

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session  
February 20, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:02 a.m. on Wednesday, February 20, 2013, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E 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:**

Sean Sever, Communications Director, Nevada Department of Transportation  
Rudy Malfabon, P.E., Director, Nevada Department of Transportation  
Paul J. Enos, CEO, Nevada Trucking Association  
Randy Bolsinger, Gold Wing Road Riders Association Chapter A  
Victor Moss, President, D&M Cycle School, Inc.  
Denise Senko, Gold Wing Road Riders Association Chapter A  
Robert Senko, Gold Wing Road Riders Association Chapter A  
Mardie Bolsinger, Gold Wing Road Riders Association Chapter A  
Mark C. Wenzel, President, Nevada Justice Association  
Traci Pearl, Administrator, Office of Traffic Safety, Department of Public Safety  
Peter Vander Aa, Program Administrator, Program for the Education of  
Motorcycle Riders, Office of Traffic Safety, Department of Public Safety

Walt Ratchford

**Chair Manendo:**

We will introduce Bill Draft Request (BDR) 43-184.

**BILL DRAFT REQUEST 43-184**: Revises provisions relating to driving under the influence (Later introduced as [Senate Bill 175](#).)

SENATOR ATKINSON MOVED TO INTRODUCE BDR 43-184.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

\* \* \* \* \*

**Sean Sever (Communications Director, Nevada Department of Transportation):**

We are here to present an overview of the operations of the Nevada Department of Transportation (NDOT).

**Rudy Malfabon, P.E. (Director, Nevada Department of Transportation):**

You have a handout of my presentation ([Exhibit C](#)). The NDOT manages nearly 5,400 miles of highway and 1,116 bridges. The system carries 54 percent of the State's traffic and includes major U.S. highways and State routes. As a multimodal agency, we deal with cars, trucks, pedestrians, bicycles, rail, air travel and mass transit. Rural transportation needs are important across the State.

The NDOT is a State Highway Fund (SHF) agency that works closely with other agencies. We understand the importance of staying within the budget of the SHF.

Safety is the No. 1 priority of the NDOT. We also strive to preserve and manage our assets, operate the system efficiently, deliver projects on time and maintain a customer-focused attitude as we deal with the public, developers and elected officials. Over the years, we have done innovative things, including the bridge slide in Mesquite. For example, we had a contractor build a bridge on the side of the interstate and then slide it into place after knocking down the old bridge.

The NDOT strives to be the “employer of choice” for our State workers, contractors, vendors and suppliers.

Our budget philosophy is to be economical, efficient and focused on safety. I have asked my staff to seek cost-cutting measures so we can raise the SHF balance back to where it should be, between \$90 million and \$100 million. The SHF balance is now more than \$100 million, primarily because we have not had much snow lately. In summer, construction and payments to contractors determine the SHF balance.

Page 5 of [Exhibit C](#) shows the NDOT organizational chart. We are a centralized agency so much of my staff is at the Carson City headquarters, working on engineering. Our four major areas are Administration, Planning, Engineering and Operations. Within Operations, 242 positions are assigned to NDOT’s three districts in Las Vegas, Reno and Elko. That budget is covered by Construction, under the Headquarters layer of the chart. About 970 employees are in the districts, with about 800 in the headquarters. Our departmental vacancy rate is about 7 percent.

The NDOT relies heavily on temporary workers, which is cost-efficient. Highway construction aides work for 6 months during the spring and summer construction season. Lesser technical positions work on construction oversight and on year-round maintenance. In winter, we focus on snow and ice control to ensure public safety.

The map on page 7 shows the boundaries of our three districts are not aligned with county lines. The Las Vegas District has a major maintenance station in Tonopah, and the Elko District has major maintenance stations in Winnemucca and Ely. There are 51 stations statewide with a goal of increased responsiveness, particularly during winter in mountainous areas.

The NDOT, the Department of Motor Vehicles (DMV) and the Department of Public Safety (DPS) share responsibility for the SHF balance. We all discuss revenue projections and expenditures and keep the Legislative Counsel Bureau up to date on the SHF balance. The SHF balance of about \$125 million is healthy but will drop during construction season. The SHF balance is constantly being replenished by fuel-tax revenue and reimbursements from the Federal-Aid Highway Program (FAHP), Federal Highway Administration (FHWA) and U.S. Department of Transportation (USDOT).

The pie chart on page 10, [Exhibit C](#), shows the SHF's revenue sources in fiscal year (FY) 2012-2013. State revenue was about \$422 million, and federal revenue was about \$467 million. Most of the State revenue was from the special fuel and gasoline taxes, with vehicle license and registration fees providing the rest. The miscellaneous receipts chart shows a large infusion of revenue from the Las Vegas Convention and Visitors Authority. That money was a one-time deal that went to the Interstate 15 South Design-Build project to widen the freeway and build access lanes alongside of it. We also built the flyover bridge at Blue Diamond Road.

The chart on page 11 shows the breakdown of the per-gallon gasoline tax. The federal and State portions are both about 18.5 cents. The chart shows the State gasoline tax has not increased since 1995. With gas prices increasing toward \$4 per gallon again, that is an issue. People tend to consolidate vehicle trips to minimize gas use, which means less State revenue. The chart on page 12 shows special fuel tax information, primarily on diesel. The State portion is 27.75 cents, and the federal portion is 24.4 cents. Professional truck drivers use interstate highways. There is a method for splitting up diesel taxes based on how many miles they travel in each state so their fuel taxes are distributed accordingly. The other special fuels are propane and compressed natural gas. The chart shows the special fuel tax has not changed since 1995.

The FAHP was established in 1956 to fund construction of the interstate highway system by collecting and then redistributing the federal gas tax back to states. In addition to the aforementioned fuel taxes, revenue is collected on tires over 40 pounds, truck and trailer sales, heavy-vehicle use and interest earned on the federal United States Highway Trust Fund.

