

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-sixth Session  
March 8, 2011**

The Senate Committee on Transportation was called to order by Chair Shirley A. Breeden at 3:39 p.m. on Tuesday, March 8, 2011, in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Shirley A. Breeden, Chair  
Senator Michael A. Schneider, Vice Chair  
Senator John J. Lee  
Senator Mark A. Manendo  
Senator Dean A. Rhoads  
Senator Mike McGinness  
Senator Elizabeth Halseth

**GUEST LEGISLATORS PRESENT:**

Senator Joseph (Joe) P. Hardy, Clark County Senatorial District No. 12

**STAFF MEMBERS PRESENT:**

Kelly Gregory, Policy Analyst  
Bruce Daines, Counsel  
Patricia Devereux, Committee Secretary

**OTHERS PRESENT:**

Trent Baldwin, P.E., M.B.A., member, American Society of Civil Engineers  
Scott Gibson, P.E., President, Nevada Section, American Society of Civil Engineers  
Mark Froese, CPM, Administrator, Management Services and Programs Division, Department of Motor Vehicles  
Bruce Breslow, Director, Department of Motor Vehicles  
Paul J. Enos, Chief Executive Officer, Nevada Motor Transport Association

Senate Committee on Transportation  
March 8, 2011  
Page 2

R. Scott Rawlins, P.E., CPM, Deputy Director, Chief Engineer, Nevada  
Department of Transportation  
Lisa Foster, Foster Consulting  
Jeanette K. Belz, M.B.A., J.K. Belz & Associates; Nevada Chapter of the  
Associated General Contractors; Nevada Highway Users Coalition  
Michael L. Dayton, Vice President, Government Affairs Group,  
McDonald-Carano-Wilson LLP  
Samuel P. McMullen, Las Vegas Chamber of Commerce  
Chris Ferrari, Ferrari Public Affairs; Nevada Contractors Association  
Wayne Seidel, Administrator, Motor Carrier Division, Department of Motor  
Vehicles  
Col. Tony Almaraz, Chief, Highway Patrol Division, Department of Public Safety  
Susan Martinovich, P.E., Director, Nevada Department of Transportation  
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of  
Nevada  
Jeff Richter, MSSM, MSBA, Administrative Services Officer I, Administrative  
Services Division, Record Management & Over Dimensional Vehicle  
Permitting, Department of Transportation  
Dawn Lietz, Supervising Auditor II, Audit Section, Motor Carrier Division,  
Department of Motor Vehicles  
Lt. Bill Bainter, Commercial Enforcement Coordinator, Nevada Highway Patrol,  
Department of Public Safety  
Brad Johnston, Chief Strategy Officer and General Counsel, Peri & Sons Farms  
E. John Snyder, Snyder Livestock Company  
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation  
K. "Neena" Laxalt, Nevada Cattlemen's Association  
P. Michael Murphy, Clark County

CHAIR BREEDEN:

We will open the hearing with a presentation by Trent Baldwin on "Supporting  
Our Nation's Critical and Troubled Infrastructure" ([Exhibit C](#)).

TRENT BALDWIN, P.E., M.B.A. (member, American Society of Civil Engineers):  
Scott Gibson, president of the Nevada section of the American Society of Civil  
Engineers (ASCE), will speak on supporting our critical infrastructure.

SCOTT GIBSON, P.E. (President, Nevada Section, American Society of Civil Engineers):

The ASCE helps promote engineers and infrastructure. We have given the Committee a packet ([Exhibit D](#), original is on file in the Research Library) that contains "Our Nation's Report Card," a summary of a 2009 infrastructure "report card" prepared by ASCE; and some contact information for its local branch and president. The ASCE is a resource for the Committee in these economically challenging times as it searches for funding for new infrastructure and how to maintain existing infrastructure. The packet also contains a document on how to sustain critical infrastructure in the United States. My PowerPoint presentation will focus on the associated concepts and policies.

The ASCE defines critical infrastructure as assets that are so vital that their destruction or incapacitation would have a debilitating impact on security, economy, health, safety or welfare of the community. Critical infrastructure includes the built environment of buildings, the natural environment such as surface water and groundwater resources and the virtual networks such as computerized information systems.

Civil engineers are intimately involved with water-treatment facilities, sewer systems, wastewater disposal, electricity-generating plants, roads, dams, levees and bridges. Many of these elements are underground, out of sight and out of mind and so well designed they seamlessly blend into our everyday lives. They only become apparent when they stop working. This slide shows the aftermath of the failure of a 66-inch-diameter water main in Bethesda, Maryland. It took several hours to extract a woman and child from the car shown in the slide after the infrastructure failure.

Much of our existing infrastructure was built by our grandfathers and fathers. I am age 56, and construction of the interstate highway system began when I was age 5 or 6. Texas highway engineer Dewitt C. Greer said, "We do not have great highways because we are a great nation; we are a great nation because we have great highways." Our underlying infrastructure is a lot of what makes possible our civilization and lifestyle.

A document in the packet, "Guiding Principles for the Nation's Critical Infrastructure," is tailored to help policy makers and citizens understand the need for, and the overarching policies surrounding, infrastructure and how to fund it sustainably. We must view infrastructure in a way that makes it much

more economical to manage in the long term while maintaining it throughout its life cycle.

Policy makers, building owners, contractors and “not-in-my-backyard” protestors are involved in the guiding principle of critical infrastructure: to hold paramount the safety, health and welfare of the public. The term “public” means current and future generations, for which engineers must maintain, manage and develop systems so they are good for the planet, Nation and people.

It is difficult for engineers to communicate infrastructure factors to the public. We must make risks transparent as we begin or maintain projects. We take an integrated-systems approach so aspects of infrastructure that touch each other are considered holistically. There was a great discontinuity after the 2005 Hurricane Katrina disaster in New Orleans and the Gulf of Mexico. The potential for disaster had been identified for years in the event that the right hurricane was to hit that community at the right time. For years, levees and dams had been funded and built under the management of the U.S. Army Corps of Engineers in the entire Lower Mississippi River reservoir. Nevertheless, that knowledge was not integrated, so the system failed to function as needed.

Engineers need to exercise good leadership, management and—most importantly—stewardship of existing infrastructure. We must communicate to stakeholders that good processes are in place so funding associated with infrastructure is more sustainable and economical. Change is the only constant, so our infrastructure needs to adapt to change, which must be considered when projects are built.

Nevada’s long-range transportation plans have always reflected the population growth that outstripped all projections. Many Nevada bridges and structures are relatively new, while infrastructure in the nation overall is aged. The Interstate Highway 35 West bridge collapse in Minneapolis had several failure modes associated with it. The disaster speaks to the need to assess continually facilities during their life cycles. Large amounts of construction materials were stored on the bridge, but no analysis was done of their impact on its performance. At the beginning of the process, it is necessary to secure funding for periodic assessments and rehabilitation of facilities.

This slide shows how pavement deteriorates and its associated repair costs. Repairing it becomes expensive; maintaining it properly is relatively inexpensive. Nevada's local agencies do a good job of economically managing their pavement. All systems, such as sewer and water-treatment, have built-in design lives. Funding is critical to maintain them throughout their lives and identify problems early on, and this is the idea we are trying to promote today.

This slide shows a fire truck falling into a Los Angeles pavement sinkhole. A Los Angeles councilman said, "We have to get to the bottom of this failure before we fund repairs." Much of Los Angeles's infrastructure is 100 years old, and the city needs to start replacing its components. This is difficult to communicate to stakeholders.

Capital funds should not be allocated unless it can be demonstrated there are continuous funds available to assess and rehabilitate facilities over time. That should be jurisdictions' overarching philosophy in managing critical infrastructure. Funding sources should be tied to facilities' uses. An example of that is S.B. No. 201 of the 75th Session, which indexed fuel taxes to inflation in Washoe County. Our national fuel tax, which helps fund highways through the Federal Highway Administration, has not been increased since 1992. The diesel-fuel tax, which pays for trucks' damage to roads, has not been raised since 1982. You can imagine what inflation has done to the ability of those funding resources to maintain infrastructure, which was the original intent of the taxes. Nevada's infrastructure needs this Committee's support.

