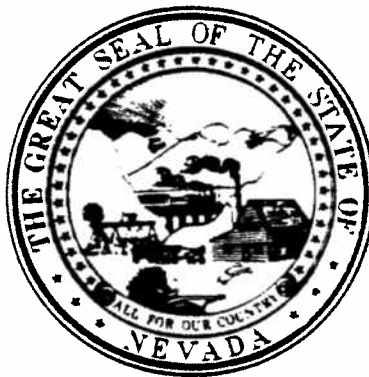


STUDY AND REVIEW OF
CERTAIN LAWS AND REGULATIONS
RELATING TO TRANSPORTATION,
INCLUDING A REVIEW OF
THE REGULATION OF
MOTOR CARRIERS



Bulletin No. 91-7

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

SEPTEMBER 1990

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SEPTEMBER 1990

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Assembly Concurrent Resolution No. 91—Committee on Transportation

FILE. 184.

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to study and review certain laws and regulations relating to transportation.

WHEREAS, The regulation of motor carriers is essential to the economy of Nevada and the welfare of its residents; and

WHEREAS, Many of our residents have expressed their concern and dissatisfaction, at public hearings conducted by various committees of the 65th session of the Nevada Legislature, with the manner and efficacy of the regulation of motor carriers by the Public Service Commission of Nevada; and

WHEREAS, In partial response to this public concern and dissatisfaction, the Nevada Legislature has amended the authority of the Public Service Commission of Nevada to regulate motor carriers through the enactment of chapter 202, Statutes of Nevada 1989; and

WHEREAS, A study and review of the manner in which the Public Service Commission of Nevada regulates motor carriers in this state, and the efficacy of that regulation, would provide the Nevada Legislature with invaluable assistance in its determination of whether further statutory amendment is necessary to protect adequately the economy of this state and the welfare of its residents; and

WHEREAS, Recent litigation resulted in an extensive revision of the method of taxing and registering motor carriers in the State of Nevada; and

WHEREAS, The passage of Assembly Bill No. 943 of this session made several related statutory changes; and

WHEREAS, It would be prudent to monitor the effect of these changes on the generation and collection of revenue and the enforcement of the related laws; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING, That the Legislative Commission is hereby directed to conduct a comprehensive study of the laws relating to transportation, including without limitation, the effect of the changes made by Assembly Bill No. 943 and any related matters, including, the feasibility of establishing designated ports of entry and a review of the manner and efficacy of the regulation of motor carriers by the Public Service Commission of Nevada; and be it further

RESOLVED, That the results of the study and review and any recommended legislation be submitted to the 66th session of the Nevada Legislature.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 66TH SESSION OF THE NEVADA LEGISLATURE:

The following report is submitted in compliance with Assembly Concurrent Resolution No. 91 of the 1989 legislative session (File No. 184, Statutes of Nevada 1989, pages 2362-2363). The resolution directs the Legislative Commission to conduct a study of the laws relating to transportation, including: (1) the effect of changes made by Assembly Bill 943 of the 1989 legislative session (Chapter 622, Statutes of Nevada 1989, pages 1410-1425); (2) the feasibility of establishing designated ports of entry; and (3) a review of the manner and efficacy of the regulation of motor carriers by the Public Service Commission of Nevada (PSCN).

In order to conduct the study, the Legislative Commission appointed a subcommittee consisting of the following members:

Assemblyman Val Z. Garner, Chairman
Senator Thomas J. Hickey, Vice Chairman
Senator Dean A. Rhoads
Assemblyman John C. Carpenter
Assemblyman Leonard V. Nevin

Legislative Counsel Bureau (LCB) staff services for the subcommittee were provided by Caren Jenkins of the Research Division (principal staff), Timothy M. Chandler of the Legal Division (legal counsel), and Debby Richards of the Research Division (subcommittee secretary). A notable amount of assistance was provided by representatives of agencies and organizations throughout the state. Of special significance were the contributions of the following individuals:

Dennis O. Barry
Assistant Director
Planning and Program Development
Nevada's Department of Transportation

Terry Page
Director of Regulatory Operations
PSCN

Donna Wadey
Tax Administrator
Motor Carrier Division
Nevada's Department of Motor Vehicles and
Public Safety (DMV&PS)

Colonel William J. Yukish
Chief
Nevada Highway Patrol Division
DMV&PS

This report presents the subcommittee's findings and recommendations, as well as background information relative to the major topics. All supporting documents and minutes of the subcommittee's meetings are on file in the Research Library of the LCB.

This report is transmitted to the members of the 66th session of the Nevada Legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
September 1990

* * * * *

LEGISLATIVE COMMISSION

Assemblyman John E. Jeffrey, Chairman
Assemblyman Robert M. Sader, Vice Chairman

Senator Charles W. Joerg	Assemblyman Louis W. Bergevin
Senator William R. O'Donnell	Assemblyman Joseph E. Dini, Jr.
Senator Raymond C. Shaffer	Assemblyman James W. McGaughey
Senator Randolph J. Townsend	Assemblyman Danny L. Thompson
Senator John M. Vergiels	

RECOMMENDATIONS

Following is a list of the recommendations to the 66th session of the Nevada Legislature by the Legislative Commission's Subcommittee to Study and Review Certain Laws and Regulations Relating to Transportation, Including a Review of the Regulation of Motor Carriers.

1. Urge the Senate and Assembly committees on transportation to review data regarding motor carrier registration fees collected since the implementation of Assembly Bill 943 (Chapter 622, Statutes of Nevada 1989, pages 1410-1425) in April 1991, and, if the data shows it to be appropriate, to adopt legislation to correct any inequality between the fees levied against interstate and intrastate motor carriers.
2. Direct, by resolution, Nevada's Department of Transportation, and/or other appropriate agencies, to provide to the Senate and Assembly committees on transportation, during the 66th session of the Nevada Legislature, the results of a cost/benefit analysis and other justifications for ports of entry prior to the construction of these facilities in the State of Nevada. (BDR R-178)
3. Encourage, by resolution, Nevada's Department of Motor Vehicles and Public Safety to evaluate the cost-effectiveness of performing in-state and out-of-state audits of the records of motor carriers and, if found to be appropriate, to increase the number of these reviews. (BDR R-179)
4. Direct, by resolution, the Nevada Highway Patrol Division of Nevada's Department of Motor Vehicles and Public Safety (DMV&PS) to promote the availability of vehicle safety inspections by appointment, at the motor carriers' convenience, as scheduling permits. Further, encourage the division to consider expanding its use of civilian inspectors to complement sworn officers for vehicle safety inspections on private property. The civilian inspectors should be required to meet certain criteria (e.g., ability, knowledge and skills) established by the DMV&PS. (BDR R-180)
5. Direct, by resolution, Nevada's Department of Motor Vehicles and Public Safety to evaluate the adequacy of existing penalties against motor carriers found to be operating unlawfully in Nevada and to report the results to the Senate and Assembly committees on transportation during the 66th session of the Nevada Legislature. (BDR R-181)

6. Direct, by resolution, the Public Service Commission of Nevada to address the concerns which have been expressed by the subcommittee members and the public during this study and report its activities to the Senate and Assembly committees on transportation at the beginning of the 66th session of the Nevada Legislature.
(BDR R-182)

7. Urge representatives of Nevada's Department of Motor Vehicles and Public Safety and motor carrier industry to: (1) review the current fee structure for permits to transport hazardous materials in the state; (2) examine the possibility of other entities assisting in the funding of the hazardous materials program; and (3) report their findings to the Senate and Assembly committees on transportation during the 1991 legislative session.

