MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION

Seventy-Third Session
March 15, 2005

The Committee on Transportation was called to order at 1:38 p.m., on Tuesday, March 15, 2005. Chairman John Oceguera 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 Oceguera, Chairman
Ms. Genie Ohrenschall, Vice Chairwoman
Mr. Kelvin Atkinson
Mr. John Carpenter
Mr. Chad Christensen
Mr. Jerry Claborn
Ms. Susan Gerhardt
Mr. Pete Goicoechea
Mr. Joseph Hogan
Mr. Mark Manendo
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn Hettrick, Assembly district No 39, Douglas County, parts of Carson City, and Washoe County

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Linda Ronnow, Committee Attaché

OTHERS PRESENT:

A.R. (Bob) Fairman, Legislative Advocate, representing Nevada Transportation Coalition, Carson City, Nevada
Donald Drake, Owner Sunshine Yellow Cab, Stateline, Nevada
Kimberly Maxson-Rushton, Commissioner, Transportation Service Authority, Nevada Department of Business and Industry
Edgar Roberts, Administrator, Motor Carrier Division, Nevada Department of Motor Vehicles
Daryl Capurro, Managing Director, Nevada Motor Transport Association

Chairman Oceguera:
[Meeting called to order. Roll called].
I would like to open the hearing on Assembly Bill 171.

Assembly Bill 171: Revises various provisions governing regulation of common and contract motor carriers in this State. (BDR 58-56)

Assemblyman Hettrick:
I am pleased to come before you today and introduce to you Assembly Bill 171. I think you all have received a summary of what this bill actually does. A whole lot of people thought, when this bill was first dropped, that this was in some way an attack on the TSA [Transportation Service Authority], and I want to make it very clear that it is not. I think what is being asked for in this bill is reasonable, sensible, and just a clarification of things that should be done to make our law presently read better than it does. It allows some things in regard to disabled folks that I think needs to be put into the law, and I just think it clarifies much of the law.

A.R. (Bob) Fairman, Legislative Advocate, representing Nevada Transportation Coalition, Carson City, Nevada:
In regard to A. B. 171, Mr. Don Drake is going to speak on our behalf.

Mr. Donald Drake, Owner, Sunshine Yellow Cab, Stateline, Nevada:
I would like to clarify something right from the start. This bill is not to affect the Department of Motor Vehicles, NRS 706.801-861 [*Nevada Revised Statutes*]. In response to the inspections that are required here, the Department of Motor Vehicles is not the responsible party, but the TSA or the Taxicab Authority (TA) in Clark County would be.

This bill sets the minimum standards in guidelines for inspection and cleans up the language. We have the inspection qualified by the manufacturer's requirements for the vehicle and not specifically an agency here. It cleans up language on the broker's responsibility. I think that we want to clarify the lines of responsibility. If an employee or a driver is directed to do something, then certainly the company would be standing behind the driver. If the company or a broker is not responsible, then make the driver responsible. This carries through to the Americans with Disabilities Act of 1990. We have occasionally had a situation come up where a driver will deny service to an individual because there is a guide dog or an assistance animal in the vehicle. The company has been found to be responsible for that, and I would like to make the driver responsible as well; that will certainly end all of the denial of service problems that we have had.

Over forty years, my company has had three of these instances; they are not great in number. It also clarifies the procedures on leasing; this is an agreement between the company and the driver. I went to a two-day hearing about five years ago and was denied a new master lease, at a cost of about $30,000. There have been no changes in master leases from that time. I think that this language would clarify that, and we can update the master lease's problem.

If you look on page 5, Section 6, number 3, lines 44 and 45 it states that, "For the purposes of this section, a determination letter from the Internal Revenue Service stating that a driver is operating a taxi pursuant to this section is an independent contractor and is prima facie evidence that the driver is an independent contractor." The simplified language just states, in the event that a company has a letter ruling from the Internal Revenue Service, that is prima facie evidence that the driver is an independent contractor and shall be treated as such.

Assemblyman Claborn:
Can you tell me exactly what this bill does?

Don Drake:
It is to clarify a lot of the language and the policies that have been used with the Transportation Services Authority. It simplifies it for an operator as well.

Chairman Oceguera:
Mr. Claborn, if I may draw your attention to Mr. Fairman's summary (Exhibit B), it draws some bullet points as to what they are trying to do.

