A quorum being present, Chairman Price called the meeting of the Assembly Committee on Transportation to order at 5:08 p.m. on Monday, May 4, 1981, in Room 214 of the Legislative Building.

MEMBERS PRESENT:

Assemblyman Price, Chairman
Assemblyman Polish, Vice Chairman
Assemblyman Beyer
Assemblyman DuBois
Assemblyman Glover
Assemblyman Mello
Assemblyman Prengaman
Assemblyman Schofield
Assemblyman Westall

MEMBERS ABSENT:

None

GUESTS PRESENT:

Virgil Anderson, AAA
Drake Delanoy, Attorney
Margo Piscevich, Attorney
Rich Myers, Attorney
Peter Neuman, Nevada Trial Lawyers
Al Pagni, Attorney
Al Stone, Department of Transportation
Brent Howardton, Department of Transportation

SB 459, Allows fee for inspection of encroachments and devices used for outdoor advertising.

Al Stone, Nevada State Department of Transportation, stated that this legislation is the result of a recommendation of the Governor's Management Task Force. It will allow the Department to assess fees for processing and issuance of encroachment permits. The Department has not been allowed to assess fees for this before. At the present time highway users who pay taxes have been subsidizing these permits. The fee charged would be commensurate with the type of encroachment involved.

During 1980 this subsidy amounted to approximately $175,000 for nearly 700 permits processed. The proposed revision would allow the Department to develop an equitable fee schedule to recover its cost in processing and issuing and performing necessary field inspection regarding encroachment. It is the Department's intention to make this aspect of the program self sustaining, not being subsidized nor subsidizing any other activity.

The other part of the bill is similar in that DOT's statutory authority for assessing sign permit fees currently allows them only to recover their cost of issuing permits, not for periodic

inspection of all control signs which is required by the federal regulations to maintain compliance with the Beautification Act. DOT currently generates annual revenues of about $4,000 from the sign permit while their administrative costs of maintaining this program statewide exceeds $30,000. This would not change the categories of signs for which permits are required but would allow DOT's enforcement and program maintenance costs to be recaptured.

Mr. Price inquired what kind of inspection and enforcement they are required to do after the initial permit is issued. A sign is not something that would change in size or move about. Mr. Stone stated that they have to make a survey and inspection of the entire interstate and primary system of the state to make sure that all signs fit into the criteria required by the federal regulations.

Mr. Howerton, Department of Transportation, explained that they were talking about two categories of signs. Under the Beautification Act there is category of nonconforming signs that will be removed. These nonconforming signs have the right to remain in their existing location and configuration until such time as the DOT purchases them. They have to run a periodic inventory to make sure that the signs are not enlarged and to local new illegal signs that have come up. They inventory four times a year and that requires covering the entire 2,000 miles of the primary and interstate system. He added that as more of the nonconforming signs are removed they would be able to go to a less frequent inventory and thus be able to lower the fee administratively.

Mr. Mello inquired how they were setting fees at this time and stated that he feels this legislation would leave it wide open for the Department to set fees as they would like. Mr. Howerton stated that currently they were authorized by statute to charge fees only to recover the cost of processing the fee and the annual billing. They cannot recover the cost of the overall program maintenance.

Mr. Mello continued by stating if they had some idea what the various fees would be why don't they included them in the bill. Mr. Howerton stated that an upward limit would be fine but that if the fee were statutorily set there is some possibility that in the future they could lower the fees and they would not be allowed to.

Mr. Stone read examples of fees charged by the California Transportation Department, their counterpart in California which charges $200 for an underground installation, $100 for an aerial installation, highway access, single approach driveway is $50 and highway access, single approach commercial driveway is $100 for a maximum of two openings, etc. He added that he would not like to have to charge this much. They would like to charge just what their expenses are but that it would be possible to predict this if that is what the committee would want.

Mr. Mello stated that he felt it was necessary in order to protect

the consumer by knowing what those charges might be. Mr. Stone stated that one of the problems he has with setting an absolute rate schedule is some of the unusual permits that might come up or problems that may occur.