SENATOR MANENDO:

Was the Los Angeles sinkhole attributed to the pavement's age, the lines underneath it or a combination of the two? A big sinkhole developed recently in my district on Desert Inn Road in Nellis Air Force Base, and the cause was never determined.

MR. GIBSON:

When the fire truck fell through the Los Angeles street's pavement, it was over a 60-plus-inch water main that had failed. It was part of a water line system that is almost 100 years old. In Nevada, fortunately, we have a lot of new infrastructure. Downtown Reno has challenges keeping up with its aging sewer system. These are big, expensive systems that require a lot of funding to maintain. Components must be replaced when they near the end of their service

lives. Engineers are good at identifying the risks associated with gambling that catastrophic failure will not occur if repairs are put off.

SENATOR MANENDO:

No one knew about the failure risk of the sinkhole in my district. It was at a major intersection.

SENATOR RHOADS:

Has any western state raised the price of gas and fuel over the last five years?

MR. GIBSON:

That has not happened, to my knowledge.

SENATOR SCHNEIDER:

Has any western state raised the price of gas and fuel over the last 20 years?  
That is about the situation in Nevada.

MR. GIBSON:

I do not know. It was remarkable that Washoe County voters supported the fuel-tax-indexing initiative. It indicated that taxpayers thought there was value associated with roads and transportation infrastructure.

CHAIR BREEDEN:

We will close the hearing on the ASCE presentation. We will open our work session.

KELLY GREGORY (Policy Analyst):

Assembly Bill (A.B.) 28 ([Exhibit E](#)) was presented by the Department of Motor Vehicles (DMV) and heard on March 4.

[ASSEMBLY BILL 28](#): Makes Nevada's definition of "low-speed vehicle" consistent with the federal definition. (BDR 43-491)

Specifically, A.B. 28 changes the definition to state that low-speed vehicles formerly defined as designed to carry up to four passengers are now defined as "four wheeled." The speed limit would be 20 to 25 miles per hour on a paved, level surface. There were no amendments proposed during the hearing.

SENATOR LEE MOVED TO DO PASS A.B. 28.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

MS. GREGORY:

Senate Bill 51 ([Exhibit F](#)) was presented by DMV on March 1.

**SENATE BILL 51**: Revises provisions relating to the reporting of and imposition of penalties for certain convictions for the violation of certain traffic laws. (BDR 43-492)

Specifically, the bill relates to commercial driver's licenses, bringing Nevada's laws into compliance with out-of-service orders in federal rules. Under this bill, DMV is required to impose a civil penalty and suspend the commercial driver's licenses of individuals who violate out-of-service declarations, in accordance with federal regulations. The bill reduces from 20 to 5 the number of days courts have to provide notice of a conviction to DMV. It also requires DMV to transmit notice to the commercial driver's license information system within five days if convicted drivers hold such licenses. The bill also expands the definition of "out-of-service order" to include temporary prohibitions against persons operating a motor vehicle and a temporary prohibition against a commercial motor vehicle being operated. Both of these changes are in accordance with federal regulations.

On March 1, DMV submitted two proposed amendments. One ([Exhibit G](#)) changes the reporting requirements to courts from "may" to "shall." The other ([Exhibit H](#)) expressly authorizes DMV to impose the civil penalties outlined in the Federal Motor Carrier Safety Administration's Code of Federal Regulations (C.F.R.) if a driver or a commercial vehicle being driven is subject to an out-of-service order.

SENATOR MCGINNESS:

How will the civil penalties change from those imposed in current statute to those in the C.F.R.?

Senate Committee on Transportation  
March 8, 2011  
Page 8

MARK FROESE, CPM (Administrator, Management Services and Programs Division, Department of Motor Vehicles):

Page 2 of the second amendment, [Exhibit H](#), outlines the proposed penalties. In Title 49 C.F.R. section 383.53, subsection 1(b) (2) states, "An employer who is convicted of a violation of section 383.37(c) shall be subject to a civil penalty of not less than \$2,750 nor more than \$25,000."

SENATOR MCGINNESS:

How does that compare to penalties in current statute?

MR. FROESE:

There are no fines in place.

SENATOR MCGINNESS:

Would this be a new fine?

MR. FROESE:

It would be seen as a new fine.

SENATOR HALSETH:

Why did you change the "may" to "shall"?

BRUCE BRESLOW (Director, Department of Motor Vehicles):

The reason DMV sought the change from "may" to "shall" is that in working with the Office of the Attorney General and our staff, a controversy developed over felony driving-under-the-influence (DUI) convictions. Courts were applying sentences incorrectly, and DMV was not properly suspending drivers' licenses. Some courts would give us conviction information promptly; others did not give it to us at all. *The Reno Gazette-Journal* ran a series of articles highlighting the system breakdown that began in courts and included DMV and other agencies. The word change means that DMV will definitely get copies of conviction records so we can apply the law concerning felony DUI cases.

SENATOR HALSETH:

Are you saying that you have not received all of the conviction records because the language was "may"? With that language change, I have a concern with this bill.



Senate Committee on Transportation  
March 8, 2011  
Page 9

MR. BRESLOW:

We obtained records from some, but not all, courts: Washoe County, Carson City, but not Clark County for many cases. The reporting system is improving, but it is up to individual courts whether they release the records. The Office of the Attorney General recommended that the language change would set up the system envisioned by the Legislature, and various stages of State law would be affected.

SENATOR MCGINNESS:

Are other states in line with the C.F.R. penalties? Did the commercial-vehicle industry know this change was coming?

MR. FROESE:

The language change was designed to conform to federal regulations, upon which the commercial-drivers program is based. We would have to survey other states to see if they comply with the C.F.R. We worked with the federal government on the regulations change.

SENATOR MCGINNESS:

Did you deal with people with commercial driver's licenses?

MR. FROESE:

No. We dealt instead with federal auditors.

MR. BRESLOW:

The federal auditors brought the issue to the attention of DMV, telling us we were not in compliance with the C.F.R. Governor Gibbons' administration brought the issue forward in order to follow the auditors' recommendations.

PAUL J. ENOS (Chief Executive Officer, Nevada Motor Transport Association):  
Our industry understands it needs to comply with the C.F.R. to receive Federal Highway Fund money. We have no problems with the bill.

SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED  
S.B. 51.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HALSETH ABSTAINED FROM THE VOTE.)

\* \* \* \* \*

MS. GREGORY:  
Senate Bill 84 ([Exhibit I](#)) was heard on February 24.

SENATE BILL 84: Revises certain provisions relating to roadblocks.  
(BDR 43-601)

There is no fiscal impact. The bill creates two standards for placing roadblock warning signs: one-quarter of a mile from the roadblock in rural areas and 700 feet from the roadblock in urban areas. No amendments were proposed.

SENATOR RHOADS MOVED TO DO PASS S.B. 84.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

\* \* \* \* \*

MS. GREGORY:  
Our last bill on work session is S.B. 140 ([Exhibit J](#)).

SENATE BILL 140: Prohibits the use of a cellular telephone or other handheld wireless communications device while operating a motor vehicle in certain circumstances. (BDR 43-45)

This bill was presented on February 22 by Senator Breeden, and it does not have fiscal notes.

The bill prohibits the operator of a motor vehicle from texting, reading or typing anything into cellular telephones or similar devices. It also prohibits a driver from engaging in voice communications on the device unless it has a hands-free accessory. The bill exempts phone use by certain first responders and other people responding to an emergency. A violation of the law would be a

misdemeanor and subject to a graduated series of fines. In a third or subsequent offense, a driver's license could be suspended.

Senator Breeden has submitted a mockup ([Exhibit K](#)) of the bill prepared by the Research Division. When the Legal Division drafts the amendment, there may be differences in language. The first portion of the amendment allows a sheriff, chief of police or the director of the Department of Public Safety (DPS) to authorize an individual carrying out certain duties to be exempt from the law's provisions. The second portion of the amendment includes provisions to exempt automated or robotic vehicles, such as the Google car on which this Committee heard testimony.

