

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

**Seventy-Fifth Session
February 26, 2009**

The Committee on Transportation was called to order by Chairman Kelvin Atkinson at 1:36 p.m. on Thursday, February 26, 2009, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, 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/75th2009/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, Chairman
Assemblyman Mark A. Manendo, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Chad Christensen
Assemblyman Jerry D. Claborn
Assemblywoman Marilyn Dondero Loop
Assemblyman Pete Goicoechea
Assemblyman Joseph M. Hogan
Assemblyman Ruben J. Kihuen
Assemblywoman Ellen B. Spiegel
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Ocegüera, Clark County Assembly District No. 16
Assemblyman Bernard (Bernie) Anderson, Washoe County Assembly District No. 31
Assemblyman James Ohrenschall, Clark County Assembly District No. 12

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Marlen Schultz, Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

Lesley Pittman, President, Sierra Strategies, representing Nevada Rental Car Group, Reno, Nevada
Mandy Murphy, Loss Control Supervisor, Enterprise Rent-a-Car, Reno, Nevada
Robert A. Ostrovsky, President, Ostrovsky and Associates, representing Hertz Corporation, Las Vegas, Nevada
Kirby Lampley, Director of Regulatory Operations, Public Utilities Commission of Nevada, Carson City, Nevada
C. R. (Rod) Nelms, Lobbyist, United Transportation Union, Winnemucca, Nevada
John Passi, National Association of State Legislative Board Chairmen, Brotherhood of Locomotive Engineers and Trainmen, Sparks, Nevada
Joe Carter, Private Citizen, Fallon, Nevada
Joseph Guild, representing Union Pacific Railroad, Reno, Nevada
Wesley J. Lujan, Director, Public Affairs, Union Pacific Railroad, Sacramento, California
Tray Abney, Director, Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada
Patrick T. Sanderson, representing Laborers' International Union Local No. 872, Carson City, Nevada
Kyle Davis, Policy Director, Nevada Conservation League, Las Vegas, Nevada
Joe Johnson, Legislative Committee for the Sierra Club, representing the Toiyabe Chapter, Reno, Nevada
Michael Geeser, Media/Government Relations, California State Automobile Association, Las Vegas, Nevada
Thomas J. Fronapfel, P.E., Administrator, Field Services Division, Department of Motor Vehicles
John W. Griffin, Attorney at Law, representing Pardee Homes, Las Vegas, Nevada

Chairman Atkinson:

[Roll call taken.] Today, we have Assembly Bill 177, Assembly Bill 138, and Assembly Bill 163 for our consideration. We are going to take them in order as they appear on the agenda. The Majority Floor Leader is here, and he will be testifying first on A.B. 177.

Assembly Bill 177: Revises provisions concerning short-term leases of passenger cars. (BDR 43-194)

Assemblyman John Ocegüera, Clark County Assembly District No. 16:

I am here today to present Assembly Bill 177. I understand there is some concern over a provision in this bill on diminished value. I would like to inform the Committee we have addressed this issue and proposed an amendment removing that language. If you turn to the back in section 5, please note the change has eliminated everything from the section. I am introducing this bill on behalf of the Nevada rental car agencies. They brought the specific issue of theft to my attention. The purpose of A.B. 177 is to include theft and vandalism of a vehicle, with extenuating circumstances, within the current collision damage waiver contract violation provisions for rental car leases currently existing within the Nevada statutes.

As you know from last session when we tried to propose an Auto Theft Authority, Nevada leads the nation in auto thefts. The rental car companies are victimized, just like many of our citizens, by auto theft rings and petty criminals as well. For example, the Nevada Enterprise Rent-a-Car franchisee in Las Vegas averages three vehicle thefts a week. Each year in Nevada thousands of rental car customers claim their rental vehicle has been stolen. They claim they are unable to provide a key to that vehicle, and in many cases, are uncooperative with the rental car agency and law enforcement authorities seeking to substantiate the allegation of vehicle theft. The loss of the vehicle due to theft is costing the rental car companies hundreds of thousands of dollars a year.

In particular, this bill provides the terms or conditions constituting theft of a vehicle. The following conditions must exist: (a) if an individual claims the rented vehicle was stolen but does not have possession of the key to establish the key was not in the car at the time of theft, and (b) if an individual does not file an official police report within 24 hours after learning of the theft and does not cooperate with the rental car company and the police in providing information concerning the theft. The event constitutes a collision damage waiver. This concludes my testimony. I would like to introduce Ms. Pittman, who represents the Nevada Rental Car Group. She will be able to offer additional technical information and answer questions.

Chairman Atkinson:

Thank you, Mr. Ocegüera, for reviewing section 5 of A.B. 177. Do you prefer taking questions now, or would you rather wait until after Ms. Pittman's presentation?

Assemblyman Ocegüera:

If you do not mind, I prefer waiting until after her testimony.

Lesley Pittman, President, Sierra Strategies, representing Nevada Rental Car Group, Reno, Nevada:

Good afternoon, Mr. Chairman and members of the Committee. I am appearing before you today on behalf of the Nevada Rental Car Group in support of A.B. 177, as amended. Present, also, is Mandy Murphy who is a representative of Enterprise Rent-a-Car. [Read from prepared testimony ([Exhibit C](#)).]

Chairman Atkinson:

Are there any questions from the Committee?

Assemblyman Goicoechea:

I do not use rental cars very often since there are not many places in Eureka to rent one, but I have rented a vehicle at the Grand Sierra in Reno. Typically, the desk is not staffed during the night. It will close around 5:00 p.m. or 6:00 p.m., and reopen at 8:00 a.m. in the morning, so they have a drop box. Theoretically, I could bring the car back through the parking lot of the Grand Sierra where Enterprise leases their cars, take the keys in, and put them in the drop box. Nobody would ever see me or the car I leased until after 8:00 a.m. the next morning. I would not know if the vehicle had been stolen or damaged during the night after I turned it in. Therefore, I would not file a police report, and I certainly would not have the key in my possession. How do we address those issues?

