

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Eighth Session
April 2, 2015**

The Senate Committee on Transportation was called to order by Chair Scott Hammond at 8:05 a.m. on Thursday, April 2, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Scott Hammond, Chair
Senator Don Gustavson, Vice Chair
Senator Patricia Farley
Senator Mark A. Manendo
Senator Moises (Mo) Denis

GUEST LEGISLATORS PRESENT:

Senator Pete Goicoechea, Senatorial District No.19

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Darcy Johnson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Craig Stevens, Clark County School District
J.J. Goicoechea, Chair, Board of Commissioners, Eureka County
Jacob Tibbitts, Manager, Natural Resources, Eureka County
Janine Hansen, Nevada Committee for Full Statehood
Dagny Stapleton, Deputy Director, Nevada Association of Counties
Charlie Donohue, Administrator, Division of State Lands and State Land Registrar, State Department of Conservation and Natural Resources
Michael Buttars, Detective, Las Vegas Metropolitan Police Department

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Brian O'Callaghan, Las Vegas Metropolitan Police Department
Tom Allen, Las Vegas Metropolitan Police Department
Chad Brown, Las Vegas Metropolitan Police Department
David Cherry, City of Henderson
Terri L. Albertson C.P.M., Administrator, Division of Management Services and Programs, Department of Motor Vehicles
Erin Breen, Director, Vulnerable Road Users Project, Transportation Research Center, University of Nevada, Las Vegas
Sean Sever, Communications Director, Communications Division, Nevada Department of Transportation
Bill Story, Manager, State Bicycle, Pedestrian and Safe Routes to School Program, Nevada Bicycle and Pedestrian Advisory Board, Nevada Department of Transportation

Chair Hammond:

I will open the hearing on Senate Bill (S.B.) 410.

SENATE BILL 410: Revises provisions relating to motor vehicles. (BDR 43-705)

Senator Pete Goicoechea (Senatorial District No. 19):

Senate Bill 410 pertains to the speed of travel for school buses. The request came to me from the Moapa Valley Pirates. Typically, much of the Clark County School District maintains white activity buses for school activity participation. There is an old statute that says that any yellow school bus cannot drive over the speed of 55 miles per hour (mph). The Moapa Valley School is using yellow buses to transport students for activities, so when the buses are on the Interstate 15 freeway, drivers are complying with the law and driving 55 mph. When the bus is traveling to Mesquite and trying to get over the summit at Mormon Mesa going 55 mph, it becomes a safety issue. Trucks are roaring up behind the bus going 75 mph and it has become a hazard.

Section 1, subsection 3, paragraph (b) authorizes the licensee to drive a motor vehicle on a street or highway only while going to and from school, and at a speed not in excess of 55 mph. That language stays in place because it references driving students to and from school. Once S.B. 410 passes, the activity buses will be able to travel at the posted speed limits.

If a bus is in Moapa Valley and driving to play a game in Tonopah, or Needles, California, it becomes a long drive at 55 mph. We are technically

asking those bus drivers to break the law by driving in excess of the 55 mph speed limit. The buses are capable of higher speeds and when used as activity buses, they need the ability to drive a little faster as they can be a hazard on the highway.

Chair Hammond:

I have been riding on those buses and returned home from Tonopah by traveling at 55 mph. I begged the driver to increase his speed to 60 mph. It is never pleasant traveling home late at night and arriving an hour later because of the speed limit restriction. The buses are capable of safely traveling faster than 55 mph when returning students back home.

We also need to talk about the provision in the bill that addresses those students in the rural areas who have restricted driver's licenses. The law does not allow those student drivers to travel faster than the school bus. We want to make sure that restriction does not change.

Senator Goicoechea:

If you are referencing section 1, subsection 3, paragraph (b) pertaining to the restricted driver's licenses by students in the rural areas, that portion of the bill will remain at 55 mph.

We are repealing *Nevada Revised Statutes* (NRS) 484B.360 which says, "A school bus shall not exceed a speed of 55 miles per hour when transporting pupils to and from school or any activity which is properly a part of a school program."

Chair Hammond:

Does this only apply to yellow buses when they are being used as activity buses?

Senator Goicoechea:

I feel comfortable that any school bus should be able to travel at the posted speed limit if it is a yellow bus or a white bus.

Senator Manendo:

When you reference a bus by calling it an activity bus, are the kids participating in an activity after school like going to a basketball game? I have not heard from Clark County, so maybe we can limit this to populations below 700,000.

Senator Goicoechea:

Moapa Valley is in the Clark County School District.

Senator Manendo:

I was thinking about Tonopah and Goldfield.

Senator Goicoechea:

Indian Springs, Sandy Valley and typically Clark County do not have enough of the large activity buses to get out to all the small rural areas of the school district. Yellow buses are being used as activity buses in Sandy Valley, Moapa and maybe even Indian Springs; this is where the issue was raised. If the driver is in a white activity bus, then he or she will be driving the posted speed limit, but if that person is driving a yellow bus as an activity bus, he or she must travel 55 mph. The drivers are the same, but one bus is white and the other one is yellow needing to travel at different speeds because of the law.

The request came through one of the principals in the Clark County School District. Why would you want a school bus driving 55 mph on Interstate 15 when everyone around them is driving 75 mph? The bus becomes a traffic hazard. The last thing we want to do is jeopardize the safety of our students.

Chair Hammond:

I have been on some of those trips when I coached basketball. We have been fortunate when I could not get the driver to drive any faster, he would turn on the microphone and sing to us the whole way home.

Craig Stevens (Clark County School District):

We totally understand the need for this bill, especially in the more rural areas in order to get those buses going a little faster to get the kids home.

For buses traveling back and forth to school within Clark County proper, specifically Las Vegas, raising the speed limit may increase our risk analysis. There are simply more accidents at higher speeds and those accidents become more deadly as the speeds increase. We believe the risk increases and so perhaps would our payouts if there were more accidents. I have spoken to the sponsor of the bill, who is willing to work with us to try to decrease our risk. We can separate the rural trips and get those kids home quicker while making sure our risk is minimized.

Chair Hammond:

We want to maintain a safe level of speed especially within the urban areas where there may be no need to travel at a speed higher than 55 mph. We want to make an adjustment so when the buses are on the highway, they are traveling with the flow of traffic at safe rates of speed.

Senator Manendo:

Would you be able to consider putting seat belts in the buses because it is also a safety issue?

Mr. Stevens:

Putting seat belts in all of our buses would require us to retrofit many school buses and the cost would be very steep. We are trying to weigh the cost with the seat belts and without the seat belts and with increased speed and the probability of increased accidents.

Chair Hammond:

I was recently on a new bus that was equipped with seat belts, but they also had seats that could be removed for the smaller kids to use a booster seat. The buses are pretty neat because they have harnesses for the smaller kids.

Mr. Stevens:

I am not an expert on the school buses, but could gather information and provide it to the Committee.

Senator Goicoechea:

I will be glad to work with Mr. Stevens to clarify language, and we may not need to repeal NRS 484B.360 for specific activities only. Even in urban Clark County, the driver would want to travel at the posted speed limit.

Chair Hammond:

I will close the hearing on S.B. 410 and open the hearing on S.B. 456.