Assemblyman Carpenter:
Could you explain to me the difference between a broker and the carrier?

Don Drake:
A broker is one who would transact transportation through a carrier. He is an independent business that would be contacted by someone who would be handling an event. A broker doesn't own any vehicles. The broker then contracts with the individual carrier.

Assemblyman Goicoechea:
In Section 1, Paragraph (b), who's going to be required to do the safety inspections? And it states, "required authority department, or other appropriate governmental regulatory entity." Is the TSA the only regulatory agency?

Don Drake:
The TSA or the Taxicab Authority in Clark County, whichever has the jurisdiction. It would not be the Department of Motor Vehicles or the Motor Carrier Division.

Assemblyman Claborn:
On paragraph 4(a) you say, "entered into a taxicab lease agreement with an independent contractor." Does that mean that you can't do that now?

A.B. (Bob) Fairman:
No. We can do that now but the TSA regulates that type of authority through their jurisdiction. They don't let us hire our own people, they are the ones who govern what's in the lease and how the lease is prepared.

Assemblyman Claborn:
Would this bill give you the latitude to do that?

A.R. (Bob) Fairman:
It would.

Kimberly Maxson-Rushton, Commissioner, Transportation Services Authority, Nevada Department of Business and Industry:
With respect to the bill, I think it's important that there are some points of clarification that we would like to raise for your attention. With your permission, I would like to just take it section by section. Regarding the concern raised by

Mr. Drake and Mr. Fairman with respect to the clarification of the language as it applies to safety inspections, I can tell you with absolute assurance that the requirement for regular safety inspections is currently in existence with respect to Nevada law as well as the applicable regulations pursuant to *Nevada Administrative Code* 706 (NAC). Those are codified based on the Federal Motor Carrier Safety Improvement Act of 1999, from an historical perspective, because many of our carriers also carry DOT [Department of Transportation] interstate authority. The guidelines are set forth under the Federal CFRs [Code of Federal Regulations] in terms of the regular requirement and the type of inspections to be required of the individuals who are licensed to do the inspections.

[Kimberly Maxson-Rushton, continued.] The oversight of maintenance of records, for purposes of reporting to state agencies, was codified pursuant to the adoption of NAC 706.247. In terms of a general background with respect to the CFRs, those require annual vehicle inspections of all vehicles that are licensed or certified to operate within the state of Nevada. It requires that all newly-acquired vehicles, whether they are new vehicles or just simply acquired by the certificated carrier, are subject to inspection by the TSA. It also requires regular 90-day vehicle inspections that pertain specifically to safety issues. The individuals who are doing the inspections are certified under both DOT and Nevada law standards. The TSA does have a responsibility for oversight of all of the safety inspections, as well as the requirements set forth, not only in our statutes and regulations, but also with the CFRs.

Historically, the TSA did do those inspections themselves. Because of the limited investigative staff, enforcement staff, and the lack of a facility to do those, we have now developed a policy in which the industry has been notified that those inspections are to be maintained and done in accordance with the proper CFR schedules and Nevada statutory schedules. The records must be maintained and proffered to the TSA on a regular, set-scheduled basis so as to ensure that they are being done.

Chairman Oceguera:
Ms. Rushton, if I hear what you are saying, one of their goals of this bill is to strengthen the vehicle maintenance and safety inspections, set minimum standards and guidelines, and expand the level of authority. Those are things that you are already doing?

Kimberly Maxson-Rushton:
Yes, sir. Under the Federal CFR codes, there are set schedules as to when they have to be done, and who may do them. In addition, consistent with the language as proposed, there is a requirement that it shall be done on a regular

basis, performed with preventive maintenance, and a safety inspection. Those are duplicative. They are just a simple reiteration of what's already contained within Nevada NAC 706.247, and then specify with great detail as to when they are to be done, the type of inspection that is to be done, and the individual or garages that are allowed to perform the actual maintenance and inspections.

Chairman Oceguera:
The last point that they were trying to make, was that it would specify remedial steps to ensure safe vehicle operation. Are there remedial steps involved in those specific regulations already?