Mandy Murphy, Loss Control Supervisor, Enterprise Rent-a-Car, Reno, Nevada:

We actually have quite a few rental locations with drop boxes, and in the scenario suggested by the Assemblyman, we would allow you the extra time. Staff would come in the next morning and check the vehicles returned and those scheduled for return and not accounted for. Then, we would contact you to determine how much longer you required the vehicle. At that point we would find out the vehicle had been returned earlier. We would inform you the vehicle was missing from the lot, the keys have been misplaced or stolen, and we would advise you to file a report.

Assemblyman Goicoechea:

That would be fine, if you could actually contact me. I am assuming the keys would be in the lock box. However, if I intended to steal the car, it would be possible for me to hot-wire the vehicle, slip the keys into the drop box, and drive away. The burden of proof would fall on you to prove I intentionally left the car running for someone else to steal or we had already hot-wired it.

Assemblywoman Spiegel:

Similarly, because of the key component, I am wondering what happens in the event of a carjacking. Somebody is at the gas station filling up the tank on the rental car prior to returning it, and the vehicle is carjacked. The renter would not have the key, but the police report would indicate there had been a carjacking. Is there an official method in place to accommodate situations of this nature?

Lesley Pittman:

The circumstances we have identified as a contract violation exist only when all of them apply. The individual in a position to cooperate with law enforcement authorities would not be considered the perpetrator of a situation where he is the true victim of the crime, and he would be treated accordingly.

Assemblyman Hogan:

In examining the various situations in which the benefit of the waiver might be lost, most of them are clear-cut criminal or near-criminal activities. One situation in particular touches me personally. My wife and I take frequent, lengthy trips using a rental car where I usually plan to do all the driving. However, there are times when it is necessary to ask my wife to take over. According to paragraph (d) I may be risking assumption of full liability for any damages, since it states the rental vehicle cannot be "Operated by a person other than an authorized driver." Is this interpretation correct, and do you consider it too severe considering the other activities mentioned?

Mandy Murphy:

Spouses are included whether they are or are not listed on the contract in the Enterprise rental agreement.

Chairman Atkinson:

Are there any other questions from the Committee members?

Assemblyman Manendo:

If someone has a car for a week and the rental week ends on a Saturday or a Sunday when the rental car agency is closed, are you billed for the extra day,

because the employee does not check until Monday even though the keys were in the drop box?

Mandy Murphy:

Usually the return of the vehicle is discussed at the time of rental and is decided between the rental car branch and the customer. Generally, if you pick up the vehicle on a Monday, the week is over the following Monday. The rental agreement operates on a 24-hour clock, so at whatever time the vehicle is rented, it would be due back at the same time. Therefore, it would not be possible to pick up a vehicle when the facility was closed, and it would not be due for return when the agency was closed. If, however, you picked up the vehicle on a Friday evening and did not plan to return it until Saturday, then you would need to work out these details with the rental branch to determine whether they would charge you for one day or until Monday.

Chairman Atkinson:

Are there any additional questions for either of the two witnesses? Thank you for your testimony, but please consider staying in case there are other issues that arise during the course of this hearing. We will move to the individuals in the audience who would like to speak in favor of A.B. 177.

Robert A. Ostrovsky, President, Ostrovsky and Associates, representing Hertz Corporation, Las Vegas, Nevada:

I am representing the Hertz Corporation, which is not a member of the association. However, the corporation does support this effort. I would like to comment on some of the previous concerns. Looking at other places in the statute, Mr. Hogan, the spouse is automatically covered under the contract. I think you will find business associates travelling together would be included under this provision also. The reason this legislation is important to us is to prevent auto theft rings from preying on the rental car agencies and not because someone was victimized by a carjacking on the street. We clearly have a police reporting system for instances like those. This is about organized theft rings working nationwide and, specifically, in Nevada, doing everything in the book to steal a rental vehicle and deny accountability. Then these cars are chopped up or taken overseas, and it is a significant problem for the industry. If there are any concerns or any protections we can build in for the legitimate renter, we will be happy to help. We are targeting a group that has meticulously and intentionally gone after us.

Chairman Atkinson:

Are there any questions from the Committee members? Is there anyone else who would like to speak in favor of this bill? Is there anyone present who would like to speak against this bill? We will close the hearing on A.B. 177.

ASSEMBLYMAN GOICOECHEA MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 177.

ASSEMBLYWOMAN SPIEGEL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Atkinson:

We will open the hearing on Assembly Bill 138 and take a one-minute recess while we wait for Assemblyman Anderson, the Chairman of Judiciary, to arrive.

Assembly Bill 138: Creates a new requirement for railroad trains. (BDR 58-598)

The Committee will come back to order at 1:57 p.m. The Chairman of Judiciary is here, and we are anticipating his remarks on A.B. 138.

Assemblyman Bernard (Bernie) Anderson, Washoe County Assembly District No. 31:

I am the primary sponsor of A.B. 138. With the Chairman's permission, there are a couple of gentlemen I would like to assist me with this presentation. I have been hearing stories from railroaders all my life. Both my father and brother were active employees, and their friends and fellow employees have been entralling me with stories about what is, in reality, a very dangerous profession. Railroad safety has improved dramatically over the years, and railroads are by far the safest form of ground transportation available today. However, the changing nature of this violent industry raises grave concerns for all the citizens of our state. Railroads have traditionally enjoyed a protected status, and it appears they may eliminate or reduce safety by creating a security hazard. The state has authorized adoption or has continued to enforce additional laws which do not unreasonably burden interstate commerce. The nature of this process, particularly with railroad safety questions, brings forth a question of preemption of federal statutes. The national government has prevented states from taking an active role in issues other than those of safety. I always ask what was the difference between the way George Washington moved his military troops as compared to the way Julius Caesar moved his military troops, and the answer to the question is none. The reason was because there was no railroad. Railroads changed the nation and contributed to this country deciding to implement standard time.