Mr. Mello continued by using the example of motor vehicle registration fees that would be much higher than they are if they had not been set by statute. Mr. Stone stated this would be only to generate revenue to pay for this function only.

Mr. Price stated that if every department could set fees based on the cost of operation to the department for that function, where would the incentive be to operate the department efficiently. Mr. Stone stated that they would have to have the fees schedule approved by regulation by the group that approves regulations. He also stated that he is responsible to the Board that meets regularly and is open to the public for suggestions and complaints. Therefore he feels that there are many controls of this type of thing.

Mr. Mello stated that if they would have to come with a fee schedule to publish then why couldn't the schedule be included in this bill. Mr. Stone stated that they cannot anticipated every situation that might occur and develop an appropriate fee for it. Mr. Mello suggested then that that would mean if the fee they originally charged wasn't enough they would come back and charge another fee and this is what he would oppose.

Mr. Schofield inquired about the number of installations they were talking about with this. Mr. Stone stated that they have identified the costs of this since they have not been charging for permits. The Governor's Task Force further identified this cost as $175,000 for encroachment and an additional $30,000 for the sign program.

Mr. Schofield inquired what surveillance was found on the second page, line 3. Mr. Howerton stated that this is the inventory review that they conduct and the actual field survey where they physically examine every mile of the primary and interstate system.

Mr. Price asked Mr. Stone to develop some type of fee schedule for the committee to see which might be incorporated into this bill.

AB 535, Reinforces privileges of handicapped to park.

Mr. Price explained that they was no one here at this time to testify on this bill and that this bill had been scheduled earlier and the meeting cancelled and perhaps those interested were not aware of its being heard at this time. He stated that this bill had been requested by the disabled veterans group to be drafted and introduced by the committee. It was developed for the purpose of putting more teeth into the problem of non-handicapped persons using handicapped parking spots. This would make it a misdemeanor.

Mr. Mello commented that in California each spot so designated for handicapped parking also has a sign that states that the vehicle may be towed away at the owners expense and that there is a $25.00 fine for using these spaces. He stated that he felt that a fine was in order.

Mr. Price stated that the vehicle could be towed away under this bill and that a fine would probably be more reasonable.

Mrs. Westall inquired what was meant by the new language found on lines 22 and 23. Mr. Price stated that he was not sure but that he would find out what the reasoning for it was.

Mr. Mello moved to amend the bill by making it a $25.00 fine for parking in a handicapped space unless the vehicle was so designated. Mr. Schofield seconded the motion. The motion carried unanimously.

Mr. Mello then moved that AB 535 be given a "do pass as amended" recommendation. Mr. Price will find out about the new language and if it was nothing other than housekeeping type language the bill would come out of committee with this recommendation. Mr. Prengaman seconded the motion. The motion carried unanimously.

AB 450, Provides direct action against insurers of motor vehicles.

Bob Heaney, President of Nevada Trial Lawyers Association, spoke in support of the bill. He stated that there are at least four states that have similar provisions. This bill is limited to automobile casualty insurers. He introduced Richard Meyers, the former President of the Trial Lawyers Association who does a great deal of this type of work in his practice and is very knowledgeable in the field. Mr. Heaney concluded his statement by saying that they feel that this is not an attorney's bill but a public interest bill.

Mr. Meyers stated that he did not feel that this was a clear cut issue in the issue of whether it was better for the plaintiff's lawyer or the insurance lawyers. Within their own group there are those who feel it would not be good for the plaintiffs. It has applications in different applications. In Nevada in a typical case when there is an injury automobile accident the injured party can only sue the other driver and not the insurance company that will pay the damage. The four states that have a direct action statute are Wisconsin, Louisianna, Rhode Island and Florida. Under the direct statute action the plaintiff may make a claim against and if necessary sue both the driver of the other vehicle and his insurance company.

Mr. Meyers stated that the traditional arguments against the direct action statute are that insurance contracts are contracts and are private between the insurance company and individual insured. It is thought that it would be improper for an individual who doesn't have the insurance to be able to sue the company.

