MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION AND HOMELAND SECURITY

Seventy-third Session
March 8, 2005

The Senate Committee on Transportation and Homeland Security was called to order by Chair Dennis Nolan at 1:30 p.m. on Tuesday, March 8, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dennis Nolan, Chair
Senator Joe Heck, Vice Chair
Senator Maurice E. Washington
Senator Mark E. Amodei
Senator Maggie Carlton
Senator Steven Horsford

COMMITTEE MEMBERS ABSENT:

Senator Michael Schneider (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
James Puffer, Committee Intern
Joshua Selleck, Committee Intern
Lee-Ann Keever, Committee Secretary

OTHERS PRESENT:

Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Office of the Court Administrator, Supreme Court
Lucille Lusk, Nevada Concerned Citizens
Cheri L. Edelman, City of Las Vegas

R. Ben Graham, Nevada District Attorneys Association; Clark County District Attorney's Office
Noel S. Waters, District Attorney
Daryl E. Capurro, Nevada Motor Transport Association
Bruce W. Nelson, Vehicular Crimes Unit, Clark County District Attorney's Office
Sandra Lee Avants, Chairman, Transportation Services Authority, Department of Business and Industry
Kimberly Maxson-Rushton, Commissioner, Transportation Services Authority, Department of Business and Industry
Bruce Breslow, Commissioner, Transportation Services Authority, Department of Business and Industry
A.R. Fairman, Nevada Transport Coalition
Michael P. Mersch, Senior Deputy Attorney General, Office of the Attorney General
John Cardinalli
Donald L. Drake, Sunshine/Yellow Cab
Ron Larson, Larson's Van Service

Chair Nolan introduced and welcomed Melissa Savage, Program Principal, Transportation Committee, National Conference of State Legislatures (Conference). The Conference is headquartered in Denver, Colorado. The membership is composed of legislators from every state who work on model legislation.

Chair Nolan opened the hearing on Senate Bill (S.B.) 132.

SENATE BILL 132: Authorizes peace officers to issue traffic citations that are prepared electronically. (BDR 43-520)

Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, explained S.B. 132 contained clean-up language which permitted the *Nevada Revised Statutes* (NRS) to reflect technological advances. The bill recognized the fact that traffic citations could be issued electronically and that an electronic signature was as binding as a manually-written signature.

Mr. Titus stated both the Nevada Supreme Court and the Judicial Council of the State of Nevada supported S.B. 132.

The Chair said the bill would allow law enforcement officers to issue electronic citations in addition to manually written ones. Mr. Titus agreed with the Chair's explanation of the bill.

Senator Carlton asked whether or not a person would receive a hard copy of an electronically issued ticket. Mr. Titus said, "Yes," adding the issuing officer would use a Palm Pilot to write the citation which the ticketed party would sign electronically. A paper receipt would be printed and given to the individual. Senator Carlton said she had been contacted by people who were concerned that they would not receive a copy of an electronically issued traffic citation.

Lucille Lusk, Nevada Concerned Citizens, said her concerns regarding S.B. 132 had been answered through Mr. Titus' testimony and she would not be presenting further testimony on the matter.

Cheri L. Edelman, City of Las Vegas, said she supported S.B. 132.

SENATOR HECK MOVED TO DO PASS S.B. 132.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS SCHNEIDER AND WASHINGTON WERE ABSENT FOR THE VOTE.)

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Chair Nolan closed the hearing on S.B. 132 and opened the hearing on S.B. 13.

SENATE BILL 13: Revises provisions governing authority of peace officers to make arrests for certain offenses. (BDR 43-363)

R. Ben Graham, Nevada District Attorneys Association and Clark County District Attorney's Office, said he had been employed by the Clark County District Attorney's Office (CCDA) for approximately 27 years. He provided the Committee members with his educational background.

Mr. Graham introduced Noel S. Waters, District Attorney, Carson City, and provided background information on Mr. Waters' career as a district attorney.

He noted Mr. Waters had the distinction of being the longest-serving district attorney in Nevada.

Mr. Graham said law enforcement communities had authority to make arrests based upon probable cause and violations of law committed in their presence. There were times when the Nevada Supreme Court (Court) issued a ruling which affected the authority of law enforcement personnel in the State. Mr. Graham cited the case of the *State* v *Rico Shountes Bayard* (Exhibit C), which resulted in S.B. 13.

Mr. Waters said he supported S.B. 13, which amended the *Nevada Revised Statute* (NRS) 484. Mr. Waters stated Nevada's current laws did not specify or limit an officer's discretion to arrest for a traffic offense. Under current Nevada law, most traffic offenses were misdemeanor in nature. As a result, a law enforcement officer would stop an individual for a traffic offense and the person would be arrested. Mr. Bayard happened to be one such person arrested for a traffic offense.

Mr. Waters provided the Committee members with the background on Mr. Bayard's arrest and the subsequent Court decision. A law enforcement officer saw Mr. Bayard contact an individual on the sidewalk and when the individual noticed the law enforcement officer, he shied away. The officer then noticed Mr. Bayard committing traffic offenses. Mr. Bayard was then stopped by the officer. When Mr. Bayard left his vehicle, a search revealed he was carrying a concealed weapon for which he had the necessary permit. However, the traffic stop had drug overtones which resulted in Mr. Bayard being arrested.

Mr. Bayard was not arrested on drug-related charges. He was arrested for the traffic violations the officer saw him commit. A booking search revealed Mr. Bayard had a sufficient amount of cocaine in his clothing that he was charged with drug possession. At the same time, he was also booked for sale of marijuana. Due to these circumstances, it appeared as though Mr. Bayard was a drug dealer.

The Court had problems with any arrest that resulted from a minor traffic offense. The Court issued a decision which restricted a law enforcement officer's discretion to arrest for a traffic offense unless the offense was listed in the NRS. An arrest under any other circumstance amounted to an officer abusing his discretion.

The Nevada District Attorneys Association felt the Court ruling to be unduly restrictive. Mr. Waters said chapter 484 of the NRS did not contain a number of severe offenses. A person who committed one or more of those offenses could not be arrested under the Court's ruling. Mr. Waters said chapter 484 of the NRS needed to be amended to permit an officer's discretion when arresting for a traffic violation which was not listed in NRS 484. Mr. Waters said S.B. 13 was needed due to the Court's decision in the *State* v *Bayard*.

Mr. Waters stated the bill would amend NRS 484.791, subsection 1 by making it clear that a law enforcement officer would be permitted to make an arrest for the offenses already noted in that statutory provision and additionally include failure to stop at a road block and aggressive driving as defined in Nevada law. The bill would further amend NRS 484.795 by allowing a peace officer to arrest rather than issue traffic citations for offenses already defined in Nevada law. The bill would also allow a peace officer to arrest for a violation of NRS 482, 483, 485 and 486 in addition to NRS 706 if the officer has reasonable and probable grounds to believe the person posed a danger to himself or others or that the person would continue to repeat the alleged violation.

Mr. Waters said he thought the provisions of S.B. 13 were broad enough that a peace officer would have the discretion to arrest when appropriate and to issue tickets when appropriate. The provisions were measurable and could be reviewed by a court as to whether or not they were reasonable. Mr. Waters stated police officers needed more latitude in certain situations than what was currently permitted by the Court's decision in the Bayard case.

