

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

**Seventy-Third Session
March 10, 2005**

The Committee on Transportation was called to order at 1:34 p.m., on Thursday, March 10, 2005. Chairman John Ocegüera presided in Room 3143 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. John Ocegüera, Chairman
Mr. Kelvin Atkinson
Mr. John Carpenter
Mr. Jerry Claborn
Ms. Susan Gerhardt
Mr. Pete Goicoechea
Mr. Joseph Hogan
Mr. Mark Manendo
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

Mr. Chad Christensen (excused)
Ms. Genie Ohrenschall, Vice Chairwoman (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Assembly District No. 31,
Washoe County
Assemblyman Mo Denis, Assembly District No. 28, Clark County

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Randy Stephenson, Committee Counsel

Angela Flores, Committee Manager

OTHERS PRESENT:

Joe Carter, Chairman, Nevada State Legislative Board, Brotherhood of Locomotive Engineers and Trainmen; International Brotherhood of Teamsters, Sparks, Nevada

Jack Fetters, Director, Nevada Legislative Board, United Transportation Union, Las Vegas, Nevada

Gary Wolff, Business Agent, Brotherhood of Locomotive Engineers, Reno, Nevada

Charlotte Gilman, Locomotive Engineer, Union Pacific Railroad, Reno, Nevada

Scott Cairns, Locomotive Engineer, Union Pacific Railroad, Reno, Nevada

John Eutsler, Locomotive Engineer, Union Pacific Railroad, Sparks, Nevada

Tony Trujillo, Engineer-in-training, Union Pacific Railroad, Sparks, Nevada

Scott Bridgman, Locomotive Engineer, Union Pacific Railroad, Sparks, Nevada

Wayne Horiuchi, Special Representative, Government Affairs, Union Pacific Railroad, Sacramento, California

Joe Guild, Legislative Advocate, representing Union Pacific Railroad, Reno, Nevada

Robert Schafer, Manager of Transportation and Public Safety, Western Region, Union Pacific Railroad

David Noble, Assistant Staff Counsel, State of Nevada Public Utilities Commission

Craig Steele, Safety and Quality Assurance Division, State of Nevada Public Utilities Commission

Andie Arthurholtz, concerned citizen, Las Vegas, Nevada

Martha Barnes, Central Services and Records Division Administrator, Nevada Department of Motor Vehicles

Chairman Oceguera:

[Meeting called to order. Roll called.] We're going to open up the hearing on Assembly Bill 140, Mr. Anderson's bill.

Assembly Bill 140: Enacts provisions relating to railroad accidents, safety violations and injuries. (BDR 58-299)

Assemblyman Bernie Anderson, Assembly District No. 31, Sparks:

[Read from Exhibit B.]

I have been hearing stories from railroaders my entire life. Both my father and brother were railroad employees and their friends and

fellow employees have enthralled me with the stories of what is, in reality, a very dangerous profession. Clearly, all aspects of railroad safety have improved dramatically over the years, and railroads are by far the safest form of ground transportation available today. Yet, we must note that the changing nature of this vital industry still raises grave concerns for all citizens of our state.

[Assemblyman Anderson continued.] A close examination of federal and state regulations shows the railroad industry has clearly carved out a very protected place for their industry which crosses so many state lines and, since the mid-1860s, has been so vital to the economic well-being of the nation. Thus, federal regulations expressly preempt states from requiring railroads to file certain accident reports with state agencies. However, under federal law, states may require railroads to give state agencies copies of the reports which the railroads file with the Federal Railroad Administration (FRA).

As explained in the Legislative Counsel's Digest, Nevada law does currently require the railroad to report certain railroad accidents to the Public Utilities Commission of Nevada (PUC). The Federal Railroad Safety Act (FRSA) requires a railroad to also report certain accidents and any related injuries to the Federal Railroad Administration. However, the FRSA and federal regulation do not preempt states from allowing railroad employees to report railroad accidents, injuries, or safety violations to a state agency. Additionally, the FRSA and federal regulations do not expressly preempt states from giving statutory protections to railroad employees who make such reports.

Railroad employees are aware of the dangerous nature of the cargo they have, and they are concerned about their families, friends, and the communities they pass through. As responsible citizens of this state, they wish to make sure their concerns are shared within the state, while keeping the mandatory reporting requirements of FRSA.

This bill gives an employee who makes such a report, and who is subjected to discharge or other retaliatory action by a railroad carrier, a statutory cause of action. Again, the FRSA does not expressly preempt a state from providing penalties against a railroad officer, manager, employee, or agent who acts inappropriately in these cases.

I have with me today, Mr. Chairman, several railroad employees who have prepared examples and information they wish to share with the Committee.

[Assemblyman Anderson continued.] I wish to also indicate that there are many railroad employees who are fearful of appearing in front of one of our State committees for fear of the loss of their jobs. It's truly a remarkable event. I would be happy to point out to the members of this Committee the pertinent subsections of the proposed amendments to Chapter 705 of the *Nevada Revised Statutes*. [Referred to [Exhibit B](#).] Line 7, subsection 1, requires that a copy of the reports be submitted. Subsection 2 at line 14 authorizes employees to make such reports of their own volition. Line 21 of Section 3 says, "no retaliation is allowed for making such reports." On Page 3 of subsection 3, lines 7 to 14, remedies for the retaliation are listed. Lines 15 to 37 of subsection 4 read: "shall not knowingly do the listed activities or would be guilty of a misdemeanor activity," which of course, would have brought this bill to the Judiciary Committee under some circumstances. Lines 41 to 43 of subsection 6 say that the PUC may enforce the provisions of the regulatory authority.

Assemblyman Sherer:

Doesn't this fall under OSHA [Occupational Health and Safety Administration] a little bit?

Assemblyman Anderson:

There are some OSHA requirements, and that's why the bill is set up the way it is. Currently, the Federal Railroad Safety Act requires that we do report to the Public Utility Commission of Nevada, but there are some other state agencies, and that's what the bill allows these people to do. I could tell you about toilets flooding over and not being looked after, and other kinds of incidental reports. Those are the kinds of stories I hear from my brother and his friends and from my father.

You're correct, Mr. Sherer, some of these do fall under that category, and the employees need an opportunity to feel protected when they do tell State agencies about these things, because they often go to railroad officials and bring them to their attention.

Joe Carter, Chairman, Nevada State Legislative Board, Brotherhood of Locomotive Engineers and Trainmen; International Brotherhood of Teamsters, Sparks, Nevada:

[Read from [Exhibit C](#).]

