

Bus & Motorcoach NEWS

June 1, 2004

THE NEWS RESOURCE FOR THE BUS AND MOTORCOACH INDUSTRY

Circulator poses threat to operators

WASHINGTON – Plans by the public transit agency serving Washington to launch a circulator service in the heart of the nation's capital has many in the motorcoach industry both outraged and worried.

The proposed service, which is expected to be in operation by next spring's National Cherry Blossom Festival, appears to pose a serious threat to three private tour services that carry millions of riders annually between sites and attractions throughout the capital.

There's also concern the service may have been developed in violation of federal transit rules, one of which requires existing operators to be involved to the maximum extent feasible when a transit agency plans new services.

Finally, millions in federal tax money will be used to subsidize the service annually.

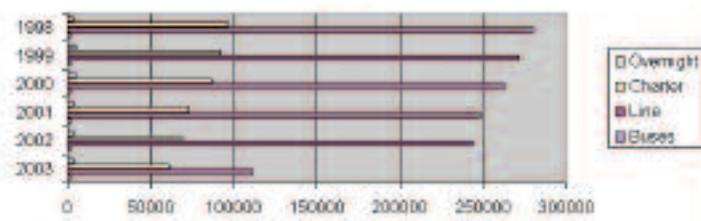
"The city has failed miserably to make its case that the downtown circulator will be anything but a huge money black hole," said one coach industry observer. "It's a perfect example of how the transits, knowing there are private operators serving the public in the city, couldn't care less."

Those seemingly put at risk by the proposed service are the Li'l Red Trolley, operated by a unit of the Martz Group in Wilkes-Barre, Pa.; Old Town Trolley Tours of Washington, a division of Historic Tours of America in Key West, Fla., and Tourmobile Sightseeing, a company that operates on a contract basis for the National Park Service. The Tourmobile has been a Washington fixture for 35 years.

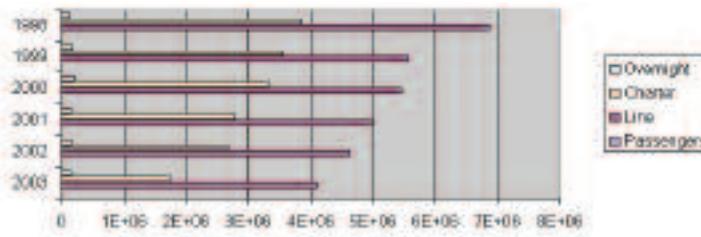
Efforts to obtain comments

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Atlantic City Motorcoach Traffic 1998-2003



Atlantic City Bus Passengers 1998-2003



NJ legislators adopt bill to provide tax relief for operators

TRENTON, N.J. – The Tourism and Gaming Committee of the New Jersey General Assembly has unanimously passed a bill aimed at exempting motorcoaches from the state law that imposes business taxes on nonresident corporations.

If the legislation is eventually adopted by both houses of the New Jersey Legislature and signed by the governor, it will impact hundreds of motorcoach operators that send buses to that state, and could reverse the trend of operators blackballing New Jersey because of its taxes.

The committee action came at the end of a hearing last month at which representatives from the Greater New Jersey Motorcoach Association (formerly the Atlantic City Bus Operators Association) and the United Motorcoach Association told legislators the state was

being penny wise but pound foolish by propagating the tax on out-of-state operators.

Speaking at the hearing was Joseph P. Fernandez, a bus industry CPA from Fort Salonga, N.Y., and treasurer of the Greater New Jersey Motorcoach Association; Joe Simonetta, a lobbyist for the association; Victor Parra, president and CEO of the United Motorcoach Association, and Steve G. Haddad, president of Carl R. Bieber Tourways in Kutztown, Pa., and a member of the board of UMA.

Parra told the committee Atlantic City is likely losing upwards of \$100 million or more in tourism and visitor revenue because motorcoach companies have stopped bringing customers to the gambling Mecca.

The amount would be sub-

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Training mandate for entry-level drivers; new operator burden?

WASHINGTON – Motorcoach and school bus drivers with less than a year's experience behind the wheel must be trained to meet new requirements mandated by the Federal Motor Carrier Safety Administration.

The new "entry-level" driver rule, announced at the end of last month, becomes effective July 20, and applies to all individuals subject to CDL requirements operating motorcoaches, school buses, trucks or combination vehicles that transport passengers or freight in interstate commerce.

The passenger vehicles must weigh more than 26,000 pounds, or carry 16 or more passengers, including the driver.

The FMCSA estimates 1,575-

2,100 inexperienced drivers are hired annually by the coach industry. That compares with 44,000-59,000 inexperienced truck drivers hired yearly. All of those drivers will have to meet the training requirements of the new rule.

Exempted from the rule are transit bus drivers and school bus drivers employed by public school districts.

The United Motorcoach Association, which had fought to have the over-the-road bus industry exempted from the rule, says the new training requirements will be especially onerous for small operators because they typically do not have in-house driver training programs like large operators.

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Congressman and operators blast FTA, DOT at hearing

WASHINGTON – A California congressman has accused the U.S. Department of Transportation of routinely ignoring laws that require public transit agencies to maximize private-sector involvement in developing transit services and failing to enforce rules that restrict transit systems from competing with private operators.

"It is clear from yesterday's testimony that there are glaring gaps in the methods DOT uses in determining private- versus public-sector participation," said Rep. Doug Ose, chairman of the House Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs.

"The law clearly dictates maxi-

imum private-sector participation in the transportation process and DOT's actions are contradictory to the letter and spirit of the law," the congressman asserted.

Ose also said his probing of DOT and the Federal Transit Administration had turned up a number of cases where the FTA had "allowed local transit authorities to compete unfairly with existing private mass transit service providers."

Ose's comments came at the start and conclusion of a hearing he called to explore the USDOT's record in encouraging private-sector participation in ground transportation, as well as its oversight

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Converted by Caldwell
Coach, B500 Trans.



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Dual Refrigerator
In-Motion Satellite



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Tow Hook, Goodyear Tires,
B500R Trans.

