

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

**Seventy-Eighth Session
May 7, 2015**

The Committee on Transportation was called to order by Chair Jim Wheeler at 3:18 p.m. on Thursday, May 7, 2015, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and also on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jim Wheeler, Chair
Assemblywoman Jill Dickman, Vice Chair
Assemblyman Nelson Araujo
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblywoman Michele Fiore
Assemblyman Edgar Flores
Assemblyman Brent A. Jones
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Michael C. Sprinkle
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

Assemblywoman Marilyn K. Kirkpatrick (excused)



GUEST LEGISLATORS PRESENT:

Senator Moises (Mo) Denis, Senate District No. 2
Senator Donald G. Gustavson, Senate District No. 14

STAFF MEMBERS PRESENT:

Michelle L. Van Geel, Committee Policy Analyst
Melissa N. Mundy, Committee Counsel
Joan Waldock, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Lee McGrath, Legislative Counsel, Managing Attorney, Minnesota Office,
Institute for Justice, Arlington, Virginia
Anastasia P. Boden, Attorney, Pacific Legal Foundation, Sacramento,
California
Jonathan P. Leleu, representing Nevada Bus and Limousine Association
Danéll Wilson-Perlman, Owner, Reno-Tahoe Limousine, Reno, Nevada
A. R. Fairman, Private Citizen, Carson City, Nevada
Lou Castro, President, Earth Limos and Buses, Las Vegas, Nevada; and
President, Nevada Bus and Limousine Association
Victor Joecks, Executive Vice President, Nevada Policy Research Institute
Clayton Mitchell, Private Citizen, Virginia City, Nevada
Brent Bell, President, Whittlesea Bell Transportation; and President, Livery
Operators Association of Las Vegas
Andrew J. MacKay, Chair, Nevada Transportation Authority, Department
of Business and Industry
Kimberly Maxson-Rushton, Executive Director and General Counsel,
Livery Operators Association of Las Vegas

Chair Wheeler:

[Roll was called.] Senate Bill 188 and Senate Bill 376 are being pulled from today's work session.

Senate Bill 188: Revises provisions relating to vehicle collisions. (BDR 43-674)

Senate Bill 376: Revises provisions relating to motor carriers. (BDR 58-632)

We will start the hearing on Senate Bill 354 (1st Reprint). For those of you who are here for Senate Bill 183 (1st Reprint), the presenters of the bill will get as much time as they need to present it and for questions. The original opposition

for the bill will get as much time as they need for questions. Comments after that will be limited to three minutes. [Committee protocol and procedures were explained.] We will open the hearing on S.B. 354 (R1).

Senate Bill 354 (1st Reprint): Authorizes the use of motorized wheelchairs and the movement of other pedestrians in bicycle lanes under certain circumstances. (BDR 43-894)

Senator Moises (Mo) Denis, Senate District No. 2:

I am here today to present Senate Bill 354 (1st Reprint) for your consideration. Let me give you a little bit of background. Existing law prohibits a pedestrian from walking along and upon a highway if a sidewalk is adjacent to the highway. Under existing law, a motorized wheelchair is included in the definition of pedestrian. This bill aims to address a problem that one of my constituents faced and which countless others likely have as well. Last year, this constituent received a citation for operating his motorized wheelchair in the bicycle lane at a point where the sidewalk was impassable. There was no other way for him to avoid the obstructed area, yet it was illegal for him to travel on the road. People operating motorized wheelchairs face challenges traveling in both urban and rural areas since sidewalks are not always available, and when available, they are not always passable due to various obstacles. This bill aims to address the issue of a missing or impassable sidewalk for all pedestrians. I will also note that in east Las Vegas, which is part of my district, there are areas where the light poles are in the sidewalks. That might make it impossible for a wheelchair to pass.

Senate Bill 354 (1st Reprint) allows a pedestrian, which includes a motorized wheelchair, who is traveling on a sidewalk and encounters an obstruction that makes the sidewalk impassable to proceed carefully on the highway immediately adjacent to the sidewalk for a short distance. As in section 4, subsection 6, such a pedestrian must walk or otherwise travel as far to the side of the highway near the sidewalk as possible; may travel in the direction he or she was traveling on the sidewalk, regardless of the direction of traffic; may travel in a lane provided for bicycles if the area between the lane and the sidewalk is impassable; and must return to the sidewalk as soon as practicable. In addition, the driver of a motor vehicle must yield right-of-way to any pedestrian traveling in such circumstances. This concludes my presentation. In the interest of clarifying the law for people who depend on motorized wheelchairs for mobility, I urge your support of S.B. 354 (R1). I am happy to answer any questions.

Chair Wheeler:

Does anyone have any questions?

Assemblyman Jones:

The bill refers to driving on a highway. Is a highway fast-moving, as opposed to a roadway, which is more inclusive? Why is the word "highway" used in the language of the bill?

Senator Denis:

Your legal staff can better answer this. This is the way the statutes make reference to roads where cars are traveling.

Assemblyman Jones:

Is there no specific definition for highway versus roadway?

Senator Denis:

Highway is defined in statute.

Melissa N. Mundy, Committee Counsel:

"Highway" is defined in *Nevada Revised Statutes* (NRS) 484A.095 to mean "the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposes of vehicular traffic, whether or not the public authority is maintaining the way"—in other words, not private property.

Chair Wheeler:

Are there any further questions?

Assemblyman Sprinkle:

When we get to section 4, subsection 6, which is the meat of this, I am curious as far as liability goes. If a wheelchair or a pedestrian is in this highway, and they are not in a designated bicycle lane or other designated area but are just as close to the shoulder as they are supposed to be and an accident occurs, how is liability determined? What if this person is way out in the middle of the street? Or, if it is a two-lane highway, what if they are in an inside lane? Are they still given the right-of-way?

Senator Denis:

They still have to follow the intent of the law. For example, one of the issues that came up was that sometimes a bicycle lane is not right next to the sidewalk, but is actually over six or ten feet, and there is paved area, and then there is a sidewalk. This says that even if there is a bicycle lane there, they still need to travel in that area closest to the sidewalk; however, if it is a bicycle lane, then dirt, and then a sidewalk, they would be allowed to go in the bicycle lane. I am sure that is treated the same way as in any other vehicular situation.

As long as they are following the law, they are okay. If they were to the left of the bicycle lane in an actual lane of traffic, that would not be acceptable under this bill. They would have to be in the bicycle lane or farther to the right.

Melissa Mundy:

Section 3, subsection 3, requires the driver of a motor vehicle to yield the right-of-way to a pedestrian as provided in section 4.

Assemblyman Sprinkle:

Section 4, subsection 6(a), says as "near the sidewalk as possible." If there is no bicycle lane, no designated area, they are in the street. The bill says as close to the sidewalk as possible. What is the intent there? I envision that this could allow someone to be out in the middle of the street, and they could say that is as close as they could possibly get to the sidewalk.