The third portion of the amendment exempts from the definition of "handheld wireless communications device" the microphones of two-way radios or similar devices if two requirements are met: (a) the microphone is attached to the sending and receiving unit of the device by means of a flexible cord or other physical connection; and (b) the unit's operating controls—a push-to-talk or similar switch or mechanism—are on the transmitting and receiving unit, not on the microphone.

CHAIR BREEDEN:

In drafting the mockup, I worked with Mr. Enos, cab company representatives, David Goldwater of Google and Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association.

I gave the Committee a copy of an article from the *New York Times* ([Exhibit L](#)) about how robotic Google cars are in test mode and years away from mass production. I spoke to Mr. Goldwater about that, so putting language in the bill concerning robotic cars will not affect the bill.

I asked representatives of the Las Vegas Metropolitan Police Department how many citations are issued annually for inattentive driving. In 2010, they issued a total of 3,844 citations; however, they could not delineate how many of those citations were for texting or talking on cell phones.

SENATOR MCGINNESS:

Was this language in the original bill's section 1, subsection 2, paragraph (a): "The provisions of this section did not apply to: (a) A paid or volunteer firefighter, law enforcement officer, emergency medical technician, ambulance

attendant or other person ..."? I do not think these professionals can text while driving any better than you or I. Was that exclusion added to the bill?

CHAIR BREEDEN:

No, that was the bill's original language. The blue writing in the amendment is the original language. We added on page 2, section 1, subsection 2, paragraph (a): " ... a person designated by the Director or a sheriff or chief of police ... ." That was to include search-and-rescue personnel. The exclusion of trained emergency medical-service providers was so that they can operate two-way radios while driving, if that is their only mode of communication.

SENATOR RHOADS:

I have a problem with this bill, although I understand the reasons for it. We already have laws and regulations concerning distracted, reckless or impaired driving. I do not see how talking on a cell phone or texting while driving are more serious distractions than eating a hamburger, applying makeup or reading a newspaper. How far can the government go to protect us individually? I have miners in my district who commute 120 to 160 miles round-trip to work. Sometimes they do not get home in time to make phone calls, so they make calls while driving. I will vote against this bill.

SENATOR LEE:

I have some issues with the bill's penalty section. Sometimes a warning is better than getting slapped by a misdemeanor offense with a \$250 fine. Also, I do not know how we are going to educate the public about this new law. If a first-time offender gets a warning instead of a ticket, I need to know if successive tickets will show up on drivers' DMV records. Perhaps only warnings should be issued for the first 12 months of the bill's enforcement. Chair Breedon, could you tell me about discussions you had with others about the penalty section?

CHAIR BREEDEN:

The penalty section was included because of the testimony indicating that texting and cell-phone use while driving is worse than drunken driving. What we wanted to do with the penalties was to let people know that it is a serious offense. In the similar bill I sponsored in the 75th Session, the penalties were much less.

We are trying to deter drivers from texting and holding cell phones, to remind them to keep their eyes on the road and pay attention. I am not opposed to further discussion on the penalties. The first-offense penalty is not a moving violation that will affect drivers' records. Senator Lee, since you have some concerns, we will hold the bill until I address your questions.

SENATOR LEE:

I did not realize this bill was in the work session so I am not prepared to vote on it.

CHAIR BREEDEN:

Senator Rhoads has concerns as well. We will hold S.B. 140 and now open the hearing on S.B. 83.

**SENATE BILL 83**: Revises provisions relating to transportation. (BDR 35-484)

R. SCOTT RAWLINS, P.E., CPM (Deputy Director, Chief Engineer, Nevada Department of Transportation):

Senate Bill 83 would provide full public-private partnership (P-3) legislation for delivering transportation facilities within the State. You have my PowerPoint printout about P-3s ([Exhibit M](#)) and a handout titled "Universal Truths About Toll Facilities" ([Exhibit N](#)). The latter will give you a good perspective on what tolling is and is not.

In 2005, then-Governor Kenny C. Guinn initiated the statewide Blue Ribbon Task Force on Transportation to examine transportation-funding solutions and then recommend how to move forward on that funding. One recommendation was the use of P-3s. Based on that recommendation, the Nevada Department of Transportation (NDOT) created its Pioneer Program, which explored processes to develop alternative project-delivery methods, one of which was P-3s. We hired outside legal, financial and technical experts with experience in P-3 programs across the United States and in other countries. Some foreign countries have been doing P-3s for more than 25 years.

In 2007, then-Governor Jim Gibbons created a Public-Private Partnership Advisory Panel to explore further the use of P-3s and make recommendations as to how NDOT should move forward on them. That panel included Legislators, local-government representatives, business leaders from across the State and representatives from the Nevada Taxpayers Association. It had three findings

and recommendations: (1) NDOT should utilize P-3s, reinforcing the Blue Ribbon Task Force's recommendation; (2) the Pioneer Program was properly organized and structured to deliver P-3 projects; and (3) NDOT should pursue a P-3 demonstration project.

Existing P-3 legislation requires NDOT to adopt regulations to administer unsolicited proposals. We adopted those regulations through the *Nevada Administrative Code* public process in 2010. Current statute does not allow NDOT to solicit for proposals or create toll roads, two things that S.B. 83 would change. The bill is the result of lessons NDOT has learned and the best practices we have gleaned from national P-3 legislation.

More than half of the states have P-3 legislation, and the majority allow for the use of tolling. That legislation has generated billions of dollars in infrastructure investment to build roads and bridges. The NDOT finalized its Pioneer Program guidelines based upon that national research and those lessons, and we are now prepared to deliver on a P-3 project.

As Congress and the Obama Administration seek solutions to meet national transportation needs, the biggest hurdle they face is funding. What continues to be put forward in proposals is the use of the private-sector funding to help fill part of the gap public funding cannot bridge. It is estimated that managers of more than \$150 billion in U.S. private-equity funds are searching for long-term infrastructure investments. Senate Bill 83 would allow Nevada to be part of those discussions.

It is important to note that S.B. 83 would be just another tool in NDOT's toolbox. By no means would it be the "silver bullet" to meet all of the State's transportation-funding needs. However, it certainly would be part of the overall package to get us there. Two immediate benefits we are predicting are job creation and an economic boost. By bringing in a new funding source, we can deliver these P-3 projects now, thus creating jobs. It would also allow for enhanced mobility by giving State commuters alternatives to congestion with managed and "hot" lanes similar to those in California, Utah, Arizona, Colorado and Washington. It would accelerate project delivery, which in turn accelerates job creation and other benefits by having those projects done sooner rather than later.

The use of P-3 projects reduces the State's risks. By shifting some of those risks to the private sector, we can realize an overall benefit to transportation projects because, in some instances, the private sector is better equipped to manage those risks. Greater schedule and price certainty can be established early on in P-3 contracts.

An important note on toll facilities is that people who use the facilities directly pay for and realize direct benefits from them. As more people utilize toll facilities, traffic is siphoned off of non-toll facilities. This helps everyone by adding additional capacity to the network.

Having increased transportation choices and systems keeps businesses moving, enhances Nevada's growth and reduces congestion. The latter benefit improves air quality because fewer cars would be idling in traffic. Senate Bill 83 would also provide greater opportunities for developing express-bus routes, ride-share programs and van pools on the freeway system. Commuters would have more reliable choices with expanded transit options. Tolling also gives us another tool to leverage the State's limited transportation funds.

The proposed amendment ([Exhibit O](#)), submitted by NDOT, states that tolling or user fees would only be applied to new lanes and capacity on existing roadways or to new roadways. The bill authorizes NDOT to solicit for P-3s, and states that tolling facilities will be owned by NDOT or the State. It authorizes DMV to accept money from and share in revenues with the private-sector partner. Senate Bill 83 designates the Board of Directors of the Nevada Department of Transportation as the oversight body, and directs it to approve a schedule of user fees and administrative penalties. It provides exemptions to the payment of user fees, such as for emergency vehicles, transit vehicles and high-occupancy vehicles. The bill provides for DMV or the private-sector partner to collect user fees, tolls or similar charges at transportation facilities.