As drafted, A.B. 138 has some issues, and if the Committee decides to proceed with the bill, I would ask the Committee to examine the mock-up in section 1 which requires qualified employees. We propose a change removing the word "qualified" in subsection 1; the law would only apply to trains operated on a

main track, as defined in *Code of Federal Regulations*, Title 49, Section 240.7. The main track means the track upon which the operator of the train is governed by one or more of the following methods of operation: timetable, mandatory direction, signal indicators, or any form of absolute or manual blocking system. Subsection 2 contains a minor word change from "exception" to "waiver," and the public utility company may grant a waiver if it would not endanger life or property. Subsection 3 provides a definition of certified engineer, which was removed from subsection 1 and deleted here as unnecessary. Finally, section 2 provides an effective date of January 1, 2010, in order to give the railroads adequate time to comply.

Railroad employees are aware of the dangerous nature of their job, and they are concerned for their families, their friends, and the communities they pass through. There are railroad employees in the audience who will share with you their concerns and why this bill is desperately needed. [([Exhibit D](#))] is an email memorandum sent to the Committee containing information from Matt Parker, a railroad employee, in support of A.B. 138. In addition I have brought two recent articles ([Exhibit E](#)), one from the *Los Angeles Times* and another from the *Las Vegas Review-Journal*, describing two train accidents that might have been prevented had a second operator been on board. Mr. Nelms is with me, and also Mr. Lampley, the Director of Regulatory Operations of the Public Utilities Commission of Nevada (PUCN), who has other concerns.

The need for this legislation is clear. We live in a world dramatically changed from that of 1860 when the Transcontinental Railroad was built. We are no longer in the age of steam or diesel. Radio communication has changed as well. We are able to accomplish things today that were not possible 20 years ago. However, public safety has to remain the same. The guy on the track still has to be out there with an engine. We have a stretch of railroad running across the central part of this state which is longer than any other stretch in our nation, and without the necessary manpower an incident could prove deadly. These remarks conclude my comments, and I would like to turn it over to people who work on the railroad and know the issues intimately.

Chairman Atkinson:

Thank you, Mr. Anderson, and do you prefer members of the Committee asking you questions or would you like us to hear the presentations from your guests?

Assemblyman Anderson:

Whatever is the pleasure of the Chairman in this matter.

Chairman Atkinson:

Are there any questions from the Committee?

Assemblyman Goicoechea:

I am looking at section 1, subsection 1, where it says two employees must be in the controlling locomotive. Is that correct?

Assemblyman Anderson:

Yes, it is. However, I am not a railroader; I am a school teacher. While I have been around trains for a long time, it is my understanding that unless a pusher or another engine is in the middle of the train, there are not very many places to ride. There is no longer a caboose or "crummy" as my father would call them. You are going to have to ride up-front or you are not going to ride.

You may be aware of the recent accident that took place in southern California where the single individual in the train was distracted on his cell phone and missed the signal, resulting in a tragic accident. I am sure you are also aware the use of remote controls has brought about a whole new era in railroading. In 2007, cyanide cars were set out on a track in southern Nevada and broke free. The train traveled three miles before someone boarded and stopped it. So not having a sufficient number of employees on the train could prove disastrous. I have listened to stories from my brothers about having to lift a knuckle weighing approximately 75 pounds, which is an iron hinge connecting one train to another. Performing this job by yourself and then moving the train by remote control would be a hazardous situation. Both for public safety and the personal safety of those employees who have to move this heavy equipment over long distances, it is important to ensure at least two employees are on duty at all times.

Assemblyman Goicoechea:

The bill clearly does not address when you are switching or making a train up.

Assemblyman Anderson:

I think you may be better served by hearing from the PUCN relative to this particular issue.

Chairman Atkinson:

Mr. Lampley, I realize you have not given your testimony yet, but would you like to answer this?

Kirby Lampley, Director of Regulatory Operations, Public Utilities Commission of Nevada:

I would be happy to respond to this issue. This bill, as we helped Assemblyman Anderson adjust it, has an exception for the cases where the employee is in the yard or doing some function not on the main track. This bill applies to operations conducted on the main track, only. On occasions where efficiency is more important, like being in the yard, then it would not be necessary to have two employees.

Assemblyman Goicoechea:

It also says you can waive the requirement. I am assuming the PUCN would have the ability to waive the two-person requirement when they are making the coal run from Carlin to Valmy. Is that correct?

Kirby Lampley:

That is correct. We wanted this provision inserted for any circumstance not covered by this, where safety was not the primary factor and efficiency was more important.

Chairman Atkinson:

Are there any other questions the Committee has for Chairman Anderson?

Kirby Lampley:

The reason the Commission supports this bill is we believe it strikes a good balance between safety and efficiency. I have already talked about the long run between Sparks and Elko, where it would be important in our minds to have two people on the locomotive. However, there are other situations where two people are not needed, as mentioned before, and it is less expensive for the railroad. In addition, we were careful to make this bill carve out those railroads unique to Nevada, such as the Nevada Northern Railway operating out of Ely on a specific loop and the Carson City loop designed for the Nevada State Railroad Museum. This legislation also would not apply to the Virginia & Truckee (V & T) Railroad when it is completed.

Chairman Atkinson:

Are there any questions from the members?

Assemblyman Hogan:

Are there other states in which the PUC has adopted such requirements or where double staffing is required by law?