Federal-Aid Highway Program managers authorize surface transportation taxes and then distribute them to various programs. The money is reimbursed soon after we pay it to contractors of FAHP projects. Since Nevada has so much land managed by the federal government, we only have to match about 5 percent of FAHP funds.

Nevada is under a surface transportation authorization bill called "Moving Ahead for Progress in the 21st Century" (MAP-21), which expires on October 1, 2014. It provides all state transportation departments with assurance of how much federal funding they will receive. The MAP-21 benefits metropolitan planning

organizations (MPOs) such as the Regional Transportation Commission (RTC) of Southern Nevada, the Washoe County RTC and the Carson Area and Lake Tahoe Area MPOs. The MAP-21 also coordinates with cities and counties under their respective jurisdictions so they may also receive federal funds. Formulas based on population and mileage in highway systems are used to disburse the federal money to states.

Typically, Congress does not want to deal with those formulas because of arguments about Eastern versus Western states and about developing states versus states with well-established infrastructures. Congress must pass an annual budget to appropriate funds. The current appropriation expires in late March. The NDOT receives more than the taxes it contributes to the federal gas tax. If Congress does not agree on a federal budget, the FHWA must shut down, and this could adversely affect the NDOT.

Each state transportation department is issued an obligation limit so it knows how much it can spend by category. The NDOT gives the FHWA a list of projects to fund, and the money is obligated. When projects are awarded to contractors, they are paid with State funds and then we bill the FHWA for reimbursement.

The former surface transportation authorization bill under which the NDOT operated was Public Law 101-59 (2005), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which expired in September 2009. The chart on page 15, [Exhibit C](#), shows how the money was split under MAP-21 nationwide. The FHWA's new National Highway Performance Program provided most of the state highway money. Previously, the funding was from the Interstate Maintenance Discretionary Program, the National Highway System and the Highway Bridge Program, which were consolidated into the FHWA's National Highway Performance Program. We also get funding from the FHWA's Off-System Bridges Program and Surface Transportation Program. The RTCs get a portion of federal funds through the FHWA's Surface Transportation Program because they are required to be suballocated or distributed by population.

Funds from the FHWA's Congestion Mitigation and Air Quality Improvement Program go to the Clark and Washoe Counties RTCs because they have "nonattainment of air quality." They use the money to improve air quality by

enhancing traffic flows with improved signal timing, mass transit and bicycle trails.

The MAP-21 plan includes funds from the Highway Safety Improvement Program and MPOs. The federal Recreational Trails Program, Safe Routes to School Program and Transportation Enhancement Program were consolidated into the FHWA's Transportation Alternatives Program. The funds may be used for enhancement projects like roadway beautification projects or conversion of railroad depots into museums. A stand-alone landscaping project along a highway could have received Transportation Enhancement Program money but would no longer be eligible under MAP-21.

The NDOT can capture other federal funding that other states do not through August redistribution, in which departments of transportation have leftover money in a current federal fiscal year that the FHWA redistributes. The chart on page 17 indicates that from federal fiscal years 2004 to 2012, the NDOT received \$45,010,530 in August redistributions. We can also get other states' money through last-day funds. The federal fiscal year is October 1 to September 30. When federal agencies see states' projects are not going to be delivered by the end of a federal fiscal year, the money goes back in the pot, and they do a last-day distribution up to the obligation limit. In recent years, though, Nevada has not gained much from other states' failures to spend their allocations. We have averaged about \$3 million per year.

Other MAP-21 changes were the elimination of earmarks we had received under SAFETEA-LU for specific projects. The projects included construction of the Mike O'Callaghan-Pat Tillman Memorial Bridge and the Boulder City Bypass. We are working with local agencies to spend the remaining \$52.5 million earmarked money, including \$28.5 million earmarked for the Laughlin-Bullhead City Bridge.

The MAP-21 has seven established national goals: safety, infrastructure condition, congestion reduction, systems reliability so people will know how much time trips will take, improved freight movement and economic vitality, environmental sustainability and reduced project delivery delays.

There are major strings attached to the federal disbursements. The National Environmental Policy Act requires us to study layers of environmental impacts. We must comply with the Clean Water Act of 1977 and the Clean Air Act of 1970. There are State and federal prevailing wage laws, of which we use the

higher when listing wage rates. We work with the Office of Labor Commissioner, Department of Business and Industry, on that aspect of our contracts. We have to comply with Title VI of the Civil Rights Act of 1964 nondiscrimination requirements and the Disadvantaged Business Enterprise (DBE) program. We are doing a disparity study update for contracts issued over the last 5 1/2 years, in which we collect statistics on how often we use women- or minority-owned firms and whether they are registered as a DBE. Our goal is 10.2 percent DBE participation for contractors and professional services on our federal projects. We are prohibited from granting local preferences. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 outlines our rights-of-way acquisition requirements and procedures for appraisals, making offers on property and paying relocation expenses.

**Senator Hardy:**

In regard to the Boulder City Bypass, we have had a paradigm shift in our discussions of Interstate 11, which is on the same plan footprint. If the Bypass is designated as Interstate 11, are the earmarks criteria the same?

**Mr. Malfabon:**

The remaining earmark for that project is about \$15 million being used for the first phase of the Bypass. It has been programmed for this FY for right-of-way acquisition and utility relocation. Our first project, \$1.5 million, was awarded to Las Vegas Paving Corporation for fencing and clearing yucca plants and cacti in the corridor. The rest of the earmark will be used to relocate major power and gas lines.

**Senator Hardy:**

Prospectively, in subsequent phases, is there an earmark difference between the State using federal money now on the Bypass and when it switches over to the Interstate 11 concept?

**Mr. Malfabon:**

The MAP-21 bill designated that corridor as future Interstate 11. We had to shift the federal funding for Phase 2—construction of the toll road—because it contained local preferences, which are disallowed. Congress had not imposed earmarks on appropriations bills or the Surface Transportation Program authorization.

**Senator Hardy:**

Are you saying you still need an earmark to construct Interstate 11?