Senator Carlton asked what the difference was between the terms "reasonable cause" and "probable cause." Mr. Waters said the terminology used in the bill was commonly used throughout the NRS, especially in NRS 484 and 171. Mr. Waters told the Senator the term "reasonable cause" was the same as "probable cause" when used in constitutional law. Mr. Waters defined "probable cause" and "reasonable cause" as those facts and circumstances which would justify a reasonably prudent police officer in concluding a crime had occurred or was about to be committed. Mr. Waters stated the definition was the Fourth Amendment standard.

Mr. Graham said if S.B. 13 were passed, it would be used in a limited scope by seasoned police officers and would give those officers a little more discretion

than the Court's decision in the Bayard case currently allowed. Mr. Graham said a provision for judicial review was included.

Senator Horsford said the broad language of the bill concerned him, specifically the reasonable cause provision and the general nature of where that provision would be applied. The Senator asked how the rights of individuals could be protected while giving the law enforcement community the discretion it needed. He stated it was a difficult balance. Senator Horsford noted that America's judicial system was built on the concept of innocent until proven guilty.

Mr. Graham stated that a law enforcement officer had to have articulable reasons for making arrests under the provisions of S.B. 13. When the articulable reasons were not satisfactory to a court, cases would be thrown out of court and the arresting agencies subject to civil litigation. Mr. Graham stated he would be remiss if he did not note there could be instances where the circumstances surrounding an arrest would be subject to questioning. Mr. Graham said the bill was not unreasonable due to the training law enforcement officers received coupled with judicial review.

Mr. Waters said courts were equipped to deal with the terms used in the bill's summary, "with the officer having reasonable or probable grounds to believe that the person poses a danger to himself or others," or that "the person will continue to repeat the violation." The courts assess the probable cause standard on a daily basis in terms of the legality of arrests and in terms of evaluating the sufficiency of search warrants or whether adequate evidence was presented at a preliminary hearing. Mr. Waters stated the probable cause standard was broad because it needed to cover a variety of crimes.

Senator Horsford said he understood the bill's intent to align traffic law enforcement activities with other types of law enforcement activities. The Senator mentioned there had been occasions when traffic officers wrongly pulled over innocent people. Senator Horsford stated the bill set a dangerous precedent and he was not sure he could support the bill due to the broad language it contained.

Senator Carlton said despite testimony indicating the courts could decide on the legality of a traffic arrest, she was concerned about a person having to sit in jail while the courts arrived at a decision on his or her case. The Senator stated there could be times when a person did not have the resources to post bond

and would have to sit in jail until justice ran its course. Senator Carlton said testimony indicated the bill was for Nevada's law enforcement community, yet she did not see representatives of the law enforcement community present at the hearing. The Senator stated she was concerned about the lack of law enforcement representatives at the hearing. She wanted to know if the bill was a high-priority for the law enforcement community.

Mr. Graham said he worked carefully with the Nevada Highway Patrol, Department of Public Safety, the Nevada Sheriffs' and Chiefs' Association and the Las Vegas Metropolitan Police Department who all supported S.B. 13. While the organizations mentioned by Mr. Graham understood the need for the bill, it was technical in nature and did not require the presence of law enforcement representatives at the hearing.

Mr. Graham said he understood the Senator's concerns about people being unduly detained in a jail cell. He stressed the provisions of the bill would not be used very often. Mr. Graham said Mr. Bayard would have been released from jail if he had been guilty of only the traffic offenses, not the drug and traffic offenses together.

Mr. Graham reminded those present that the provisions of S.B. 13 would be a balancing act between meeting the needs of the community while not burdening individual rights.

Senator Washington asked Mr. Graham what provisions were included in chapters 482, 483, 485 and 486 of the NRS. Mr. Waters replied in Mr. Graham's stead and stated chapter 482 dealt with vehicle licensing and registration; NRS 483 dealt with the issuance of driver's licenses and NRS 485 dealt with motorcycle usage in Nevada. Mr. Waters explained the chapters were all contained in the traffic title of the NRS.

Senator Washington asked about traffic stops and wanted to know whether or not a traffic officer could pull a vehicle over for having expired license plates or for being improperly registered. Mr. Waters replied, "That is correct, Senator."

Senator Washington wanted to know if a traffic officer had the ability to review the validity of a person's driver's license once the officer had pulled over the person's vehicle during a traffic stop. Mr. Waters replied, "That is correct under chapter 484, section 791 of the NRS."

Senator Washington asked Mr. Waters whether or not a traffic officer could ask the driver of the vehicle to exit the vehicle when it was discovered the driver was not properly licensed. Mr. Waters said current law permitted traffic officers to either issue a citation to those drivers with improper driver's licenses who were driving without a driver's license or to make an arrest. In most instances, the officer could use his or her discretion based on the circumstances surrounding the traffic stop.

There would be occasions when a traffic officer had no choice but to arrest an improperly licensed driver due to statutory requirements. Mr. Waters cited the example of an individual who lost his or her driver's license due to being a convicted drunk driver, but continued to drive. In that instance, the driver faced a minimum, mandatory 30-day jail sentence if he or she were pulled over by a traffic officer.

Senator Washington asked whether those individuals pulled over by traffic officers, and who were not convicted of drunk driving, would be issued traffic citations. He asked whether those individuals would instead pay a fine or appear before a judge. Mr. Waters replied, "That is correct, Senator."

Senator Washington said the judge would make a determination on the appropriate sentencing for a traffic offense based on the evidence and information provided by a defendant. Mr. Waters said, "That is correct," adding sentencing would be determined only after a trial had been conducted.

Senator Washington stated that, as written, the bill gave a traffic officer the discretion to either issue a traffic citation or arrest the traffic offender. Mr. Waters said the traffic officer would have to exercise his or her discretion within the parameters of the law.

Senator Washington asked Mr. Waters to define reasonable cause and probable cause. Mr. Graham said the standard of probable cause for arrest was "facts and information sufficient to lead a reasonable person to believe that a crime has been committed and this particular person probably committed it." The standard could be applied to the first part of search and seizure as well.

Senator Washington asked whether the facts, during a traffic stop, could include driving with a suspended driver's license or driving a vehicle with an

expired registration. Mr. Graham said those two instances could constitute sufficient facts for a traffic officer to believe a crime had been committed.

Senator Horsford asked Mr. Graham what he meant when he talked about the facts in evidence. The Senator noted a person could be speeding and the law enforcement dispatchers might only be provided with a vague description of the offending vehicle, such as it was a white car with a Caucasian driver. The traffic officer could then pull over any white vehicle driven by a Caucasian. The Senator wanted to know whether that information would be sufficient, based on the facts presented, for a traffic officer to pull over any white vehicle with a Caucasian driver. Mr. Graham said the situation presented by the Senator would constitute facts and information sufficient to lead to an arrest.

Senator Horsford stated he had a problem with S.B. 13 in that, based on limited information received by law enforcement, people could be detained and arrested for resembling the perpetrator of a crime. The Senator said that was a dangerous situation for any person.

Mr. Waters said he wanted to correct information submitted by Mr. Graham. He wanted to make it clear that Nevada law did not support stopping and arresting a person based upon a telephone call from an unknown or anonymous person. However, Nevada law gave law enforcement officers the right to detain a person and investigate the circumstances surrounding the stop. Nevada law enforcement officers could not arrest a person for a misdemeanor crime unless the crime had been committed in the officer's presence. The only statutory exceptions to Nevada law were: 1) traffic accidents where the officer could rely upon information obtained at the scene; 2) hit and run accidents and 3) reckless driving.