Senator Denis:

The intent is about if there was an obstruction on the sidewalk and they need to get around it. Normally, a pedestrian is supposed to be walking against traffic if walking along the side of the road. What this bill would allow is, rather than making you go back to find a crosswalk to cross to the opposing traffic side, you could go into the highway, get around the obstruction, and then get back on the sidewalk. The intent is to keep pedestrians as close to the sidewalk as possible, but if that is not possible, they would have to go farther around. Drivers will still have to pay attention to pedestrians and yield right-of-way.

Assemblyman Sprinkle:

That is what I wanted to hear for legislative intent.

Chair Wheeler:

Are there any further questions?

Assemblyman Carrillo:

Boulder Highway runs through my district. There are no sidewalks on certain portions of it. I do not think there are bicycle lanes on it. If a pedestrian traveled down Boulder Highway, he would be in the roadway itself.

Senator Denis:

If there is already a way for a pedestrian to go, this bill allows for going around an obstruction if the sidewalk is inaccessible. If there is no sidewalk, a pedestrian should not be on that route. There are areas of Boulder Highway that have sidewalks, but if there is no sidewalk, pedestrians have to follow the law. Boulder Highway is different from a regular street. It was the main thoroughfare, like a freeway, before we had U.S. Highway 95. It has a lot of

high-speed travel. There are areas without pedestrian access, so motorized wheelchairs would not be able to travel in those areas. I do not know if this addresses that. I think that would fall under the pedestrian laws they would have to follow.

Assemblyman Carrillo:

The Boulder Highway area has become densely residential in close-in places. We have a lot of people driving in the area, which creates a concern for people who might want to travel there. Part of it has sidewalks and bus routes. There are portions where it is still that major thoroughfare, with speed limits going from 45 miles per hour up to 55 miles per hour and then back to 45 miles per hour closer to Henderson. If someone using a motorized wheelchair gets caught in that area, do they catch a bus to get past it?

Senator Denis:

I am not trying to address all of those issues. The big issue I was trying to address was most situations where there are sidewalks that a wheelchair is traveling on and they meet an obstruction they cannot get around. This gives them the ability to go around it. My constituent was given a citation. He went before a judge who threw it out. We should not need to have this kind of legislation, except that it was legal to give my constituent the citation because it was illegal for him to be in the roadway. What I am trying to do is create in the law the ability for a pedestrian to go around an obstruction without fear of being cited. I also do not want to see them having to go back to get to a crosswalk so that they can face traffic.

Assemblyman Carrillo:

To be sure that I understand and to record legislative intent, in the absence of a sidewalk, it would be legal for a pedestrian to be partially on the road? I would hate to see constituents cited for being on the road itself in trying to get from point A to point B.

Senator Denis:

The intent is not to create a new right for wheelchairs to be driven down regular roads. This gives them the ability to get around an obstruction in a sidewalk. I would not anticipate that wheelchairs that were not able to go down Boulder Highway because there were no sidewalks would now start using Boulder Highway as a pedestrian lane.

Chair Wheeler:

Are there further questions? [There were none.] It seems to me that you are trying to legislate common sense. It is sad that we have to do that.

Is there testimony in favor of S.B. 354 (R1)? [There was none.] Is there any testimony in opposition? [There was none.] Neutral? [There was none.]

Would the Committee like to vote on this? Any objections? [There were none.]

ASSEMBLYWOMAN DICKMAN MADE A MOTION TO SUSPEND
RULE NO. 57 OF ASSEMBLY RESOLUTION 1.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS
ABSENT FOR THE VOTE.)

Is there a motion to do pass?

ASSEMBLYWOMAN DICKMAN MOVED TO DO PASS
SENATE BILL 354 (1ST REPRINT).

ASSEMBLYMAN ARAUJO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS
ABSENT FOR THE VOTE.)

Assemblywoman Fiore will make the floor statement. I will close the hearing on
S.B. 354 (R1). We will move on to our work session.

**Senate Bill 127 (1st Reprint): Revises provisions relating to the Department of
Motor Vehicles. (BDR 43-601)**

Michelle L. Van Geel, Committee Policy Analyst:

The first bill on work session is Senate Bill 127 (1st Reprint). It was heard in Committee on May 5, and is sponsored by Senator James Settlemeyer. The bill authorizes the Department of Motor Vehicles (DMV) to issue a credit to a person who cancels a vehicle's registration and does not qualify for a refund, or transfers registration from one vehicle to another, and the registration fee or governmental services tax paid on the original vehicle is more than that owed on the vehicle to which the registration is transferred. Such credit may be applied to the registration of any other vehicle the person owns. Any unused credit expires when the original vehicle's registration was due to expire.

An amendment was offered by the DMV to change the effective date of the bill from October 1, 2015, to as soon as practicable and upon determining that sufficient resources are available to enable the DMV to carry out the amendatory provisions of this act, or January 1, 2016, whichever occurs first ([Exhibit C](#)).

ASSEMBLYWOMAN DICKMAN MOVED TO AMEND AND DO PASS
SENATE BILL 127 (1ST REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Chair Wheeler:

Is there any discussion on the bill? I would like to make a comment on it. I think this is a good bill.

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS
ABSENT FOR THE VOTE.)

Assemblywoman Fiore will make the floor statement.

**Senate Bill 156: Makes various changes concerning motor vehicles.
(BDR 43-11)**

Michelle L. Van Geel, Committee Policy Analyst:

The second bill on work session is Senate Bill 156. It was sponsored by Senator David Parks and Senator Pat Spearman. It was heard in Committee on April 14. Senate Bill 156 provides that a person who unlawfully proceeds through a temporary roadblock established because of flooding or water on the roadway is liable for the expenses of any emergency response that is required to (1) remove the driver or any passenger from the vehicle, and/or (2) move or remove the vehicle from the roadway or any area near the roadway if the vehicle creates a hazard. The bill provides possible similar liability for a person convicted of reckless driving for driving a vehicle into any area temporarily covered by a rise in water. The liability imposed by S.B. 156 must not exceed \$2,000 per incident.

Two amendments have been offered on the bill. The first amendment clarifies that a Good Samaritan who ventures into a flood zone in an effort to help another stranded driver, becomes stranded, and needs rescue will not be cited under the provisions of the bill. The second amendment changes the effective date from October 1, 2015, to July 1, 2015 ([Exhibit D](#)).

Chair Wheeler:

I will accept a motion to amend and do pass.

ASSEMBLYWOMAN SPIEGEL MOVED TO AMEND AND DO PASS
SENATE BILL 156.

ASSEMBLYMAN SPRINKLE SECONDED THE MOTION.

Is there any discussion on the bill?

THE MOTION PASSED. (ASSEMBLYWOMAN KIRKPATRICK WAS
ABSENT FOR THE VOTE.)

Assemblyman Carrillo will make the floor statement. We will close our work session and move on to Senate Bill 183 (1st Reprint).

Senate Bill 183 (1st Reprint): Makes various changes relating to the Nevada Transportation Authority. (BDR 58-717)

Senator Donald G. Gustavson, Senate District No. 14:

I would like to begin my testimony by referring you to *Nevada Revised Statutes* (NRS) 598A.030 under legislative declaration. It reads: "The Legislature hereby finds that: (a) the free, open and competitive production and sale of commodities and services is necessary to the economic well-being of the citizens of the State of Nevada." This is a clear directive that was put into statute, which unfortunately became clouded by later statutes that enabled what I consider to be an oligopoly that allows the actions of some to create significant negative impacts on the market and on competitors.