[Joe Carter continued.] Assembly Bill 140 complies with all policies of the Union Pacific Railroad in regard to harassment, intimidation, and retaliation. The Union Pacific Railroad policies prohibit harassment, intimidation, and retaliation of employees in reporting injuries or accidents. The Union Pacific is the only class one railroad that operates within the state of Nevada. The Burlington Northern Santa Fe has some of its trains operated in the state of Nevada by Union Pacific crews and for all intents and purposes, they do not participate in the safety process in the operation of their trains.

In the binder ([Exhibit C](#)), you will see a section with a red tab. That red section contains the policies of the Union Pacific Railroad and a statement from Mr. Dick Davidson, Chairman of the Union Pacific Railroad. Chairman Davidson, in his statement to Union Pacific Employees, was responding to a series of articles that appeared in *The New York Times* by Walt Bogdanich, and a *New York Times* editorial titled "Deadly Trains." You will find the articles written by Mr. Bogdanich and the editorial in the blue tabbed section. This section contains articles that appeared in the *St. Louis Post-Dispatch*, *Arkansas Democrat Gazette*, and the *Portland Oregonian*. The *New York Times* articles are in chronological order, along with the *St. Louis Post-Dispatch*, *Arkansas Democrat Gazette*, and the *Portland Oregonian*.

Chairman Davidson, in responding to the articles from these different newspapers, said, "much of the factual information in these stories is accurate." He went on to say that he was committed to "ensuring the highest degree of ethical behavior at all levels of our company."

In an article titled "Other Cases and Other Questions," published on July 11, 2004, Mr. Bogdanich cited cases where the Union Pacific has mishandled evidence in two cases of wildfires. In an article dated July 12, 2004, titled "A Crossing Crash Unreported and a Family Broken by Grief," a family's experience in the death of their daughter in a crossing accident is chronicled. It turns out that two teenage boys had been killed at the same crossing four years earlier, but because the railroad involved had not filed the accident report required by the federal authorities, there had been no action to put up crossing gates. In the same article, a town police officer was said to have observed that the view of a railroad crossing had been blocked by heavy brush, but the railroad said nothing about the obstructed view to the federal regulators later.

[Joe Carter continued.] In another article, titled "Death on the Tracks," *New York Times*, written by Mr. Bogdanich, published December 30, 2004, a *New York Times* computer analysis of government records found that from 1999 through 2003, there were at least 400 grade-crossing accidents in which signals did not activate, or were alleged to have malfunctioned. At least 45 people were killed and 130 injured. These accident reports were prepared by the railroads. James E. Hall, a former chairman of the National Transportation Safety Board, said, "If we had that type of record in aviation, it would be unacceptable."

The other articles by Mr. Bogdanich are similar in nature. The *Portland Oregonian* article discusses the harassment and intimidation that railroad workers face every day. It discusses that these actions are prohibited by the federal authorities. The article chronicles 13 instances where these types of actions occurred. The real telling statistic is the fact that, according to the *Oregonian*, the Union Pacific had \$5,150 in fines for harassment levied by the Federal Railroad Administration. This is a company today that has earnings of \$12 billion. \$5,000 in fines for harassment is not much of a deterrent.

The harassment and intimidation is not done by a corporation. The harassment and intimidation is done by individuals. I want these managers to be held personally responsible for their dishonest and unethical behavior. That's the reason for this bill.

[Joe Carter continued reading from [Exhibit C](#).]

In the *Arkansas Democrat Gazette* article on the third page is a section titled "Railroad Death." This section details Union Pacific's failure to turn over records in a trial concerning the death of a sanitation worker at a railroad crossing. In another case, the Union Pacific Railroad was fined because the railroad had destroyed documents in the case of a couple hit at a crossing in Wynne, Arkansas. The wife died in this incident and the husband was severely injured.

I could go on quoting these newspaper articles, but in the section with a yellow tab ([Exhibit C](#)), you will read a statement from engineer Scott Cairns concerning reporting an injury on December 24, 2003. To make a long story short, Roseville Service Unit Superintendent, Dan Shudak, drove over 400 miles in a blinding snowstorm to Elko, Nevada, for the purpose of

haranguing, and to intimidate, two crewmembers over an injury. In this same section, you will see a statement from conductor Larry Sternberg from Portola, California, on his perception of the incident. In this section, I have also included a newsletter from Sparks, Nevada, dated February 24, 2003. In the middle of the newsletter, you will notice that seven employees have been named in the PAL (Preferred Attention List) program. Every one of these employees had been injured at work and they were being singled out for special attention. On the face of it, it may sound reasonable to help employees with further training and help with performing their duties correctly. The Union Pacific PAL program is included in this section next to the newsletter.

[Joe Carter continued.] None of us could stand up to being under a microscope such as this in our professional life. These seven employees, and the rest of the employees at the Sparks terminal, received the message loud and clear. The reality is that any other employee that may be injured at work will not report an injury unless he or she absolutely has to. Please refer to the statement from Conductor Sternberg. Not only that, now that these employees have been identified as being on the PAL program, who in their right mind would want to work with them? In the railroad industry, this practice of singling out employees for special observation is called "bird-dogging." It is absolutely impossible to go day in and day out without violating one rule or another.

[Joe Carter held up copies of the General Code of Operating Rules from the Union Pacific Railroad, the "Superintendent's Special Notices," "General Orders," and hazardous materials documents.] This is just a small portion of what we're required to work by. This is a bunch of rules, basically an operating manual. Not only are we required to work by this, the problem is, we're required to work by some manager's interpretation of this, which may or may not be correct. We may end up in a disciplinary hearing over an interpretation that's incorrect. It doesn't matter. The railroad doesn't care if they win or lose the hearing. They have, in fact, intimidated that employee and the rest of the employees at work, simply by coming after the person whether or not they broke the rule.

[Joe Carter continued reading from [Exhibit C](#).]

Assembly Bill 140 is intended to reduce these types of behaviors of intimidation, harassment, retaliation, and suppressing evidence by individuals. The purpose of the bill is to hold those that engage in

harassment, intimidation, retaliation, and the concealing of evidence, personally responsible along with the railroad.

[Joe Carter continued.] This bill also requires the railroad to file a copy of any report it files with the FRA and with the state Public Utilities Commission. If this bill, A. B. 140, had been in effect when Roseville Superintendent Dan Shudak drove to Elko, I believe he would have been held accountable for his actions. If a high level manager who is the supervisor of many lower level managers will engage in this type of behavior, what does that tell us about the culture of management at the Union Pacific Railroad in relation to filing injury reports and/or safety in general?