REPORT TO THE 66TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO
STUDY AND REVIEW CERTAIN LAWS AND REGULATIONS
RELATING TO TRANSPORTATION, INCLUDING A
REVIEW OF THE REGULATION OF MOTOR CARRIERS

I. INTRODUCTION

The 65th session of the Nevada Legislature adopted Assembly Concurrent Resolution No. 91 which directed the Legislative Commission to conduct a comprehensive study of Nevada's laws relating to transportation. The resolution specified a review of: (1) the effect of changes made by Assembly Bill 943 of the 1989 legislative session (Chapter 622, Statutes of Nevada 1989, pages 1410-1425); (2) the feasibility of establishing designated ports of entry; and (3) the manner and efficacy of motor carrier regulation by the Public Service Commission of Nevada (PSCN).

The subcommittee which conducted the study held a total of five meetings. Two meetings were held in Las Vegas, with one each in Carson City, Elko, Las Vegas and Reno, Nevada. Members of the subcommittee also participated in a fact-finding tour of Woodburn, Oregon, to investigate the manner in which that state is managing its ports of entry and motor carrier regulation. The subcommittee solicited and encouraged public input throughout the study process.

II. FINDINGS AND RECOMMENDATIONS

During the course of the study, the subcommittee:

- Recognized the complex interaction of many divisions of state government regarding transportation issues, and analyzed the process by which motor carriers must interact with related state agencies; (See Appendix A.)
- Discussed ways to: (1) facilitate motor carrier compliance with federal and state laws and regulations; (2) improve the state's "customer service" approach; and (3) reduce motor carrier evasion of registration, safety inspections, special permits and taxes; and
- Suggested a total of seven recommendations to address the issues specified in A.C.R. 91. (See Appendix H for bill draft requests.)

A. DISCUSSION OF ASSEMBLY BILL 943 OF THE 1989 LEGISLATIVE SESSION

According to the subcommittee's deputy legislative counsel, A.B. 943 was enacted to satisfy the provisions of the settlement agreement reached in the case of Dave R. Grant Hay, Inc. v. Nevada Department of Motor Vehicles and Public Safety. The complaint filed in that case alleged that various taxes and fees were collected by the department illegally in that it discriminated against interstate truckers and, thereby, violated the Commerce Clause (Article 1, Section 8) of the Constitution of the United States. (See Appendix G.)

The subcommittee expressed a concern regarding the possibility of future lawsuits or claims against the state. The deputy attorney general for Nevada's Department of Motor Vehicles and Public Safety (DMV&PS) explained that any motor carriers which are not represented in the lawsuit are precluded from filing an action against the state regarding refunds of fees and taxes. (See Appendix F.)

The financial impact of the changes made by A.B. 943, effective January 1, 1990, will not be evident until the new collection rates and methods have been in place for a full year. As a result, the subcommittee decided not to recommend any action until the data has been collected and fully analyzed. The Motor Carrier Division of the DMV&PS collects registration fees and compiles data regarding the revenues and expenditures relating to motor carriers.

The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

1. Urge the Senate and Assembly committees on transportation to review data regarding motor carrier registration fees collected since the implementation of Assembly Bill 943 (Chapter 622, Statutes of Nevada 1989, pages 1410-1425) in April 1991, and, if the data shows it to be appropriate, to adopt legislation to correct any inequality between the fees levied against interstate and intrastate motor carriers.

B. COST OF PORTS OF ENTRY

The rate of compliance with motor carrier regulations may be influenced by the difficulty or ease of obtaining services. It is assumed that a one-stop operation would promote uniformity in administrative practices by bringing together, under one roof, the various state agencies regulating the

motor carrier industry. Such an approach should allow carriers to satisfy all requirements with a minimum of delay. (See Appendix B.)

A one-stop operation should enable a motor carrier to comply with all of the state's highway use requirements at a single contact point. Various services could be provided, including:

- Information on all of Nevada's state taxes, fees and regulations imposed on interstate and intrastate motor carriers.
- Commercial Vehicle Safety Alliance (CVSA) inspection services.
- All necessary application forms and tax report returns.
- Issuance of all required credentials and temporary permits.
- Central collection of all motor carrier taxes and fees.
- Accessibility in person, by telephone, mail or wire service.

These one-stop operations are sometimes referred to as ports of entry because they are generally located at or near a state's border. Ports of entry may be in operation 24 hours per day, 365 days each year. Oregon and Utah, two of Nevada's neighboring states, provided the subcommittee with information regarding their ports of entry, costs of operation, policies and procedures, and staffing requirements.

Information was gathered through public testimony, staff research and a visit to an Oregon port of entry station. It was agreed by the subcommittee that ports of entry may help to alleviate the problem of motor carriers entering the State of Nevada illegally. Based on testimony from representatives of both the Oregon and Utah Departments of Transportation, the current cost of constructing a port of entry is estimated to be \$3 million and the annual cost of operating such a facility is approximately \$1 million. It is uncertain whether the increased revenue to the State of Nevada would be sufficient to offset the cost of constructing and operating a port of entry. (See Appendix C.)

The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

2. Direct, by resolution, Nevada's Department of Transportation, and/or other appropriate agencies, to provide to the Senate and Assembly committees on transportation, during the 66th session of the Nevada Legislature, the results of a cost/benefit analysis and other justifications for ports of entry prior to the construction of these facilities in the State of Nevada. (BDR R-178)

C. AUDITS OF MOTOR CARRIERS

The Motor Carrier Division of the DMV&PS, among other things, conducts desk and field audits of the records of motor carriers which operate in Nevada. In 1989, the division performed approximately 698 in-state and out-of-state field audits and 457 desk audits. The state realized revenue of over \$1 million as a result of these 1,155 audits, at a cost of \$468,000. This cost includes the salary, fringe benefits and travel expenses for 12 staff positions. (See Appendix D.)

The subcommittee wished to determine the cost of performing additional audits versus the potential benefit to the state. The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

3. Encourage, by resolution, Nevada's Department of Motor Vehicles and Public Safety to evaluate the cost-effectiveness of performing in-state and out-of-state audits of the records of motor carriers and, if found to be appropriate, to increase the number of these reviews. (BDR R-179)

D. SAFETY INSPECTIONS

The Nevada Highway Patrol (NHP) Division of the DMV&PS performs Commercial Vehicle Safety Alliance (CVSA) inspections in the state. The CVSA inspection stickers are valid for 90 days upon successful completion of an inspection. By displaying a valid sticker, a carrier may avoid delays created by random inspection stops on the highway. The CVSA is in place to encourage compatibility, reciprocity and uniformity among enforcement activities and inspections in all states.

Motor carriers are randomly stopped on the roadway to verify their compliance with regulations and inspections, and, if found to be in violation, inspected on the spot. (See Appendix E.) It was proposed that, if inspections are made more convenient for carriers, compliance with safety regulations and inspections would rise. Inspections are also available at the carriers' terminals, but few companies are aware that this service is provided by the NHP.

By making carriers more aware of the opportunity to set an appointment to schedule inspections, it is assumed that more trucks would be inspected in Nevada, producing a variety of benefits. For example: (1) fewer uninspected vehicles would be operated on the state's highways; (2) Nevada would realize an increase in revenue, as the Federal Government distributes CVSA funds based on the number of inspections each state performs; and (3) motor carriers would perceive a more cooperative approach to enforcing regulations from the NHP.

The subcommittee agreed that vehicle safety inspections of motor carriers are important for the safety and well-being of the people of the State of Nevada, and that such safety inspections can be time-consuming and inconvenient for motor carriers. The intent of the subcommittee is to encourage the performance of such safety inspections while minimizing the negative aspects.