Mr. Meyers stated that the plaintiff through his attorney can find out who the insurance company is and to what amount the insurance is allowed. This is not big secret. Secondly in Nevada there is mandatory insurance so that everyone knows or expects that drivers of vehicles have insurance.

Mr. Meyers stated that the purpose of liability insurance is to benefit the victims of negligent motorists and it is not to benefit the wrongdoer. Therefore is seems that this will break a fiction that the insurance company isn't really involved. The other argument against this regards the economic interest that the insurance companies think they have in that if the insurance company is a party along with the driver, the jury is likely to award a higher sum of money and consequently settlements that are made are likely to be higher. In answer to this Mr. Meyers stated that this is not true and he cited authorities in the field that have concluded that direct action statutes do not increase awards or settlements.

Mr. Meyers stated that he could think of cases where he would not like to have the insurance company named. Mr. Meyers stated that in the subject of potential jury prejudice, they have an example in this state for five or six years and that is that the Supreme Court has held that in uninsured motorists cases that insurance company that is faced with an insured motorist claim should intervene as a party in a lawsuit.

Mr. Meyers stated that it has been his experience that the verdicts are no higher or the settlements are no higher where an insurance company comes in as a named party.

In conclusion Mr. Meyers stated that there are three reason that they feel this committee should pass this bill and they are:

1. It would avoid a duplicitious situation that they sometimes have. This would be when the insurance company takes the position that they will not pay any settlement because the insured has breachedthe fine print thing called cooperation clause. They defend the insured under what is termed "reservation of rights". This could cause the issue to be tried twice in that the insured would have to sue the insurance company.

2. As a matter of reality, the insurance company is really the party interested, not the insured. The plaintiff and his representatives throughout the process have contact with the insurance company through their attorney, adjuster, etc. and little contact with the insured. The insured has no control over the litigation.

3. There is a certain amount of "cat and mouse" and "fun and games" that takes place in injury jury trials. This is where the defense lawyer wants to make it appear that the insured or defendant is going to have to pay this verdict and the plaintiff's lawyer wants the jury to realize that there is

insurance involved in this. These games become evident in the question asked, the arguments used, etc. The result of the games is that there are objections made, the trial goes on a little longer, appeals may be made, and this is all an unnecessary burden to the system.

For these reasons, Mr. Meyers stated they feel that this bill is desirable. Basically it recognizes the reality of the system and at the same time doesn't systematically prejudice either the plaintiff or the insurance company.

Mr. Glover inquired what the experience has been in regard to the number of litigations and cases where this type of provision is allowed. Mr. Meyers stated that he has not seen statistics that would answer this question but that he would not think that there would be any increase since there appears to be no difference in the verdicts or settlements.

Mr. Glover went on to inquire about the language found on page 2 regarding separate trial. Mr. Meyers stated that this would be within the same lawsuit. He stated that this would occur if the insurance company took that position that there was no coverage and at the present time this litigation is a separate trial and lawsuit and under the provision this would be litigated in the same suit along with the injury claim.

Mr. Glover questioned how long the case would then be involved in the court. Mr. Meyers stated that as he would see it the injured party will know and it will be within his control what the outcome would be between the insured and his company regarding this rather than in a separate lawsuit that he is not a party to.

Mr. DuBois inquired how long ago the other states adopted this statute. Mr. Meyers stated that Wisconsin was in 1950, Louisianna in the 1950's, Rhode Island in the 1960's and Florida in the early 1970's.

In answer to Mr. Schofield's question regarding cooperation clauses, Mr. Meyers stated that they have been held to be valid and an insured is obligated to "play ball" with his insurance company. If the company contends that the insured was not covered at the time, then the trial will go on and a verdict reached and another trial held to determine if the insurance company really is liable under the policy.

Mr. DuBois inquired how widespread this was. Mr. Meyers stated that they are not extreme cases and that he is seeing this more and more.

Mr. Heaney stated it is his observation that this kind of legislation might serve to actually reduce litigation in terms of eliminating a lot of the red tape that has to be gone through presently. Cases that should settle might more readily settle without alot of the delay factors presently being used.