Why would an agent, manager, or other employee engage in these types of behaviors? Managers are routinely given bonuses based on their safety and injury performance. If they can suppress or discourage the reporting of an injury, their bonus is likely to be positively impacted.

In closing, today the Nevada Public Utilities Commission is faced with a Herculean task. In my opinion, there are just not enough inspectors to supervise the railroad operations in this state. The railroad inspectors do a good job, but there is much that slips through the cracks simply because they can't be every place at once, 24 hours a day.

Railroad employees can help with the task of railroad safety and homeland security. They can be our eyes and ears. They will not be, if they continue to be discouraged in making reports on safety and/or public safety by harassment, intimidation, or retaliation. We, as a state, face the possibility of transporting nuclear material to Yucca Mountain. Given the information contained in these newspaper articles, are you willing to trust the safety of the people of the state of Nevada to the railroads? In the matter of safety and the reporting of accidents, injuries, and safety violations, the process has to be as transparent as possible.

Mr. Hall of the NTSB [National Transportation Safety Board] mentioned, "in the aviation industry, the railroad record would be unacceptable." I believe we can improve on safety, but if we are to improve, we must have good data to analyze. We cannot allow rogue managers, employees, or agents to distort our data by

suppressing the true number of incidents, or the severity of the incidents.

[Joe Carter continued.] Fining the railroad in cases of harassment, intimidation, and retaliation, becomes a cost of doing business for the railroad. The real people that pay these fines are the consumers, in higher shipping costs, and the stockholders, in lower earnings. The railroad should be responsible to supervise its employees, but rogue employees should also be responsible for their actions. Engaging in harassment, intimidation, and retaliation is against company policy. It should also be against the law in the state of Nevada with penalties applied to the offending individual.

When I sat down and was contemplating what issues I wanted to bring to the Legislature, I had to prioritize. This bill, more than any other railroad bill, is a good first step. We cannot improve safety without removing the fear employees feel. We must be able to have an honest dialogue about railroading without the fear of being railroaded because we told the truth and gave you, the public and other government authorities, the facts. This bill will lead us to discuss other safety issues in the open; issues such as crew fatigue and crew size.

Today, employees are being charged, disciplined, and/or counseled under an absentee policy that allows an employee approximately 7 days off in a 91 day period. Most of society gets 26 days off in the same period. Railroad employees work a 24/7 work schedule and often two shifts a day. We will also be able to discuss crew size. The railroads, in their contract demands this time around, have advanced the demand that they be able to determine crew staffing on trains. That means from the two-man crews we have today, the railroads would like to reduce the size of the crews to a one-person operation, and probably in the future to no one on board.

I am asking for your vote on this bill, and I am also asking you to help me educate your fellow legislators in the Assembly and the Senate. I realize that most of you do not have a lot of knowledge of railroading and railroad operations.

Assemblyman Claborn:

Of the individuals you talked about in regard to intimidation and harassment, this means you have no recourse to file a grievance, or do you have a grievance procedure?

Joe Carter:

We have a grievance procedure. However, it doesn't deal with harassment, intimidation, or retaliation.

Assemblyman Claborn:

Wouldn't that come under a federal act as well?

Joe Carter:

Not to my knowledge.

**Jack Fetters, Director, Nevada Legislative Board, United Transportation Union,
Las Vegas, Nevada:**

[Introduced himself. Read from [Exhibit D.](#)]

Our Nevada Council represents the legislative interests of TCU [Transportation Communications Union], Carmens Division, employed by Nevada railroads, whose principal employment functions are repairing penalty and minor rail car defects. Penalty defects are those listed under Federal Railroad Administration (FRA) guidelines. If a rail carrier fails to comply with these regulations, a monetary fine is assessed.

Occasionally, TCU Carmen members perform "Band-Aid repairs" inadvertently directed by management. These repairs are hasty attempts to get carload freight to the customer without transloading costs or delays. This inadvertent oversight can be communicated to the employee by innuendo, reflecting harassment, or intimidation, in the event of a safety accident.

Assembly Bill 140 addresses these inadvertent oversights or acts of omissions and protects rail employees for making equipment defect disclosures to the Nevada state and local authorities in the event an accident occurs. TCU, Nevada State Legislative Council, respectfully requests this Committee pass Assembly Bill 140.

About a year ago, I was hurt changing the knuckle on a car. A knuckle is what holds them together. The knuckle busted in half, and I had to walk a 9,000 foot train about 25 cars back to change the knuckle so we could proceed. As I was pulling the knuckle out from the draw bar, something popped in my arm. I

reported the injury. Management showed up and they said, "You need to go to the hospital." I said, "No, I need to go home. My wife's a nurse. I will go see my own doctor." And they said, "If you leave the property, you're fired." I went to the emergency room, and basically I had a bad case of tennis elbow; nothing serious. They acted like, my god; the railroad is going to go bankrupt if I go see someone other than their doctor first.

[Jack Fetters continued.] I've known guys who have filled out accident reports and been fired, and taken about a year or so to get back to work; they have to go to a public law board. About two weeks ago, I was involved in a derailment. I don't know if very many people know about the Caliente Canyon wash-out that just obliterated the railroad on that end. I was up there rebuilding the railroad on a work train as a conductor. We were shoving toward Las Vegas and a car went on the ground in the middle of the train. We shut down the railroad again for six hours while we re-railed the car. A couple days later, a conductor was told to pick that car up. The car was definitely bad-ordered. He picked it up, and a couple days later he got up above Caliente and that car went on the ground again. He's out of service now, pending an investigation. They want to fire the guy just for following orders. They always try to find the blame at the employee's level and not at the company level. You're supposed to follow orders; do it now, and grieve later, is what the Union's always told us. So we do. But if something happens in the meantime, it's our caboose that gets in trouble, and not the railroad's.

I've been on trains a lot of times that originate in L.A. with hazardous materials on them, and the paperwork doesn't catch up to the train until it gets to Las Vegas. That's a UP (Union Pacific) oversight. You can look at what happened in Salt Lake a week ago when a car bubbled over with sulfuric acid and they didn't even know what was in the car. Come to find out, it was combination of three different chemicals. I'm not so sure if that's the railroad's fault, or the guy who loaded the car. But there's lots of things that can happen, and there's no place in this state where a train doesn't run through a town of any population, whether it be Elko, Winnemucca, Las Vegas, or Reno, there's a lot of dangerous materials floating around this state in freight cars.