The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

4. Direct, by resolution, the Nevada Highway Patrol Division of Nevada's Department of Motor Vehicles and Public Safety (DMV&PS) to promote the availability of vehicle safety inspections by appointment, at the motor carriers' convenience, as scheduling permits. Further, encourage the division to consider expanding its use of civilian inspectors to complement sworn officers for vehicle safety inspections on private property. The civilian inspectors should be required to meet certain criteria (e.g., ability, knowledge and skills) established by the DMV&PS. (BDR R-180)

E. NONCOMPLIANCE WITH REGULATIONS

The subcommittee's understanding of the testimony given was that a high rate of evasion of motor carrier regulations exists in Nevada. Motor carriers run through the state at night to avoid paying fees for special overweight, over-dimensional or hazardous waste permits, and they are generally able to avoid compliance with Nevada's motor carrier

taxation, registration and regulations. Testimony was provided representing some motor carriers' opinions that, since the penalties for noncompliance are so low in Nevada, and the chance of not being caught so high, the best "gamble" is to try to get through the state without paying fees. (See Appendix E.)

The subcommittee agreed that the unlawful operation of motor carriers within the State of Nevada is detrimental to the safety and well-being of the people of this state, and that such unlawful operation must be stopped. It may be necessary to increase the severity of existing penalties in order to discourage such unlawful operation.

The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

5. Direct, by resolution, Nevada's Department of Motor Vehicles and Public Safety to evaluate the adequacy of existing penalties against motor carriers found to be operating unlawfully in Nevada and to report the results to the Senate and Assembly committees on transportation during the 66th session of the Nevada Legislature.
(BDR R-181)

F. CONCERNS REGARDING THE PUBLIC SERVICE COMMISSION OF NEVADA

During the 1989 legislative session, members of the public expressed concerns over the regulation of the transportation industry by the PSCN. Subcommittee members expressed similar concerns in the course of the study. A more detailed description of the discussion is contained in minutes of the legislative committee and subcommittee meetings.

Most of the complaints focused on the PSCN's procedures for regulating the motor carrier industry. A question regarding the amount of time and resources expended for regulation of transportation versus other functions of the PSCN was raised. Some individuals perceived the commission and staff as unresponsive and inflexible. Others received varying responses from different staff and commission members regarding a single question. Another person alleged that transportation regulations were not being enforced in southern Nevada by the PSCN.

It was agreed that the PSCN must be responsive to the concerns of the Legislature and the public. The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

6. Direct, by resolution, the Public Service Commission of Nevada to address the concerns which have been expressed by the subcommittee members and the public during this study and report its activities to the Senate and Assembly committees on transportation at the beginning of the 66th session of the Nevada Legislature.
(BDR R-182)

G. TRANSPORTATION OF HAZARDOUS MATERIALS

The subcommittee received testimony regarding Nevada's hazardous materials permit fee structure. The state's fees are significantly higher than those of other Western States. Various reasons for and against high permit fees were presented, and no conclusions were made.

The subcommittee, therefore, recommends that the 66th session of the Nevada Legislature:

7. Urge representatives of Nevada's Department of Motor Vehicles and Public Safety and motor carrier industry to: (1) review the current fee structure for permits to transport hazardous materials in the state; (2) examine the possibility of other entities assisting in the funding of the hazardous materials program; and (3) report their findings to the Senate and Assembly committees on transportation during the 1991 legislative session.

III. APPENDICES

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APPENDIX A

"Administration And Enforcement Of
Motor Carrier Regulations"

ADMINISTRATION AND ENFORCEMENT OF
MOTOR CARRIER REGULATIONS

Generally, enforcement of motor carrier regulations takes three forms: authority, safety and taxation. A number of agencies in the state are involved in the process. They are the: (1) Administrative Services Division (ASD) of the Department of Transportation; (2) Commercial Driver's License (CDL) Division, Motor Carrier (MC) Division and Nevada Highway Patrol (NHP) Division of the Department of Motor Vehicles and Public Safety; (3) Public Service Commission of Nevada (PSCN); and (4) Taxicab Authority (TA).

- The ASD issues permits to motor carriers which haul non-reducible loads.
- The CDL implements the standards for disqualifying, licensing and testing commercial motor vehicle operators under the federal Commercial Motor Vehicle Act of 1986.
- The MC administers motor carrier vehicle registration, licensing, special permits and tax collection. Its Tax Administration Bureau issues motor carrier identifications, and collects fees and taxes from interstate and intrastate commercial vehicles. The Revenue Bureau researches and collects delinquent tax returns and delinquent license fees. Audits of licensed vehicles are performed by the Audit Bureau to determine the correct tax liability, enforce statutes and assist the carrier.
- The NHP enforces federal and state laws and regulations relating to motor carriers, the safety of their vehicles and equipment, and the transportation of hazardous materials and other cargo. It performs driver checks, motorist assistance, on-view patrols, school bus and motor carrier safety inspections, and weight enforcement.
- The PSCN supervises and regulates every common and contract motor carrier in the state which operates over and along the highways providing intrastate service. It grants specific authority for commodities transported, geographical areas served and fares or rates charged. The PSCN adopts regulations providing for safety and insurance requirements, conducts administrative hearings, and assesses fines for violations of jurisdictional laws and regulations.

- The TA adopts regulations for the administration and enforcement of the taxicab industry and the qualifications of and the issuance of permits to taxicab drivers in Clark County. It conducts administrative hearings regarding: (1) certificate holders; (2) drivers' permits; (3) license plates; (4) monetary penalties; and (5) taxicab drivers.

The following charts indicate that, in 1989, approximately \$63 million was collected and \$9.5 million expended through the administration and enforcement of motor carrier regulations. Any excess revenue is transferred to the highway fund and used only for costs of enforcing regulations, collecting fees and improving the highway system. According to Article 9, Section 5, of the Nevada Constitution, all proceeds from fees for motor vehicle licensing and registration and excise taxes on fuel must be used exclusively for the construction, maintenance and repair of public highways in the state.

1989-1990

ESTIMATED COST OF ADMINISTERING AND ENFORCING

MOTOR CARRIER REGULATIONS

ASD = Administrative Services Division, Department of
Transportation
CDL = Commercial Driver's License, Driver's License
Division, Department of Motor Vehicles and Public
Safety (DMV&PS)
MC = Motor Carrier Division, DMV&PS
NHP = Nevada Highway Patrol Division, DMV&PS
PSCN = Public Service Commission of Nevada
TA = Taxicab Authority

<u>Type of Expenditure</u>	<u>Approximate Agency Total</u>	<u>Approximate Total</u>
Salaries		
ASD	\$ 155,000	
CDL	399,541	
MC	1,415,493	
NHP	2,004,275	
PSCN	1,608,710	
TA	1,374,100	
Total Salaries		\$6,957,119
In-State Travel		
ASD	\$ 500	
MC	13,669	
NHP	7,500	
PSCN	50,928	
TA	1,000	
Total In-State Travel		\$ 73,597
Out-of-State Travel		
ASD	\$ 1,000	
MC	43,747	
PSCN	6,400	
TA	3,600	
Total Out-of-State Travel		\$ 54,747

<u>Type of Expenditure</u>	<u>Approximate Agency Total</u>	<u>Approximate Total</u>
Training		
CDL	\$ 9,961	
NHP	24,875	
PSCN	5,820	
<u>Total Training</u>		\$ 40,656
Vehicles		
NHP	\$ 85,118	
PSCN	40,000	
TA	56,500	
<u>Total Vehicles</u>		\$ 181,618
Equipment		
ASD	\$ 1,000	
CDL	286,360	
MC	27,809	
NHP	63,000	
PSCN	156,790	
TA	26,325	
<u>Total Equipment</u>		\$ 561,284
Operations		
ASD	\$ 11,000	
CDL	352,943	
MC	167,090	
NHP-General	247,300	
NHP-Motor Carrier Safety Assistance	261,369	
PSCN	316,510	
TA	190,762	
<u>Total Operations</u>		\$1,546,974
<u>TOTAL</u>		\$9,415,995

