MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR

Seventy-Sixth Session
May 4, 2011

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 1:10 p.m. on Wednesday, May 4, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblywoman Maggie Carlton
Assemblyman Richard (Skip) Daly
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Cresent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Michael Roberson, Clark County Senatorial District No. 5
Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Sara Partida, Committee Counsel
Andrew Diss, Committee Manager
Diane O'Flynn, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association
John Sande III, representing Nevada Bankers Association
Robert Armstrong, representing Beacon Trust Company
Keith L. Lee, representing Sutton Place Limited
George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry
Paul J. Enos, representing Nevada Motor Transport Association and Nevada Towcar Council
Richard Perkins, representing R&S Investments
Danny Thompson, representing Nevada State AFL-CIO
Michael Geeser, representing AAA Northern California, Nevada, and Utah
Dennis Milk, President, Tow Guys, Las Vegas, Nevada
Brian O'Callaghan, representing Las Vegas Metropolitan Police Department
Marlene Lockard, representing Nevada Collision Industry Association
Randy Soltero, representing Southern Nevada Building Trades Council
Mike Sullivan, representing Quality Towing
Scott Scherer, representing Quality Towing
Sam McMullen, representing Copart, Inc.
Mark Fiorentino, representing Greater Nevada Auto Auctions, LLC
David Walker, representing Walker Towing, Henderson, Nevada
Rex Ewing, representing Ewing Brothers Towing, Las Vegas, Nevada
Andy MacKay, Chairman, Nevada Transportation Authority, Department of Business and Industry
Matthew Saltzman, Attorney, Kolesar & Leatham, Las Vegas, Nevada

Chair Atkinson:
[The roll was called, and a quorum was present.] We would like to welcome our audience in Carson City and Las Vegas. We have five bills before our Committee this afternoon. The bills will be taken a little bit out of order today. We will open the hearing with Senate Bill 136 (1st Reprint).

Senate Bill 136 (1st Reprint): Revises provisions governing certain real property held by banks. (BDR 55-737)

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
Senate Bill 136 (1st Reprint) is a very simple bill that is an effort to correct an issue that we have had problems with under the current market conditions. Nevada law, for many years, has required that when a bank took possession of property through foreclosure or settlement of debt, it had to write it down 10 percent every year on the anniversary. In the current environment, we also have to have the property appraised.

What has happened is that those numbers have diverged. National banks have a five-year holding period, whereas Nevada charter banks have a ten-year period. National banks do not have to take this stated percentage right down. They carry it at its appraised value. This brings Nevada charter banks into line with national banks and takes away this automatic write-down. This will benefit the balance sheets of community banks in the state.

Bill Uffelman:
For the record, section 1 of Senate Bill 198 (1st Reprint), when you get to it, is the same. The benefit to us as banks under S.B. 198 (R1) is that it is effective on passage, so if you pass it and the Governor signs it, we get the benefit earlier than October 1. I have had bankers calling me up saying, "When is this going to go through?" This is because the bill does impact their balance sheets.

Assemblyman Segerblom:
For the record, I am on the board of directors of a community bank. Mr. Uffelman, can you tell the Committee how many community banks have disappeared in the last couple of years?

Bill Uffelman:
We have lost about a third of the banks in this state. Some of them were not community banks in that sense, but they in fact had state charters. The reality is we have lost about a third of the banks. We have gone from over 50 to under 40, including national banks. Of the state chartered banks, if you take what we call retail community banks or business banks with the loss two weeks

ago, I think we are down now to fewer than ten real community banks, including First Asian Bank in Las Vegas.

[Assemblywoman Carlton assumed the Chair.]

Assemblyman Goedhart:
You said currently, that whatever they have on the books, they would be required to write it off at the rate of 10 percent per year. In the language of the bill, I do not see so much about the write-down time, but I see that it may not be held longer than five years.

Bill Uffelman:
There is no percentage in the amended bill. The requirement is that within five years after the acquisition and any extension that I might get, I have to dispose of the property. So in the normal course of events, I will get rid of it sometime during that five-year period after I have acquired it. If I have not gotten rid of it within five years, I can request a five-year extension. The value that I carry on the books is under the Financial Accounting Standards Board (FASB) rules, and under the Federal Deposit Insurance Corporation (FDIC) rules. I have the property reappraised annually and revalued annually, if not more often.

Assemblyman Goedhart:
And you are required to write down the value of that asset to the current appraised value?

Bill Uffelman:
To the current appraisal.

Assemblyman Goedhart:
So even if it happens to be 30 percent in one year, it is 30 percent, it is not 10 percent per year. The bill says unless they get an exemption they can hold it only for five years. That to me seems to be what the bill is getting at. It is not about what the banks can write down every year.

Bill Uffelman:
Yes, you are correct, Mr. Goedhart; it is the holding period that the bank is permitted. The value that the bank carries on its books is according to the FASB accounting rules and according to the FDIC requirements. This gets the State of Nevada out of that kind of dilemma. I had a bank last fall, with the 10 percent write-down, where the property was appraised at more than what I now had to write it down to, and this would alleviate that.

Assemblyman Goedhart:
What part of the language would alleviate that?

Bill Uffelman:
The fact that we took out the mandatory 10 percent write-down.

Assemblyman Goedhart:
Despite taking it out, that allows you to follow what is called generally accepted accounting principles, according to the FASB. But once again, I do not know why the state should be telling the banks how long they can hold on to a piece of property.

Bill Uffelman:
Because it is the national rule for national banks. It is the rule that everybody else operates under so it aligns state charter banks with the national bank rules.

Acting Chair Carlton:
Are there any other questions? [There were none.]

John Sande III, representing Nevada Bankers Association:
I am also on the board of Western Alliance Bancorporation, which owns banks in California, Arizona, and Nevada, including Bank of Nevada in southern Nevada and First Independent Bank in northern Nevada. This issue has really become big for Nevada banks in particular, and I would say, Clark County more than any other place. That is because if you do a foreclosure on a commercial property, these are usually large commercial properties. If you do a foreclosure under existing Nevada law, you have to write it down 10 percent each year regardless of whether the value of the property has gone down. The FDIC will require you to make appraisals, on a regular basis on your Other Real Estate Owned (OREO) property, that is, foreclosed property. They make you do appraisals, and if the value of the property is less than what you have on your books, you have to write it down. The mandatory 10 percent existing law goes back to a long time ago, and you have to write it off and take it against your income even though the value of the property may not have gone down by 10 percent. So this makes a lot of sense. It puts you in compliance with generally accepted accounting principles, and I think it helps Nevada banks, because hopefully things are stabilizing now and we will not have as many write-offs because of OREO property going down in value.

Acting Chair Carlton:
Any questions for Mr. Sande?

Assemblyman Goedhart:
But in Nevada, is it not about 70 percent of folks who have mortgages that are underwater? That would tend to make me think that when a bank forecloses on a property, the appraised value is going to come in less than what it is on the books, because if a person owed less on the property than it was worth, he would not let it go into foreclosure. He would simply sell it for more than he owed on it, hence the market said it was worth that much. Maybe this has some applicability to commercial real estate, but I do not see how much applicability it has towards the homeowner.

John Sande III:
I think you are exactly right. Most of the banks that are governed by FDIC in Nevada, like Bank of Nevada, are mostly concentrating on nonresidential mortgages. When you foreclose on a property, you have to write it down to whatever the appraised value is at the time of foreclosure. Especially in southern Nevada, because of the economy—which now looks like it is stabilizing—the appraised value on a property you acquire is oftentimes less than what it was originally appraised at. Then you have to take a write-off and it goes through your income statement. This also is very important because you are graded by the FDIC as far as the quality of your assets, and if you continually write off assets every year like the 10 percent rule would require you to do, you get a lower score, and your FDIC insurance goes up if your bank is rated lower than other banks.

Acting Chair Carlton:
Any other questions for Mr. Sande? I have one quick one for either you or Mr. Uffelman. Are there any tax implications related to this write off?

John Sande III:
No, because you are subject to the Government Accountability Project (GAP) as far as doing your financial statements if you are doing them publicly. It really should not. Obviously, if you write off something on your books, that can be written off against your income. But as you probably have seen from many banks in southern Nevada, it has been tough to make any income, and so a lot of banks have losses. But in the long term it seems that things are turning around in southern Nevada, and I think everybody is pretty optimistic we are going to get out of this recession.

Assemblyman Conklin:
Mr. Sande, Mr. Uffelman, did we not consider this body of *Nevada Revised Statutes* (NRS) last session? Not at all?

Bill Uffelman:
We did not consider this section or this provision last session. We have not dealt with this previously that I am aware of.

John Sande III:
Last session, we were starting to get into these tough times. I was Chairman of the Board of Directors for First Independent Bank for about ten years, and I think we had one write-off of a loan that went sour. Now, obviously, things are different. In last session it was not an issue because you did not have any OREO.

Acting Chair Carlton:
Are there any other questions? [There were none.] Is there anyone else who wishes to testify in favor of S.B. 136 (R1)? Is there anyone here in opposition to S.B. 136 (R1)? Anyone neutral? [There were none.] We will close the hearing on S.B. 136 (R1). We will open the hearing on Senate Bill 259 (1st Reprint).

Senate Bill 259 (1st Reprint): Revises provisions governing certain trust companies. (BDR 55-629)

Robert Armstrong, representing Beacon Trust Company:
I would like to introduce this bill. Nevada law allows for the formation and operation of trust companies restricted to the management of a single family's trust business for a number of years. They do not operate for and do not serve the public. The Nevada Legislature clarified the law in 2009 in a new chapter, *Nevada Revised Statutes* (NRS) Chapter 669A. Since its enactment the law has attracted new trustee business to Nevada, creating new jobs, purchases, rentals, and vendor relationships with Nevada companies. Senate Bill 259 (1st Reprint) is designed to further enhance the provisions of NRS Chapter 669A, which allows families through private trust companies to better manage and administer specialized assets held in trust, which commonly include family businesses and concentrated positions in public and private companies.

The enactment of NRS Chapter 669A and the statutory provisions to the Nevada trust laws that have been enacted over the last several Legislatures have allowed Nevada to maintain a leadership position among six other jurisdictions in this area. Currently, Texas and Florida are several of the new jurisdictions considering passage of legislation for family trust companies similar to Nevada's, and New Hampshire's statutory framework. To give you a little side note, New Hampshire has reported that it has attracted $315 billion of new trust business since the enactment of its family trust company law and the

updating of its new uniform trust code laws. An article appeared in the *Boston Herald* on April 5, 2011, which reported on the 50 percent increase in state chartered trust companies in New Hampshire as a result of this law.

Senate Bill 259 (1st Reprint) enhances family trust administrative flexibility and administrative asset management, accounting, and dispute resolutions, while avoiding having to go to court and burdening the court system. Key elements in selecting jurisdictions for these families is a strong public policy to enforce the intent of trust laws and the terms of the trust declaration, to enhance both flexibility and a positive business regulatory environment. S.B. 259 (R1) is designed to allow Nevada to keep abreast of the family trust company laws emerging with increasing frequency in other jurisdictions, most notably in Wyoming, South Dakota, Alaska, Delaware, and New Hampshire. As previously noted, Texas and Florida are now both actively considering attracting this trust business as well.

I will now review the bill, section by section. Section1 states that this is an amendment to NRS Chapter 669A. Section 2 provides a new definition of "interested person," which will be used in our discussion later on concerning nonjudicial settlements. Basically, an interested person is anybody who is going to be a beneficiary or a trustee or potentially a creditor in a trust situation. Section 3 confirms the extent of the trust company's liability if the trust company acts in good faith and in reasonable reliance on the trust instrument. Section 4 is a jurisdictional provision which confirms that NRS Chapter 669A applies only to family trust companies that are licensed family trust companies. Section 5 sets forth requirements and duties trust companies must observe if they fall within NRS Chapter 669A. They must manage these funds in accordance with the trust instrument. They must administer the trust in the interest of the beneficiary, they must administer it in accordance with the chapter, and they may exercise discretionary powers granted to the fiduciary power of administration granted to them. Section 6 was deleted from the bill in the Senate.

Section 7 is one of the larger sections of this bill. It identifies a number of transactions that are commonly engaged in by family trusts. As long as they make certain minimum defined standards and relationships in order to avoid conflicts of interests, they are going to be allowed to proceed and not be voidable without court approval. Sections 8 through 10 allow for the resolution of trust administration matters through the use of a nonjudicial settlement between interested persons, with the definition of "interested person" that we introduced in section 2; this includes required notices and a statute of limitations period that are expressed in the statute. Section 11 imposes accounting requirements for family trust companies reporting to beneficiaries of

family trusts. Section 13 modifies the definition of "family affiliate" to recognize that a material ownership relationship is a key factor in determining family affiliation. Section 14 exempts family trust companies that are otherwise exempt under federal law from having to qualify as an investment adviser under state laws. Section 15 requires a trust to be administered in court under the Uniform Prudent Investor Act, but if it observes also the terms of the trust instrument, the trust instrument will control. That concludes my formal remarks.

Acting Chair Carlton:
Any questions?

Assemblywoman Bustamante Adams:
Just for my edification I want to make sure that I understand the difference between a family trust company and a retail trust company. Could you clarify that for me?

Robert Armstrong:
A retail trust company is regulated by NRS Chapter 669 and is open for business to the general public. It is regulated under that chapter by the Division of Financial Institutions (FID). A family trust company is able to operate trust business only for a single family, and the single family is defined in NRS Chapter 669A. So that is the main distinction as well as the fact that a family trust company cannot serve the public.

Assemblywoman Bustamante Adams:
On page 13 at the end of the bill, I do not see a date when the bill would go into effect. Do you have any specific desire, if the bill does pass, as to when it would be implemented?

Robert Armstrong:
It would be terrific if it could be enacted and go into effect immediately after signature by the Governor, as opposed to an October 1 date.

Acting Chair Carlton:
So you would it want upon passage and approval?

Robert Armstrong:
That is correct.

Acting Chair Carlton:
Please make sure the Chair is aware of that.

Assemblyman Ohrenschall:
I have a couple of questions. A handout that was given to me says that this bill designates Nevada as the principal place of trust administration for these family trusts, am I correct?

Robert Armstrong:
No, that was deleted in an amendment to the Senate legislation.