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

Senator Pete Goicoechea (Senatorial District No. 19):

I bring S.B. 456 for your consideration. This is typically referred to as the Revised Statute 2477 (Section 2477 of the Revised Statutes of the

United States [43 USC 932] commonly referred to as R.S. 2477) and there is a plethora of dialogue regarding this issue all over the western United States with a need to protect rural access roads. I worked for the Eureka County Road Department in the late 1960s and 1970s. This has been an issue that came to light with the 1976 passage of the Federal Land Policy and Management Act (FLPMA).

In 1973, we were required to post and designate any county road. Eureka County was fortunate that a road map was created and every track and road on the books was included for the map. The information was then filed and recorded. Due to this documentation, there has been some protection, but now there have been more and more challenges about whether or not the roads are true county roads.

Federal agencies gave White Pine County the cattle guards and culverts to put in a road, and once these items were installed, the federal agency said the county had no right-of-way on that road. White Pine County was told the road was not a county road even though it was and had been maintained forever. The County was provided the infrastructure to upgrade the road, and the federal government indicated the road was not a county road. The County could be held out of compliance.

There are many stories about right-of-way applications and whether or not the roads are really county roads. Technically, an R.S. 2477 road is one that has been established by use and some of the roads go back into the 1800s. The roads only have to be established by use to declare the right-of-way. These roads were clearly in place as they were used as mining camp roads and wagon roads. Now federal agencies are looking at the roads and saying, even though they have been maintained by the counties, the counties do not have rights-of-way for use.

This bill asks the State to assist the local jurisdictions in establishing the rights-of-way claims on county roads. The language allows the counties and State to come together to provide access in this State. This bill is critical for rural access.

J.J. Goicoechea (Chair, Board of Commissioners, Eureka County):

The R.S. 2477 has been an ongoing issue for 40 years, especially in the rural counties. The R.S. 2477 was repealed by FLPMA and we are trying to roll the State Land Use Planning Advisory Council (SLUPAC) into the mix.

The R.S. 2477 was enacted by Congress in 1866 to encourage settlement of the western United States by the development of a system of highways and roadways. The exact text read, "the right-of-way for the construction of highways across public lands not otherwise reserved for public purposes is hereby granted." Many of these roadways were wagon trails used as pioneers were moving west, and others were used for exploration of mining prospects. Many of the roadways were maintained by filling in low spots, so were developed and maintained by users.

In 1976, R.S. 2477 was repealed under FLPMA. The repeal was subject to "valid existing rights." The relevant text, FLPMA Sec. 701, 43 USC, section 1701 reads:

(a) "Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act"

The question becomes, what constitutes valid existing rights? In Eureka County, we are maintaining and operating on roads with clouded titles.

One example would be the Fish Creek road in southern Eureka County. Senator Pete Goicoechea worked for the Eureka County Road Department in the late 1960s early 1970s. The day I was born, he was running a scraper on the Fish Creek road bringing it to grade so they could lay asphalt. The Eureka County sheriff found him so he could travel to Elko for my birth. That was in the early 1970s when the road was paved. The Fish Creek road is a paved road in Eureka County that extends from U.S. Highway 50 south to the Eureka County line, then it enters into White Pine County, into Nye County and ends at the Duckwater Indian Reservation. This is the main access road for children from the reservation to attend school in Eureka.

There is a proposed project in Eureka County for the development of a mining operation to mine vanadium. Proponents of the mine approached representatives

from the U.S. Bureau of Land Management (BLM) to talk about upgrading the road to the mine. The proponents indicated they would be working with Eureka County to upgrade the road. The mine representatives were told by the BLM that the road did not belong to Eureka County because the County had no right-of-way. The road has been in existence longer than any of us in this room have existed, and it has been paved for over 40 years. The road was paved prior to the creation of FLPMA in 1976.

Last year, that same BLM district threatened Eureka County with trespass on the Gable Canyon road with the Frasier Fire in 2012. That fire resulted in erosion the subsequent summer due to runoffs, and we lost the Gable Canyon road multiple times. We continued to maintain the road by blading it. The road accesses private property called Jim Buckskin's, and it also accesses the border of the wilderness study area on Roberts Mountain. This is a primary access for hunters, recreation and livestock along with access to the water developments for some of the local ranchers in the area.

Eureka County reconstructed the road by pulling up the shoulders and installing drainage next to the road to carry away any runoff water. We were threatened with trespass by the BLM. If Eureka County received a trespass from the BLM, then all other withdrawals would stop and we would not have been able to maintain a gravel pit. Eureka County had to resolve the trespass prior to moving forward. Thankfully, we were able to work it out through a couple of very heated meetings and the trespass was dropped by the BLM. We indicated to the BLM representatives that we were willing to go to court to resolve the issue. Eureka County does not want to go to court on thousands of miles of roads in this State. Senate Bill 456 does not lay claim to any additional roads or any additional rights-of-way, it merely establishes a process for the counties to work with the State to resolve the issue of having or not having title to the roads.

Jacob Tibbitts (Manager, Natural Resources, Eureka County):

Reading through the bill, section 1 contains conforming changes so there should not be much discussion. Section 2, subsection 2 clarifies the meaning of a public road. This addresses the issue of what we are proposing to do with S.B. 456.

Currently, the statute defines a public road as those roads where public use was established between 1866 and 1976.

There are also accessory roads, and that definition is contained in the statute. Those are roads that existed during that time period, but there was no established public use.

Where the statute identified accessory roads, S.B. 456 will now identify these roads as public roads. There has been much caselaw within the last 5 to 10 years regarding the R.S. 2477 roads. When this portion of the statute was changed, in at least 1993, the Legislature determined preserving this access was important to Nevada. Accessory roads were separated from public roads because R.S. 2477 was self-effecting. The law from 1866 meant if individuals or counties built the road, then they maintained the rights-of-way. Once the road was built, the right-of-way was granted. There was never any thought to additional actions to prove title to the road because it was granted once the road was built.

There has also been caselaw that says those rights-of-way are not formally recognized unless adjudicated in federal court. The mechanism establishing this is the Quiet Title Act (28 USC 2409 a). For Eureka County to obtain clear title to these roads, we need the changes now because there have been many changes since 1993 when this was put into place and we need clarification that public roads are included.

Section 3 provides a legislative declaration speaking about the need to protect the authority and continued accessed uses on federally administered lands. Throughout the rest of the section the words "and public roads" has been inserted into the language. Section 3, subsection 2 proposes that the Attorney General is permitted to participate in finalizing and formalizing titles to accessory roads and public roads in the State. It is important to have the State and the Attorney General involved and is based on some of the recent decisions based on R.S. 2477 roads.

The Quiet Title Act and caselaw have statute-of-limitation issues, and a county is held to a different standard than when the state is involved. When the counties try to address the issue on their own, there is a 12-year statute of limitations on the Quiet Title Act, but it is very vague. The statute of limitations starts when the county knows or should have known of a case of controversy that took place. When the State is involved, the State has to be notified by the federal government of its claim to those roads. It is important to have State support when moving forward on this issue.

The rest of the bill talks about how the State can be involved. In section 3, subsection 3, there is clarification on recent caselaw. Most of these cases are coming out of the U.S. Court of Appeals for the Tenth Circuit. Nevada is in the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit, and there have been decisions from the Ninth Circuit Court on R.S. 2477 by adopting the standards developed by the Tenth Circuit Court. Language being used is "case or controversy," which creates the opportunity to move forward under a quiet title action. The language also authorizes the Attorney General to participate.