EXPENDITURES BY AGENCY

	Approximate Agency Total	Approximate Total
ASD	\$ 168,500	
CDL	1,048,805	
MC	1,667,808	
NHP	2,693,437	
PSCN	2,185,158	
TA	1,652,287	
TOTAL		\$9,415,995

<u>Source for Operating Budget</u>		<u>Approximate Agency Total</u>	<u>Approximate Total</u>
ASD	Highway Fund Appropriation	\$ 192,000	
			\$ 192,000
CDL	Highway Fund Appropriation	\$ 958,766	
	Federal CDL Fund	100,000	
			\$1,058,766
MC	Highway Fund Appropriation		\$1,689,142
			\$1,689,142
NHP	Highway Fund Appropriation	\$2,432,068	
	Federal Motor Carrier Safety Assistance Program (MCSAP)	261,369	
			\$2,693,437
PSCN	Highway Fund Appropriation	\$2,072,058	
	Taxi, Tow Car & Warehouse Fees		\$ 27,600
	68% of Application & Copy Fees		37,400
			\$2,137,058
TA	15¢ Per Trip Charge	\$1,175,000	
	Driver & Vehicle Licensing	60,500	
	Airport Taxi Control System	345,000	
	Fines & Driver Violations	34,000	
	Copy Fees	1,000	
			\$1,643,500
TOTAL OPERATING BUDGETS			\$9,413,903

REVENUE GENERATED THROUGH ENFORCEMENT

	Approximate Agency Total	Approximate Total
ASD (Non-Reducible Load Permits)	\$ 192,000	
CDL (Licenses Issued)	30,370	
MC (Fees & Taxes, 1989)	60,430,414	
NHP (Hazardous Materials Permits)	800,000	
PSCN (Taxi, Tow, Warehouse Fees)	65,000	
TA (Self-Funded, See Above)	1,643,500	
<hr/>		
TOTAL REVENUE GENERATED		\$63,161,284

SUMMARY

Approximate Revenue Generated	\$63,161,284	
Administrative & Enforcement Costs	9,413,903	
<hr/>		
NET REVENUE		\$53,747,381

APPENDIX B

"Establishing a One-stop Operation for Motor Carriers"



What Some Motor Carriers Say About Them

Contacting one office and receiving information on all requirements for a state is efficient, saves time and money, and gives us the assurance that we have complied with and have received all permits in order to operate legally.

— Dan Phipps Refrigerated Transport,
an Iowa based owner-operator

One-stop shopping promotes uniformity in administrative practices by bringing together, under one roof, the various state agencies regulating the trucking industry. It improves communications between these agencies to the benefit of the trucking industry.

— Ryder Truck Rental

A one-stop operation not only makes it easier for motor carriers to obtain temporary trip permits, but also makes it possible for states to combine different types of permits into one permit, which reduces the cost to motor carriers to have these permits transmitted electronically.

— Yellow Freight

What Some States Say About Them

A one-stop operation is an efficient way to utilize state resources in administering motor carrier registration and taxation requirements while simplifying procedures for the carrier.

— Department of Transportation, Iowa

Minnesota established the Administrative Truck Center by physically consolidating the agencies that administer the different requirements. There was no shifting of responsibilities between agencies.

— Department of Transportation, Minnesota

One-stop shopping benefits both the motor carrier industry and Oregon. It allows carriers to satisfy all requirements with a minimum of delay. Compliance levels are increased because of the ease of obtaining service.

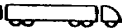
— Public Utilities Commission, Oregon

Administrative complexity is reduced for the interstate carrier as well as for the Virginia state government since only one agency is involved, the State Corporation Commission's Motor Carrier Division.


— State Corporation Commission, Virginia

For additional information contact

National Governors' Association
444 North Capitol Street, N.W., Suite 250
Washington, D.C. 20001-1572
202/624-5395



Establishing a One-stop Operation for Motor Carriers



One of the best ways to simplify and streamline administration of motor carrier tax and regulatory requirements is to establish a centralized motor carrier office or one-stop operation.

The nation's Governors encourage all states not only to cooperate in establishing uniform procedures for administration of interstate motor carrier requirements, but also to improve administrative procedures within each state by establishing a one-stop operation.

A One-Stop Operation Provides a Full Range of Services

A one-stop operation enables a motor carrier to comply with all of the state's highway use requirements at a single contact point. A one-stop operation includes an information service and an office to apply for and receive all required license plates, cab cards, decals, and other annual credentials, as well as all temporary permits.

Although there may be more than one such office in a state, each is capable of providing the full range of services. These services are available to motor carriers appearing in person, by mail, by telephone, and through private transmittal companies.

Services

- Information on all of a state's taxes, fees and regulations imposed on interstate motor carriers.
- All necessary application forms and tax report returns.
- Issuance of all required credentials, indicia and temporary permits.
- Central collection of all motor carrier taxes and fees.
- Accessibility in person, by phone, mail, or wire service.

A One-Stop Operation Benefits States and Motor Carriers

Most states place at least four major requirements on interstate motor carriers—vehicle registration, fuel use tax reporting, oversize/overweight permitting, and operating authority registration and fees. In most states a different state agency administers each of these requirements. As a result of this decentralized structure, these states have no single office where motor carriers can obtain information on the state's overall tax and regulatory program.

How Motor Carriers Benefit

Motor carriers experience a significant improvement in ease of compliance with a state's requirements. This saves them time and money.

How States Benefit

Creating a one-stop operation not only improves the level of service provided by the state to the motor carrier, it also results in improved relations between the state and the motor carrier industry. Also, because of the greater ease and convenience for motor carriers, many states with a one-stop operation have reported increased compliance with state requirements.

Approaches to Establishing A One-Stop Operation

Eleven states have some type of one-stop operation. The most effective method to use in establishing a one-stop operation varies from state to state. Different approaches include the following.

Consolidation. Responsibility for administering each motor carrier requirement is consolidated in one state agency.

IOWA. Responsibility for administering the various requirements was consolidated into the Department of Transportation, which administers them all through one agency—the Truck Permit Center.

Cooperation. Agencies keep their individual responsibilities but cooperatively create and maintain a one-stop operation.

MINNESOTA. The four departments that administer the various requirements cooperatively established and run a one-stop office—the Administrative Truck Center.

Electronic linkage. Various agencies are linked electronically. By contacting one agency, a motor carrier is automatically in touch with all agencies.

ARIZONA. Has worked to enhance its consolidated one-stop operation by integrating its services into one computerized database.

Designated agent. All agencies maintain current responsibilities, but one agency acts as agent for the others.

VIRGINIA. Interstate motor carriers are able to comply with all requirements, at least on a temporary basis, at the State Corporation Commission.

APPENDIX C

Memorandum from the Nevada Highway Patrol Division,
Department of Motor Vehicles and Public Safety,
regarding Ports of Entry, May 14, 1990

TO Caren Jenkins, LCB
Research Analyst

FROM Capt. Goddard
Nevada Highway Patrol

SUBJECT A.C.R. 91, REQUEST FOR INFORMATION RELATING TO P.O.E.'S.

Memo

DATE May 14, 1990

Per your request of May 11, 1990, the Nevada Highway Patrol submits the following response to your questions:

1. The cost of building a P.O.E.

In reference to the January 24, 1990 letter from N.D.O.T. Director Garth Dull to Assemblyman Garner it states "The minimum cost would be approximately 2.5 million dollars for construction excluding Right of Way acquisition". This would be for a single facility on the interstate system capable of maximum use ie., commercial vehicle/driver enforcement, tax and license verification and temporary permit services.

NOTE: Estimates are based on present costs.