Kirby Lampley:

Yes, sir, there is. I think Arizona has a requirement of four employees on a train, consisting of two engineers, a brakeman, and a conductor.

Chairman Atkinson:

Are there any other questions from the Committee members for this witness?

C. R. (Rod) Nelms, Lobbyist, United Transportation Union, Winnemucca, Nevada:

John Passi, who is the state director for the Brotherhood of Locomotive Engineers and Trainmen, is with me today. Between the two of us, we represent all operating employees in the State of Nevada. [Spoke from prepared testimony containing two news articles and four position papers from the United Transportation Union, marked as [\(Exhibit F\)](#).]

Chairman Atkinson:

Are there any questions?

Assemblyman Claborn:

Do you have the run from Salt Lake City to Las Vegas?

Rod Nelms:

No, there is no run from Salt Lake City to Las Vegas. It goes from Salt Lake City to Milford, Utah, then from Milford to Las Vegas.

Assemblyman Claborn:

It stays overnight, and there used to be two people on that carrier consisting of the engineer and one other person.

Rod Nelms:

Yes, there is an engineer and a conductor.

Assemblyman Claborn:

I sponsored past bills relating to this same issue, and this surprises me that it keeps coming back. We passed those into law before. Did I hear if we sign this, it will supersede everything we have already done?

Rod Nelms:

No, this is a rail safety bill basically addressing fatigue issues like hours off and who can be called upon or who should not be called. It does not address crew size. There is no federal mandate for crew size on freight trains.

Assemblyman Claborn:

I remember when they approached us to reduce the crew down to one man, and we were successful in defeating that proposal.

Chairman Atkinson:

Are there any other questions?

Assemblyman Carpenter:

How do you control those engines on the rear?

Rod Nelms:

They are controlled by the lead locomotive and the engineer by remote control. Whatever he does on the locomotive, whether he is operating the air, the dynamic brakes, or the throttle, also affects the rear unit.

Assemblyman Carpenter:

Is that done by radio or something else?

Rod Nelms:

It is radio-controlled.

Chairman Atkinson:

Are there any other questions from the Committee members for either one of these witnesses at the table? If not, we will ask the gentleman in the middle to give his testimony.

**John Passi, National Association of State Legislative Board Chairmen,
Brotherhood of Locomotive Engineers and Trainmen, Sparks, Nevada:**

Last year H.R. 2095, the Federal Rail Safety Improvement Act of 2008, was passed. It calls for the implementation of positive train control (PTC) by December 31, 2015. Positive train control is a system designed to prevent train-to-train collisions, over speed derailments, and movement from a switch left in the wrong position. The positive train control operates in the background designed to perform these three functions. This technology is still in its infancy. In fact the models currently being tested do not have the capacity to protect roadway workers from injuries due to train incursions. We believe it will be a decade or more before PTC is sufficiently tested for widespread use. The railroad industry has made engineer-only operation a key bargaining goal in the current round of negotiations and has unsuccessfully attempted to manipulate the legal bargaining process to achieve this goal. It has done so in spite of the fact the technology is new and untested. It defies the reality of PTC requiring a locomotive engineer to observe and do more, rather than less. This is what an engineer-only operation means for the communities you

represent. No one is on the train to make an emergency stop or take any other steps to prevent an accident when the locomotive engineer becomes incapacitated. Only one side of a train can be inspected for shifted lading or other problems. If a single train becomes disabled, all following trains will have to come to a halt and wait while the railroad dispatches someone to diagnose and resolve the problem. This work is being performed by the conductor currently. If the train comes to a stop in a position that blocks the public railroad crossing for any length of time, the conductor will go back to the crossing and cut the train to clear the crossing so that traffic may flow and also allow for emergency vehicles to cross the tracks.

Chairman Atkinson:

Thank you, and I see that Mr. Carpenter has a question.

Assemblyman Carpenter:

You said it would be ten years before the positive train control system would be implemented.

John Passi:

H.R. 2095, which was signed by President Bush, contains the provisions for PTC. It is being tested and implemented around the country. There is an article in *The New York Times* which mentions commuter trains are using the positive train control now, and they have one person operating it, who is the motorman. He does not touch the controls unless something happens.

Assemblyman Carpenter:

So what happens if the only person near the controls has a heart attack?

John Passi:

That is a good question. The PTC would shut down the engine. On the locomotive controls there is a device known as the "dead man's switch." The engineer must continually press the button or the airbrakes will go off. If he does not press that button, there is a fail-safe that will stop the train.

Assemblyman Carpenter:

Did someone say conductors are not really licensed or qualified to operate the train?

John Passi:

Most conductors do not hold an engineer's license, but they can stop the train.

Chairman Atkinson:

Are there any other questions from the Committee members for either of the witnesses? Seeing none, thank you for your testimony and you are excused. We will take anyone else who wants to speak for A.B. 138.

Joe Carter, Private Citizen, Fallon, Nevada:

I am the past State Legislative Board Chairman for the Brotherhood of Locomotive Engineers and Trainmen (BLET). I am currently transitioning into retirement, and I am present today as a private citizen. This bill is a good down payment on fatigue. That is it. It will not solve the issue of fatigue. The National Transportation Safety Board, after the Waco, Texas, accident, instructed the unions and the railroads to work together to mitigate the issue of fatigue. H.R. 2095, the Rail Safety Improvement Act previously referred to, is the federal bill dealing with hours of service. It makes some significant changes, but it does not deal with specific issues like setting up turns, dropping turns, or accuracy of lineups. All this bill does is ensure someone is plugged in while aboard the locomotive. I have spent 37 years in the railroad industry, and there were many times I went to work in Sparks and woke up in Elko without any knowledge of what occurred during the interim. I was on autopilot for 313 miles. It happens regularly.

