

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

**Seventy-Eighth Session
May 25, 2015**

The Committee on Transportation was called to order by Chair Jim Wheeler at 3:04 p.m. on Monday, May 25, 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 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
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Michael C. Sprinkle
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Senator Mark Manendo, Senate District No. 21

Senator Pete Goicoechea, Senate District No. 19

STAFF MEMBERS PRESENT:

Michelle L. Van Geel, Committee Policy Analyst

Melissa M. Mundy, Committee Counsel

Henri Stone, Committee Secretary

Trinity Thom, Committee Assistant

OTHERS PRESENT:

Sean McDonald, Administrator, Division of Central Services and Records,
Department of Motor Vehicles

Greg McKay, Chair, Commission on Off-Highway Vehicles

Paul Jackson, Private Citizen, Reno, Nevada

William Adler, representing the Commission on Off-Highway Vehicles

Michael Gerow, Owner, Michael's Cycle Works, Carson City, Nevada,
and Michael's Reno Powersports, Reno, Nevada

Bill Hermant, Owner, Reno Cycles and Gear, Reno, Nevada

Edward Vento, representing 5th Gear Powersports, Elko, Nevada

Rudy Malfabon, P.E., Director, Department of Transportation

Bill Hoffman, P.E., Deputy Director, Department of Transportation

Brian Reeder, representing Nevada Chapter, Associated General
Contractors

Chair Wheeler:

[Roll was taken. Protocol was explained.] We will have Committee members coming and going today because of the many committee meetings going on. We will change the order a bit because of this, and hope to have everyone here by the work session. We will start with Senate Bill 492 (1st Reprint).

Senate Bill 492 (1st Reprint): Revises provisions governing the financial administration of off-highway vehicle titling and registration. (BDR 43-1175)

Sean McDonald, Administrator, Division of Central Services and Records, Department of Motor Vehicles:

Senate Bill 492 (1st Reprint) was brought by the Department of Motor Vehicles to address two areas pertaining to the off-highway vehicle program. The first relates to off-highway vehicle (OHV) dealer plates, while the second makes changes to the existing funding model.

Existing law requires the Department of Motor Vehicles (DMV) to issue an OHV dealer, long- or short-term lessor, or manufacturer a special plate commonly known as a dealer plate for use on OHVs. Senate Bill 492 (R1) provides the DMV the ability to charge a \$12 fee for these plates. Such fees are not unlike what is currently being assessed for plates issued to car dealers for their dealer license plates.

Second is the OHV funding proposal. The Department of Motor Vehicles is recommending a change to the current funding mechanism used to operate the off-highway vehicle program relative to revenues received from registrations and titles. Senate Bill 492 (R1) proposes a new funding model, reallocating revenues to meet program obligations prior to disbursement of funds. The funding proposal the DMV has brought forth resembles a business enterprise fund and enables the DMV to cover costs incurred in the program's operation while simultaneously allowing all other funds to flow directly to the Commission on Off-Highway Vehicles. This new funding mechanism would account for all revenue streams, including titles, which are currently outside of the scope of the program.

As presented, Senate Bill 492 (R1) would remove the current revenue split of 85 percent to the Revolving Account for the Administration of Off-Highway Vehicle Titling and Registration, and 15 percent to the DMV as outlined in *Nevada Revised Statutes* (NRS) 490.084. Under the new plan, revenues generated from the processing of registrations and titles would be reviewed quarterly. A flexible reserve of \$150,000 would be established, maintained in a separate account, and permitted to balance forward should future revenues be insufficient to cover program expenses.

The Department's proposed funding model was recently supported in a report issued by the Department of Administration's Division of Internal Audits. This report was presented on December 10, 2014, to the Executive Branch Audit Committee. This new model may ultimately result in higher revenues than are

presently provided under the existing model, but will also ensure that the Department's program obligations in the short run are met should revenues be insufficient to cover costs.

Assemblyman Jones:

This is a funding mechanism. Why was it not included with the bill [Assembly Bill 217] when we revamped the whole OHV program and how fees would be collected?

Sean McDonald:

The original funding mechanism was the 85-15 split for the off-highway vehicle program. I think that they were trying to get the program off the ground. The intent was to set up a way to allocate those revenues. However, as we have moved forward, we have learned that all we want to do is cover our expenses for the program at the DMV. Any extra revenues, at that point, are allowed to flow over for the OHV Commission to use.

Assemblyman Carrillo:

I have a question about section 2, subsections 3 and 4. Is the special plate a dealer plate? Is that for a short-term lease?

Sean McDonald:

There is not a huge need for dealer plates with OHVs. Perhaps the Chair of the OHV Commission can answer those questions. If someone is demonstrating these vehicles, there are situations where the vehicle would be permitted on county roads. If they are in a county that designates their roadways for OHV use, the plate would be needed on large OHVs that are insured. This bill is written to align with how regular car dealers are doing business.

Assemblyman Carrillo:

I was under the impression that there were decals issued. Thanks for that clarification.