2. Estimated annual operating costs:

The estimated cost to operate a POE on a 24-hour basis with three (3) Nevada Highway Patrol Officers and our license/permit operator per shift:

1st Year

Personnel:

1 Supervisor/15 officers/5 license staff \$647,500.00

Equipment:

Office equipment/computer & office equipment: 450,000.00

Building operating: heat, lights, telephone, etc. 100,000.00

\$1,187,500.00

2nd Year

Personnel:

\$670,600.00

Personnel operating costs:

96,000.00

Building operating costs:

110,000.00

\$876,000.00

NOTE: Estimates are based on present costs.

3. The revenue that may be generated through the use of a POE that is not currently being collected:

a. At this time there are delinquent Motor Carrier taxes of	\$650,000.00
and delinquent Motor Carrier license fees of	150,000.00
and an estimated loss of 2.7% in temporary license fees not being purchased	<u>105,000.00</u>
For a total of:	\$903,980.00

As all commercial vehicles that enter the POE would be screened for license/tax status, any Motor Carrier who owes the state fees will be detained until such fees are collected. The percentage of fees owed that would be collected is unknown, as is the deterrent value to the state once Motor Carriers realized the capability of the POE facility to detect delinquent tax/license carriers.

b. There are also mandated enforcement activities which, if not met, could result in loss of Federal highway funds and grant funds to the state. These activities include weight enforcement, vehicle inspection and commercial driver checks. Although the Nevada Highway Patrol has always met these obligations, the POE will provide the facilities and resources to enhance these programs, insuring state compliance, thereby protecting these funds.

4. A timetable for return on capital invested.

A monetary return on the capital investment will not be realized through POE activities. License fees would only pay for part of the costs. As

citation fines go to the county, these revenues cannot be considered.

It is the Nevada Highway Patrols philosophy that the "Return on the Investment" is in reducing lives, lost, personal injury and property damage on Nevada highways through increased commercial vehicle and driver safety inspections. The POE facility provides for 24-hour all-weather operations. The "Return" is increased enforcement and voluntary compliance to save lives - a cost benefit to which a monetary value cannot be assigned:

NOTE: Oregon has suggested that their POE's will pay for themselves over a period of time; however, we have been unable to obtain information as to how they support or validate this claim. It should also be noted that Oregon has a different commercial tax structure than Nevada.

5. The possibility of combining the expansion of Motor Carrier inspections with a development of POE's.

This is within the program goals of the POE plan at the POE facility. All State agencies, laws and regulations relating to commercial vehicles, drivers, loads, permits and licenses would be enforced. Other Federal and State agencies would have the capability of coordinating enforcement activities at the POE facility.

APPENDIX D

Report from the Department of Motor Vehicles and
Public Safety - Motor Carrier Division,
regarding A.B. 943

Department of Motor Vehicles and Public Safety

Motor Carrier Division

The purpose of A.B. 943 was to satisfy the provisions of the settlement agreement in the case of Dave R. Grant Hay, Inc. versus Nevada Department of Motor Vehicles and Public Safety. A.B. 943 eliminated the 3rd structure mileage tax and all minimum fees. The bill shifted the fees to a two structure tax system comprised of annual and temporary registration fees and special use fuel tax. In addition, the 70-105, (overlength/overweight) permit fees were increased.

In the development of the new tax structure it was initially determined \$23,000,000.00 must be generated to recover revenues received from existing tax structure. The Governor's Office in conjunction with NDOT agreed to accept a \$4,000,000.00 loss to the Highway Fund. The tax structure developed was estimated to generate approximately \$19,000,000.00.

In addition to the \$4,000,000.00 reduction in revenues, the settlement agreement allowed credits and/or refunds for mileage taxes, privilege taxes and a lump sum amount of \$370,000.00. As of April 30, 1990 carriers have been allowed the \$370,000.00 credit. The credit for mileage taxes in the amount of \$699,212.22 and the credit for privilege taxes estimated to be \$300,000.00 will be credited or refunded during the second quarter of 1990. The total credits given per the settlement agreement are estimated to be \$1,369,212.22 and were not included in the estimated revenues to be generated from A.B. 943. The following comparison analyzes the estimated annual revenues to be generated from A.B. 943 versus actual revenues collected from January 1, 1990 through April 30, 1990.

	<u>Estimated Revenues</u>	<u>Actual Revenues</u>	<u>Percentage</u>
Temporary Licenses	\$ 5,905,101	\$ 867,566	14.69%
Special Fuel Tax Increase	2,688,826	726,300	27.01%
Registration Fee Increase	9,463,060	5,488,806	58.00%
70-105 Permit Fee Increase	<u>1,139,595</u>	<u>1,309,500</u>	114.91%
TOTAL	<u>\$19,196,582</u>	<u>\$8,392,172</u>	

The temporary license fees are paid mainly by interstate carriers with an occasional sale to seasonal intrastate carriers. The revenues generated from temporary licenses probably will not meet the estimated figure as carriers are purchasing annual licenses rather than the 24-hour temporary licenses due to the elimination of bonding requirements for annual licensing. The recomputed estimated annual revenue to be generated from temporary licenses is \$2,520,000.00. This will generate an additional \$3,385,101.00 loss of revenue.

The special fuel tax statistics are comprised of January and February special fuel dealer tax returns. The special fuel dealer tax returns for March and the user tax returns for the 1st quarter were due postmarked April 30, 1990. The annual statistics cannot be projected until at least one quarters revenues have been distributed. The percentage increase of 27.01% is misleading in that the request for refunds for overpayment of special fuel tax during the first quarter of 1990 have not been processed as they have been received within the last week. The special fuel tax is collected from motor carriers and special fuel dealers not on a vehicle by vehicle basis. Therefore, since many motor carriers operate both intrastate and interstate and special fuel tax is collected at the pump, it is not possible to provide a breakdown of the tax collected from intrastate carriers versus interstate carriers.

The actual revenues for registration fees cannot be considered as one quarter of the annual revenues as the registration fees may represent in some cases the entire annual fees due. A.B. 943 allowed the registration fees to be paid in equal installments. The registration fees outstanding as of May 11, 1990 are \$3,503,867.16. The total registration fees billed for 1990 are \$11,940,787.16. The breakdown of intrastate versus interstate is as follows:

	<u>Intrastate Carriers</u>	<u>Interstate Carriers</u>
1990 Registration Fees Billed	\$5,097,211.06	\$6,843,576.10
Number of Vehicles Registered	6693	230,046

Another issue to be considered regarding the registration fees is A.B. 943 allows carriers to return the license plates and registration certificates for refund of the unused portion of fees paid or cancellation of the remaining amount due.

Applications for licensing fo vehicles have been received and processed but payment has not been made. Upon receipt of payment license plates and registration certificates will be issued. The following is a breakdown of these additional registration fees.

	<u>Intrastate Carriers</u>	<u>Interstate Carriers</u>
1990 Registration Fees in Suspense	\$96,884.58	\$324,266.85
Number of Vehicles in Suspense	124	15,004

The actual 70-105 permit fees have exceeded estimates. However, a portion of these fees may be refunded if the credentials are returned. Refer to the following table for the comparison of permits issued through May 10, 1990.