**Gary Wolff, Business Agent, Brotherhood of Locomotive Engineers,
Reno, Nevada:**

It's really a shame that a bill like this even has to come forward. They shouldn't have to go to a grievance procedure, even if there is one in place. If someone is injured on the job, according to the law, this should happen without any retaliation. The reason this bill is here, is because managers do what managers want to do, and don't follow the law. I really would like to see your support

here. Without it, this will continue, and the people who work for a living are the ones who suffer.

Charlotte Gilman, Locomotive Engineer, Union Pacific Railroad, Reno, Nevada:

On September 7, I sustained an injury to my left knee due to poor footing conditions in Elko, Nevada. When I was taken off the equipment, I was not taken immediately to the emergency room, but was required to go into the yard office in Sparks, Nevada. I couldn't even put any weight on that left leg. I hobbled in to fill out an accident report. Subsequently, a manager took me to an emergency room. I was examined; the doctor left the area and came back and said to me, "you're a VIP." I asked, "what do you mean by that?" He said, "that was the company doctor on the telephone." He released me with an Aleve.

I found out later that if they do not give you a prescription for your pain, they don't have to report it as an on-duty injury. I was told to go home, elevate the leg, ice it, and so on. The very next day, the manager of Elko yard called me to see if a carry-all were provided to me, would I be willing to go to Elko and point out exactly where in the yard this accident occurred. I explained to them that the doctor told me to elevate that leg and keep it iced until I next had a follow-up visit with the doctor. It's important to note that it was that many days they did not report this accident. When the manager called to see if I would go to Elko, I said, "I'm still on the working board. You don't show me off-injured." He said he would take care of it. I called my union representative; he said he would take care of that. Two days later, I'm still on the working board with my space working up to be called to duty. I had to take it upon myself to lay myself off.

Assemblyman Claborn:

Did you miss a day when you were hurt? Was it a whole day off, or did they make you come back to work after you injured your knee?

Charlotte Gilman:

No. I was off, sir.

Assemblyman Claborn:

Then you actually had a lost time accident, and they did not report that?

Charlotte Gilman:

That's correct. To my knowledge they still showed me on a working board.

Assemblyman Claborn:

That's not proper.

Charlotte Gilman:

No, it isn't. Why should they not take me immediately to an emergency room? I was in a world of hurt. I wasn't faking it. Two weeks later I finally had an MRI [magnetic resonance imaging] and I had a severe lateral tear to the meniscus of my left knee.

Assemblyman Claborn:

I know why they do that. If you do not miss a day, they don't report that to their insurance for the simple fact that they did not have a lost time accident, and it does not go against their insurance. But if you were off a complete day, they had a lost time accident and it goes against their insurance. Something's wrong here.

Charlotte Gilman:

Today was my final doctor's appointment and I tried to have the manager okay the layoff for an old injury, and he wouldn't do it. Their lack of cooperation is truly not right, and I encourage you to support the bill that's before the Assembly, and encourage your cohorts to support it, too.

Scott Cairns, Locomotive Engineer, Union Pacific Railroad, Reno, Nevada:

You have my statement ([Exhibit C](#)). I wanted to try to portray just about every aspect of what transpired that day. I hope you have an opportunity to read it, and please realize that I wasn't the individual injured. I was just kind of in the undertow, and it became apparent to me that it was going to be such a painful situation that I'd want to share it with everyone so that they wouldn't want to file any kind of claim whatsoever. It had quite the opposite effect on me. It made me quite angry that I was treated with such disdain and disregard for my health and welfare. It's pretty much indicative of the way the railroad handles everything. If they don't like it, this is how they handle it. In fact, for the next three trips to Elko, the manager there made it a point to come and see me and ask me how I was feeling about the whole thing, and he said, "Oh, by the way, I have your statement on my desk." It just continued on and on, and although no formal charges were ever brought against me, we were treated as if we were co-conspirators to some degree. At least that's how I felt.

John Eutsler, Locomotive Engineer, Union Pacific Railroad, Sparks, Nevada:

I was injured in December of 2002. At the hospital, the manager followed me in to the emergency room and asked that the doctor not prescribe anything that was not over-the-counter. It wouldn't have been a reportable injury if it was just Advil. They had to remove him from the emergency room.

Tony Trujillo, Engineer-in-training, Union Pacific Railroad, Sparks, Nevada:

My name is mentioned in the yellow section ([Exhibit C](#)) in the PAL [Preferred Attention List] program. My name is in there because I was injured in 1999. I received continual harassment. That was just the first time that my name was written for everyone to see. I was fired from the railroad four days later; I was fired for 11 months. The local management claimed that I took 36 minutes for lunch. I was part of a three-man crew, and I was the only one who was charged with taking 36 minutes for lunch. They fired me for it. I recently got hurt in December, 2004. I slipped in ice in Winnemucca. I was on a train that was supposed to go to Elko. We only worked for 12 hours. We weren't going to make it there, and the local manager in Winnemucca brought a crew from Sparks, and we got into his personal car and went to Winnemucca. They informed us there wasn't going to be a ride to take us all the way to Elko, so the corridor manager told us to go to the hotel. I slipped in ice and fell at the hotel and I separated my shoulder. It happened early in the morning, and I didn't know how bad I was hurt. In the morning, I couldn't move my arm at all, and it took me three hours to get a hold of somebody.

I got a hold of Rodney Nelms, the local chairman, he's present here, and he took me to the hospital, but they were pretty adamant that I fill out an accident report but claim that I was not on duty, even though I was on duty, so they wouldn't have to report it. That's the kind of harassment that they give employees over injuries. They claim that they want you to do things by the rules, but when you do things by the rules in the railroad rulebook, it takes a long time because you have to be thorough with everything. What the managers say they want you to do, and what they really want you to do, are two different things.

Assemblyman Claborn:

When you were terminated, did you have an opportunity to file a grievance as unjustly terminated?

Tony Trujillo:

Yes, I did. It went to the public law board, and I got my job back because they claimed that I was on a switch engine. On a switch engine, you stay in the yard and you move cars around in the yard. They claim that the time that the yard master told us to go to lunch, until the time the engine moved again, was 36 minutes, and he only allowed us 30 minutes to eat. I never left the property, and the board put me back to work.

Assemblyman Claborn:

I'm just trying to point out that you did have a grievance procedure.

Tony Trujillo:

Yes.

Scott Bridgman, Locomotive Engineer, Union Pacific Railroad, Sparks, Nevada:

[Introduced himself.] I was injured in December of 2002. I cut my hand open on an engine. I went to the hospital and had some stitches. I came back to work; my hand had swollen, so I was not able to use it. So I was off work. When I came back to work, I was informed that I must wear gloves 24 hours a day while I'm at work—eating lunch, anything, I had to wear gloves. There were several instances since I got hurt, where at 3 o'clock in the morning I'd be at work inspecting the locomotive, away from the yard, a manager would just pop up out of the blue in the middle of nowhere, on an engine, not say anything, and just walk away.