Senate Bill 83 outlines methods for enforcement of tolls, collection of administrative penalties and processes for the DMV to assist in the enforcement of delinquent tolls and penalties. We are working with DMV on this language to ensure that it meets their administrative needs. The bill provides that money received by NDOT first be used to defray project costs and then be used on transportation facilities within the county where that project exists. It also provides prevailing-wage requirements as per *Nevada Revised Statutes* (NRS) chapter 338. It outlines the reporting requirements to the Board of Directors of

the Nevada Department of Transportation and the Legislature. In summary, there are three things that this bill would do: facilitate job creation, accelerate economic benefits in the State and increase access to new transportation funding sources.

SENATOR RHOADS:

Are there any toll roads in the planning stage or under consideration in Nevada?

MR. RAWLINS:

No. However, since 2007, we have identified potential tolling projects in the State. One of them is Senator Joseph P. Hardy's bill concerning construction of the Boulder City Bypass. Managed-lanes projects along U.S. Interstate 15 (I-15) and U.S. Highway 95 (U.S. 95) in Las Vegas would facilitate connections to the resort corridor and be reliable choices for commuters.

CHAIR BREEDEN:

Would revenue from toll roads be shared by the private developer and the State?

MR. RAWLINS:

That depends on the financial viability of the project. In other states, if competitive bids are opened to the private sector for the viability of projects like the managed lanes along I-15 and U.S. 95, bids may stipulate that the developer pay an upfront concession fee to the state. As part of the agreement and bid, the developer would submit that fee and then collect revenues over a period of time.

Another way it could be done is if the State did not want an up-front concession fee or if revenue-sharing were proposed, that money would go into the State Highway Fund. The State would always seek revenue-sharing in an agreement.

CHAIR BREEDEN:

Would the State be obliged to underwrite bonds sold to finance a private developer's toll-road project?

MR. RAWLINS:

No.



CHAIR BREEDEN:

You mentioned that the Boulder City Bypass was a viable toll-road project. What was the other project that could possibly benefit from this bill?

MR. RAWLINS:

We have looked at a managed- or hot-lanes project along I-15 through the resort corridor to add connections to the corridor. We are also considering adding connections to Clark County Highway 215 and to U.S. 95 through the Las Vegas Spaghetti Bowl then all the way on U.S. 95 into northwest Nevada. That project would benefit the entire area.

Without the ability to pursue full P-3s, private-sector developers have not come to Nevada to explore such opportunities. Senate Bill 83 would create a tool to begin those discussions and determine the viability of the aforementioned projects.

CHAIR BREEDEN:

In our discussion yesterday, you mentioned that the bill would not affect the new express lanes on I-15. Is that correct?

MR. RAWLINS:

That is correct. That amendment I spoke of would not allow for that.

LISA FOSTER (Foster Consulting):

I am representing Boulder City today. Boulder City has sought enabling legislation to allow for tolling for a long time. This is the third Session that we have supported such legislation. Boulder City donated land worth millions of dollars for the Boulder City Bypass, which we have found could probably only be financed through tolling. The City has worked with the Nevada Congressional Delegation to obtain earmarks to help fund the Bypass.

Boulder City was hoping in vain that the Bypass would be built before the Mike O'Callaghan-Pat Tillman Memorial Bridge opened. There is now a tremendous problem with traffic backed up from the bridge into the City. The NDOT has agreed to widen the road through the Boulder City area, but the City is searching for a longer-term fix with the Bypass. Senate Bill 83 would be the long-sought enabling legislation to allow tolling to finance the project.

JEANETTE K. BELZ, M.B.A. (J.K. Belz & Associates; Nevada Chapter of the Associated General Contractors; Nevada Highway Users Coalition):

We support this bill, particularly with the NDOT amendment stipulating tolling only for new-capacity roadways. We use the word "toll," but it really is a user fee; only users of the facility will pay the toll. We agree that this is just another implement in NDOT's tool chest. Not every road would benefit from the application of a P-3, but the method should be available for those projects that would. Senate Bill 83 would strengthen our capacity and infrastructure and create jobs.

MICHAEL L. DAYTON (Vice President, Government Affairs Group, McDonald-Carano-Wilson LLP):

I am representing the southern Nevada chapter of the National Association of Industrial and Office Properties (NAIOP) of the Commercial Real Estate Development Association. For the many benefits outlined by Mr. Rawlins, NAIOP strongly supports S.B. 83.

As the State's leading organization of developers, owners and related professionals in office, industrial and mixed-use real estate, NAIOP believes that P-3s will allow Nevada to leverage limited public funds and utilize private capital to improve our transportation infrastructure. The commercial real estate industry, which includes warehouses, distribution centers and other businesses, relies on a modern transportation infrastructure for success. This is an economic-development issue; this is a jobs issue. We encourage the Committee to provide NDOT with the authority to enter into such innovative partnerships.

SENATOR SCHNEIDER:

When Goldman Sachs Group, Inc. negotiates a P-3 with a battery of Philadelphia attorneys, they are going to promote a deal that is absolutely in their best interests. Is there any firm in this State—McDonald-Carano-Wilson; Lionel, Sawyer & Collins; Jones Vargas—that can go head-to-head with those attorneys? The P-3 attorneys will cut deals to make sure they have an absolute, exclusive, non-compete clause for their roads, with the State just writing them checks. Does your firm have anyone who can go up against them?

MR. DAYTON:

I cannot address that, but that is a question our members have asked. Nevada Department of Transportation Director Susan Martinovich has done a lot of good

outreach to the business community, and we are confident that she will hire the best people to represent us in such negotiations.

SENATOR SCHNEIDER:

What happens if the attorney who was hired is not the best, and we find out about it after we have a 30-year Goldman Sachs monopoly on our roads?

MR. RAWLINS:

We now have the best advisers who are involved in P-3 deals going on across the Country. That was why we hired them. We are working with the KPMG (Klynveld Peat Marwick Goerdeler) accounting firm, the Naumann Law Firm and Wilbur Smith Associates, that does the technical side of things. They are all renowned firms. Some poor deals have been struck around the Country that give people a negative view of P-3s, but those deals are rare.

The P-3 projects being built are being used by the public. Private-sector companies do not roll up the pavement and take it or take bridges away. There has never been a public agency on the hook when the private sector has taken the risk with a completed P-3 project. We certainly would strive to meet that mark.

SENATOR SCHNEIDER:

Would the State guarantee any bonds for P-3 projects?

MR. DAYTON:

No.

SENATOR SCHNEIDER:

Would the State just offer the land?

MR. DAYTON:

The State owns all rights-of-way. Private-sector contractors have the right to build, operate and maintain roads for additional capacity, based on requirements we would put in agreements.

SENATOR SCHNEIDER:

Would the private partners ask for a non-compete clause?

MR. DAYTON:

This legislation would not allow for non-compete clauses. Early P-3 projects fell into that trap, but we have learned from them.

SAMUEL P. McMULLEN (Las Vegas Chamber of Commerce):

The Las Vegas Chamber of Commerce has had members on task forces to find creative alternative ways to fund road construction. We see P-3s as opportunities for which we should have legislative authority to proceed or explore. With the current strain on State revenue, other means for funding roads should be examined to relieve the pressure to fund infrastructure development.

We should benefit from the knowledge that other states gleaned over the many years that toll roads have been utilized in the United States. Those issues can be accommodated, negotiated and appropriately constructed so tolling can happen here. At the very least, the opportunity should be in statute.

MR. BALDWIN:

In his presentation about sustainable infrastructure in the State, Mr. Gibson discussed how projects need to be funded throughout their life cycles. In S.B. 83, section 18, subsection 1, paragraph (k), it establishes that when the P-3 project is complete, the developer is responsible for its " ... repair, rehabilitation, reconstruction or renovations ... " when it reverts to the State. This ensures the condition upon reversion is the same as at the project's ribbon cutting. This puts the burden of maintaining our infrastructure onto the public sector, which is a wonderful incentive to keep all of our roads in good condition. That is the key to successful private partnerships.