	<u>Interstate Carriers</u>	<u>Intrastate Carriers</u>
Permits Issued	981	401
Percentage of Total Permits	70.98%	29.02%
Revenue Generated	\$1,875,980	\$834,940
Percentage of Total Revenue	69.20%	30.80%

AUDITS - 1985
MOTOR CARRIER DIVISION
NEVADA'S DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

<u>Assessments</u>	<u>Count</u>	<u>Audit Revenue Produced</u>	<u>Cost Including Salary & Fringe</u>	<u>Adjusted Revenue Recovered</u>	<u>Average Per Auditor</u>
Desk Audits					
In-state	132	\$ 53,665.24			
Out-of-state	888	337,316.97			
<hr/>					
Total Desk	1,020	\$390,982.21			
Field Audits					
In-state	36	\$ 90,050.26			
Out-of-state	229	160,683.74			
<hr/>					
Total Field	265	\$250,734.00			
<hr/>					
TOTALS	1,285	\$641,716.21	\$286,422.78	\$355,293.43	\$39,477.05 (Staff of 9)

AUDITS - 1986
MOTOR CARRIER DIVISION
NEVADA'S DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

<u>Assessments</u>	<u>Count</u>	<u>Audit Revenue Produced</u>	<u>Cost Including Salary & Fringe</u>	<u>Adjusted Revenue Recovered</u>	<u>Average Per Auditor</u>
Desk Audits					
In-state	108	\$ 37,325.85			
Out-of-state	806	473,489.49			
<hr/>					
Total Desk	914	\$510,815.34			
Field Audits					
In-state	46	\$ 72,643.13			
Out-of-state	256	108,964.69			
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Total Field	302	\$181,607.82			
<hr/>					
TOTALS	1,216	\$692,423.16	\$300,718.75	\$391,704.41	\$43,522.71 (Staff of 9)

AUDITS - 1987
MOTOR CARRIER DIVISION
NEVADA'S DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

<u>Assessments</u>	<u>Count</u>	<u>Audit Revenue Produced</u>	<u>Cost Including Salary & Fringe</u>	<u>Adjusted Revenue Recovered</u>	<u>Average Per Auditor</u>
Desk Audits					
In-state	78	\$ 81,314.63			
Out-of-state	417	341,969.75			
<hr/>					
Total Desk	495	\$423,284.38			
Field Audits					
In-state	30	\$131,453.45			
Out-of-state	329	197,255.18			
<hr/>					
Total Field	359	\$328,708.63			
<hr/>					
TOTALS	854	\$751,993.01	\$327,152.27	\$424,840.74	\$44,720.08 (Staff of 9.5)

AUDITS - 1988
MOTOR CARRIER DIVISION
NEVADA'S DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

<u>Assessments</u>	<u>Count</u>	<u>Audit Revenue Produced</u>	<u>Cost Including Salary & Fringe</u>	<u>Adjusted Revenue Recovered</u>	<u>Average Per Auditor</u>
Desk Audits					
In-state	67	\$ 145,772.32			
Out-of-state	908	868,800.92			
<hr/>					
Total Desk	975	\$1,014,573.24			
Field Audits					
In-state	89	\$ 149,262.45			
Out-of-state	312	246,978.76			
<hr/>					
Total Field	401	\$ 396,241.21			
<hr/>					
TOTALS	1,376	\$1,410,814.45	\$425,605.06	\$985,209.39	\$82,100.78 (Staff of 12)

AUDITS - 1989
MOTOR CARRIER DIVISION
NEVADA'S DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

<u>Assessments</u>	<u>Count</u>	<u>Audit Revenue Produced</u>	<u>Cost Including Salary & Fringe</u>	<u>Adjusted Revenue Recovered</u>	<u>Average Per Auditor</u>
Desk Audits					
In-state	36	\$ 152,768.81			
Out-of-state	421	257,106.93			
<hr/>					
Total Desk	457	\$ 409,875.74			
Field Audits					
In-state	83	\$ 309,981.12			
Out-of-state	615	311,859.92			
<hr/>					
Total Field	698	\$ 621,841.04			
<hr/>					
TOTALS	1,155	\$1,031,716.78	\$468,104.87	\$563,611.91	\$46,967.66 (Staff of 12)

FIVE-YEAR AVERAGE
AUDITS 1985-1989
MOTOR CARRIER DIVISION
NEVADA'S DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

<u>Assessments</u>	<u>Count</u>	<u>Audit Revenue Produced</u>	<u>Cost Including Salary & Fringe</u>	<u>Adjusted Revenue Recovered</u>	<u>Average Per Auditor</u>
Desk Audits					
Average In-state	84	\$ 94,169.37			
Average Out-of-state	688	455,736.81			
<hr/>					
Average Total Desk	772	\$549,906.18			
Field Audits					
Average In-state	57	\$150,678.08			
Average Out-of-state	348	205,148.46			
<hr/>					
Average Total Field	405	\$355,826.54			
<hr/>					
AVERAGE GRAND TOTALS	1,177	\$905,732.72	\$361,600.75	\$544,131.97	\$51,357.66

APPENDIX E

Memorandum from the NHP regarding
"Roadcheck 90," May 25, 1990

STATE OF NEVADA
DEPARTMENT OF MOTOR VEHICLES AND PUBLIC SAFETY

MEMORANDUM

May 25, 1990

TO: LIEUTENANT STEVE WILLIAMS
FROM: SERGEANT ROY BAUGHMAN
SUBJECT: ROADCHECK 90

"Roadcheck 90" was officially underway at 12:01 A.M. on Tuesday, May 15, 1990. It was concluded at midnight on May 17, 1990. The Roadcheck was held at the Wadsworth checksite on I80 eastbound approximately 30 miles east of Reno in accordance with the North American Uniform Driver/Vehicle Inspection Procedure.

Emphasis was placed in performing Level 1 Inspections and Level 2 (walk around) inspections and Level 3 Inspections (driver CDL charts).

During "Roadcheck 90" the following special item checks were performed:

1. Automatic slack adjuster information:
 - a. Number of commercial vehicles equipped with any type of automatic slack adjusters = 59
 - b. Number of commercial vehicles with automatic slack adjusters out of adjustment = 15
(25.4% of the vehicles were out of adjustment)
2. Alcohol testing of drivers was performed, based on probable cause only. Four tests were performed with two showing positive (any amount) and one driver arrested.

The low number of drivers tested can be attributed to the advance notice of "Roadcheck 90" and the communications between the drivers.

I. PERSONNEL MAN-HOURS STATISTICS

1. Total NHP employee hours.....960
2. Number of NHP personnel participating in "Roadcheck 90" 32 x 3 shifts.....96
 - a. Supervisors (3).....90 hours
 - b. CDL Operators (2).....60 hours
 - c. Weight Troopers (3).....90 hours
 - d. Inspectors.....280 hours
Level 1 - 2 Man Team
Level 2 - 1 Man
 - e. M.C.I./04 Program.....152 hours
 - f. Break Time (1 hr/day).....96 hours
 - g. Travel Time (2 hr/day)....192 hours
 - Total Hours.....960 hours

MEMORANDUM

II. NUMBER OF VEHICLE DRISINGS TO INSPECTIONS5040

Number of drivers interviewed at point (.04 BAC MCI).....4536
Percentage of drivers contacted.....90%

NUMBER OF VEHICLES INSPECTED

Level 1....245 Level 2....68

NUMBER OF VEHICLE PLACED OUT OF SERVICE

Level 1....118 Level 2....1

OUT OF SERVICE PERCENTAGES

Level 1.....48% Level 2.....1%

NUMBER OF MULTI-STATE DRIVERS' LICENSE CHECKS256

NUMBER OF DRIVERS PLACED OUT OF SERVICE25

DRIVERS OUT OF SERVICE PERCENTAGE10%

TOTAL NUMBER DRIVER/VEHICLE VIOLATIONS DISCOVERED724

TOTAL NUMBER OF CITATIONS ISSUED432

TOTAL NUMBER OF MECHANICAL REPAIR ORDERS ISSUED556

III. CITATION ACTIVITY BREAKDOWN

DRIVER VIOLATIONS

Hours of Service.....27.....42%
Mechanical Examiner Certified.....7.....10%
Unqualified Drivers.....1.....1%
Disqualified Drivers.....14.....22%
.04 BAC Violations.....4.....6%
Possession of Controlled Substance.....4.....6%
Felony Warrants.....1.....1%
Other Violations (Passed Check Station).....2.....3%
Unauthorized Passenger.....3.....4%
Total Driver Citations.....63