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Oklahoma operator rebels against sales tax policy

OKLAHOMA CITY — Kraftours, a charter operator based in Tulsa, Okla., is going eyeball to eyeball with the Oklahoma Tax Commission over its collection of state sales taxes on intrastate coach services.

"Barring equitable enforcement actions by the Oklahoma Tax Commission, beginning June 1, 2004, Kraftours will no longer be collecting or remitting sales tax for bus and motorcoach services," Michael Kraft, director of vehicle operators at Kraftours, wrote in a letter to the tax agency last month.

Kraft also asked the commission to refund all sales taxes his company

has collected and sent to the state during the past three years so it can return the money to customers.

Kraft says he is battling the tax commission because his company has been collecting state sales taxes while his competitors have not.

In fact, following a routine tax audit five years ago, the state insisted Kraftours be more aggressive about collecting sales taxes. At the time, a state auditor told Kraft he had to start demanding official proof when a customer claimed it was exempt from Oklahoma sales tax. "Since that time, and at considerable irritation to our customers and demonstrable cost to our firm,

we have felt compelled to insist that customers provide documentation of exemption from the tax commission before we can perform services on a tax-exempt basis," Kraft said.

Suspecting his competitors weren't collecting and remitting sales taxes to the state as he was, Kraft contacted the tax commission 18 months ago to get answers. He got nowhere. "I played their game for a year and a half," he explains. The only thing Kraft received for his time and effort was a letter saying the issue needed more study.

However, Kraft was able to learn

elsewhere that competitors were not collecting sales taxes and, in fact, at least one competitor was insisting the tax did not apply to charter bus operators.

To confirm what his competitors were doing, Kraft surreptitiously contacted three operators in April, asking them to submit charter quotations based on a presumed trip from Tulsa to Oklahoma City for a cheerleading group. According to Kraft, none of the competitors asked whether the phony cheerleading group had tax-exempt status, and none of the quotes from the competitors indicated sales tax was due.

"Any industry in which similarly situated competitors are struggling for the same business cannot be operating on a level playing field when one of the competitors is required by governmental mandate to charge 8.517 percent more (for sales tax) than all the others," says Kraft. "In our example of a trip from Tulsa to Oklahoma City, the tax difference amounts to approximately \$50."

"It's easy for a customer to quickly rule out one of the competitors who is forced to charge \$50 more than his competitors because of sales tax regulations," Kraft adds.

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Coach operators help Bush reach voters in key states

NASHVILLE, Tenn.—Two Nashville motorcoach companies are playing an important role in the re-election campaign of President George W. Bush.

Hemphill Brothers Coach Co., the nation's leading provider of tour coaches for the entertainment industry, and Gray Line of Nashville, one of the largest tour and charter operators in the Midsouth, are supplying the transportation when Bush tours battle ground states by bus.

Last month, for example, Bush boarded one of two Prevost conversion coaches being leased from Hemphill Brothers and toured Michigan and Ohio on one swing, and Iowa and Wisconsin on another.

The second Hemphill Prevost reportedly is used primarily by the Secret Service detail that accompanies Bush.

The livery on both H3-45

model Prevosts is deep blue with white and red trim, and the slogan *Yes, America Can* emblazoned on the sides. The motto is designed to equate support for the Bush campaign with support for America.

Right behind the conversion coaches on the campaign trips are four brand new Prevost seated coaches owned by Gray Line of Nashville, carrying reporters, campaign staff members and others.

According to the *Washington Post*, the bus fleet has allowed Bush's campaign managers to repackage his re-election effort, focusing more on retail politicking and less on the trappings of the White House, reducing the danger of Bush looking out of touch with average voters.

Additionally, says the newspaper, the bus tours allow candidate Bush to exploit what his campaign advisers believe is an

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Senate tiff over highway bill resolved; conferees named

WASHINGTON – The stalled highway and public transportation reauthorization bill appeared to get back on track late last month.

Gridlock was broken when Republican and Democratic leaders in the Senate said they had resolved a dispute that had blocked progress on the six-year bill for a month.

Senate Majority Leader Bill Frist and Senate Minority Leader Tom Daschle said they had come

to terms on appointing senators to a conference committee that will work with House members to resolve differences in the two highway bills passed by the two chambers.

Senate Democrats had blocked the naming of negotiators on the bill and other legislation until they received assurances they would be treated as partners in writing the final bill.

With Republicans having a slight Senate majority, senators

from that party had been calling the shots on the legislation.

The Senate approved a \$318 billion highway bill in February and the House adopted a \$284 billion reauthorization bill in April. But the White House has said both are too expensive; it wants highway and public transit spending held near \$256 billion.

The last six-year highway bill, funded at \$218 billion, expired in September, and Congress has had to approve three temporary exten-

sions. The latest extension runs through the end of this month.

There had been wide speculation that if the wrangling over the conference committee did not get resolved by Memorial Day, the legislation would stand little chance of being passed this year.

Chairing the Senate conference committee will be James Inhofe, R-Okla. Other Senate Republicans on the committee are: Christopher Bond, Mo.; Charles Grassley, Iowa; Orrin

Hatch, Utah; Trent Lott, Miss.; John McCain, Ariz.; Mitch McConnell, Ky.; Don Nickles, Okla.; Richard Shelby, Ala.; George Voinovich, Ohio, and John Warner of Va. The Senate Democrats are: Max Baucus, Mont.; Barbara Boxer, Calif.; Kent Conrad, N.D.; Tom Daschle, S.D.; Bob Graham, Fla.; Fritz Hollings, S.C.; Joe Lieberman, Conn.; Harry Reid, Nev., and Paul Sarbanes, Md. Independent James Jeffords, Vt., is also on the committee.

House takes step to reduce federal rules & paperwork

WASHINGTON – The U.S. House of Representatives has passed a bill designed to reduce the federal paperwork and regulatory burden on small businesses.

The Paperwork and Regulatory Improvements Act (H.R. 2432) was introduced about a year ago by Rep. Doug Ose, R-Calif., to provide Congress with more tools to curb the growth of federal regulations and paperwork. The bill passed 371 to 54, meaning it had strong bipartisan support.