Currently, the Attorney General can bring a declaratory action or judgement if a road is closed by a federal agency. Senate Bill 456 will allow the Attorney General to assist in the quiet title action. The language now includes the county or counties in which the road lies. Section 3, subsection 3, paragraph (b) provides that the Land Use Planning Advisory Council, the Attorney General and the Nevada Association of Counties work cooperatively to develop a consistent protocol for all of the counties to move forward. This is important because there is no guidance. The courts are helping to provide guidance on what should be done, but the counties are left on their own to make determinations about procedural issues.

Nye County has spent a large amount of money and time documenting its roads, but some of the other counties are left to fend for themselves. The reason we feel the State Land Use Planning Agency (SLUPA) and the Nevada Association of Counties (NACO) should both be involved in this issue, is because NRS 321.710, subsections 1 and 2, the SLUPA are under the advisement of SLUPAC:

1. ...The Administrator has authority and responsibility for the development and distribution of information useful to land use planning.
2. The activities of the State Land Use Planning Agency which have priority are: (a) Provision of technical assistance in areas where such assistance is requested; (b) Activities relating to federal lands in this State.

The responsibility of the Division of State Lands is to address the types of issues we are encountering in Eureka County.

Every county has a representative on SLUPAC and every county is represented through NACO. The NACO is also an ex officio or nonvoting member of SLUPAC. This is not a proposal for Eureka County to go forward with a quiet title action, but all agencies need to get together to determine how to address these issues and defend our right-of-access to our public lands.

Chair Hammond:

The proposed plan that will be actuated by S.B. 456 involves the Attorney General. Have you spoken to representatives from the Attorney General's Office and how they feel about being involved?

Mr. Goicoechea:

We have had multiple conversations with the Attorney General's Office, most recently last week. We met with Solicitor General Van Dyke via telephone and he is supportive of what we are trying to accomplish.

There may have been some confusion because some representatives from Eureka County met with representatives from Utah a few years ago to find out how that state was handling similar issues. Someone from the Attorney General's Office also contacted representatives from Utah. The state of Utah is at a different level in the process than Eureka County. We are trying to develop and determine the structure for Nevada, and once the Attorney General's Office understood what was involved, the Office supported our request.

Mr. Tibbitts:

Solicitor General Van Dyke indicated his office has contacted representatives to ask how much money is appropriated for this process and found it is around \$2 million in Utah. Utah is already involved in a quiet title action for every county in the state for over 10,000 roads, and Utah is much further into the process than Nevada. We want to make sure we have a protocol in place. Under the Quiet Title Act, we must have our claims and rights perfected in accordance with State law first. The laws in Nevada relating to highways differ from Utah. Nevada issues are not synonymous with issues in Utah.

Many years ago, Utah established a protocol to address these issues through its attorney general's office. The counties were contacted and provided with a step-by-step process to bring forward their claims. After that was complete, Utah moved forward with other actions. We are asking for help in creating the

protocol for all 17 counties in order to bring forward the claims. A county is not under any obligation to participate, but we want to establish a process utilizing legal advice and assistance from the Attorney General's Office.

Janine Hansen (Nevada Committee for Full Statehood):

The reason for the name of my organization is that in many of these situations, Nevada has not been treated as if we are a full or sovereign state. We support S.B. 456. I lived in Washoe County and when I went hunting with my husband in northern Washoe in the antelope refuge area, the BLM had barriers across roads that my husband used to go hunting for years and years. Now, I live in Elko County and this roads issue has been a huge problem. Elko County prepared a large map to show all of the roads that had been in use for many, many years in the County for review by the BLM. The BLM ignored the information, so many roads were closed. The citizens are very concerned in the rural counties about what is happening and are glad to see this bill is proposing a process to move forward. My brother always said, "he has rights who dares to assert them," and this allows the Attorney General, in cooperation with the counties, to assert the rights that have been here for over 100 years with regard to perfecting our roads in the counties.

Dagny Stapleton (Deputy Director, Nevada Association of Counties):

We are in support of S.B. 456 in that it creates a protocol for clarifying the status of these roads in all of Nevada's counties. Though this issue affects counties throughout the State, due to the high percentage of public lands in Nevada, this issue does disproportionately affect Nevada's rural counties.

One of the Nye County Commissioners has spent thousands of hours creating an inventory of the R.S. 2477 roads. This bill will create a more streamlined and consistent process for counties to address this issue. It would help to support some of the rural economic activities the counties depend on that, in turn, depend on the use of these roads.

Charlie Donohue (Administrator, Division of State Lands and State Land Registrar, State Department of Conservation and Natural Resources):

I am here in the neutral position for S.B. 456. The SLUPAC is specifically called out in legislation to work cooperatively with the NACO and the Attorney General's Office on the development and the implementation of a protocol to address public and accessory roads over public lands. During the last Legislative Session the NACO was added as an ex officio member to SLUPAC,

and my agency regularly works closely with the NACO on land management issues. I feel I have the needed authority to work on issues such as this with input from the SLUPAC membership and my staff.

Chair Hammond:

I will close the hearing on S.B. 456 and open the hearing on S.B. 404.

SENATE BILL 404: Makes certain changes concerning registration of mopeds.
(BDR 43-1016)

Senator Moises (Mo) Denis (Senatorial District No. 2):

For many years I have opposed the concept of registering mopeds, but there is a significant problem needing to be resolved in respect to these vehicles. Senate Bill 404 requires mopeds to be registered through the Department of Motor Vehicles (DMV). *Nevada Revised Statutes* 482.069 defines moped as a motor-driven scooter, motor-driven cycle or similar vehicle propelled by a small engine which produces not more than 2 gross brake horsepower, has a displacement of not more than 50 cubic centimeters (cc) or produces not more than 1500 watts final output, is designed to travel on not more than three wheels in contact with the ground and is capable of a maximum speed of not more than 30 mph on a flat surface. This term does not include an electric bicycle.

Why is S.B. 404 important? Currently mopeds do not need to be registered. The usual way to think of a moped is a 2-wheeled motorized vehicle with pedals from back in the 1970s. The majority of what is considered a moped today is really a scooter. Moped theft is a serious issue in Clark County as well as other counties throughout Nevada. I have received numerous calls from constituents whose mopeds have been stolen and who have had difficulty recovering them if at all.

Towing company lots in southern Nevada are overflowing with stolen mopeds. The issue is nearly as large a problem for towing companies as it is for the owners. Since mopeds are not registered, there is little recourse for either party. Senate Bill 404 removes the exemption of mopeds from the requirement to register a motor vehicle, trailer or semitrailer that the owner intends to operate on State roads and sets an annual registration fee of \$33. I will walk the Committee through the bill, but I will also be proposing to amend some of the language.

The owner of a moped is required to carry a certificate of registration in a tool bag or other convenient receptacle attached to the vehicle. However, moped owners need not maintain liability insurance for their vehicles. In addition, the DMV must issue one license plate to the owner of a registered moped which must be attached to the rear of the vehicle. The bill allows disabled owners of mopeds to obtain and use special license plates and parking stickers applicable to mopeds.

Senate Bill 404 simply requires mopeds to be registered with the DMV in an effort to protect Nevadans and ensure stolen vehicles will be returned to rightful owners. This bill does not require insurance for a moped, an operator to wear a helmet or to acquire a motorcycle license. It does not require any sort of class or training in order to ride a moped.

In discussing this bill with the DMV, the Las Vegas Metropolitan Police Department (LVMPD), legal counsel and others, we can achieve the goal of moped registration with just a slight amendment to the bill as introduced. I propose to amend S.B. 404 to include moped in the definition of motorcycle for the purpose of vehicle registration. It is my hope this change will also eliminate or greatly reduce the fiscal note submitted by the DMV.