Assemblyman Atkinson:

I'm confused because it almost sounds like with some of the stuff that's gone on, that there should be some lawsuits. It sounds like if you do have some kind of employee contract that the supervisors are supposed to be following, and it doesn't sound like that's happening. I'm wondering, what is the process when someone gets hurt?

Joe Carter:

Getting hurt is not a contract issue. Our contract deals with the various provisions of the contract—like overtime, job assignments, things like that. Our contract does not deal with harassment, intimidation, or retaliation. There is no grievance process for those three items. We can write—and that's my job—safety, sanitation, and political education complaints. Those complaints go to UP [Union Pacific Railroad] management. You can see how successful I am. Generally speaking, I get a very polite letter in return, but we have no ability to recover against the railroad for these types of actions.

We do represent the people involved when there's an alleged rule violation. We represent them both on the local level in the investigation, and we represent them in the appeals process, such as what happened with Mr. Trujillo. Even then, there is nothing to do with retaliation, harassment, or intimidation. I know this sounds crazy, but that's the truth. I wish there was.

Assemblyman Claborn:

That's hard for me to believe. Of course, I'm sure you're telling the truth. I was a business representative for the Operating Engineers for over 25 years, and there always was some kind of grievance procedure or arbitration. I just don't understand. There are so many avenues out there. You need to find out what avenues you could go.

Joe Carter:

I understand, Assemblyman Claborn. The protective side of the union is not my area of expertise, and I'm not really an expert in my area of expertise. As far as I know, it's not in our contract. It simply is not. I went and saw a labor attorney in Reno not long ago over this very issue.

Assemblyman Claborn:

You may be right, but I know for a matter of fact, when my operating engineers got injured, I represented them whether they got laid off, injured, sick, late, early, or whatever. I had to represent them, and the federal government made me do that.

Joe Carter:

We don't represent our members that are injured unless they're charged with a rule infraction.

Assemblyman Claborn:

That's something I didn't know.

Assemblyman Atkinson:

In these cases, do these guys go on Worker's Comp.? How long are they out?

Joe Carter:

We don't work under Worker's Comp. We're covered under the Federal Employers Liability Act, which is a different variety of Workman's Comp. From our point of view, it's much better than Workman's Comp. because instead of having a set recovery, the recovery generally depends on the severity of the injury, and at that point a whole classification of special attorneys called FELA [Federal Employees Liability Act] attorneys take over and represent the member on an individual contract basis.

Assemblyman Atkinson:

So, they don't file Worker's Comp. and then as a result of that, they have to go to the doctors that the railroad association has identified for them, and then is that where the major problem is, that the supervisors are able to talk to the doctors?

I'm wondering why no one has filed a lawsuit. I've never heard of this. I've worked in human resources for the last 14 years for the County and when we deal with Worker's Comp. issues and employees getting hurt, they go to the county's doctors and then they go to their own, but I can't imagine anybody intervening. It's just amazing to me that someone's supervisor can talk to the doctors and tell them what to prescribe.

Joe Carter:

They're not supposed to, but they do interfere.

Wayne Horiuchi, Special Representative, Government Affairs, Union Pacific Railroad, Sacramento, California:

[Introduced himself.] We've heard a lot of allegations today about fatigue, crew size, HAZMAT [hazardous material] spills, malfunctioning crossings, and especially poor employee relations. We don't believe that Assembly Bill 140 will necessarily solve all these problems, but we do want to speak specifically to the issues of harassment, intimidation, and employee injuries.

You've heard a number of anecdotal, isolated, and singular examples coming from our employees, and frankly, I'm dismayed. It's not the position of this company to tolerate these allegations. And I have to say that they're allegations, of course, because you haven't heard the other side, and I don't know all the details. If indeed these allegations are accurate, I'm going to apologize on the part of Union Pacific Railroad—and apologize profusely—that these events have occurred. That's not the way we want to treat our employees.

We've got some doubts as to whether Assembly Bill 140 can bring about a better relationship between the employee and the employer—between union and management. But I want to be very emphatic about this, the Union Pacific Railroad does not tolerate this kind of managerial behavior, and again, that's if these allegations are accurate. There's a brief before all of you that has a statement from the highest ranking operating officer in the company, Mr. Dennis Duffy, which came out in the fall of 2003. He insists that the managers report these instances with regard to employee injuries and accidents. He insists that if you don't follow these rules—federal rules—of reporting those accidents, that there will be immediate termination.

There are processes and procedures. If Mr. Fetters had called me, for example, and said, "I was treated poorly by my manager," I would have gotten on the phone and called Mr. Shudak, who is, incidentally, no longer the superintendent on the service territory, and I would have yelled at him. But beyond that, you've got a grievance process that's established under federal law. They could go to the Public Utilities Commission and complain to them, as agents of the federal government who enforce rail safety. They could go to our ombudsman in Omaha; they can go to the courts. There are a number of processes that go beyond Assembly Bill 140, frankly, that they can use to address these issues.

Assemblyman Hogan:

As I understand it, the publication in *The New York Times* of some of these incidents took place last summer—nine months ago or thereabouts. Has the company had occasion to directly investigate and complete a report with respect to each of those incidents?

Wayne Horiuchi:

Aggressively. There's been an investigation on the part of the media and we've responded, and it's aggressively going on. We're going to get to the bottom of all this. This is not the way our company wants to operate. It's not only an embarrassment, but it is a threat to public safety, if indeed, these allegations are accurate.

Assemblyman Hogan:

So at the present time, the investigations of each of these incidents are still ongoing?

Wayne Horiuchi:

That's correct.

Assemblyman Hogan:

You've reached no conclusions as of yet?

Wayne Horiuchi:

I haven't seen a report on it yet.

**Joe Guild, Legislative Advocate, representing Union Pacific Railroad,
Reno, Nevada:**

I'm going to walk the Committee through several of the things that we've provided for your information ([Exhibit E](#)).

Relative to the emergency room incident where the manager was involved in suggesting to the doctors that certain things not be prescribed, that's not company policy, and indeed it's against federal law to do that. I just wanted to point the Committee to the bottom of page 2 ([Exhibit E](#)), it says "The FRA [Federal Railroad Administration] now takes the position that the very presence of an employee's manager in the treatment room at a medical facility may constitute interference with medical treatment, unless the employee either specifically requests, or consents to that presence." So it's against federal law for that to have happened, and as Mr. Horiuchi pointed out, there is a procedure to complain about that, and indeed, the employee should have.