To be clear, the objective of this proposed legislation is to repair certain government policies in regard to obtaining a certificate of public convenience and necessity (CPCN). [Read from prepared testimony ([Exhibit E](#)).] A CPCN is issued under the consent of the three-member Nevada Transportation Authority. I will now show you a short video ([Exhibit F](#)). I have provided a paper copy of "Carolyn's Story" by Kyle Gillis from the *Nevada Journal* dated Wednesday, January 16, 2013 ([Exhibit G](#)).

The Nevada Transportation Authority (NTA) is a regulatory agency that was created in 1997 in a bill that was intended to deregulate electric utilities. In doing so, the heavily amended Assembly Bill No. 366 of the 69th Session ironically created this new regulatory agency that has nothing to do with

utilities, and immediately the problems began. I will not go into the details regarding A.B. No. 366 of the 69th Session, but I invite you to read the article "Limousine Lumps" from the *Nevada Journal* in 1999 ([Exhibit H](#)) if you want to know more about how the NTA amended its way into existence. [Continued to read from prepared testimony ([Exhibit E](#)).]

Nevada no doubt has the most restrictive rules in place. This bill does not disband the NTA or the need for a CPCN. Instead, it leaves in place those statutes that were designed to protect public health and safety, which the NTA director always emphasizes is their number-one priority. This bill is removing the barriers that harm consumers and job growth. [Continued to read from prepared testimony ([Exhibit E](#)).]

It takes up to 18 months, along with an expensive and tedious process, just to get denied a permit to move furniture across town. You can understand why many potential start-ups have to abandon the process or never even bother to begin. In focusing on the NTA, the intent of S.B. 183 (R1) is to keep language in place that defines a proper role for the NTA in regard to public health and safety, which we can all support, and removes language that is designed to deny competition.

You do not need to guess if our current statute is capable of inviting abuse. In your exhibits, I invite you to view the 1998 *Las Vegas Sun* article entitled "Where I Stand" ([Exhibit I](#)). [Read from testimony ([Exhibit E](#)).] The examples of abuse were substantial and continue today. The next two articles in the packet ([Exhibit J](#) and [Exhibit K](#)) offer later examples of the harm being caused, which turned into a lawsuit similar to successful lawsuits in other states. The case *Underwood v. MacKay* [No. 3:12-CV-00533-MMD-VPC, 2013 WL 3270564 (D. Nev. June 26, 2013)] is a follow-up to a previous case *Merrifield v. Lockyer* [547 F.3d 978,991 (9th Cir 2008)] brought forth by Mr. Underwood's attorney in which the United States Court of Appeals for the Ninth Circuit Court declared that the government may not use its licensing laws to benefit private interests of already established companies. Two articles from the Pacific Legal Foundation cover these issues ([Exhibit L](#) and [Exhibit M](#)). [Continued reading from ([Exhibit E](#)).]

If you will read the original language that was put into statute under A.B. No. 366 of the 69th Session, and if you take time to review the history of how it gave origin to the NTA, you would come to realize that this was a legislative wrong that must be corrected at this level to stop the continued abuse by the NTA. [Continued reading from ([Exhibit E](#)).]

Next, Mr. Chairman, with your permission, I would like to have you listen to comments from Mr. Lee McGrath with the Institute for Justice by videoconference. [Additional exhibits that were submitted include a letter from attorney Justin M. Clouser ([Exhibit N](#)), *Las Vegas Sun* articles entitled "Renegade LV limo owner loses bid for licensing" ([Exhibit O](#)) and "Vegas cab alternative runs into regulations stifling competition" relating to Uber ([Exhibit P](#)), and a *Regulation* journal article on certificate of necessity laws ([Exhibit Q](#)).]

Lee McGrath, Legislative Counsel, Managing Attorney, Minnesota Office, Institute for Justice, Arlington, Virginia:

Thank you so much for the opportunity to testify today in support of S.B. 183 (R1). I appreciate the hard work of your staff allowing me to testify by video from Minneapolis. I submitted written comments ([Exhibit R](#)) to the Committee, but will summarize one of the three reasons the Institute for Justice supports S.B. 183 (R1). That single reason is that the idea that the government should evaluate whether there is unmet demand and require the applicant to prove and submit evidence of unmet demand before the applicant receives a permit or license to operate is an anachronism. It had its most popular use in the nineteenth century regarding railroads, and again in the 1930s with interstate trucking. It has fallen out of favor on the federal level, and it has also fallen out of favor on state levels. Your state should follow, and focus not on the question of whether the applicant can meet unmet demand, but only on the question, Can the applicant provide a safe service to your constituents and other consumers in Nevada? Destructive competition, an idea that has fallen out of favor, is the notion that the government must protect a supplier's or provider's profits because if the provider is not profitable, he will then skimp on maintenance and risk the safety of consumers. This idea has been rejected principally by the federal government—dating back to 30 years ago, when the Carter Administration and then the Reagan Administration began the deregulation of airlines. With those moves as well as the moves in interstate trucking, the federal government got out of the business of evaluating applications and forcing applicants to prove unmet demand. Today we have highly competitive airlines that are the safest in the world. Similarly, we have a highly competitive interstate trucking market that is very, very safe.

Beyond the federal government, other states have gotten out of the business of requiring applicants to prove unmet demand. In my own state of Minnesota, I was involved in repealing this component of state regulation as it relates on a state level to household goods movers, and in the City of Minneapolis, as it relates to taxis. In the City of Minneapolis, the number of taxis has grown magnificently from 350 to 950. The number of suppliers and providers has grown from 10 to 38. Minneapolis is different from Las Vegas, Reno, and Carson City. We have a lot of snow here that you do not. Our concerns about

brakes may be greater than yours. There can be parallels drawn between the government here in Minnesota getting out of evaluating this and your focusing only on health and safety.

In closing, let me suggest that you are not alone in evaluating this type of legislation. Just yesterday, the Colorado legislature passed House Bill 15-1316, which is nearly identical to Senator Gustavson's bill. It gets the State of Colorado out of the business of forcing applicants to prove unmet need and turns its transportation agency to the sole business of protecting public health and safety. I ask that you look at this history, including history that is less than 24 hours old, and support this bill.

Chair Wheeler:

Senator Gustavson, do you have any other testimony?

Senator Gustavson:

I would like to have Anastasia Boden from the Pacific Legal Foundation testify. This is part of my presentation.

Anastasia P. Boden, Attorney, Pacific Legal Foundation, Sacramento, California:

Pacific Legal Foundation routinely challenges licensing laws that have nothing to do with protecting the public but instead exist solely to stifle competition. Nevada's current licensing law for transportation companies is one such law. Pacific Legal Foundation has challenged it in federal court. I would like to briefly summarize my written remarks ([Exhibit S](#)) to testify about why certificate of public convenience and necessity laws like Nevada's, as they stand on the books, are anticompetitive and therefore unconstitutional.