Assemblyman Ohrenschall:
So that is no longer in this version of the bill?

Robert Armstrong:
Correct.

Assemblyman Ohrenschall:
My next question then is, with these amendments to the Uniform Prudent Investor Act, how far are we departing from the Act and do you foresee any problems with the other states that have not enacted similar legislation?

Robert Armstrong:
The Uniform Prudent Investor Act allows trust companies to hold concentrated positions in family businesses as long as they are observing the Act and they cite what are called special circumstances. What we are doing with this legislation is primarily identifying family businesses and concentrated stock positions as special circumstances. So we are being consistent with the Uniform Prudent Investor Act, but it goes further. This law allows us to vary from the Uniform Prudent Investor Act if the trust instrument—and a lot of these families have very sophisticated trust instruments—specifies exactly how they want the assets to be administered. So to that extent, we are varying it from the Uniform Prudent Investor Act.

Assemblyman Ohrenschall:
You mentioned that these companies handle just one client, that is, one family. Is that enough for them to stay in business, doing business with just one family?

Acting Chair Carlton:
They are very rich. It is a lot of money.

Robert Armstrong:
It is enough for them to stay in business because of the nature and extent of their asset holdings. They find great economies of scale. The reason these types of issues are coming to the forefront is because retail trust companies and

national trust companies are not equipped to manage these specialized family assets. The families have hired top-notch executives to manage their assets, and they are allowed to do some succession planning with regard to the families that is not available if they use a corporate fiduciary or a retail trust company.

Assemblyman Hickey:
Mr. Armstrong, the current businesses that help individuals create family trusts for families to protect their assets are typically drawn up by a certified public accountant (CPA) and an attorney. Would they automatically in any way become qualified to serve in this capacity under the bill, or are we talking about two different entities?

Robert Armstrong:
Probably two different entities, assuming that what happens is that these families control these corporations that are serving as family trusts. Actually, the entity that serves as the family trustee and the family trust company is then hiring individuals to serve in officer and administrative capacities administering these trusts. Anecdotally, we have had one client who since the enactment of this legislation in 2009 will have, by the end of the year, 20 employees in Washoe County who would not otherwise exist without this legislation.

Acting Chair Carlton:
I remember this legislation in 2009, and we were not sure how many folks were going to take advantage of this. If I heard you correctly, we are talking now about 11 families in the state who have benefited from this legislation?

Robert Armstrong:
That was the last report I got from the Financial Institutions Division as of January 1, but I know personally that there have been inquiries to my colleagues around the state of probably 10 to 15 new families this year.

Acting Chair Carlton:
Just out of curiosity, how do you sell Nevada to these folks? What is the advantage of coming to Nevada and hopefully there are not any tax implications?

Robert Armstrong:
The advantage to Nevada—actually taxes do not drive it much—is our trust laws. Taxes have a little bit to do with it. The ability to get licensed here is more accelerated, and because there is not as much activity going on in the state, the Financial Institutions Division in this area is very responsive. One of the big advantages is climate; when deciding where to locate a family trust

company, Nevada, and especially Las Vegas, always beats out South Dakota in the winter. So these families regularly travel to Las Vegas to meet, usually quarterly, and are spending a lot of time at our establishments in Las Vegas as well as Reno. I think the natural attractiveness of our state is probably the biggest draw along with the great job the Legislature has done in the last couple of years with the development of our trust laws.

Acting Chair Carlton:
So the fact that there is no personal income tax in this state is not a driving factor for these family trusts? Are they not depositing their wealth within our borders to protect themselves?

Robert Armstrong:
Our main competitor is New Hampshire, and it taxes in-state residents as beneficiaries under its income tax laws, but excludes taxation of beneficiaries who are living out of state. Delaware and South Dakota do the same thing. So in order for us to remain competitive, we need to retain that type of situation we have right now, which we have by default.

Acting Chair Carlton:
Those monies then are located here in this state, or are they just managed in this state?

Robert Armstrong:
The assets are managed and administered in this state.

Acting Chair Carlton:
But they are not actually located in this state?

Robert Armstrong:
Some are located here. Many have brokerage firms located in New York or San Francisco, but they have banking relationships here in the state. It is a requirement for licensed trust companies to have a bank account and adequate capitalization here to operate.

Acting Chair Carlton:
Any other questions? There are none. Thank you, those were very good answers.

Keith L. Lee, representing Sutton Place Limited:
Sutton Place Limited is an administrator trustee of a large family trust of a single family. To answer Mr. Hickey's question, we have been located in Reno for a number of years. We currently have about 35 employees in the Reno office,

including accountants, lawyers, and investment advisors. We worked with the Legislature last session to develop this whole licensing and regulatory scheme. We were pleased to work with Mr. Armstrong and his clients and with the Senate in developing the amendments that Mr. Armstrong talked about that now comprise the bill. I might indicate just for informational purposes that my client, Sutton Place, is an unlicensed family trust company. Two years ago, we developed a licensed trust company and an unlicensed trust company, all as part of a regulatory scheme. The primary difference is that it depends upon the business model and the direction that the family trust wishes to go. There are certain advantages at a federal level to being licensed in the state. There are other business models of a particular family trust where it makes no sense to be licensed in the state. My client happens to be one of those who has chosen not to be licensed in any state because his trust did not need the advantages of being licensed under the federal scheme.

We certainly support the bill as it was amended and we appreciate Mr. Armstrong's diligent and long work on this bill to bring it to a point where we think, as he has indicated, the law makes Nevada a haven for these family trusts to come here and not necessarily bring their assets, but to create offices that have employed a fair number of people and all at nice salaries.

Assemblywoman Bustamante Adams:
Are the unlicensed family trusts also required to have a bank account here in Nevada?

Keith L. Lee:
Yes, they are required to have a bank account, because they all have a presence here. As was said previously, my client has 35 employees, so he certainly has a bank account. Clearly it is part of the operational structure.

Robert Armstrong:
I want to clarify, just a little bit. An unlicensed family trust company is not required to have a bank account, but as a matter of operation, it does. Unlicensed family trust companies want to follow the guidelines set forth for licensed trust companies very much, because that represents the best practices in the area. When you vary from the best practices, you create liability exposure, so even though the statute does not require a bank account for an unlicensed trust company, my experience is that all of them have them, and very sizeable ones, here in the state.

Assemblywoman Bustamante Adams:
So, Mr. Armstrong, if this piece of legislation passes, where does that put Nevada in regards to best practices in this type of industry?

Robert Armstrong:
We will be at the same level as New Hampshire, which now has emerged as the leading jurisdiction for family trust companies.

Acting Chair Carlton:
Are there any other questions?

Assemblyman Ellison:
When they set up these trusts and move these companies here, it usually creates more businesses within the state. That is what I have seen in the past, and it is a large benefit for the state when these companies set up business and/or relocate to Nevada. Is this not correct?

Robert Armstrong:
That is absolutely correct. We are getting people visiting Nevada who would not otherwise come here, and once they are here, we sell Nevada and all the attributes that Nevada has to them, and they get tired of me telling them that.

Assemblyman Ellison:
I think this could be a windfall in the future, and our state needs that right now.

Acting Chair Carlton:
Are there any other questions? Thank you, gentlemen very much. Is there anyone else wishing to testify in favor of S.B. 259 (R1)?

George Burns, Commissioner, Division of Financial Institutions, Department of Business and Industry:
I am here today to testify in support of S.B. 259 (R1). A review of this bill by the Division indicates that these measures are largely technical and legal enhancements to facilitate family trust businesses and do not create any regulatory concerns from the perspective of the FID. We believe that this will help enhance as well as extend the family trust business in Nevada. Also, for the record, there was a question earlier about how many family trust businesses we have right now. We have 11 licensed family trust companies and 10 unlicensed family trust companies, and it is growing every day because of the beneficial legislation that we have. I believe that these enhancements will add to that business enhancement as well.

Acting Chair Carlton:
Any questions from the Committee? [There were none.] Now we will proceed to opposition. Is there anyone opposed to S.B. 259 (R1)? Anyone in neutral? [There were none.] We will close the hearing on S.B. 259 (R1). We will open up the hearing on Senate Bill 407 (1st Reprint).

Senate Bill 407 (1st Reprint): Revises provisions relating to tow cars. (BDR 58-1031)

Paul J. Enos, representing Nevada Motor Transport Association and Nevada Towcar Council:
The bill as currently drafted gives the Nevada Transportation Authority (NTA) the ability to create a model tariff and audit the tariffs that are currently in place and this would address the charges for non-consent tows. A non-consent tow is when a tow operator tows a vehicle at the request of someone other than the owner of that vehicle. Usually this involves law enforcement or the owner of a piece of property where the vehicle was illegally parked and somebody wanted to have the vehicle moved. Since it is a non-consent tow, all these charges are regulated by the NTA through tariffs filed by the tow operators that are approved by the NTA. Currently, we do have an issue with some of the charges in these tariffs. The definitions are not always consistent with one another. It does make it a little unclear and difficult to decipher what certain terms mean. For example, a winching charge can mean something different to different carriers, and similarly, a hook-up fee, lot visit, or cleanup fee can all mean different things to different operators. What we did in this bill was to ask the NTA to audit all the charges that are in the tariffs and come up with a model tariff, so that we have some consistency throughout the industry to ensure that the charges the tow companies are levying for these non-consent tows are not erroneous. We believe that this model language will help allay a lot of those concerns that have been brought up in previous testimony regarding this bill. We understand that there may be an amendment to the bill. Would you like me to speak to that possible amendment now?

Acting Chair Carlton:
If it is not your amendment, no. You are here doing the bill, so we will let the people who are proposing the amendment handle it.

Assemblywoman Bustamante Adams:
On page 3, can you speak to what happens once the audit is done? What is the next step after that?

Paul J. Enos:
After the audit, where they go through the charges and determine what is appropriate, the NTA would then have to adopt a model tariff, so all those terms for the different charges would all be in concert with each other. Sometimes there could be a charge called a broom fee. A broom fee may cost somebody an additional $20 or $30, whereas a cleanup fee alone could cost just $20. So we want to get all these terms consistent in the tariffs so that you do not have an erroneous charge, like a broom fee being tacked onto a cleanup fee or

some other charge. That is the difficulty right now with how the tariffs are written. They are written and approved by the NTA, but there is no consistency in the terms that are used or in the definitions of what the charges actually mean. By doing this, we could have a reasonable determination of what those charges should be for that specific item.

[Chair Atkinson resumed conducting the meeting.]

Chair Atkinson:
Mrs. Bustamante Adams?

Assemblywoman Bustamante Adams:
So is the time frame addressed on page 3, line 12, as to when this audit would be completed? [On line 12, section 4, subsection 3 set the report deadline at, on, or before March 1, 2012.]

Paul J. Enos:
Yes, and I believe that Mr. MacKay with the NTA would tell you that he could actually beat those dates in the bill for getting these regulations approved and promulgated.

Assemblywoman Bustamante Adams:
If there was a suggested date for line 12 on page 3, do you have any indication of how soon the audit would be able to be done?

Paul J. Enos:
I think that is a question that Chairman MacKay with the NTA can answer better than I could, since he would be doing that audit and adopting those regulations.

Assemblywoman Bustamante Adams:
I would like to see the time frame moved up. I am concerned for our consumers who have to go have through this process, and I would like to make sure that it gets done sooner rather than later.

Chair Atkinson:
Are there additional questions?

Assemblyman Goedhart:
The way I read this bill, it affects the entire state, is that correct?

Paul J. Enos:
Yes, that is true. This bill would create a model tariff for the State of Nevada. That is not to say that the charges are going to be same across the state. There are different business circumstances for companies in different locations. If you have a tow yard in Lake Tahoe, you are going to have a much higher storage fee for that yard then you will at many other jurisdictions just because of the cost of that real estate and having that yard located in that particular area.

Assemblyman Goedhart:
According to your testimony, this is only in relation to setting up the model tariffs for non-consent tows, is that correct?

Paul J. Enos:
That is correct. The NTA is precluded by federal law from regulating consent tows. It can regulate only non-consent tows.

Assemblyman Goedhart:
So in this case, when you say you are going to develop a tariff that could have regional differentials in fees based upon the cost of doing business, say, in Lake Tahoe versus Clark County, is it your intent that these model tariffs provide a price range differential based upon being located in different areas of the state? Or will it be based on mileage? Or are you going to build ranges within that model tariff system?

Paul J. Enos:
Right now there are currently ranges in similar areas too, so there may be a different range such as exists right now in the City of Sparks. One tow company may have a different charge than another tow company because of those particular business circumstances. By having a model tariff we will be able to define exactly what those charges mean, and the NTA will be better able to determine if those charges are appropriate by analyzing the other charges in the same area. So there still will be a range. It is not to say that there will be a standard charge or standard rate for every charge in each area. It is just going to say that for all similar charges, they will have the same definitions, so there will not be a question of what a winching fee means as opposed to a hook-up fee, or a broom fee as opposed to a cleanup fee.

Assemblyman Goedhart:
Will they be setting a maximum charge or not?

Paul J. Enos:
The NTA does not set a maximum or minimum charge when you submit a tariff; that tariff is the fee that you can charge, and you cannot deviate from that fee one penny.

Assemblyman Goedhart:
But that is a tariff. You just said what you are doing now is to provide a range of fees. So it is not really providing for a tariff. Merely defining terms for the sake of consistency and providing general information to determine the range of fees in a particular area are not the same thing.

Paul J. Enos:
Yes, that is correct. But as far as the fees that can be charged by a particular tow company, I want to make sure that the tow company is consistent. They do not have a range. There could be a range with the different tow companies in the area or in the state, as far as what they can charge for each particular item. However, when that tow company is charging that fee for that item, that fee is set in stone by the NTA. It cannot change.

Chair Atkinson:
Are there any additional questions?

Assemblyman Hickey:
Briefly, Mr. Enos, could you describe for us why this bill is needed? I see it passed unanimously in the Senate, but I would like to know a little of the background concerning what problem it addressed.

Paul J. Enos:
About a year ago, some insurance companies approached the NTA, feeling that they had been gouged on some fees they were being charged, such as auction prep fees or cleanup fees. They asked the NTA to investigate the charges. When the NTA looked into these charges, it realized it was difficult to determine what some of these charges entailed, because there were no consistent, recognized industry wide definitions. So when this bill came forward in the Senate, it was very different from the bill when it was first introduced. They spoke a lot about the need to allay some of the costs of these fees that were being levied by the towing industry. We believe that the current language we put into S.B. 407 (R1) is the best way to address those issues.