**Mr. Malfabon:**

No earmarks are forthcoming. When they designated the corridor as Interstate 11, they did not set aside money for it. We will use other federal funds for the Nevada portion of the highway. The Bypass earmark was granted years ago.

**Senator Hardy:**

As it stands now, is there no reason to get an earmark to build Interstate 11?

**Mr. Malfabon:**

Earmarks are no longer granted for specific projects. Whenever a member of the Nevada Congressional Delegation tries to add one to a bill, it is unsuccessful.

**Senator Hardy:**

Are you saying that since earmarks are no longer granted, the federal money is all in one pot, and we must just rely on our Congressional Delegation to get Interstate 11 competitively funded?

**Mr. Malfabon:**

Correct.

**Chair Manendo:**

Many Legislators are interested in the future of Interstate 11. Could you supply us with a breakdown of federal appropriations for southern Nevada highway projects?

**Mr. Malfabon:**

Certainly. The pie charts on page 20, [Exhibit C](#), show the SHF disbursements in State FY 2012-2013. The DMV and the DPS get some SHF funding, but the NDOT gets the lion's share. The NDOT used the bulk of its share for capital improvements. In the last few years, we have had some of our biggest disbursements, including from the American Investment and Recovery Act of 2009 and the Las Vegas Convention and Visitors Authority for the Interstate 15 South Design-Build project. The "Other Disbursements" chart shows the bond fund, to which we shift money from the SHF to repay bonds that have been sold. The bonds are used throughout the State on projects like the widening of



U.S. Highway 95, a design-build project on Interstate 15 North and for Interstate 580 between Carson City and Reno.

The pie charts on page 21 show NDOT's expenditures for FY 2012-2013. Most of the money went toward capacity projects, in which we added lanes or built interchanges, ramps or bridges. Preservation projects are overlays on improving the pavement of existing highways or improving, not replacing, bridges. The "Other Projects" chart includes items like installation of traffic signals or safety improvements like slope-flattening or chain-up pullouts near passes. Because of its population, Clark County received the bulk of the funds, especially for capacity projects. We are still trying to provide infrastructure due to the large population increase from 2000 to 2005.

The pie charts on page 22 of [Exhibit C](#) show NDOT's rural and urban expenditures for FY 2008-2012. About 54 percent of the preservation projects are in rural areas, with 80 percent of the capacity money going to Clark County and a small amount to Washoe County. Clark County received 64 percent of the money during that 5-year period.

One of the most common questions I receive is how the NDOT selects and prioritizes its projects. We begin with corridor studies to identify needed improvements over a 20- to 25-year projection. We do an annual review of the State highway system, and every other year we review with NDOT district personnel familiar with the roads to determine their condition. Technical divisions review their goals for using federal funds, including maintenance, bridge and safety programs, traffic operations and hydraulics. Hydraulic projects include drainage issues and water quality improvement at Lake Tahoe.

Proposed projects then receive scores based on asset preservation, mobility and safety improvements, promotion of economic development, impacts on community livability and benefit-cost analyses of projects costing more than \$25 million, which we submit to the Legislature. From May to September, we make presentations before county commissions about our annual work program and long-range plans, and we consult with Native Americans.

The NDOT submits its list of FAHPs to the MPOs in Carson City and Lake Tahoe and to the RTCs of Southern Nevada and Washoe County to ascertain their regional project needs. The RTCs work with member agencies in their jurisdictions to create project lists. We list our FAHPs as draft regional

transportation improvement programs, which last 4 years. We assist the RTCs and MPOs about how to add federally funded NDOT programs to their 4-year transportation improvement programs. The RTCs and MPOs also develop regional transportation plans for Years 5 through 20.

The agency boards conduct public meetings on the short- and long-range plans and then adopt and submit them to the NDOT. We either must accept plans as they are or reject them; we cannot modify them. We incorporate the plans into our statewide Transportation Improvement Program and then submit them to the NDOT Board of Directors. After the implementation of MAP-21, the FHWA gave the RTCs an extension on the deadlines to submit plans, which usually are due by the end of the FY. The RTC of Southern Nevada has approved its plan, and the Washoe County RTC is almost done with its plan.

After the NDOT Board of Directors approves MPO and RTC plans, they go to the FHWA. After that approval, the NDOT works with the MPOs and RTCs to program and manage delivery of the projects that have an obligation of federal funds. We must make sure projects stay on schedule for completion during the federal fiscal year; if we see a project falling behind, we move up another. We make sure we understand local agencies' priorities.

Pages 27 and 28, [Exhibit C](#), list major projects for southern and northern Nevada. We are starting Phases 1 and 3 of Project Neon: routing Interstate 15 from Sahara Avenue to the U.S. Highways 95/515 Spaghetti Bowl interchange, reconstructing the Charleston Boulevard interchange and connecting Interstate 15's express lanes to U.S. Highway 95's high-occupancy vehicle—or carpool—lanes. We have made some improvements on the latter, but there is still no connection between the centers of U.S. Highway 95 and Interstate 15. We are seeking a public-private partnerships for a 30- to 35-year availability payment to fund that expensive project.

We are acquiring property as part of Phase 1 of the Bypass but are encountering inverse condemnation, in which owners seek compensation for property whose value is adversely affected by projects. We anticipate going to court with a landowner who is asking for compensation higher than our estimate. Phase 1 of the project goes from the southern end of Henderson to U.S. Highway 95 and is a series of frontage roads and realignment of the highway to connect to Phase 2, which may be a toll road. The projected cost of Phase 1 is \$130 million. The project to reconstruct Interstate 15's Cactus Avenue

interchange was recently awarded to Las Vegas Paving Corporation. It will provide continuity between the southern end of The Strip and the southern highlands of the southwest portion of Las Vegas Valley. In partnership with the City of Las Vegas, the NDOT is reopening the F Street Bridge at Interstate 15.

