

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
February 13, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:03 a.m. on Wednesday, February 13, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Mark A. Manendo, Chair
Senator Kelvin Atkinson, Vice Chair
Senator Pat Spearman
Senator Joseph P. Hardy
Senator Donald G. Gustavson

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst
Darcy Johnson, Counsel
Melodie Swan-Fisher, Committee Secretary

OTHERS PRESENT:

Andrew J. MacKay, Chair, Nevada Transportation Authority, Department of
Business and Industry
Charles D. Harvey, Administrator, Taxicab Authority, Department of Business
and Industry

Chair Manendo:

I will open the meeting with a presentation from the Nevada Transportation Authority.

Andrew J. MacKay (Chair, Nevada Transportation Authority, Department of Business and Industry):

This is a brief presentation of the Nevada Transportation Authority (NTA), Department of Business and Industry.

Prior to the Session, NTA created the informational handout before you ([Exhibit C](#)).

The NTA is the statewide regulatory agency charged with enforcing State laws pertaining to interstate transportation. Its scope includes but is not limited to the enforcement of laws and regulations concerning transportation of passengers, household goods and the intrastate tow car industry.

Our mission is summed up in one word: safety. The NTA exists to advance safety, and safety will be my focus any time I speak before this Committee. The NTA's declaration of purpose and policy is found in *Nevada Revised Statutes* (NRS) 706.151, subsection 1, paragraph (c). In short, it states that the NTA is responsible "To provide for fair and impartial regulation, to promote safe, adequate, economical and efficient service and to foster sound economic conditions in motor transportation."

The NTA is an administrative unit of the Department of Business and Industry. A board of three commissioners heads the NTA: George Assad, Monica Metz and I. The Governor appoints us, and Marilyn Skibinski, Deputy Commissioner, directs a staff of 20. The NTA consists of these 24 full-time employees. Our offices are in Reno and Las Vegas. Our main office is in Las Vegas, where the majority of activity takes place.

With respect to regulation, the NTA issues Certificates of Public Convenience and Necessity (CPCNs) and permits for contract carrier authority. The CPCNs fall into two areas of regulation: fully regulated operating authority, and partially regulated operating authority. Examples of businesses that are under fully regulated operating authority are charter limousine services and airport transfer service, scenic tour authority and taxicab services outside of Clark County. The Taxicab Authority (TA), Department of Business and Industry, regulates the taxicab business in Clark County.

Partially regulated authority includes the regulation of intrastate charter buses as well as tow car businesses. The federal government has preempted states' ability to regulate buses and tow operators with regard to issues of safety and insurance. The State cannot regulate rates, routes and service. The State does have the authority, pursuant to federal law, to regulate rates as they relate to nonconsensual tows. The regulation of charter buses and tow trucks is somewhat relaxed in comparison to regulation of the fully regulated carrier.

The NTA is comprised of three working units that oversee its operations: applications, enforcement and compliance. The applications staff manages applications submitted by any entity filing for transportation authority with the State. The applications staff oversees the comprehensive screening process. This involves consulting with the applicant. Anyone who charters a limousine or hires a household goods mover expects to be safe, to have his or her worldly possessions free from damage or theft and to be insured adequately. Carriers expect the vehicles to be safe and drivers to drive safely and be drug tested. This is pursuant to federal regulation. In the application's final phase, one of us commissioners, who all serve as hearing officers, evaluates the evidence, as shown on page C6 of [Exhibit C](#). The commissioner who heard the application then presents it to the full authority for recommendation of approval. Applications for partially regulated operating authority are similar in that the proprietors and owners of the company are subject to criminal background investigations. The company must also demonstrate it is operationally fit and knows how to operate a bus service or tow car service. Unlike fully regulated operating authority, however, partially regulated operating authorities do not need to demonstrate financial fitness. Fully regulated operators are governed under NRS 706.391.