In order to create a new vehicle for registration in the DMV system, it requires creating a new classification for the moped. This would involve a great deal of programming and could not be completed right away. The need is now and not down the road. The vehicle classification for motorcycles already exists in the DMV system. If we include mopeds by defining them as a motorcycle, we can still accomplish our goal for registering these vehicles. There would be flags in the DMV system, but the moped will be classified as a motorcycle and must meet the requirements of the NRS definition. The only downside of this solution is that instead of a \$33 registration fee, the vehicle would be registered as a motorcycle and the owner would have to pay full fees.

As an example, if a moped costs \$1,000 there would a \$33 registration fee, a \$6 safety fee, a \$16 minimum basic governmental services tax and a \$4 fee for the supplemental governmental services tax (SGST). On the \$1,000 moped, the registration fee would be \$59.

On a \$500 moped, the fee stays the same except for the SGST which would be \$2. There is a difference of \$2 between a \$500 moped and a \$1,000 moped.

The cost of registration would be in the range of \$60 for the majority of mopeds. The cost is higher than I wanted, but it requires every moped and scooter to have a license plate and be accessible through the DMV system for law enforcement. This is one option, but I am still open to other solutions.

There is also a safety issue. Comparing a 90 cc moped and a 49 cc moped, a person cannot tell the difference just by looking at the vehicle. A person would have to look at the motor to determine the difference between the two vehicles. Today, many people are driving vehicles defined as motorcycles, but not registering the vehicles and not wearing helmets. If the vehicles have not been registered, the riders would be caught and brought into compliance. All mopeds would have to be registered, and documentation would be presented to the DMV either by providing a certificate of origin or having the vehicle inspected at the DMV. Any safety issues could be addressed at that time.

Chair Hammond:

If the moped is being registered as a motorcycle, will the license plate be the same as what is displayed on a motorcycle?

Senator Denis:

Yes.

Chair Hammond:

An officer could not tell the difference unless he or she pulls over someone and checks the documentation, but he or she could not tell when the vehicle is driving down the highway. Will a moped still have the ability to be used on the highway?

Senator Denis:

Yes. The moped would still have to follow the law such as the minimum speed limit on the freeway. The 49 cc moped is supposed to travel at a speed of less than 30 mph. If one of these mopeds were using the freeway or a highway with higher posted speeds, the driver would be breaking the law.

Chair Hammond:

Even if the moped is being registered as a motorcycle, do the restrictions for use change based on the capabilities of the vehicle?

Senator Denis:

Yes. There may be some motorcycles that do not travel at speeds fast enough to travel on the freeway. The current laws addressing these vehicles will not change. We would not expect a moped to be traveling on the freeway at a speed of 25 mph when the minimum is 30 mph. I urge the Committee's support for S.B. 404 as it proposes a much needed solution to the problem of moped theft in southern Nevada.

I opposed registering mopeds in the past because many people who drive these vehicles do not have much money. These people cannot afford a car, and I did not want them to worry about paying extra fees; however, because these people are saving to purchase these vehicles and when the vehicles are stolen, there is no recourse to get them back because they are not registered. Even though the owners of these vehicles have to pay fees under this scenario, they will have some protection if the vehicle is stolen. The registration fee of \$33 is equivalent to one gallon of fuel a month, so it is still a minimal amount of money for the protection received. By having these vehicles registered in the DMV system, it will also provide protection against mopeds being stolen in Nevada and taken out of state to sell; they will show up as stolen in the Nevada DMV system because of the agreements we have in place.

Chair Hammond:

While this is not an ideal solution, I would like to see the ability to register the vehicle one time in case of theft as a tracking mechanism. The DMV does not have the ability to put a new category in its system because it is cost-prohibitive. In this way, at least mopeds will be registered with an ability to be traced. The idea was to get mopeds registered at a minimal cost. We may need to continue to work on the bill to achieve that goal.

Senator Gustavson:

It would be a good idea to pursue a one-time registration for these vehicles, and when the vehicles are sold, the new owners could register the vehicles in their names for tracking purposes. Do all these mopeds have serial numbers?

Senator Denis:

Yes. There is a 17-character vehicle identification number (VIN) which is consistent with motorcycles already in the DMV database.

Senator Gustavson:

When someone buys a new vehicle, there is some type of documentation with the vehicle. There should be a receipt, a bill of sale or some form of documentation listing the VIN. Why are we having a problem identifying to whom the moped belongs? If my moped was stolen and I reported it, LVMPD should have a record of that vehicle in order to trace the owner.

Senator Denis:

That information will be covered by the next testifier. I researched many different states and if we could provide a one-time registration and license plate, it would only need to be updated when there is a change of ownership. That would be our goal. There is still a certain amount of fraud associated with this method. While a one-time license plate is used in the trucking industry, we are unable to use the same programming and there would be substantial programming costs. Because of the urgency of the problem, I am trying to get this up and running sooner rather than later.

Michael Buttars (Detective, Las Vegas Metropolitan Police Department):

I want to paint a picture of what we are experiencing in moped/scooter thefts and how they relate in Nevada as shown in my slide presentation ([Exhibit C](#)). I have been a detective in auto theft for 6 years. In early 2009 and 2010, these vehicles were just a blip on the radar. A moped is not considered a motorcycle and the definitions are separated, so this is a grey area. During the tough economic times when gas prices were high, we started noticing thefts of mopeds and scooters. We are now seeing these vehicles inundating the market.

Slide 2 of Exhibit C shows the different types of Taotao Group mopeds and scooters available for sale with the variation of engine size. Trying to tell the difference between the 90 cc and 50 cc is very difficult. The motors are interchangeable. The 50 cc motor can be replaced with a 90 cc motor at a shop. Manufacturers follow industry standards as motorcycle and car manufacturers do. The 17-character VIN is unique to each manufactured vehicle, including the engine number.

We are seeing a trend in southern Nevada. Based on the LVMPD reports alone, we are seeing a significant increase in the number of stolen mopeds and scooters. There were 997 of these vehicles stolen in 2014. A victim must come into the LVMPD with a VIN to report the vehicle stolen. We noticed a 30 percent increase from 2013 to 2014, and the numbers continue to grow.

Moped and scooter thefts have also increased in northern Nevada. Reno saw an increase in scooter thefts in high numbers. For both Reno and Sparks, the statistics reported are through the third quarter of 2014. During that 3-year period, based on the totals from LVMPD, Henderson Police Department, Reno Police Department and Sparks Police Department, there were 2,945 reported thefts of scooters.

Slide 7 of [Exhibit C](#) shows a photograph of the Quality Towing seizure lot of approximately 200 vehicles, mostly mopeds and scooters. This is the same number Henderson Police Department reported stolen within a 3-year period. Slide 8 doubles the number of vehicles to 400 for northern Nevada. The scooters shown on slide 9 indicate the number of reported thefts for the LVMPD during 1 year, and slide 10 indicates the total number of thefts over a 3-year period.

Slide 11 of [Exhibit C](#) indicates data from the 2013 Motorcycle Theft and Recovery Report; Nevada is eleventh in the Nation for motorcycle theft. How does this apply to motorcycle theft in our ranking? In the same report, the vehicle had to have a VIN and a theft report filed with law enforcement. Listed by the manufacturers, the highest increase in theft is Taotao Group, with an increase of 84.9 percent as shown on slide 12. Astronautic Bashan is reporting 25.6 percent increase of stolen vehicles, and Jonway Group Co., Ltd. reports a 59.7 percent increase in thefts.