Assemblyman Carpenter was questioning Mr. Passi, my replacement, about positive train control. When they start a new system, the Federal Railroad Association goes through a period of federal rulemaking. All PTC has to do is meet the safety standards of the existing signal system. There are false green signals occurring as we speak. Positive train control keeps track of where the trains are located on the rail system using global positioning system (GPS) technology, and supposedly, the computer is going to send a signal from Omaha to the satellite, from the satellite to the engine, to cause the train to stop.

This bill is not perfect. There are provisions I would have liked included but were preempted. I would have liked a provision ensuring a second employee on the engine had a minimum of a student-engineer's license. The entire purpose of this bill is to lessen the chance of a collision due to fatigue. You have been told the conductors can stop the train, however, most of them reach over and grab a handle called the emergency brake and pull it. Yes, the train will eventually stop, and maybe it will still be on the track. It might contain hazardous material that could be released into the air. Once the emergency handle is pulled, nobody has any control over the slack in the train. You are just as likely to have a derailment if the emergency handle is pulled. There are two major issues in this state requiring a thoughtful review. One is the issue of fatigue, and the other is the issue of reporting injuries and accidents.

Assemblyman Goicoechea:

As I look at the amendment to the bill, it does not require either of the employees be a certified engineer.

Joe Carter:

Federal law requires every train to have a certified engineer operating it. The Rail Safety Improvement Act of 2008 also requires conductors to be licensed.

Assemblyman Goicoechea:

I understand the certified engineer was deleted language from this bill only and does not affect the standards imposed by the federal law.

Chairman Atkinson:

Are there any other questions from the Committee for Mr. Carter? Does anyone want to speak in favor of this bill? Is there anyone here who would like to testify in opposition to A.B. 138?

Joseph Guild, representing Union Pacific Railroad, Reno, Nevada:

Wes Lujan is with me, and he will also provide testimony after I have spoken against this bill. Additionally, I would like to respond to a couple of comments made earlier. The Chairman of Judiciary and I have had many discussions through the years, so I completely understand his position and point of view on this issue. What is not in dispute is the Union Pacific Railroad's commitment to safety and the safe operation of its trains throughout the entire system.

I started doing legislative work for the Union Pacific in 1982, so I have a fair amount of history which might help illuminate the Committee. In 1913 the Nevada Legislature passed a law requiring five members on a train crew operating in Nevada. In 1985, *Nevada Revised Statutes* (NRS) 705.410, which was Nevada's "full-crew law," was repealed when the Legislature made the public policy decision to get out of dictating the size of train crews to rail labor and rail management. Since that time, collective bargaining agreements have governed the size of rail crews. I believe members of the Committee were left with the erroneous impression that trains are operated with less than two-member crews in Nevada. In other words, the belief that only one person is operating a train in this state is not the case, and collective bargaining agreements set forth the requirement of two-person crews.

There are three additional comments I would like to make. First, Mr. Lampley from the PUCN said an exception was carved out so the Nevada Northern Railroad in White Pine County would not be subject to A.B. 138 if it were to be passed. Also, the V & T Railroad from Carson City to Virginia City would not be subject to that, and I question why. If it is applicable to the Union Pacific

Railroad, then it should apply to all other railroads in this state as well. Then my second comment concerns Mr. Passi's statement regarding one-man crews not being safe. He went on to say the proposed bill would be solving a problem, and I believe there is no problem. I would also like to mention Mr. Carter's remark of not being misled about A.B. 138 solving the railroad problem. I do not believe rail safety, as a problem, is ever solved. It is an ongoing issue which must be continually addressed. People who work on the railroads need to participate in safety seminars and efforts by rail management to make the railroads safer. Finally, I would like to clarify some concerns expressed by Assemblyman Claborn. The Union Pacific Railroad has never come before this Legislature and asked for an opportunity to operate trains in this state with one-man crews. Contrary to all the issues I have dealt with over the last 28 years, we have never asked to be allowed to operate one-man train crews.

Chairman Atkinson:

I believe Mr. Carpenter has a question for you.

Assemblyman Carpenter:

How long is that collective bargaining agreement in force?

Wesley J. Lujan, Director of Public Affairs, Union Pacific Railroad, Sacramento, California:

All of these agreements are done at the local level. They vary in their terms, and I do not have this specific information readily at hand, but I am more than happy to follow up with you through the Committee Chairman to supply you with the length of the agreement.

Chairman Atkinson:

Mr. Claborn wants to reserve his comments for later. Are there any other questions from the Committee members for Mr. Guild before we move to the next witness?

Wesley Lujan:

As the new representative for the Union Pacific Railroad in the State of Nevada, I am looking forward to working with you. I am sure many of you worked with my predecessor, Wayne Horiuchi. After 26 years with our company, he decided to retire. I think it is imperative to discuss a couple facts about rail safety. First and foremost, there is nothing more essential to our company than protecting our 620 employees in Nevada and assuring the public's safety. It permeates every aspect of our culture as a company and, in fact, we have designated the concept as our "total safety culture." From the management on down, there is nothing as vital as ensuring we perfect our safety practices at the local yards and places of operation, which is evidenced by the fact the rail employee injury

rate has decreased more than 71 percent since 1980 while crew sizes have decreased from 5 to 2 people. It is also critical to note the hazardous material accident rates have declined 87 percent since 1990.