The NTA's enforcement staff consists of compliance/enforcement officers whose goal is to obtain compliance before resorting to enforcement. It is especially important with respect to certificated carriers. Enforcement's number one goal and mission is to deal with those motor carriers who choose not to become certificated; e.g., gypsy cab operators and fly-by-night operators who move household goods. The Legislature has been very clear in charging us with this task. The enforcement focuses primarily on targeting and eliminating illegal activity and ensuring that carriers comply with statutes and regulations. Illegal operators pose the greatest threat to the safety of the traveling and shipping public. They do not carry insurance, their vehicles are unsafe, drivers are not drug tested, and they often engage in deceptive trade practices, including price

gouging. This can be seen in the case of unlawful movers. A typical scenario involves movers who quote a certain price; e.g., \$500. A consumer loads the truck with his or her possessions, and the mover suddenly doubles or triples the price. The unlawful mover then demands a ransom for the return of the goods.

The NTA's compliance officers also do general control and complaint investigations of existing carriers. Violation examples include the following: incomplete trip sheets, incorrectly charged tariff rates and the unlawful solicitation of passengers. Any citation issued by the NTA is adjudicated in an administrative tribunal. As I explained earlier, one of our three commissioners serves as a hearing officer in these matters. The designated hearing officer listens to the case. The State must prove its case against the carrier or operator. The hearing officer enters the tribunal's findings and makes a recommendation to the full NTA board. No decision by an administrative hearing officer is final until it is ruled upon by the full board of three commissioners.

Compliance with existing laws can be summarized in three areas: insurance, vehicle inspections and operational inspections, as shown on page C9 of [Exhibit C](#). The levels for insurance for charter limousine service, charter bus, tow car service or taxicab service are governed by *Nevada Administrative Code* (NAC) 706.191. The NTA is listed on the certificates of insurance as "additional insured." This way, if a carrier's insurance changes, we become aware of it immediately. If a carrier's insurance has lapsed or the carrier does not have the requisite level of insurance mandated by law, the carrier's operation is immediately suspended until the insurance violation is resolved. Oftentimes, we become aware of the eminent lapse of insurance coverage and notify the carrier. The carrier usually renews the insurance. Carriers rarely let their insurance lapse; they do not want to jeopardize their ability to retain certificated carrier status.

The NTA also regulates vehicle inspections. Every vehicle operated by a certificated carrier in Nevada must undergo comprehensive vehicle

inspections. The NTA maintains a database of all commercial vehicles. The database includes a tickler system that generates notifications to carriers whose certifications will expire within the next 30 days. Usually, carriers have had an updated inspection or an inspection scheduled, or they notify us they will have the inspection soon. The NTA does not conduct the annual vehicle inspections. Carriers are responsible for obtaining the inspection from a registered garage of their choice or a certified inspector on their staff.

The NTA does random operational inspections on one-third of the certificated carriers under its jurisdiction. We begin by notifying the carriers at least 48 hours in advance of the random inspection. Our notice details what records we will be inspecting. Carriers can organize their records and incur minimal inconvenience. In general, we focus on inspecting documentation of preemployment and random substance-abuse tests. This is to ensure that carriers comply with federal regulations. The NTA also checks trip sheets and trip receipts to verify that carriers comply with requirements for hours of service and tariff rates.

The only time the NTA does not provide a minimum 48 hours' notice for an operational inspection is when it is a risk-based operational inspection. A risk-based operational inspection is one in which the NTA has reason to believe a carrier is forcing its drivers to work beyond the required hours of service as delineated in State and federal law. We will sometimes do risk-based operational inspections on busy weekends when we have reason to believe carriers are doubling their approved rates. When the NTA acquires information indicating such practices, the chief of enforcement evaluates the credibility of the information and forwards it to one of the three commissioners for examination. The commissioner determines whether it is necessary to do a risk-based operational inspection. The commissioner who determines a risk-based operational inspection is necessary must then recuse himself or herself from further involvement in the case; that commissioner does not have permission to hear the case or to vote on it. This ensures the carrier gets a fair and impartial hearing.

Chair Manendo:

How is the NTA initially notified of the operational risk or violation an operator is committing? Does a driver call and tell you he or she is being forced to work too many hours? If so, does the NTA keep the tip confidential?