The *Constitution of the United States* protects the right of everyone to earn a living free of arbitrary government interference. Thus the U.S. Supreme Court has ruled that licensing requirements must bear a rational relationship to the applicant's skill. Nevada's law fails this test for at least two reasons: (1) existing companies can protest an application for a new business for any reason—for reasons wholly unrelated to public safety, including the mere reason that they do not want to compete; and (2) that protest will trigger a hearing requirement in which NTA can and must deny an application for reasons wholly unrelated to the applicant's skills. The NTA can deny applications on the basis that the new business will "adversely affect" existing companies or even if the new business will not "benefit" existing companies. Applicants can be denied a license despite their qualifications because of their effect on entrenched businesses. Moreover, applicants are also forced to prove to the NTA that the market will support their proposed business, but this is something that often cannot be proven in advance. You could be the safest, most efficient business

around, yet you cannot necessarily prove that the market will sustain you. The only way you discover if that is true is by trying. For example, could Apple have proven that the iPhone was necessary when we already had Blackberrys and PalmPilots? Could Google have proven that it was necessary when we already had Yahoo? Even entrepreneurs cannot be certain that their businesses will succeed, but we allow the experiment because competition leads to efficient outcomes that are good for everyone.

It is easy to see that these laws are not related to public safety by debunking some of the rationales that are often repeated for them that you will probably hear today. One of the most often repeated rationales is that competition will cause businesses to start competing, and then skimping on safety measures. The easiest way to debunk this is by applying it to other industries in a commonsense fashion. For example, no one would suggest that competition in the restaurant industry is going to cause restaurant businesses to skimp on safety measures and serve spoiled food in order to save on costs. Competition does not force companies to do worse; it causes companies to do better or fail. In the meanwhile, safety measures ensure that businesses behave safely.

Evidence from lawsuits against similar laws in other states indicate exactly how these laws are used. It is not to protect public safety. In Missouri, between the years 2005 and 2010, every single application for a moving business was protested by an existing firm. Of all 106 objections made, not one was based on public safety, and there was no evidence the state denied the applications based on public safety during that time. Since then, Missouri voluntarily overturned its certificate of public convenience and necessity laws, as did Oregon. Two weeks ago, Montana did the same. We won a federal lawsuit in Kentucky, which caused them to rescind their law as well.

While we have yet to conduct discovery to see how these laws are being used in practice in Nevada, I think this evidence gives you a good indication. The losers from these laws are entrepreneurs, consumers, and the Nevada economy. In my written testimony ([Exhibit S](#)), I have provided evidence of how states that have gotten rid of certificate of public convenience and necessity laws have experienced increased innovation, increased jobs, a higher number of businesses, improved quality, and decreased complaints.

In sum, any argument that these laws have to do with public safety are fallacious. Existing companies can protest for reasons wholly unrelated to public safety. The NTA is then empowered, if not required, to deny applications for reasons unrelated to the applicant's skill. This is unfair. It is contrary to how most people view the American dream. For someone like me, a constitutional lawyer, it is unconstitutional.

Chair Wheeler:

I will open the floor for questions.

Assemblyman Sprinkle:

Senator Gustavson, I definitely understood what your argument is here. I understand why you are axing out so much of this language. I have not read through everything you submitted. Did you go back and look at the legislative intent that was on the record when these laws were passed initially? Can you give me any of the history? You said the law was passed in 1997. What was the statute you referenced at the beginning of your presentation?

Senator Gustavson:

I referred to Assembly Bill No. 366 of the 69th Session. It was done at one of our end-of-session conference committees that dealt with utility regulations. This is a whole new section of law that was added that no one really had a chance to look at, but it did get passed.

Assemblyman Sprinkle:

Were all the marked portions of the bill in an amendment in a conference committee at some point?

Senator Gustavson:

The entire section about the NTA was placed in the bill in a conference committee.

Assemblyman Araujo:

I am curious as to the logic under section 3 of S.B. 183 (R1) to lower the number of days from 180 to 60.

Senator Gustavson:

Going from 180 days to 60 days—from six months to two months—is because the current 180 days is too long to have to wait.

Assemblyman Araujo:

Will 60 days provide the time needed to reapply?

Senator Gustavson:

That would allow the NTA to get back to the applicant sooner. If you have to wait 180 days, you might find another business to go into.

Chair Wheeler:

Are there any further questions? [There were none.] We will take testimony in support of S.B. 183 (R1). There will be a three-minute time limit for testimony.

Jonathan P. Leleu, representing Nevada Bus and Limousine Association:

The president of the Nevada Bus and Limousine Association is presently in Las Vegas and has his own testimony; however, I would like to state for the record that we do support the NTA. The NTA is the subject matter expert in our industry. We applaud them for their efforts in regulating our industry. That said, we stand in support of S.B. 183 (R1). We appreciate the bill sponsor for bringing it forward. We believe this is a growth bill that will help Nevada businesses grow. We appreciate the bill sponsor working with us on amending the bill in the Senate, getting it to where it is today. With that, we can offer our full support.

Danell Wilson-Perlman, Owner, Reno-Tahoe Limousine, Reno, Nevada:

I am here in support of S.B. 183 (R1) as it stands. I am not just representing Reno-Tahoe Limousine today. I am here to be the voice for every transportation company that has had to fight the same fight for way too long in this state. Our company has a restricted limousine license. In 2006 we received our Nevada license stipulating that we could only operate seven vehicles intrastate. In 2012, our company applied to the NTA to expand our license. We comply with all state laws, licensing, safety criteria, and insurance requirements. Our competitor intervened, and we had to go through a hearing process last year. Our expansion was denied by the NTA. The reason given was that we could not prove our market. If we were allowed to add the additional vehicles, we would adversely affect other limousine companies. The bottom line here is we were denied because we were going to take business away from our competitor. We already owned the seven additional vehicles we were asking to add to our license.

The ultimate dream and focus for us as entrepreneurs is to be able to grow our business, which will create more jobs and have a positive impact on the state's economy. The competitor's veto law stops us and so many others from doing so. What happened to free enterprise? The company with the best service and products usually wins the customers. Is that not what America was built on? There is an old business quote—if you do not grow, you die. Time for change is now, Nevada. Let the public decide which companies can grow or not, not outdated laws. In closing, I became a U.S. citizen two years ago. The first question I was asked on my exam was, "Why do people come to America?" The answer was "to be free." We are far from free in this current situation.

A. R. Fairman, Private Citizen, Carson City, Nevada:

I am for this bill. It will help the industry, will help transportation in our state, will help everybody. The federal government has an application fee of \$350.

The application is four pages long. The state of Nevada charges about \$750, and has a 14-page application for a permit to operate in the state. The process takes 180 days.

Chair Wheeler:

Are there any questions for any of these three people? [There were none.]