Kimberly Maxson-Rushton:
Specifically according to NAC 706.379 and NAC 706.381 those are the specific and applicable regulations that require that remedial steps be taken to ensure that the vehicle is safe at all times. At the end of every shift, the vehicle must be brought back to the yard, must be thoroughly inspected by the driver, and a maintenance record or log retained by the owner-operator of the company. Those maintenance records are required to be retained for purposes of inspection by the TSA. If at any time a portion of the vehicle, specifically a brake light, a taillight, the pressure in the tires, anything that would jeopardize the safety of the vehicle, is noted by the carrier, it must be taken off the road and the TSA must be notified. In the event that they are not taken off the road and the TSA becomes aware of it, we have the authority to order it be taken off the road, that it be inspected by the TSA to see what the defect is. It will remain out of service until the time that the mechanical problem has been completed, to the satisfaction of the TSA.

Assemblyman Goicoechea:
We have heard what the laws are, now how is the compliance?

Kimberly Maxson-Rushton:
I can safely say that as a result of the new administration that came into effect in 2003, we have verified that 100 percent of the safety inspections that are required on an annual basis were done. That was an issue that was raised pursuant to the legislative audit that was done of the TSA. The time-frame of the review was between 1997 and 2003. We were assured by the staff that the vehicle maintenance inspections were being done, but we did not have the recordation to document that, or to demonstrate that it was 100 percent verification.

Under the leadership and supervision of Chairman Avants, that was done. The records were maintained within a central database by the TSA and that was demonstrated at the time of the conclusion of the audit. It was noted in the

audit and at this time I can say that has been fully implemented. For the last two years it has been done to the complete satisfaction of the requirements under the regulations and statutes.

Assemblyman Carpenter:
If an ordinary citizen wanted to inspect his records, are they kept in your office or where could they be inspected at?

Kimberly Maxson-Rushton:
The records that are maintained by the owner-operator are maintained at their location. Copies are sent to the TSA and then they are always subject to inspection pursuant to our regulations between 8:00 a.m. and 5:00 p.m. If a member of the traveling public or a consumer had a concern, they would be able to go to the office, but in the event that the records were not handed over, they could make the request specifically to the TSA.

In Section 3, it is my understanding that the intent was to set greater responsibility with respect to the actions of the drivers and the brokers. The way that the TSA sees it is that we do have oversight over the drivers, the operators, and are fully regulated, and partially regulated carriers to the extent that the law provides. There are specific provisions within the regulations that pertain to the fully regulated carriers, those being limousines. In the instance that they commit a violation, they are the ones who are cited.

We see the intent as being an attempt to take the responsibility away from the owner and operator. As it currently exists the hearing officer has the discretion as to whether or not to find a violation on behalf of the owner-operator. As it's currently written in the bill, all the responsibility would then fall to the driver. It would allow an owner-operator to come in and relinquish himself of any responsibility, even if he had given specific direction to a driver, to perhaps charge a certain tariff or to do a certain act. It would all fall to the driver as being the one punishable and perhaps subject to a fine. The objective, I think, is to really lessen the responsibility as to the owner-operator, but there wasn't a specific basis as to why that would be more advantageous to the traveling public. So, therefore, I would recommend not changing the law because that gives the hearing officer the discretion to determine what was the basis of the violation and on whose behalf those actions were taking place.

On page 4, subsection 5, lines 24 and 25, the proposed language specifically states, "It is unlawful for any driver of a common motor carrier or for a common motor carrier to do the following acts." That would be to deny the use of the facilities or the services to an individual with disability. If you will look at line 40, Section 5, I believe that was possibly an oversight in the sense that I would

recommend or ask that the "or" language be included there for consistency purposes. Under NRS 706.366, "It would be unlawful for a driver or a common carrier by means to refuse service."

[Kimberly Maxson-Rushton, continued.] I understand what Mr. Drake's concern is. It's my understanding that specifically there might have been an incident in which an individual, based on religious reasons, denied a patron the opportunity to be provided transportation as a result of them having a eyesight dog. At no time has anyone been cited for that, so I am not sure what the basis of it is. I would strongly express to the members of the Committee that that language not be changed, because it is the responsibility of the carrier, under the Americans with Disabilities Act (ADA), to ensure that their vehicles are operated in accordance with the ADA. I state that because there needs to be proper training done of those drivers, and in the event that a driver did deny service to someone, that individual could make a complaint, and yes the TSA would have the authority to cite the driver. If they found out that they had not been subject to the training, or it was done at the specific instruction of the owner-operator, the TSA would also have the authority to go after the operator.