Major northern Nevada projects include the redesign of the Meadowood interchange on Interstate 580. The contractor is lagging, and we are working to resolve the construction issues they are blaming on us. The contractor will probably have to go before a claims review board and then take the State to court if in disagreement with that board's ruling. The contractor has submitted a claim for an additional \$1.4 million and 220 more days of work expenses. We are trying to get the lanes back to normal configurations and remove temporary barrier rails by the end of March. The area near the Reno-Tahoe International Airport on Interstate 580 needs a lot of work on its concrete pavement. We plan to repave it from Moana Lane to Glendale Avenue.

We are working on the Snyder Avenue overpass over the Carson City Freeway and looking at how we can quickly complete the bypass from Fairview Drive, where a lot of the truck traffic enters and exits from the Freeway onto a local street, to U.S. Highway 50/U.S. Highway 395. We are looking at ways to make Fairview Drive a functional interchange while postponing interchange and bridge costs.

Major projects in rural Nevada are shown on page 29. The Carlin exit tunnels on Interstate 80 are being constructed using the construction manager at-risk method (CMAR). This Session, we are asking the Legislature to sunset the CMAR process, in which private contractors work with NDOT designers so we have an effective design and savings. We then negotiate a guaranteed maximum price with contractors after independent cost analyses of their bids. The NDOT engineers' estimates are based on different factors than contractor bids. We are also planning pavement rehabilitation on Interstate 80's Golconda, Emigrant and Battle Mountain exits and on Interstate 15's Logandale/Overton interchange.

**Senator Hardy:**

State Route 169, which goes through Logandale and Overton, has safety issues when people try to turn left onto two-lane roads. Where does that stand among the NDOT projects? There is a special fund to put left-turn lanes on rural two-lane highways.

**Mr. Malfabon:**

We will look into the problem.

**Senator Atkinson:**

When will work begin on the Freeway extension at Fairview Drive?

**Mr. Malfabon:**

The Snyder Avenue bridge is being constructed, but the next phase of the Freeway will not go out to bid for 2 years. Meanwhile, our engineers are designing a paved road to the intersection of U.S. Highways 50/395 on which people could drive past Fairview Drive to U.S. Highway 50.

**Senator Atkinson:**

Are the three projects on page 28 already funded?

**Mr. Malfabon:**

Yes, with federal aid.

**Senator Gustavson:**

If traffic is dumped off the Freeway onto Snyder Avenue, there will still be problems. What is your plan to divert traffic to the interchange at U.S. Highways 50/395? Is the \$86 million just for the next phase of the Freeway, excluding that interchange?

**Mr. Malfabon:**

The \$86 million is to complete the section of Fairview Drive to the interchange. The Snyder Avenue bridge just goes over the future bypass; it does not open up the Freeway all the way to Snyder Avenue. We are also relocating utilities in the area in anticipation of the major project.

The NDOT has presented many bill draft requests. We worked with the Nevada Association of Counties on road relinquishments to allow the NDOT Board of Directors to be able to do so. The NDOT is seeking permission to establish public-private partnerships for tolling authority. The Governor will only approve toll roads and bridges if the public has a free, alternative road. We have proposed an amendment to the *Nevada Revised Statutes* (NRS) involving electronic data collection on vehicle crash statistics. We also seek to amend Nevada's open container law because the National Highway Traffic Safety Administration (NHTSA), USDOT, has determined it does not exempt limousine

and taxicab drivers. Our rest stop commercialization bill would offset costs of some cleaning and janitorial services in rest areas so that, unlike other states, we do not have to close them.

**Paul J. Enos (CEO, Nevada Trucking Association):**

You have a copy of my presentation ([Exhibit D](#)). The Nevada Trucking Association (NTA), formerly known as the Nevada Motor Transport Association, is an affiliate of the American Trucking Association in Nevada and represents truckers from big carriers like the United Parcel Service of America, Inc., and FedEx Corporation to mom-and-pop outfits.

The NTA started in 1932, a generation after the U.S. trucking industry began in 1903. The industry was economically regulated. Congress passed the Motor Carrier Act of 1935, which established the Interstate Commerce Commission to regulate rates and routes and to determine what goods could be carried. State commerce commissions were set up, including Nevada's Public Service Commission.

The next thing that helped establish the modern trucking industry was the Federal-Aid Highway Act of 1956, which created the interstate highway system. Instead of having to stop at small town stoplights or rural area stop signs, truckers could now efficiently move goods throughout the entire Country.

The Motor Carrier Act of 1980 deregulated the trucking industry, making it a lot more competitive. The legislation was sponsored by Nevada's U.S. Senator Howard Cannon. Before 1980, Reno had 5 trucking companies functioning under regulations; after deregulation, 50 companies operated there, but profit margins decreased. Deregulation reduced transportation costs. Today's costs are about the same as those in 1980 because of reduced competition and elimination of the back room. When I was growing up in Elko, if the J.C. Penney store did not have the Levi's size you wanted, clerks said, "Let me check in the back." Today, back rooms are in the back of trucks. Stores do not need to have raw goods on hand because trucks are constantly on their way with them.

The Nevada trucking industry sustains about 45,000 jobs: drivers, dispatchers, human resource and safety workers, mechanics and salespeople. Their average salary is about \$44,000. Most of the State's 2,380 trucking companies are small, family- and locally owned businesses.

In Nevada, trucks transport 94 percent of the total manufactured tonnage, about 133,000 tons per day. The reason that number is so high is the State does not have much rail service or navigable waterways. More than 80 percent of our State's communities rely exclusively on trucks for goods delivery. If trucks stopped moving, just-in-time manufacturing would cease in just a few hours. Fuel supplies would run short in 2 to 3 days; in 3 days, stores would run out of food, especially meat, milk and produce. Garbage pickup would cease, and banks would run out of cash. In 7 to 10 days, medicine and radiopharmaceuticals to treat cancer would become unusable, and hospital oxygen supplies would be depleted. In 2 to 4 weeks, water supplies would be depleted. I ask people, "Name one thing in this room—except the human beings—that was not on a truck at one time."