“The passage of this legislation is a victory for small businesses across the nation that have faced unnecessary and burdensome paperwork and regulatory requirements for far too long,” said Ose. “The hours spent and penalties paid by small businesses affect productivity, jobs and economic growth. In today’s highly competitive global marketplace, American businesses need every advantage they can find,” Ose added.

The bill tackles the federal regulatory and paperwork burden on a variety of fronts, most notably by requiring the Office of Management & Budget to dedicate at least two full-time staff members to work exclusively on reducing tax-related paperwork, and by making permanent the requirement for the General Accounting Office to respond to congressional requests for an independent evaluation of selective regulatory proposals by federal agencies.

According to Ose, the IRS accounts for more than 80 percent of all government-imposed paperwork and there is a clear need to reduce tax reporting paperwork requirements. At the same time, Ose says if Congress is to fulfill its

oversight responsibility for federal regulations it must be armed with independent information. He contends Congress needs to know when federal agencies are failing to follow congressional mandates and when they are trying to legislate with regulations.

“Under the legislation, Congress will be better equipped to review federal agency rules and, more importantly, congressmen and women will be able to submit timely and knowledgeable comments on proposed rules during the public comment period,” he noted.

Finally, the bill requires federal agencies to annually submit estimates of the costs and benefits associated with the rules and paperwork required under the programs managed by the agencies, and establish pilot projects for what is called regulatory budgeting. This will help ensure federal agencies address the worst societal problems first.

The bill is strongly supported by the chief counsel for advocacy at the U.S. Small Business Administration, Thomas M. Sullivan, who has testified twice in support of the act.

“As well-documented by the Office of Advocacy’s Crain-Hopkins report, small business continues to pay a disproportionately large share of the total federal regulatory burden,” says Sullivan. “For firms employing fewer than 20 employees, the annual regulatory burden in 2000 was estimated to be \$6,975 per employee – nearly 60 percent higher than the \$4,463 estimated for large firms with more than 500 employees.”

Virginia eyes Beltway tolls; Bush weighs in

RICHMOND, Va. – Virginia is considering looking into building toll-lanes on a 13-mile stretch of the Capital Beltway around the District of Columbia.

The plan would add two lanes on each side of the Beltway – Interstates 495 and 95. High-occupancy vehicles could use the toll lanes free but single-passenger autos would have to pay a toll.

Toll prices would be demand based, meaning they would increase when traffic is heavy to prevent the toll lanes from jamming.

The proposal is to be considered by Virginia’s transportation commissioner, Philip Shucet.

Meanwhile, a U.S. Department of Transportation policy planner says the Bush administration backs the idea of using tolls to finance major new highway projects.

Tyler Duvall, the DOT’s deputy assistant secretary for policy planning, told a group of investors in New York last month that the choice between tolls or no tolls is a false premise for highway funding. The real question, he said, is between tolls and higher fuel taxes.

Duvall said planning for future highways should favor tolls, or user fees, over higher gasoline and diesel fuel taxes.

Buses are OK on widened roadway in Maine

PORTLAND, Maine – The Maine Turnpike Authority has banned commercial vehicles from the left lane of newly widened sections of Interstate 95 and the Maine Turnpike – except buses

Florida to cut fuel taxes during the month of August

TALLAHASSEE, Fla. – Florida’s Senate joined the House in approving a temporary cut in the state’s motor fuel taxes.

The measure, which passed the Senate by a 34-4 vote, would trim 8 cents a gallon from both diesel fuel and gasoline taxes in August. Florida collects a 27-cent a gallon tax on diesel fuel, and 14.3 cents on gasoline.

The Florida House of Repre-

sentatives approved the cut in April and after the Senate vote late last month the bill was sent to Gov. Jeb Bush for signature.

What few opponents there were to the bill said the main beneficiaries of the action would be big oil companies, not consumers.

Supporters said the tax cut would be passed along to fuel buyers at the retail level.

Higher fuel prices help feed increase in fuel tax in Maine

AUGUSTA, Maine – Higher fuel prices mean that fuel taxes are going up next month in Maine.

Two years ago, Maine became another of the states that ties its fuel-tax rate to the consumer price index. When the index goes up, fuel taxes are raised.

With sharply higher fuel prices this year leading the way to a higher consumer price index, the Maine fuel tax must go up too.

On July 1, the diesel fuel tax in the Pine Tree State goes to 26.3 cents a gallon from 25.7 cents, and the tax on gasoline rises to 25.2 cents from 24.6 cents a gallon.

Oklahoma likely to keep fuel taxes

OKLAHOMA CITY – Higher fuel prices have taken the steam out of efforts to raise fuel taxes in Oklahoma.

The state legislature has been considering a number of measures this year to raise fuel taxes, which are among the lowest in the U.S. Currently, diesel is taxed at 13 cents a gallon, and gasoline 16 cents.

The rates in neighboring Kansas are 26 and 24 cents a gallon, respectively, and in Texas the tax on both gasoline and diesel fuel is 20 cents a gallon.

Now it seems unlikely the legislature will refer any initiative calling for higher fuel taxes to the voters or enact a fuel tax increase on its own. The reason: the steady climb in fuel prices this spring.

and motorcoaches.

The over-the-road bus industry dodged a bullet when the turnpike authority implemented the truck ban last month on the left lanes of the upgraded turn-

pike from the Piscataqua River Bridge at the New Hampshire-Maine state line in Kittery, through Portland, the state’s largest city, a distance of about 50 miles.

Availability of security grants announced by TSA

July 7 deadline for applications

WASHINGTON — The U.S. Transportation Security Administration has announced the availability of \$9.9 million worth of federal grants to improve over-the-road bus security.

These are the same sort of grants the TSA parceled out to operators in 24 states last August. At that time, the TSA announced it was awarding nearly \$20 million in grants, but that amount was cut to \$14.85 after \$5 million was reallocated elsewhere within TSA.

The TSA Intercity Bus Security Grant Program money is to be used by operators to improve security for their businesses and passengers, and to provide training for employees of coach companies.

Applications for the fiscal 2004 grants must be received by the TSA by July 7.