It is not a perfect world, and accidents do happen as we saw with Chatsworth last year. That accident had a tremendous impact on the debate about rail safety. I do not want to go into elaborate detail about what was or was not the cause of that incident, but a salient point to mention is that the hardened bulkhead in the locomotive protected all the crew members when it collided with the Metrolink train. No fatalities occurred on the engineer's side. This can be attributed to the technology perfected in the bulkhead which helped protect our employees in this accident. It is also important to note that on November 20, 2008, in Rialto, California, as a result of the Metrolink incident with our locomotive, the Veolia Transportation Company began staffing their Metrolink passenger trains with two-person crews. The event which precipitated this change was a Metrolink train ran through three signals and sideswiped a Burlington Northern Santa Fe (BNSF) locomotive. Two crew members on every train is not necessarily the panacea for stopping these incidents, but as an operating practice, it is a precautionary tool we do utilize.

Positive Train Control (PTC) is a complex issue, and I am more than happy to fly out our experts from Omaha to talk to you about our implementation schedule. We have committed to the two different time frames for phasing this device into operation. Federal mandate requires compliance by 2012 in the Los Angeles basin and by 2015 throughout Union Pacific's 23-state network. In our opinion, bills like this distract from the overall focus of safety, because anything dealing with crew size needs to be done through the employer-employee collective bargaining agreement. We recognize there is considerable sensitivity about people's employment and their future in terms of how they operate our trains. We will not implement any technology, nor will the Federal Railroad Administration (FRA) allow us to initiate technology, that is not fail-safe.

There was a reference to an incident with a chlorine car in Las Vegas, and I wanted to underscore the fact that the Union Pacific Railroad has spent \$1 million on a derail siding located by Blue Diamond Avenue. It has a triple redundancy. We already have two derailer switches there, and this was a third system to avoid this same situation from occurring in the future.

Chairman Atkinson:

Are there any questions from the Committee?

Assemblyman Goicoechea:

Do you anticipate a move by the Union Pacific Railroad Company to reduce your two-man crews down to a one-person crew once you have this technology in place?

Wesley Lujan:

That is an issue we believe needs to be negotiated through the collective bargaining process in partnership with our union associates.

Assemblyman Claborn:

What is the name of your railroad?

Wesley Lujan:

I am speaking on behalf of the Union Pacific Railroad.

Assemblyman Claborn:

Is this the same one running from Las Vegas to Salt Lake City to Milford that returns every day?

Wesley Lujan:

Yes, your description is correct.

Assemblyman Claborn:

I intend to prove to you there has been a bill submitted to us previously to attempt to reduce the crew down to one person, and I will prove it to you before the day is out.

Assemblyman Carpenter:

It is a mystery why both of the crew members are not trained to operate the locomotive. Those trains are 10,000 feet long or longer from what I can tell, and I wonder how you apprentice employees to ensure you have a qualified replacement when the engineer decides to retire?

Wesley Lujan:

It really is an issue left up to the collective bargaining agreements we have with both the Brotherhood of Locomotive Engineers and Trainmen (BLET) and the United Transportation Union (UTU) in terms of who performs what function within a cab. We go through 23 states and 7,300 communities, and it is imperative we educate our crews at a nationally accepted level.

I would like to address your concerns regarding the length of trains. To my knowledge, it is not a normal operating practice to run trains over 10,000 feet, and if that is not the case, I will make sure I correct this statement.

Joseph Carter:

I wonder if I could help out by responding very briefly. In answer to Assemblyman Carpenter's question, the testimony indicated the conductor was capable of stopping the train. It is true, they know how to perform this limited operation, but the conductor begins a career path as a conductor and remains in that capacity for the duration of his employment. Their duties are defined as a conductor, and although they are different, the duties are considered on a par with those of the engineer.

Chairman Atkinson:

Is there anyone else who wishes to speak in opposition to A.B. 138?

Tray Abney, Director of Government Relations, Reno-Sparks Chamber of Commerce, Reno, Nevada:

In the Chamber's public manual for economic vitality in Nevada, under the labor management section, we mention our opposition to mandated personnel staffing requirements. The Union Pacific Railroad Company is a Chamber member, and I would like to echo the concerns they voiced today. I worry from a broader business perspective about the precedent this will set when you start having state law and regulations determining the staffing decisions of any specific company. I think it should be the choice of the company and the unions they bargain with to determine the staffing ratios needed to properly run their operations. I am certainly concerned with remaining competitive with other states, and every regulation or new law could add to the cost of goods transported to us by train.

Chairman Atkinson:

Are there any questions from the members for Mr. Abney?

Assemblywoman Dondero Loop:

I have a point of clarification. Are you saying the company should make the staffing decisions whether those decisions are considered safe or not?

Tray Abney:

I do not think state law should determine the number of staff or staffing decisions for any company, whether it is a railroad company, a trucking company, or a restaurant. All of these companies deal with public safety in one capacity or another.

Assemblywoman Dondero Loop:

If you take your logic one step further and apply it to the teaching profession, it would be similar to asking me as a teacher to teach a classroom of 200 children. This scenario might be acceptable until one of those children being taught in an overcrowded classroom is yours.

Assemblyman Christensen:

I am not sure I can top my colleague's analogy, so I am not going to try. What is the name of the organization you represent in your testimony?

Tray Abney:

I am with the Reno-Sparks Chamber of Commerce.

Chairman Atkinson:

Are there any other questions from the Committee? There are none, and you are released to return to seat. Thank you for your testimony. Is there additional testimony in opposition? Is there anyone here wishing to speak in a neutral position on A.B. 138?

**Patrick Sanderson, representing Laborers International Union Local No. 872,
Carson City, Nevada:**

I am speaking today as a concerned citizen. I did not plan on coming up here, but for the legislators of the State of Nevada who are charged to help protect the citizens that live here, saying safety is not a concern is asinine.

Chairman Atkinson:

Assemblyman Anderson, would you like to come forward and offer some closing remarks?