The maps on pages 14 to 19, [Exhibit D](#), show how trucks connect communities. The American Transportation Research Institute put global positioning system devices on 2,000 trucks in Las Vegas to see where they traveled over 7 days. After 24 hours, as the trucks spread out, they connected Las Vegas to the ports of Long Beach and Los Angeles and showed how the Interstate 15 corridor is essential. At the end of the week, the trucks had reached almost every state and into Canada. Instead of thinking about roads as local, we need to realize the interstate highway system is essential to freight movement. The maps on pages 20 to 25 show where trucks originating in Reno went over a week, with Interstate 80 as the main route with a lot of activity in the Port of Oakland.

Generally, a truck cannot weigh more than 80,000 pounds when operating on an interstate highway. How weight is distributed over axles is very important, analogous to a 300-pound man stepping on your foot versus a 100-pound woman in stiletto heels. There is more road damage if a lighter weight is distributed over a smaller area. On the interstate system, trucks cannot have a single-axle weight exceeding 20,000 pounds, tandem axle weight exceeding 34,000 pounds or tridem axle weight exceeding 42,000 pounds. Trucks must also comply with federal bridge weight laws. In Nevada, trucks may get annual permits to carry divisible loads of up to 129,000 pounds; truckers must get one-time trip permits for anything over that.

Nevada allows longer combination vehicles. There is no overall length limit; we just limit cargo length. Triple trailers, Rocky Mountain doubles and turnpike doubles cannot exceed 95 feet of cargo. Straight truck and trailer combinations

cannot exceed 98 feet. The safety of triple trailers versus other longer combination vehicles has been questioned. A 1996 study commissioned by the FHWA found triple trailers and Rocky Mountain doubles had less than one accident annually. Nationwide in 2010, there were only five fatalities related to triple trailers. Only 0.1 percent of all fatal and nonfatal truck accidents involve triple trailers. Operators of those trucks are the industry's most-seasoned and best drivers. In Nevada, they must be at least aged 25 and get a special endorsement.

The slide on page 34 describes the operational flexibility of triple trailers. Truckers can deliver goods and leave and return for the trailers while maintaining productivity.

Trucking is an industry in which pennies make the difference. A rise of a few cents in the cost of diesel fuel can make the difference in profitability. The industry pays \$277 million in State and federal roadway taxes, or 36 percent of all taxes and fees owed by Nevada motorists. Trucking accounts for 9 percent of all miles traveled, or \$15,000 per truck.

In 2011, the average operating cost per mile for trucks was \$1.706, or \$68.20 per hour. Fuel and oil costs are high; in 2008, fuel surpassed labor as the trucking industry's No. 1 expense. As a result, many companies went out of business until they figured out how to pass those costs onto understanding customers.

The International Fuel Tax Agreement (IFTA), implemented in 1997, ensures that trucks, some of which can go halfway across the Country on 300-gallon tanks, pay for the damage they do to roads whether or not they fill up in the affected states. It is a base state concept. A trucker based in Nevada sends his IFTA reports to the DMV, listing the number of miles traveled in several states. Then IFTA staff apportions out the tax. If a trucker travels many miles in a state but did not buy fuel there, that trucker owes more IFTA tax. The IFTA taxes can only be collected on statewide bases. Washoe County has indexing, which is a problem for truckers who drive most of their miles out of state then cannot recoup fuel costs. Truckers used to have "bingo card registration," in which license plates had multiple stickers from multiple jurisdictions. Now, as shown on page 43, [Exhibit D](#), licenses end in "A," for APPORTIONED.

Safety is paramount in the trucking industry. If we do not operate safely, we will not make money by delivering products. Since 1975, the industry fatality rate has dropped by 75 percent; in 2010, there were 1.4 fatal crashes per 100 million vehicle miles of travel. In 2010, the Federal Motor Carrier Safety Administration (FMSCA) instituted the Compliance, Safety, Accountability Operational Model assessment. It makes sure state highway patrols know who are the good and the bad carriers and drivers. This is contributing to a nationwide truck driver shortage of 25,000 to 200,000 individuals.

The safety and ticketing record of each company is available to the public as the FMSCA's Behavioral Analysis Safety Improvement Categories score. The seven categories are: unsafe driving, fatigued driving, driver fitness, use of controlled substances and alcohol, vehicle maintenance, cargo-related issues and a crash indicator for vehicles and drivers. Many companies have invested heavily in truck safety features, including Lane Departure Warning Systems, roll and electronic stability systems that use hydraulics to prevent tipping, Forward Collision Warning Systems with Adaptive Cruise Control, and vehicle diagnostic and location systems.

Drivers are required to carry medical cards showing their fitness to drive and be in a drug-testing consortium. Like airplane pilots, they must perform daily vehicle inspections before and after trips. To prevent fatigue, drivers may drive no more than 11 hours in a 14-hour shift. In January, Governor Brian Sandoval suspended the hours-of-service rules because truckers could not deliver propane in a timely manner to eastern Nevada communities that needed it.

Page 50 shows a driver's logbook wherein the driver is required to record the time off duty, in a sleeper berth, driving and on duty but not driving. Paper logbooks will disappear by 2015, replaced by electronic onboard recorders connected to the trucks that track hours of service, braking, engine revving and driver fatigue. The slide on page 52 shows the driver's vehicle inspection report checklist. He or she has full control and can refuse to drive a truck that does not pass inspection. The slide on page 49 shows Jackpot Sutfin, a Con-way Freight, Inc., driver who logged 3 million miles of accident-free driving in triple trailers from Las Vegas to Utah. My office is creating an awards program for individuals with 10 years or 1 million miles of accident-free driving.