Senator Amodei said people needed to take a 360 degree look at the bill. He reminded those present that in past sessions the Nevada Legislature worked on eliminating racial profiling. The Senator said S.B. 13 would not repeal past legislative action taken to eliminate racial profiling. Senator Amodei noted former Senator Joseph Neal pioneered most of Nevada's racial profiling laws. He reiterated S.B. 13 would not eliminate or undermine Senator Neal's hard work in that area.

Senator Amodei asked those present to not judge S.B. 13 by ignoring the NRS and the operational procedures followed by Nevada sheriffs, police departments,

and other law enforcement agencies. He stressed the bill should not be considered a wholesale abandonment of the statutory and operational progress which had been made towards eliminating racial profiling.

Chair Nolan stated he was hesitant to have the Committee vote on S.B. 13 due to the concerns expressed by some of the Committee members. The Committee members were concerned with the bill's language being too broad. The Chair said the bill's language on section 2, subsection 5 would be modified so as to not hamstring a law enforcement officer's common sense. He said the reasonable and probable cause language would be tightened. Chair Nolan said the bill would be scheduled for future consideration by the Committee after it had been amended.

Chair Nolan directed Mr. Graham and Mr. Waters to work with Senator Carlton and Senator Horsford in modifying the bill's language. Mr. Graham said he was sensitive to the fact the bill could be considered overreaching and wanted to make sure people were protected. Mr. Graham stated he and Mr. Waters would work with Senators Carlton and Horsford in rewording the bill.

Daryl E. Capurro, Nevada Motor Transport Association, stated he appreciated the testimony regarding S.B. 13's intent. He directed the Committee's attention to section 2, subsection 5 of the bill, which took into account chapters 482, 483, 485 and 486 of the NRS. He said a person who was guilty of violating even a minor provision of one of those chapters would have to be taken before a magistrate under the provisions of the bill.

Mr. Capurro referred to section 2, subsection 5 of the bill. He said a person who had been pulled over for a minor traffic infraction, such as an improperly licensed vehicle, would be guilty of repeating the offense for which he or she had been pulled over the minute he or she left the traffic stop.

Mr. Capurro said he thought the bill needed to be cleaned up with respect to the exact areas of concern the bill was supposed to address.

Senator Washington detailed a hypothetical situation in which a cross-country truck driver was pulled over for having expired or improper vehicle registration. In that instance, could he be brought before a magistrate instead of being issued a traffic citation? Mr. Capurro stated, "That's what the bill says."

Senator Washington said mandating an appearance before a magistrate represented a loss of time and income for a truck driver. Mr. Capurro agreed with the Senator, noting the bill's provisions were mandatory and included chapter 706 of the NRS.

Senator Amodei said he appreciated Mr. Capurro's remarks which addressed worst-case scenarios. He stated Mr. Capurro ignored the fact that a law enforcement officer needed reasonable or probable grounds to pull over a driver. Those reasonable or probable grounds would not be present during every traffic stop.

The Senator said law enforcement operation criteria had to be enunciated before a person appeared before a magistrate or the person continued to repeat the violation. Senator Amodei said when a person continually drove without insurance or a commercial driver ignored the weight limits resulting in evidence of repeat violations, he wanted those individuals to appear before a magistrate. Mr. Capurro agreed with the Senator's statements.

Senator Amodei said he was not familiar with how an officer determined there was a problem with either a driver's license or a vehicle's registration. He stated he thought a law enforcement officer needed to have objective evidence of repeat violations. Senator Amodei said the judges and magistrates would not take kindly to people who continually appeared before them when there was no need.

Senator Amodei said he agreed with Mr. Capurro's worst-case scenarios, but noted the provisions of the bill were subject to operational criteria. Mr. Capurro read from the bill's summary as it concerned him:

> AN ACT relating to public safety; allowing a peace officer to arrest without a warrant if there is reasonable cause to believe that a person has committed certain offenses relating to traffic laws; requiring a peace officer to arrest a person charged with certain offenses if there is cause to believe that the person poses a danger to himself or others or that the person will continue to repeat such offenses; and providing other matters properly relating thereto.

Mr. Capurro said when a person was pulled over for improper registration, he or she would be guilty of being a repeat offender according to the bill's summary

and provisions. The reason for this being he or she would not have had an opportunity to rectify the improper registration. He said there would be minor circumstances when a person should not have to appear before a magistrate.

Senator Amodei said if he was stopped for a second traffic offense immediately after being cited for a first traffic offense by a traffic officer, he would present the citation to the second officer. He said he thought in such an instance a reasonable traffic officer would not cite him again. Mr. Capurro said the bill mandated Senator Amodei appearing before a magistrate.

Senator Amodei stated the bill read, "When the peace officer has reasonable and probable grounds to believe ... or that they will continue to repeat the violation." Senator Amodei said he thought the language permitted discretion by the law enforcement officers in Nevada. The Senator said if he assumed those individuals had no common sense, then he agreed with Mr. Capurro's interpretation of the bill.

Mr. Capurro said he understood Senator Amodei's analysis of the situation, but added he did not feel comfortable with the bill as currently written. He said he thought the bill's language could be rewritten so innocent people were not adversely affected by the bill.

Chair Nolan referred to Exhibit C and wanted to know if there were other statutes available to the officers involved in the case and which would have permitted those officers to search Mr. Bayard.

Mr. Waters said the decision in the *State* v *Bayard* determined the officers did not have reasonable and probable cause to arrest Mr. Bayard for drug-related offenses, even though those officers were suspicious about Mr. Bayard's actions. The Court dismissed Mr. Bayard's arrest. Mr. Waters said the provisions of S.B. 13 would guard against similar cases being dismissed in the future due to the bill's provision saying the community was in danger or the person was likely to repeat his or her offenses. Mr. Waters said he thought the bill increased the protections to the public.

Mr. Waters noted that some traffic offenses were circumstantial but developed into more serious crimes. As an example, he cited the Oklahoma City, Oklahoma bombing on April 19, 1995. The primary suspect in that bombing,

Timothy McVeigh, had been stopped for a traffic violation. The traffic stop was responsible for Mr. McVeigh's capture and arrest.

Chair Nolan said it was unfortunate that Mr. McVeigh had not been stopped for a traffic offense before the bombing. He noted the Committee members also looked at homeland security issues and possible legislation needed to help protect the State.

Mr. Graham said in addition to Senators Carlton and Horsford, he and Mr. Waters would work with Mr. Capurro on tightening S.B. 13's language.

Chair Nolan closed the hearing on S.B. 13 and opened the hearing on S.B. 141.

SENATE BILL 141: Increases term of imprisonment under certain circumstances for driver of vehicle who leaves scene of accident involving bodily injury to or death of person. (BDR 43-362)

Mr. Graham introduced Bruce W. Nelson, Vehicular Crimes Unit, Clark County District Attorney's Office (CCDA), and explained Mr. Nelson had spent most of his career prosecuting vehicular crimes. Mr. Graham said the CCDA had seen an increase in the number of people who left the scene of a motor vehicle accident. There had been occasions where one accident resulted in multiple victims. However, due to a Court decision, a person who left the scene of an accident could only be charged with one count of leaving the scene no matter how many victims resulted from the accident. Because of those circumstances, the CCDA requested S.B. 141.

Mr. Nelson said the same penalty which was currently imposed on those individuals charged with drunk driving would be imposed for leaving the scene of accident under this bill. He explained if he were to hit a vehicle with three occupants while drunk driving, he would be charged with three counts of drunk driving. However, if he were to leave the scene of the accident, he would be charged only with one count of leaving the scene.