**Lou Castro, President, Earth Limos and Buses, Las Vegas, Nevada; and
President, Nevada Bus and Limousine Association:**

We are an association of 20 small bus and limousine companies. We are small businesses that are essential to the growth of our state. The Nevada Bus and Limousine Association offers full support of Senate Bill 183 (R1) as amended. Senate Bill 183 (R1) will help the industry grow as the market dictates. The bill allows for healthy competition and oversight when it comes to safety. The bill amendment has been a collaborative effort that we have worked hard on for several months. I want to thank Senator Gustavson for sponsoring the bill, and all the joint sponsors as well.

Victor Joecks, Executive Vice President, Nevada Policy Research Institute:

We support Senate Bill 183 (R1) because it increases liberty. All too often, government rules and regulations are used to stifle competition, limiting the freedom of would-be competitors and the choices available to consumers. We have heard examples of that today. Senate Bill 183 (R1) would simply allow private individuals to enter a business without having to get the blessing of their competitors. We urge your support.

Clayton Mitchell, Private Citizen, Virginia City, Nevada:

I am here to share a little anecdotal evidence in support of this bill. I will specifically address the chilling effect the status quo has. I live in Virginia City. We rely heavily on tourism. One of our biggest challenges is transportation—both getting people to town and getting people around town. We are on the side of a mountain up there. I looked into starting a shuttle service. I had a break in my projects and thought that a shuttle service would help my community. When I printed out that 14-page application and saw that three of those pages were just a list of the attachments and exhibits that I was required to attach, I said, "I do not have time for this." When you add into that the delay that comes with having to wait 180 days to get a hearing, it became too onerous for someone who was looking to start a small business that would be very helpful on a very small scale, but have very little impact in the large scale of things. I strongly support eliminating the anticompetition provision of the current statute, shortening the time frames, and making a hearing optional instead of compulsory if the NTA dictates that is the way it should be. In fact, in some ways I wish this bill went further in streamlining the application, or at

least in allowing flexibility for small or rural operators. Specifically, the financial and economic information is burdensome and excessive—it does not directly relate to safety. It puts the NTA in the position of determining the economic viability of someone before they have even started the business. For these reasons, I urge your support.

Chair Wheeler:

Are there any questions for either Mr. Joecks or Mr. Mitchell? [There were none.] Is there anyone else in support of S.B. 183 (R1)? [There was no one.] We will move to testimony in opposition.

Brent Bell, President, Whittlesea Bell Transportation; and President, Livery Operators Association of Las Vegas:

To clarify, we are part of the original opposition to this bill. May I have more than three minutes to speak?

Chair Wheeler:

Yes. We are running ahead of schedule, so take as much time as you need.

Brent Bell:

I would be here in support of this bill with the exception of one provision—the intervener process. While the intervener process affects folks here in the north, by restricting it just to a safety matter, it hurts us in the south. As all of you know, Las Vegas is substantially bigger. I think there are over 50 limousine operations. On occasion, we get some unscrupulous characters in our business. That intervener process is very important in making sure that operators are financially fit and operationally fit. Through that process, we also make sure that they are applying for the right license they need in order to operate. The intervener process is not anticompetitive. In some cases it has actually helped new and smaller operators become more productive.

The best example that I can give you of the intervener process working really well took place last October. Many of you probably recognize that our industry got a terrible black eye when one of our larger operators was indicted and then pled guilty for drug trafficking, prostitution, defrauding American Express, and defrauding his bank. When the owner was getting ready to go to prison, he tried to sell his company to his best friend, who had been operating it ever since he was indicted. When the sale and transfer hearing took place, the man going to prison hired an attorney and the prospective buyer hired an attorney. Those two high-powered attorneys would have overpowered the state's one attorney who has multiple cases. Without the intervener process, the man going to prison might have been able to sell his company and profit from it. We would possibly have had another unscrupulous operator in our industry.

The intervener process is very important. It is not anticompetitive. It is about gathering more information, and giving more information to the NTA commissioners so that they can make a better decision. I would like to give you a few statistics about what has gone on in Nevada. Some of the testimony you heard earlier was about what happened in other states. Let us talk about what has happened in Nevada since 2009, in the last six years. There were 324 applications filed. Only 11 were denied. I would not see that as anticompetitive. I would say those 11 applications had some problems. As far as limousine applications go, 56 were applied for. Only one was denied, and that was due to a criminal background problem. Twenty-eight limousine expansions were applied for; only three were denied. Fifty-three charter bus applications were applied for; only two were denied. One was applying for expansion and was not denied. For household goods movers, like what you heard on the first video, 46 applied in the last six years. Zero were denied. Regarding tow companies, 109 applied, and 2 were denied. Four asked for expansion; zero were denied. As far as contract carriers, 12 asked for new authority; only 1 was denied. Five asked for expansion and only one was denied. The grand total is just a bit over 3 percent denied.

I would submit to you that those applications had some serious problems, which is why they were denied. This is not an anticompetitive situation. If you want to compare our industry to gaming, you see that when you apply for a gaming license, you pay thousands—sometimes hundreds of thousands—of dollars so the background checks and investigations can take place. At the NTA it only costs a couple hundred dollars, so there is no money there to do the proper vetting that is needed. That is why the intervener process works.

I am here today to offer an amendment ([Exhibit T](#)) because I understand that the folks in the north are very concerned about that, but in the south we really need this intervener process. I apologize for the amendment being late. I thought of this yesterday in my office in Las Vegas. I called my lobbyist, jumped on a plane, and came up here. What the amendment says is that in counties of over 700,000 population, the intervener process would stay in place. It would be removed for counties with under 700,000 population. That would take care of some of the issues that you heard before you today.

Chair Wheeler:

Are there any questions?

Assemblywoman Dooling:

With all the numbers you gave on applications and denials, do you have any time frames on those? We were hearing about some taking 18 months to be decided.

Brent Bell:

I do not have those time frame numbers. There might be somebody in the audience who could give them to you. The application is long and tedious, but it is important that it is. We are not delivering pizzas here. We are transporting people. It is very important that the right people are doing it.

Chair Wheeler:

Mr. MacKay, I see you out there. Do you know the answer to that question?

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

That is a complicated question. First, it depends on what type of operating authority they are contemplating—tow car operations, moving, limousine, scenic tours, and on and on. Some of those are more involved than others. Second, it depends on who is applying. Is it a mom-and-pop business that does not have legal counsel or a certificated public accountant to help them with any financials? Naturally those will tend to take a lengthier period of time. Staff assists applicants and carriers as much as they can, and we see that. Most folks who apply to the NTA do it on their own. If you were to amalgamate them, the process is about six months, on average.

Since I am up here, there are some things I would like to address in testifying neutral.

Chair Wheeler:

I have a lot of people who want to ask Mr. Bell some questions. If you can stay there in case we need some information, I would appreciate it. As far as your testimony in neutral, we will wait until we are finished with Mr. Bell.

Assemblyman Sprinkle:

Mr. Bell, in the original part of your statement, you said that this intervenor process, as described in the bill, was specifically going to be related to safety issues and that was of concern to you. I do not see that anywhere in the bill language. Could you explain that a little bit more?