The NTA is focused on sustainability and how clean and environmentally friendly our trucks are because of new regulations passed by the United States



Environmental Protection Agency and the California Air Resources Board (ARB). Through technological advances, we have lowered the particulate matter and nitrogen oxides coming out of truck smokestacks by 98 percent since 1990 and 98 percent of sulfur emissions since 1999. The truck shown on page 55 is an old, conventional truck, which is not aerodynamic with its long hood. Today's trucks, shown on pages 56 and 57, [Exhibit D](#), have a scoop on the hood to reduce wind drag to save fuel. Trailers have tails and side skirts to reduce their drag. The ARB requires the skirts, but they are only effective above 65 miles per hour (mph), while California's truck speed limit is 55 mph.

**Chair Manendo:**

If a truck enters Nevada from California, does it have to have the side skirts?

**Mr. Enos:**

Yes. The ARB has a schedule of what percentage of a truck fleet entering that state must have side skirts. In the next 5 years, every trailer entering California must have side skirts.

**Chair Manendo:**

What is the penalty if a truck does not have them?

**Mr. Enos:**

I do not know. However, penalties California imposed on a Nevada trucking company for a paperwork violation—unrelated to side skirts—was less than \$7,000.

Much of the bad public relations the industry gets is from people who are stuck behind trucks that cannot legally go more than 55 mph. Until 2008, the limit was 65 mph. Then truckers realized they could save a lot of fuel by driving 62 mph, so that is why motorists get stuck behind them. Slower speeds also decrease the risk of crashes.

Page 59 shows a single wide tire, which reduces drag and increases fuel efficiency. The ARB has asked companies to adopt these tires. Page 60 shows the ARB's required "certified clean idle" sticker, which costs truckers \$15,000 to \$20,000 more per vehicle. Truckers entering California from Nevada have many stickers, at a high cost to the industry.

Page 61 shows a Cummins class 8 truck engine for 2012. The U.S. Environmental Protection Agency establishes compliance dates. The ARB has a planned obsolescence schedule listing the compliance years of trucks that may operate in that state. Trucks built after 2010 have tanks for diesel exhaust fluid, as shown on pages 62 and 63. A mist is injected into the exhaust after it has been filtered for particulates, and then it goes into the diesel exhaust fluid tank. The resulting emission is nitrogen and water vapor.

**Chair Manendo:**

We will open the hearing on Senate Bill (S.B.) 85.

**SENATE BILL 85**: Revises provisions limiting the liability of owners, lessees and occupants of premises under certain circumstances. (BDR 3-105)

**Senator Joseph P. Hardy (Senatorial District No. 12):**

I was in a Boulder City park when Robert Senko approached me on his Honda Goldwing motorcycle. He said it is a challenge to find places with parking lots that will allow motorcycle riders to partake in riding safety classes because of liability issues. Senate Bill 85 seeks to remedy that situation.

This letter from the Motorcycle Safety Foundation (MSF) ([Exhibit E](#)) is written by Kathy R. Van Kleeck. She cites a Pennsylvania law that could be the model for Nevada to address the issue. The bill would add to NRS 41.510 the words, " ... or conducting or participating in a course of instruction for motorcycle riders," allowing parking lots or similar open spaces to be used as driving ranges. A motorcycle-safety group will soon hold an instructional session in Saint George, Utah, near our border, and we would like them to come to Nevada.

**Randy Bolsinger (Gold Wing Road Riders Association Chapter A):**

It is difficult to find parking lot owners who will allow us to teach classes because they are concerned about liability. The Gold Wing Road Riders Association (GWRRA) holds a \$2 million liability policy under which we can list lot owners. We ascertain in advance any safety issues that lots pose. Senate Bill 85 would enhance our ability to teach basic motorcycle safety: braking, swerving, cornering and proper riding techniques.

**Chair Manendo:**

Where does the GWRRA hold classes now?

**Mr. Bolsinger:**

We just presented a course in Laughlin in a casino's back parking lot. We conduct parking lot practices for riding techniques at municipal parks or schools. Las Vegas has a lot of pavement, but owners are reluctant to let the GWRRA use it.

**Victor Moss (President, D&M Cycle School, Inc.):**

I own the second-largest provider of State-approved motorcycle training through the MSF and the DMV's Nevada Rider Safety Program. We train about 1,200 students each year.

About 5 years ago, I signed an agreement with the general manager of a business to use its parking lot for the State program. I expended considerable effort and expense to obtain approval from the MSF, the DPS Nevada Rider Motorcycle Safety Program, the DPS and the Clark County Department of Business Licensing. I brought in equipment and personnel and had been operating for about 3 months when the absentee property owner showed up. He did not know about our classes because his general manager had approved them. The owner shut us down in the middle of the class. I called him to ask if I could at least finish the class and explained that the State-approved program was benefiting the public. He told us to get off of his property, or he would have us arrested for trespassing.

His pockets are deeper than mine, so I could not fight the directive in court without going bankrupt. His action effectively shut down about one-third of the State's capacity to provide training through the Nevada Rider Motorcycle Safety Program. I was able to reopen after a few weeks in the Chapman Las Vegas Dodge Chrysler Jeep Ram parking lot, and I have continued to operate there. The general manager told me that the owner's major concern was liability. The owner had been sued for other activities on his property, and he did not believe my insurance would adequately protect him.

Senate Bill 85 would help the Nevada public by potentially opening up other parking lots if I were to lose access to a property. Without \$500,000 or more to buy my own lot and lay down asphalt, I am at the mercy of what lot owners will allow me to do. The rent is steep to access lots.

**Chair Manendo:**

If you were to set up operations in a parking lot and a rider crashed, would the property owner be liable? Could you walk us through that scenario?

**Mr. Moss:**

We have mandatory insurance with a \$2 million liability. Generally, the amount of damage that might occur would be well within that amount, and reasonable people would file a claim with our carrier, which would pay the bill. However, depending on the damage, injuries or if there is a fatality—there have been only four since 1973 out of millions of riders in the MSF program—we could be exposed to a lawsuit from the property owner and the businesses engaged with him or her.

**Chair Manendo:**

If four people have died, how fast do riders go in the training?