Operators applying for the money will have to jump through normal federal bureaucratic hoops. The best place to start is to go to the TSA Web site. Here's the drill to find all of the pertinent information and there's a lot of it:

- Go to www.tsa.gov.
- Near the top of the home page, look for a link called *Business Opportunities*. Click on that.
- When the Business Opportunities page pops up, look for a link on the left side the page called *Contracting with TSA*. Click on that.
- When that page pops up, look in the center of the page for the words *Bus Security Grants*. Click on those words.

You'll arrive at a page announcing that applications for the Intercity Bus Security Grants are now being accepted. Below the announcement are more than a dozen links to various forms, instructions, checklists, explanations and other documents to guide applicants.

There's also a document that explains who can apply, a list of frequently asked questions, and a sample proposal.

Last year, 57 coach companies were awarded grants ranging from \$9,900 to \$5 million. Additional, the United Motorcoach Association and the American Bus

Association received hefty awards, along with New Jersey Transit.

UMA and ABA used their money to develop security training programs that they made

available free to thousands of operators.

Operators receiving grants used the money for a variety of purposes, including installing GPS systems, buying cell phones

and other communications systems, adding driver protection, passenger and baggage screening, security assessments and plans, and training for personnel to recognize and respond to criminal

attacks and terrorist threats.

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INDUSTRY NEWS

Ose hearing

CONTINUED FROM PAGE 1

and enforcement record. Clearly, Ose was underwhelmed by the record amassed by the Bush Administration DOT and FTA.

Several witnesses described how the FTA had allowed public transit authorities to compete unfairly with existing private bus operators, while others expressed strong disappointment with the DOT's private-sector participation policies and performance.

Ose recounted his experience investigating the case of Regional Transit, the public agency in his home city of Sacramento, and its take over of a 25-year competitively awarded contract for a shuttle bus service.

FTA rules, said Ose, prohibit a public transportation service from using federal grant dollars to purchase buses to offer equivalent service at a reduced rate to that charged by the private sector.

Yet, despite the regulations, the FTA awarded \$2.4 million to Regional Transit for the purchase of buses and later allowed the agency to use the buses to takeover an existing privately operated transit service. "This takeover resulted

in an estimated additional \$277,000 annually in public operational expense," Ose said.

"There is a clear problem here. When a grantee (Regional Transit) does not use federal grant monies consistent with federal law, Congress needs to weigh in," he said. "I am severely disappointed by the attitude and actions to date to enforce the statutory and regulatory requirements that apply to capital assets purchased in whole or in part with federal funds, especially when those assets are used to push existing private transit operators out of business."

The victim of the Regional Transit takeover, William Allen, president of Amador Stage Lines of Sacramento, was one of those who testified before Ose's committee.

"FTA's record of failure in this case is profound," Allen said. "FTA abdicated its responsibility to enforce congressionally-mandated statutory standards, federal regulations and the FTA's own signed grant agreement with Regional Transit as a condition of receipt of \$2.4 million to purchase new shuttle buses," he continued.

"Instead of assuming a quasi-judicial role in this complaint as required by Congress, FTA

became, in effect, an unapologetic advocate for (Regional Transit)," said Allen, who went on to provide a laundry list of examples of the FTA neglecting its statutory and regulatory responsibilities.

Some of the most erudite testimony offered at the hearing came from Terry Thomas, president of Community Bus Services in Youngstown, Ohio.

Thomas told of how the FTA aided and abetted a local public transit agency's efforts to thwart the award of a contract to his company to operate public transit service in Trumbull County, Ohio. Rather than submit a proposal to provide the service itself, Western Reserve Transit Authority of Youngstown threw up bureaucratic roadblocks for nearly a year.

Thomas went on to sight examples of how the FTA has moved away from congressional mandates requiring maximum private-sector participation in public transit planning, and how FTA has failed to meet a standard of enforcement as intended by Congress.

"Existing federal transit statutes must be enforced to encourage both public transit agencies to consider contracting with private transportation companies to the

maximum extent feasible and provide less costly and much needed services while maximizing all available transportation resources," Thomas told the committee.

Like others appearing at the hearing, Thomas called for new rulemaking by the FTA to address unfair competition from federally subsidized transit agencies.

A third strong voice providing evidence of the FTA allowing a public transit provider to stifle private-sector competition – regardless of the intent of federal laws and regulations, came from Katsumi Tanaka, chairman and CEO of E Noa Corp., operator of the Waikiki Trolley and E Noa Tours in Honolulu.

Tanaka said the city and county of Honolulu and their transit service, The Bus, had monopolized service to a popular visitor destination, Hauauma Bay; deliberately excluded the private sector from plans to develop a bus rapid transit system, and harmed private operators by aggressively recruiting tourists to use its subsidized service.

Two others appearing before Ose's committee were from public policy think tanks and both said the USDOT had failed miserably to maximize private-sector partici-

pation in public transportation.

"By not capitalizing on all opportunities to involve the private sector we are increasing the costs of transportation services, limiting their flexibility, stifling innovation and creating a static system to the detriment of taxpayers and travelers," said Dr. Adrian Moore, vice president of the Reason Foundation in L.A.

"It might be expected that in the United States, with the world's strongest market economy, competitive contracting would have spread rapidly. However, the greatest progress toward incorporating competition in transit has occurred overseas," said Ronald Utt, research fellow at the Heritage Foundation in Washington.

Representing the USDOT at the hearing was Emil Frankel, assistant secretary of transportation policy. He defended the department's actions and policies by saying DOT "is committed to providing a greater role for the private sector in transportation service and infrastructure investment."

He said the FTA is preparing a report on charter service regulation and how regulation can impact the prohibition against transit agency competition.

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OPINION

Oh yea, Ose

For the motorcoach industry, it probably doesn't get much better than this.

Last month, a member of the U.S. House of Representatives, a California congressman you've probably never heard of, conducted a hearing that laid bare much, but certainly not all, of the arrogance, bias, ineptitude and failings of the Federal Transit Administration.

It was, as one attendee put it, "spectacular."