Peter Neuman, member of the Trial Lawyers Association, spoke in support of this bill. He stated that the reason that he feels that this is good legislation is that it takes the "lie" out of the present trial system. He stated that this giant lie that they all live with in the court room is that they cannot mention the word insurance in the court room. If they mention the word, then the defense moves for a mistrial. Most judges grant the motion and if they grant they go back to square one and there is almost a years delay (in Washoe County). Using the blackboard, Mr. Neuman demonstrated a hypothetical case. He went through the process involved in getting the case to court.

Mr. Neuman stated this bill would allow them to name the actual parties of the case and include the insurance company that is definitely a large part of the case.

Mr. Mello inquired if the judge instructs the jury as the amount of coverage the insured has. Mr. Neuman stated that he did not believe the bill addresses that. He added that he didn't know whether that would be important and that the judge would have to decide on a case by case basis whether that was relevant or not. The judge would probably instruct the jury that the amount of coverage is not important and that the verdict should be decided merely on the merits of the case alone. To take the fact that there is insurance and amount of the insurance into consideration of the verdict would be a violation of the juror's oath. Mr. Neuman stated that at the present time attorney's are not allowed to mention the word insurance yet jurors are discussing insurance in the jury room while coming to a conclusion on the case. This bill would bring honesty into the whole system.

Mr. Glover stated that it is traditional to sue the person doing the injury and wouldn't this apply to many things and why only to auto injuries. Mr. Neuman stated that the only reason for that would be that it addresses the biggest problem area.

Continuing, Mr. Glover questioned what would happen if there are a number of insurance companies and one was left out. Mr. Neuman stated that he felt the insurance companies would make sure that all companies involved were named. At the present time this would require another lawsuit.

Mr. Glover inquired whether this would interfere with the mechanism of percentages. Mr. Neuman stated that he did not feel it would.

Mr. Neuman stated that another factor to consider would be that many people who get sued get very upset about being sued even though it really is the insurance company that is being sued. This would soften the blow to that person if they are being sued along with the insurance company. Mr. Glover pointed out that on this same point the person being sued did injure somebody and that they should not be able to detach themselves from it. They must assume some liability or it doesn't serve society.

Mr. Neuman stated that defendant is still liable up to the amount of the total judgement. If the judgement is more than his insurance then he is personally liable for that excess amount of the judgement.

Mr. DuBois inquired why this type of statute has not been adopted in more states. Mr. Neuman stated that this was because the insurance industry has fought it so vigorously everytime it has been introduced. Insurance companies like the status quo and do not want any change in the system.

Drake Delanoy, Trial Lawyer from Las Vegas and Reno, spoke in opposition to this bill. Mr. Delanoy stated that this legislation doesn't belong here. He stated that it was rather ironic that the previous speakers kept referring to Florida, since Florida did not pass a statute but had one adopted by the courts. Mr. Delanoy cited a situation of a school district being sued that has a $100,000 deductible and the insurance company insures them above this amount. With this legislation, Mr. Delanoy questioned what would happen. He stated that this bill does not limit how much is involved. He added that not only is the person injured involved but the consumer is involved. All this type of legislation is going to do is increase the cost of litigation.

Mr. Delanoy pointed out that there are also different statutes of limitations. The policy of insurance has a 6 year limitation and personal injury is 2 years. Which one would apply. Would the entire policy of insurance be introduced. If that happens if the jury doesn't like the insured, they could award above the policy limits just to hurt the insured. Mr. Delanoy stated that all this belongs to the courts. This piece of legislation is not a popular trend because of the high cost of litigation, according to Mr. Delanoy.

Mr. Delanoy stated that the consumer suffers with this. Another consideration is if punitive damages are included. This would require another lawyer. Also to be considered would be if the insured is immune from suit such as religious groups.

Mr. Delanoy stated that this is all the function of the court and for that reason the bill should not be considered.

Mrs. Westall inquired why some group that is immune from being sued would have this type of insurance. Mr. Delanoy stated that some of them are not sure and are not sure what is going to happen with the courts.