Mr. Nelson said the Court's decision created a number of problems. He elaborated on the drunk driving scenario. A drunk driver charged with three counts of drunk driving faced 60 years in prison; however, if the driver were charged with leaving the scene, he faced only 15 years in prison. The bill

sought to enhance the penalties for leaving the scene of an accident when there were multiple victims.

Mr. Nelson cited the example of Mitchell Dettloff who, while driving, hit a car, knocking it into another car; the accident killed four people and severely injured a fifth person. Mr. Dettloff eluded capture for nearly a week. Due to the lapse in time between the accident and the arrest, it was unknown whether Mr. Dettloff was intoxicated at the time of the accident. When arrested, Mr. Dettloff had been initially charged with five counts of leaving the scene of an accident. However, due to the Court's decision, the charges had been reduced to one count of leaving the scene of an accident. Mr. Dettloff had been convicted on the one charge of leaving the scene of an accident.

Mr. Nelson told the Committee members about Clark D. Morris who was one of the most often-arrested drunk drivers in Nevada. Mr. Morris had been convicted on 15 drunk driving charges when he was involved in another accident. In the accident one person was killed and four people were injured. One person was injured so severely she was left a quadriplegic. Mr. Clark left the accident scene but was arrested while still legally intoxicated. Mr. Clark had been charged with two counts of driving under the influence, one count for the death and one count for the severe injury. He had also been charged with five counts of leaving the scene of an accident. Again, due to the Court's decision, the five counts of leaving the scene of an accident had to be reduced to one count.

Mr. Nelson stressed that even when a person left the scene of an accident and injured additional people in his or her escape, they could only be charged with one count of leaving the scene. He said the current penalty was not fair and the bill would change that.

Mr. Nelson explained the sentencing structure proposed by the bill: leaving the scene of an accident with three or more victims would result in a sentence of 6 to 20 years, two victims would result in a sentence of 4 to 15 years and one victim would result in a sentence of 2 to 15 years.

Senator Horsford asked whether the minimum and maximum sentencing terms for imprisonment proposed by the bill were in line with the drunk driving sentencing terms. Mr. Nelson told the Senator, "Almost," adding when a person was convicted of killing or severely injuring someone while driving intoxicated, the sentence would be 2 to 20 years per count. The current sentencing term for

leaving the scene of an accident was 2 to 15 years. The bill would enhance the sentencing terms for leaving the scene of an accident and align it with the driving under the influence (DUI) sentencing.

Mr. Nelson noted that it was possible for a person to receive probation when sentenced to leaving the scene of an accident, while no probation was permitted for those convicted of DUI offenses.

Senator Horsford asked whether a 15-year sentence was the maximum sentence which could be imposed upon a person convicted of leaving the scene of an accident, no matter how many people were harmed. Mr. Nelson told him that was correct.

Vice Chair Heck said he thought when a person was involved in a fatal motor vehicle accident and left the scene of the accident, the person would be charged with additional charges besides the leaving the scene of an accident charge.

Mr. Nelson said, “Yes,” adding there would be additional charges in addition to the vehicular homicide, manslaughter or severe injury charges already imposed. He explained that a person involved in a fatal traffic accident would face only misdemeanor charges if that person was not DUI or had not been driving recklessly. However, if that person were to leave the scene of the accident, he or she would then be charged with a felony for leaving the scene of an accident.

Mr. Nelson said there were situations where an accident victim left the scene of an accident with injuries; even though that person did not cause the accident, he or she would be charged with leaving the scene of an accident. Mr. Nelson stressed that all parties involved in a traffic accident had to remain at the scene until law enforcement and the first responders arrived on scene.

Mr. Nelson said the current state of the law mandated a person could only be convicted of leaving the scene of an accident if that person knew or should have known he or she had hit someone or something. As an example, he cited the instance in Las Vegas where the driver of an 18-wheeler truck struck and killed a bicyclist. The truck driver had not been charged in that accident as the evidence determined he was not aware he had killed the bicyclist.

Vice Chair Heck read from section 1, subsection 1 of the bill, "...resulting in bodily injury to or the death of a person..." and noted the provision ensured a person being charged with something over and above leaving the scene of an accident.

Mr. Nelson disagreed and cited the following example of a driver waiting at a red light when he or she was rear-ended by another driver. In that instance the waiting driver would not be at fault for the underlying traffic offense, while the other driver would be at fault. However, if the waiting driver left the scene of the accident, then he or she would be guilty of leaving the scene even though he or she was not at fault for the original traffic accident. Mr. Nelson noted that the majority of drivers who left accident scenes were the ones who were at fault and would be charged on two counts: one count for the traffic accident and one count for leaving the accident scene.

Vice Chair Heck referred to Mr. Nelson's example and wanted to know who was injured or killed in that example. Mr. Nelson said the driver who left the scene would be charged with felony leaving the scene if he or she left other people to die as a result of the accident.

Vice Chair Heck stated his concern was a person would be charged with more than one count of leaving the scene of an accident even when he or she left one accident scene. Mr. Nelson said in the instance of a drunk driver, there might be one collision, but multiple injuries or fatalities. He noted all the injured might need medical attention, which is why a driver should not leave the scene of an accident. Vice Chair Heck stated while he understood Mr. Nelson was attempting to draw a parallel to other statutes, it did not mean he agreed with those statutes.

The Vice Chair referred to Mr. Nelson's accident scenario and wanted to know whether or not the driver knew there were three people in the vehicle he or she hit. Mr. Nelson said the driver would know that he or she had been in an accident and that he or she should stop.

Vice Chair Heck said the driver should be charged with leaving the scene of an accident, but wanted to know if the penalty should be escalated based on the number of people injured or killed in the accident. The Vice Chair wanted to know why there was a limit on the number of victims if the penalty was going to be based on the number of people injured or killed. He suggested using a

sliding scale. Mr. Nelson stated when there were multiple chances for injury or death due to a lack of medical attention, the driver should be charged with additional penalties.

Mr. Nelson reminded the Vice Chair that when people threw bombs into a crowd killing three people, they would be charged with three murder counts even though there was only one crowd. Vice Chair Heck said, "I agree," adding if 100 people were killed in Mr. Nelson's bombing scenario, there would be 100 murder charges. Mr. Nelson wanted to know if the driver should be punished more severely when an accident resulted in 100 injured people or deaths, than if he or she left one injured or dead person at the accident scene. The Vice Chair reminded Mr. Nelson that S.B. 141 limited the number of injured or dead to three.

Mr. Graham said the law enforcement and criminal justice personnel had to take their victims as they found them. He added a driver who left the scene of an accident was risking that there was more than one person needing help. Mr. Graham said the bill was based on added victims rather than added counts or charges.

Chair Nolan said it seemed to him the number of hit-and-run accidents in Clark County were increasing. He added in some of the accidents, the driver would rob the victim, indicating the driver knew he or she had hit someone.

Chair Nolan wanted to know whether Nevada's drivers were aware of the enhanced penalties imposed upon an intoxicated driver who did not leave an accident scene. Mr. Nelson said a good portion of the drivers who left accident scenes were intoxicated.

The Chair reiterated that he was noticing more hit-and-run accidents in Clark County. He wanted to know whether the number of hit-and-run accidents were increasing or were the newspapers reporting these accidents more frequently. Mr. Nelson said it was in the best interests of an intoxicated driver to leave the scene of an accident. By doing so, the driver would face one charge of leaving the scene of an accident instead of multiple counts of drunk driving. He added the sentence would be 15 years for leaving the scene of an accident while the sentence for drunk driving could be 100 years.