Assemblyman Anderson:

I would like to clarify the question that was put forth by Assemblyman Carpenter earlier. I think Mr. Guild made a good point about what happened in 1985 when they moved from a full crew of five or six employees. Once upon a time, there was an engineer, a fireman, and a brakeman riding in the front of the train. In the back of the train, there was a flagman and a conductor who rode in the caboose. When Nevada modernized, the caboose was eliminated and that provided the opportunity for a two-person crew. Frequently, these employees are out there by themselves. It is difficult to perform the work required on the job with the conditions existing in Nevada in the summer or winter when temperatures have huge fluctuations.

I am convinced this is a good piece of legislation where we are guaranteeing at least a minimum of two individuals on every train in our state.

Chairman Atkinson:

Are there any final questions for Mr. Anderson? I do have one quick question for you. If it is already being done, why are there individuals opposed to this bill? Their testimony stated there is currently a two-man crew on a train, so why are we doing this if it is indeed a fact?

Assemblyman Anderson:

It is a national collective bargaining unit. I felt it was necessary to include this provision as a state statute, since Nevada was among the last states to move from the six-man crew to the five-man crew, and now we are arguing to maintain two crew members.

Chairman Atkinson:

Are there any further questions? Is there anyone else wishing to be heard on A.B. 138? We will close the hearing, and we will bring it up in our next work session.

At this time we will open the hearing for Assembly Bill 163, and I will turn this meeting over to Vice Chair Manendo to officiate.

Assembly Bill 163: Requires the Department of Transportation to adopt regulations to allow certified low emission and energy-efficient vehicles to be operated in a lane on certain highways designated for the preferential use or exclusive use of high-occupancy vehicles. (BDR 43-40)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

It is an honor to speak before you in favor of Assembly Bill 163. The reason I requested and introduced A.B. 163 is to find more incentives for people to purchase the new fuel-efficient hybrid cars. One incentive which is inherent in these cars is a person uses less gasoline and saves a significant amount of money at the fuel pump as a result. Initially, they are somewhat expensive to purchase. Many people have told me they would buy a hybrid car, but they simply cannot afford it. Unfortunately, I am in the same predicament. I own an old gas-guzzling truck, and I would like to trade it in for one of the hybrids.

I believe Clark County has five miles of roadway with high occupancy vehicle (HOV) lanes and, by the end of the year, we will have 16 miles. Our intent with A.B. 163 is to save time during rush-hour for people by using the HOV lanes, if you have an energy efficient vehicle. It will be an extra incentive for people to purchase this type of vehicle. The benefits will be fewer emissions and less consumption of fossil fuels, thereby bettering the entire community. I have had a number of discussions with representatives from the Nevada Department of Transportation (NDOT), the Department of Motor Vehicles (DMV), and the

Nevada Highway Patrol (NHP). These talks have produced an amendment which we are presenting as well. In a conversation I had with Scott Rawlins, the Deputy Director of NDOT, the amendment provides them with more flexibility to decide when hybrids and fuel-efficient vehicles can use the HOV lanes. The amendment is a simple change, making the "shall" a "may." Additionally, we changed the effective date to enable DMV to develop a tag or sticker identification system. This time extension was requested by Mr. Roberts, Director, at DMV.

Vice Chair Manendo:

Thank you, Mr. Ohrenschall. I personally appreciate a piece of legislation like this. It is important to think outside of the box, and I believe A.B. 163 accomplishes this. However, I am disappointed with the amendment change of "shall" to "may." My concern is this bill may never be implemented because of the proposed change. Changing the effective date provides ample opportunity for implementation without reducing the language as suggested. I have a quick question for you. Do you have any thoughts about what the stickers might look like?

Assemblyman Ohrenschall:

In our neighboring state to the west of us, the qualifying hybrid cars have a bright, yellow sticker. I believe California also sets a cap on the number issued, which is an option our DMV could employ. If they are worried about congestion in the HOV lanes, it would be possible to set a limit as to the number of stickers issued, thereby limiting the number of vehicles using those lanes. Currently the HOV lanes are not being used extensively, but as time goes by, potentially the use will increase and there may be a need to cut back. I understand there are already some discussions taking place to increase the number of occupants required for a vehicle to utilize the HOV lanes from the mandated two to three people. Statutes and the *Code of Federal Regulations* have allowed states to permit other uses in the HOV lanes up to September 30, 2009, and future use is contingent upon the federal government's approval. Therefore, the amendment changing "shall" to "may" provides a measure of protection for the state should the federal government deny future alternative usage by hybrid vehicles.

Also, I forgot to mention there is one other amendment being proposed by Ms. Lazovich permitting this initiative at the county level.

Vice Chair Manendo:

Does the Committee have any questions?

Assemblyman Christensen:

Anything that can truly create an incentive for people to use more fuel-efficient vehicles is great. I have seen an effective use of the HOV or carpool lanes in California where cars certified to achieve a certain miles-per-gallon rating can purchase a sticker to access these multiple occupancy lanes regardless of the fact that only one person is in the vehicle. Also, I know people who have bought hybrid vehicles for their business to reduce their commute. I am curious if you have a viewpoint on what other states have done? Have you had an opportunity to talk to our legislative counterparts in these states to ascertain their opinions regarding this issue?

Assemblyman Ohrenschall:

I have tried to study what the other states have done. In fact, one of the inspirations for this bill came from different states and municipalities. There are some cities offering free metered parking to people who have these hybrid efficient cars. Some places were waiving registration fees, which are all ideas I considered. However, these provisions would cost the state revenues which we cannot afford to lose at this economic turning point. My proposal as submitted does not put a drain on the state's resources, but, as we know, the traffic in Clark County can be outlandish at times. The extra time saved and the gas saved by driving in the carpool lanes as we have seen in communities like Los Angeles can make a significant difference. It can be an incentive to purchase one of these cars. I believe Arizona and New York, among others, have passed different variations of this, and I understand it has been a successful program.