In response to Mrs. Westall's question regarding punitive damage, Mr. Delanoy stated that there is no coverage for punitive damage and so the carrier is going to have to have separate lawyer for this and it will add to litigation costs. He stated that everytime they add more people to this it gets more expensive and the consumer is the one the pays for it eventually.

Mr. Delanoy stated that insurance companies operate today at their peril because of the "intelligent attorneys" that there are on the plaintiffs side. He added that he has never heard of a case where "lack of cooperation" is used. There is bad faith used.

Mr. Schofield stated that he felt that this provision could work to the advantage of both sides. It could be an asset or a detriment to either side.

Mr. Delanoy cited the possibility that the insurance company runs the risk of being held in "bad faith". If they don't settle up front and promptly they can be held in bad faith. He added that if there is a problem with the insurance company not paying as they should it is something that should come from the Insurance Commissioner.

Mr. DuBois inquired if Mr. Delanoy had any figures on the the additional costs that this would cause as it would apply in the four states that have it. Mr. Delanoy stated that he had no figures.

Mr. Glover asked Mr. Neuman if he would agree that this would increase costs. Mr. Neuman stated that he felt it would not but would decrease the cost of litigation and that it would not in any way bring in the 6 year statute of limitation previously mentioned.

Margo Piscevich, attorney from Reno, spoke in opposition to the bill. Mrs. Piscevich began with the general rule that in the absence of a statute or contractural provision there is no privative contact between the injured person and the automobile liability insurance coverage. Without this statute there is no privative contract and they cannot sue the insurance company. What this bill would do is allow the injured party to sue the insured directly in court and then bring in the insurance company at the same time to show there is coverage.

She stated that to pass the bill they should determine what public policy it would further. She cited the three reasons given by the proponents of the bill. In response to the game reasons, there is a rule of evidence that states they don't mention insurance. The reason for this is that if it is questionable whether the insured is guilty the general opinion is that if there is insurance it tends to make somebody believe that the person was liable. The actions of a party should not be determined by whether or not they are insured. That is the main reason insurance is not brought in. It should be litigated on its merits. It is also prejudicial to bring in the fact there is insurance.

Ms. Piscevich stated that judges can take judicial notice that wards or judgements are higher if insurance is entered into or is brought to jurys attention.

Ms. Piscevich stated that it has always been determined that in

our legal system that the rights and liabilities of the parties should depend upon their legal relationship independent of their poverty, their wealth, or their financial circumstances.

In mitigation of damages, the defendant is not allowed to bring other kinds of evidence into the proceedings such as disability payments, private accident insurance etc. This type of thing is never known. If they are going to get rid of one "lie" they ought to get rid of more.

Ms. Piscevich stated that the insurance laws have become much more sophisticated and there are a great many things required so as not to be in "bad faith" with the insured and plaintiff.

Ms. Piscevich concluded that these laws have been around for generations and that she could see no public policy being furthered by this piece of legislation. She stated that she felt that it would increase the cost as there would be more attorneys involved. She also stated that there is nothing that prohibits the court from conducting an additional trial to determine if the insurance company is liable to the insured.

In response to Mr. Schofield's question regarding the number of times there has had to be two lawsuits, in Ms. Piscevich's experience, she stated that she has seen very few. She added that if there was a problem the Supreme Court would find a way of allowing it to be introduce as they have done in Florida. She stated that she did not feel that there was a need for it. She added that she felt it would make for higher awards and would prejudice the insurance company and insured in front of the jury.

Al Pagni, attorney from Reno, spoke in opposition to the bill. Mr. Pagni stated that he felt the example being used has missed the point of the system. That is that the injured should be compensated to put him back to the same position as if they had not been injured. It should make no difference how much insurance is involved. One of the difficulties with mentioning the amount of insurance is that the suggestion would be that the plaintiff should get the full amount because it is there.

Mr. Pagni stated that he felt this would lengthen trials and make them more complicated. He added that in his years as a lawyer he has had very few double lawsuits and that he also has never heard of lack of cooperation being used by insurance companies. He also stated that in most cases if the word insurance is mentioned, there is no mistrial but the judge admonishes the jury to disregard the insurance issue.