SENATOR MANENDO:

Which roads would you like to see kept in good condition?

MR. BALDWIN:

We have to keep all of our roads in good condition.

SENATOR MANENDO:

Do you want to privatize all roads?

MR. BALDWIN:

No. I am saying P-3s have been very successful in Nevada. This bill only addresses P-3 roads.

SENATOR MANENDO:

When you said, "keep all of our roads in good condition," that made me think that there is more to this than meets the eye. I have concerns about that.

CHRIS FERRARI (Ferrari Public Affairs; Nevada Contractors Association):

All across the State, our members are building many of the roads about which we are talking and driving upon, toll and non-toll roads. The NDOT has done an excellent job in reaching out to all construction-industry sectors to forge P-3 partnerships and figure out the best possible use of taxpayers' money.

WAYNE SEIDEL, Administrator, Motor Carrier Division, Department of Motor Vehicles:

There may be amendments forthcoming based on those discussions with Mr. Rawlins. The amendments may address toll-road programming costs and the resulting fiscal impact on DMV's Division of Information Technology from the tolls-and-charges portion of the bill. There are no programs in motor vehicle departments in our neighboring states that put holds on vehicle registrations or things like that to collect tolls. We would work with NDOT on establishing those programs and developing fees and administrative costs to do so.

MR. ENOS:

The NDOT has done good work on identifying protections for the State concerning non-compete clauses in S.B. 83. We have heard some absolute horror stories in which P-3s turn into disasters because a state could not maintain its assets from a free route within a 1.5-mile radius of a tolled one. Infrastructure owned by states or local jurisdictions have deteriorated because the private sector could not maintain it.

We appreciate that the amendment states tolls could not be collected on existing facilities. That is something that we need to have as part of our toll-road policy. My organization's only opposition to the bill stems from our belief that the Legislature—not the private-sector partner—should determine our toll-road policy and put protections into statute so that when NDOT negotiates with entities like Goldman Sachs, everyone knows the ground rules. We know you cannot impose tolls on existing facilities or have non-compete clauses.

We also want to watch out for how toll rates are increased. Will another corporation—an unelected third party that is not accountable to the voters—make determinations on how fees are raised and charged? Or will that job fall to

accountable, elected officials? Whenever we talk about taxation, we are giving someone the ability to raise revenue. We want to have accountable people doing that, not someone in a corporate office or on Wall Street determining what the public is going to pay. Toll roads would be State assets, even though run by private entities, based on agreements entered into by the State.

There is another thing of which we need to be wary. We have seen companies like Macquarie Atlas Roads and Transurban Group enter into toll-road P-3s with states while demanding a certain rate of return on their profits. This gives them the ability to raise tolls if they do not meet that rate. Wholly-owned subsidiary corporations have been established, and revenue has been drained from the parent company into the subsidiaries to justify raising toll rates.

As Senator Schneider said, these deals are negotiated by shrewd and savvy securities experts. It will be difficult when the State—even if it has hired experts and engineers—to compete with some of the best and brightest people in the world to make sure it is getting the best end of the deal. That does not always happen, as we have seen in many jurisdictions.

I worry about what is going to happen to Nevada's citizens driving on toll roads. I am fine with user fees—something paid to do a specific thing. If I am paying a specific fee to drive on a specific road, where does that revenue go? Will I be subsidizing other roads? If I pay a toll on I-15 and only use that route, should that toll revenue only be used for I-15, or should we export the toll revenues to another road or another State area? Those are all things we need to consider as part of an overall policy on toll roads and transportation funding before we move forward with this bill.

This bill would designate P-3s of 55 years' duration. If you think about what Reno or Las Vegas looked like even 10 years ago—let alone 55 years—they were much different places. We need to be very wary of signing agreements for that length of time, as you cannot issue bonds for 55 years. That 55 years is better than the Chicago Skyway Bridge, which is leased for 99 years; or the Indiana Tollway, leased for 100 years. We need to be cognizant when making these decisions that we may be tying the State's hands for a long period.

COL. TONY ALMARAZ (Chief, Highway Patrol Division, Department of Public Safety):

The DPS and the Nevada Highway Patrol (NHP) support the concept of S.B. 83. However, we have some qualifying issues to put on the record. The NHP has discussed things with Mr. Rawlins that we need to enhance the bill's progress.

Some variables of S.B. 83 specifically affect NHP, the most obvious of which is its enforcement factor. The NHP enforces tickets on highways. If there were a private component to highways, I am not sure whether NRS gives us the authority to do that. Perhaps the bill needs an amendment to allow us to make enforcement stops on toll roads.

Would NHP officers need special equipment to enforce incidents on toll roads? Would there be a staffing component for issuing citations, collecting revenue and things like that? We cannot necessarily quantify these things at this time. As a chief, I must consider things from a fiscal standpoint.

CHAIR BREEDEN:

Mr. Breslow, would you like to address Col. Alvaraz's comments?

MR. BRESLOW:

We did not see this bill until March 4, when we started meeting with NDOT. We need more road capacity, and there are many ways to implement toll roads. We have not yet worked enough with NDOT to flesh out the details. The DMV does not want to chase tourists into California to put a hold on their cars or their registrations if they do not pay tolls. We can fix this bill, figure it out and work together on it, but we have not yet looked at it long enough.

SENATOR SCHNEIDER:

Do you have some information concerning Col. Alvaraz's questions?

MR. BRESLOW:

We have been working with DPS on the bill. There are models in other states for the relationship between the private and public sectors concerning the patrolling of toll roads. We will study the best of those models to determine if we need to include anything in this legislation to allow for enforcement.

SENATOR SCHNEIDER:

Does the private company patrol the roads in any of those states? Do they provide wrecking and towing equipment to service crashed or stalled vehicles?

MR. BRESLOW:

Yes. Private investors want to make sure their roads are managed like businesses. They want repeat customers, so they contract themselves for things like freeway-service patrols and incident-response vehicles. Private investors develop programs with state agencies for dealing with enforcement and emergency responders. In other states, the private sector works with highway patrol agencies and actually supplements the agencies' budgets for patrolling their facilities.

SENATOR SCHNEIDER:

Could NDOT Director Martinovich come forward? What is the State's approximate shortfall in road funding?

SUSAN MARTINOVICH (P.E., Director, Nevada Department of Transportation):

The amount of the shortfall varies. We have a shortfall of \$3 billion to \$6 billion over the next 10 to 15 years; it is not a defined number. We have some big projects in the works, and, with rising costs, that is our projection.

SENATOR SCHNEIDER:

I heard a shortfall estimate today of \$9 billion. Is that for State or local roads?

MS. MARTINOVICH:

The shortfall estimates are for roads all across the State, including local ones. Our biggest shortfall is for the major routes: in and out of Las Vegas, U.S. Highway 93 (U.S. 93), and Washoe County, Interstate 80 (I-80).

SENATOR SCHNEIDER:

Are you up to \$6 billion that the Legislature has never properly funded?

MS. MARTINOVICH:

We do not have the money to do the aforementioned projects.

SENATOR SCHNEIDER:

The Legislature has underfunded the gas tax over the last 25 years, or we would have the money to fund our highways. Is that correct?



MS MARTINOVICH:

The tax revenue is not keeping up with the demands.

SENATOR SCHNEIDER:

We have gotten ourselves into somewhat of a pickle. We need the roads; we need I-15 improved, especially in southern Nevada; we may need a bypass around Boulder City. Do we not have funding for any of that?

MS. MARTINOVICH:

No. An investment in infrastructure is really one of the key things you can do to put people to work and to have long-term sustainability.

SENATOR SCHNEIDER:

We are now forced into a position to do P-3s, and we will have to pay some developer a large profit to bail us out of our road-funding problem. Is that correct?

MS. MARTINOVICH:

As Mr. Rawlins mentioned, toll roads are a tool which can be quite successful. One of the benefits is the money that a developer puts into a toll road's infrastructure translates into money the State can put into other projects. Yes, the developer makes a profit, but there are profits in everything that we do.