Slide 13 of [Exhibit C](#) shows the Unified Crime Report from the FBI statistics for 2013. Listed are totals for theft of auto, trucks, buses and other vehicles. Other vehicles are motorcycles, mopeds and scooters. Around the Country and in the West, reported thefts usually run about 10 percent. The LVMPD has noticed reported thefts are running about 20 percent. One-fifth of the thefts we deal with are these mopeds and scooters which is higher than what is commonly reported to the FBI.

I reached out to the local dealers, and based on prices the Website for Procell Motorsports, they advertise a motorcycle scooter with a 50 cc motor averages almost \$1,000. Another manufacturer, Best Buy Scooters, has a special offer for a 50 cc motor for \$649. Other dealerships are selling these vehicles for about \$1,000.

If you take the number of reported thefts from the four agencies listed on slide 6 of [Exhibit C](#) and use a low average cost of \$500, the lost money to our victims is in the millions of dollars. It is difficult for auto theft detectives and police agencies to prosecute these cases and arrest suspects in order to vindicate our victims.

We are looking for the record keeping the DMV can provide by registering these vehicles. Any proof of ownership is acceptable but what we run into is with the transfer of vehicles and the lack of documentation. The paperwork is sometimes retained by the previous owner or the dealership that sold the vehicle, making it difficult to show proof-of-ownership documentation. These owners need to have some sort of certificate or title to indicate ownership. I have no idea what the VIN is on my vehicle. If it were to be stolen tomorrow, I would have to contact DMV for a copy of my record in order to file a report of a stolen vehicle.

There is a standard National Crime Information Center (NCIC) Hot Hit VIN record database. Law enforcement has standards of receiving reports of stolen property. Before we can file a report by entering the information into our system, the criteria of ownership must be met. There must be a victim that we can prove is truly a victim and true owner of the vehicle. We also have to make sure this is not a civil matter, which happens in many vehicle cases.

With the registration of these mopeds and scooters, many are under 50 cc, but some are 3 to 5 horsepower. This is where we find the grey area because the vehicles are motorcycles in one aspect, but not in another. Many people are skirting the law of being registered even when the vehicle is identified as a motorcycle. Law enforcement will be able to identify the mopeds and scooters and associate them to the proper owner and victim once the vehicle has been stolen. That could also be used for a freshly stolen vehicle. If the owner is not with the vehicle, law enforcement could run the VIN through the DMV and have an officer knock on the door and ask if they know where their vehicle is at that moment. If the vehicle were freshly stolen, the owner would let us know. With no record anywhere coming back to the owner of the vehicle, we are unable to prove the crook is on a stolen moped or scooter.

The second most highlighted issue is prosecution efforts. The district attorney's office will not prosecute these cases without a proof of ownership that has to be established for a crime and a victim. Without a solid proof of ownership, these cases are not being pursued in either the north or south.

Whether the vehicle is a standard tow or an impound, either way, the LVMPD does not have an impound lot. We contract with towing companies that store the vehicles on their lots. The release of any type of vehicle from the tow lots is based on any type of ownership documentation. A registration would speak volumes for an owner being able to show up to recover the item that was stolen. The item is stored at the towing yard whether it was just impounded or recovered based on theft.

Chair Hammond:

What if an owner knows the VIN of his stolen vehicle?

Mr. Buttars:

Even if the owner knows the VIN without providing documentation, we will send him away. Tom Allen of the auto theft section screens theft reports and turns away those owners. I could not go into the police department, provide your VIN and tell law enforcement this is my vehicle. There needs to be some sort of documentation to prove ownership. With the NCIC Hot Hit crime report, we know these people are true victims. Many times we ask them to find the dealership where the vehicle was bought to obtain documentation that proves the owner. Law enforcement needs something to establish the owner of that vehicle rather than hearsay. We are unable to take a theft report from a third party because that person is not the true owner. We will not take a report for a vehicle, and we will not take a report for a scooter.

Chair Hammond:

What happens to the scooters if you are unable to establish an owner?

Mr. Buttars:

Many victims are sent away without a report or any recourse to recover the stolen vehicle. I would not feel comfortable taking a VIN from someone who I cannot establish as the owner of the vehicle. As an auto theft detective, I deal with all vehicles and have upset girlfriends and boyfriends who know the other party has taken or borrowed the vehicle. Many times this person is not the true owner of the vehicle, but is reporting the incident as a theft. We have implemented policies and procedures to establish a true owner of the vehicle. Senate Bill 404 would assist us in establishing the owner.

Chair Hammond:

What happens to the mopeds and scooters sitting on the lot? Do they go somewhere else after a certain amount of time?

Mr. Buttars:

After the mopeds and scooters are recovered and since the LVMPD does not have an impound lot, the contracted tow companies go through the lien sale process to clear them off the lot. If an owner is not located who can prove ownership to receive their vehicle, the vehicle becomes the property of the tow company.

Chair Hammond:

How long do vehicles typically sit on the tow company lot?

Mr. Buttars:

I do not know the exact time period. I know many people come to the LVMPD to request help and we cannot help them without some sort of documentation to prove ownership of the vehicle. We conduct inspections at the tow company lots on altered VINs with a method to determine the true VIN for the vehicles. Even though we are able to identify the true VIN, oftentimes the owner is still unable to retrieve the vehicle due to missing documentation.

Senator Gustavson:

Are all of the mopeds and scooters in the photos stolen vehicles or impounded vehicles? How do you know the vehicles are stolen?

Mr. Buttars:

At the seizure lot of Quality Towing, these mopeds and scooters have gone into the lien sale process. Many of them are stolen and the owner is unable to make a report. Many of the vehicles at the tow yards as tow impounds may not be stolen. The vehicles could be impounded, unreported stolen vehicles, towed vehicles or unidentified vehicles due to an altered VIN.

Senator Gustavson:

Do the tow companies charge a daily fee for storage of the vehicles? If so, could some of these vehicles be there because the impound fees are so high the owners cannot afford to get them off the lot?

Mr. Buttars:

Yes.

Senator Gustavson:

This is a major problem with mopeds and scooters being stolen. What is the increase in the sale of these vehicles? The point being, if 20 percent more vehicles are being sold, would the number of thefts also increase?

Mr. Buttars:

Yes. We have taken that information into consideration. Things that have not been tracked are the number of vehicles sold and how many have been imported. I have reached out to a couple of the local dealerships, but have not yet received information. It is true the sales of these vehicles is on the rise. Once these vehicles are stolen, there is no record and the criminals look at them as almost a black market item. It is easy to steal someone's scooter and not worry about being caught. If someone is caught, with no proof of ownership, the criminal will not serve any time in jail for the theft. It has become a habitual crime that is gaining momentum, and there are more vehicles being sold which would contribute to the increase.

The LVMPD has seen these vehicles stolen more often than any other vehicle. About 10 percent of the victims will return to the dealership to request help after their scooters or mopeds are stolen. Many of the dealerships will supply documentation, so the victims can file stolen vehicle reports.

Senator Gustavson:

Do you record the VIN from the stolen scooter or moped and save it somewhere?