Mr. Pagni stated that he felt there was a fundamental issue here that was not being considered and that is whether the legislature can enact such legislation without violating the principle of separation of powers. He cited several rules of Nevada Rules of Civil Procedure. They were Rule 8, which tells what a claim is; Rule 12, governing when actions will be dismissed; Rule 17, which tells who are proper parties; Rule 18, which tells when there is

joinder of claims; Rule 19, tells about when there is a proper joinder of parties; Rule 20 deals with permissive joinder of parties and claims; Rule 21 is the opposite and tells about misjoinder and Rule 26 which specifically relates to the insurance. These are court rules and this is the enherent power reserved to the court and therefore he felt this decision should be made by the court and not by the legislature.

Mr. Price pointed out that the Supreme Court and courts interpret the law as set forth by the legislature. The legislature passes laws to establish boundaries whereby the court establishes their rules.

Mr. Pagni stated that he felt this bill tells the court under its own rules what constitutes a cause of action, what constitutes a claim, etc. He also stated that he could also see no public policy being furthered by this legislation.

Mrs. Westall inquired if the Nevada Supreme Court had the final say in this type of thing as to what is legal or not. Mr. Pagni stated that is true within this jurisdiction but is not necessarily the final arbitrator if the case involves some part of federal constitution or federal law.

Carl Holbert, Western Counsel for the National Association of Indpendent Insurors, spoke in opposition to the bill. He stated that they represent about 45% of the automobile business written in the State of Nevada. This bill is not considered a "big ticket" to them. They feel that if this legislation could help stablize the cost of insurance, give the consumer more benefits for the less dollars, give a better distribution system to the consumer, etc. they would favor it. However, this would cause insurance premiums to go up. He stated that if they did away with the financial responsibility law across the country about half the plaintiffs lawyers would "go back and start farming" because they wouldn't be interested in suing the average wage earner.

He stated that when they have suggested a reverse contingent fee bill the plaintiff lawyers oppose it violently but are in favor of changing contributory negligence to comparative negligence which would allow more lawsuits.

He also suggested getting the collateral source rule in and find out everything that the injured party receives and let it be allowed to offset the judgement.

In answer to Mrs. Westall's question regarding if they would favor the bill if it were a two edge sword and included the collateral source rule, Mr. Holbert stated that they would indeed.

He concluded by stating that they are a controversial type business and they expect litigation and aggravation. But that they do not feel this legislation is necessary.

Virgil Anderson, AAA, stated that from the discussion held so far

the indication is that the plaintiff always prevails. This is not alway the case. He added the situation if the defendant countersuit there would be additional costs and the possibility of the defendant winning the suit.

As there was no further testimony to be heard, Chairman Price adjourned the meeting.

Respectfully submitted,

Sandee Gagnier,
Assembly Attache

Attached to these minutes as Exhibit A is the information requested by the committee on SB 459, setting up suggested fees for the various permits.

ASSEMBLY

AGENDA FOR COMMITTEE ON TRANSPORTATION

Date MONDAY MAY 4, 1981 **Time** 5:00 P.M. **Room** 214

Bills or Resolutions to be considered	Subject	Counsel requested*

THIS AGENDA CANCELS AND SUPERSEDES THE PREVIOUS AGENDA FOR THIS DATE

AB 450	Provides direct action against insurers of motor vehicles.	
AB 535	Reinforces privileges of handicapped to park.	
SB 459	Allows fee for inspection of encroachments and devices used for outdoor advertising.	

*Please do not ask for counsel unless necessary.

7421

450

ASSEMBLY

AGENDA FOR COMMITTEE ON TRANSPORTATION

Date MONDAY May 4, 1981 Time 5:00 P.M. Room 214

Bills or Resolutions to be considered	Subject	Counsel requested*
AB 450	Provides direct action against insurers of motor vehicles.	
SB 459	Allows fee for inspection of encroachments and devices used for outdoor advertising.	