SENATOR LEE:

Is the \$6 billion shortfall based upon cost/benefit-analyses of tangible projects or just a wish list of things that people would like to have you do?

MS. MARTINOVICH:

They are projects that we have identified as important under then-Governor Guinn's Blue Ribbon Task Force. The list was formulated with input from local metropolitan planning organizations. The list is basically every major road in and out of Las Vegas, I-15, U.S. Highway 515, U.S. 95 and U.S. 93; in the Reno area, I-80; U.S. 93/95 through Nevada; and the major routes of the CANAMEX Corridor. They are necessary projects, not just a wish list.

CHAIR BREEDEN:

Can you tell us who are the top three contractors with whom you work on projects in southern Nevada?

MS. MARTINOVICH:

I would not say the "top three"; all of our contractors are good. They include Las Vegas Paving, Meadow Valley Construction and Granite Construction. Capriatti Construction Corporation is working on our U.S. 95 Westlake project and did the I-15 express-lane project. I can get you a list of the contractors who are working on our big projects and provide you with other data.

CHAIR BREEDEN:

Could you expand that list to the top three contractors in northern Nevada?

MS. MARTINOVICH:

Yes.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

The American Civil Liberties Union (ACLU) takes no position regarding the construction of toll roads in and of themselves. I am merely here to present some ideas hoping you will move forward with an as-yet-to-be-drafted amendment. I have not spoken with NDOT, but an amendment is needed to ensure the protection of the privacy of drivers using toll roads.

As drafted, the bill allows NDOT to select electronic traffic-enforcement systems and authorizes it to contract with a third party to use and collect tolls through those systems. This would obligate the State to a vendor through contract provisions and give it a kind of de facto authorization to use said systems as it sees fit. Throughout the nation, the ACLU has identified concerns about the use of toll roads' electronic data-collection systems, insofar as it may allow for the anonymous use of cash payments throughout the system. This would mandate retention periods for the identifiable information associated with that collection process.

We are also concerned about prohibitions on the secondary use of toll or travel records. The ACLU has observed that contract providers in states that collect this information have essentially kept an electronic record of the whereabouts of individuals traveling on toll roads. We want to make sure that Nevada does not proceed in a manner that would leave that system ripe for abuse. We hope that legal safeguards against third-parties' use of that information would be prohibited, and also that the data collected would be discarded within a reasonable time frame.

Toll-collection systems use a technology called radio-frequency identification (RFID), which allows long-distance reading of chips' locations. The RFID chip is open for abuse of data collection by parties who are neither the vendor nor the State. We want to make sure that safeguards to prevent third-party abuses continue to protect drivers' information if RFID chips are used.

There is language in NRS about the abuse of RFID information. The rest of the concerns I have discussed are largely unaddressed in NRS. There is some model legislation from around the Nation we could study to ensure RFID-chip privacy protections. I will work with the Committee and NDOT to defend the privacy interests of Nevadans.

SENATOR JOSEPH (JOE) HARDY (Clark County Senatorial District No. 12):

I am more than neutral on S.B. 83. The opportunity to bring private dollars into the State would be a wise thing to do right now to create jobs. It would also allow people to access Nevada more easily, especially Arizonans, without going through horrendous traffic jams in Boulder City, where I live.

Many investors are waiting to figure out where they can put their money. If the State fully legalizes the principle of P-3s, that investment conversation will be more meaningful. We have to make this available to the public of Nevada.

CHAIR BREEDEN:

We will close the hearing on S.B. 83 and open the hearing on S.B. 48.

**SENATE BILL 48**: Revises provisions relating to permitting and enforcement of standards for oversize and overweight vehicles operating on Nevada highways. (BDR 43-485)

JEFF RICHTER, MSSM, MSBA (Administrative Services Officer I, Administrative Services Division, Record Management & Over Dimensional Vehicle Permitting, Nevada Department of Transportation):

I am NDOT's over-dimensional (O-D) vehicle permits manager. I will provide background on Nevada's oversize and overweight vehicle program ([Exhibit P](#)). Title 23 of the C.F.R. requires us to implement a program to enforce vehicle size and weight limits on the interstate and national highway network to protect infrastructure and public safety. Federal highway funding is contingent on Nevada's participation in these critical Federal Highway Administration and Federal Motor Carrier Safety Administration programs. There is some latitude

within those programs, particularly on State and local roads, but we strive for consistency among the networks.

The NDOT is responsible for oversight of truck and special-vehicle programs, with the assistance of DMV and DPS in administration, permitting and enforcement. The DPS provides on-road enforcement with 60 specially trained State troopers inspecting vehicle safety, maintenance and permits. The DMV administers the federal International Fuel Tax Agreement and the International Registration Plan.

Permitting longer-combination vehicles (LCVs) and other commercial vehicles that weigh between 80,001 pounds and 129,000 pounds is authorized in NRS. The LCVs are reducible truck-tractor-trailer-load combinations longer than 70 feet that may exceed the maximum gross vehicle weight of 80,000 pounds. Typically, these trucks have two or three trailers. The DMV annually issues about 3,000 multiple-trip permits. The DMV does not manage the routing or movement of LCVs.

The NDOT also permits, determines the routes of and restricts other classes of oversize and overweight vehicles known as O-Ds. These vehicles and loads are non-reducible and may be marked with oversize or wide-load signs and escorted by pilot cars and deputies. They are either wider than 8 feet, 6 inches; taller than 14 feet; longer than 70 feet; have excessive overhang or weigh more than 80,000 pounds. Some of these loads can weigh 1.5 million to 2 million pounds.

The Carson City NDOT office permits and determines the routes of O-Ds on all State roadways, including in county and municipal jurisdictions. This totals approximately 30,000 miles and 1,900 bridges. At the 2007 peak, we issued 42,000 permits; currently, we issue about 35,000 permits. The permits account for more than 250,000 annual vehicle movements.

There is a major difference between the truck services provided by DMV and those of NDOT. The latter controls especially large and heavy vehicles because those rigs are governed by different C.F.R.s and have the potential to cause the most road and bridge damage and traffic disruption. They often require in-depth route evaluations, specific route instructions and movement planning. The goal is to minimize road and bridge damage and reduce congestion. The oversize and overweight permitting and enforcement programs administered by NDOT, DMV

and DPS preserve Nevada's costly highway infrastructure and facilitate interstate and State commerce.

The NDOT proposed amendment to S.B. 48 ([Exhibit Q](#)) seeks to clarify and simplify confusing aspects of NRS. Sections 1 to 12 of S.B. 48 apply to DMV operations. Our proposed amendment to section 8 seeks to improve the distinction between farm and ranch vehicles and equipment used for family farming or ranching operations. These vehicles are capable of normal highway travel and qualify for the "family-farm" exemption. The equipment is not intended for highway operation, even though it may need to travel on highways.

In sections 33 to 35 of S.B. 48, an as-yet-unwritten amendment will seek corresponding changes to NRS chapters 366 and 706 that affect DMV operations. Sections 13 to 32 of S.B. 48 apply to the permitting of all oversize and overweight equipment. We will recommend changes in definitions to align State requirements more closely to federal requirements and to clarify implementation. The NDOT seeks the repeal of other regulations to consolidate them elsewhere in NRS. We will add rules to improve the program's enforcement to protect the State's acquisition of Federal Highway Fund revenue. We will fine-tune language about administrative fines and violators' license suspensions because some carriers are circumventing the permits process and operating illegally or on restricted highways. We will eliminate some loopholes that allow oversize and overweight vehicles to operate without oversight or authority. In section 29, we will clarify and consolidate exceptions scattered elsewhere in statute for common oversized vehicles and add rules for travel by oversize farm or ranch equipment on secondary highways.

In section 25, we will add language to allow the State to participate in the Western Regional Agreement For the Issuance of Permits for Oversize And Overweight Vehicles Involved in Interstate Travel developed by the Western Association of State Highway and Transportation Officials, in which NDOT participates. The agreement enhances interstate commerce by allowing O-D trucks to cross state lines on select routes under a single permit.