At no time under the ADA would it extinguish the patron's ability to pursue a legal action against an owner-operator in the event that they were denied service because they had a disability and had a seeing-eye dog with them. In my legal opinion it would be a disadvantage to the state and would be setting a bad precedent to put the burden strictly on the driver. I think it should be an owner responsibility to stress the importance of the American with Disabilities Act and the requirements under that act to their staff. To leave it simply to the driver and simply relinquishing them from responsibility is not a very wise or practical step.

Section 6 provides oversight to the taxicab and lease agreements. Currently, the TSA is working on a workshop that would readdress the master leases as set forth by Mr. Drake. The TSA currently has responsibility for the oversight and ultimate approval of those, not in order to control the terms of the contract between the owner-operator, the driver, the lessor, and the lessee, but rather to ensure that the safety requirements that are required pursuant to both the statute and the applicable regulations are contained within the provisions of the lease agreement.

One of the findings of the recent audit was the fact that the lease agreements were old and antiquated. As a result of that, the lease agreements were redrafted. At the present time we are working with members of the industry, such as Mr. Drake and Mr. Fairman, to ensure that the lease agreement that is being proffered by the TSA is consistent with all applicable statutes and

regulations. Let me assure you that owner-operators and drivers are not required to use the proposed lease agreement; it is simply a draft. There is a specific requirement within the applicable statutes and regulations in which taxi drivers, outside of Clark County, are subject to the provisions. The TA's authority would not allow them to do that. All of the drivers in taxicab agreements outside of Clark County are required to contain certain information that basically puts all the parties on notice as to what their responsibilities are as they apply specifically to safety. That is why we created a master draft lease agreement which they can work off of. It is not an exclusive lease agreement—they are not bound to it—it is simply one in which we would recommend that they utilize in order to ensure that all parties are aware of the standards and applicable rules that they must abide by consistent with the statutes and the regulations. With respect to the TSA's authority, I would implore you not to remove that. It is important to ensure that at all times both the carriers as well as the drivers are made aware of their specific requirements, and that everyone is operating at a full knowledge of the law at the time that they entered into this contract.

[Kimberly Maxson-Rushton, continued.] The other concern that we have under subsection 3 is it relieves the owner of all liability in most circumstances, and would leave all liabilities in the event that there was an accident, to fall on the shoulders of the driver. That is a concern in the event that the driver may not have personal insurance. In the event that a party is injured, that party would be left with absolutely no recourse. That is a provision that is consistent within our rights and our statutes. I would stress that our traveling public deserves to have a right of recourse in the event that there is wrongdoing. That joint and several liability gives the court the authority to determine fault, without the responsibility falling on the Legislature to say it's inherently that of the driver.

With respect to the issue pertaining to the prima facie evidence that the contracts entered into between an owner-operator and a driver or an independent contractor, I have serious concerns again on a legal basis as to the validity of that statement. Determination letters proffered by the IRS [Internal Revenue Service] are only provided to individuals in circumstances of independent contractors, and an employee-employer relationship. At the specific request of the employer-employee, therefore, a determination letter based on hypotheticals would not be provided by the IRS. I have documentation that I took off the IRS website as recently as this morning that states that very clearly. It goes on to provide a form that an individual company may submit for consideration to the IRS. It specifically enumerates that the facts of the working agreement and relationship between the parties must be set forth and a determination will be made. It goes on to state that without any equivocation that that decision is binding only for the IRS in federal tax purpose reasons.

[Kimberly Maxson-Rushton, continued.] There are multiple places within the *Nevada Revised Statutes* that define an independent contractor. To generically say that a letter ruling from the IRS would have controlling authority could be contrary to a state's specific statutes. It has absolutely no applicability, truthfully speaking, under the IRS's own code, to any other agency or any other body of law. I say that based on the fact that as recently as May 2004, the National Labor Relations Board specifically addressed the issue as to leases between taxicab owners and taxicab drivers. It found that relationship to be more akin to an employer-employee relationship versus an independent contractor. I don't believe that the language has any significance whatsoever. I believe that it lacks clarification, and, therefore, if you are inclined to pass the bill, I would encourage you to either have further clarification made by the drafters of this or to remove it completely.

Edgar Roberts, Administrator, Motor Carrier Division, Nevada Department of Motor Vehicles:
The Department currently has no position on this bill, as clarified today by Mr. Drake and Mr. Fairman.