Chair Atkinson:
Mr. Enos, a moment ago you wanted to cover an amendment. Are you talking about the latest amendment or the amendment that was proposed in the Senate?

Paul J. Enos:
Mr. Chair, I have not seen an amendment. We have just heard conceptionally what that amendment might be. I have not seen the amendment that is proposed yet.

Chair Atkinson:
You are talking about the current one.

Paul J. Enos:
Yes, the current one.

Chair Atkinson:
Is there anyone else wishing to testify in favor of S.B. 407 (R1)?

Richard Perkins, representing R&S Investments:
I am here to support an amendment to S.B. 407 (R1) (Exhibit C). The original S.B. 407 (R1) was brought on our behalf in the Senate, and an amendment was adopted in the Senate that basically put the language in the bill that you see here today. I still think that the language that is in here today is not inconsistent with the amendment that I am going to propose and I would support that as well.

As many of you know, I had the privilege of serving in this building and became pretty familiar with issues related to towing vehicles. I also spent 25 years with the Henderson Police Department, many of those years as an accident investigator, and the last three years as the Chief of Police, making me even more familiar with these issues.

The amendment before you is essentially the original bill as presented to the Senate Committee on Transportation with significant changes to accommodate many of the parties who were involved at the time. The bill was gutted and replaced with a requirement that the NTA adopt model tariffs for towing, storage, and lien sales. While we have no problem with the NTA undertaking this effort; I believe this amendment provides for an alternative private sector solution to the problems that exist instead of additional government regulation. Also, these two concepts are complimentary to each other. With your permission, let me describe to you a scenario that this amendment is intended to address.

When the owner of a vehicle is involved in an accident, and the crash occurs, the officers arrive, traffic controls are set up, the injured are attended to, and the scene is preserved. Accident investigation then commences. The officer fills out a Nevada Highway Patrol (NHP) accident investigation form; it is called

an NHP-5 form (Exhibit D). Everybody in the state uses the same forms. Near the top line of that form is where the officer enters the insurance information. It is part of the accident investigation itself. A duty tow truck is called to remove the vehicle from the scene. The tow truck takes the vehicle to the company storage yard unless the owner directs the car to another location. The owner notifies the insurance company. The insurance company then sends an adjuster and/or has the vehicle towed to a shop or other location. The vehicle stays in the storage yard an average of 18 days, according to the five major insurance companies.

Now, why are we here and why is this an issue for the Nevada Legislature? The government cannot just take somebody's property, even damaged or disabled vehicles on a roadway, without the person's permission or without a public safety or other compelling public reason as determined by the Legislature. There are statutes that provide law enforcement with these authorities, and I think we can all agree that there are good reasons to remove damaged or disabled vehicles from public property. Over the last several years, however, a monopolistic environment has been brutal on consumers. Several months ago, my client, Bob Ellis, who happened to be one of my duty tow companies when I was Chief of Police, was asked to look over an audit of tow and storage charges and provide his analysis to a number of insurance companies. What he saw was offensive. Citizens and their insurance companies were being charged outrageous fees for the storage of their vehicles. In addition, there were several added fees for things like letting a citizen access his vehicles to get his personal belongings, or for taping up a broken window if the weather looked like it was turning bad. These storage fees oftentimes amounted to $1,000 to $2,000. These fees have crept up over time because of the monopoly these companies have had for decades, and they often cost your constituents more than it does to repair the vehicle. Insurance companies had to pay these fees on behalf of their insureds and then either repair or total out the vehicle. All of these costs become a component of the premiums you and I pay for automobile insurance.

After looking over the audit, Bobby Ellis was asked to make suggestions to bring these costs under control. He had a number of conversations with insurance companies and came to the conclusion that the current government-driven monopoly was bad for the consumer. Instead of creating more government bureaucracies, Bobby recommended creating a market that allowed for private businesses and insurance companies to negotiate and contract with other private businesses, storage yards, to drive down the costs and ultimately benefit the consumer. While we are here today to ask government for statutory authorization to do this, we are truly trying to create a private industry solution.

You might ask why Mr. Ellis is working so hard to effect this change. My answer begins with the fact that he is one of the most community-minded individuals I have ever met. He donates hundreds of thousands of dollars every year to worthy causes, including elementary schools, high schools, universities, state colleges and other charitable organizations. As Chief of Police, if I had a citizen with a hardship who was unable to afford the tow charges, I could always count on Bobby to work something out. Make no mistake about it, Mr. Ellis would clearly try to compete in the storage lot market when you see fit to pass this amendment. Compete is what I said. There is no assurance he would ever get a contract, but I can guarantee you that your constituents would all benefit from his attempt to compete for this business, because the other businesses, including the governmental tow contractors in our state, would have to be more competitive with their prices to win these contracts.

So what are the top costs we are talking about right now? If I pull a car out so an adjuster can look at it, the fee is $50; a lien sale fee after 96 hours is $104.50; after 336 hours it is another $104.50. A lien sale is just a communication between the storage lot and the government, saying we might have to do a lien sale on this car. In addition, an auction prep fee after 15 days is $495, even if the car is never sold at auction. A yard maintenance fee is $5; that is usually the kitty litter they use to soak up the oil that leaks out of a car while it is being stored. Taping a window is $35. A lot visit after the first visit is $35 to $65; if the visit occurs after hours or on a holiday the cost is $35 to $75, and on and on. The owner and adjusters often have to wait significant amounts of time even to look at the vehicle. By the way, if you have a constituent who cannot afford to pay the $2,000 to get his vehicle out of the storage lot and the tow company auctions it off for, say, $500, the company will sue your constituent for the balance of the money, so he will lose his car and have his wages garnished.

The amendment does not take away any towing opportunities from the current duty tow companies. They will still get all the police impounds, like driving under the influence (DUI), felony arrests, any case where the vehicle is impounded for evidentiary purposes, and that amounts to 60 to 70 percent of all the vehicles that are towed.

What is the opposition going to tell you about this amendment? They are going to tell you that this is a special interest bill for Mr. Ellis. As I have already explained, he wants to compete in this area, but it is just that, to compete. Everybody else will have the same level playing field to compete on. They will tell you that law enforcement will not want to have an additional burden. I think I can speak fairly authoritatively to that point, having done a number of accident investigations and understanding how those procedures work. All this

amendment would require is for the officer to mention to the tow driver who comes to pick up the vehicle which insurance company the vehicle is covered under. The opposition would also ask, why should the insurance company get to choose what tow car lot is used? Well, frankly, they pay the bills on your behalf and then charge it back to your premium. This bill makes for a more competitive market instead of continuing to protect the current monopoly. The storage fees and costs of towing a vehicle can be significantly increased if the lot is too far away. The lots that are currently being used are a significant distance from the center of Clark County. At least half the tows in the Las Vegas Valley would be just as close to any lot that was opened up.

Mr. Chairman, I recall conversations I have had with many of you about bad experiences your family members or friends have had in this regard. Also, I had a conversation with Senate Majority Leader Horsford about an 86-year-old constituent whose vehicle was towed on a holiday weekend, and not only could she not get her car out of the storage lot for several days, but her bill was over $1,000. Almost everyone we have spoken to in this building has had a bad experience that this bill would help to avoid. Becoming involved in a traffic accident is one of the most stressful and tragic things anyone can ever experience. You should not be a victim of both the accident and the tow company.

With your permission, Mr. Chairman, I will walk you through the amendment (Exhibit C) so you can see what it does. The amendment preserves sections 1 through 4 of the bill, so the study that the NTA would do would remain the same. Section 5, subsection 1, of the amendment reads, "An insurance company may designate a vehicle storage lot . . ." "May" is probably the most important term in the entire amendment. If I am a major insurance company, or a small insurance company for that matter, and I choose to go out into the market and negotiate a lower price than I am paying today, I can do that. I do not have to do that. No insurance company has to. Nobody is forced to do this; it is purely a "may." It gives them the negotiating power to hold down costs. The insurance company then notifies law enforcement agencies and tow car companies of its designated storage lot location. In subsection 2 of section 5, it says, the law enforcement officer shall advise. We made significant changes here with leeway for law enforcement, but it reads, "A law enforcement officer shall, when readily available and unless exigent circumstances exist . . ." So the information has to be readily available. If they cannot find it during the first moments of the accident investigation or they are called off on another call, or there are five cars in the middle of a major intersection and they need to get them towed out to clear the roadway—those are all exigent circumstances that could affect the ability to find insurance information.

To continue, subsection 2 of section 5 of the amendment reads, "A law enforcement officer shall, when readily available and unless exigent circumstances exist, advise an operator of a tow car of the identity of an insurance company that provides coverage for the vehicle if . . ." Subparagraph (1) adds "Is inoperable because of an accident or was recovered after having been stolen"—the two situations that involve insurance companies. Then subparagraph (2) continues, "is not otherwise subject to impoundment"—it is not a DUI arrest or a felony arrest of any sort; it is not impounded for law enforcement purposes.

Section 5, subsection 2(b) also adds, "The accident or recovery takes place in a county whose population is 400,000 or more . . . " So this bill pertains only to Clark County. In the Senate it started out as concerning both Clark and Washoe Counties. During that hearing we discovered that there are approximately 12 to 14 tow companies in Washoe County that are on the duty tow rotation. It became clear to us that there was already a competitive market in Washoe County, so this amendment was not needed in Washoe County.

Another important part to the amendment (Exhibit C) that reinforces current law is in section 5, subsection 2(c), which reads, "The registered or legal owner of the vehicle or a representative of the insurance company has not directed otherwise." You, as the owner and the victim of a traffic accident, always have the authority to direct where your car goes. Subsection 2(c) continues, "The tow car shall then deliver the vehicle directly to a designated vehicle storage lot." In subsection 3, penalties are set in the event that the tow company does not deliver the car to the appropriate tow lot or yard. Among the penalties set, a misdemeanor was kept in the language of the amendment after my conversations with the Chairman of the NTA, who told me that being able to charge an operator with a misdemeanor in certain situations was a helpful tool. This is for the enforcement of NRS Chapter 706, which is the NTA statute. I would never envision local law enforcement writing citations to tow cars, because it is not its primary jurisdiction.

In subsection 4 of section 5, there used to be a lot of description about what storage lots should and should not entail. We were advised that this language became much too restrictive, and would be a barrier to entry into this industry for a number of prospective business owners. So we took most of the language out of the amendment. For example, there is no longer an acreage requirement, or any mention of six-foot block walls. But it does say that a vehicle storage lot must be "physically separated and not commingled with other business activities." This means that you cannot have an auto shop and a storage lot together with people wandering in and out, so further damage does not happen to somebody's car or his personal affects come up missing. In subsection 4(b)

it says, “Comply with the requirements imposed pursuant to NRS 706.4485 on an operator of a tow car by the largest law enforcement agency in the county . . .” so the tow storage requirements of the Las Vegas Metropolitan Police Department (Metro) in Clark County would have to satisfy those provisions. It mainly concerns the security requirements of storing private vehicles. Subsection 5 says, “The interior of the vehicle storage lot must be equipped with 24-hour video monitoring or 24-hour live security.” That was, again, additional security for these vehicles. Subsection 6 of section 5 has a definition of a boat and a vehicle. Section 6 of the amendment talks about the new provisions of the law regarding those violations that can be filed against the tow operator.

As you can see, there are no barriers to anyone competing for this service, including those who currently provide governmental towing services. For the life of me, I cannot understand why the lobbying effort has been so strong in opposition to us trying to establish the criteria for fair and open competition in this field. The model tariffs, as you heard earlier, and the tariffs that even exist today, do exist in a range. Even if we have model tariffs, if there is a range created by the NTA, one tow operator could charge this much per day for a storage fee, and another might charge a different amount. In a truly competitive market, you are going to get the best price because if an insurance company decides it wants to negotiate a rate and contract with somebody to store a vehicle, it is going to go to the one that gives it the best price, and that is going to be at the bottom end of the spectrum, not at the top end. Again, I do not think the two concepts are mutually exclusive, but our concept provides for a competitive, private sector market to encourage entrepreneurs who want to get into this business.

Assemblyman Grady:
Mr. Perkins, I guess I am a little bit confused. You are one of the prime sponsors of the bill. It was heard in the Senate. You had about a week to work with the opposition. An amendment came forward and, apparently, you agreed to the amendment or you did not agree to it, and then it was voted out of the Senate Committee. Now you want to put the original language back in and take out everything else that was in the bill? Do I read it right?

Richard Perkins:
No, that is not exactly correct. We did bring the bill to the Senate. We tried to make amendments to the bill to satisfy some of the parties. We were never going to be able to satisfy all of the parties. There is just too much polarization on the issue to do that. Our amendment did not pass the Senate Committee. It was a very close vote, and the opposition offered its own amendment for the NTA to review the model tariff. That is the bill that you have in front of you

today, and this amendment that we have brought does not take their amendment out; it leaves it in. I am fine with their amendment and doing the tariff review. I just believe that the private sector solution to this, that is, increasing competition, is complimentary to that, and is a better solution overall.

Assemblyman Horne:
I have a few questions, Mr. Perkins. In section 5, subsection 2(c), it talks about the registered or legal owner of the vehicle or a representative. In the instance where the insurance company has not directed otherwise, and the car is towed and the person is arrested because of a warrant or DUI or whatever, typically he does not get to articulate where he wants his vehicle taken, is that not correct? So in that circumstance, the person may not have that opportunity.

Richard Perkins:
That is absolutely correct. In fact, just before that, in section 5, subsection 2(a)(1) it talks about vehicles that are "inoperable because of an accident" or were "recovered after having been stolen" and that were involved in an insurance situation; it is not referring to a police impound, or a DUI or felony arrest, or for any evidentiary impound purpose. So subsection 2(c) that you referred to concerns only an accident or a recovered stolen vehicle situation.

Assemblyman Horne:
Thank you for that clarification. Also, in subsection 3(b), it says, "Shall forfeit the charge for towing and storage . . ." if that occurs when the tow car fails to take the vehicle where it is supposed to go, where would that forfeited money go? Has anyone thought about that?