Chair Nolan stated he supported the bill. He said he thought the number of accidents in Clark County in which a driver left the scene of an accident were increasing.

Senator Carlton stated the bill concerned her and she would not be voting on it. She said she reserved the right to vote on the Floor.

SENATOR WASHINGTON MOVED TO DO PASS S.B. 141.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO. SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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Sandra Lee Avants, Chairman, Transportation Services Authority (TSA), Department of Business and Industry, introduced Kimberly Maxson-Rushton, Commissioner, Transportation Services Authority, Department of Business and Industry and Bruce Breslow, Commissioner, Transportation Services Authority, Department of Business and Industry.

Chairman Avants said Commissioner Breslow worked in the TSA's Sparks office, while she and Commissioner Maxson-Rushton worked in the TSA's Las Vegas office.

Commissioner Maxson-Rushton spoke from prepared text (Exhibit D).

Commissioner Breslow said he would be addressing four major initiatives which the TSA worked on during 2004.

The first issue concerned A.B. No. 518 of the 72nd Session also known as the Household Goods Mover Initiative.

Commissioner Breslow said A.B. No. 518 of the 72nd Session gave the TSA the tools it needed to safeguard both the public and industry. He noted that prior to the bill being passed, there had been hundreds of uncertificated moving companies in Nevada, especially in Clark County. As a result of A.B. No. 518 of the 72nd Session, 42 uncertificated moving companies had their telephones

disconnected. Commissioner Breslow noted during administrative hearings many of the moving companies admitted to a lack of insurance, that the employers' insurance was not being paid and the proper deductions were not being taken from the employees' paychecks.

Commissioner Breslow said the 42 companies represented about half of the initiative's goal. He stated being able to disconnect a business's telephone gave the TSA strong, enforceable regulations.

The second initiative concerned tow cars. The TSA conducted four public tow car workshops. At those workshops, input was received from both the public and tow car representatives, in addition to discussing the TSA's scope of authority with regard to federal preemptions which were a result of the Transportation Equity Act for the 21st Century (TEA-21). Commissioner Breslow told the Committee there had been an increase in the federal case law which allowed the TSA more authority over the tow car industry in Nevada.

Commissioner Breslow said the TSA would be conducting a public hearing on March 24, 2005, to hear testimony on the proposed changes to the Nevada Administrative Code (NAC) 706. After the hearing, the changes would be forwarded to the Nevada Office of the Secretary of State as temporary regulations.

The third initiative dealt with the charter bus industry in Nevada. The TSA conducted two workshops at which the TSA encouraged testimony from both the public and representatives of the charter bus industry. The charter bus representatives were asked to submit their testimony in writing. The TSA would be conducting a public hearing on March 24, 2005. The public hearing would deal with the TSA's scope of authority with regard to federal preemptions regarding the charter bus industry.

The fourth initiative concerned the Legislative Counsel Bureau's recommendation to create a uniform lease for taxicab leasing. Commissioner Breslow said many of the taxicab leases were created when the TSA was known as the Public Service Commission of Nevada. The TSA found it had no legal authority to mandate a uniform lease for taxicab leases. The TSA staff created a sample lease which could be used by the taxicab companies. The sample lease would be considered at the TSA's March meeting. Once the sample was approved by the TSA, it would be sent to taxicab companies to use and then submit new

leases to the TSA. The taxicab companies would have 60 days to submit new leases to the TSA. Commissioner Breslow noted the TSA could not force the taxicab companies to use a master lease as each company was unique. The sample lease was intended to provide the taxicab companies with the information the TSA would like contained in taxicab leases.

Chairman Avants said the industries regulated by the TSA represented $170 million of revenue in Nevada per year. She added the TSA commissioners had multiple functions as the TSA heard requests for applications and citations and conducted approximately 500 hearings per year.

Chairman Avants said in addition to its enforcement duties, the TSA provided instruction to carriers in Nevada. The TSA offered the assistance of its staff to each applicant or each certificated carrier in Nevada. The TSA was a resource for those individuals and companies. Chairman Avants stated the TSA reached out to the citizens of Nevada.

Chairman Avants noted there were frequently multi-jurisdictional issues with which the TSA became involved. She added over the last year and a half, the TSA worked with the Clark County Board of Commissioners and the Clark County Department of Business License (License) to develop an ordinance for pedicabs or rickshaws. Additionally, the TSA had been told by both the Nevada Highway Patrol (NHP) and the Las Vegas Metropolitan Police Department (Metro) that the prices charged for a law enforcement tow differed from other types of towing. After working with the TSA, the NHP and Metro, the tow companies which provided law enforcement towing arrived at one, uniform charge.

The Regional Transportation Commission of Clark County had issues with those individuals representing the handicapped community. The TSA acted as a mediator and worked to resolve the issues.

Chairman Avants said the counties in Nevada had different regulations concerning the use of alcohol by passengers in commercial vehicles. The TSA was working with Clark County on the issue.

Chair Nolan asked what types of allowed alcoholic beverages could be used by the passengers in commercial vehicles. Chairman Avants told the Chair he would be surprised by the different vehicle types in which alcohol was served to

passengers. She said the TSA did not license any vehicle type to serve alcohol. Drivers had been cited for permitting alcohol in their vehicles. In other parts of the State, companies were permitted to stock the bars in limousines or fun buses. Clark County officials were working with the rest of Nevada's counties on the issue.

In response to a question by the Chair, Chairman Avants said the TSA was citing those limousine drivers in Clark County who provided a stocked bar in the back of a commercial vehicle. Commissioner Breslow stated the citation issued depended on the county in which the limousine was operating.

Senator Washington wanted to know whether the citations were issued in Clark County due to a county ordinance. Chairman Avants said it was a county ordinance. Senator Washington wanted to know whether the TSA was the enforcement agency for Clark County. Chairman Avants replied, "Absolutely not," adding the TSA employed law enforcement officers with the ability to cite limousine drivers in Clark County when the officers saw a county ordinance being broken. The TSA was working with both the commercial vehicle companies and Clark County officials in order to facilitate an understanding of the ordinance.

Senator Washington wanted to know whether a TSA employee could cite the offending driver or notify law enforcement when he or she saw the county ordinance being broken.

Chairman Avants said a TSA law enforcement officer in Clark County who observed alcohol being served in a commercial vehicle had the option of citing the driver. She noted there were additional issues to consider such as whether or not the alcohol was being consumed in the front of the vehicle with the driver present or whether the alcohol was being provided to only those passengers riding in the back of a commercial vehicle.

Senator Washington asked whether or not the TSA law enforcement officers were actual employees of the agency or, contract employees. Chairman Avants said the TSA law enforcement staff worked for the TSA and had limited law enforcement authority as contained in chapter 706 of the NRS.

Senator Washington said he was concerned with state law enforcement officers enforcing county ordinances. He stated there might be some inconsistency or

conflict of interest when those officers enforced county ordinances. The Senator said there might be a liability issue as well.

Commissioner Maxson-Rushton said the NRS contained a prohibition against open containers of alcohol in vehicles with the exception of commercial vehicles and the federal Motor Carrier Act contained a prohibition against inebriated drivers or alcohol being within constructive possession. The Commissioner said she interpreted that provision to mean alcohol could not be served within arm's length of the driver.

Commissioner Maxson-Rushton said under the NRS, a passenger could provide his or her own alcoholic beverages. However, the Clark County ordinance prohibited the drivers of commercial vehicles from providing alcohol to passengers unless licensed to do so. The Commissioner said under NAC 706, there was a provision mandating all drivers over which the TSA had jurisdiction to comply with all applicable federal, state and county laws.