[Joe Guild continued. Referred the Committee again to [Exhibit E](#)] Part 225 [Federal Railroad Safety Act, as amended, 49 U.S.C §§20101]: Railroad accidents, incidents, et cetera, beginning on page 267 of the FRA *Code of Federal Regulations* relative to accident reporting classifications of investigations, et cetera. We've highlighted the last two sentences of section 225.1: "Any state may, however, require railroads to submit to it copies of accident/incident and injury/illness reports filed with FRA under this part, for accidents/incidents and injuries/illnesses which occur in that state." If you look at subsection 1 of Section 1 of the bill, that's exactly what this bill is doing. So we have no objection to Section 1, subsection 1, of the bill. Indeed, if we had objection, you would wonder about our credibility, because the federal rules allow states to do this. We have no objection to the state passing such a requirement, where a person may report an accident, because the federal law and the rules allow that.

If you'll look at the second to the last sentence of 225.1, the "purpose" paragraph: "Issuance of these regulations under the federal railroad safety laws and regulations preempts states from prescribing accidents/incident reporting requirements." I know most of you have heard of federal preemption. It stems from the Supremacy Clause of the *United States Constitution*. There's a doctrine of Implied Preemption and a doctrine of Express Preemption under our law. Implied preemption means, simply, that the federal government has so immersed itself in an area of statutory and regulatory activity as to preclude states from ever getting involved in that area. Express Preemption requires a statement in the statutes or the regulations which says that the states shall not do something because the federal law is preempting in that area, and that's the sentence I just read you—an expression of preemption by the federal government in areas of accident reporting requirements. If you read subsections 3, 4, and 5 of the bill, it's my position that these are expressly preempted by the federal statute and regulations.

[Joe Guild referred the Committee to [Exhibit E](#).] Part 225 on page 284, entitled "Investigations," says that the Federal Railroad Administration is going to investigate accidents and incidents, et cetera, and they also give the authority to states to license accident investigators, and that's been done in Nevada. The PUC [Public Utilities Commission] here in Nevada does have accident investigators who are licensed and qualified by the FRA, and they are allowed to look at the accident investigations.

[Joe Guild continued.] Under part 225.33, entitled "Internal Control Plans", there's a very important clause in subsection A1, the first column on page 285, it says, in effect, that harassment, intimidation of any person who reports an accident or an incident or discourages or prevents such a person from obtaining

proper medical treatment, is absolutely not permitted or tolerated under the federal rules, and it requires railroads to notify employees to that effect.

[Joe Guild continued.] There is a policy statement ([Exhibit E](#)) by the Union Pacific Railroad, complying with that requirement in the federal regulations, in effect saying, we don't tolerate, we will not condone, any harassment or intimidation in the areas I've just discussed, of any employee of the railroad. That section in the regulations, I just cited to you, also requires the railroad to disseminate that information widely to its employees. The piece of paper, I just referred you to in your packet, has been sent to employees of the Union Pacific Railroad in the past in their pay packets; it is hung in every workplace on the railroad. So the employees know what the procedures and policies are.

In reference to Section 4, subsection 4 of the bill, is 49 U.S.C., Section 201.09. This is the whistleblower protection in the federal statutes, so that any employee who seeks to report an accident or tries to achieve some sort of medical treatment and is intimidated in any way from complaining about that, there's federal whistleblower protection for railroad employees. Therefore, I would say, subsection 4 of the bill is unnecessary, and indeed, is preempted by the federal statute.

This all means, Mr. Chairman, that Assembly Bill 140 would be supported by the railroad if it consisted of subsections 1, 2, 6, and 7 of the bill, but we would recommend that, to avoid a preemption challenge, that subsections 3, 4, and 5 of the bill be amended out, because it's our contention that they are preempted.

Mr. Sherer asked early on about OSHA [Occupational Health and Safety Administration]. OSHA regulations and statutes do not apply to railroads. The Federal Railroad Safety Act is the railroad OSHA, if you will. As far as Worker's Compensation, since the early 1900s, the Federal Employees Liability Act (FELA) has been in effect. Congress has decided to enter into some of these things to maintain a uniform set of laws around the country, relative to railroads, because railroads go everywhere, and some railroad companies, like the Union Pacific Railroad, are in 27 states. You can't have a balkanization of different laws applicable to railroads all over the country, because we would have blockades to interstate commerce.

[Joe Guild continued.] The FELA is the workman's compensation act for railroad workers and it's been in effect for almost 100 years, if not longer. There are lawyers in the country who specialize in FELA cases on behalf of railroad workers. If there's an injured worker, there is recourse through the courts, through the Federal Employee Liability Act to get Worker's Compensation.

There is a grievance procedure, Mr. Claborn, pursuant to the negotiated contracts that railroad employees have with all the railroads that are operating in this country, and they work. So, I would dispute some of the things Mr. Carter said, because there are procedures that are available.

Assemblyman Hogan:

The preemption, as I read it, is very narrow and very specific. Essentially, it says that the states may not prescribe reporting requirements. As I look at paragraphs 3, 4, and 5, they seem to provide penalties for certain behaviors, but I don't see that they violate this very narrow preemption by requiring a specific reporting requirement.

Joe Guild:

I disagree, respectfully. The reason I do, is that Part 225 has to be read in its entirety, unfortunately. And we're talking about page after page, after page here. It does look to be narrow, I will concede that. But the "Internal Control Plan" paragraph of Part 225.33 does talk about reporting requirements and what a railroad has to do. In subparagraph A in the second sentence, it says, "each railroad shall amend its internal control plan as necessary to reflect any significant changes to the railroad's internal reporting procedures." That's what we're talking about, reporting requirements that are set forth in the federal law. I know it does look narrow, but if you look at the whole context and purpose of Part 225, it is, I would submit, to preempt states from creating other procedures that would conflict, potentially, with the federal requirements that are imposed upon railroads. For instance, subsection 4 of the bill says that a railroad company shall not knowingly harass, intimidate, et cetera. It also says exactly that in Part 225 of page 285: "To be in full compliance with the letter and spirit of FRA's accident reporting regulations, and the principal, in absolute terms, that harassment or intimidation of any person" is not condoned or in any way expressly granted to a railroad company by the federal government. That's the conflict, Mr. Hogan.