The overall intent of the proposed amendments is to encourage voluntary compliance, ensure close scrutiny of high-impact vehicles' routing, prevent unnecessary wear and tear on roads and minimize congestion, particularly around work zones. Some of the proposed regulatory changes require further clarification, but we will strive to keep them concise, straightforward, balanced

and focused on protecting public safety and infrastructure, while facilitating commercial trucking and family farms and ranches. We have good working relationships with people involved in those entities and will work with them on these issues.

DAWN LIETZ (Supervising Auditor II, Audit Section, Motor Carrier Division, Department of Motor Vehicles):

Senate Bill 48 was submitted on behalf of NDOT in cooperation with DMV, because permitting issues cross over between the departments. Mr. Seidel has submitted a proposed amendment ([Exhibit R](#)) on behalf of DMV. The bill includes provisions to allow DMV to address violations by LCVs of permits administered by DMV on behalf of NDOT upon registration. These vehicles are non-reducible and not O-D, so they do not require special routing. Section 20 of the bill allows DMV to suspend privileges for repeated permit violations, which current NRS does not allow. Section 27 authorizes DMV to assess administrative fines of \$100 per each foot that the load exceeds limits for LCVs.

Section 35 authorizes DMV to issue \$50 replacements for lost or stolen LCV permits. In the absence of statutory policy, DMV is issuing \$5 replacement permits. Because the permits can cost up to \$3,000 and are not vehicle-specific, companies are not buying permits for all of their trucks, which are then caught by NHP for operating without permits. Drivers tell troopers that their permits were lost or stolen then get replacements for just \$5, which means they could technically have two permits. Increasing the permit-replacement cost is a strong deterrent to this practice. Section 35 allows DMV to impose an administrative fine of up to \$2,500 if a person is caught using a permit reported lost or stolen.

SENATOR MCGINNESS:

In section 7, subsection 2, the bill proposes to replace the term "implements of husbandry" with "farm and ranch equipment." What kind of changes will result from that?

MR. RICHTER:

We are asking to simplify NRS by creating two classes of farm vehicles: those with highway capability and everything else that is normally considered "implements of husbandry" and classified as farm or ranch equipment. The term "implements of husbandry" is too vague and hard to regulate so we are trying to clarify that.

SENATOR MCGINNESS:

Does the new definition classify everything as “farm equipment”? Can you give me an example of an “implement of husbandry” that will become “farm equipment”?

MS. LIETZ:

The new language will not essentially change the definition of farm or ranch vehicle or farm or ranch equipment. The one vehicle class currently receiving an exemption is hay squeezers. They would now technically fall under the farm vehicles—not the farm and ranch equipment—classification. Farm vehicles are required to be registered, and with unladen-weight exemptions, can be registered at a lower rate. Farm equipment is exempt from registration. Hay squeezers have been registered as farm equipment because their primary purpose is use on farms. Under S.B. 48, hay squeezers would be classified as vehicles.

We met with Doug Busselman of the Nevada Farm Bureau Federation and Mr. Enos to craft the proposed amendment’s language. We will entertain an amendment to clarify that the only currently exempt vehicles that would fall under the new vehicle class are for hire for commercial enterprises. If a vehicle is owned and used by a family farmer, even if it is loaned out or bartered to another farmer, it would qualify as farm equipment. If a company rents out equipment or is hired to move a commodity, that equipment would be considered a farm vehicle and thus may be eligible for the unladen-weight registration discount.

LT. BILL BAINTER (Commercial Enforcement Coordinator, Nevada Highway Patrol, Department of Public Safety):

The NHP has worked with NDOT and DMV on S.B. 48 changes in the definition of “implements of husbandry.” We support the idea of breaking that down into farm and ranch vehicles and farm equipment categories. The proposed statute is clear on that, which will aid our enforcement.

MR. RICHTER:

This is a complicated issue due to the C.F.R. requirements and because there are multiple variations of “farm equipment.” Whereas we will work on that definition, we draw the line on some things, particularly as to what constitutes a private family farm, versus a commercial operation. The goal of the bill is to streamline language that makes it difficult for NDOT to permit vehicles and give

officers specific enforcement tools. While the definition of "farm vehicles" catches the eye, other elements are proposed to ensure we do not have oversize or overweight vehicles using roadways and bridges that may be damaged because we do not have permitting oversight over the vehicles' routes.

SENATOR MCGINNESS:

Are farm vehicle permits available in Carson City? Could a farmer or rancher obtain a permit by mail?

MR. RICHTER:

Our permitting system is the envy of most U.S. states because we can efficiently issue permits within a few minutes by telephone. The permit is then typically faxed to the requestor. We are working on an electronic version of that to e-mail permits. With 5 agents issuing 40,000 permits annually, our turnaround time is about 10 minutes or less. There is no cost to private farmers and ranchers.

SENATOR MCGINNESS:

Are people required to get permits without fees?

MR. RICHTER:

This bill stipulates that permits are free for private operators. We are trying to control the operation and routing of those vehicles on our roads, not to collect permit fees.

SENATOR MCGINNESS:

This issue came up a couple of sessions ago, and we got it straightened out so farmers could easily haul onions, potatoes and alfalfa. Eighty-five percent to ninety percent of this bill targets farmers or ranchers. Are we making a U-turn from our last decision?

MR. RICHTER:

There is more in the new proposed legislation concerning permit issuance to farmers and ranchers. Most of the citations therein are getting definitions in the right places. About half of the bill concerns updating that language. We did not intend to overburden anyone with regulations. Changing the definitions is critical because it is a gray area with overlapping considerations between commercial



and private enterprises in current statute. The C.F.R. requires the State to specify the vehicle types.

SENATOR MCGINNESS:

I was a member of that subcommittee, and that is what makes me nervous.

MR. ENOS:

The Nevada Motor Transport Association supports S.B. 48. We recognize there are some language-clarification concerns on which we will work with NDOT, DMV, NHP and the Nevada Farm Bureau Federation. It is a nightmare to transport overweight, non-divisible loads across multiple jurisdictions. Simplifying that process with a Western Regional Permit Agreement permit would make things much easier for the trucking industry. It would be easier to move "paratransformers," windmill blades or anything else that exceeds the 129,000-pound limit or is a wide load that needs a pilot car.

There is no statutory definition of "longer-combination vehicle." An LCV has multiple trailers or is a trailing unit that exceeds 70 feet. They are double and triple trailers. Permits for Nevada LCVs cost \$2,900 or \$3,000, one of the highest rates in the West. Because of that high cost, we have seen people who buy three permits for ten trucks and then claim the permits have been stolen. It is good that permits are not truck-specific because that allows flexibility to transfer permits to different vehicles. Between the permits' high cost and their low replacement cost, dishonesty occurs in the system. We would like to dampen that as much as possible, so we appreciate efforts to increase the permit-replacement cost. We would also like to require a notarized statement and have the ability to fine those who do not buy enough permits for their fleet. People who are following the law are now at a competitive disadvantage.

BRAD JOHNSTON (Chief Strategy Officer and General Counsel, Peri & Sons Farms):

Senate Bill 48 goes a lot farther than merely clarifying definitions, when it goes to "the devil is in the details" with the proposed amendments to the bill. Peri & Sons Farms utilizes about 8,000 acres in Mason Valley, growing onions, organic leafy greens, romaine lettuce, spring mix and rotational crops like alfalfa. The acreage is not contiguous, so we move equipment throughout the valley.

One of our major concerns is that NRS dictates that registration for farm vehicles is less expensive because it is based upon unladen, versus declared

gross weight. Senate Bill 48 proposes to change the definition of farm or ranch vehicles that could receive the lower, unladen-weight registration fee. It changes it dramatically to any vehicle "Controlled and operated by a farmer ..." used to transport product between properties of the farm or ranch.