Commissioner Maxson-Rushton stated the federal provision allowed the TSA to enforce the Clark County ordinance against alcohol in commercial vehicles. She noted there were problems with consistency as the other Nevada counties permitted alcohol to be served to the passengers of commercial vehicles. The TSA did not issue policy on whether or not the prohibition was good for the industry.

The TSA met with Clark County representatives and their legal counsel to determine what the county wanted to do with that ordinance. The Commissioner stressed the TSA would only be involved in such meetings from the objective perspective as to the consistency of the ordinance and its application. The interests of the carriers would be represented by the owner-operators.

Senator Washington said he was concerned that there would be a conflict of interest between Clark County and the State in that state law enforcement officers were being used to enforce a county ordinance.

Chairman Avants stated the TSA adopted the Code of Federal Regulations (CFR) in 1998 which gave the TSA authority over the commercial transportation industry in Nevada. The CFRs were detailed and by adopting the CFRs, the TSA was given authority to enforce federal, state and local laws in Nevada.

Senator Washington said the testimony indicated the commercial drivers who were cited were usually limousine drivers or fun bus drivers. The drivers were not drinking the alcoholic beverages; the passengers were. He stated if the drivers were being cited due to a county ordinance, then there was nothing the Legislature could do. Chairman Avants mentioned she had seen a television program in which a Metro officer stated liquor was not permitted in commercial vehicles in Nevada. The statement was being researched by the TSA staff as it was inconsistent with the NRS. Commissioner Maxson-Rushton said the NRS allowed open containers of alcoholic beverages in commercial vehicles in the passenger area only. Most limousine or bus charter companies believed they could stock a bar for their passengers due to this NRS provision. Clark County's ordinance was the only exception to this statutory provision. The Commissioner noted the NAC provision mandated commercial drivers in Nevada comply with all state and local laws.

Senator Washington reiterated his question of how the TSA officers could enforce a county ordinance which prohibited the use of alcohol by a passenger in a commercial vehicle, especially when the NRS provided for use by the passengers. Chair Nolan said as the TSA was empowered with enforcing all federal, state and local laws, it had to cite those commercial drivers who allowed alcohol in their vehicles.

Chair Nolan thanked the TSA commissioners for their testimony. He said he was going to permit testimony from the public. Chairman Avants said the TSA commissioners would be pleased to address the public testimony.

Chair Nolan wanted to know about the TSA's nine sworn peace officers; specifically, where were they located and if they were uniformed or in plainclothes. Chairman Avants said two of the nine officers were stationed in the TSA's Sparks office with the balance of the officers being stationed in the TSA's Las Vegas office. The officers were armed, wore plainclothes, displayed their badges from their belts, drove unmarked cars and had limited authority. The cars driven by the TSA law enforcement officers were equipped with law enforcement lighting. The officers were certified by Peace Officers' Standards and Training Commission (P.O.S.T.) as Category II law enforcement officers.

Chair Nolan told the TSA commissioners that his office received communications from commercial drivers who were concerned that the TSA officers were not uniformed and did not drive marked police vehicles. He noted

the commercial drivers were hesitant to pull over for an unmarked car driven by someone who was not in uniform. The Chair stressed it was possible for people to buy badges even though they were not entitled to wear them. Chairman Avants said she heard the complaint about the TSA officer not being uniformed and driving unmarked cars approximately once a year. She noted when pulling commercial vehicles over, the TSA officers would identify themselves to the drivers.

Senator Washington requested that Chairman Avants explain the TSA's procedure for licensing taxicabs in Nevada.

Chairman Avants said the process for licensing taxicabs in Nevada had been modified approximately 18 months ago when the process had been shortened significantly. Prior to the modification, the process could take a year. The Commissioner noted most businesses could not afford to wait a year for the proper licensing.

Individuals who were interested in obtaining a limousine license would be given a lengthy form to complete which was similar to those applications issued by the Nevada Taxicab Authority, the Nevada Gaming Commission and the State Gaming Control Board.

There was a $200 application fee associated with submitting the application. After the application had been submitted to the TSA office, it was filed and reviewed within a week's time by the TSA docket manager. The application would be reviewed for accuracy and whether it met the required standards. Those applications meeting the standards would be entered into the TSA system. The applications which did not meet the standards were returned to the applicants with a detailed letter indicating why the application had been rejected and detailing what steps the applicant had to take in order to have the rejected application meet the required standards. Accepted applications were given a docket number and assigned to a TSA commissioner and investigator. At that time, a public notice would be published in either the two newspapers in Las Vegas or all of the four major newspapers in Nevada. The applicants were charged for the publication costs.

Once the application was accepted and public notice made, the TSA investigator would begin a background check of the applicant; the docket manager would review the application and the TSA's chief financial

officer (CFO) would review the applicant's financial documents. The TSA investigator would interview the applicant and ask questions about the vehicles. The TSA's CFO could require additional financial information or request clarification on the financial information contained in the application. There were status meetings where the applicant and his or her representatives met with TSA employees. At those meetings, the applicants were counseled by the TSA staff on cost and the unknowns which the applicant might encounter during the application process.

Once the application process was completed, there would be a hearing before the TSA's hearing officer. On occasion, an intervenor might be used.

Chairman Avants noted after the public notice had been published, those individuals with significant interests in an application for the service to be provided could become an intervenor. Senator Washington asked for and received the definition of intervenor from Chairman Avants. An intervenor is an interested party, individual, association or group, who is concerned with the application or had cause to believe more information is needed and who wanted to be part of the application process. The intervenor is usually someone involved in the transportation industry.

Senator Washington wanted to know whether or not an intervenor could be an applicant's competition. Chairman Avants replied, "Absolutely," and added intervenors usually were the applicant's competition.

A.R. Fairman, Nevada Transport Coalition (NTC), said he had been involved in the transportation business for 40 years. He said the NTC had issues with the TSA regarding the deregulation of charter buses in Nevada. The NTC and its attorneys attended the TSA workshops. Mr. Fairman said it appeared as though the TSA felt it could regulate the charter bus industry in Nevada.

Mr. Fairman said the NTC felt the charter bus industry should be regulated for safety issues and the inspection of the vehicles. He said the TSA had taken it upon itself to regulate the charter bus industry more rigorously than it should.

Chair Nolan asked for specific examples of the extended regulation imposed by the TSA on the charter bus industry in Nevada. Mr. Fairman stated the TSA wanted the charter bus operators to file tariffs with the TSA and abide by chapter 706 of the NRS regarding the leasing of vehicles and signage.

Mr. Fairman noted the federal government had oversight on the signage displayed on a vehicle and did not require a charter bus owner to receive permission from the TSA to lease vehicles. Mr. Fairman said the TSA made it difficult for the charter bus operators in Nevada to lease vehicles due to the regulations it attempted to impose on the charter bus owners. Mr. Fairman noted a charter bus could serve alcohol to its passengers as long as the vehicle crossed state lines.

Chair Nolan asked whether the concerns listed by Mr. Fairman were his primary concerns. Mr. Fairman replied, "Yes." The Chair requested the TSA address Mr. Fairman's concerns.

Senator Carlton asked Mr. Fairman if he felt the charter bus industry was regulated by the federal government and the State was overstepping its bounds on the regulations it imposed on the industry. Mr. Fairman replied, "That is correct, Senator."