Richard Perkins:
First, the reason for that provision is that if a tow operator decides to ignore the law and take the vehicle back to its storage lot, there had to be some mechanism to correct that behavior, and that is what this is supposed to do. When it talks about forfeiting the charge for towing and storage, it would be that you basically do not get to charge for it. If the insurance company finds out that you took it back to your yard instead of the designated storage lot, after having been advised by law enforcement that it belongs in another location, you have to tow it back to the designated storage lot, and you do not get to charge anybody for the activities that you participated in.

Assemblyman Horne:
Okay. In subsection 4, paragraph (a), it says the storage lot should be "physically separated and not commingled with other business activities." I do not know if Mr. Ellis could better answer this, but I have been in tow yards

before, and I could not make hide nor hair of how things are divided up. But I know that they are separated. Some vehicles there are impounds; some are in the tow lot for different reasons. When it says "not commingled with other business activities," is the lot going to be physically cordoned off, and is that typically how most of the tow yards are?

Richard Perkins:
Yes, they are, and we wanted to maintain that integrity of the storage of private vehicles. You are right that the vehicles not subject to impound are separated from those that are subject to impound, especially if it is for evidentiary purposes because you need to maintain the integrity of the evidence. But in this situation, you might have somebody who owns an auto body shop and has a lot of vehicles waiting to be repaired out in his lot; we do not want those vehicles commingled with the storage of privately owned vehicles in this situation, because you have people walking in and out. There is no way to secure those vehicles and make sure that they are not going be further damaged, or somebody's golf clubs get taken out of the back seat, or something like that. It is just maintaining the integrity of the storage lot so that you are not commingling cars and they are kept secure.

Assemblyman Horne:
If there is a business that has an auto body shop and is taking these tows as well, and if it is not currently separating these vehicles, it would have to find a way to separate, upon passage of this bill, if it was going to compete in this area?

Richard Perkins:
Exactly. The business would have to put up a fence or barrier of some sort to secure the area.

Assemblyman Goedhart:
To reiterate, your amendment affects only the insurance tows, which are only 30 percent of the market, because non-consent tows are about 60 to 70 percent, is that correct?

Richard Perkins:
I understand that insurance tows run between 30 and 40 percent as opposed to the police impounds, correct.

Assemblyman Goedhart:
From the notification of the police officer, who is at the accident, to the tow yard operator, is it assumed that the tow truck operator has a list of insurance companies and their particular storage yards? Is that how it will work?

Richard Perkins:
At the beginning of the bill, it mentions that if an insurance company does designate a storage lot, it has to notify law enforcement and all the tow operators of that designation with the physical address of that storage lot.

Assemblywoman Bustamante Adams:
Mr. Perkins, in section 5, subsection 2, in your presentation, you talked about the law enforcement officer. I want to make sure I stated it correctly. I think that we are assuming that the information about the insurance company is accurate, that there has not been a lapse or maybe the owner has switched insurance companies. My question is (1) what happens if there is a change in the insurance company and (2) what if the owner does not have insurance? Does this bill address that?

Richard Perkins:
I will answer the second question first. If you do not have insurance or if the officer at the scene is unable to quickly identify your insurance carrier, the duty tow company would take the vehicle to its storage yard. It would not go to a designated lot because we have not been able to determine if a particular insurance is responsible for that car. To your first question, there is always the possibility that you are going to have inaccurate insurance information. Sometimes the vehicle goes to the duty tow lot because you cannot determine insurance at the scene, but he does have insurance. Those are going to be a small percentage of those towed, and they will fall through the cracks. At worst what is going to happen is they have already negotiated a lower rate than somebody else is going to get anyway, so you have probably saved that consumer or the next insurance company a sizeable amount of money. I am not going to tell you that it is a 100 percent perfect system.

Assemblywoman Bustamante Adams:
Looking at the second page of your amendment, I believe you stated for the record that the NTA made the suggestions regarding the penalty, is that correct?

Richard Perkins:
They did not make the suggestion. When the bill first came to the Senate with the penalty in it, I did have a conversation with Chairman MacKay prior to the hearing, and he was okay with that penalty. In fact, he mentioned that it would be a useful tool.

Assemblywoman Bustamante Adams:
Could this verbiage be put into the regulations by the NTA instead of into a statute?

Richard Perkins:
Absolutely, if that is the pleasure of the NTA. I do not know if the misdemeanor could go in the *Nevada Administrative Code* (NAC) because you have to have statutory authority for a misdemeanor penalty, but other sorts of penalties could clearly be put in the administrative code.

Assemblywoman Bustamante Adams:
You mentioned Washoe County in your statement. Could you help me to understand why that model works? You said that there is a rotation; can you explain it a little bit more?

Richard Perkins:
Certainly. I was unaware of this until the hearing in the Senate, but we found out that the Washoe County area has 12 or more duty tow companies, that were used by law enforcement to tow vehicles for impounds or accidents. Because there were so many of these companies, there is a strong competitive spirit in Washoe County. It is a much smaller community, where if you treat a citizen poorly by overcharging him or the like, you are likely to be more identifiable. That said, I am not sure how they set up the rotation, but we did find out that there is a fairly sizeable, competitive market already in the Washoe County area.

Assemblywoman Bustamante Adams:
So in the Clark County area there is a monopoly? Can you describe that to me?

Richard Perkins:
Yes. For the largest law enforcement agency in the county, there have been the same two tow companies for decades. They are currently in the process of a request for qualifications to put that up to bid, so to speak.

Assemblyman Ellison:
I have just one real short question. When there is a wreck on the freeway, they send out one company, correct? They do not send out multiple companies. They only send out one, because they go on a rotational basis, is that correct?

Richard Perkins:
That is currently the process, yes.

Assemblyman Ellison:
There could be two or three different vehicles, and one has to be towed here, one has to go there, and one has to go to another location, instead of just to one lot. Is not that going to create even more of a cost?

Richard Perkins:
I do not think so. I am not going to speak to the practices of different tow companies, but let me suggest to you how those things occur. Let us say it is three cars at an accident scene. Rarely do you send out one truck for three cars. Even if you did send one truck out for more than one vehicle, you still have three customers that you are going to charge. All of those vehicles are going to different lots, and you are going to charge each of them an individually priced tow rate; that is how I understand it works. Now, I am sure the tow operators in the audience will correct me very quickly if I am wrong, but rarely do you send one truck out for multiple cars. It makes a lot more sense, even in your fleet, to be more flexible than that.

Assemblyman Ohrenschall:
Regarding subsection 4, I think the Assembly Committee on Judiciary Chairman asked you a few questions about the requirement that the vehicle storage lot be physically separated and not commingled with other business activities. What is the motive behind that? What are you seeking to accomplish with that separation?

Richard Perkins:
It is purely so that you do not have multiple activities in one enclosure. That way you do not have unauthorized persons, who are conducting separate business activities, walking in and out of an enclosure and having access to a person's private vehicle, which might have personal belongings in it. Or they might be driving through and run into the back of a vehicle and create additional damage. It is basically to create security for that private vehicle.

Assemblyman Ohrenschall:
In the vehicle storage lots as they exist now, are there other business activities going on?

Richard Perkins:
The way that storage yards work today—and Mr. Ellis happens to have one—you go out and tow the cars, you bring them back to the lot, and the vehicles from the different activities are completely separated. In fact, it is one of the requirements. I know in my law enforcement agency, it was a requirement that they be held separate for those very reasons.

Assemblyman Ohrenschall:
Back to page 1 of the amendment, subsection 2 reads, "A law enforcement officer shall, when readily available . . . advise an operator of a tow car of the identity of an insurance company . . ." When I looked at the next page with the

misdemeanor penalty for the tow truck operator, what if, the law enforcement officer gave the wrong information to the tow truck operator?

Richard Perkins:
Good question, and it also came up during the Senate hearing. In practice, if a law enforcement officer on his best information gave erroneous information to a tow operator, there is no way that you can hold that tow operator liable for that. He is operating on information that he was given. In Criminal Law 101, the elements of the crime have to exist, and if you are acting on good faith, you are pretty much insulated from liability.

Assemblyman Ohrenschall:
Back to page 1, subsection 2, I wonder about the role that you envision now for law enforcement officers, in terms of advising the tow truck operators. Is there anything comparable to this where law enforcement officers have to give advice to the tow truck operators about the insurance carrier, and where the tow lot is located, or is this going to be a new role for law enforcement that it never had before?

Richard Perkins:
Law enforcement officers will not have any responsibility to advise the tow operator where to take the car, just what the insurance company is. It is a new role. I would envision that to occur in one or two ways. When the officer is investigating an accident and he calls for that duty tow truck, he may already have the information in hand. Let us say that Mr. Ohrenschall's car is insured by this company, so the dispatcher at the time could actually tell the tow operator while he is en route where to tow it to. Or when the tow operator arrives and is about to tow the vehicle, the officer would say, "Hey, this is Mr. Ohrenschall's car and it is insured by so and so." That is the only responsibility the officer has. It really does not add any time to his investigation. It does not make him an agent of the insurance company, and he does not have to direct the tow operator to any location whatsoever. The tow operator will have that information.

Assemblyman Ohrenschall:
And the officer would know the insurance carrier based on the insurance card in the person's glove compartment, or based on a computer search on the car?

Richard Perkins:
Either/or. Right now we do not have a very reliable electronic database search engine. Nevada LIVE (Liability Insurance Validation Electronically), a project of the Department of Motor Vehicles, should be up sometime this summer, and that would be much more helpful. Right now it is basically the officer searching

for the insurance card, and oftentimes that insurance card cannot be found, especially if a vehicle has been in a rollover or a serious high speed accident. Things go everywhere. In those situations the duty tow company would just take the vehicle back to its own storage lot because the officer did not have the time to find that insurance information.

Chair Atkinson:
Is there anyone else in the audience wishing to testify in favor of S.B. 407 (R1)?

Danny Thompson, representing Nevada State AFL-CIO:
We supported this bill originally in the Senate. We support the amendment that has been proposed here today. I know there have been some changes to the original bill. Our involvement in this is that our members are the ones who end up paying these bills. I can tell you both from personal experience in my office, and from members of my family, these costs are out of control, and anything that you can do to rein them in, I believe, is important. Certainly, this bill, I think, would be a step in that direction, and we support anything that can be done to control those costs. We support the amendment that is being proposed here today.

Chair Atkinson:
When you say that the costs are out of control, are you talking about the varying amounts that certain tow companies charge to tow the vehicle, or the cost to get your belongings out of the car? This was news to me. I did not even know that they charge for that kind of stuff. But am I right on that?

Danny Thompson:
Yes, some tow companies limit you to one free visit to your car, and after that there is a charge. Some of them even charge you on the first visit. I have had people in my office who found themselves in this situation, and had to sell their vacations so that they could get their car back. Oftentimes, these charges on a car are so high that, depending on the circumstance, you have to weigh the value of the car versus the charges owed, and so we think it is important that anything you can do to control these costs would be helpful.

Michael Geeser, representing AAA Northern California, Nevada, and Utah:
We just wanted to weigh in with our support of the original bill and the model tariff as well as the proposed amendment. As Mr. Perkins stated, the reason we are in support of the bill is simply because it gives us a choice. It says an insurance company may designate a vehicle storage lot. I could not promise anybody today that if you were with AAA that is where we would go, but it increases our choices, and if that price is better and it is more convenient, you can bet that we are going to go there. If it is not, we will not, but at least it

gives us one more choice and a chance to perhaps bring prices down. For that reason we think it is a good idea and support the bill.

Chair Atkinson:
Did you say you are in favor of the new amendment and that have you seen it?

Michael Geeser:
Correct.

Dennis Milk, President, Tow Guys, Las Vegas, Nevada:
I would like to clarify a couple of things: Statutorily, the first lot visit is at no charge provided it is during normal business hours. After the first visit, within the tariffs, we all have to charge the amount that is in our tariff. I am surprised that Mr. Perkins would sit here and tell you that Mr. Ellis, being a licensed carrier, would waive tow fees when we are absolutely forbidden to do that. It is basically subject to regulation from the NTA, and if we deviate from our tariff, we are subject to fines for that.

Chair Atkinson:
Excuse me, that is not how we do this in this Committee. We do not attack each other. If you want to refute a certain part or parts of the bill, I am totally open to you doing that, but we do not do personal attacks here.

Dennis Milk:
I can give you an example of what concerns me about this bill. I tow for a number of insurance carriers, I pick up cars from various tow companies around town, and I can tell you from random sampling that there are tow companies that are obviously overcharging. I can look at the vehicles and the charges, and I can tell you there is a problem with it. I am in the business. But I would also tell you that a huge portion of our revenues, somewhere around 40 percent, come from storage and auctions on lien vehicles. With this bill you are going to take away a large portion of our revenues, because in order to stay in business, we are going to do is that we are going to have to go back to the NTA, and for the savings that the insurance industry would get out of this bill, people who are not insured, or who get towed for other reasons, are going to pay, and the insurance companies are going to get a break. Mr. Perkins also stated that 18 days is the average time an insurance company takes to get to an accident vehicle. I spent 25 years in the insurance business, and I can tell you that if my insurance companies took 18 days to get there, I would have been out of business years ago. My customers would not have stood for that. For the cars that I pick up, the average number of days in storage is five or less.

With the duopoly that exists in Clark County, Metro has opened a request for quotation (RFQ). There were five companies that responded to the RFQ. They have not announced the results, but I would imagine that we are not going to end up with two companies when all is said and done. We are going to have more competition in Nevada. I fortunately happen to be in a position where I could respond to that RFQ, so I am one of those five companies, and I see that we are going to have some change. I think Metro has done an admirable job in bringing the overcharging under control in the rate structure that they have proposed. They are looking at about a 30 percent reduction from current rates. Also, they are requiring that the tow companies include certain changes in the base rate, and that is going to reduce overcharging.

Chair Atkinson:
I asked for folks in favor of the bill. Are you in favor of the bill, or the original bill that came over from the Senate?

Dennis Milk:
I am opposed to the amendment that they want to make to the bill.

Chair Atkinson:
So you are opposed to the amendment, and you are in favor of the bill . . .

Dennis Milk:
As it came over from the Senate.

