Department of Motor Vehicles to waive certain fees owed by certain military personnel. (BDR 43-1145)

MS. GREGORY:

After the April 5, 2011, hearing, the DMV submitted a revised fiscal note ([Exhibit M](#)) to the bill.

MS. BAVARO:

The DMV's revised fiscal note is based on additional information we obtained. The number of active military personnel currently deployed was significantly less than first anticipated in DMV's first fiscal note, thus reducing the fiscal note significantly.

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CHAIR BREEDEN:

The first fiscal note was \$137,000, and we questioned that at the most there might be 20 qualifying individuals in the State.

SENATOR MANENDO MOVED TO DO PASS S.B. 406.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR BREEDEN:

There being no further business before the Senate Committee on Transportation, this meeting is adjourned at 5:48 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
S.B. 320	C	Kimberly Maxson Rushton	Livery Operators Association Amendment
S.B. 320	D	Kimberly Maxson Rushton	Testimony
S.B. 320	E	Kimberly Maxson Rushton	Chauffeur for Hire Definition
S.B. 48	F	Kelly Gregory	Amendment
S.B. 48	G	Jeff Richter	Testimony
S.B. 48	H	Kelly Gregory	Senator Hardy's Amendment
S.B. 236	I	Kyle Davis	Amendment
S.B. 236	J	Terry Graves	Amendment
S.B. 303	K	Ed Gobel	Amendment
S.B. 322	L	Senator Settlemeyer	Conceptual Amendment
S.B. 406	M	Kelly Gregory	Revised Fiscal Note