Senator Washington referred to the TSA audit recommendations contained in Exhibit D as they referred to the regulation of charter buses. The Senator said he thought Chairman Avants addressed the audit's recommended changes. Chairman Avants said the audit recommendations had been adopted through the workshop process. The changes would be voted on by the TSA commissioners at the TSA's March 2005 meeting.

Mr. Fairman said he attended many of the TSA's workshops and the NTC's attorneys previously informed the TSA staff that it was violating federal law. He noted the workshops were after the fact as the deregulation occurred in 1998.

Michael P. Mersch, Senior Deputy Attorney General, Office of the Attorney General, stated he had represented the TSA for approximately four years. Mr. Mersch said some of Mr. Fairman's statements were not accurate and provided clarification on the status of the federal laws which oversaw the charter bus industry. Mr. Mersch said no state could pass regulations or laws which impacted the rates charged by a charter bus company, the routes those companies used or the services the companies provided.

Mr. Mersch stated federal regulations did not prohibit a state from regulating the safety and insurance of charter buses. The law specifically gave the State and the TSA the ability to require the filing of tariffs. The TSA could not tell the

charter bus companies what they could charge. When a charter bus company submitted the tariffs it charged to the TSA, those fees would be available to the public.

Mr. Mersch said he had spoken with the NTC's legal counsel who had not submitted any proposed changes to the TSA's regulations. Mr. Mersch said he was confused by Mr. Fairman's statements as his legal counsel agreed with the modifications to the regulations suggested by the TSA.

Mr. Mersch stated there was no law in Nevada regarding the leasing of additional vehicles. He reiterated federal law prohibited the TSA from telling a charter bus company how many vehicles it could operate. The TSA's primary concern with charter buses was safety. Mr. Mersch added the TSA's regulations were safety-oriented.

Chair Nolan asked for and received clarification from Mr. Mersch regarding Mr. Fairman's statements on the difficulty in providing additional vehicles for last-minute leases. Mr. Mersch said the TSA's only concern was safety. As long as the additional vehicles were safe, there would be no additional requirements. Mr. Fairman would have to guarantee the additional vehicles he leased were safe to operate and he had performed a safety inspection on those vehicles. Charter buses in Nevada were required to carry the proper signage which indicated to the TSA that the vehicles had been through the process.

Senator Washington mentioned Mr. Fairman's concern with the signage for charter buses. Mr. Fairman indicated the signage only had to be two inches high, but the TSA required the signage to be larger. Mr. Mersch said the regulation required the lettering on charter buses to be two inches high and visible from 50 feet. The TSA used the two-inch requirement as a bench mark of lettering which would be visible from 50 feet. The whole point of the signage was not to be burdensome to the charter bus owners and informed both the TSA and members of the public who was operating a specific charter bus.

Senator Washington asked whether the TSA would cite a charter bus owner if the lettering on a charter bus fell within federal requirements, but was smaller than the standards contained in the TSA regulations. Mr. Mersch said the TSA was proactive and would inform charter bus owners of the need to correct lettering size per the law. He noted whether or not a person was cited by the TSA depended on whether the act in question had been deliberate or accidental.

Mr. Mersch stressed the TSA was a proactive agency which worked closely with the carriers in making their businesses easier to operate. Senator Washington corrected Mr. Mersch's statement concerning the provisions governing signage size as they were contained in the NRS. The Senator noted those provisions were contained in the NAC, not the NRS. Mr. Mersch added the TSA would enforce any law passed by the Legislature.

John Cardinalli said he owned Sunshine Taxi in Stateline. Mr. Cardinalli stated his experience with the TSA differed from the presentation the agency made to the Committee and asked the Committee to take whatever action was necessary to abolish the TSA.

Mr. Cardinalli said the TSA was an outdated organization no matter what name it operated under. The TSA staff did not know what it was doing and had no concept regarding the needs of the public. He stated he thought it would be better to abolish the agency instead of trying to fix the agency's operating problems.

Mr. Cardinalli addressed the TSA's application process. He said it was not as easy a procedure as presented to the Committee. He said he had been in the taxicab business since 1971 and had operated approximately 25 cabs in the Stateline area since 1985. He had never experienced problems with a government agency. There had not been maintenance, insurance or regulatory problems with his fleet. Mr. Cardinalli's problems with the TSA began when he attempted to expand his business operations into the Reno area.

Mr. Cardinalli stated the TSA's intervenor process was another means by which to give an applicant a difficult time. The TSA's manual was 350 pages and difficult to follow, as it contradicted itself. Mr. Cardinalli said the TSA would abide by one set of rules on one day, another set of rules on another day and the TSA held the applicants to different standards. The TSA's application process was adversarial and geared towards the TSA protecting those applicants or owners it favored over those it did not favor.

Mr. Cardinalli said there were taxicab companies in Reno which the TSA was protecting. Mr. Cardinalli's application was rejected by the TSA due to that agency's nitpicking. He stated the TSA would have reasonable explanations for the Committee as to why his application had been rejected.

Mr. Cardinalli said the TSA was not user-friendly. The TSA's rule book did not address public or community service. The rule book contained needless reports and paperwork required for the TSA's annual report. Mr. Cardinalli said despite the TSA's paperwork requirements, it was not interested in the time required to pick up passengers, what the drivers and owners did to accommodate the public's needs or their promotional campaigns for the needy.

Mr. Cardinalli stated the TSA was interested only in having the rules followed. As an example, he cited the process which had to be followed when a company requested a rate increase. The TSA provided for an automatic 10-percent rate increase which taxicab companies were allowed to take once a year. He noted that a 10-percent increase was too much in most cases and did not track with the cost-of-living increases. When a taxicab company requested a rate increase lower than the permitted 10-percent increase, the application could be rejected 2 or 3 times before receiving approval. Mr. Cardinalli said the TSA did not check to see what rates were being charged prior to approving a request for a rate increase.

Mr. Cardinalli said his taxicab fleet was also licensed by the State of California due to the proximity of the California border to Stateline. Mr. Cardinalli stated the TSA had not performed a safety inspection on his fleet, checked the meters or driven the vehicles. He said it appeared as though the paperwork associated with a rate increase was more important than the actual increase.

Mr. Cardinalli referred to the TSA's application process. He said the application process was so adversarial that the applicants had to retain legal counsel. The process was lengthy with specific attention paid to an applicant's financial records. Mr. Cardinalli said he found the TSA's attention to an applicant's financial status laughable as the agency had been audited and found lacking by the auditors.

Mr. Cardinalli reiterated his previous testimony regarding the abolishment of the TSA. He requested the agency's budget and staffing be reduced or possibly merge the agency into another State agency as a division.

Mr. Cardinalli added in the other states, the taxicab industry was regulated at a county or city level, not a state level. He said it did not make sense for a Las Vegas-based state agency to have authority over transportation issues throughout the rest of Nevada's counties.

Donald L. Drake, Sunshine/Yellow Cab, referred to NRS 706.151 which defined the legislative purpose of the TSA. He said the safety and welfare of the traveling public were outlined in that statutory provision, which implied commercial vehicles in Nevada were safe. Mr. Drake reiterated Mr. Cardinalli's statements regarding the TSA's failure to perform safety inspections on commercial vehicles in Nevada. In 2004, the TSA asked Mr. Drake to fax the results of approximately 30 vehicle inspections to the TSA's Las Vegas office. The faxed statements constituted the annual inspections on the 30 vehicles. He said the TSA made the same request of him in February 2005. Mr. Drake stressed the fact that the vehicles were not physically inspected by the TSA.