**Mr. Moss:**

Generally, they do not exceed 25 mph.

**Chair Manendo:**

Do students wear helmets?

**Mr. Moss:**

Absolutely. They are wearing helmets and full safety gear. Twenty-five mph does not seem like a high speed, but most motorcycle fatalities occur at less than forty mph.

**Senator Spearman:**

You mentioned that millions had been trained. Is that hyperbole or the literal number?

**Mr. Moss:**

Yes, literally, millions of riders have been trained. The DPS records indicate 5,000 to 6,000 riders have been trained in Nevada annually since 1973, and that is in a state with a small population. The MSF probably has records to the effect that millions of riders have been trained in the Nation.

**Senator Spearman:**

Were the four fatalities necessarily in Nevada?

**Mr. Moss:**

There have been four fatalities in the United States since 1973, but none were in Nevada. About 8 years ago, a man had a heart attack and died on my training range, and there was another stroke or heart attack death at a College of Southern Nevada class about 15 years ago.

**Senator Spearman:**

The bill proposes to eliminate the litigious exposure of property owners. Would you be able to provide them an additional \$1 million in insurance riders or an indemnity clause on your policy?

**Mr. Moss:**

Every student must fill out a waiver that contains an indemnity clause relieving the class sponsors and property owners of liability. That simply allows us to prove to a judge that students knew what they were doing, but it does not prevent one from suing us. Our policy lists property owners as additional insured parties to protect them. The outcomes of lawsuits would always be at the mercy of juries and attorneys' skills.

**Denise Senko (Gold Wing Road Riders Association Chapter A):**

I have been riding motorcycles for more than 25 years. I learned to ride through a MSF course, and my continuing education classes have helped my safety and that of others around me. I was the GWRRA Chapter A district educator.

It is difficult to find places to hold our classes and parking lot practices. The main problem has been property owners' worries about liability. Our classes go along with recreational uses of public lands.

**Robert Senko (Gold Wing Road Riders Association Chapter A):**

I was the one who proposed the bill to Senator Hardy. When I took the MFS class years ago, the instructor told me class completion was equal to skills gained through 5 years of motorcycle riding on the open road. Education is important for beginning and younger riders and kills bad habits of experienced and older riders.

**Senator Hardy:**

Please describe the class. How many hours does it entail, how does it equate to actual driving? Is it geared for different levels of riding expertise?

**Ms. Senko:**

Classes vary if they are parking lot practices or full MSF courses. A course is set up with traffic cones that entails different driving skills, including executing panic stops, making slow turns and maneuvering through parking lots.

**Mr. Senko:**

The MSF Experienced RiderCourse entails 4 hours in the classroom and then 4 to 6 hours on the driving range. The Basic RiderCourse lasts 3 to 4 days of classroom and range-riding time. To be a GWRRA member, riders must repeat the MSF Experienced RiderCourse every 2 years. Other classes include cardiopulmonary resuscitation, crash scene response and safety commitment. The highest attainable GWRRA levels are senior/master and grand master riders.

**Mardie Bolsinger (Gold Wing Road Riders Association Chapter A):**

I am a motorcycle co-rider who rides behind my husband, Randy Bolsinger. I will do anything I can to make riding a safe experience, including involvement with the GWRRA. I helped my husband find a place to hold the MSF classes after we were constantly turned down. This bill would encourage property owners to open parking lots to improve motorcyclist safety.

**Senator Spearman:**

The bill seems to be a short-term fix for the problem. Do you plan to establish a permanent facility to eliminate the liability issues?

**Mr. Bolsinger:**

I am Nevada's district rider educator for the MSF courses. The GWRRA cannot afford to purchase or lease property for our classes. It would be great if a business offered us a permanent site, but we cannot purchase our own.

**Mark C. Wenzel (President, Nevada Justice Association):**

The proposal to change the recreational use statute, NRS 41.510, contravenes its intended purpose. Historically, recreational use statutes have allowed landowners to let neighbors and friends onto their land to hunt and fish while freeing the owners from legal responsibility if someone is injured.

Senate Bill 85 would go beyond the well-intentioned purposes of NRS 41.510 to allow motorcycle schools and property owners legal immunity when operating on private property. The school operators would have no obligation to train employees and ensure the site is danger-free. The Nevada Justice Association

believes if schools do not take responsibility for negligent or careless situations, that would promote irresponsibility and carelessness.

**Senator Spearman:**

If the word “recreational” were removed from the statute, would you still oppose the bill?

**Mr. Wenzel:**

The entire NRS is called the recreational use statute so I do not know which word you would remove. That use is generally perceived and codified as hunting, fishing, gardening, etc.; today we are discussing a commercial operation that charges students and leases space. It is taking the statute’s intention of letting people use private property to hunt, fish or hike and bringing a commercial endeavor under the scope of recreational use, which contravenes the statute’s intended purpose.

**Senator Spearman:**

That was not my point. We are talking about recreation, and it sounds like what the bill’s supporters are endeavoring to do is instructional, which is different from recreation.

**Mr. Wenzel:**

I agree with you. When I prepared my testimony, the situation reminded me of a commercial drivers’ education school. That is also not the recreational purpose that the statute was enacted to protect. The motorcycle school is not recreational; it is more instructional and is presented for a price.

**Traci Pearl (Administrator, Office of Traffic Safety, Department of Public Safety):**

The Office of Traffic Safety, DPS, applies to the federal grants office for traffic safety grants to pass through State and local agencies. We also manage the Nevada Rider Motorcycle Safety Program, which is fee-based.

**Peter Vander Aa (Program Administrator, Program for the Education of Motorcycle Riders, Office of Traffic Safety, Department of Public Safety):**

You have the printout ([Exhibit F](#)) of my presentation. I direct the Nevada Rider Motorcycle Safety Program. The GWRRA operates a different type of training than we do at the State level. We train about 5,500 riders annually through 11 providers on 20 practice ranges and schools.