Chair Atkinson:
Typically when we call for people who are for this measure, we are talking about in favor of. I just wanted to make sure you are on record as being against the amendment but for the original bill that came from the Senate. Do you have any additional comments? [Mr. Milk had none.]

Assemblywoman Bustamante Adams:
Regarding the way the bill came over from the Senate and this new RFQ process that Metro is putting in place, will the combination increase competition in the market?

Dennis Milk:
I believe it will reduce the overall charges for tows that are initiated by Metro.

Assemblywoman Carlton:
If this goes out to bid to multiple companies, yes, they are going to compete and want to change their price ranges, but I do not understand how this RFQ is structured. Are there going to be four rotating companies, or two? What are

the rates going to be? I am not sure any of us can say that it will get cheaper for the person who has had his car towed. It may be explained better by Metro or whoever is doing the proposal.

Dennis Milk:
In the RFQ, one of the items was a proposed tariff. Those rates are 30 percent below the current tariff rates. The NTA has to approve them, but we had to agree that if they could get the support of the NTA, we would sign a contract for those tariff rates, which are lower than the current ones.

Assemblywoman Carlton:
Are they going to grant this to two, three, or four companies? Our friend from Metro is sitting next to you, so I can put him in the hot seat for a moment.

Brian O'Callaghan, representing Las Vegas Metropolitan Police Department:
That is correct; it is going to be a rotation. All the companies that come to the RFQ and are qualified will go through a monthly rotation.

Assemblywoman Carlton:
Thank you. We have gotten some good answers.

Brian O'Callaghan:
Since I am up here, originally we supported S.B. 407 (R1), as it came over from the Senate, but we are going to have to disagree with the amendment. Under the amendment we are going to be agents of the insurance companies, telling tow operators where to take the vehicles, and we do not agree with that.

Chair Atkinson:
I just want to make sure your position on the amendment is clear. Could you please state that one more time?

Brian O'Callaghan:
I am looking at subsection 2 of the amendment: "A law enforcement officer shall, when readily available and unless exigent circumstances exist, advise an operator . . ." This turns us into agents for the insurance companies, and there are about 800 insurance companies out there. We are opposed to that.

Assemblywoman Carlton:
I do not see how you will be an agent of the insurance company. "Agent" has a definite meaning when it comes to the business of insurance in the state, and you will not be an agent of the insurance company. You will have a function in this, but I believe it is more along the same lines as the function of just getting that car off the road. It is part of doing the job of clearing the roadway, so

I think we need to be careful about using the word "agent." We need a new word.

Brian O'Callaghan:
I do not have a new word, so it would have to be agent . . .

Assemblywoman Carlton:
You understand where we are coming from?

Brian O'Callaghan:
I agree. But we are still directing the tow companies where to go, or telling that tow company, for the insurance company, where to take that tow, so we are telling them what insurance and where to tow it.

Assemblywoman Carlton:
We will not go into the relationships between law enforcement and insurance companies in this particular Committee hearing. We will save that for another day.

Chair Atkinson:
That is another bill.

Assemblyman Goedhart:
As I read the amendment, it basically says that law enforcement officers, as part of their traffic report, has the name of an insurance carrier. I think the way this amendment discusses it, all the officer has to do is tell the tow operator that the vehicle's owner is insured through XYZ Insurance Company. I do not think there is anything required of law enforcement beyond that under this amendment. Is that correct?

Brian O'Callaghan:
You are correct in one way, but what happens is that I am telling them where to go. If this information is incorrect—there were some comments on that earlier—we could be liable for telling them to go to the wrong yard or perhaps the insurance is bad. We could still be liable if that tow company takes it to another yard, and it turns out to be incorrect; we could be liable even though the insurance company said it was a certain yard. We do not know at this time what would occur.

Assemblyman Segerblom:
If we added language that says Metro is not liable for falsely representing which insurance companies are on there, is that satisfactory to you?

Brian O'Callaghan:
No, we want to be out of the business of telling the tow company where to take that vehicle.

Assemblyman Segerblom:
You could just point your finger on the line of the citation or on the traffic accident report and do not say anything.

Dennis Milk:
I would like to mention one other thing. In the state's statutes, the tow car operator is the owner, myself, my managers, my drivers. If I get a rogue driver who tows the car to the wrong place, that makes me guilty of a misdemeanor. I would suggest that if you are going to charge me with a misdemeanor you better tell the tow company where to take that car in writing, not just verbally.

Chair Atkinson:
Questions?

Marlene Lockard, representing Nevada Collision Industry Association:
I want to be very clear. We support the bill with the amendment offered today.

Chair Atkinson:
Are there questions from the Committee? [There were none.]

Randy Soltero, representing Southern Nevada Building Trades Council:
We stand in support of S.B. 407 (R1) with the amendment for the same reasons Mr. Thompson from the AFL-CIO outlined. It is our members and your constituents who are paying these fees, and we feel that this will put some control on that.

Chair Atkinson:
Are there questions? Is there anyone else in the audience wishing to testify in favor of S.B. 407 (R1)?

Mike Sullivan, representing Quality Towing:
We are in support of the bill as it is currently written, but not of the amendment that was presented by Mr. Perkins. We think that the bill, as it is written, accomplishes everything that Mr. Perkins was talking about. It will allow the NTA to do what it is instructed to do: come up with a model tariff that will set the tone for what you can charge. That is what was brought to Mr. Ellis as he said, "How do we get this rate? How do we make them uniform?" We feel that this bill, in the way it was processed by the Senate, will do that. Everybody—the insurance companies, the tow companies, the public—will be at

the table, and if it is not done, it comes back in front of you, and I know that Chairman MacKay does not want that to happen, so he is going to make it work.

Regarding the fact that complaints were filed with the NTA, we take that very seriously. We took it very seriously when it was brought to us. Some of it was our company. We engaged Scott Scherer to represent us at the NTA, to look at these complaints, and make sure that we were doing everything we possibly could to be fair and honest and charge the right charges. I wanted Scott to make a comment on the complaints that were brought to the NTA.

Scott Scherer, representing Quality Towing:
I was asked by Quality Towing to make a review when some complaints were made by various insurance companies to the NTA about Quality's charges. To respond to those complaints I obtained all of the paperwork that Quality had with regard to all of those accidents and tows; I dug through every single one of them. I examined them in detail. I can tell you that all of those documents, fewer than 5 percent had some type of violation involved. We promptly refunded money for those violations and have reached agreements on most of them now with the NTA. For many years the towing industry has been doing bills in a sort of short-form way. When these complaints arose, they came out of the blue and somewhat blindsided the towing industry. In response, we have already changed the way we do billing. There is a lot more detail now on the bills, which are provided to the customer and the insurance company up front. We have been told by the NTA that, as a result of the changes we have made, they are not getting the number of complaints that it used to get, and that it is very happy with the amount of detail and substantiation we are providing now on the bills.

Of the fewer than 5 percent that were violations, the vast majority, over 90 percent, were due simply to our inability to find the backup documents. We just do not know where they went; many of these incidents are more than a year old and we cannot find the backup documentation. So, technically that is a violation, and we refunded the money because we cannot find the backup documentation. There were a couple overcharges. There were more cases with undercharges than overcharges, indicating to me that this was simply human error. Mistakes get made by human beings; occasionally they undercharge and occasionally they overcharge. But again, we have refunded all of those.

The average bill, out of all of these bills that I looked at, was typically under $500. It was not $2,000. If there was a $2,000 bill, it was because it was a rollover way off in the desert and they had to send a four-by-four vehicle, winch the car out of a ravine, and haul it back with a four-by-four many, many miles to

get to a $2,000 bill. I can also tell you that the storage charge is one of the lowest charges on the bill. It is not the storage charges that are driving up the costs of the tows unless someone leaves the vehicle in the storage yard for an incredibly long period of time. If people are out and respond quickly to the fact that their vehicle has been towed, the storage charges are relatively minimal, usually in the mid to high $20 per day range.

Those are things that I saw in my review of the bills. We have addressed the situation, and we are working closely with the NTA. We hope to continue to work with them. We know different companies charge different things. The NTA already has the authority to make sure that the charges are reasonable and to regulate the charges that towing companies impose for non-consent tows. But as with any regulatory structure that has the ability to regulate rates, the tow companies have to be allowed to make a reasonable rate of return. If they lose the investment that they have made in their storage yards, that is going to force them to recoup that investment in other services that they charge for. So, this is going to benefit the insurance companies to the detriment of those who are uninsured, or those services that are not covered by insurance, because constitutionally we will be entitled to a reasonable rate of return under our regulated rates, and we will have to somehow recapture the investment that has been made in those storage yards.

Chair Atkinson:
You said that they can recoup in other areas. I have not had to use that service; what other services would not be outlined in this?

Scott Scherer:
This really focuses on what happens at the storage yard itself. It does not cover the tow charge, or the mileage charges for towing the vehicle to the yard in the first place. It does not cover the charges for winching the vehicle or the charges for tying a loose bumper so that it does not impact the wheels while you are towing the car. Different charges that occur at the scene of the accident will have to be increased to cover the loss of storage revenue and still allow a reasonable rate of return on the investment in the storage yard

Chair Atkinson:
So you are in favor of the bill that came over from the Senate but against the amendment?

Scott Scherer:
Yes, Mr. Chairman, I apologize for not making that clear. I am with Mr. Sullivan, we are representing the same client, and we are in favor of the current bill but opposed to the amendment.

Assemblywoman Carlton:
I just pulled Quality Towing up on the Internet and it costs $100 for the first five miles. That is not cheap. It is $5 per mile after the first 5 miles, and that appears to be both the daytime and the nighttime charge. If you go to recover your towed vehicle, they ask for forms of identification. One of them—which is the problem that I have encountered—is the current registration for the car. In our case, the registration was in the totaled car, and it was kind of hard to get to, so I had to get a copy, which added a couple of days to getting the car back. Or you could have the title; a lot of people do not have the title because they have a note on the car. You can get a DMV printout or a dealer's report of sale. One of the difficulties, I believe, that people encounter when trying to recover their vehicles, so they do not get hit with these high fees, is the documents that they have to provide.

Those are some of my concerns, plus the matter I brought up the other day. The car got towed, and my daughter said, "It went that way, and it looked like it was orange!" So I had to figure out who had the car by the color of the tow truck. This bill would solve that problem. I would know where to find my car.

Chair Atkinson:
Does anybody want to respond?

Mike Sullivan:
What you probably referred to on the website is the consent tow, which is what we charge for somebody who has not been picked up by Metro's contract. I do not know if this bill would solve what you are talking about, because your car was towed to a lot. You would still have to figure out if you were parked in a section that was represented by Quality Towing or another tow company.

Chair Atkinson:
Are there additional questions? [There were none.]

Sam McMullen, representing Copart, Inc.:
I am here today on behalf of a company called Copart, Inc. It is a salvage company. It usually contracts with insurance companies for totaled or wrecked vehicles, in terms of a salvage operation. The reason we are here is that this is a system that works all the way from the accident through to the repair and everything else. I am in favor of the bill as it came over from the Senate. We are against the amendment. I am going to speak first for the bill, and then I am going to speak against the amendment, if that is all right with you, Mr. Chair.

Chair Atkinson:
Yes, you may. What is Copart's relationship with the tow company? Is it that tow companies would take on salvage as part of their yard? I am trying to figure out where Copart fits in.

Sam McMullen:
Under the current system, if a car was towed from an intersection in the City of Las Vegas subject to Metro's jurisdiction, it usually would be towed to the lot of the tow car company. If it was totaled, the insurance company would have a contract with various companies—we happen to be one of them—and the vehicle would then be transferred to the salvage yard/storage lot for Copart as the final resting place, or to one of the places where it would be wholesaled out to somebody who handles wrecked cars. Because we have many contracts with insurance companies, we end up being part of the process in which these cars are towed and disposed of.

Chair Atkinson:
So, when you speak about the bill and the opposition to the amendment you will cover how the amendment affects the company.

Sam McMullen:
To the extent that this is a system of economic activity, we appreciate the amended version as it came out of the Senate, because we think that is an appropriate solution. In the first instance we do not believe that there needs to be any disruption in the economic activity if the NTA report works. If this solves the problem that started this, there is no need for any other economic disruption of contractual relationships or any other adjustments to the business. We think that is the correct solution. It is a public solution to a statewide problem. As you have heard, it was alleged that it disrupts Metro's ability to clear intersections quickly and changes its role. I think it also probably has costs to other law enforcement agencies, so consequently there would not be that disruption. It also gives the NTA a chance to solve the foundational problem, which involved questions about the rates.

With respect to the amendment, we think that, again, this is not necessary. An insurance company could tell them what lot the car should be delivered to. This is actually a problem where there is no need for a solution; it is already allowed. Insurers could work with their insureds, because they always have the ability to direct cars, and that is not taken away by this. It may be unclear as to whether or not this insurance company designation would compromise the ability of the insured to send it to a different body shop, or some other place. But, again, this is not necessary. Also, if you look at the fact that the designation is being provided to all law enforcement agencies and all tow

companies, that means that they will have to have record-keeping systems and the ability to let the officer know, on the street, exactly what insurance company is involved. More importantly, these records will have to be kept and updated. It is a record-keeping exercise, not only for the law enforcement agencies and the public agencies but also for the companies. Again, this disrupts a lot of existing practices that we do not think need to be disrupted.

Secondly, we are not sure whether this designation of a storage lot would be regulated by the tariffs. Certain storage lots that are associated with tow car operations are regulated, but others are not. Today people have said they appreciated the version that came over from the Senate, including the proposed amendment, and that in fact may be resolved by the tow tariff and the regulation by the agency in its audit and review, leading to some readjustments in those practices.

As a lawyer I cannot pass up clarifying one thing, which I think is a question for the proponents of the amendment. It may be that there is prosecutorial discretion involved in the misdemeanor, but if you look at subsection 3, paragraphs 5(b) and (c) in this amendment, there is no qualifying language on this; if a tow car fails to tow the vehicle to the right place, things automatically happen. There is no safe harbor for a legitimate mistake. I think this is supposed to be directed at something that is intentional, but the language of (b) and (c) is extremely mandatory, that they are required to "forfeit the charge for towing and storage" and shall "tow the vehicle, free of charge, to the vehicle storage lot designated by the insurance company." I think that those two provisions are not necessarily subject to prosecutorial discretion, and there is really no exemption in the case of a legitimate mistake.