*Please do not ask for counsel unless necessary.

7421

EXHIBIT A

TRANSPORTATION BOARD
ROBERT LIST, *Governor, Chairman*
RICHARD H. BRYAN, *Attorney General*
WILSON McGOWAN, *State Controller*

STATE OF NEVADA
DEPARTMENT OF TRANSPORTATION
1263 SOUTH STEWART STREET
CARSON CITY, NEVADA 89712

A. E. STONE
Director

May 7, 1981

IN REPLY REFER TO

S. B. 459

MEMORANDUM FOR MEMBERS OF THE
ASSEMBLY TRANSPORTATION COMMITTEE

In response to the Committee's inquiry, S. B. 459, establishing fees for the processing of encroachment permits and increasing the scope of the fees currently charged for outdoor advertising sign permits, stems from a recommendation of the Governor's Management Task Force based on that group's study of the Department of Transportation.

S. B. 459 proposes to amend two existing statutes, NRS 408.423 which requires that an encroachment permit be obtained prior to placement of non-highway-related improvements within State highway rights of way, and NRS 410.400 which currently allows the Department to administratively establish a sign permit fee sufficient to defray the costs for processing and issuing sign permits. The Task Force noted that the Department is incurring a significant cost (about $175,000 in 1980 for 637 encroachment permits issued and about $177,000 in 1979 for 711 encroachment permits issued) in reviewing, issuing and inspecting encroachment permit installations of non-highway improvements from which no income is derived. It will be noted that while the number of encroachment permits issued in 1980 declined about 10% from the number issued in 1979, the costs incurred in 1980 versus 1979 delined only about 1%. This differential is attributed to the Department's increasing operating costs primarily due to general inflationary trends.

In order to accommodate the Task Force recommendation, the Department of Transportation is proposing, under the amendment to NRS 408.423, to be authorized to assess fees for the review, processing, issuance and inspection of encroachment permits and facilities placed thereunder. It is the intent of the Department to recover only its costs incurred as if reflected in S. B. 459. Legislative authorization to assess fees as proposed will rectify the current situation where in highway users' taxes now subsidize the Department's costs incurred in controlling placement of non-highway related encroachments, primarily utility facilities driveways, sidewalks, and drainage facilities within State highway rights of way.

The Department of Transportation has developed a proposed fee schedule for encroachment permits which is delineated as follows:

Categories	Description	Amount
I	Underground installations, including but not limited to telephone, gas, sewer, electric and water lines, storm drains, traffic signal appurtenances, television cables, street light circuits.	$200.00
II	Aerial installations, including but not limited to electrical and telephone lines, television cables, fire alarm cables.	100.00
III	Highway access approach or driveway for single family residence or rural, low-density use.	50.00
IV	Highway access approach or driveway for commercial traffic, includes two openings.	100.00
V	Permits related to subdivision or large commercial developments including but not limited to roadway widening, turning lanes, acceleration/deceleration lanes, curb, gutter, sidewalk, drainage structures, approaches, street lights, traffic signals, adjustment of roadway safety features.	400.00
VI	Miscellaneous, including but not limited to chain installers, bike paths, awnings, fences. Any permit, regardless of category, requiring an abnormally great amount of engineering or inspection would be charged on actual cost.	50.00

Local governmental entities and other State agencies, when working on their own systems and not performing work necessitated by or on behalf of a new development, would be exempted from fees.

By applying the proposed fee schedule to the encroachment permits actually issued during 1979 and 1980, we find that we would have generated a permit-related income of $114,200 in 1979 to offset our cost of $177,000 and 1980 revenues of $106,290 to offset our costs of $175,000. We have deliberately set our fee schedule somewhat low, primarily to insure that we are not overcharging for the services rendered. In reviewing our past costs incurred, we found that the overhead account against which our costs were charged also reflected costs in processing other types of transportation permits and nonrelated charges. We have since established a separate cost account against which encroachment permit costs are to be levied. This will enable more accurate and efficient analysis of costs than was previously possible. Additionally, we did not want to set a fee that was prohibitively high for the Category I permits, those relating to minor driveways, as half of the permits we issue relate to these more minor encroachments. We are concerned that a higher than proposed fee would encourage construction of residential and rural approaches with no permit at all.