Chair Wheeler:

How many plates will this affect per year?

Sean McDonald:

I do not have a firm number and need to defer to the OHV Commission. This would be specific to dealers just for demonstration purposes. It is a relatively small number.

Chair Wheeler:

I would appreciate it if someone here from the OHV Commission could come up and answer some questions. I assume you folks are in support of this bill anyway.

Assemblywoman Fiore:

This bill might be moot, since we already have a bill from Assemblywoman Titus that is revamping this program. We are going to give them two more years. Why put something in place that will be repealed and eliminated?

Chair Wheeler:

I believe that bill does not handle the dealer plates specifically. Legal says it is correct, and this bill handles dealer plates. Could someone answer my question as to how many plates this actually will affect?

Greg McKay, Chair, Commission on Off-Highway Vehicles:

To my knowledge, there are about 75 dealers in the state. Maybe two thirds of them would get dealer plates. We are not talking about a huge number of plates, perhaps 50 plates. They could each purchase a couple of plates. There are probably several smaller dealers who would not purchase any. They are for demonstration models that will go a short distance from the dealership. They would not ride on any other roads than a normal OHV could ride on.

Chair Wheeler:

We are looking at this for 50 plates then?

Assemblywoman Fiore:

Once we start making these laws, there are tickets, consequences, people breaking a law that we created, all for \$600. That is kind of where I am at.

Sean McDonald:

There are already dealer plates in statute. The only difference here is that we are just assigning a fee to make it consistent with the regular automotive dealers. There is already a \$12 dealer plate fee for automotive dealers. This will make it consistent across the board.

Chair Wheeler:

What is the current procedure for OHV dealer plates?

Sean McDonald:

They just get dealer plates. There is no fee assessed to them.

Assemblyman Jones:

What would be the negative consequences of not enacting this law?

Sean McDonald:

I think it is important to outline that there are two components to this bill; the first being the plates and the second changing the funding mechanism for the program. That way, we are not sitting on excess revenues that could go to use by the OHV Commission for their projects. It is a business enterprise fund. That way, the DMV covers its expenses, and then everything else goes to the Commission. The bill changes dealer plates as well as the funding mechanism.

Chair Wheeler:

Without the actual funding coming in, you would not really need the funding mechanism, correct?

Sean McDonald:

You are correct.

Chair Wheeler:

Is there anyone else in favor of S.B. 492 (R1)? Please come forward.

Paul Jackson, Private Citizen, Reno, Nevada:

Assemblywoman Dickman is stuck in the Assembly Committee on Ways and Means. She has two amendments to this bill. I was not able to get 20 copies to the Committee before the deadline. Can I still present those amendments at this time?

Chair Wheeler:

Yes. Could you give us a conceptual amendment now based on what we will be reading? I have no problem with that.

Paul Jackson:

The first amendment would change the classification of OHVs to "motor vehicles." If this amendment is adopted, it will mean that when you trade in an OHV for another OHV, you would receive a tax credit. For example, if you take a \$10,000 used car and trade it in on a \$20,000 car, you pay sales tax on the \$10,000 difference. This does not happen with an OHV. Now that they are registered, we feel that is an appropriate change to make. It would mean a net gain of sales tax to the state because if you issue a \$4,000 credit on an OHV that is being traded in, it is usually sold by the dealership at a profit. The sales tax would be collected on it at that time. It would actually be a net increase to the state for sales tax.

The second amendment is as follows. Currently, if you pass the registration deadline for an OHV, you would have to pay a late fee of \$25. The registration of the OHV is \$20. The late fee is \$25, which has stopped a lot of people from reregistering their OHVs and has damaged compliance. What we are proposing in this amendment is to lower the late fee to \$5, which would be a lot less odious and would allow for better compliance.

Assemblyman Araujo:

Is your second amendment proposing to lower the late charge from \$25 to \$5?

Paul Jackson:

Yes.

Assemblyman Araujo:

That seems rather drastic. Was there a reason for this, or a calculation done?

Paul Jackson:

Yes, it is 25 percent of the sticker cost, which is generally what a late fee is.

Chair Wheeler:

Our committee manager is checking right now to see how A.B. 217 is affected here. As I remember, A.B. 217 had a one-time charge. Therefore, if that bill passes, there would no longer be a registration renewal.

Paul Jackson:

Assembly Bill 217 still has an annual registration fee, but it takes away the late charge completely. The result of that may be a change in the actual structure of the registration, which means that we may not have reciprocity with other states.

Chair Wheeler:

We will ask our legal counsel about that. If we were to pass A.B. 217 on the floor first and then pass this bill, the fee would be right back and the annual registration would be right back. Is that correct?

Melissa M. Mundy, Committee Counsel:

If A.B. 217 passed first, we could not pass this bill if it conflicted with that bill.

Paul Jackson:

Would you not just strike this amendment at that point?

Chair Wheeler:

I believe that if the amendment is already in the bill and it passes as amended and passes on the floor, we would be in conflict. We need to do more study on that.