Mr. MacKay:

Let me clarify: Risk-based operational inspections are uncommon. An employee usually provides information. I recall one instance when an operator contacted us via text message. The carrier had told the operator, "You are going to work all night. Get as much business as you can."

The NTA tries to keep these tips as confidential as possible. However, every instance is unique, and every case has a distinct fact pattern. There are occasions when it is not possible to keep the tip confidential. This can happen when only one individual has the information in question. The company may know that a given individual is the only person privy to the information. In instances like this, confidentiality is beyond our control.

Chair Manendo:

Do customers contact your office to complain about long hauling? This is the practice of taxi drivers' boosting fare tabs by taking passengers the longest possible route to their destination. Is the practice becoming a problem?

Mr. MacKay:

Issues with long hauling usually occur in the city of Las Vegas and in Clark County. Clark County is under the jurisdiction of the TA. Mr. Harvey, the next speaker, will discuss that. The TA does not regulate taxicab service outside Clark County, so we, the NTA, get complaints for incidents occurring outside Clark County. There are times we receive a complaint or an investigative tip, and we keep it confidential. However, if the complaint is from an individual—for instance, someone complaining about a tow—the individual lets us know that a carrier charged an extra day of storage on the tow. If the individual wants his or her money back, we do not have the ability to keep that person's name confidential. Interestingly, the person who complains is usually up front about revealing himself or herself. The individual is intent on getting his or her money back.

Page C10 of [Exhibit C](#) outlines information about the NTA's budget. The NTA has two budget accounts. Budget account (B/A) 101-3922: Transportation Authority regulatory fund, is the NTA's general administrative budget. All general administrative expenses, including personnel-related expenses, are paid out of this fund. The revenue sources for B/A 101-3922 are the State Highway Fund (SHF) and fees from vehicle application registrations. Approximately 90 percent of funds in this account are provided by the SHF. The remaining 10 percent comes from fees. The NTA has a legislatively approved budget of \$2,669,000 for fiscal year (FY) 2012–2013. The Governor recommended a budget of slightly under \$2,662,000 for FY 2013–2014. For FY 2014–2015, he recommended \$2,594,000.

There is no reserve account in B/A 101-3922. The NTA must first utilize any unspent monies—proceeds from fines and any revenue collected by the NTA. Any expenses that cannot be paid from B/A 101-3922 must be paid out of the SHF. Any SHFs that are not used must be returned to State coffers. This happens every year.

There is a reserve account for B/A 101-3923. The account is funded 100 percent by fines generated from administrative assessments, and statute limits its use to the NTA's enforcement function. The NTA uses this account to pay for our officers' training, overtime and vehicle expenses. We transfer any unused monies that are over the authorized expenditure limit to a reserve account. For FY 2012–2013, the authorized expenditure level is \$127,000. We expect it to remain static in the Governor's recommended budget for FY 2013–2014 and FY 2014–2015.

Senator Gustavson:

How much is in the reserve fund from B/A 101-3923?

Mr. MacKay:

There is approximately \$134,000 in the reserve fund. This number may not be up to date; I will let the Committee know if I find it is incorrect.

Senator Gustavson:

With regard to safety, you mentioned that you do operational inspections yourself. How often do you do them?

Mr. MacKay:

Operational inspections are random. We inspect one-third of the carriers every year. We go through the list and randomly choose carriers to inspect. The inspection is comprehensive, but the focus is mainly on the drug-testing files, preemployment drug testing and vehicle maintenance files. We do not examine the annual vehicle inspections for this requirement, however. As a commercial driver's license holder, Senator Gustavson, you are familiar with the comprehensiveness of the annual vehicle inspection. The inspectors don coveralls, crawl under the vehicle and check the brakes, the transmission and more. They check the vehicle from side to side and front to back; they turn it inside out. We do not do those inspections. We do not have the certified personnel to conduct such inspections.

Senator Gustavson:

I did not think you did. You mentioned an independent company does your inspections. Carriers themselves have independent inspections done. Does the State approve or certify the inspection stations that conduct the inspections?

Mr. MacKay:

Yes. A qualified inspector certified by the federal government must perform a federally approved Certified Operational Inspection. The inspector who is certifying that he or she is qualified to conduct the operational inspection signs the operational inspection form the carrier transmits to the NTA.