Although we understand the concern of the Assembly Transportation Committee over allowing the Department to administratively establish fees, we believe that protection is provided from excess fees in both S. B. 459, which would enable the Department of Transportation to only recover its actual cost, and in the regulatory process that must be observed to adopt any fee structure. Any regulations promulgated to establish fees must be presented for review to the Legislative Counsel Bureau, must be subjected to public review and comments at public hearings, and perhaps most importantly, must be approved by the Transportation Board of Directors comprised of the Governor, the Attorney General, and the State Controller. We have not found that this process provides a blank check for everything we propose.

Several of the Assembly Transportation Committee members questioned the different methods of fee assessment for encroachment permits used in other jurisdictions. Our research shows that many different methods are used with the California Department of Transportation charging a flat $47.00 processing fee, plus actual cost for engineering and inspection time. We believe that their system would penalize those processing encroachments some distance from our district offices due to the extreme travel time that would be charged to perform inspections. The Washington State Department of Transportation and Highways has for years used a graduated fee schedule similar to that which we propose. Many local entities assess a fee as they would for a building permit based upon a percentage of the construction cost. Given all of the varied methods of assessment available, we believe that our proposed fee schedule is the most simple, least costly method to administer and provides a substantial measure of equity.

Regarding the proposed change to NRS 410.400 incorporated in S. B. 459, the current statute allows the Department of Transportation to administratively establish a permit fee for outdoor advertising signs. Current provisions only allow the fee to be assessed to defray costs of processing and issuing permits, not the additional costs of periodic inspection and surveillance of the 2,000 miles of Interstate and Primary highways that must be patrolled to locate and remove illegally erected signs. Although Federal funds are available and participate in 75% of the Department of Transportation's cost in purchasing and removing illegally erected and maintained signs that are nonconforming, review and removal of illegal signs occurs under the State's police power and does not qualify for federal participation.

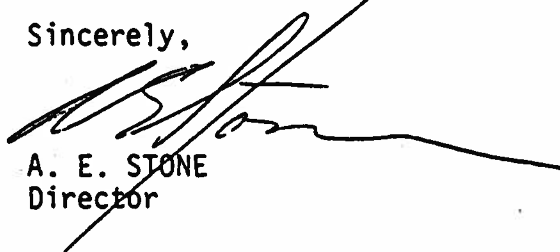
While our current $8.00 per sign annual permit fee generates an income of $4,888.00 per year (611 signs are under permit), our annual cost in maintaining compliance with State and Federal law is about $30,000.00. Failure to comply with the Federal law and regulations would invite federal sanction in the form of withdrawal of 10% of our annual Federal-aid highway apportionment.

Here again, we are requesting an amendment to the existing law allowing us to increase our sign permit to not only recover the cost of processing and issuance of sign permits, but also to recover the costs of our overall sign program maintenance. An increase in the annual sign permit fee from $8.00 to $50.00 would be required. We are also requesting that we be allowed to continue to establish the fee by regulation, since over the long term, we fully expect our operational costs to become lower as remaining nonconforming signs are removed, reducing our enforcement problems, and as more conforming signs are built, increasing our fee base.

The Assembly Transportation Committee expressed concern that the Department of Transportation would abuse the authority to administratively establish fees. We believe that allowing fees to be established administratively has certain advantages over statutorily setting fees, particularly in terms of flexibility, and that important and significant safeguards exist to prevent abuse of any administrative authority granted. Not only does the Department of Transportation have to scrupulously follow the Administrative Procedures Act in promulgating regulations, and also gain the approval of its elected Board of Directors, but the Department is also subject to the review of this Legislature every two years. Any apparent abuses of our administrative authority would undoubtedly receive the attention of this body, which would prescribe the proper corrective action.

Your favorable consideration of S. B. 459, as drafted, is requested.

Sincerely,



A. E. STONE
Director

AES:jn