Rep. Doug Ose, a Republican from Sacramento, chaired the landmark meeting of the House Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. He scheduled the hearing to plumb the oversight and enforcement record of the FTA and the U.S. Department of Transportation, and to explore their record in encouraging private sector participation in ground transportation during the three years of the Bush Administration.

Ose is no neophyte to these issues. He spent months investigating the FTA's handling of the takeover of a privately-operated shuttle service in Sacramento by the city's public transit agency. What he found left him with the unmistakable impression that the FTA is broken agency, failing to enforce its own statutory and regulatory requirements, and serving as little more than a lapdog for the agencies it funds.

What he heard at the hearing reinforced that notion.

At the end of the day, Ose was using terms like "glaring gaps" and

"actions contradictory to the letter and spirit of the law" to describe the FTA/DOT record.

According to one industry veteran who attended the hearing, it marked the first time the DOT has been questioned so thoroughly on issues related to FTA enforcement, oversight and involving the private sector in transit planning.

Served up as sacrificial lamb for the roasting was Emil Frankel, assistant secretary for transportation policy at DOT. Frankel offered the DOT's rote response for the FTA's shortcomings.

"FTA's ability to exert influence over the transit industry is limited to setting terms and conditions over the use of federal grant funds," Frankel said. "Therefore, unlike agencies with authority grounded in the commerce clause, FTA has very limited authority to regulate."

In other words, FTA has no trouble handing out buckets of money, but when it comes to accountability and responsibility the agency is just a bunch of wimps.

The FTA wimps may regret their status by the time Ose gets through with them. "He's like a pit bull," said an industry official who attended the hearing.

The seriousness of the questions asked and the allegations made at the hearing will force DOT and FTA to follow up.

Now is the time for the motorcoach industry to rally behind those calling for a DOT/FTA rule-making on the issues of transit competition, federal charter rules enforcement and maximum private-sector participation.

Collateral 101: Loans, security interests



By Thomas D. DeMatteo
Vice President & General Counsel
ABC Companies

We all borrow money. Banks love collateral. So, I thought it would be helpful to review the fundamentals of collateral.

As you know, when banks lend money they need to securitize the loan, meaning they need property to be pledged against the loan as back-up property in the event of default.

Banks want a collateral interest in either real estate or personal property. A collateral interest in real estate is called a mortgage. A collateral interest in personal property is called a security interest.

Since we all have a feel for how a mortgage works, I want to explain the fundamental principles surrounding the creation of a security interest.

Article 9 of the applicable states' Uniform Commercial Code governs the creation, attachment, perfection and enforcement of security interests in personal prop-

erty. Generally, personal property means anything other than real estate and buildings, i.e. furniture, inventory, products, cash and the like. A security interest is defined as an interest in personal property which secures payment or performance of an obligation.

statute does not explain exactly what rights are required, it is clear that something less than full title may suffice.

3. Value must have been given.

Once a security interest is created it is always enforceable against the debtor. However, it must be perfected to be valid against other creditors. The general ways to perfect a security interest so it has superior ranking to other lenders, is either by taking possession of the collateral or by filing a financing statement at the applicable secretary of state, or in the county where the property is located, or both.

Many lenders file in both places or in multiple states depending on where the debtor has property. The reason for filing is to put other lenders on notice of superior collateral interests and to identify collateral that has already been pledged.

The rules governing perfection are complex and depend on the type of collateral and where it is located. The rules governing enforcement or foreclosure of a security interest are also complex. Therefore, whenever you pledge your assets as security for a loan you should seek legal counsel to understand your rights.

Thomas DeMatteo also is an adjunct professor at Hamline University School of Law in St. Paul, Minn.

**'Whenever
you pledge your
assets as security
for a loan you
should seek
legal counsel'**

Three things must occur before a security interest exists. If any of the three is missing, there is nothing to enforce, even against the debtor:

1. The parties must enter into a security agreement that creates or grants a security interest. While the security agreement need not contain any particular words, it must articulate that a security interest has been created. The security agreement must describe the collateral. While a collateral description need not be detailed, it may not be so general as to be virtually meaningless.

2. The debtor must have rights in the collateral. While the

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ABA responds to comments made by president of CBA

Editor's Note: The May 15 issue of Bus & Motorcoach News contained an interview with Mike Waters, president of the California Bus Association. The interview provoked the following comments – contained in a memorandum addressed to ABA operator and associate members – by Charlie Zelle, chairman of the board, and Ronald L. Eyre, vice chairman, of the American Bus Association.

“Unfortunately, the article includes quotes from the California Bus Association that misrepresent ABA's position and incorrectly characterize the efforts we have made on the very important issue of unfair competition with transit agencies. Certainly, the California Bus Association has been very aggressive on this issue in California and, for those efforts, we applaud their hard work. But publishing unfair and inaccurate statements does not help to achieve our common goals or solve our industry's problems. ...

The article asserts that ABA supported Senate language on transit competition, asserts that we didn't understand the subtleties of the issue, and that the ABA board and members were not well briefed on the legislation. Finally, the article says that ABA is more focused on line-haul carriers and large operators than small carriers that handle most of the charter business in the industry. This isn't true.

Yes, the language in the Senate bill was there because of ABA's efforts to garner more protection for the industry. No, the language was not perfect and, yes, working with California Bus Association and others has provided us additional leverage to move the language closer to a real, meaningful solution for the industry.

Working with the House of Representatives, and including more industry partners, we have been able to create more leverage so that, we believe, in conference both chambers will ultimately come to a positive conclusion for our industry. After many rewrites of the language by ABA General

Counsel Rick Schweitzer, who has solicited input from CBA, UMA and the school bus association, we have language that we believe answers everyone's concerns.

ABA's board is one of the most informed, active and engaged boards of all the associations in Washington, D.C. We understand the issues and we understand the way the legislative process works. We are briefed on staff strategies for dealing with transit competition and other issues from the start and as recently as during our last board meeting in May.

And, for the record, most operator members of our board are in the charter and tour business. We also have board members from the travel industry and manufacturers and suppliers to the industry. Clearly no one group dominates our discussions or our agenda and ABA works for the entire industry, not just one segment....