Assemblywoman Spiegel:

You had said before that if somebody sells their OHV to a dealer and then the dealer resells it, there would then be sales tax collected. Is sales tax collected on those transactions now?

Paul Jackson:

That is correct. That would not change.

Assemblywoman Spiegel:

Where was the increased sales tax that you were talking about coming from?

Paul Jackson:

Most people do not trade their vehicles in because they can go to California, trade it in, and get a break on the sales tax. If you are trading in a \$10,000 unit for a \$20,000 unit, that is \$750. It puts Nevada dealers at a disadvantage. I spoke with a Nevada dealer this morning. He told me that since the sticker program, his business is up 13 percent, but he still loses business to California because of trade-ins.

Assemblyman Carrillo:

I understand that this came from Senate Committee on Finance. Would they object to amendments to their bill? How would this change factor into this bill's final passage?

Chair Wheeler:

This was also heard in the Senate Committee on Transportation. I believe that Assemblyman Carrillo's question was if the sponsor of the bill is aware of the proposed amendments, and if the sponsor considers them to be friendly.

Paul Jackson:

I have spoken to Mr. McDonald at the DMV. I believe he was neutral on this.

Sean McDonald:

I think it is important to note that S.B. 492 (R1) is part of the Governor's recommended budget. As the bill is written, all revenues from the entire program are designated to cover our expenses and move forward. It is hard for me to speak on any elements involving the Department of Taxation because we

only work as an agent of the Department of Taxation. I do not know what kind of input they would or would not have on this. The way the bill passed on the Senate side was based on our budgets. I cannot provide more input than that.

Assemblyman Carrillo:

Does there seem to be a big issue with people not renewing in a timely manner? Does registration get put off long enough that people forget to register their OHVs? Is that why it is so important to reduce the late fee? Do you get a lot of revenue from late fees? In my experience, the registration reminders for automobiles from the DMV are very effective.

Sean McDonald:

There is a substantial amount of revenue from the late fees. This year, we are projecting \$100,000. There are a large number of people that just do not renew their OHV registrations. It is different from your car. You drive your car every day, but the OHV is more recreational. I think there is an education and enforcement component that the Commission is currently working on. As people become more knowledgeable about the program and the requirements of the OHV program, I believe you will see a lot of those fees start to diminish because people will be more aware of the registration process. It is, for all purposes, like a normal auto or truck.

Assemblywoman Spiegel:

Is the \$100,000 in late fees money that your department budgets for? Do you anticipate this money is going to come in, or is that money that just comes in and which you are not counting on?

Sean McDonald:

We have budgeted based on title revenue, which is a one-time fee, and we take a portion of registration revenue. That is how we are budgeted right now. What we are looking to do is to take all of the title and registration revenue and any other revenue from now on and just take enough to cover our costs and then pass off the rest to the Commission. At that point, any revenues that were generated in the program through S.B. 492 (R1) would be allocated accordingly.

Chair Wheeler:

You say that you take enough out to cover your costs. What are your costs?

Sean McDonald:

The Off-Highway Vehicles Commission is looking at total revenue of \$278,000 for fiscal year 2015. This does not include the late fee revenues, which are

over and above that projection. There would be an additional \$100,000 from late fees that, right now, comes to the DMV. Under the new funding model, that money would flow to the Commission. The OHV Commission's total costs right now, as projected, would place our break-even point at about \$309,323. That includes renewal notice mailings and labor. We run the program with three employees. We cost-allocate management as needed.

Chair Wheeler:

You have costs of roughly \$309,000. You have total revenues of \$278,000. Only in government could we have costs higher than revenues. You actually have to have late fees just to cover your costs. Is that correct?

Sean McDonald:

At the moment, that is correct. One part of the bill is education and enforcement. We only have 40,000 actively registered OHVs in the state at the moment. Projections at the beginning of the program were considerably higher. Our internal costs would not grow that much. We run the program with three people and have an online renewal process, which eliminates the human resource factor. As more education is out there and the revenue begins to increase because more people are registering their vehicles, our costs will not grow as much as the revenues for the program as a whole.

Chair Wheeler:

Where is this education component? I do not see it in the bill.

Sean McDonald:

We are not the education component. We are strictly registration and titling. Education will come from grants funded by the OHV Commission and through law enforcement.

Chair Wheeler:

Thank you.

Assemblyman Jones:

How did we go from a \$600 bill to talking about this whole program? We were talking about 50 people, and now we are talking about the whole budget for the OHV Commission.

Chair Wheeler:

Does anyone else have any questions? Is there anyone else in favor?

William Adler, representing the Commission on Off-Highway Vehicles:

We are in full support of S.B. 492 (R1) as is. The funding mechanisms allow for quarterly transfers of money from the DMV to the Commission on Off-Highway Vehicles. This will set up the funding mechanism to actually get the Commission properly funded and get the dollars from registration where they need to go. These would include education programs, grants to make trails, or grants for signage. The idea behind this is that the DMV would take what they need each quarter and then transfer the rest over. The dealer license plate part is 50 plates, maybe 100 at most. It is not a huge component in this, but was overlooked before. The funding portion is what we are really for.