Mr. Buttars:

There is a paper record for every impound. If a police officer were to impound a vehicle or a scooter based on a lawful traffic stop, there will be a tow record that includes the VIN; however, the ownership category is left blank on the tow slip. There is a category for a legal owner and another for the registered owner. The registered vehicle owner does not exist because the vehicle does not need to be registered. The legal owner is not always the person behind the wheel or seated on the scooter, so we cannot add the information. There is a box for the name of the arrestee.

Because we are dealing with private tow companies, if someone shows up and says he or she was arrested while riding the scooter and it belongs to him or her, the tow company will not release the vehicle based on that conversation. There is a record, but it is kept for the impound of that towed vehicle. The record is not searchable to indicate persons related to the vehicle as owners unless it is a theft report. The information does meet our criteria for taking a theft report.

Senator Gustavson:

Would it make more sense to have your own impound lot so the fees do not become so cost prohibitive the owner has no way to recover the vehicle?

Mr. Buttars:

The LVMPD contracts with local tow companies and it would be up to the sheriff or finance people to respond to your question. It might assist us, but that would only be one agency. All of the other agencies who provided statistics for this report will still be contracting with private tow companies. I wish I could give you a better answer.

Senator Gustavson:

Did you indicate you would have to go to the DMV to obtain a copy if you did not know your personal VIN?

Mr. Buttars:

Yes. If my vehicle was stolen, the insurance paperwork and registration are in the glove box. It is not something I carry with me. When I show up at the police station, I could hand them my driver's license and they could run my name through the database and find the vehicles associated with my name. Based on NCIC standards, I cannot run my own information.

If a trailer, boat or truck was stolen, we could find those vehicles in the system and match them to the owner. We could look at the photo on the driver's license and with the record from the DMV, we would be able to file a stolen vehicle report.

Senator Gustavson:

I keep records of everything because it is important to know what a person owns so if it is stolen, it can be recovered.

Senator Denis:

One of my concerns is the people in my Senate District who are not good at keeping paperwork. This legislation would help them. If people lose their documents, there would still be a way to file theft reports. There is a huge market on Craig's List or one could be purchased at a yard sale because there is no record of an owner. By allowing the owner to register these scooters and mopeds, the owner would have something to show when the vehicle is stolen.

Mr. Butters:

This goes back to people being sent away without filing a theft report. Victims are purchasing these vehicles to drive and they cost a great deal of money. Oftentimes these people do not have all the paperwork because it was a third-party sale. When someone comes in with a handwritten bill of sale on yellow legal notepad paper, we cannot accept it as proof of ownership and the person is turned away without filing a report. There are an unknown number of thefts that are not reported and the crime itself is underreported. We are sending too many victims out the door without filing reports. If the scooter is stopped by a patrol officer on the street and the VIN is run, there is no theft record and no ownership record. The person driving away on the scooter will not be stopped.

Senator Manendo:

The lien sale on scooters can be started after 96 hours by sending the first notice. The second notice is sent after 336 hours and it must be advertised in the newspaper once a week for 3 weeks. A couple of years ago my neighbor, who is a retired law enforcement officer, wanted a scooter and bought one. She had it locked up, but it was stolen within a week.

Brian O'Callaghan (Las Vegas Metropolitan Police Department):

The LVMPD contracts with three different towing companies. The presentation photos were taken at one of them. We have these high numbers at all three of the tow company locations. There may be fewer vehicles on the lots in the winter, but the numbers increase during the summer.

We also have chop shops changing VINs on vehicles. Some people work on mopeds for a living. Law enforcement conducted a search and found the engines are being changed. We are in support of the bill.

Tom Allen (Las Vegas Metropolitan Police Department):

To provide clarification on our theft procedure; when someone visits the office to report a stolen vehicle and he or she has a bill of sale on a yellow piece of legal paper or even the form downloaded from the DMV Website, we will not accept it for proof of ownership. On a weekly basis, 20 percent of thefts are mopeds and I get about 10 people a week from whom I do not take reports because they have no proof of ownership. Many of these people also become third-party victims because they are purchasing mopeds without ownership paperwork, off the Internet and through Websites such as Craig's List. Some people are stopped once the moped has been determined to be stolen and the vehicle is taken away from the person who just purchased it because someone else had the paperwork to prove ownership.

Each vehicle sold through a dealer comes with a Manufacturer's Statement of Origin (MSO) or proof of ownership for that vehicle. The MSO is sold with the vehicle. These documents are not transferred to the new owner following a purchase. This is the same document that is given to the DMV to obtain a title when someone purchases a new car. We are advocating for the victims. We have so many victims we are not able to help or they will not get the vehicle back because ownership of the vehicle is in question.

The statistics for getting back mopeds as opposed to any other vehicle is very low. When they are found, they are usually already chopped into little pieces and used for parts on other legal mopeds. The mopeds and scooters that cannot be identified and cannot be sold due to a destroyed VIN, are crushed. Mopeds are lost by our victims, especially the third-party sales where mopeds are being purchased off the Internet. On a weekly basis, we have dozens of these vehicles picked up while people are driving stolen ones.

If we had a registration and proof of ownership on these mopeds, they would not sit in the tow yards accumulating huge fees the way they do now. The owners could pick up their property in a few days once notified by the tow yard when the fees are still reasonably small. Even after we can identify the vehicle by conducting a VIN restoration, by that time the tow fees are so large the victim cannot get the vehicle off the impound lot.

Chair Hammond:

You indicated there is a way to obtain a clear title and some mopeds have been returned to the rightful owner. There seems to be a way to address this issue

now with appropriate paperwork, but the process may not be as quick when tracing the ownership back to the victim.

Mr. Allen:

Yes. When we complete theft reports, our standard is to see proof of ownership. We lower the standards slightly when it comes to mopeds because of the ownership issue. All vehicles come with an MSO when they are brand new. If the victim has the MSO, it ensures that a person was the first owner of the vehicle even though there is no name on the MSO. A receipt from the dealership or the person who sold them the vehicle with the MSO is the standard we use to determine ownership.

Another time I might approve a report is when the victim says he or she had the MSO and the receipt, but they were left in the box on the moped. I will err on the side of the victim in this instance and take the report. When the moped is picked up, the victim can get it back. Those are the only instances where I will determine ownership. People who are purchasing these vehicles without the MSOs and handwritten bills of sale or even the completed form from the DMV, will not be able to file a report. The victim is turned away because I cannot determine ownership and liability.

Chair Hammond:

If a chop shop manipulates the VIN in some way, would you be able to get those vehicles back? What would be the procedure for this scenario?

Chad Brown (Las Vegas Metropolitan Police Department):

In regard to chop shops, any time we are called to a house that references a chop shop or we are executing a search warrant, the mopeds we are unable to identify, because the VIN is obliterated, end up being impounded to a tow company lot. We try to conduct a VIN restoration, but if the VIN cannot be identified, the vehicle is turned over to the tow company and the vehicle will be crushed.

We are in support of the bill for all the stops we have had on stolen mopeds. Some of these people admit the moped they are riding is stolen, but because we cannot prove anything, we have to let them go. It is difficult to prove ownership without this registration. These people are saving for months to purchase a moped by working minimum wage jobs on The Strip and losing two to three

mopeds to theft. The people just want the vehicle back. It is difficult to return the property without the proper mechanism in place which is a registration.

David Cherry (City of Henderson):

I am here to express the City of Henderson's support for S.B. 404. As the photo shown earlier in the presentation noted, hundreds of citizens of the City of Henderson are victims of moped theft, and the Henderson Police Department is facing the questions of how to address the issues raised at this morning's hearing when it comes to stolen mopeds. For this reason, the City of Henderson supports this practical legislation.