Brent Bell:

There was an amendment that came out of the Senate portion of this bill that said that the intervenor process could only be used to talk about safety issues. That is not my concern. My concern is section 2, subsection 8. That amendment would only allow intervenors to jump in and talk about safety issues. In the example I gave you of the limousine operator who is going to prison, we would not have been able to intervene.

Assemblywoman Dickman:

You listed applications and how many were denied. You said that for limousines there were 56 applications and 1 was denied. Over what period of time was that? Are we talking about 10 years or 20 years?

Brent Bell:

Fifty-six were approved. Zero were denied.

Assemblywoman Dickman:

I had it down as one denied. Is that over 5 years, 10 years, or 50 years?

Brent Bell:

I think the Chair of the NTA would be better suited to answer that.

Andrew MacKay:

These numbers were presented in the Senate Committee on Transportation when this bill was initially heard. I think Mr. Bell's dates were beginning on January 1, 2009, to approximately March. I have data up to May 7.

Assemblywoman Dickman:

We have 56 new limousine companies in the last seven years?

Andrew MacKay:

That is correct.

Assemblywoman Dickman:

Are they all in Las Vegas?

Brent Bell:

Yes, the majority of them are. There are about 60 companies in the south.

Assemblywoman Dickman:

Were these recently approved?

Brent Bell:

The 56 companies have been recently approved.

Chair Wheeler:

Of those 56, how many are still in business?

Brent Bell:

A number of them are still in business. I have seen, in the last couple of years, several apply to the NTA to shut down operations. I would guess that would be five or six in the last couple of years.

I want to make clear for the record that I am in support of what Senator Gustavson is doing—increasing the timelines and making it easier. It is just the intervenor process that I am trying to preserve, just for the south. I feel it is very important.

Assemblyman Jones:

I would like a little bit more definition of the intervenor clause. I liked the earlier testimony about the free market. What exactly in the intervenor clause do you dispute? I cannot see what rights it gives you to intervene. Is one of the arguments you give that if this applicant can compete with us, we already have something in the market, and therefore this service is not needed? Is that still a central part of the intervenor clause?

Brent Bell:

I believe that the legislation that is being sponsored here today by Senator Gustavson takes care of that. It is not there anymore. Having to prove there is a market does not exist anymore under this new legislation. I think the reason you are having trouble with the intervenor clause is because the intervenor language is in the regulations, not in the law. That is why you are not finding it. The amendment that came out of the Senate specifically says that the intervenors will only be able to talk about safety issues. That is what concerns me.

Assemblyman Jones:

What does the intervenor clause include now that you want to maintain? You say that you are okay with the bill except for the intervenor clause. What are you trying to protect in the intervenor clause?

Brent Bell:

Right now, it just says that we can only intervene based on safety issues. I want to be able to intervene to make sure that the applicant is operationally fit and financially fit. There is a law that says that all operators or owners of certificates must have 20 percent equity in their company. There is a good reason for that. If they do not have enough insurance and get sued above and beyond their policy limits, the NTA wants to make sure that they are in business long enough to pay any accident claims that they need to. In the example I gave you with the limousine company owner that was doing some unscrupulous things that gave us all a bad name, we want to be able to

intervene on that sale and transfer like we did. It was my company that intervened on that to make sure that license was not sold and the operator did not profit after what he was doing.

Assemblyman Jones:

I can appreciate your concern for the marketplace, but is that not the job of the regulators to worry about those things, not you as the competitor? That is what is confusing me. Are you the regulatory body, or is the regulatory body the regulatory body that needs to make sure it ferrets out the bad actors?

Brent Bell:

Obviously, the NTA is the regulatory body, but as I testified earlier, they are very limited in funds. They only have one deputy attorney general assigned to them, and they have tons of cases to deal with. They need help. When you bring in a side that has a substantial quantity of resources and attorneys, they can overwhelm a state's attorney. We come forward and bring new evidence and light to the situation. Then the commissioners make a decision based on that.

Assemblyman O'Neill:

Mr. MacKay, does a company have to come to NTA for permission to expand the business, even though they are vetted and have met all the regulations?

Andrew MacKay:

The short answer to that is yes, if the question is in the context of expanding what their current operating authority is. If they have authority to operate 10 vehicles and they want to operate 12, you are asking if they have to file an application to expand? Yes, they do.

Assemblyman O'Neill:

What do you look at for a company that wants to expand by two vehicles? Is that not my free choice to invest in my company?

Andrew MacKay:

Certainly. I think that is precisely why we are here. Presently, under Nevada law, if you want to add vehicles or expand your operating scope, you have to file an application. If you only operate in Washoe County and you also want to operate in Carson City, Douglas County, or Lyon County—you want to expand your operating scope—you have to file an application. The statutes do not allow any flexibility on that whatsoever.

Assemblyman O'Neill:

Let us say I am operating a business in Reno. I have been vetted by you and have been in operation using ten cars. I want to add two more cars to my Reno operation. Would I have to get permission from you?

Andrew MacKay:

You would have to file an application.

Assemblyman O'Neill:

If I am a lousy businessman, to go out of business, do I have to ask permission from NTA to close down my business?

Andrew MacKay:

That would require a simple filing. If you simply vacate the operations, you have a vacated business rather than filing a piece of paperwork that says you are going to close down operations. In that case, the NTA would have no other option than to go forth and do an "order to show cause" hearing and then revoke the certificate. That wastes everybody's time.

Assemblyman O'Neill:

Mr. Bell, you gave some statistics that showed us that most applications over the last six or seven years have been approved. What I am hearing is that the intervening requirement is unnecessary if most are approved. Do you agree with that?

Brent Bell:

I would disagree with that for the very example that I gave. Chair MacKay may be able to better testify, but if we were not involved in that sale and transfer hearing, I think the state's attorney would have been overwhelmed by the high-powered attorneys for the man trying to sell his company and the one trying to buy it. In some cases, the interveners actually help the applicant. They provide more information so that the NTA can make a better decision. It is not all about competition and opposition.

[Assemblywoman Dickman assumed the Chair.]

Assemblyman O'Neill:

May I ask a question of Ms. Boden? You stated how these regulations and laws prohibit free enterprise. Is there ever a time when they can actually enhance business or protect communities?

Anastasia Boden:

I think that the amendment limiting the intervener process to safety, if anything, I suppose that is at least constitutional. I think that the evidence bears out that where an existing business has the opportunity to intervene to their benefit, they will. I would submit that the statistics we heard are not exactly accurate because, first of all, they do not capture how many businesses never even applied because they were deterred.

Assemblyman O'Neill:

My question was, Is there a time when they can prove beneficial to the businesses and the industry? Can regulations actually provide benefit to industry, help it grow, and/or be good for public safety?

Anastasia Boden:

The intervener process alone?

Assemblyman O'Neill:

Yes.

Anastasia Boden:

I do not think that existing businesses have good incentives to police the industry or any better knowledge than the regulators would have about the applicants for business.

[Assemblyman Wheeler reassumed the Chair.]