We have looked at the two new amendments. We see the need to have a sensible late fee. It is a barrier to registration. The late fee should come down to below the registration fee. The Commission declares that the fee should be \$15 or lower. We could negotiate \$5. Classifying OHVs as real vehicles would allow for trade-in values to be assessed. The idea is to save buyers of new vehicles from paying excessive taxes. That is something we would also like to look into, but if the Department of Taxation declared it would have a huge fiscal impact on the state, we would not support.

Greg McKay:

We support S.B. 492 (R1) as it is written in its entirety today. As far as the amendments, we are fine with someone getting a sales tax credit for trading in their vehicle and with the reduced late fee. However, we do not want anything that will jeopardize passage of the bill as written.

Michael Gerow, Owner, Michael's Cycle Works, Carson City, Nevada, and Michael's Reno Powersports, Reno, Nevada:

For the record, I am a commissioner on the OHV Commission, but I am not representing or speaking for the commission today. I own two businesses, one in Carson City and one in Reno. I definitely support this bill. Classifying an OHV as a vehicle will save money for people buying and will generate more money for the state. As anyone knows, if you take a trade-in for \$1,000, you will sell it at a profit. It will be a net positive for the state, and also encourage our people to stay in state and not move out of state. It is definitely a benefit for everyone in the state as well as dealers.

I would also comment on the late fee. I have been dealing with the OHV situation from the beginning. There was a lot of pushback. The late fee that was assessed upset so many people that they basically refused to register any more OHVs. You have to consider OHVs like snowmobiles. Over the last few years, we have not really had snow in northern Nevada. You ride a snowmobile about three months out of the year. If you forgot to register, it is

insulting to have to pay the registration plus the late fee when you could not ride that year. There should still be some kind of a late fee to keep the reciprocity intact. I cannot tell you how many thousands of California stickers I have sold out of my dealerships. This is Nevada money being shipped to California because our people ride in areas that cross over state lines. With our current stickers, Nevada money stays in Nevada, but you can still ride elsewhere. This sticker works over in California and in several other states.

Chair Wheeler:

When you sell a used vehicle, sales tax is on the entire price, correct?

Michael Gerow:

That is correct.

Assemblywoman Spiegel:

If we were to adopt this second amendment that would change the definition of "vehicle" to include OHVs, would it change anything else, such as insurance requirements, that the consumer would have to pay for?

Michael Gerow:

No. It will save money for the consumer and increase sales and revenue for the state. It will also drive more trade-ins that we are losing to other states. Every time we sell, we also do all of the registration. Right now, the dealers are the people getting these OHVs registered. People who go on craigslist.com and buy OHVs from private parties are not registering them. It is more than a twofold gain for the state. The more that get registered, the more money will be generated to the Commission, which will be put back into the state. It is just a win-win situation.

Bill Hermant, Owner, Reno Cycles and Gear, Reno, Nevada:

One thing with the trade-in is the sales tax. When we take a trade-in, we actually have to give less than the value of the vehicle. We have to figure that it is 7 to 10 percent of what the regular public is selling these vehicles for. When we take a trade-in, the consumer is actually not getting the right value for his own vehicle. When you sell these vehicles again, it brings new people into the sport. They go out and buy gas, shop at restaurants, and stay at motels. They visit Nevada for that reason.

Assemblyman Carrillo:

There are unintended consequences. When you change something, it has effects. You said on the record that it will not affect anything. Once you change definitions in statute there can be unintended consequences. What qualifies you to say it would not change anything?

Michael Gerow:

Nevada does not classify an all-terrain vehicle (ATV) as a vehicle. If you drive an ATV to California, it becomes a vehicle. I deal with California dealers all of the time. All the dealers must do is register their OHVs. The machine does not change. In our state, an ATV is not a vehicle. In California, it is.

Assemblyman Carrillo:

My concern is that by changing this in statute, there will be unintended consequences.

Michael Gerow:

It is not just California. It is all of the western states that we interact with that classify these as vehicles—Arizona, Idaho, Utah, Oregon, and Washington. The reason these were never classified as vehicles in the state of Nevada, as I understand, was because they were not registered. That has changed, but someone forgot to say that now, because we register them, they are vehicles.

Bill Hermant:

Since we have had the sticker law in effect, we have recovered 15 stolen vehicles because the police department can take a stolen vehicle report. Law enforcement has always considered them vehicles.

Chair Wheeler:

Any further questions? Seeing none, is there anyone else to testify in favor?

Edward Vento, representing 5th Gear Powersports, Elko, Nevada:

We are in support of the amendments.

Chair Wheeler:

Are there any questions? Seeing no one in Las Vegas, we will go to testimony in opposition. Is there anyone in opposition to S.B. 492 (R1)? [There was no one.] Is there anyone neutral? Seeing no one, we will close the hearing on S.B. 492 (R1). We will open the hearing on Senate Bill 324 (2nd Reprint).