We also had some questions about the language in subsection 4(a), about being "physically separated and not commingled with other business activities." There is always a concern in this business about directing businesses to various entities. I think that in some ways this would be a funnel that would be created by statute. It would be a separate mechanism funneling business to certain designated lots allowed by statute. Then what would be the impact, in terms of directing business and changing people's economics and contractual relationships with other people? Again, that is why we are against the amendment and why we like the bill as it came over from the Senate.

Chair Atkinson:
I am trying to understand how this affects each one of these components. I did not get a feel for how your clients would be affected by the bill. It helps the Committee if we know exactly what this bill is going to do for folks or if it will instead cause harm.

Sam McMullen:
I was going to try and leave it with my prior explanation.

Chair Atkinson:
I did not understand it so that is why I am asking you again.

Sam McMullen:
I just wanted to emphasize that you asked. Mr. Ellis was the proponent of this bill. I know I am not supposed to talk about individuals. The lot that he would be utilizing is right next to an existing salvage yard. I think he sold it too high, to AAA, the company that owns it, and it causes concern with people that this kind of relationship, being so close to another salvage yard, would affect their business. That is why we think we are affected.

Assemblyman Carlton:
I am going to keep asking this question over and over again. When my car gets taken off the highway before I get there, because it was in an accident, and nobody knows where it is, how do I solve the problem of "Where is my car?" How do I do not get "dinged" with extra fees and have to go searching based on the color of the tow truck to find out where my car ended up?

Sam McMullen:
I think that is an excellent question. I have been in the same situation myself. I think that the only answer to that—unless there is some other expense imposed upon the towing company that does the tow of an abandoned or a wrecked vehicle, and this is what I had to do when it happened to me—is to call the law enforcement agency. Admittedly, you have to sometimes call different jurisdictions; you may think it was the city, and then you find out it is the highway patrol. I do not know if there is any other way to answer to that.

Assemblyman Carlton:
But you will admit that the amendment placed on this bill gives me the option of knowing where my car went because I can contact my insurance agent and he can say, "We have a deal with this lot, and your car should be there." This amendment gives me a starting point.

Sam McMullen:
I am not sure I see that. It depends on the circumstances at the intersection. It could be that the car is towed to the lot directed by the insurance company that is clearly at fault. I think there is some confusion about which insurance company would be directing the transfer. If it looks to you that, in most instances, it would be the primary insurance company, I think it is clearly a starting place.

Assemblyman Carlton:
Because that would be the insurance card inside the glove compartment.

Sam McMullen:
Correct.

Chair Atkinson:
Are there additional questions from the Committee? [There were none.]

Mark Fiorentino, representing Greater Nevada Auto Auctions, LLC:
Let me give you a little background. Greater Nevada Auto Auctions is a subsidiary of Cox Communications. Their operations include storage salvage and auction of vehicles. In that regard, they operate in a fashion very similar to Mr. McMullen's client.

The company and its affiliates have storage and auction facilities in southern Nevada; one is in City of North Las Vegas and one is in the City of Las Vegas. The company and its affiliates employ over 600 employees, so they are a substantial contributor to southern Nevada. Very clearly, we are in support of the version of this bill that came to you from the Senate, and in opposition to the proposed amendment.

We are not currently a tow company, so we have not been intimately involved in the concerns that were expressed as the initial purpose of this bill, regarding the potential for inconsistent charges and abuses that may or may not be happening. We accept that that is a legitimate concern and it is something that the Legislature should address. We support the Senate's version of this bill because we believe it directly, efficiently, and effectively addresses the solution of potential rate abuses utilizing the mechanisms that are in place. Having said that, we believe the concept that insurance companies can designate specific lots is one that merits discussion. It may be an idea that we would be willing to support but, as you have heard, the concept is complex and has a lot of potential negative impacts. We support the discussion, we support a potential solution, but we believe that the solution has to truly create a level playing field. It must not unduly impact people who are in this business, whether it is directly, like existing tow companies that have storage lots, or indirectly, like companies such as ours that have storage lots and are the ultimate receivers of these cars. And it should not unduly add to the burden of our law enforcement officials or increase their potential liability. The Senate heard that the Metro's legal counsel advised that whenever a car gets towed to the wrong location, under the current law, it costs the department a fair amount of money because it ends up having to settle those suits. We suggest that any solution should not increase that problem. There is a way that you could amend this bill that could make it

acceptable to us, but just making it acceptable to us is not the way I think you should approach this, and why we continue to oppose the proposed amendment and support the version of this bill that came to you from the Senate.

Chair Atkinson:
Are their questions from the Committee? [There were none.] Is anyone else wishing to testify on S.B. 407 (R1)?

David Walker, representing Walker Towing, Henderson, Nevada:
I wish to testify in favor of the Senate version of the bill. We are adamantly opposed to the amendment.

First of all, there is no logical reason for a car to remain in storage for 18 days. We release cars daily to insurance companies hours after an accident. We release cars the next day. This happens more frequently than we like to think, but many of the people, who are taken to the hospital, do not know where their car is, but they also know that it is taken to some place nearby.

For example, under this amendment, if an accident happened in Boulder City, the car might be towed to North Las Vegas. Boulder City does not have any of these yards that would meet these qualifications. That person, when he gets out of the hospital, would have to take a taxicab or other means of transportation to North Las Vegas in order to get his prescriptions, glasses, and other personal affects out of the car.

Mr. Enos referred to the fact that there are "consent tows" and that there are "non-consent tows." Ninety percent of accidents are consent tows. Federally, we cannot regulate anything on consent tows. We can regulate on non-consent tows, and that is why we support the NTA, because it sets the rules and goes by them. I have worked with the NTA and its predecessors for 30 years in the towing business. We have been able to have discussions and meet the requirements. Let me give you an example of a particular tow that I would be concerned about. Recently I spent eight hours out on Interstate 15, with a semi-truck and trailer turned on its side blocking the highway. We required five tow trucks, air bags, cleanup, and driver-helpers. We had a tremendous expense. Now, if the highway patrolman told us that truck is insured by XYZ Company, we then look it up and take the truck across town somewhere. When we drop it off, who is going to pay the $8,000 or $9,000 for these ten employees, these five trucks, the cleanup, and everything else that is involved? I do not know of a storage or salvage company that would maintain that kind of cash on hand to pay for the vehicle when it was transported there. That is a concern.

We have a difficult time being paid by the insurance companies. That is one of the reasons why they are upset; we do not like to release a car to an insurance company on its word because it does not pay for it. Many of the cars we have go to auction and lien because the insurance company has looked at the car and said, "Oh, it is not worth it," and walks away from it. What are we supposed to do? We are there to make a living, just like everybody else. If you are going to require a change to the storage and the 18 days that the car remains in storage, require the insurance company to work a little more quickly, rather than put the burden onto someone else because the insurance company cannot handle its business.

As far as rotation goes, Mr. Perkins mentioned that this original amendment and coverage included Washoe County, and because there were 12 or so companies on a rotation, they exempted it. He mentioned that there two companies that currently had the Metro contract. What he failed to mention is there are companies who have the Boulder City, the City of Henderson, and the City of Mesquite contracts; that certainly takes it above those 12 or so that are in Washoe County. Why are we being singled out? Because of only two companies, allegedly? Currently, there are contracts in place with every police department that I am aware of in Clark County in reference to their storage yards, which require a six-foot fence, security, and that the cars be separated and not mingled with the other cars. Do not these other police entities count? Do not these other companies count? Or are we still trying to get back at two companies in Las Vegas? I think that we could certainly review our tariffs. I am the first to agree, after working 30 years in the business, that there are those who take advantage, but those are limited to the non-consent tows.

Chair Atkinson:
Thank you for your testimony. Are there questions from the Committee? [There were none.]

Rex Ewing, representing Ewing Brothers Towing, Las Vegas, Nevada:
I am in support of S.B. 407 (R1) as it came to you from the Senate, before the amendment, and I am against the amendment. Number 1, the reason that I support the way it come from the amendment is we have been in the towing business since the early 1950s, when towing was brought under the Public Service Commission. After that it was under the Transportation Services Authority, and now it is under the NTA. We have abided by their rules; they have always made good rules. They have always made the rules for the public just as much as they have for the towing companies. We have what I would consider one of the best records of a tow company in Nevada or any state. By the way, we are one of the towing companies that tow for Metro. Through all the investigations, my company received two citations. The one citation was

for a minimum tow directly from the accident to an auto body shop. It was one o'clock in the afternoon on a Saturday and the driver forgot to write in his times when he gave a receipt to the body shop. It had nothing to do with price, and it had nothing to do with being a weekday, a weekend, or at night. The other citation was because they had always required a complete speedometer reading, and our drivers, which I really was not aware of, got lax and were using the last four numbers on the speedometer. It properly calculated the prices for the mileage, but that was the other citation. I have never been told that my storage rates were way higher. We are an interstate carrier. We tow cars back for rental agencies from Utah, California, Arizona, and other places in Nevada. Their storage rates, if not higher, are very similar to mine. I think if you check Mr. Ellis's storage rates, you are going to see that they are just about the same rate as what we charge.

Regarding where the orange tow truck towed Mrs. Carlton's car, unless the people go to hospital, they usually are there with the vehicle, and our drivers give them a business card. If they prefer that the car be towed to a different location, we take it there. A lot of people do not want a wrecked car taken to their house, so they send it to the storage yard. If somebody else arrives on the scene and wants to know where the car is, just call the police department. They will tell you. When you have a duty tow, they can tell you exactly who tows, and where they are located.

I strongly support the NTA. They are very intelligent people. Every tow invoice that we give out has the NTA information. If the people have a problem, the invoice has the NTA's phone number, its address and how to get ahold of the NTA on the Internet.

Chair Atkinson:
Did you have any other parts of this bill or the amendment that you are opposed to?

Rex Ewing:
Well, basically, like I said I support S.B. 407 (R1) as it came here today from the Senate. I oppose the other parts. I think some of the things in Mr. Perkins' amendment are making us out to be people who are not honest, and we are. I am definitely opposed to that part.

Joe Causey from Custom Towing was also here and he had to leave. He is definitely in favor of S.B. 407 (R1), and he is opposed to the amendment.

Chair Atkinson:
Any questions from the Committee?

Assemblyman Goedhart:
According to testimony, this amendment to S.B. 407 (R1) affects only consent tows, not non-consent tows, and the NTA has authority only over non-consent tows, so how does this bill preclude the NTA from doing its job? I do not see the connection.

Rex Ewing:
If the tow call comes through a law enforcement agency, whether it is an accident or not, it still comes in as a non-consent tow. That is how it affects the tow companies and the NTA.

Chair Atkinson:
Does anyone else wish to testify on S.B. 407 (R1)?

Andy MacKay, Chairman, Nevada Transportation Authority, Department of Business and Industry:
First, the NTA is neutral on the bill and the amendment. There were a couple of things that I thought were important to put on the record, and I will try to make this brief. With respect to S.B. 407 (R1) that came over from the Senate, and specifically the section concerning adopting a model tow tariff, the NTA in the past interim entered into three rule-making dockets pursuant to what was filed with the Legislative Counsel Bureau (LCB) as regulation 112-10. That regulation, contained therein as section 1 of the bill, was ultimately approved by the Legislative Commission, effective December 16. The NTA requested the authority to begin the process of adopting a model tow tariff, and the Legislative Commission approved it. Staff has been in on the process, and I am working on the definition end of things. Once the session is complete, then we intend to finish it.

The reason the NTA decided to seek legislative approval to adopt a model tow tariff was to address many of the concerns that have been raised today, such as some companies defining cleanup as cleanup while others refer to it as a broom charge. The idea is to make the terminology consistent across the board with respect to the definitions; that will obviously save staff time when evaluating any tariff modifications that are submitted by the industry. It should save time on behalf of the tow car operators, who sometimes pull various tariffs and see how one company defines the same or similar activities by different terms. This is the way the tow tariffs are approved and evaluated by the NTA; these are only for non-consensual tows. Tow Company A submits a request for a tariff modification. It could be as simple as modifying its hourly rate, or it could be about mileage or specific charges relating to winching. Pursuant to law, staff then evaluates those tariffs to ensure (a) they are compensable, (b) they are not predatory, and (c) they are within the range of rates as currently

charged by the industry. If somebody tries to charge something that is 30 to 40 percent higher than what the industry average is, I can say unequivicably that when that matter goes in front of the full authority, it is the same as when Desi Arnaz says to Lucy, "You got some explainin' to do," because he would have to be able to justify the higher fees being charged. As it relates to tows themselves, there are some representations made with respect to tow operators who would charge for the first lot fee visit. That is categorically against the law. The first lot fee visit is supposed to be free. There are no charges. If there were a charge, that tow operator violated the law, and if the NTA were to investigate that, he would be cited.

As it relates to specific charges levied by the tow industry with respect to any tow, if it is a simple, minor accident or if there is winching, they take it to their tow yard. By law the tow operator has to substantiate every single charge associated with that tow. If they cannot substantiate it, oftentimes the authority will either cite them or conduct an investigation and those charges will be refunded to the customer. If the offense is egregious enough, a citation will be issued and presented to one of the three commissioners—myself, Commissioner Metz, and Commissioner Kloberdanz. Then there is a quasi-judicial proceeding in the administrative context, and potential penalties, assuming the state proves its case, would be rendered henceforth.

Mr. Perkins did not misrepresent the conversations he and I had, and I want to raise the same issue with respect to the Senate concerning the misdemeanor language. The NTA's position is that it would still like the ability and authority, in the event there is a violation, in the amended form that is currently in front of the Committee, to still write that violation in an administrative context in an administrative hearing. The reasons are really twofold. One, we firmly believe that by keeping it in-house, so to speak, we ultimately have the hammer over that tow operator and that is his certificate. So, if there is a pattern and practice occurring, the NTA would like to be able to maintain a record of that tow operator's actions. Two, from an operational standpoint in the NTA, if every violation were written into justice court as a misdemeanor—and there was not an option of writing it in an administrative hearing—quite frankly, the NTA does not have the staffing in order to designate an investigator. We cannot pay overtime for employees to sit in the court and wait for that citation to process through. However, and I want to emphasize, if there is a pattern and practice, the NTA would like to still maintain the authority to be able to issue a citation in justice court as a misdemeanor.