VEHICLE MECHANICAL VIOLATIONS

Brake System.....106.....60%
Fuel System.....6.....3%
Frame.....4.....2%
Suspension.....5.....3%
Wheels.....1......05%
Lighting.....9.....5%
Exhaust.....1......05%
Lugs Nuts and Studs.....4.....2%
Tires.....11.....6%
Steering.....7.....3%

MEMORANDUM

Coupling Devices.....1.....05%
Other Equipment.....21.....11%
Total.....176

HAZARDOUS MATERIALS VIOLATIONS

HazMat Permit.....2
Placard Violations.....3
Total.....5

MOTOR CARRIER LICENSING VIOLATIONS174

Registration Violation.....4
Driver's License.....5
Overdimensional.....3
Emissions.....1
Mud Flaps.....1
Total.....180

IV. MECHANIC REPAIR ORDER BREAKDOWN

APPROXIMATE %

Brake System.....239.....42%
Fuel System.....13.....2%
Frame.....19.....3%
Suspension.....46.....8%
Wheels.....3.....05%
Lighting.....63.....11%
Exhaust.....7.....1%
Lug Nut and Studs.....8.....1%
Tires.....32.....5%
Steering.....23.....4%
Coupling Devices.....2.....03%
Other Equipment.....101.....13%
Total.....556

cc: Capt. Bawden
Capt. Goddard
Capt. Farmer
Sgt. Baughman

RB/ne

APPENDIX F

Letter from Nevada's Office of the Attorney General
regarding Dave R. Grant Hay, Inc. v. Nevada Department
of Motor Vehicles and Public Safety, May 22, 1990



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
Counsel
For
DEPARTMENT OF
MOTOR VEHICLES AND PUBLIC SAFETY

BRIAN McKAY
Attorney General

May 22, 1990

Assemblyman Val Z. Garner and the
Legislative Commission Subcommittee
on Transportation Issues
c/o Legislative Building
401 South Carson
Carson City, Nevada 89710

Re: Hay v. State
(Stipulated Settlement Agreement)

Dear Mr. Garner and Committee Members:

You have asked if it is possible for any added truckers represented by ITS to enter into the settlement agreement, and if it is possible for any added truckers who are not parties to the agreement to sue the state on the same issues as alleged by Hay and the other plaintiffs.

The agreement sets a date of December 1, 1989, for Hay and other carriers represented by ITS to submit written documents to join the agreement. Thus due to the passage of the December 1, 1989 date, no other carriers who are represented by ITS may join the agreement.

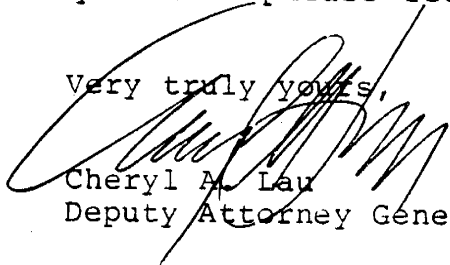
In regards to whether other truckers can sue the state who are not represented by ITS and a part of the class action agreement, if those truckers are not parties or privies to the settlement agreement, they are not precluded from filing an action against the state regarding refunds of fees and taxes. However, there is a three year limitation of actions on any liability created by statute. (See NRS 11.190). Except for claims of PSC fees, mileage and service plate fees that were paid from an applicable time to September 1, 1987, all other fees and taxes claimed in the complaint are outside the three year limitation of actions and may not be raised by any carrier. Moreover, these truckers must have paid their taxes under protest for refund under NRS 706.576 and NRS 366.660. The Motor Carrier Division of the Department of Motor Vehicles

Assemblyman Val Z. Garner
May 22, 1990
Page Two

and Public Safety has no documentation of any payment under protest from any other carriers.

If you have any further questions please feel free to contact our office.

Very truly yours,



Cheryl A. Lau
Deputy Attorney General

CAL:cjw

cc: Chan Griswold, Esq.
Brooke Nielsen, Chief Counsel, Gaming
Brian Hutchins, Chief Counsel, NDOT
Garth Dull, Director, NDOT
Wayne Teglia, Director, DMV

APPENDIX G

Letter from Nevada's Legislative Counsel
regarding A.B. 943, May 22, 1990

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



LEGISLATIVE COMMISSION (702) 687-6800
JOHN E. JEFFREY, *Assemblyman, Chairman*
John R. Crossley, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6800
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

JOHN R. CROSSLEY, *Director*
(702) 687-6800
Fax No.: (702) 885-5962

Wm. GARY CREWS, *Acting Legislative Auditor* (702) 687-6800
ROBERT E. ERICKSON, *Research Director* (702) 687-6820
LORNE J. MALKIEWICH, *Legislative Counsel* (702) 687-6800

May 22, 1990

Assemblyman Val Z. Garner
4917 East Monroe Avenue
Las Vegas, Nevada 89110

Dear Mr. Garner:

You have requested the opinion of this office concerning the constitutionality of Assembly Bill No. 943 of the 65th Session of the Legislature. We have examined the provisions contained in A.B. 943 and believe that all are defensible in court. The only provision that is of questionable constitutionality is NRS 706.531 (see section 3 of A.B. 943). To minimize the possibility of a successful constitutional challenge to NRS 706.531, the legislature may wish to amend subsection 2 of NRS 706.531 as described in this letter.

Assembly Bill No. 943 was enacted to satisfy the provisions of the settlement agreement reached in the case of Dave R. Grant Hay, Inc. v. Nevada Department of Motor Vehicles and Public Safety. The complaint filed in that case alleged that various taxes and fees were collected by the department illegally in that those taxes and fees discriminated against interstate truckers and thereby violated the Commerce Clause of the Constitution of the United States (see Art. I, § 8) by placing an illegal burden of taxation on interstate commerce. It is likely that the complaint was filed based upon the decision of the United States Supreme Court in the case of American Trucking Ass'n v. Scheiner, 107 S. Ct. 2829 (1987), which held that two Pennsylvania statutes that imposed lump-sum annual taxes upon the operation of trucks on Pennsylvania highways were unconstitutional. The case also held that: (1) the Commerce Clause created an area of trade that is free from interference by the states; (2) taxes that are directly apportioned to the mileage traveled by the taxpayer within a state are constitutional in that such taxes are simply payments for traveling a certain distance that happens to be within that state, but that unapportioned flat taxes penalize some travel within the free trade area, with the effect that such taxes threaten the free movement of commerce by placing a financial barrier around the state; (3) taxes that discriminate against out-of-state vehicles by subjecting them to a much higher charge per mile traveled in the state are unconstitutional; and (4) to be constitutional, a tax must bear some relationship to the taxpayer's presence or activities in the state, such as by varying directly with the number of miles traveled or with some other proxy for value obtained from the state.

NRS 706.531 concerns the issuance by the department of motor vehicles and public safety of special identifying devices for combinations of vehicles. Subsection 2 of NRS 706.531 provides, in pertinent part:

The annual fee for each identifying device or set of devices for a combination of vehicles is \$60 for each 1,000 pounds or fraction thereof of gross weight in excess of 80,000 pounds. The maximum fee must not exceed \$2,940.

In Scheiner, the court invalidated a Pennsylvania statute that required an identification marker to be affixed to every motor carrier vehicle and imposed a fee of \$25 for the issuance of the marker, because the statute, by imposing a much higher charge per mile on out-of-state carriers than that imposed on local carriers, was clearly discriminatory in favor of local businesses and, therefore, violated the Commerce Clause. A similar argument could be made against the constitutionality of subsection 2 of NRS 706.531, on the grounds that it imposes an unapportioned flat tax that discriminates against out-of-state vehicles by subjecting them to a much higher charge per mile traveled in Nevada.