Senate Bill 324 (2nd Reprint): Revises provisions concerning the Department of Transportation. (BDR 35-23)

Senator Mark Manendo, Senate District No. 21:

In the interest of time, I have expert witnesses here to walk you through Senate Bill 324 (2nd Reprint).

Rudy Malfabon, P.E., Director, Department of Transportation:

I just wanted to thank Senator Manendo for his sponsorship by request on this bill. I am going to turn it over to Bill Hoffman, who will provide the testimony.

Bill Hoffman, P.E., Deputy Director, Department of Transportation:

We are here before you today asking for your support and passage of S.B. 324 (R2). This would give the Department of Transportation (NDOT) much-needed authority to control illegal dumping and discharges from third-party entities into NDOT rights-of-way. Without sufficient legal authority in the eyes of the U.S. Environmental Protection Agency (EPA), NDOT will be unable to effectively implement its stormwater program. The Department of Transportation has been working very closely with the Nevada Division of Environmental Protection (NDEP), State Department of Conservation and Natural Resources, on the language of this bill. It mirrors the legal authority that NDEP has already.

The EPA requires NDOT to monitor all 13,000-plus miles of our roadways, making sure that the only thing being discharged into our rights-of-way and into our storm drains is rain or snowmelt. That is a very daunting task, especially in our urban and industrial centers. Examples of illicit discharges that NDOT has had to address include fast food restaurants hosing down their parking lots, local agencies' sewer systems plugging up and overflowing, and car dealerships washing cars and allowing water to flow onto our roadways and into our storm drains. All of these incidents happened where discharges flowed onto our rights-of-way. They were handled properly, but it took additional time and effort because we were without legal authority. As I mentioned a moment ago, NDEP currently has legal authority to address NDOT's illicit discharge program; however, there is a lot of duplication of effort and extended time delays when NDOT has to call upon NDEP and it actually does not meet compliance by the EPA.

The EPA has been auditing state department of transportation stormwater programs across the country. A large majority of state and local agencies have found themselves in our exact position. The Department of Transportation was audited in August 2011 and received an audit report noting deficiencies in May 2012. In November 2014, the EPA decided to pursue legal enforcement action against NDOT that could possibly cost NDOT millions of dollars in civil penalties and administrative fines. The Nevada Department of Transportation needs to be proactive to address EPA stormwater compliance issues. As an example, Hawaii's department of transportation had a settlement with the EPA that amounted to about \$52 million. If NDOT shows the EPA that it is being aggressive and proactive, NDOT hopes to substantially limit the fines and

penalties that are currently being negotiated. We did submit a fiscal note to the original bill saying that no additional funding will be needed for this effort. We should mention that at the joint meeting of the Senate Committee on Finance and Assembly Committee on Ways and Means Subcommittees on Public Safety, Natural Resources, and Transportation it did recommend to approve the NDOT budget on May 5, which included an amendment adding a Deputy Director, new positions, and a stormwater division for this effort.

Section 3.5 of S.B. 324 (R2) expands the definition of "discharge" to include solids and liquids. Section 4, subsection 1 cleans up the language regarding firefighting and makes it consistent with current requirements of the National Pollutant Discharge Elimination System program. The bill's section 4, subsection 3 gives NDOT options to recoup expenses associated with remediation of an illegal discharge, including attorney fees, costs associated with the illegal discharge, administrative fees, and putting any property owners on notice to cease illegal dumping in our rights-of-way. All other sections in the bill clean up older *Nevada Revised Statutes* (NRS) language and bring NDOT into the proper EPA compliance requirements. Section 13 amends the current NRS to allow the NDOT Director to hire a third Deputy Director who will oversee NDOT's new stormwater management division.

Assemblywoman Spiegel:

I have three separate questions that are all related to section 4, subsection 1, where it says "No person shall discharge or cause a discharge...." What happens if there is a car accident that causes a puncture of a radiator or gas tank, and there is a discharge onto the state highway? Would you criminalize the person responsible for the discharge?

Bill Hoffman:

No, we would not criminalize anything that happens where there is an accidental discharge on freeways or highways.

Assemblywoman Spiegel:

Say an establishment had a poorly designed parking lot, and rainwater drained toward the street. If a vehicle had a leak and materials ran down into the street, would that criminalize the owner of that establishment, especially if the local municipality had approved the plans?

Bill Hoffman:

Good question. I want to put the Committee at ease that NDOT is not going to run around the state handing out fines trying to hammer folks. We would much rather be doing highway work, designing roadways, and going after safety issues. We would work closely with that property owner, making sure they

understand through education and person-to-person conversation what the violation is. The Nevada Department of Transportation will be developing codes in the *Nevada Administrative Code* (NAC) and regulations that spell out this enforcement action and process. We have to create an enforcement plan that the EPA will review and approve. If there were things that needed to be changed with that property owner, we would work closely with them to end the discharge into our right-of-way.