Terri Albertson (Administrator, Division of Management Services and Programs, Department of Motor Vehicles):

The DMV is neutral on S.B. 404 and has submitted a fiscal note based on the original drafted language in the bill.

Chair Hammond:

Was the fiscal note based on registering the moped just once?

Ms. Albertson:

The fiscal note was based on creating a new category for a moped in the DMV database. Senator Denis has been working with the Department on amended language and we would like to continue to work with him in order to reduce the impact of the fiscal note. However, as you are aware of the wait times and the number of individuals coming into our offices, we are concerned there will be an impact with all of these individuals visiting an office to register these vehicles upon implementation.

Chair Hammond:

This is a big issue, and I would like to see it resolved.

Senator Denis:

This is a large issue needing to be resolved and by registering these vehicles it will resolve the stolen vehicle issue. It is also a safety issue as many of these vehicles are identified as mopeds when they should be registered as motorcycles. We will continue to work on the language. The bill already poses a registration fee of \$33 which could be a one-time registration, just recently proposed. We need to address this issue sooner rather than later.

If we do not address this issue during this Session, 2 years from now the issue will be much greater and more difficult to get a handle on it. A stolen moped will be a common occurrence. The detective indicated if the problem gets out of control, law enforcement would stop enforcing it because they would not be able to keep up with the problem.

Chair Hammond:

I will close the hearing on S.B. 404 and open the hearing on S.B. 354.

SENATE BILL 354: Authorizes the use of motorized wheelchairs in bicycle lanes.
(BDR 43-894)

Senator Moises (Mo) Denis (Senatorial District No. 2):

A motorized wheelchair is included in the definition of a pedestrian in the NRS. Senate Bill 354 exempts the motorized wheelchair from certain laws related to pedestrians, specifically allowing a person to operate a motorized wheelchair on a bicycle path or lane adjacent to a highway. My intention in introducing this bill is to allow motorized wheelchairs on bicycle paths or lanes only if sidewalks are not available or passable for motorized wheelchairs. The intent is fully reflected in the amendment (Exhibit D).

I have a constituent who showed up at my door in a wheelchair. He does not live anywhere near me, so he had to travel several miles to tell me his story. My district is on the east side of Las Vegas Valley which has older sidewalks. The area is being upgraded as often as possible, but occasionally there could be a light pole in the middle of a sidewalk. This constituent was traveling down the sidewalk and moved into the bicycle lane to bypass an area where he was unable to operate his wheelchair on the sidewalk. He was pulled over by a police officer and given a citation for operating his wheelchair in a bicycle lane. He told the officer he was trying to get around an obstacle on the sidewalk.

This gentleman conducted some research and determined the citation was legitimate, so went to the judge to explain the reason he received the ticket. The judge dismissed the ticket. Even though anyone who receives such a ticket could go to the judge and have the ticket dismissed, I promised him I would look at the issue and see if we could make some changes to clarify the law.

People operating motorized wheelchairs face challenges traveling in both urban and rural areas. Sidewalks are not always available and when available they are not always passable due to various obstacles.

I am not trying to put people in harm's way. The intent of the bill is to allow someone in a wheelchair to occasionally travel in a bicycle lane. The key piece of this bill is section 4, subsection 6, which allows a person operating a motorized wheelchair to operate on a pathway or lane provided for bicycles or electric bicycles if sidewalks are not available or passable. In addition, the person in the wheelchair must yield the right-of-way where practicable to any person riding a bicycle or an electric bicycle traveling on the same pathway or lane as the motorized wheelchair. The person in the wheelchair cannot take over the lane, but they have permission to use the bicycle lane under certain circumstances. If there are bikes already in the pathway or lane, the person in the wheelchair must yield the right-of-way.

Other sections of S.B. 354 update the definition of motorized wheelchair and add reference to exempt motorized wheelchairs from sections of the NRS that refer to bicycles, electric bicycles or motor vehicles. These sections exclude motorized wheelchairs from the definition of motor vehicle and motorcycle; but include motorized wheelchairs in statutes related to the rules of the road and the interaction of motor vehicles and bicycles. For example, there must be at least 3 feet between a motorized wheelchair and a passing motor vehicle. If the wheelchair is in the bike lane and there is a motor vehicle close by, there must still be 3 feet between the wheelchair and the motor vehicle.

Chair Hammond:

We passed a law in 2011 pertaining to general bicycle safety.

Senator Denis:

Motor vehicles must yield the right-of-way to a motorized wheelchair operating in a bicycle lane or path; and this allows motorized wheelchairs on any trail or pedestrian walkway intended for bicycle use. A wheelchair is considered and included as a pedestrian, but a pedestrian is allowed to step off a sidewalk that is not accessible. The pedestrian must travel against traffic, so in the case of a person in a wheelchair traveling on the sidewalk, the person in a wheelchair would have to travel back to a crosswalk, cross the street and go against traffic in the bicycle lane. Senate Bill 354 would allow the motorized wheelchair to

immediately enter the bicycle lane to continue forward in the same direction it was originally heading.

Chair Hammond:

Is the intent of the bill to allow the wheelchair to enter the bicycle lane, travel around the obstruction and return to the sidewalk as soon as possible to ensure their safety?

Senator Denis:

Yes. A wheelchair is safer on a sidewalk, and no one wants them in the bicycle lane all of the time. This bill will allow wheelchairs to get around better in areas where there are many issues with the existing sidewalks. I live in an older part of town and oftentimes the sidewalks have cracks and things that make it difficult for a wheelchair to travel on the sidewalk. A pedestrian might be able to bypass the obstacle, but it would be more difficult for a person in a wheelchair. This bill provides the person in the wheelchair the ability to traverse around any obstacle and get back quickly on the sidewalk.

Chair Hammond:

Are you envisioning the wheelchairs traveling on the highway?

Senator Denis:

No.

Senator Manendo:

I had a similar experience with my father, who was 100 percent disabled. I was pushing him in his wheelchair and the sidewalk ended. There was some kind of obstacle that required us to travel onto the street in order to skirt the obstacle and then return to the sidewalk. It was scary and I could probably have been ticketed, but there were no other alternatives. The other side of the street did not even have a sidewalk and was just a dirt area. Our only choice was to use the street for a short time before getting back on the sidewalk.

I am disappointed that your constituent had to go to court, because it is a difficult process for someone who is in a wheelchair. I could understand if the wheelchair was in the middle of the street, but I give the person a lot of credit that he took the time to ask Senator Denis for help.

Erin Breen (Director, Vulnerable Road Users Project, Transportation Research Center, University of Nevada, Las Vegas):

I support S.B. 354. Even if you have never listened to a news story or read a newspaper account before taking office, just in the time you have been in Session, you must understand our roads are complex and often dangerous. Road users without benefit of a vehicle around them are known as vulnerable road users. None are more vulnerable than the people in wheelchairs. Even in my specific duties, I did not understand just how many people are struck while in a wheelchair.

Between 2011 and 2013, there were 126 crashes involving wheelchairs in Nevada. Eleven of those crashes killed the person in the wheelchair. Twelve of those in wheelchairs received critical life-altering injuries and only 19 of the 126 were reported as no injury. These are serious crashes. Seven of the eleven fatalities were people in wheelchairs over the age of 75 and the four remaining fatalities were between the ages of 55 and 60. The data for injuries shows more than half of those injured were ages 50 to 70; another 20 were ages 71 to 80; and 9 were older than the age of 80. The contrast is for fatalities, the older the person, the more likely he or she will succumb to injuries in a crash.