I think I clarified everything with respect to some of the questions. To Assemblywoman Bustamante Adams' question concerning timing with respect to promulgation of the model tariff regulation, that has already taken

place. Evaluating all the tariffs of the existing companies is occurring currently, and I believe we can easily meet that December 31, 2011, deadline. In fact, we will probably have it done before then. I do not want to say we will have it done by October 1 and instead have it done by October 15 so that I painted us into a corner and we do not meet the legislative dictates. With all due respect, we request that the language regarding these dates in the current bill, as passed by the Senate, remain in effect. I do not want to over commit our staff's resources.

Assemblyman Ohrenschall:
Earlier, Mr. Perkins mentioned some of the fees that citizens are charged when their vehicle gets towed, such as a fee for trying to get on the lot to get their personal possessions out of the vehicle, or a fee for taping a window so the rain will not get in. Are these being regulated at all? They sounded like very hefty fees that someone gets even before they get their car back, if they do ever get it back.

Andy MacKay:
The answer to that is, yes, they are being regulated. Every single charge that a tow carrier levies, so to speak, must be approved by the NTA. The taping of windows, as Mr. Perkins indicated, would entail a charge. For instance, if a window is broken and a thunderstorm is coming, they put plastic and tape on the window to maintain the integrity of the vehicle's interior. Concerning lot fee visits, currently the first visit is free. The tow operator can charge for any lot fee visit subsequent to the first. As it relates to obtaining personal possessions, the regulation clearly prohibits a tow operator from holding for bailment any personal effects contained in the vehicle. If my truck is towed, and I want to go and get the CDs, flashlight, and tool box, I have the authority as the owner of that vehicle to go in and get that property. Now, if it is the second or third visit, I obviously have to pay for the lot fee visit, but they cannot prohibit me from going in and getting my personal property.

Assemblyman Ohrenschall:
About the fees for second or third visits, and the fee for taping up the window, can you give us examples of the charges? Are they uniform among all the companies or do they vary?

Andy MacKay:
They do vary. On average a lot fee visit is probably about $30 or $35. The NTA has not adopted the practice of setting the rates because of the statewide nature of Authority. Running a tow company in City of Reno is dramatically different than running a tow company in Las Vegas, or Gerlach, which have a much different cost structure than in City of Elko. So what the

Authority staff does with respect to specific charges is they view it as sort of a concentric circle. When in doubt, all politics is local. You look locally. If it is a sole operator in rural Nevada, for instance, in the Gerlach area, staff would probably evaluate what other operators charge in places like Battle Mountain, the City of Carlin, or Elko, and they would have to be within the accepted range of rates. Usually that is plus or minus 10 percent on the higher or lower end.

Chair Atkinson:
Are there additional questions? Mr. Perkins, would you like to close out?

Richard Perkins:
Just to clarify a couple of the points that were made, I think it is important to point out that we made an inquiry of Committee Counsel yesterday and have worked with a number of parties as it relates to the salvage and auction operations, to make sure that they were not affected by this bill. That was confirmed by Committee Counsel and, in fact, it was the opinion of the Committee Counsel in the Senate Transportation Committee as well. But you did hear from at least two witnesses today who opposed the amendment even though it did not affect them.

At the end of the day, this is a permissive bill. It says "may, an insurance company may." I have great faith in Chairman MacKay and the NTA and the effort it is going to put forward, but that is just a framework. This is, in my view, the real hammer for the charges that might occur within a range. If somebody wants to continue to charge at the top end of the range, an insurance company might choose to go find its own storage facility. We are here today because the practices were such that people were getting charged a lot of money. And we are here with the amendment that they proposed in the Senate for this review because of the stories that people are being charged a lot of money. The real hammer is the ability for the private sector to negotiate these rates on its own, should they continue to charge at the top end of the range. This will not affect law enforcement's opportunity to clear intersections. It does not change that process, not even a little bit. I know you heard opposition from law enforcement as it relates to this bill, to quote a previous speaker, making law enforcement "an agent of insurance companies." What does an accident investigation do? It has two purposes, if you think about it. One is to identify dangerous roadways, engineering structures, intersections, and the like, so that the government can make changes to reduce accidents. The second is to determine who is at fault. Why should we determine who is at fault? We determine who is at fault because we are doing an investigation for the insurance company. Law enforcement is already in the insurance business. I used to have this debate with my traffic investigators all

the time, and, you know, they did not want to do the accident investigations because they were done for the insurance companies. It is part of what we do.

If the misdemeanor violation in the amendment is horribly concerning to you and you still want to support the amendment, I am happy with taking it out. I left it in because of the conversation I had with Chairman MacKay. I do believe in this prosecutorial discretion. There is no mandate here. Prosecutors use this discretion all the time. Law enforcement uses this discretion all the time. I will give you a clear example. An initiative passed that banned smoking in taverns and other places where people served food. While I was still the Chief of Police in Henderson, they wanted to know how many of my officers were going to go write citations in bars, and I told them, none, zero; this was left up to the health districts and their authority, because we do have the ability to direct that discretion and to determine whose jurisdiction it is. I want to point out that there is language in the RFQ that Metro put in one of its addendums, which states that the registered owner's insurance company or the legally authorized agent shall have the right to have a vehicle, not otherwise subject to impound, towed to the location of its choice. The owner or insurance company can have it sent to the location of their choice. That is in the RFQ. So, what we are doing is affecting that same authority by statute. Many of you have probably been in an accident or you know somebody who has been. When you are in an accident, even if you do not end up going to the hospital, you are pretty shaken up. You do not necessarily have the wherewithal to designate where that car should go during the 30 minutes you have to figure out what to do because they want to get it off the roadway. That is why the insurance company takes care of that for you. It is part of the rights that an owner has, but it is not always the ability that the owner will have at the scene. Again, Mr. Chairman, you will not meet again for another two years. If the NTA's model tariff implementation is unsuccessful at reining in some of these fees, unless you pass this amendment, insurance companies will not be able to seek this private sector solution until you meet again. That is why we have the amendment here.

Chair Atkinson:
We will not have any additional questions, and I will advise the members that if they have additional questions of Mr. Perkins, or anyone else with interest or noninterest in this bill, to check with those folks.

Richard Perkins:
I also have a fact sheet of tow charges from all the counties that I could share with you, so you can see what does get charged, what does not get charged, and the different charges between different tow companies.

Chair Atkinson:
If you could get that to Marji Paslov Thomas, our Committee Policy Analyst, we will get it to the Committee. We will close the hearing on S.B. 407 (R1). We will open the hearing on Senate Bill 198 (1st Reprint).

Senate Bill 198 (1st Reprint): Revises certain provisions governing financial institutions. (BDR 55-822)

Senator Michael Roberson, Clark County Senatorial District No. 5:
Thank you allowing me to introduce my bill, Senate Bill 198 (1st Reprint), which passed out of the Senate unanimously. I have a couple of important witnesses today from the City of Las Vegas, including George Burns, Commissioner of the Division of the Financial Institutions (FID), and also Matthew Saltzman, who is an attorney specializing in banking law and trust law. I first want to make a disclosure, although the Legislative Counsel Bureau (LCB) tells me I do not need to and that there is not a conflict. For transparency purposes, I want to make clear that I work for a law firm called Kolesar & Leatham that represents banks, or retail trust companies. Matt Saltzman is a colleague of mine at Kolesar & Leatham. I noticed that Assemblyman Segerblom mentioned that he is on the board of First Asian Bank. Matt Saltzman and my firm represent First Asian Bank, and another colleague of mine, former Governor Bob List, is also on the board of First Asian Bank.

Senate Bill 198 (1st Reprint) has two components. The first component is identical to the bill you heard earlier today, Senate Bill 136 (1st Reprint), making certain revisions to banks here in Nevada. You have already heard the testimony by Mr. Uffelman, but I want to reiterate that what section 1 of this bill does, and what S.B. 136 (R1) does, is put state charter banks on a level playing field with the big national banks. I think that is really important. It is a pro-Nevada bill. The second component of this bill makes technical changes to *Nevada Revised Statutes* (NRS) Chapter 669, which regulates retail trust companies. Those changes are important in that they clear up ambiguities in the current law, they clarify the due process rights of retail trust licensees, and they provide more flexibility to retail companies in how they satisfy the required forms of stockholder equity which they must hold. All of these provisions will serve to strengthen the law governing retail trust companies in Nevada, while providing more consistency and transparency in the regulatory process, and encourage more retail trust companies to move to Nevada. This bill is nonpartisan, noncontroversial, and it is supported by the state regulator and by the licensees being regulated. With that, I am happy to run through the bill, but I think all of you may be better served if Mr. Saltzman and Commissioner Burns talk more in detail about the bill.

[Assemblywoman Carlton took over as Acting Chair.]

Matthew Saltzman, Attorney, Kolesar & Leatham, Las Vegas, Nevada:
My law practice focuses on representing financial institutions, and we frequently speak with people who are interested in establishing trust companies in Nevada. We also represent a number of existing retail trust companies. Over the past ten years or so, the Nevada Legislature has passed a number of laws to encourage and promote the development of Nevada as a state with favorable laws to promote trusts to be located in Nevada, and trust companies to be formed in Nevada. There has actually been a reduction in the number of trust companies in Nevada in the past few years, while states like South Dakota, which has aggressively sought to lure business, have had a noticeable number of trust companies forming there. The technical and legal changes to NRS Chapter 669 governing trust companies is to make it a bit more clear, for licensees interested in locating in Nevada and becoming licensed, what the procedures will be, and also to lower in one important respect the financial status of their shareholder's equity and give them an enhanced benefit that is lacking in the bill right now. After S.B. 198 (R1) was introduced, there was a conference between a number of trust company licensees, presidents, Senator Roberson, and FID Commissioner Burns to work through the bill and to come to an agreement on a few areas where there was a disagreement.

The bill before you today represents the agreement among all of the constituents and the regulator. Section 3 removes the determination of whether business will succeed from things considered in evaluating an application. It simply deletes one consideration from the laundry list that the Commissioner in his wide discretion has to evaluate in a new trust company application. The current law is confusing when it comes to what procedure a business has to follow if it wants to take over a trust company. There is ambiguity. It looks like you have to advise the FID of your having taken control of a trust company, but you cannot transfer ownership of the trust company without approval; it is sort of a Catch-22. The new law seeks to clarify that. If someone wants to take control of a Nevada trust company, he has to get permission first. If a Nevada trust company wishes to open an office in another state, the new law clarifies that it will either have to get a license in that other state or otherwise satisfy that other state's legal requirements by providing proof to the Nevada Commissioner, in writing, of having satisfied those requirements.

The most important changes include the change in how the shareholders' equity can be invested; that is not the trust companies' customers' money, but is the investment capital of the owners of the trust company itself. Under the prior law, half of it, or $500,000, would have had to be in cash. That was a very large amount of money for businesses to keep in cash, especially in this

environment where it does not earn very much interest. After discussing things with the licensees and the Commissioner, it allows for 25 percent to be in cash; 25 percent to be cash equivalents, which can earn a slightly higher rate of return; and the balance to be in a very conservative type of bonds and fixed income investments. Also, when it comes to applying for a new trust company license, S.B. 198 (R1) provides that there will be an allowance to cure a defect in the application, if one is identified before formal denial is rendered, and also allows for a very short back and forth if the FID wishes to terminate an executive from a trust company where they would have a right to appeal and some due process. I would characterize these as technical and legal changes that are not overly dramatic but that move Nevada into a slightly more competitive position, relative to other states that are also competing for this business.

[Chair Atkinson reassumed chairing the meeting.]

Senator Roberson:
I have a conceptional amendment which I hope was distributed to you (Exhibit E). It is a very minor amendment, but we caught it after the bill went through the Senate. We had intended paragraph (a). This amendment puts back section 5, subsection 2 to keep existing language in the law under paragraph (a), so as you will see, it says, "(a) Obtain from that state a license as a trust company; or," and continues to the new language paragraph (b), which was approved through the Senate. In fact, Commissioner Burns is the one who caught this, and we are happy to propose that amendment because this was the original intent of Commissioner Burns, myself, and others involved.

George Burns, Commissioner, Division of the Financial Institutions, Department of Business and Industry:
As this Committee is probably aware, in the last session there was a complete rewrite of the trust statutes in order to modernize, as well as enhance, the regulatory control of trust companies that had led to some major defalcations amongst some of our licensees. In the two years since it was passed, some real world experience has brought about the need for the technical corrections that are being introduced in this bill. As it has been amended and passed by the Senate, I think that a balance of industry and regulatory concerns have been accomplished, and this bill should accommodate the business interests as well as continue to protect the public interest regarding retail trust companies. The Division is in agreement with the enhancements that have been made here and were reviewed by Mr. Saltzman. One issue was establishing what the capital levels would be within a retail trust company.

As you may recall from earlier testimony on this the difference between a retail trust company and a family trust company is that a retail trust company holds itself out to the public and provides services to the public in general, and therefore the regulatory risk, as well as the responsibilities of the state and the FID to protect the public, are much greater. This is the reason for the much higher capital requirements for a retail trust company. They are set at a $1 million currently in statute. As Mr. Saltzman pointed out, it was previously 50 percent of that in cash. One primary purpose of the capital, from the FID's point of view, is to absorb any losses that may occur from the normal operations of the trust company, as well as any kinds of claims that may be made by the public that it is servicing. Another purpose of that capital is to facilitate the FID in taking that trust company into receivership should it become unsafe and unsound. The average cost amongst regulators for receivership of a retail trust company is in the range of $500,000 to $1 million. The more that is maintained in cash, the easier it is to facilitate that receivership. However, we do understand the business need for trust companies in this low-interest environment to be able to maximize their earnings, so the three-tiered arrangement has been made through this bill of 25 percent in cash, and the other 25 percent in cash equivalents as defined under generally accepted accounting principles. That is why the language is so extensive within the bill. The remainder of it, in other types of securities, should be workable for the FID in being able to expedite receivership should it become necessary. So, in general, we are in support of the bill as it has been introduced and with the additional correcting amendment that Senator Roberson just mentioned.

Chair Atkinson:
Thank you. We will open for questions now.