But don't be confused into thinking that the unfair competition issue is one that only affects our charter and tour operators. Line-haul operators are hurt when transit agencies link-up to provide regional intercity bus service in violation of the rules. Industry-wide our members are hurt by unfair, heavily subsidized competition from Amtrak, and the airlines, and by low-cost bus operators that skirt the safety rules. We have been working these issues in a comprehensive way and on many levels. ...

Finally, to say we are not engaged in working for smaller carriers that handle most of the charter business in the industry is simply a 30-year old myth. Eighty percent of our operator members are smaller charter or tour operators. Our monthly magazine Destinations is devoted to charter and tour operators, and our annual show, Marketplace, is devoted to the charter and tour industry.

Many of our members have lost money and lost service to transit agencies that are not following federal rules or are operating outside of our legal boundaries. We want to make it stop, once and for all.”

'Most operator members of our board are in the charter and tour business.'

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People

Torbejorne E. Toby-Purdy has been appointed senior vice president of marketing at *Greyhound Lines* in Dallas. Purdy, who has 14 years of marketing experience, most recently was senior vice president, marketing and business development, at Dean Foods Co. in Dallas. Previously, he managed snack food brands at Frito-Lay in Dallas. He holds an MBA in marketing from Clark Atlanta University.

Ken Presley, vice president of *Service Insurance Agency* in Charlotte, N.C., has been appointed chairman of the regulatory committee of the Bus Industry Safety Council, and **Ryan Robie**, operations manager at *Excellent Adventures Inc.* in Ft. Wayne, Ind., has been named chairman of the council's driver training/communications committee.

William E. La Macchia, founder, president & CEO of *The Mark Travel Corp.* of Milwaukee, will be inducted into the National Tourism Foundation Hall of Fame on June 10. Mark Travel is one of the largest and most diversified travel companies in the U.S., with

14 subsidiaries and offices in 10 cities, plus London and Jamaica. One of Mark Travel's affiliate companies is Showtime Tours, a motorcoach and airport shuttle operation based in Las Vegas.

The Trailways Transportation System has honored two drivers for their professionalism and documented safe performance records.

Named Driver of the Year for Trailways-Scheduled Route Division was **James Minuski** of *Martz Trailways* in Wilkes-Barre, Pa. Sharing honors as Driver of the Year for the Charter & Tour Division were **Cheryl Rusche** of *Alpha Trailways* in Cincinnati, and **Bryan E. Jackson** of *Capital Trailways* of Alabama in Montgomery.

William Mahorney, director of safety and regulatory programs at the *American Bus Association*, has been named co-chair of the motor carrier committee of the District of Columbia Downtown Congestion Task Force.

Marco Thompson has joined the board of directors of *DriveCam Video Systems*, a San Diego-based

developer of fleet safety technology designed to improve driving behavior. Thompson is a venture capitalist, engineer and founder of seven companies, including Doctor Design, which in the 1980s and 1990s became the largest engineering design services firm in Southern California.

Bus museum schedules June expo

HERSEY, Pa. — The Museum of Bus Transportation and its partner, the Antique Auto Club of America Museum, are jointly sponsoring the 9th annual Museum Expo on Saturday, June 26.

The expo will feature a day of activities, beginning 7 a.m. and lasting until 4 p.m., on the museum grounds in Hersey. A highlight will be an automobile and big bus flea market, featuring a wide variety of bus-related memorabilia.

Other activities include a car show, arts and crafts, car corral, judged tractor and farm machinery display, and pedal car display. Bus owners are invited to bring their coaches. Food will be available and trophies awarded.

The day's events are free. Individuals interested in participating in the flea market can rent a table for \$25.

The bus museum will be open from 9 a.m. to 5 p.m.

For information, including details about renting a table, call John Dockendorf, secretary of the museum, at (717) 787-1220.

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Gray Line Nashville

Gray Line of Nashville is on a roll. With its order for eight new Prevost H3-45s, owners Chris and Dennis Levering will boast a company fleet of 22 late model Prevost H3-45 premium touring coaches.

When the Levering brothers re-purchased their business two years ago (it had been purchased by Travelways in the 1990s), they decided it would be smart to re-approach the Nashville market with a new face.

"Our first move was an order for 10 2003 Prevost H3-45 premium touring coaches," says Chris Levering. "All things considered, the Prevost H3-45 best fit our challenge of showing booking agents and visitors that the new owners of Gray Line of Nashville were making some very big

changes for the better."

"We had no hesitation to stick with H3-45s when time came to add capacity and renew some of our fleet units," Levering noted.

The latest Prevosts added to the Gray Line of Nashville fleet are equipped with Detroit Diesel Series 60 engines, Allison B500 transmissions with Jake Brakes, National Seating, REI A/V systems with four monitors, Firestone tires mounted on Alcoa aluminum wheels, and Isringhausen driver seats.

Gray Line of Nashville has been providing charter and sightseeing service in the Nashville area for more than 30 years. With the addition of the new Prevosts, the company has 45 motorcoaches and 22 midsize buses.

Bush tour

CONTINUED FROM PAGE 3

advantage the president has over Sen. John Kerry, the presumptive Democratic presidential candidate. That is, Bush is more likable and approachable.

On his first swing using the Hemphill and Gray Line of Nashville coaches, Bush and his entourage were driven 225 miles through rural and suburban Michigan.

Inside the conversion coach, Bush can lounge in a leather captain's chair, watch one of the flat-screen televisions, be served from a kitchenette, and stay in touch with Washington via an extensive communications system.

Both of the Hemphill coaches have been armored and secured in other ways that no one associated with the campaign or the bus companies is supposed to discuss.

It is known that the coaches



President Bush prepares to board the Yes, America Can bus after the landing of Air Force One in Dayton, Ohio.

use KVH satellite television antennas, as well as the company's high-speed Internet products.

One of the Gray Line coaches also has a satellite antenna with WI-FI (wireless networking) that reporters and others can use for on-the-road communicating.

Two other Gray Line coaches

have inverters with 110-volt outlets on both aisles for those using laptop computers.