Assemblyman Flores:

I am trying to understand why we are considering the population cap. I understand your argument for why you think it is necessary to expand it beyond just the safety issue. What I am having a hard time understanding is why that argument is appropriate to Las Vegas with the population cap, but is not necessarily to Reno, which also has cabs and many limousine companies. I am trying to understand the distinction we are creating as to why we want to treat the two areas differently when we talk about interveners.

Brent Bell:

I think the reason is that Reno and the rural areas are substantially smaller—the markets are smaller, the operations are smaller, everything is smaller. They do not have the type of resources that the operators in Las Vegas have. They are running into more problems with the intervener process than we are in Las Vegas. That is the best answer I can give you. I can tell you that it is vitally important for the south. That is why I have asked for the carve-out.

There are 50-some new limousine companies in Las Vegas within the last six years. They have not had some of the problems that we have had down in the south. I think that is merely because of the size of the market.

Assemblyman Carrillo:

When it comes to the intervener process, it can be for new or existing businesses, correct?

Brent Bell:

Yes. That is correct.

Assemblyman Carrillo:

If you had a business that wanted to expand, we understand that the companies that are doing the intervening are in direct competition with the one that wants to expand. For a legitimate company that is trying to do it right, would you feel that it would be necessary to have the intervener process? Or do you feel it is for new businesses?

Brent Bell:

Both examples apply here, but I believe Senator Gustavson's legislation takes care of the argument you are talking about with respect to a company wanting to expand. Now you no longer are looking to try to prove a market, so when an intervener did jump in and try to make that argument, it would fall on deaf ears. The main reason for intervening now would be if there were an existing company that is operating now, but not operating legally—perhaps there were citations involved and other unscrupulous activities going on—we would want to be able to come in and point that out. That would possibly affect their expansion.

Assemblywoman Dickman:

I have a problem with competitors policing one another. Does this intervener process only happen in regulated industries? Is it unique to the NTA?

Brent Bell:

I do not believe it is unique to our industry. Other industries have similar types of processes. Contractors report other contractors for doing things they should not be doing. Gaming is involved in a lot of things, but gaming has a big budget to do the proper investigations, whereas NTA is working on a very small budget. That is why they appreciate the help of the industry in the intervener process. Remember, we are not vetoing anything. We are simply bringing information to light. The three commissioners still make the decisions.

Assemblyman O'Neill:

I have a question for Legal. Will population caps be allowed? I think we are currently being restricted on adding population caps on legislation.

Melissa N. Mundy, Committee Counsel:

Population caps are currently allowed in statute. I cannot speak as to what the future holds.

Chair Wheeler:

Are there any more questions for Mr. Bell? [There were none.]

Assemblyman O'Neill:

I have a question for Mr. MacKay. One of the things I have heard from Mr. Bell several times is that you are understaffed and underfunded, and that the companies intervene to help you make these determinations on what should or should not occur on licensing. Is that correct?

Andrew MacKay:

That is what Mr. Bell said.

Assemblyman O'Neill:

He keeps referring to gaming and how they do their background checks. As I recall, gaming actually charges the applicant for the background check. Theoretically speaking, in order to remove any inference of impropriety by a potential competitor, would you be opposed to assuming the gaming background model that would charge the applicant for the investigation? That way you could be staffed fully to do a full background check. It would then be fully the NTA making the decisions—there would be no interplay from the competitors.

Andrew MacKay:

I have to be careful in how I answer that question. I do not want to get sideways with my boss, Governor Brian Sandoval. What you suggested would constitute legislative action that would necessitate significant fee increases. I think I would have to punt on that. It would be highly inappropriate for me to opine about requiring applicants to bear the entire burden of the application process and its associated costs.

Assemblyman O'Neill:

Mr. Bell, would you like to give your opinion?

Brent Bell:

I think Senator Gustavson's bill is doing a good job of streamlining the process, making it cheaper for applicants, allowing them to get to market sooner. That is why I still think it is so important that the intervener process stay in place. As we move these things along, it is important that all the information gets to Chair MacKay and his fellow commissioners.

Chair Wheeler:

Do we have any more questions? [There were none.] We have opposition testimony in Las Vegas.

Kimberly Maxson-Rushton, Executive Director and General Counsel, Livery Operators Association of Las Vegas:

Mr. Bell presented testimony on behalf of the Livery Operators Association of Las Vegas.

Chair Wheeler:

Does anyone have any questions for Ms. Maxson-Rushton? [There was no one.] Is there any more opposition testimony? [There was none.] Is there any neutral testimony?

Andrew MacKay:

Because I was answering questions earlier, a fair amount of what I wanted to say was covered, but there are a few things that I need to say to make sure everything is clear. I think Mr. Bell inadvertently spoke about 57 applications. That number is for fully regulated common motor carrier of passengers authority. Those would include the charter limousine authority, airport transfer services, special services, nonemergency medical transfer services, and scenic tours. These are my numbers as of March 6: 57 new grants of authority, 1 denial; 29 expansions of authority, 3 denials.

Assemblywoman Dickman asked a very good question with respect to the intervention process in regulated industries. It is not unique to the Nevada Transportation Authority. It exists at the Taxicab Authority, the Public Utilities Commission of Nevada, and the Private Investigator's Licensing Board. It is not out of the ordinary with respect to the intervention process. How widespread it is, I am not qualified to say.

You heard the term "competitor's veto," and I think that it is important to note this in the context of the moving industry about which there were comments made. Not only, as Mr. Bell accurately put on the record, have there been no

denials as far back as the NTA has been able to research the records relative to granting of household goods moving authority, but there have not been any protests or interventions filed in that arena.

There was a reference made to Kentucky. The facts of what occurred in Kentucky are dramatically different. In that case, *Bruner v. Zawacki*, [997 F.Supp.2d 691 (2014)], the court noted that "it is also noteworthy that an existing moving company that protests an applicant for a new Certificate may offer the applicant the opportunity to buy a Certificate it holds." That does not exist in Nevada. Since 2007, 39 new applications for certificates have been filed by companies seeking to enter the moving business. Existing moving companies have filed 114 protests and oppositions to those applications. To apply what is happening in Kentucky to Nevada is to compare apples to oranges.

The NTA is neutral on this bill, but I think it is my duty to correct inaccuracies. In the state of Nevada, you cannot intervene on an application in front of the Nevada Transportation Authority on the basis of competition. If you file an intervention saying you do not want this company to compete—I can speak for myself, Commissioner Keith Sakelhide, and Commissioner George Assad, whoever is the presiding officer on that case—that intervention will be rejected immediately because it is not worth the paper it is printed on. You cannot intervene on the basis of competition. I sound like a broken record, but I have heard that time and time again.

Additionally, I would be remiss if I did not point out and speak to the intervention process itself. Even if you are an intervener, it does not necessarily mean that you are ultimately going to get what you want. I say that in this context—22 decisions rendered by the Authority have been appealed at district court in roughly that same period of time. The NTA's decisions have been affirmed by the district court every single time. Those decisions include denials. The one decision that the Nevada Transportation Authority was partially reversed on was actually a granting of an expansion of authority. There was an intervener in that process. The intervener appealed the Authority's decision to grant the expansion of authority. Ultimately, the district court reversed the granting of authority and remanded it. The end result, interestingly enough, was that the company ended up getting more vehicles than they were initially approved for and that the NTA had been reversed on. The subsequent decision by the NTA, in which the recommendation was for a higher number of vehicles, was affirmed by the district court. It is interesting that the intervener intervened based on market conditions, operational fitness, and so on. They had a Pyrrhic victory. Long term, there were more vehicles put on the road.