The posted speed limit is known on eight of the streets where fatalities occurred; with five of the eight incidents, at 45 mph, one at 50 mph and the remaining two at 25 mph and 30 mph, respectively. Most unusual to a pedestrian advocate is that 86 times during the 126 crashes, the driver was listed as "at fault." You do not see that in pedestrian crashes. Sixty-one of the incidents were listed as a failure to yield as the No. 1 reason contributing to the crash.

When the pedestrian was at fault, the No. 1 action was improper street crossing, followed by not being visible enough. I fully support the intent of S.B. 354 and think a solution to the plight of those traveling by wheelchair is long overdue. We have streets in urban Clark County where when traveling down the sidewalk it ends and leaves those less abled persons stuck.

We also have building ordinances that allow new developments to put sidewalks on one side of the street only, which in 2015 is truly amazing to me. We have sidewalks full of furniture, leaning poles, newsstands and other items blocking passage, and we have sidewalks in such disrepair that traveling by wheelchair

can literally catapult a person out of the chair when it hits a raised or broken section of sidewalk. I know conditions are similar or worse in other parts of the State.

Section 4, subsection 6 allows those in wheelchairs to use a bike lane when available, which is a good solution and should not be an issue very often in the grand scheme of things. The positives outweigh the negatives of allowing this to happen. For the sake of safety, I would ask that bicycle lanes not be classified as bidirectional, and that a wheelchair on the street be treated as a vehicle and travel with traffic and with lights required from dusk until daylight.

My fear is that drivers will not look low enough to see the wheelchair in the lane until it is too late to stop. This would mean that wheelchairs would have to travel with traffic while on the sidewalk and not facing traffic as pedestrians are asked to do on the sidewalk. I know all of us have the best interest of those in a wheelchair at heart and I have shared other suggestions with the sponsor of the bill. If the safety issues were better defined, I would be happy knowing we did the right thing for those people in wheelchairs.

Chair Hammond:

The bill uses common sense. When there is an obstruction on the sidewalk, the wheelchair can travel around the obstruction by using the bicycle lane and return to the sidewalk as soon as possible. This bill will allow those in wheelchairs to do this without being ticketed.

Mr. O'Callaghan:

The LVMPD was in support of the bill but after hearing the testimony, we have some concerns. When a bicycle lane in Clark County is marked, it could be up to 10 feet away from the curb and closer to traffic. In Carson City, you will see the same thing. A wheelchair is allowed to leave the sidewalk and travel along the curb under NRS 484A.165 where a pedestrian is defined which also applies to a wheelchair. *Nevada Revised Statutes* 484B.297, subsection 2 states, "Pedestrians walking along highways where sidewalks are not provided shall walk on the left side of those highways facing the approaching traffic."

The problem is the wheelchair traveling one way while going to the store, faces traffic but in order to return the person must cross to the other side of the highway and face traffic if there is no sidewalk provided, then cross back to the other side. It should not matter what direction traffic is traveling along the

curbside, so our main concern is when language in the bill references a bicycle lane because it is further away from the curb. Wheelchairs are also closer to the ground than a bicycle and lower than the hood of a car, which causes us some concern. There may be some things in the NRS now that could be changed so the person in a wheelchair could travel in either direction along the curb.

Chair Hammond:

I understand what you are saying because sometimes when I am running I will run next to the bicycle lane between the lane and the curb. Sometimes the area between the bicycle lane and curb is quite large.

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

The Nevada Department of Transportation (NDOT) is neutral on S.B. 354 but we have some concerns with the language. We hope to work with the sponsor quickly to clarify some of our concerns. One main concern is having bicycles and wheelchairs conflicting with each other.

Bill Story (Manager, State Bicycle, Pedestrian and Safe Routes to School Program, Nevada Bicycle and Pedestrian Advisory Board, Nevada Department of Transportation):

We are neutral on the bill and realize there may be a problem when there are obstructions on the sidewalk for persons in wheelchairs to navigate around. We have concerns which are workable if we can present some modifications. One concern is changing the motorized conveyance for a wheelchair which has speed and power requirements. By removing these clarifications, there is no definition of motorized wheelchair in the NRS. There would be no power or speed limitation on the wheelchair which may be a concern.

Bicycle lanes are directional rather than bidirectional. Bicycle lanes are one-way facilities so a bicycle can only travel in one direction within the lane, which is a federal guideline. Another issue is the visibility of the person in the wheelchair, and they are exempted from the requirement of reflectors and lights during dark periods. The bill changes the definition by adding motorized wheelchairs to the definition of bicycles in two different laws, NRS 408.234 and 408.571, which mandates our bicycle planning program and our bicycle pedestrian education program. We are unsure if the NDOT will be required to provide education or planning programs specifically for motorized wheelchairs.

Chair Hammond:

I can see the sponsor shaking his head no to these questions.

Mr. Story:

By putting the language into those statutes, the NDOT would be required to provide the same education for wheelchairs as we currently provide for bicycles.

Darcy Johnson (Counsel):

I would have to look at the specific sections and chapters. The intent to add motorized wheelchairs was not to require wheelchairs to be included in the NDOT programs but to acknowledge that the wheelchairs are allowed to use a bicycle lane. We felt it was important to acknowledge that information in every section that referenced those kinds of pathways and bicycle lanes.

Mr. Story:

Is the intent specific to motorized wheelchairs only? What about a manual wheelchair or electronic personal assisted mobility device which is also referenced in the statute? As currently written, if someone were using a Segway for mobility, this bill would exclude use of the bicycle lane.

Chair Hammond:

Both the Segway and the wheelchair are considered to be pedestrians: therefore, if a pedestrian needed to skirt an obstacle he or she would have the ability to go into the street and then get back on the sidewalk after passing the obstacle. Because the wheelchair has a motor, it must be treated differently.

Mr. Story:

Referencing the situation where there is a bicycle lane separate from the curb but there is still shoulder near it, in this situation a pedestrian would be prohibited from using the bicycle lane. A pedestrian can use the roadway facing traffic and if the bicycle lane happens to be the edge of the roadway, that person could use it. If the bicycle lane were not at the edge of the roadway, then a pedestrian or a runner would not legally be able to walk or run within the bicycle lane. The last section of intent, allowing a person in a wheelchair to use trails, was included when we passed the electric bicycle bill and would only apply to federally funded facilities.

We were required to include this language because electric bicycles were specifically prohibited in Title 23, USC section 217 from using federally funded

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bicycle paths unless state law allows these vehicles. Title 23, USC section 217 already allows motorized wheelchairs.

Chair Hammond:

The sponsor has indicated his willingness to work with getting the language right before we process the bill.

Senator Denis:

I appreciate the input because we want folks to be safe and at the same time be able to travel comfortably. We will review the issues and try to clarify the language and bring it back.

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Chair Hammond:

Some really good points were made during the testimony. I will close the hearing on S.B. 354. There being no further business to come before the Committee, we are adjourned at 10:07 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator Scott Hammond, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	10		Attendance Roster
S.B. 404	C	19	Michael Buttars	Moped/Scooter Thefts in Nevada slide presentation
S.B. 354	D	6	Senator Moises (Mo) Denis	Proposed amendment