Assemblywoman Bustamante Adams:
Senator Roberson, I do not know if you or the other two gentlemen can answer the question, but where does Nevada currently stand in regards to best practices in this industry, and if the Legislature passes this bill, how does it reposition Nevada?

Senator Roberson:
I believe that answer would be better answered by Mr. Saltzman or Commissioner Burns.

George Burns:
In answer to your question, when we rewrote this trust statute we did it to the highest level of industry standards throughout the country. Many consider that somewhat conservative. However, we felt that it was necessary in order to make sure that we were providing the most safe and sound trust services not

only to Nevada citizens but also to citizens who may live outside this state where trust companies offer their services. The changes that we are making here will not necessarily lower those standards. I think they are clarifications with regards to how we will proceed in general operating manner. The reduction in cash capital is a little bit different. There is a great variance of the amount of capital required to be held by a trust company. It ranges anywhere from $100,000 in Puerto Rico to $10 million in the State of New York. Our $1 million requirement is about the average throughout the country.

Chair Atkinson:
Are there additional questions?

Assemblywoman Carlton:
Mr. Burns, regarding the section on being able to clear up any discrepancies within the licensing application, could you clarify what you are trying to do there? I am trying to remember what the fee for the licensing is on this.

Matthew Saltzman:
The ability to have a notice of deficiency at the end of the application is to allow an applicant the opportunity to cure an application's problems if there are any problems identified before a formal denial of the application would be issued by the FID. There is a significant penalty in life, so to speak, if you are denied formally an application for a privileged license of this type. It may be that the applicant chooses to withdraw the application rather than have it formally denied. Or they can work with the FID during this window of opportunity to change things; they may even propose a different executive officer or have additional capital be required or whatever it is that the Commissioner, in his discretion, requests.

Assemblywoman Carlton:
That leads me to more questions. If there might be a problem with one of the folks listed on the application, we would just switch out people so we could comply with this?

Matthew Saltzman:
There could be any number of reasons that the Commissioner could have to find an application not approvable as filed. It could be the identity of an executive, or the composition of the board of directors. The amount of experience that the management has in the business could be deemed unsatisfactory.

Assemblywoman Carlton:
I would like to hear from the Commissioner about what information he would need to deal with this.

George Burns:
This section that you are referring to does provide a chance to correct deficiencies in the applications without having to completely refile them. It may be one item of the many required items that I look at in approving an application, everything from the qualifications, experience, and knowledge of the principal directors, officers, and employees to their business plan or any of the other 12 items that I look at in the application. Previously, if 1 of those 12 things was wrong, under the statute we would deny it, and they would have to go through the entire application process and $2,000 application cost again.

Chair Atkinson:
Are there additional questions from the Committee? Does anyone else wish to get on record in favor of S.B. 198 (R1)?

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
I would ask that everything in our testimony on S.B. 136 (R1), that was said on behalf of the Nevada Bankers Association by myself and Mr. Sande be brought forward into this record, or at least referred to in this record. We are in support of S.B. 198 (R1), and particularly in support of the Act becoming effective on passage and approval.

Chair Atkinson:
Ate there questions from the Committee? Does anyone else want to get on record in favor of S.B.198 (R1)? Any opposition to S.B.198 (R1)? Anyone in neutral? [There was none.]

Senator Roberson:
Mr. Chairman, thank you again for showing me the courtesy of hearing my bill today.

Chair Atkinson:
Not a problem. We will work on our bills in work session a little bit later, but we will let you know when it is up. We will go ahead and close the hearing on S.B. 198 (R1)) and open the hearing for Senate Bill 414 (1st Reprint).

Senate Bill 414 (1st Reprint): Revises provisions relating to financial institutions. (BDR 55-1107)

Senator Michael A. Schneider, Clark County Senatorial District No. 11:
As everyone knows, Nevada's real estate market has been devastated. It is enough to note that Nevada leads the nation in foreclosures. Senate Bill 414 (1st Reprint) addresses several unfortunate consequences of the current real estate market. Section 3 prohibits a bank from unreasonably delaying a response to an offer for a residential short sale. A bank is presumed to have unreasonably delayed it if it does not respond within 90 days after receiving an offer. Section 4 prohibits a deficiency judgment on a short sale of certain family dwellings. Mr. Chairman, I also note that you did send us an appraisal bill downstairs. We need to try to stop the downward spiral in the real estate market, and the banks are one angle of that. There is not much we can do with the Wall Street bankers who bundled loans and sold them off worldwide. Not one banker has gone to jail over what they have done in devastating the world's economy. This is just a little effort directed at the banks, which we have some regulation over. We have, as you know, control over the appraisers to some degree, and I think they were the firewall. They allowed the market to go up. Now with the burst of the bubble, the appraisers have forced the values way down below replacement costs, let alone the land, and I am trying to address that.

I know constituents who have been working over a year to try to execute a short sale. Every time they think they are getting close, they call the bank and there is a new person in that department and he lost all the paperwork. So what I am trying to do here is work with the banks so that they work with our constituents faster. The big banks all got the stimulus money. They were bailed out. They were saved and they needed to be. I am not going to argue with that, but the homeowner was not saved in this. I think it is incumbent on the banks now to work diligently with the homeowners to process short sales—move it on down the road. Those are our constituents, and let us get this whole bubble behind us as fast as we can.

Assemblyman Segerblom:
With respect to the deficiency judgments on the short sales, is that applied to existing mortgages, including second and third mortgages?

Senator Schneider:
Does it apply now?

Assemblyman Segerblom:
Yes.

Senator Schneider:
Yes, I believe the banks can go after deficiency judgments on any sale.

Assemblyman Segerblom:
But did not you say you are getting rid of that?

Senator Schneider:
We are trying to get rid of that. Mr. Uffelman has brought up some ideas, but maybe they are not so good. He can come forward. He is worried about a dump of real estate on the market.

Chair Atkinson:
Senator, you were talking about a bill we sent to the Senate on that. I believe Mr. Conklin attempted to address the whole deficiency issue in his bill as well.

Bill Uffelman:
To go through the bill as it was passed from the Senate, section 2, which dealt with the commercial properties, was deleted in the Senator's Committee, the Senate Committee on Commerce, Labor and Energy. The Senator was good enough to amend section 3, which deals with the approval time for short sales. Ninety days is the preferred amount of time, but if there are any hangups the parties can agree in writing to extend the time. That is because a short sale is like any other sale of real estate. You are dickering about price. A short sale typically involves an occupied property, and the bill makes reference to the fact that it is occupied. There may be deficiencies. After an inspection, the purchaser says, "I want this fixed. I want the furnace replaced." People come back and say, "No, we will not do that" or "We will allow you this." The way the bill was originally written, the deal is not done. I do not want to wind up in a situation where the only way you can protect yourself is to say, "No." I would rather be able to extend for two weeks to get the thing approved. There is the financing side also. I am trying to keep that flexibility in section 3 so that the parties, the purchaser and the representative of the financial institutions, can agree to keep it open.

With respect to section 4 of the bill, and the new language beginning on line 36 on page 3, I probably read it 80 times and then all of a sudden this afternoon I had an epiphany. At line 42 it says, "foreclosure sale or trustee's sale." This is a short sale that we are talking about in subsection 4, not a foreclosure or trustee's sale; that should be stricken from the bill. Everything above that, subsections 1, 2, and 3, is the language that we passed back in 2009 that was Mr. Conklin's bill.

The new language at line 20 talks about "as defined in NRS 363A.050. You may recall when this bill passed in 2009, credit unions late in the process had themselves exempted from the prohibition on pursuing deficiency judgments post-foreclosure. They retained that right, so when the subsection 4 amendment was put in, where we defined everybody into the short sale provision, they had to undefine them in line 20, and that is why that language is there. With the suggestion that I made in line 42, subsection 4 relates to the parties of the short sale agreement. What I am trying to do with Senator Schneider is encourage financial institutions and parties to, in fact, go to short sales; in effect, everybody is better off. We will find a value for a property in a short sale because you get a broker's price opinion; you put a property out and you say, "It is a $200,000 property." Foreclosures in the neighborhood may be $165,000, but the reality is that it is a short sale, and we have all these specifications if it is continuously occupied, and the person is there. They have a role in this. They want to keep the property up; they want to encourage people to purchase it. You are trying to sell your house, but you are selling it for less than what you owe on the house. Banks have been waiving their deficiency judgments rights on short sales as part of the process. That said, there are individuals who are making strategic defaults. They are saying, "I want out of here, but the house is upside down."

By the way, this provision applies to all mortgages that are sitting out there; it is not just mortgages entered into after a certain date. This bill says you can agree to the short sale, but the two parties, the borrower who is deficient and the lender, can agree that there is a right to a deficiency relative to the property. It has to be declared, and both parties have to acknowledge that it was declared. So you have the million-dollar house that is selling for $500,000. The individual has other property. Now he is going to occupy his vacation home in Incline Village instead of his house in Reno or his house in Las Vegas. They could agree to a deficiency; the institution has to state the amount, and the individual agrees to that amount. In other words, you may now have an unsecured loan that funds that deficiency. But the parties have agreed to it and signed off on it, as part of the sales agreement relative to this piece of property. Again, trying to get things moving is what we all want. We need to find what the bottom is, or the mid-point, and get properties moving, because by the time you go through the foreclosure, it takes too long with all the things that we have put in place. That is what we are trying to do.

Chair Atkinson:
Questions?

Assemblyman Hickey:
Long day, short question. I am happy to see the banks in support and working with you, Senator Schneider. Realtors as well. I do not see them but I assume they are happy and part of this solution.

Bill Uffelman:
About ten minutes after I found the error in line 42 and I talked to the Senator, they came to me and said, "Line 42 is screwed up." We fixed it; they are happy.

Chair Atkinson:
Are there any questions?

Assemblywoman Bustamante Adams:
Senator Schneider, this bill does not specify an implementation date. I know that this is a concern for my constituents, and I wanted to see what your thoughts were on that.

Senator Schneider:
Effective on passage and approval. Our constituents are the same.

Assemblyman Horne:
I heard Mr. Uffelman discuss what can hold up the short sale process, but a homeowner told me the bank denied him on a short sale because the buyer, who was paying cash, came in $3,000 below the price. It took some time, and then they denied it; it fell through, and the buyer went somewhere else. Two months later, they had another buyer, and the bank said, "No, it is taking too long," and they were going forward with the foreclosure. I hope that with this and the other bills this kind of thing is getting addressed. I will not name a bank, but I got that homeowner in touch with the persons who represent that particular bank. That is ridiculous, so it is not just financing and things like that.

Bill Uffelman:
I go through this pain almost every day, too. Last week, we had a meeting of government relations people who represent the bank. We had a discussion about this, and in all honesty they are as frustrated by their operational people. We are all in this together. At the same time you and I can agree with what is reasonable and that somebody else had a bad day. Everybody is changing their systems, and dealing with new federal provisions. We just have to make it happen.

Senator Schneider:
That is a problem I have faced. I personally took constituents to meetings after they went round and round with—and I will say the name—Bank of America. The head guy from Bank of America came to Las Vegas and they still could not figure it out. So this whole idea that private business does such a good job—if we operated the state like that, we would be in big trouble. If they were operating the U.S. military, they would have gone after Bin Laden in Zimbabwe. It is just unbelievable how they have absorbed all these homeowners and then lose their paperwork. They do not get back to them. That is what we are trying to do here. Hopefully, Mr. Horne, this is a step in the right direction.

Assemblyman Ohrenschall:
My question is for either Senator Schneider or Mr. Uffelman, and it is in line with Assemblyman Horne's question. I know folks who were a few days away from getting the short sale done, and then the foreclosure goes through. Will this bill remedy that at all?

Bill Uffelman:
I am trying to get the short sale system to the point that there is an incentive for both parties to get a short sale done before we get that far down the pike. The homeowner, the borrower, has missed three payments, and he says, "I want to do this." For the institution there is an incentive with the short sale because there is more money on the table. Presumably, if you are going to do a short sale, you are going to sell it for more than it would sell for at a default, because there are expenses related to that. Then you have all the other related expenses that predate it in the mediation. I believe, in talking to the Senator, the whole notion is if we are going to do short sales, let us do them with these understandings of what they involve.

Senator Schneider:
Hopefully we speed it up, so we can get them done in 90 days or whatever, because the foreclosures are going down the track. I firmly believe that one side of the bank never talks to the other side. Hopefully with the short sale we incentivize them so much that they can get it done in 90 days, and the foreclosure goes away.

Bill Uffelman:
This agreed short sale could occur before default. I do not have to be in default to get the financial institution to agree to a short sale. Maybe I am anticipating a change in my life. Maybe I have been told by my employer that we are closing the plant. We are out of here. The financial institution always says, contact us in advance if there is a life change. Maybe I want to retire, and I am so far underwater that the bubbles are not even making it to the top. You could

negotiate and establish the terms of the short sale before you go into default. You have been making the payments, but the future is mighty dim and therefore let us agree. This bill does not require default, unlike a lot of the other bills do.

Assemblyman Ohrenschall:
If I understand it, what we hope to do with this bill is incentivize short sales and speed them up. But it will not stop the dual tracking. You are just hoping that by speeding up the short sale, you will stop that other arm of the bank, which we do not think is talking to the modification arm, from going ahead with foreclosures if the notice of default has already been recorded.

Senator Schneider:
That is correct, Mr. Ohrenschall.

Chair Atkinson:
Are there additional questions? Does anyone else wish to testify favor of S.B. 414 (R1)? Is there any opposition to S.B. 414 (R1)? Neutral? [There were none.] We will close the hearing on S.B. 414 (R1) and bring it back. Is there any public comment? Is there any other business to come before the Committee? The meeting is adjourned [at 4:55 p.m.].

RESPECTFULLY SUBMITTED:

_____
Diane O'Flynn
Committee Secretary

APPROVED BY:

_____
Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: May 4, 2011 **Time of Meeting: 1:10 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 407 (R1)	C	Richard Perkins/R&S Investments	Perkins Amendment
S.B. 407 (R1)	D	Richard Perkins/R&S Investments	NHP-5, The Nevada Highway Patrol Accident Investigation Form
S.B. 198 (R1)	E	Senator Michael Roberson/Clark County Sen. District No. 5	Roberson Amendment