Another provision of NRS 706.151 mandated safe, adequate, economical and efficient service to passengers. This statutory provision required the meters in taxicabs be inspected for accuracy; however, that inspection was rarely conducted by the TSA. Mr. Drake said the State of California regularly inspected the taxicabs operating in Stateline, but noted the TSA had not inspected the taxicabs at Stateline since 1997. For the TSA to say otherwise would be misrepresentation to the Legislature. He added he had been operating taxicabs in northern Nevada for approximately 40 years.

Mr. Drake addressed the audit of the TSA operations and said the audit put the TSA on notice. He said he did not think the Legislature should overlook any of the audit recommendations.

Chair Nolan asked whether Mr. Drake was requesting the TSA conduct regular vehicle inspections or if his comments were intended to demonstrate the TSA was not performing its duties and should be eliminated even though agency representatives stated otherwise. Mr. Drake said the Legislature gave the TSA the authority to inspect vehicles and meters. As those inspections had not been performed as mandated by law, the agency should be eliminated.

Chair Nolan asked Mr. Mersch to address the issues raised by Mr. Drake's and Mr. Cardinalli's testimony. Mr. Mersch said Commissioners Avants, Breslow and Maxson-Rushton described the application process exactly. The process was conducted in an adversarial fashion. TSA's regulations mandated all administrative proceedings were investigatory in nature. The TSA staff wanted to resolve all issues associated with an application. The role of the TSA staff was similar in nature to the staff of a city council or county commission. Staff looked at all matters pending before the TSA and presented recommendations

to the commissioners. The commissioners were the finders of fact in all matters pending before the TSA and would make the final decision. The TSA staff worked with all applicants to help them through the application process. The TSA staff was experienced and had a wealth of knowledge.

Mr. Mersch stated taxicabs and limousines in Nevada were not regulated by the federal government. Nevada law required the owners of taxicabs and limousines to share information with the TSA. The TSA wanted to make sure the businesses were healthy. He said the TSA reviewed the number of gallons of fuel expended, the trips per vehicle and detailed financial information to ensure a company was operating in a safe manner. When a company encountered financial difficulties, safety suffered. The insurance would not be paid, drug testing of drivers was halted and no vehicle maintenance or repairs were undertaken.

Mr. Mersch stated the NRS required an applicant to be financially fit, able and willing to operate a taxicab or limousine service in Nevada. The TSA's ultimate concern was the safety of the vehicles in which people would be riding.

Mr. Mersch explained the intervenor role was also contained in the NRS. He paraphrased NRS 706.391 by saying a person has the right to be an intervenor in the process or to be a concerned party in the process, but had to demonstrate a direct and substantial interest in the process. Competition alone was not a basis for intervention. Intervenors had to demonstrate an applicant's proposed business would cause a detrimental and unreasonable effect on their businesses.

Mr. Mersch said business owners should have the right to participate in the application process if a proposed business would affect an established operation. He noted Nevada's intervenor process was unique, but was used by other industries. The intervenor process was fair and limited by the TSA commissioners.

Mr. Mersch addressed Mr. Cardinalli's application. He stated Mr. Cardinalli failed to provide the TSA with the financial documents it requested from him and refused to cooperate with the TSA staff. The TSA could not process Mr. Cardinalli's application due to the lack of information. Mr. Mersch stressed that none of the TSA staff or commissioners had any ill will towards Mr. Cardinalli. Mr. Mersch stated he met with Mr. Cardinalli's attorneys to

discuss Mr. Cardinalli's application with the goal of working things out, but had been unsuccessful in that regard.

Ron Larson, Larson's Van Service, said he had been working with the TSA since 1992. He stated his business was regulated by the U.S. Department of Transportation (DOT), not the TSA. Despite the federal regulation, the TSA insisted on regulating Mr. Larson's business. Mr. Larson transported airline flight crews to and from their hotel accommodations during extended layovers in Las Vegas.

Mr. Larson had been cited by the TSA for transporting a flight attendant and her children to McCarran International Airport. Mr. Larson said the TSA did not provide prior warning not to transport family members of flight crews. He added the airlines paid for the transportation, not the flight crews.

Mr. Larson said he learned his company did not have to be licensed by the TSA in order to transport both flight crews and their families from the jetways to the hotels and back.

Mr. Larson said the TSA did not know how to place a vehicle in the out-of-service mode. He asked Mr. Mersch how a vehicle would be placed out of service. The Chair directed Mr. Mersch to answer Mr. Larson's question.

Mr. Mersch said he was not a TSA enforcement officer and would have to defer the question to a TSA enforcement officer. He said, generally speaking, when there were safety concerns about a vehicle, it would be monitored to ensure it was not being used to carry passengers until the safety concerns were corrected.

Mr. Larson said Mr. Mersch was wrong. He wanted to know whether or not it was a fact that the TSA had put his company out of service for three days. The reason given had been nails were allegedly found in the tires of one of his vans. Despite only one van being affected, Mr. Larson's entire fleet had been put out of service.

Chair Nolan said he could sense Mr. Larson's frustration with the TSA. He said he thought Mr. Larson's complaint was that the TSA should not have the ability to regulate Mr. Larsen's business. Mr. Larson said, "That is correct," and added the TSA continued to overstep its boundaries. Mr. Larson said the TSA removed

records from his office and used them in an administrative hearing without a subpoena being issued. Mr. Larson said he had been harassed by TSA employee, Ron White, over a piece of luggage which supposedly fell out of Mr. Larson's van. The National Transportation Safety Board contacted the TSA regarding the incident even though the DOT had oversight over Mr. Larson's business. Mr. Larson said Mr. White appeared to be more interested in another piece of luggage which had been left behind at one of the hotels.

The Chair informed those present that the Committee was a public body with the ability to create statutes which affected the oversight of state agencies. The Committee could take action regarding the TSA if there was sufficient cause for the Committee to do so.

Chair Nolan said there were three people with serious complaints regarding the TSA and the manner in which it operated. Chair Nolan directed Committee staff to draft a letter on his behalf asking if there were additional issues which needed to be addressed.

Mr. Cardinalli said Mr. Mersch stated the TSA staff acted like a city council staff. In reality, the TSA staff did not operate in that fashion. He noted the TSA had been sued by a company which was attempting to start a limousine business. The court decision found that the TSA's regulations were burdensome. As a result of the court's decision, the company was certificated to operate a limousine business. Commissioner Breslow stated, "That's all lies."

Mr. Cardinalli said he refused to provide the information when Commissioner Breslow asked him if he wanted to go to an administrative hearing without producing the additional information. Mr. Cardinalli opted to proceed with the administrative hearing and not produce the additional information. He added despite Mr. Mersch's statements that the TSA staff had no ill will towards Mr. Cardinalli, it appeared as though Mr. Mersch had sabotaged the hearing on Mr. Cardinalli's application. Mr. Cardinalli informed the Committee that it could take any action it wanted against the TSA as long as taxicabs were removed from its jurisdiction.

Chair Nolan reminded those present that the testimony received by the Committee influenced the actions and votes of the Committee. He said the statements made by those testifying had to be truthful and accurate as the

State considered testimony before a legislative committee to be sworn testimony.

There being no further business, the meeting of the Senate Committee on Transportation and Homeland Security adjourned at 4:02 p.m.

RESPECTFULLY SUBMITTED:

_____
Lee-Ann Keever,
Committee Secretary

APPROVED BY:

_____
Senator Dennis Nolan, Chair

DATE:_____