Vice Chair Manendo:

Are there any other questions from the Committee? Do you have a list of people you would like to testify?

Kyle Davis, Policy Director, Nevada Conservation League, Las Vegas, Nevada:

Assemblyman Ohrenschall did a creditable job in summing it up. We are in support of the bill and believe it is a good step to provide incentives for people to buy and use more fuel-efficient vehicles. It has a number of different positive impacts, whether they alter global warming or reduce the buildup of greenhouse gases.

Joe Johnson, Legislative Committee for the Sierra Club, representing the Toiyabe Chapter, Reno, Nevada:

We would like to be on record as supporting this bill. We think it is a meritorious piece of legislation.

Michael Geeser, Media/Government Relations, California State Automobile Association, Las Vegas, Nevada:

We, too, are in favor of this bill. This is exactly the kind of incentive and motivation we would like to see offered to motorists who purchase hybrid vehicles. One point I did want to raise. We are in full support of setting some type of limit, either with the amount of cars or a limit on time so a carpool lane is not degraded by other users. If, indeed, people start purchasing hybrid vehicles and filling these lanes with single-occupant cars, then we are defeating the purpose of a carpool lane.

We would like to see limits implemented similar to those in California, Colorado, and Arizona. Arizona has a limit on the number of cars. California and Colorado have limits on the number of cars, and they have a time frame set on when the lane is not available for a single-occupant hybrid vehicle.

Assemblyman Ohrenschall:

I submitted a handout showing the number of hybrid vehicles in the state ([Exhibit G](#)). This document was sent to me by Mr. Roberts, Director, at DMV, and I believe the total of all those vehicles registered statewide is 56,000. These vehicles are not all located in Clark County where we have the HOV lanes. One of the good things about this bill is we have left the door open for the NDOT in collaboration with DMV and the NHP to set those limits.

Vice Chair Manendo:

Does anyone have any questions? Actually, Assemblyman Ohrenschall's exhibit shows a total of more than 58,000 registered vehicles statewide.

Assemblyman Christensen:

I have seen the flexible fuel logo on the back of some vehicles, and I can use biofuel in my own vehicle if it was available. Can either of you answer what flexible fuel involves?

Assemblyman Ohrenschall:

In terms of what vehicles would qualify, the base is set by federal statute, *United States Code*, Title 23, Section 166 (f)(3). This statute defines a low-emission and energy efficient vehicle by referring you to some of the *Code of Federal Regulations* (CFRs) from the *Federal Register*. There is an extensive list, and I am not sure if all flexible fuel vehicles qualify. I believe the Department could set a cap by regulation or they could set standards.

There is one other point I would like to make. The 58,000 hybrid vehicles listed statewide is only a fraction or 2.5 percent of the 2.3 million in use nationwide.

Anything we can do to encourage people to raise this number will be extremely positive.

Vice Chair Manendo:

Is there anyone else in favor of this legislation?

Tom Fronapfel, Administrator, Division of Field Services, Department of Motor Vehicles:

Assemblyman Ohrenschall's statement was correct. Mr. Roberts, Director, at the DMV did provide the information regarding the number of alternative energy vehicles operated in the state. Of the 58,000 listed, there are approximately 6,400 qualifying under the definition mentioned under the federal law. In Clark County, there are 60 to 150 EPA-approved vehicles meeting this definition. There are 20 in Lincoln County and 149 in Nye County.

Assemblyman Goicoechea:

I am assuming flexible fuel and ethanol/methanol gas fueled vehicles do not qualify in the numbers you just gave us.

Tom Fronapfel:

I do not believe they do.

Vice Chair Manendo:

Are there any other questions?

John W. Griffin, Attorney at Law, representing Pardee Homes, Las Vegas, Nevada:

Pardee is the master developer of Coyote Springs which is a master planned community bordering Clark County and Lincoln County. We would like to testify in support of the bill and thank Assemblyman Ohrenschall for allowing us the opportunity to propose this amendment to this Committee. The intent of the amendment is to allow a designated lane within a master planned community for electric vehicles or carts. These lanes are typically slower than normal traffic in residential communities for things like electric bicycles and electric scooters. The language gives the county the authority to adopt the specifics of the regulations.

Vice Chair Manendo:

Are you saying they would have to create a separate lane inside the community, or could they use an existing lane and simply designate it for this alternative use?

John Griffin:

The intent from Pardee Homes' perspective is to create separate lanes so instead of a two-lane road, there would be a four-lane road. The width of the second lane may not be as large as a normal travel lane.

Vice Chair Manendo:

Are there any questions from the Committee? Is there anyone here to testify in opposition? I will close the hearing on A.B. 163 and bring it back to the Committee. Is there anyone in the audience who would like to make a public comment? This meeting is adjourned [3:22 p.m.].

RESPECTFULLY SUBMITTED:

Marlen Schultz
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: February 26, 2009

Time of Meeting: 1:30 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 177	C	Lesley Pittman, President, Sierra Strategies, for Nevada Rental Car Group, Reno, Nevada	Prepared Testimony.
A.B. 138	D	Matthew B. Parker, Railroad employee, private citizen, Sparks, Nevada	Two-page email sent to the Assembly Transportation Committee on 02/25/09.
A.B. 138	E	Assemblyman Bernard "Bernie" Anderson, Washoe County District No. 31, Chair of Judiciary	Five-page document of articles from the <i>LA Times</i> and the <i>Las Vegas Review-Journal</i> .
A.B. 138	F	Rod Nelms, State Legislative Director, United Transportation Union, Winnemucca, Nevada	Written testimony and articles totaling 17 pages.
A.B. 163	G	Assemblyman James Ohrenschall, Clark County District No. 12	One-page list of Registered alternative fuel vehicles prepared by the Department of Motor Vehicles.