Daryl Capurro, Nevada Motor Transport Association:
Everything that I had a question to put forth with respect to this bill has at least been entered on the record. What I suggest is that there are at least three other bills that deal with TSA that have not come out of drafting yet. They deal in different areas, and it would seem to me to be helpful to hang on to this bill to see it in context with the other bills that are coming out. We have at least one that would substantially eliminate the TSA all together. To be changing the law that affects it before you make the decision as to whether TSA should continue to exist seems to me would be wasted effort. We do have some concerns. I have been at this for 36 years and I am not sure what it says in part 2. The affected regulation is on the regulated carriers.

That has always been the history when it goes back to the Public Service Commission and the TSA. Now, to start saying that you are going to add drivers to it seems to me is a great leap of faith that really needs to be looked at carefully. Ultimately, it is the company that employs the driver who is responsible for anything that occurs with respect to that carrier.

Chairman Oceguera:
I will close the hearing on Assembly Bill 171.
I would like to now move into the work session. We have one bill on the work session docket today. I would like to turn it over to Ms. Paslov-Thomas to explain the bill that we will be looking at.

Assembly Bill 82: Makes various changes relating to use of highways, (BDR 43-274)

Marjorie Paslov-Thomas, Committee Policy Analyst:
If you look in your blue work session binder (Exhibit C), A.B. 82 will be considered today. It makes various changes relating to the use of highways, and it was sponsored by the Committee on behalf of Nevada Department of Transportation.

This bill authorizes NDOT [Nevada Department of Transportation] to designate lanes on highways for the use of high occupancy vehicles commonly referred to as car-pool lanes. The Department must establish the conditions for the use of the car-pool lanes, including the number of occupants, and the hours and days of the use of the lane when it is restricted. Unlawful use of a designated car-pool lane is a misdemeanor. This measure also requires farm tractors and other implements of husbandry to comply with the restrictions on size, weight, and load, and special permits on an interstate highway and controlled access highway. This requires that the equipment be transported as a load on another vehicle. Assembly Bill 82 changes the way in which weight limitations on vehicles are calculated. The allowable weight on any group of two or more consecutive axles will be calculated to the nearest 500 pounds. There were no proposed amendments.

Chairman Oceguera:
We were actually waiting to move this bill. We didn't have a lot of trouble with it. I wanted to make sure that no one has a problem with it. They had several meetings, and have come up with a letter (Exhibit D) that we would like to have entered into the record.

> Dear Assemblyman Carpenter and Goicoechea:
>
> On Monday, March 7, 2005, Kent Cooper and Jan Christopherson met with you to discuss issues regarding A.B. 82, and, specifically, the language relating to the restrictions on how implements of animal husbandry and farm equipment move on interstate highway and controlled access highways. It was agreed, that should this bill be passed by the 2005 Legislature with an effective date of October 1, 2005, regulations will be developed to include: (1) 8' 6" to-12'-wide loads will be allowed to be driven with a pilot car in the rear, and (2) 12'-to-17' wide loads will be required to be hauled with a pilot car in the rear and no highway patrol escort, as is usually required for loads over 16' wide. We would expect that

these loads, when driven, would use the shoulder as much as possible.

Please let me know if you have any other concerns. Thank you for affording us the opportunity to work out the details on this bill in advance of the vote.

Sincerely,
Jeff Fontaine, P.E. Director, Nevada Department of Transportation.

[Chairman Oceguera, continued.] We will enter this letter into the record and it seems that concerns have been addressed the best we can.

ASSEMBLYWOMAN OHRENSCHALL MOVED FOR COMMITTEE TO DO PASS ASSEMBLY BILL 82.

ASSEMBLYMAN CLABORN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Oceguera:
We have about thirty bills that we are expecting in the next seven days, and we have about ten meetings left. As those bills enter, we may end up having some long days. I think we can group them into three or four and get through most of them quickly.

There being no further discussion the meeting is adjourned [at 2:22 p.m.].

RESPECTFULLY SUBMITTED:

_____
Linda Ronnow
Committee Attaché

APPROVED BY:

_____
Assemblyman John Oceguera, Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Transportation

Date: March 15, 2005 Time of Meeting: 1:30 p.m.

Bill #	Exhibit ID	Witness	Dept.	Description
	A			Agenda
A.B. 171	B	Bob Fairman		Summary A. B. 171 proposed amendments
A.B. 82	C	Marjorie Paslov-Thomas		Work session A.B.82
A.B. 82	D	Chairman Oceguera read into the record		Letter from Jeff Fontaine