Supplying the coaches is something of an adventure for both Hemphill and Gray Line. "They don't tell us where they're going, jokes Chris Levering of Gray Line of Nashville."

Kraftours

CONTINUED FROM PAGE 3

Kraftours is a 44-year-old company that operates eight motorcoaches. The Kraft family has been in the industry since 1915.

In the letter Kraft sent to the tax commission, he accused the agency of violating the equal protection provisions of the U.S. and Oklahoma constitutions because of its unfair and inequitable enforce-

ment of tax statutes. He also informed the agency he planned to stop collecting the tax until the commission can settle on language it deems enforceable and which it intends to apply equally.

According to another Oklahoma charter operator, the sales tax issue boils down to the vagueness of Oklahoma tax statutes. "No one knows what is taxable," says Jeff Polzien, president of Red Carpet Charters in Oklahoma City. He

said a group of tour and charter operators met with tax commission officials earlier this year, and three tax attorneys in the room could not agree on the applicability of the tax statute to bus operators.

"It's crazy," said Polzien. "The statute is so poorly written. The way I read it, I'm not taxable, period."

Polzien said he knows of no other operator in Oklahoma that is collecting sales tax except Kraftours.

That, of course, galls Kraft almost as much as the tax commission's inability to acknowledge that its enforcement policies are as lackadaisical as they are unfair.

Kraft's declaration that he intends to stop collecting the tax has not endeared him to the tax commission. The director of the commission's tax policy and research division says if Kraft goes through with his threat he will be treated like any other delinquent taxpayer. That means Kraft could be subject to fines, penalties, interest and possible incarceration.

The tax commission wants Kraft to litigate the issue as the law provides. However, amassing thousands of dollars in legal fees to get equal treatment from tax collectors doesn't hold much appeal for Kraft.

"We are a tiny, little family-owned bus company," he says. "It's simply beyond the resources of a company like ours to take up the banner of sales tax equity in any other way than we have."

Meanwhile, Kraft says he is exploring other options that will keep him from violating the law, which he wants to avoid.

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INDUSTRY NEWS

Training

CONTINUED FROM PAGE 1

Compounding the problem, says UMA, is the fact there are no motorcoach driver training schools operating in the U.S.

UMA contends the FMCSA badly underestimated the financial impact on the coach industry of complying with the new rule.

One of the key elements of the rule is that those drivers receiving the training must be certified, meaning thousands of small coach companies likely will have to develop a training program that contains all of the elements mandated by the FMCSA, and self-certify that any new drivers they hire have been trained.

The rule is very specific about who must receive the training and how quickly they must be trained.

Any inexperienced driver hired within the past 10 months will have to receive the training, and the training must be completed no later than 90 days after the effective date of the rule (i.e. Oct. 17).

After July 20, any driver with less than a year's experience driv-

ing in interstate commerce must receive the training before hitting the road. Operators cannot escape the training requirement by hiring a driver whose only experience is driving intrastate. The experience requirement specifically states it must be interstate driving.

The rule requires new-driver training in four areas: Driver qualifications, hours-of-service, driver wellness and whistle-blower protection. The FMCSA says that increased driver knowledge in these areas is critical to large bus and truck safety.

Here are some of the elements to be included in the training:

- Driver qualification requirements: Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, disqualifications based on various offenses, and loss of driving privileges.
- Hours of service: Limitations on driving hours, off-duty requirements, fatigue countermeasures.
- Driver wellness: Basic health maintenance, including diet and exercise. Importance of avoiding excessive use of alcohol.

- Whistleblower protection. The right of an employee to question the safety practices of an employer without the risk of losing a job or being subject to reprisals for simply stating a safety concern.

"These training requirements

'The FMCSA will police the rule during compliance reviews'

will reduce crashes caused by entry-level drivers of large trucks, school buses and motorcoaches," FMCSA Administrator Annette M. Sandberg said when the rule was proposed last year.

The new federal rule is a "minimum" standard that entry-level drivers must meet. Although the rule does not specify a required number of hours for the training, the agency estimates it will take roughly 10 hours for motorcoach and large truck drivers, and at least 4 hours for school bus drivers.

Evidence that a new driver has gotten the training must be main-

tained in the driver's qualification file. That is, a "proof of training certificate" must be in the file.

The FMCSA will police the rule during compliance reviews. Operators must show inspectors the documents confirming the training has been completed. Filing phony certifications carries serious consequences.

The new rule had been in the bureaucratic pipeline at the U.S. Department of Transportation for more than a decade. It was mandated by federal highway and public transportation legislation adopted a dozen years ago but languished before new leadership at the FMCSA moved it to the front burner last August, issuing a notice of proposed rulemaking. (See Sept. 1 issue of *Bus & Motorcoach News*.)

The FMCSA entertained comments on its proposed entry-driver rule until the middle of last October, receiving more than three dozen written comments from motor carriers, associations, training organizations, a union, a public interest organization and several individuals. (See Nov. 1 and Jan. 1 issues of *Bus &*

Motorcoach News.)

Those commenting on the proposed rule from the bus industry included UMA, the American Bus Association, the National School Transportation Association, and bus industry safety consultant Carmen Daecher.

Among those "generally supporting" the new rule were the American Trucking Associations, the Commercial Vehicle Safety Alliance, Consolidated Safety Services Inc., the Teamsters, and the ABA.

The FMCSA highlighted the ABA support in announcing the rule, quoting from the association's comment letter. "We believe that minimum training requirements for entry-level drivers are long overdue," the ABA wrote to the FMCSA last fall. Elsewhere in its letter, however, ABA advocated changes to the rule as it was proposed in August.

A copy of the final rule can be found in the Federal Register at most public libraries. See Vol. 69, No. 99, pages 29383-29405. Or, track it down on the Internet. Start at <http://dms.dot.gov/>.

New Jersey

CONTINUED FROM PAGE 1

stantially more for the entire state because out-of-state operators also are no longer taking coach loads of passengers to other New Jersey destinations, including the seashore.