Assemblyman Hogan:

I guess we have to agree to disagree. I see the prohibition against State activity here strictly limited to having reporting requirements beyond those imposed by the State. With regard to observing the overall purpose and intent of the federal regulations, it seems to me that the purpose is stated in the purpose statement—it's to provide accurate information "concerning the hazards and risks that exist on the nation's railroads."

If the testimony we heard earlier is true—if any of it is true—it would appear that the thrust of this federal requirement is being avoided by causing there not to be a report. If only the feds can require the report and they've established the

requirement, we can't add another report, and if you can somehow suppress the submission of reports, you win. That's my concern. If we're talking about the overall purpose of the statute, I think the activities, if true, would have entirely frustrated the purpose of the reporting requirement and of the regulations. So I guess we have to try to sort that out. We've heard a couple of ways to look at it.

**Robert Schafer, Manager of Transportation and Public Safety, Western Region,
Union Pacific Railroad:**

As far as the reporting process, we are very controlled on our reporting process to make sure our managers comply. Our internal plan ([Exhibit E](#)) states that if there is an issue there, the employees would call the 800 number and report any harassment or any intimidation. Line 3 says the safety manager will conduct an internal investigation, and I have not received, in any of these events, a notification of any harassment from anyone to investigate.

This process was sent out to all employees way back in 1997, and I think everybody here today was in that group of individuals. I do thoroughly investigate all injuries. We investigate them to figure out our problems and see if we do have an issue of safety that we need to take care of immediately. Obviously, if we have a slip in our yard, we would want to investigate right away where that happened in order to make sure that we take care of that issue—take care of any hole or any tripping hazard that would be an issue with the railroad so that we don't have that incident happen again. We usually have an intensive investigation by our local manager, sometimes superintendents participate in that.

Assemblyman Hogan:

Were the investigations of the accidents that we've heard about conducted under your supervision?

Robert Schafer:

I have never received any investigations on any of these as far as anybody saying that there was an issue with the way it was handled. Any of these that are reported are entered by the local, or the service unit manager, for administrative compliance.

Assemblyman Hogan:

Is it satisfactory for the company to have a fairly straightforward accident situation, and nine months later, not have a conclusion as to what actually happened?

Robert Schafer:

I can only speak for my territory. I'm familiar with my piece of the railroad and that's six service units. We are very intense in trying to find out the cause of injuries, and we have a discussion every morning about any injury that occurred the day before, up to the vice president's level. We discuss thoroughly the investigation and how it's being drilled down to the root cause of that injury. Every Friday we have a safety call that I conduct, where we determine whether we have any outstanding investigations that have not been conclusive as to what caused the injury. We're very thorough in trying to make sure we have our problem fixed, so that we don't have another injury in that location.

Chairman Ocegüera:

We have legal counsel with us this session. We're going to have him give his view of how they see the preemption issue.

Randy Stephenson, Committee Counsel:

Over the years we've certainly looked into a lot of federal preemption issues. That was a very good statement of federal preemption law, Mr. Guild. In preparing this request, we did look at all those issues. We always look at issues like that—federal constitutional preemption. In this particular case, yes, subsection 1 is expressly allowed under federal law. There's no problem with that. Subsection 2 is simply providing a discretionary mechanism for employees of railroads to report to officers in the state. It would be very difficult to somehow say, especially when the Supreme Court of the U.S. over and over again has said, that state causes of action which are in addition to federal provisions, are generally not prohibited. So it's pretty difficult to even say that there is an implied preemption here.

Certainly there's no express preemption, simply because it's discretionary and it's simply allowing employees to do this—same thing with the cause of action provided in subsection 3. I guess it would be an additional crime under subsection 4. These are simply provisions that are being adopted by a separate sovereign, which is the State of Nevada. You may well have to operate under federal law, but in many instances, states are not precluded from adopting their own laws in this situation, especially when they're trying to remedy something that is affecting their local residents.

David Noble, Assistant Staff Counsel, State of Nevada Public Utilities

Commission:

[Introduced himself.] We are neutral on Assembly Bill 140. However, we'd like to go through it briefly and provide our opinions and thoughts on the bill. Currently, NRS 704.190 [*Nevada Revised Statutes*] allows us to receive accident reports involving utilities in which there has been a death. We have a

regulation in place, NAC 704.235 [Nevada Administrative Code], that, with regards to railroads, requires that they file such accident reports and also requires them to file the accident reports that are contemplated in Section 1. To date, we receive those, and have not had a problem receiving those. What Section 1 does, in our opinion, is reinforce our ability to receive those accident reports, as well as the federal statute that Mr. Guild delineated.

[David Noble continued.] As for Section 2, while there's no restriction against railroad employees reporting accidents, injuries, that sort of thing, to Commission personnel, having a statutory provision in place reinforces that, and the more eyes and ears that our inspectors have to investigate railroad safety, the better. We have four railroad safety specialists on staff right now. They each have their own specialties.

Sections 3, 4, and 5 appear to provide for both civil and criminal causes of action, and the Commission has no opinion one way or another with regard to those. However, Section 6 allows for the Commission to adopt regulations for the enforcement of Assembly Bill 140, and we just wanted to clarify that the authority to promulgate regulations applied to Sections 1 and 2, and not 3, 4, and 5, which appear to be outside of our expertise. In our opinion, they appear to be personnel issues, dealing with harassment and intimidation, and not specifically railroad safety, which is our area.

Under 49 CFR 225.33, which Mr. Guild also delineated, there is a provision to investigate harassment and discrimination regarding accident and injury reports. We've talked with our FRA advisor about what the focus of that provision is. Their consultation with us is that it's a very narrow focus. Basically there are three instances where reportable instances of harassment and discrimination exist. One, the question would be, was the employee able to report the injury or accident? Number two, did the railroad keep the employee from getting medical attention? Number three, did the railroad attempt to influence the employee's treatment plan? If the answer is no to all of those, there is no harassment or discrimination, according to the FRA advisor. If the answer is yes to any of those, that is a reportable offense that we would investigate and then forward that on to the FRA for prosecution or resolution.

[David Noble continued.] We don't have an opinion one way or another with regards to Assembly Bill 140. There is an FRA preemption specialist, and we would offer their services to counsel if you would like another opinion. That is something they deal with on a day-to-day basis and they may have some additional insight that may be helpful.

Assemblyman Hogan:

If you were here at the time the earlier testimony from the employees of the railroad was heard, did you hear a story which, if accurate, would have permitted your office to entertain a complaint of harassment following an unreported accident?

David Noble:

Yes, I was here earlier. If the allegations were true, there were several instances where the answer would have been yes to one of those very narrow questions. Those would have fallen into the jurisdiction of our operating practices investigator, to investigate those, and forward on the report to the FRA for prosecution.