Senator Gustavson:

I would be leery about safety if I let my carriers take their vehicles to a random shop to have an inspection done and signed off. It would not be a good inspection, as far as I am concerned.

Mr. Mackay:

I agree.

Senator Gustavson:

Chair Manendo, you mentioned nonconsensual tows. I have heard complaints from people whose cars have been impounded. Is it true that, in Clark County, the NTA uses certain tow companies for consensual tows and certain ones for nonconsensual tows and impounding vehicles? Is it true that not all tow companies have the right to do nonconsensual tows and impounds?

Mr. MacKay:

Not all tow carriers who have tow authority have nonconsensual tow authority. Some tow operators want to do only consensual tows. This means they will tow a vehicle only with the permission of the registered owner. A tow operator must have nonconsensual tow authority. A tow operator who does not have nonconsensual tow authority and tows a car without the owner's consent has no more authority to tow than I; I have no authority at all.

The State regulates the tow industry. It is no different in Clark County than it is in Washoe County, Mineral County or Nye County.

A typical tow scenario might involve a private property owner—say, an apartment complex owner—who wants a vehicle removed. The owner of the real property or his authorized agent must provide a signed, specific request to tow the vehicle. Before towing, the tow operator must possess a signed request that includes as much identifiable information as possible. This includes, if possible, the vehicle's make, model, year, license plate information and vehicle identification number. If a private property owner called and said, for example, "Senator Gustavson's Tow Service, I need you to come out and remove this car because it is parked in somebody's designated spot," the tow service could not tow.

The only time a signed, specific request is not required is when there is an agreement or contract between the property owner and the tow company to remove a vehicle blocking a fire lane, a handicap spot or an entrance to or egress from the property. Such an instance is rare, though. Usually the property owner will immediately notify the tow operator that a car is blocking the entrance or a handicap spot, and the property owner generates a signed, specific request at that moment.

Senator Gustavson:

I have also received complaints regarding towed vehicles. Some companies are charging exorbitant fees. If a car owner does not pick up the car within a certain number of days, the tow company increases the fee considerably. Do you regulate those fees?

Mr. Mackay:

Yes. The NTA approves tariff rates for tow operators. A tow operator—frankly, any regulated carrier except charter bus carriers—cannot charge a penny more

or less than the approved rate. If the tow company tows a car and the owner leaves it in the tow lot, the tow company will charge accrued storage fees. If, for example, an owner waits a week to pick up the vehicle, it will cost more than if the owner picked it up 24 hours after the impound. The majority of the complaints we receive are tow-related. Anytime a tow occurs, nobody is happy, even when it is consensual. It is not fun when a car breaks down.

The tow bill must show all substantiated charges in writing. All charges must be in accordance with the approved tariff rates. If a vehicle owner goes to the tow operator's domicile to retrieve his or her vehicle, the tow operator must provide a copy of the tariff. The car owner can examine the bill for accuracy. If a tow carrier charges fees that are not in accordance with the rates approved by the NTA, we want to know about it. We want the public to contact us immediately regarding such matters. We will investigate charges to confirm they are reasonable, justified and in compliance with the tariff rates. If they are not, the tow operator must refund to the vehicle owner any overcharges, and we may cite the tow operator.

Mr. MacKay:

Let us revisit Senator Gustavson's question regarding the amount remaining in the reserve fund from B/A 101-3923: There is \$164,947 in the account for FY 2013.

Senator Gustavson:

I have heard complaints over the years regarding the difficulty of obtaining a CPCN. Typically, it takes a long time. What is the average time it takes to obtain a new CPCN? If, for instance, someone wanted to buy a limousine and go into business, how long would it take to get a CPCN?

Mr. MacKay:

That is difficult to answer. The certification process can be expeditious, but it depends on how promptly the applicant furnishes us with the required information. Sometimes the process goes quickly. For example, an individual or entity may want to start a charter limousine service. The applicant meets with our staff, looks at prior applications, attends an agenda meeting or two—or an application hearing—and we make sure the application is placed on the front end as much as possible. The NTA can move such applications rapidly. What tends to be the rule and not the exception is that the applicant will submit the application, and the NTA will send a data request notifying the applicant that

the application is incomplete. The applicant will then ask for repeated extensions. It can be a drawn-out process.