On the other hand, it could be argued that subsection 5 of NRS 706.531, which provides that the holder of special identifying devices may surrender them to the department and receive a pro rata refund of fees paid, sufficiently distinguishes the statute from the Pennsylvania statute at issue in Scheiner, by allowing an out-of-state carrier that makes only occasional trips through Nevada to surrender its identifying devices after each trip and receive a pro rata refund of fees paid, thereby reducing its cost per mile traveled in Nevada and avoiding the discriminatory impact of the Pennsylvania statute.

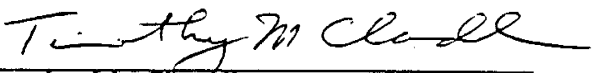
However, to minimize the possibility of a successful constitutional challenge to NRS 706.531, the legislature may wish to amend subsection 2 of NRS 706.531 to authorize the apportionment of fees for identifying devices based on the ratio that the total number of miles driven in Nevada by an operator's combinations bear to the total number of fleet miles driven by those combinations. (See NRS 706.841 for an example of the apportionment of fees.)

If we may be of further assistance in this or any other matter, please contact us.

Very truly yours,

Lorne J. Malkiewich
Legislative Counsel

By:



Timothy M. Chandler
Deputy Legislative Counsel

cc: Senator Thomas J. Hickey
Senator Dean A. Rhoads
Assemblyman Leonard V. Nevin
Assemblyman John C. Carpenter
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APPENDIX H

Suggested Legislation

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SUMMARY--Directs Department of Transportation and Department of Motor Vehicles and Public Safety to analyze establishment of ports of entry. (BDR R-178)

CONCURRENT RESOLUTION--Directing the Department of Transportation and the Nevada Highway Patrol Division and Motor Carrier Division of the Department of Motor Vehicles and Public Safety to provide the Legislature with an analysis of the costs and benefits of constructing and operating ports of entry within Nevada before the construction of any port of entry is begun.

WHEREAS, The construction of ports of entry may help to alleviate the problem of motor carriers entering the State of Nevada illegally; and

WHEREAS, The estimated cost of constructing a port of entry is approximately \$3,000,000; and

WHEREAS, The estimated annual cost of operating a port of entry is approximately \$1,000,000; and

WHEREAS, It is uncertain whether the increased revenue to the State of Nevada resulting from the operation of a port of entry would be sufficient to offset the cost of constructing and operating a port of entry; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE
CONCURRING, That the Department of Transportation and the Nevada Highway Patrol Division and Motor Carrier Division of the

Department of Motor Vehicles and Public Safety are directed to work together to prepare an analysis of the costs and benefits of constructing and operating ports of entry within the State of Nevada before the construction of any port of entry is begun; and be it further

RESOLVED, That upon completion, the analysis must be presented to the Senate and Assembly Standing Committees on Transportation if the Legislature is in regular session or to the Legislative Commission if the Legislature is not in regular session.

SUMMARY--Directs Department of Motor Vehicles and Public Safety to evaluate costs and benefits of increasing audits of motor carriers.
(BDR R-179)

CONCURRENT RESOLUTION--Directing the Department of Motor Vehicles and Public Safety to evaluate the costs and benefits of performing audits of motor carriers and to increase the number of audits that are found to be cost effective.

WHEREAS, The Motor Carrier Division of the Department of Motor Vehicles and Public Safety conducts desk and field audits of motor carriers both within and outside the State of Nevada; and

WHEREAS, Such audits are helpful in the collection by the Department of fees due to the State of Nevada by the motor carrier industry; and

WHEREAS, The revenue generated by increasing the number of audits conducted may exceed the cost to the State of Nevada of conducting such additional audits; now, therefore, be it

RESOLVED BY THE _____ OF THE STATE OF NEVADA, THE

CONCURRING, That the Department of Motor Vehicles and Public Safety is directed to evaluate the costs and benefits of performing audits of the records of motor carriers both within and outside the State of Nevada and to increase the number of any such audits that are found to generate revenue in excess of the cost of conducting them.

SUMMARY--Directs Nevada Highway Patrol Division of Department of Motor Vehicles and Public Safety to promote availability of vehicle safety inspections for motor carriers. (BDR R-180)

CONCURRENT RESOLUTION--Directing the Nevada Highway Patrol Division of the Department of Motor Vehicles and Public Safety to make vehicle safety inspections for motor carriers available by appointment at the motor carriers' convenience as scheduling permits, and to consider the use of civilian inspectors to assist peace officers in conducting such vehicle safety inspections on private property.

WHEREAS, Vehicle safety inspections of motor carriers are important for the safety and well-being of the people of the State of Nevada; and

WHEREAS, Such safety inspections can be time consuming and inconvenient for motor carriers; and

WHEREAS, It is the intent of the Legislature to encourage the performance of such safety inspections; now, therefore, be it

RESOLVED BY THE _____ OF THE STATE OF NEVADA, THE

CONCURRING, That the Nevada Highway Patrol Division of the Department of Motor Vehicles and Public Safety is directed to promote the availability of vehicle safety inspections for motor carriers by making such inspections available by appointment at the motor carriers' convenience as scheduling permits, and to consider the use of civilian inspectors to assist peace officers in conducting such vehicle safety inspections on private property.

SUMMARY--Directs Department of Motor Vehicles and Public Safety to evaluate adequacy of existing penalties for unlawful operation of motor carriers. (BDR R-181)

CONCURRENT RESOLUTION--Directing the Department of Motor Vehicles and Public Safety to evaluate the adequacy of existing penalties for the unlawful operation of motor carriers.

WHEREAS, The unlawful operation of motor carriers within the State of Nevada is detrimental to the safety and well-being of the people of this state; and

WHEREAS, It is the intent of the Legislature that such unlawful operation be stopped; and

WHEREAS, It may be necessary to increase the severity of existing penalties in order to prevent such unlawful operation; now, therefore, be it

RESOLVED BY THE _____ OF THE STATE OF NEVADA, THE _____ CONCURRING, That the Department of Motor Vehicles and Public Safety is directed to evaluate the adequacy of existing penalties that may be imposed against motor carriers that are found to be operating unlawfully in the State of Nevada; and be it further

RESOLVED, That the Department of Motor Vehicles and Public Safety report its findings to the Senate and Assembly Standing Committees on Transportation of the 66th session of the Legislature on or before March 1, 1991.

SUMMARY--Directs Public Service Commission of Nevada to consider and address certain public concerns. (BDR R-182)

CONCURRENT RESOLUTION--Directing the Public Service Commission of Nevada to consider and address certain concerns of the public and the Legislature.

WHEREAS, Various members of the public have expressed concerns over the regulation of the transportation industry by the Public Service Commission of Nevada; and

WHEREAS, Members of the Legislative Commission's Subcommittee to Study and Review Certain Laws and Regulations Relating to Transportation, Including a Review of the Regulation of Motor Carriers, have expressed similar concerns; and

WHEREAS, It is the intent of the Legislature that the Public Service Commission of Nevada be responsive to the concerns of the public and the Legislature; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE

CONCURRING, That the Public Service Commission of Nevada is directed to consider the concerns of both the public and the Legislative Commission's Subcommittee to Study and Review Certain Laws and Regulations Relating to Transportation, Including a Review of the Regulation of Motor Carriers, relating to the regulation by the Public Service Commission

of the transportation industry, as expressed during the meetings of the subcommittee; and be it further

RESOLVED, That the Public Service Commission of Nevada report to the Senate and Assembly Standing Committees on Transportation of the 66th session of the Legislature on or before March 1, 1991, concerning the actions it has taken to address those concerns.