Assemblywoman Spiegel:

If there is a rainstorm that causes pollutants to be dislodged from the parking lot and then run into the street, would that be considered an intentional act on the part of the owner?

Bill Hoffman:

If the case is that they were not trying to pollute or if it were an act of nature, we do not intend to go after those folks. We will work closely with them to prevent that.

Assemblyman Araujo:

How does this bill relate to the stormwater drainage program that you touched on earlier?

Bill Hoffman:

You would like to know what this bill has to do with the budget amendment we submitted, correct?

Assemblyman Araujo:

I just want to understand how it relates to the new program that is being launched.

Bill Hoffman:

The stormwater management program is a huge operation that NDOT has to manage throughout the entire state over all 13,000 miles of roadway, urban and rural. In working very closely with NDEP and meeting several times with the EPA, a new stormwater division with 59 positions, having the legal authority to prevent illegal dumping on our own properties, is all part of this negotiation that we are currently in with the EPA.

Assemblyman Araujo:

As a quick follow-up, I noticed in section 4, the fine is set at \$25,000 per day for anyone who either assists or is responsible for the pollution. Is there a cap for how many days they can be charged that fine? What is the rationale for that amount?

Bill Hoffman:

The \$25,000 and the criminal language you see in the bill is for the most egregious incidents. For example, if there is a public health issue and the owner has ignored our requests, we need this sort of leverage to make sure that we can cease any discharges.

Assemblywoman Fiore:

To simplify this bill, we see that the EPA is going to come in and we have established businesses like dry cleaners and car washes that NDOT will be able to start fining and feeing and destroying businesses. We just had a firearm bill that we had to repeal. This is an anti-business bill. You definitely do not have my support on language like this.

Assemblyman Carrillo:

You touched on working with the EPA and NDEP. We understand that investigations sometimes take place. Do you monitor samples of water that are discharged and then notify the owner? Could you give me an example of what the new Deputy Director is going to be doing?

Bill Hoffman:

The Department of Transportation has to monitor and patrol all 13,000 miles of our roadways. If we see something that is being discharged into our right-of-way, there is an escalation process for dealing with it. We will make contact verbally, then have written correspondence with the property owner, then send a cease and desist letter, and follow an escalation process to help correct the issue that we have noted.

Assemblyman Carrillo:

Does NDOT have any plans to educate the general public and businesses?

Bill Hoffman:

Yes, the budget amendment we submitted does have a public information officer who will work specifically on stormwater outreach and education. That will include brochures, social media, and traveling around to businesses and educating them. I should say that public education and outreach is a huge component of the stormwater management program that the EPA mandates.

Assemblyman Jones:

It is my understanding that this bill is coming about because you are getting hassled by the EPA. The EPA is saying that you must have something in place or the state can be subject to fines. Is that correct?

Bill Hoffman:

Yes, that is correct.

Assemblyman Jones:

I am like Assemblywoman Fiore in that I do not like to pass down more laws that are making it hard to be in business. Although we do not want gross polluters, it is already hard enough for businesses to survive. Is there any way this problem with the EPA could be attacked differently? Have you looked at any other alternatives?

Rudy Malfabon:

We want to alleviate concerns regarding the adverse impacts on businesses. A business owner will still have the same responsibility they have now to prevent illicit discharges onto NDOT rights-of-way or any county or city road. For example, if you see a puddle of oil in your parking lot, put some blotter sand on it. Property owners are still responsible for preventing water pollution. We need to do a better job of communicating about what they can do to help themselves by preventing that material from getting into stormwater. There is still a responsibility for property owners to comply with the Clean Water Act. Yes, the EPA is currently leaning heavily on NDOT, but it is the responsibility of all state departments of transportation to comply with the Clean Water Act. We are not being treated any differently from any other state.

Assemblyman Jones:

There is a two-thirds majority vote needed for this bill to pass. I do not see a tax, but I see potential fines. Why is this a two-thirds bill?

Melissa M. Mundy, Committee Counsel:

In subsection 3 of section 15, the existing language says, "The Department shall charge each applicant a reasonable fee for all administrative costs incurred by the Department in acting upon an application for a permit." This relates to the encroachment permits that are issued by the Director. We have included a reference to discharge at the beginning of section 15, subsection 1. Because we are now requiring a person to get a permit prior to discharging anything, we are expanding the applicability of the existing fee. That is why there is a two-thirds requirement.

Assemblyman Araujo:

I am trying to understand the fee. Did the Senate Committee on Finance vet that?

Bill Hoffman:

Yes, it did come out of the Senate Committee on Transportation and it did pass. It was referred to the Senate Committee on Finance, where it passed, and then passed unanimously on the Senate floor.

Assemblyman Araujo:

I was curious if they had specifically vetted that amount.

Bill Hoffman:

I do not know if they vetted that specific detail. I would imagine that it was at least considered and discussed. I cannot answer for them.