Applications for charter bus authority and tow car service move a lot more quickly because mandates by the federal government have preempted the State's ability to regulate routes, service and rates; they are not subject to NRS 706.391. They do not have to prove they are financially fit, willing and able or that there is a market for the proposed services. That is not required in statute. For this reason, such applications move forward more quickly. I will not mislead you. The application process can be lengthy, but the NTA wants to process the applications as quickly as possible.

The downturn in the economy has also had an effect on the application process. The charter limousine industry in particular has taken a hit. Prior to the downturn, limousine business was robust. Since the economy's downturn, however, many operators have struggled to keep their doors open. I cannot recall an instance when someone filed a Petition for Leave to Intervene (PLTI) for a moving application. However, in the case of charter limousine businesses, virtually every application has had a PLTI filed by either a certificated carrier or a group of entities. That has the potential to slow down the process.

I cannot even guess the average application time. The NTA's goal is to get them done within 6 months of receipt. The average time for limousine service applications is longer. My guess is that it is approximately 3 months longer. This is due to the lengthy process. Upon receipt, the NTA reviews the application and accepts it. If we need additional information, we send a data request, and if the carrier requests additional time, we will grant an additional 15 to 20 days. Carriers often submit repeated requests for extensions. We try to accommodate the applicants as much as possible.

Senator Gustavson:

You say somebody petitions to intervene. If someone wants to open a limousine business, do the competitors have the opportunity to approve, disapprove or intervene? Does the applicant have to show necessity for the business for which he or she is proposing?

Mr. MacKay:

Whether someone who petitions to intervene can approve or disapprove the application, the answer is no. A competitor cannot intervene using the argument that the new business would compete with the competitor's business. If someone applied, for example, and a certificated carrier filed a PLTI because he or she does not want the competition, our hearing officer would reject the petition. A PLTI must be based on the proof that the market could not withstand the extra supply—that it would adversely affect the certificated carriers and the motor carrier industry in the area in which the application is proposed. I want to emphasize that this is a heavy burden for a petitioner. As I indicated, we have had numerous PLTIs. I can recall only one application in which there was a PLTI filed for an application that resulted in the NTA denying approval. I was the hearing officer in the case, and we denied the application because of inadequacies with safety and operational fitness. It had nothing to do with the market. No PLTI that is filed based on the contention that the proposed business would pose competition is worth the paper it was printed on.

Senator Hardy:

You mentioned preemployment and random drug testing. Do you test for bath salts? The State Board of Pharmacy has deemed bath salts an illegal substance. Do you test for spice or compounds? Does the NTA's drug screen include these substances?

Mr. MacKay:

I do not know, but I will find out. A.R. (Bob) Fairman, who is sitting behind me in the gallery, indicates we do. The State adopted various parts of the Code of Federal Regulations to develop its drug-testing requirements. The NTA adopted its requirements pursuant to these regulations. I have not looked recently at what the requirements include. Mr. Fairman is certain that testing for those substances is part of the drug tests, and I do not doubt the accuracy of his determination.

Senator Hardy:

The point I am trying to make is that, though bath salts are illegal, the isomers in them are not. The isomers are only one step ahead, chemically, of what we can consider illegal. An operator who uses a substance that contains one of the isomers could be adversely affecting safety. Labs can screen for bath salts. Can they also detect their isomers?

Mr. MacKay:

I do not know. I will get back to you with the information.

Senator Spearman:

You talked about the disciplinary action for noncompliance. Are there levels of disciplinary action that you would take? If someone has an infraction in, for example, January 2013 and then incurs another infraction of the same nature in June 2016, would you consider the infractions cumulatively before suspension or revocation of the license, or do you consider infractions that occurred only within finite periods?

Mr. MacKay:

Yes and no. The NTA does not have set fines in place with respect to specific violations. The NTA has a settlement schedule in which the cited operator can settle minor infractions not related to safety. The operator can come in and settle the citation in lieu of appearing at an administrative hearing and paying a fine.