Assemblyman Hogan:

If those events took place less than one year prior to the present, would you still be in a position to entertain them if they took place in the state of Nevada?

Craig Steele, Safety and Quality Assurance Division, State of Nevada Public Utilities Commission, Carson City, Nevada:

[Introduced himself.] The investigation of this type of report, that we would conduct, would be coordinated with the specialist in the FRA, who is responsible for operating practices. I can tell you we don't have any experience with a report of this type of claim. We have not had one of these. So I do not know if there's a statute of limitations or any limit on how far back we could go to investigate something of this nature. I can tell you that the FRA does discourage us from filing reports that are over three months old. I do not know, however, that that would be the case with respect to the types of incidents that were reported to the Committee this afternoon.

Chairman Ocegüera:

We're going to close the hearing on Assembly Bill 140. We'll open the hearing on Assembly Bill 169, Mr. Denis' bill. Mr. Denis and I, along with the DMV [Department of Motor Vehicles], have been negotiating this bill and we've come up with a reasonable solution. Hopefully with an amendment, we can accomplish what Mr. Denis is trying to accomplish.

Assembly Bill 169: Makes changes to provisions governing transfer of title to or interest in vehicles. (BDR 43-967)

Assemblyman Mo Denis, Assembly District No. 28, Clark County:

Most people, when they sell a car, think that when they turn in their plates, do the title, and do a bill of sale, they no longer have any responsibility or liability. What I tried to come up with was something that would transfer the liability to the new owner. I have someone in Las Vegas. I think when you hear what she has to say, then I can conclude with where we're at.

Andie Arthurholtz, concerned citizen, Las Vegas, Nevada:

On July 1, 2004, my husband and I sold an automobile to a private party. Prior to selling the automobile, we went on to the State of Nevada Department of Motor Vehicles website to ensure we did everything that was required in selling an automobile in a private party sale. We gave the purchasing party a signed title. We provided a bill of sale with odometer verification, and we took the plates off of the automobile, turned those plates in to the DMV, and we received a receipt. About 3 months later, we received a bill for approximately \$1,200 from a towing company, indicating that the vehicle had been towed. I called the tow company, and I was advised that even though the vehicle had been sold, Nevada laws were quirky, and that we were financially responsible for the bill. Apparently, the purchaser chose not to register the vehicle, and they abandoned it, leaving the last registered owner—myself—responsible for the incurred charges. I submit this as an untenable situation, and there should be ways a private citizen can protect themselves against this happening.

Assemblyman Denis:

As you mentioned, we met with the DMV on some things, and we have some proposed changes that I think will accomplish what we're trying to do, and also not providing a burden on the Department of Motor Vehicles.

Basically, what we're proposing is to eliminate Section 1, which created a form that would then be turned in to the DMV and they would have to put it in the system, so we're going to eliminate that. We're going to take Section 2 and make the following changes: The first line, "every person who abandons a vehicle is responsible for the cost of removal and disposition of such vehicle." And then in Section 2, number 2: "an abandoned vehicle is presumed to have been abandoned by the registered owner thereof. The registered owner may..."—and then eliminate the word "not"—"rebut this presumption by showing that he transferred his interest in the abandoned vehicle." From thereon you would just eliminate that section.

Then we would add a section that would add the presumption that it can be rebutted with the bill of sale. So, having a bill of sale, you could then rebut the fact that you did not own it anymore and this is the new owner. Also in our discussions, I asked that we have a letter written to the

TSA [Transportation Safety Administration], which is the department that oversees the tow-car industry, basically noting what the change in law would be, so that they could talk to the tow-car guys so they would be aware.

[Assemblyman Denis, continued.] The DMV has a website that you can go to when you sell a car that basically tells you all the things that Ms. Arthurholtz did. So we would add some things to the website that would explain that part of it.

**Martha Barnes, Central Services and Records Division Administrator, Nevada
Department of Motor Vehicles:**

We did meet with Assemblyman Denis and are in agreement with the proposed language change. Also for the record, I'd like to let you know that the fiscal note that we submitted with this language change would be removed from the bill.

Chairman Oceguela:

The fiscal note would be removed with the amendment, and also the website changes would be okay with you as well?

Martha Barnes:

Absolutely, Mr. Chairman.

Assemblyman Goicoechea:

It requires a notarized bill of sale, I would assume. It wouldn't be just a bill of sale.

Martha Barnes:

We do have a bill of sale form that you can print from the website and it does require a notary.

Chairman Oceguela:

You could have a contract on a pizza box; basically, it would be a binding contract to sell a vehicle. Any contract would suffice, as long as it was in writing and signed.

Randy Stephenson:

I guess it would be up to the person. Certainly, you could have a notarized bill of sale. Whatever document it is that you're using to try to evidence the transfer, he's right, you could write on a pizza box.

Assemblyman Hogan: Is the contract for sale of the vehicle a legally binding contract? Were you saying that, if it is a normal contract, signed but not

notarized, you would not honor it for the purpose of shifting responsibility for the towing charges?

Martha Barnes:

At this point, the language removes the DMV from the bill completely. So this would be something that you'd need to take up with the towing companies.

Chairman Oceguera:

What we contemplated here was that the tow company would be the one that would be receiving that contract. You would be bringing that however it was, from your own printer, or like I said, on a pizza box. That was one of the reasons we were going to contact the TSA, tell them about the new law change, and tell them that any contract would be good.

We'll close the hearing on Assembly Bill 169 and I'll entertain a motion for an amend and do pass.

ASSEMBLYMAN ATKINSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 169.

ASSEMBLYMAN CLABORN SECONDED.

THE MOTION CARRIED. (Assemblyman Christensen and
Assemblywoman Ohrenschall were not present for the vote.)

[Meeting was adjourned at 3:21 p.m.]

RESPECTFULLY SUBMITTED:

Angela Flores
Committee Manager

APPROVED BY:

Assemblyman John Ocegüera, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Transportation

Date: March 10, 2005 **Time of Meeting:** 1:30 p.m.

Bill #	Exhibit ID	Witness	Dept.	Description
	A			AGENDA
	B	Assemblyman Bernie Anderson		Prepared statement
	C	Joe Carter		Packet containing prepared statement, news articles, testimony of Scott Cairns, Union Pacific employee policies.
	D	Jack Feters		Prepared statement from the Transportation Communications Union.
	E	Joe Guild		Packet containing Statement from Dennis Duffy; Federal Railroad Administration Regulations