Assemblyman Carrillo:

Ultimately, you are trying to achieve limiting the amount of chemicals leaking into the environment. We want to make sure that the waters in Lake Mead and Lake Tahoe are not contaminated with chemicals that will be harming wildlife or people. I understand that is the premise of this bill and thank the Senator for bringing this bill forward. People may see this as hurting business, but ultimately you are harming the environment if this does not go forward.

Senator Manendo:

You are right. We share some of the same areas in our districts, with the Las Vegas Wash and the Clark County Wetlands Park. All the runoff goes down there. We have a beautiful new visitor center out there. We have to be conscious about what is flowing into Lake Mead. I saw an article in the paper that folks were concerned about discharge that could go into Lake Tahoe. The thought of Lake Tahoe someday looking like Lake Mead is a nightmare.

There is a situation that happened in Las Vegas. I will not name the business. There was a dry cleaner by the Boulevard Mall that had severe leakage for years and years. That runoff went east because of the slope of the valley. All those homes on the Las Vegas National Golf Course were affected. That was my district once. I spent a third of my time in those people's homes, seeing the mitigation and lawsuits they had to go through. Hundreds and hundreds of homes were affected by this leakage. In the bigger picture of what could happen with this type of runoff, whether into storm drains or into the ground, how it affects property owners can be catastrophic. We do not want to pick on businesses. But if the business is doing something harmful and wrong, we need to be able to go in and say, "This is wrong; this is how you can fix it. Let us all get along, and do not do this again." That is the intent of this bill. If the dry cleaner had listened, people who have lived there for 50 years would not be

so severely impacted. They have had to vent their homes, bring in equipment that runs 24/7, fence off their homes, and spend the extra in electricity costs. It was a horrible situation for those property owners.

Assemblyman O'Neill:

Did I understand correctly that you need 59 people and a Deputy Director to administer this?

Rudy Malfabon:

We have responsibilities associated with design, with administration of the program, training, public information, mapping, construction, maintenance, permitting, and inspection of permits. The additional staff are required all across the board. Forty-two additional positions were approved in our budget. We had started out with reclassification of some positions before we got the EPA audit. We attempted to try to repurpose six of the vacant positions. However, it was not enough, and not timely enough to implement the program for the EPA.

Assemblyman O'Neill:

You need a Deputy Director and some 50 other people? How many people are in NDOT now? How many Deputy Directors do you have? What is their span and responsibility?

Rudy Malfabon:

I have two Deputy Directors. Bill Hoffman has the responsibilities for all of the divisions. We are a centralized agency. At headquarters, we have all of the technical divisions, support functions such as human resources, and internal audit. Then we have another Deputy Director who is over the three districts and the external civil rights program.

Chair Wheeler:

This bill only deals with the Deputy Director position, correct?

Rudy Malfabon:

Yes. It deals with one more Deputy Director for this program for all of those areas that touch the water quality program and Clean Water Act compliance.

Chair Wheeler:

I assume that the other 59 people are already in the Executive Budget. Is that correct?

Rudy Malfabon:

Correct. They were added in by amendment.

Chair Wheeler:

Are there any further questions? [There were none.] Is there anyone else in favor of S.B. 324 (R2)? Seeing no one, we will take testimony in opposition to S.B. 324 (R2).

Brian Reeder, representing Nevada Chapter, Associated General Contractors:

We are not opposed to clean water. We are opposed to how this bill is proposing to manage clean water. We are opposed to taking \$14 million or \$15 million away from road construction to build a rather large division with 59 employees. We are talking about an agency that does not currently have the funds to carry out its basic mission, which is to provide safe and adequate highway infrastructure.

The NDOT and the construction industry have already taken action to deal with this issue. All projects going forward must have plans for dealing with stormwater. Beginning May 1, training requirements for stormwater compliance kicked in. A water manager must be designated by the contractor on all NDOT projects to work with the project engineer to ensure compliance. I urge the Committee members to vote no on this bill and let the new process take hold before we spend more money expanding government and turning NDOT into an enforcement agency.

Chair Wheeler:

If we do not have an enforcement agency in this industry, who is going to keep up with the EPA requirements? How do you plan on keeping abreast of those federal requirements? The EPA could nail us for some fines.

Brian Reeder:

To answer your question, I still say we should let the new process take hold before we go with the NDOT enforcement authority. I do not have an answer for who will take that enforcement position right now. However, I think that there are measures that could be successful, including training and designating a water manager.

Assemblyman O'Neill:

Is there anything less extreme we could do than create this bureaucracy? What would you suggest in construction management or education that would keep the EPA from coming down on us?

Brian Reeder:

I hate to sound repetitive, but I think the designation of the water manager and the training that just kicked in with this new program will suffice.

Assemblywoman Kirkpatrick:

What is your opposition? Where does it fit in with stormwater compliance for our state as a whole?