A practice range is a large parking lot free from obstructions. It must be approved by our program analyst for safety. The State uses the MSF curriculum, and they are very strict as to the safety, size and appearance of practice ranges. Contracted providers include DPS; Western Nevada College, Truckee Meadows Community College and the College of Southern Nevada; seven private businesses: Harley-Davidson dealerships in Reno, Carson City, Henderson and Las Vegas; D&M Cycle School; Silver State Motorcycle Academy at the Silver Springs Airport; and Cape Fox, based at the Fallon Naval Air Station.

Practice ranges are operated through DPS at DMV offices in Winnemucca, Elko and Carson City, and the Hawthorne Industrial Airport; Western Nevada College uses the NDOT parking lots on Stewart Street and Hot Springs Road, and a campus lot; Truckee Meadows Community College uses lots on its campus and Spanish Springs High School; and the College of Southern Nevada uses three campus lots and the Tonopah Airport.

Practice ranges are difficult to find because of MSF requirements. A full-size range to accommodate 12 students must be 260 feet by 160 feet, relatively flat, have minimal cracks and asphalt in good repair, have a 20-foot runoff drain on all sides and be free from obstructions like light poles, curbs, walls, fences, speed bumps and trees.

I spoke with some of the insurance businesses that providers use. The DPS uses U.S. Insurance Services, Inc., which does not envision any impacts to our policy if S.B. 85 passes. It adds the caveat that may change if the law is tested in court. The MSF letter, [Exhibit E](#), expresses support for S.B. 85. The DPS uses a lot of NDOT, DMV and municipal airport properties, so the bill would more specifically affect private providers.

**Chair Manendo:**

Does the DPS inspect the college parking lots to see if they comply with the MSF requirements?

**Mr. Vander Aa:**

Yes, if someone wants to open a practice range, I would personally have to inspect and measure it. I would take pictures of the site from different viewpoints and then send them to the MSF.



**Chair Manendo:**

Have you taken photos of all of the facilities? Have you or someone on your staff personally viewed all of them?

**Mr. Vander Aa:**

I began my job in May 2012, so no, I have not personally seen every site. However, the DPS has signed off on every practice range.

**Senator Spearman:**

Would motorcycle safety be enhanced if these facilities were expanded or new ones added?

**Mr. Vander Aa:**

Are you asking if we need additional practice ranges? We have additional capacity at our current ranges, but that depends on the providers. Some are maxed out; others have additional capacity.

**Senator Spearman:**

What is the distribution of the facilities in southern versus northern Nevada?

**Mr. Vander Aa:**

About 60 percent of the ranges are in the Las Vegas area.

**Mr. Wenzel:**

If we are discussing immunity from lawsuits, it does not matter how much insurance one has. The point of the bill, as written, is people who conduct or participate in motorcycle instruction would be immune from lawsuits, just as I would be if I let you fish on my property. I want to make it crystal clear to the Committee that immunity from lawsuits means one cannot be sued, regardless of the amount of your insurance. That is why the Nevada Justice Association opposes the proposal to extend the recreational use statute to for-profit businesses.

**Senator Hardy:**

The MSF is a not-for-profit organization. In NRS 41.510, the words "hunt," "fish," "hike," etc. are analogous to motorcycle riding, which is a recreational activity done for pleasure, not for a living. The nexus of S.B. 85 is an opportunity to improve safety for recreational opportunities, much like a fly

fishing guide who takes clients across private land to fish then charges the client for showing them where to drop their lines.

**Chair Manendo:**

We will bring S.B. 85 back to Committee and close the hearing on it.

**Walt Ratchford:**

You have my handout ([Exhibit G](#)). I testified to the Committee last week about the Boulder City Bypass and the proposal to install overpasses on U.S. Highway 93 at Industrial Avenue and at Veterans Memorial Drive. If both of those overpasses were built to interstate standards, there could be a bypass. The NDOT would not have to purchase additional land; there are preexistent roads, and only a 30-mile frontage road would have to be built to bring Industrial Avenue to U.S. Highway 93. This plan would save the State hundreds of millions of dollars and would be completed faster.

**Chair Manendo:**

Have you ever lived in Boulder City?

**Mr. Ratchford:**

Yes, I lived there for 2 years. My cousin and her husband lived there while he worked on the Hoover Dam, and I have friends who live there. The Committee is interested in extending Interstate 11 from Las Vegas to Reno someday. There was a push to divert traffic on it around Portland, Oregon; Sacramento and Seattle. Instead of going through Los Angeles, if traffic came up U.S. Highway 93, millions of drivers' dollars would come to the State, and it would be an impetus for traffic on Interstate 11. A simple advertising campaign could include billboards on the interstates and brochures paid for by hotels and restaurants along the route. The State would benefit greatly from such a plan.

We will never need the interchange on the Carson City Freeway at Fairview Drive. Traffic must stop at a light there now. As drivers proceed down U.S. Highways 50/395 South, there are five more stoplights.

Senate Committee on Transportation  
February 20, 2013  
Page 27

**Chair Manendo:**

Seeing no more business before the Senate Committee on Transportation,  
I adjourn this meeting at 10:41 a.m.

RESPECTFULLY SUBMITTED:

---

Patricia Devereux,  
Committee Secretary

APPROVED BY:

---

Senator Mark A. Manendo, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>				
<b>Bill</b>	<b>Exhibit</b>		<b>Witness / Agency</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
	C	31	Rudy Malfabon	Presentation: "State of Nevada Department of Transportation Department Overview"
	D	66	Paul J. Enos	Presentation: "Trucking 101"
S.B. 85	E	3	Senator Joseph P. Hardy	Letter from Kathy R. Van Kleeck, Motorcycle Safety Foundation
S.B. 85	F	8	Peter Vander Aa	Presentation: "Nevada Rider Motorcycle Safety Program"
	G	3	Walt Ratchford	Handout: "The Shortest Distance Between Two Points is a Straight Line"