The bill uses the definition of "family farm" from federal regulations for the U.S. Department of Agriculture's Farm Service Agency Specialty Crops Block Grant Program. That agency limits a "family farm" to operations in which all labor is performed by the farm owner, not outside laborers. Most large operations in Nevada are not farmed solely by the owner or with supplemental labor. At its peak, Peri & Sons Farms employed about 1,500 laborers; even in the non-season, we employ a few hundred people. According to the bill, any large operation will no longer have "farm or ranch vehicles," which does not make sense if the bill then redefines those vehicles. That definition limits "farm and ranch vehicles" to operations that qualify as "family farms," as defined by a specialized federal regulation.

This is an attempt to narrow the registration exemption for farm equipment. Vehicles registered for agricultural use run on red diesel fuel, not diesel at the pump. It costs 50 cents less per gallon to use red diesel fuel. If we cannot register farm and ranch vehicles because of an excessively restrictive definition, operators cannot use red diesel. Nevada farmers and ranchers use hundreds of thousands of gallons of red diesel, so this would have a huge economic impact—in addition to the increased registration fees.

As written, this bill is not a mere clarification or simplification of definitions. It will narrow special-registration fees levied on farm and ranch vehicles, reduce which farm equipment is exempt from registration and have a dramatic impact on operations' economics due to higher diesel costs. Peri & Sons Farms has 18 to 20 onion trucks that haul product from fields to storage sheds. The trucks are only on the road for a limited harvest time for a limited purpose, which is a reason for reduced registration fees.

There is a lot of pressure on Nevada farmers and ranchers now due to increased prices for fuel and other necessities. This bill would have a negative, unintended impact on the farming and ranching community, which would, in turn, significantly impact Nevada's rural communities. We are strongly opposed to the legislation.

E. JOHN SNYDER (Snyder Livestock Company):

We have many of the same concerns as Mr. Johnston. We have been a Nevada family-owned corporation for more than 100 years, producing onions, garlic, small grains and alfalfa. Some of the bill's routing definitions could be detrimental to our operations. This year, we have approximately 200 acres of garlic in Carson Valley, and we must constantly move farm implements to and from our Mason Valley base. Restrictions in the bill would make that difficult, if not impossible.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):

We oppose all of the sections in S.B. 48 pertaining to farm and ranch changes. Those proposed changes will expand regulatory jurisdiction. Many farm and ranch vehicles not registered and treated as "equipment" would be classified as vehicles under this bill. Senator McGinness's district has many farm trucks solely used to haul manure to fields. Those trucks are unlicensed and unregistered, but under this bill they would be required to become registered and follow new rules.

The Farm Bureau has been involved in this type of legislation for several sessions, as continuing attempts have been made to force certain equipment to be registered. We continue to oppose this concept. The definition of "family farm" seriously limits the application of this bill. If you delete the words "family farm, as that term is defined in 7 C.F.R. section 761.2" wherever it appears in section 8, there is another definition in that the C.F.R. that applies to "farms" that embodies all farms: corporations, partnerships, family-run operations and all other possible business configurations.

There are many Nevada agricultural operations that do not have farmland. Commercial ventures called "custom farming operations" do not qualify as farms under this bill, yet they perform services for farms and ranches that are targeted for inclusion in the registration regulations. If I am driving a tractor as a custom farmer, how does that tractor differ from those used by the Peri and Snyder operations? Senate Bill 48's title and summary make it appear to be merely dealing with permits and overweight vehicles, but most of the bill concerns changing regulations for farm and ranch vehicles and equipment.

CHAIR BREEDEN:

Did NDOT talk to you about this bill?

MR. BUSSELMAN:

We did not hold conversations with them before yesterday afternoon. Our basic question was, "What is in NRS that needs to be fixed?" We did not think anything was broken and were seeking the exact causes of the proposed changes in this legislation. We have not yet been able to accomplish a oneness of mind with NDOT.

CHAIR BREEDEN:

Did NDOT consult with you before the bill was drafted?

MR. BUSSELMAN:

No.

K. "NEENA" LAXALT (Nevada Cattlemen's Association):

I am concerned about some unintended consequences of S.B. 48. I understand some amendments are forthcoming, so I ask the Committee to invite my group to any meetings concerning them.

P. MICHAEL MURPHY (Clark County):

We have a proposed friendly amendment ([Exhibit S](#)) to S.B. 48 that clarifies the ability of cities and counties to recoup costs for damages to roadways, signs and bridges from LCVs or O-Ds. We are neutral on the bill, with our amendment.

CHAIR BREEDEN:

Does your amendment address a specific problem?

MR. MURPHY:

We have had more than one occasion when Clark County roads, signs or bridges were damaged by permitted vehicles. Current statute states that NDOT or the State has to pursue offenders for damage repairs. When Clark County has tried to go after those funds legally, we have been left out in the cold. We understand we will not receive permitting funds, but we would like the ability to recoup repair costs. The amendment's language was crafted by the Clark County legal department to that specific end.

CHAIR BREEDEN:

I was driving on Shadow Lane after leaving Valley Hospital Medical Center when an 18-wheeler making a right turn onto Alta Drive took out a stoplight. The

driver kept driving. As I reported the incident, an officer stopped the driver. This type of damage does occur.

SENATOR MCGINNESS:

The proposed amendment, [Exhibit Q](#), states, " ... city or county, when their highways are included in a permit to charge the permittee for the actual cost incurred by city or county for preparation for, participation in, and any damages caused by the traffic authorized by the permit; ... "Are you talking about preparation of the roadbed in general or for a single event, such as one requiring a wide load?

MR. MURPHY:

The intent is to be able to recoup cost for damage from a single event.

MR. RICHTER:

The draft of S.B. 48 was published several months ago. I regret that NDOT did not directly provide it to Mr. Busselman so he could share it with his members. I incorrectly assumed that his group was watching out for this legislation; it was not our intent to circumvent it. Current NRS does not limit a county or city from going after drivers, permitted or not, if they damage highways or roads. It has been many years since anyone approached NDOT to collect damages. Current NRS specifies that NDOT or other State agencies are responsible, so if a permitted load caused the damage, we would financially support a county or city that presented sufficient documentation of the incident. In most cases, there are no witnesses to the damage, and that is part of the problem.

CHAIR BREEDEN:

Do you have any objections to working with today's testifiers on reworking S.B. 48?

MR. RICHTER:

We will take as much time as necessary to satisfy everyone's requirements, because the State must comply with the C.F.R.

Senate Committee on Transportation  
March 8, 2011  
Page 38

CHAIR BREEDEN:

We will close the hearing on S.B. 48. Seeing no other business before the Senate Committee on Transportation, I adjourn this meeting at 6:10 p.m.

RESPECTFULLY SUBMITTED:

---

Patricia Devereux,  
Committee Secretary

APPROVED BY:

---

Senator Shirley A. Breeden, Chair

DATE: \_\_\_\_\_

<b><u>EXHIBITS</u></b>			
<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Scott Gibson	PowerPoint presentation: "Supporting Our Nation's Critical and Troubled Infrastructure"
	D	Scott Gibson	ASCE documents, CD, packet
A.B. 28	E	Kelly Gregory	Work session document
S.B. 51	F	Kelly Gregory	Work session document
S.B. 51	G	Department of Motor Vehicles	Proposed amendment
S.B. 51	H	Department of Motor Vehicles	Proposed amendment
S.B. 84	I	Kelly Gregory	Work session document
S.B. 140	J	Kelly Gregory	Work session document
S.B. 140	K	Chair Breedon	Proposed amendment
S.B. 140	L	Chair Breedon	<i>New York Times</i> article: "Google Cars Drive Themselves in Traffic"
S.B. 83	M	R. Scott Rawlins	"Public-Private Partnerships"
S.B. 83	N	R. Scott Rawlins	"Universal Truths About Toll facilities"
S.B. 83	O	R. Scott Rawlins	Proposed amendment
S.B. 48	P	Scott Richter	Testimony
S.B. 48	Q	Scott Richter	Proposed amendment

S.B. 48	R	Dawn Lietz	Proposed amendment
S.B. 48	S	P. Michael Murphy	Proposed amendment