Brian Reeder:

If I understand your question correctly, is it how we can maintain compliance without creating this new division? My answer is that certain actions have taken place in the last few months to deal with this. I do not quite understand why NDOT is the agency that needs to enforce something like a leakage issue with a dry cleaning company. Specific to road construction, all projects require training for dealing with stormwater to ensure compliance. I think we can rely on that training to maintain compliance.

Assemblywoman Kirkpatrick:

We have been having a hard time this session because we have a \$16 million compliance issue. I am not aware of any changes that have taken place. In the past, local governments have taken care of their own issues, but if they cannot do that and the state gets fined for it, we need to change the conversation. Help me understand what changes have taken place in the last couple of months in order to rectify this problem. In the north and in rural areas, the groundwater is very precious, I want to understand how you can argue against protecting our groundwater. I apologize that I arrived late and missed the discussion.

Brian Reeder:

I did not say that we were hit with a \$16 million price tag for noncompliance. That is what was passed out of the finance committees for this new division.

Assemblywoman Kirkpatrick:

The bottom line is that the state has got to come up with that money, so what has changed that makes you think that in the future we will not have any issues protecting our groundwater?

Brian Reeder:

The industry has worked with NDOT to set up training for stormwater compliance. I believe that started on May 1. All NDOT projects from now on require that contractors designate a water manager to work with the NDOT engineer to ensure compliance. We have not had a chance to see how these new processes will work.

Assemblywoman Kirkpatrick:

I truly understand that construction has been hit harder in this session than in the past. This session is supposed to be about being proactive rather than reactive. If there were things we could change to make it less onerous on construction, I would be willing to support you for the next week. I just worry that if we continue to be reactive in Nevada that it will be too late and we will be stuck.

Right now, we are facing an issue that we did not know was coming. Our groundwater is all we have in this state. I want to make sure we protect it. It is indeed odd that NDOT is overseeing this. You would think it would go before the environmental folks, but we have to be proactive as opposed to reactive. Maybe there is a way to work on this.

Chair Wheeler:

Mr. Reeder, please get with Assemblywoman Kirkpatrick and NDOT. Please sit down and make this palatable by Wednesday morning. Is there any other testimony in opposition to this bill? [There was none.] Is there neutral testimony for S.B. 324 (R2)? [There was none.] We will close the hearing on S.B. 324 (R2) and take a five-minute break.

[The Committee recessed at 4:30 p.m. and reconvened at 4:35 p.m.]

Chair Wheeler:

We will call the meeting of the Transportation Committee back to order. We will do a work session on Senate Bill 456.

Senate Bill 456: Revises certain provisions concerning the control and preservation of certain accessory roads. (BDR 35-1089)

Michelle L. Van Geel, Committee Policy Analyst:

Senate Bill 456 was heard in Committee on May 19 [read from ([Exhibit C](#)).] It urges the Attorney General to take a leadership role in pursuing actions on behalf of the state and counties in formalizing and finalizing title to accessory roads and public roads. The bill authorizes the Attorney General to participate as a party in a quiet title action regarding such roads under certain circumstances and in cooperation with or on behalf of the county or counties in which the road lies. Finally, the Attorney General, the Land Use Planning Advisory Council, and the Nevada Association of Counties must work together to develop and implement the legal protocol that a county may use to perfect its rights to and finalize title to an accessory or public road.

No amendments were offered on the bill. It has been confirmed that the Office of the Attorney General has removed the fiscal note that had been on the bill. I emailed Brett Kandt at the Attorney General's Office, and he confirmed that the fiscal note has been removed.

Senator Pete Goicoechea, Senate District No. 19:

This is a fairly simple bill. There is no fiscal note because it brings the process to the Attorney General, the Land Use Planning Advisory Council, and the Nevada Association of Counties trying to come forward with something for this issue.

Ultimately, we are going to have to do something on some of these quiet title actions on Revised Statute 2477 roads. We need to go in there and establish a procedure by which we can determine once and for all if it is a county road, a public access road, a Revised Statute 2477 road, or a federal road. If it is a federal road, then let us see if we can do something about them maintaining it. That is the next step in this.

Chair Wheeler:

I will accept a motion to do pass.

ASSEMBLYWOMAN DICKMAN MADE A MOTION TO DO PASS
SENATE BILL 456.

ASSEMBLYWOMAN FIORE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ARAUJO, CARRILLO,
FLORES, KIRKPATRICK, SPIEGEL, AND SPRINKLE VOTED NO.)

Senator Goicoechea:

The bill will not have to go to the Assembly Committee on Ways and Means, will it?

Chair Wheeler:

I do not believe so, since the fiscal note has been removed, but I will check with leadership. The floor statement will go to Assemblyman Silberkraus. We will close the work session and open the floor for public comment. Seeing no public comment, we will adjourn [at 4:40 p.m.].

RESPECTFULLY SUBMITTED:

Henri Stone
Committee Secretary

APPROVED BY:

Assemblyman Jim Wheeler, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Transportation

Date: May 25, 2015

Time of Meeting: 3:04 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 456	C	Michelle L. Van Geel / Committee Policy Analyst	Work Session Document