I know what it is like to own a business, having owned one. I know what it is like when somebody does not pay you and you have to go to the bank to transfer money from your personal account to the payroll account so that you can pay your employees. I know what it is like when you call your wife and tell her you are not getting paid this week. I understand in that respect. If an application is denied, I can tell you—and I can speak on behalf of Commissioner Assad and Commissioner Sakelhide—that is a decision that sucks. It is terrible. We want to do nothing more than put people into business, but it is really a clinical decision—do they meet the provisions of the statute? Even if you want to add two cars in the hypothetical case that Assemblyman O'Neill described, if this bill becomes law as drafted, they will still have to file an application with the NTA. There are different standards that are going to be met. This does not get rid of the application process at all.

Assemblyman Jones:

The 56 vehicles you mentioned—did that include all the categories you said: tow companies, limousines, scenic tours, everything?

Andrew MacKay:

Including what has been approved in the last two months, I believe the number is now 59. That would include charter limousine operators, providers of airport transfer service, special services, scenic tours, and nonemergency medical transporters. Do you want me to give you the statistics on towers?

Assemblyman Jones:

We can stop right there. Let us say those are covering an area with 2 million people. Would that be considered a lot of companies or not very many?

Andrew MacKay:

I do not know how to answer that. It depends upon the scope of the operator—how many vehicles they run. For instance, SuperShuttle went into business about a year ago. They started with approximately 40 or 45 vehicles. I think they are running upwards of 60, 70, or 80 vehicles now. The vast majority of the passenger carriers are operating in Las Vegas. You have a population density with respect to residents in the Las Vegas area, but then you have 43 million visitors.

Assemblyman Jones:

I do not know that 56 seems like very many operators compared to 2 million people plus 43 million visitors. Since not many applications are being

denied, are there many who are starting the process, but dropping out? Are there many dropping out of the process or not applying when they see that it is onerous?

Andrew MacKay:

I cannot give an opinion about any that do not apply. Some people will actually meet with the Nevada Transportation Authority and find out that they cannot operate the business on a part-time basis—the business cannot be open only Friday nights and Saturdays. At that point, they will not go any further. Other times, they will find out that they will be subject to a Federal Bureau of Investigation (FBI) background investigation, and decide not to proceed. Others will submit an application, and will abandon their application when they get to the point that their fingerprints will be electronically transmitted to the FBI by and through the Central Repository for Nevada Records of Criminal History.

I am not going to say that there may be a small number of companies for the number of people you are referencing, but I will say that Las Vegas is the biggest limousine market, I believe, in the United States and also the world. It is a very robust, very competitive market. When you look at the annual reports, that is demonstrated in the revenue and the fact that the margins are 2 or 3 percent.

Chair Wheeler:

Are there any further questions? [There were none.] Is there any further neutral testimony? [There was none.]

Senator Gustavson:

There has been a lot of talk. Most of the talk had to do with the intervening process. Mr. Bell proposed an amendment ([Exhibit T](#)) that changed the bill somewhat. It was the intervening process that I am trying to restrict to safety only. This amendment would put the population cap in, which is also in jeopardy right now, but it would also eliminate restricting it just to the safety concerns of the bill. The amendment states that "any person who can demonstrate a direct and substantial interest in an application, for certification or a modification of such certificate, and who desires to participate as an intervener must file a petition with the Authority requesting an order to intervene." This says nothing about restricting that just to safety. That is why I do not approve of the amendment.

Chair Wheeler:

It is not a friendly amendment?

Senator Gustavson:

You are correct. Even Mr. Bell stated that he is neutral, other than to the intervening process. I appreciate your concerns.

Assemblyman Jones:

Senator Gustavson, thank you for bringing this free market-principle bill. Why do we limit the NTA and not the Taxicab Authority (TA) as well? I think the problem is bigger with the TA. I know that in earlier testimony this session, it was stated that in the past 16 years there has not been one new taxicab company because of intervention by the existing firms.

Senator Gustavson:

I could not say whether that is correct or not. This bill is directed mainly at the Nevada Transportation Authority.

Chair Wheeler:

I will now close the hearing on S.B. 183 (R1) and open it for public comment. [There was none.] The hearing today is adjourned [at 5:08 p.m.].

RESPECTFULLY SUBMITTED:

Joan Waldock
Committee Secretary

APPROVED BY:

Assemblyman Jim Wheeler, Chair

DATE: _____

<u>EXHIBITS</u>			
Committee Name: <u>Assembly Committee on Transportation</u>			
Date: <u>May 7, 2015</u>		Time of Meeting: <u>3:18 p.m.</u>	
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 127 (R1)	C	Michelle L. Van Geel, Committee Policy Analyst	Work session document
S.B. 156	D	Michelle L. Van Geel, Committee Policy Analyst	Work session document
S.B. 183 (R1)	E	Senator Donald Gustavson	Written testimony
S.B. 183 (R1)	F	Senator Donald Gustavson	Video of Carolyn Davis, All-Pro Movers
S.B. 183 (R1)	G	Senator Donald Gustavson	<i>Nevada Journal</i> article, "Carolyn's Story"
S.B. 183 (R1)	H	Senator Donald Gustavson	<i>Nevada Journal</i> article, "Limousine Lumps"
S.B. 183 (R1)	I	Senator Donald Gustavson	<i>Las Vegas Sun</i> article, "Where I Stand," Mike O'Callaghan
S.B. 183 (R1)	J	Senator Donald Gustavson	Underwood case summary from Pacific Legal Foundation
S.B. 183 (R1)	K	Senator Donald Gustavson	<i>Las Vegas Review-Journal</i> article on moving industry
S.B. 183 (R1)	L	Senator Donald Gustavson	Pacific Legal Foundation, "Fighting Mover Cartel"
S.B. 183 (R1)	M	Senator Donald Gustavson	Pacific Legal Foundation, "Competitor's Veto"
S.B. 183 (R1)	N	Senator Donald Gustavson	Statement of Justin M. Clouser
S.B. 183 (R1)	O	Senator Donald Gustavson	<i>Las Vegas Sun</i> article, "Renegade LV limo owner"
S.B. 183 (R1)	P	Senator Donald Gustavson	<i>Las Vegas Sun</i> article, "Vegas cab alternative"
S.B. 183 (R1)	Q	Senator Donald Gustavson	Article on certificate of necessity laws

Assembly Committee on Transportation

May 7, 2015

Page 33

S.B. 183 (R1)	R	Lee McGrath, Institute for Justice	Written testimony
S.B. 183 (R1)	S	Anastasia P. Boden, Pacific Legal Foundation	Written testimony
S.B. 183 (R1)	T	Brent Bell, Livery Operators Association of Las Vegas	Proposed amendment