The following are examples of infractions that are included in the settlement schedule: solicitation of passengers, and failure to have the medical card in possession. According to NRS 706.771, any violation can result in fines up to \$10,000. Anytime a carrier incurs fines totaling \$10,000, there is a precedence of multiple prior violations. We usually levy \$10,000 fines against the operator we have cited multiple times for noncertification. This would be someone who is not getting the message. It could also be a carrier cited numerous times for a serious violation such as towing a vehicle without authority. The circumstances are limited. The NTA's aim is to bring the certificated carrier into compliance. As a rule, we consider whether the carrier has committed " ... a mistake of the head and not the heart" In other words, we consider the operator's intention. An operator may not realize, for example, that he or she needs to fill out forms and logs or to keep records in a separate, locked file.

The NTA will levy a fine but suspend it. We will suspend a fine for 1 year, our message being that it will not be due and payable if there are no further infractions for a year.

Every case is unique and has a fact pattern. We can cite a carrier and then cite him or her again 3 months later for the same infraction. The first thought is that the carrier should have known better. Then it becomes apparent the carrier has made a mistake. The infraction is not major, so an infraction that had the potential to result in suspension ends up not being due and payable. Our recommendation depends on the fact pattern, evidence and circumstances. Here is the crux: We limit the big fines to the unlawful, noncertificated carriers as well as to carriers that are blatantly violating the law because of hours of service, preemployment drug testing and the like. This agency does not operate in order to be punitive.

Senator Spearman:

Some homeowners associations display tow-warning signs. A constituent asked about towing charges, saying they are exorbitant. Does the NTA regulate or monitor those? Who is responsible for setting tow charge rates?

Mr. MacKay:

The NTA regulates tow charges. If your constituent is unhappy about tow charges he or she incurred, please have the constituent contact the NTA. We will investigate the incident. The first thing we do in any tow investigation is determine whether the tow was properly effectuated. We question whether there was a signed, specific request to tow. Let us say, for argument's sake, that there was. We would then ensure the charges were in accordance the tariff rates approved for the carrier.

Charles D. Harvey (Administrator, Taxicab Authority, Department of Business and Industry):

I will read my written testimony ([Exhibit D](#)), which explains my presentation ([Exhibit E](#)). Some of the information I will present will be similar to that presented by Mr. MacKay.

When reading [Exhibit D](#), I added the following statement under "Staffing" on page 3: "Since 2004, our workload has increased by over 40 percent, while our staffing has decreased by 12 percent." Under "Equipment & Technology," also

on page 3 of [Exhibit D](#), I added the following: "The Taxicab Authority must evolve to keep pace with the technological and digital changes in the industry."

Senator Hardy:

In the interest of full disclosure, I am notifying the Committee that Joe Hardy, Jr., a member of the TA's board, is my son.

Chair Manendo:

Mr. Harvey, is long-hauling within the TA's jurisdiction?

Mr. Harvey:

Yes.

Chair Manendo:

How common are customer complaints regarding long hauling?

Mr. Harvey:

We have been focusing on long hauling since I took office in May 2011. The TA has taken steps to gauge the magnitude of the problem, but it has been difficult to determine. My office receives a number of complaints on a daily basis; we investigate each one. Not only do we receive complaints directly, the individual companies do, as well. Taxicab businesses take affirmative action to investigate and rectify the grievances. The TA has done a number of things to address this issue, including increasing targeted enforcement, conducting administrative stops and undercover operations, and distributing public service information to the riding public. We also work jointly with the hotel and tourism industry, local law enforcement and the taxicab companies.

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Chair Manendo:

There has been a lot of media attention on the issue of long hauling, specifically in southern Nevada.

Seeing no further business before the Committee, we are adjourned at 9:08 a.m.

RESPECTFULLY SUBMITTED:

Melodie Swan-Fisher
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance roster
	C	11	Andrew J. MacKay	Information Package Handout
	D	3	Charles D. Harvey	Written testimony
	E	15	Charles D. Harvey	Nevada Taxicab Authority Handout