Parra presented data compiled by the South Jersey Transportation

Authority, showing charter bus traffic to Atlantic City declined 37 percent between 1998 and 2003 and the number of passengers dropped 55 percent. (See charts.) In-line bus service to Atlantic City dropped 60 percent during the same period, while the number of line-run passengers fell 40 percent. Overnight stays by bus passengers

declined 25 percent between 2000 and 2003.

"For many years, New Jersey destinations, particularly the hotels and casinos of Atlantic City were considered to be premier tourism locations for the bus and motorcoach industry," Parra told the committee. "However, the rapid expansion of casinos and other gaming alternatives ... in other states, such as Connecticut, meant that both the public and private bus companies had much greater discretion in travel options than in the past.

"When New Jersey first started collecting corporate franchise taxes from out-of-state carriers, we were concerned and, quite frankly, a bit puzzled," Parra said. "It was as if the Garden State was sending a message to motorcoach companies that 'we don't recognize, nor do we care about, the financial contribution that you make to our state's economy. Plus, we're not interested in having visitors come to New Jersey and enjoy the many amenities this state - my home state - has to offer.'

"New Jersey then compounded the problem," said Parra, "by increasing the minimum (corporate) tax two years ago from \$200 to \$500."

He urged legislators to adopt Assembly Bill 2489, introduced earlier this year by Tourism and Gaming Committee Chairman Jeff

Van Drew, that would prohibit the imposition of the state corporate business tax on out-of-state corporations that carry passengers into and out of the state in motor vehicles and motorbuses.

"With the passage of AB 2489, New Jersey has an opportunity ... (to) recapture lost business," Parra said. "On the other hand, the current New Jersey corporate franchise tax, if kept in place for bus companies, will guarantee the continued decline the South Jersey Transportation Authority has noted over the past six years."

In his testimony, Fernandez explained the onerous nature of doing business in New Jersey, and provided additional examples of the contribution of bus operators to the state economy.

As a CPA and specialist in bus industry accounting, Fernandez said he had been approached by many bus operators wanting to know what was involved in doing business in New Jersey. "After explaining to these operators that they had to (a) file a Business Registration form to register their business with New Jersey; (b) file a Public Records Filing for New Business Entity form that requires the company to obtain a "Certificate of Good Standing" from their home state, the retaining of a New Jersey-authorized registered agent, and the payment of a

filing fee of \$100; (c) file annual corporation business tax returns and pay, at a minimum, a \$500 tax, and (d) file an annual report and pay a \$50 fee, the response from these out-of-state bus operators was unanimous in that it was too much of a hassle and cost and they would either not do business in New Jersey or limit the number of trips into the state to no more than five times, the threshold of what is now considered as doing business in New Jersey," Fernandez told the tourism and gaming committee.

Fernandez also pointed out that New Jersey's new "Alternative Minimum Assessment" tax, which is based on either the gross receipts or profits of a business, could mean that even a company with a net loss could still be subject to a tax greater than the minimum of \$500, plus the suspension of the use of net operating loss carryovers.

"These changes (and others) all contributed to an unwillingness to do business in New Jersey," Fernandez said, adding that the state has lost far more than it gained by discouraging the out-of-state bus operators from doing business in New Jersey.

Observers believe the unanimous, bipartisan support shown Van Drew's bill by the tourism and gaming committee bodes well for its outlook by the full New Jersey General Assembly and in the state senate.

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D.C. Circulator

CONTINUED FROM PAGE 1

from the three companies were unsuccessful, although one of the operators confirmed that his company had not been consulted by the Washington Metropolitan Area Transit Authority regarding the proposed service.

"This is a good example of a transit operator trying to displace private sightseeing routes," said a leading authority on federal transit regulations. "Under Section 5323(a), the secretary of the Department of Transportation is supposed to make a finding that existing operators were involved to the maximum extent feasible."

Planning for the circulator clearly has been going on for months, if not years. Funding requests have been included in recent D.C. appropriations bills and negotiations to buy the buses for the service are nearly complete.

Under the service's plans unveiled by WMATA last month, the "downtown D.C. circulator" would initially connect tourist hot spots, popular attractions and major business centers.

If that service proves popular and another \$12 million to \$15 million can be found, a second phase would add routes that would primarily circle the National Mall and monuments area, the bread-and-butter market of the private sightseeing services.

The initial routes would allow riders to catch a bus and travel between the new Washington Convention Center, Union Station and Georgetown, with stops along K Street. Or, they could travel along Seventh Street between the new Convention Center, part of the National Mall and the Southwest waterfront.

The subsidized fare for the circulator would be 50 cents, which would raise roughly 45 percent of the projected annual operating cost for the first phase and that's only if the service reaches its ambitious ridership goals.

The circulator buses would appear at stops, which include hotels, every five minutes during rush hours and every 10 minutes during off-peak hours. Most of the year, the service would operate from 8 a.m. and 9 p.m. daily.

WMATA plans to spend between \$12 million and \$15 million to buy 29 Van Hool A330 transit buses to provide the service. The stylish low-floor buses seat 55, have three right-side doors and feature large windows. Money to buy the first batch of buses would come

from transportation funds the city has set aside, plus federal money.

The purchase arrangement for the buses likely will allow WMATA to sidestep Federal Transit Administration "Buy America" provisions. Rather than buy the buses directly from the manufacturer, WMATA is negotiating to buy them from AC Transit, the public transit system in Oakland, Calif. AC Transit

'WMATA is projecting a yearly operating deficit of \$4.2 million'

ordered a total of 134 Van Hool A330s, plus another 57 60-foot Van Hool buses. Delivery of the AC Transit order began mid-2003,

and has continued into this year.

The buses would require a retrofit to install air conditioning.

Operation of the initial two lines is expected to cost \$7.7 million annually and create 87 jobs. WMATA is projecting a yearly operating deficit of \$4.2 million. The District of Columbia and the federal government would provide \$2 million each annually to make up for the shortfall, with another

\$200,000-\$500,000 coming from the city business community, which is pushing for the service.

Officials of WMATA are hoping to attract upwards of 4.6 million riders annually. To make the service convenient, plans call for selling tickets at stops so riders can board directly and show their tickets to checkers on the buses, rather than riders queuing in a line at the front door.



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