

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
May 3, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:12 a.m. on Friday, May 3, 2013, 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 Mark A. Manendo, Chair
Senator Pat Spearman
Senator Joseph P. Hardy
Senator Donald G. Gustavson

COMMITTEE MEMBERS ABSENT:

Senator Kelvin Atkinson, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman William C. Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst
Darcy Johnson, Counsel
Jennie F. Bear, Committee Secretary

OTHERS PRESENT:

Rudy Malfabon, P.E., Director, Nevada Department of Transportation
Tom Greco, Assistant Director, Planning Division, Nevada Department of Transportation
Steve K. Walker, Carson City; Lyon County
Kristina Swallow, City of Las Vegas
Tom Lawson, Lieutenant, Nevada Highway Patrol, Department of Public Safety
Whitney Morfitt, Intern, Office of Assemblyman William C. Horne

Jennifer Lazovich, Lamar Outdoor Advertising
Aaron West, Clear Channel Outdoor

Chair Manendo:

We will begin the hearing with Assembly Bill (A.B.) 18.

ASSEMBLY BILL 18 (1st Reprint): Revises provisions governing the relinquishment of state highways to local governments and the relinquishment of local roads to the Department of Transportation. (BDR 35-363)

Rudy Malfabon, P.E. (Director, Nevada Department of Transportation):

The Nevada Department of Transportation (NDOT) has been working on the concepts within this bill for years. Assembly Bill 18 will help the NDOT and our State's counties and cities in the area of relinquishment of roadways.

Tom Greco (Assistant Director, Planning Division, Nevada Department of Transportation):

I will discuss the four bulleted points from my written testimony ([Exhibit C](#)). You may ask why the NDOT is offering this bill. Our highway relinquishment program has been unsuccessful. Presently, the State owns 600 miles of roads that would be better defined as local roads. Additionally, Nevada has between 100 and 200 miles of local roads that would be better classified as State routes. The program does not work well due to right-of-way problems, maintenance costs, definitions of "road in good repair" and equitable trades.

Staff has looked at similar programs in six western states. Nevada and Wyoming are the only two states with bilateral relinquishment programs. This means the State initiates the process, but the local entity has the right to disagree. The four other states have a unilateral process in which the only option for local entities is to appeal the state's decision to relinquish a roadway. Such appeals go to the boards of the departments of transportation in those states, where the decisions likely will not be reversed. We wish to keep our bilateral process.

In December 2012, we organized a working group comprised of members of the Nevada Association of Counties, the Nevada League of Cities and Municipalities and NDOT's Statewide Transportation Technical Advisory Committee. It is developing a document to better define trade of rights-of-way, roads in good

repair and equitable trades. The group also is establishing a checklist and review process. This group's work is successful and will benefit the State regardless of the result of A.B. 18.

Chair Manendo:

Do you have examples of roads for which relinquishment is being considered?

Mr. Malfabon:

We are considering relinquishing Summerlin Parkway to the City of Las Vegas. It has qualities of a typical highway with limited access. The City has approached us in support of this relinquishment. Due diligence must be done first, which involves consideration of an equitable trade with arterial roadways. One trade candidate is Cheyenne Avenue, which is in the City's jurisdiction.

Senator Hardy:

Do you have a map showing roads being considered? I am thinking about roadways in Boulder City.

Mr. Malfabon:

We have a map of the routes that have been under consideration for years as transfer candidates. We can provide this to you.

Senator Hardy:

Okay.

Chair Manendo:

This is what I was wondering. It will help give us a better idea of the local entities with which you are working.

Mr. Greco:

Nevada Revised Statute (NRS) 408.527 specifically covers abandonment of a State road to a local agency. Language in A.B. 18 will add details for trading roadways between State and local entities.

Senator Hardy:

Will the trading require agreement on both sides?

Mr. Greco:

Yes.

Steve K. Walker (Carson City; Lyon County):

Carson City and Lyon County support A.B. 18. I have spoken with the NDOT officials. The bill is a good deal for all entities involved.

Mr. Malfabon:

The NDOT works closely with counties and cities in these types of transfers and relinquishments. In some cases, we give them money to improve a roadway. Sometimes, we repave a road before transferring it to a local entity. We are looking for an equitable process in the changes proposed in A.B. 18.

Chair Manendo:

Does anyone from southern Nevada agree with this bill?

Kristina Swallow (City of Las Vegas):

We support A.B. 18. The NDOT has reached out to us in the City of Las Vegas to work on mutually agreeable language.

Senator Gustavson:

Are the trades equitable in terms of monetary value? The roads need to be in good repair prior to the swap. I want to ensure the trades will not be burdensome to the State, cities or counties.

Mr. Malfabon:

The swaps are equitable. We consider lane miles per lane miles and the cost to repave the roads. At times, a county will want us to improve something other than the pavement. An example is installation of a traffic signal, as is being done on Haskell Street in Winnemucca. Humboldt County officials are willing to accept the trade once the signal has been installed.

Senator Gustavson:

I have no problem with the bill as long as both parties agree that trades are equitable.

Chair Manendo:

In Las Vegas, the area of East Tropicana Avenue and Boulder Highway may be NDOT's responsibility. A four-way stop at Sun Valley Drive was installed in 1991 after local people fought to protect children who have to cross the street to go to school. I believe this location is within the jurisdiction of NDOT. There has been talk at the county level about installing a traffic light there. Sadly,

many people cross Boulder Highway and continue driving 45 miles per hour in this residential area past the school. It is not my district anymore, but I am quite familiar with the community. Some people want to remove the four-way stop. It concerns me, and I worry this will happen if the bill passes.

I will close the hearing on A.B. 18. I will open the hearing on A.B. 21.

ASSEMBLY BILL 21 (1st Reprint): Revises provisions relating to public safety.
(BDR 43-364)

Mr. Malfabon:

Assembly Bill 21 will clean up some of the language within NRS 484B.150 regarding safety. One of the revisions is the open container law. A loophole exists whereby drivers of taxicabs, limousines and recreational vehicles can possess open containers of alcoholic beverages. I am sure this was not the original legislative intent. The National Highway Traffic Safety Administration (NHTSA) reviews the traffic safety laws of each state. A recent review found several states, including Nevada, have language that needs to be changed to address this problem. Tom Greco will review the other elements of A.B. 21.

Mr. Greco:

I have written testimony (Exhibit D) I will summarize. In addition to the open container law revision we must make to avoid funding penalties, we want to clarify NRS wording for crash data reporting. This needs to be done because in 2001, the Department of Motor Vehicles (DMV) and the Department of Public Safety (DPS) became two separate agencies. The responsibility for crash data reporting became unclear. Assembly Bill 21 addresses the matter.

Senator Hardy:

I do not see the word "taxi" in Exhibit D. Please clarify how the prohibition of open containers in taxis is included in the bill.

Mr. Malfabon:

It involves situations in which someone accepts payment for transporting passengers.

Senator Hardy:

That includes taxis, shuttles, limousines and other for-hire vehicles. Could you point to the section of the bill that refers to this?

Mr. Malfabon:

Yes. It is section 1, subsection 2, paragraph (a) on lines 11 through 13. It says, "... motor vehicle which is designed, maintained or used primarily for the transportation of persons for compensation." This is where taxicabs, limousines and similar vehicles are covered.

Senator Hardy:

Will any vehicle anywhere be allowed to have an open container if we pass this bill?

Mr. Malfabon:

Yes. Occupants in recreational vehicles are allowed to have open containers.

Tom Lawson (Lieutenant, Nevada Highway Patrol, Department of Public Safety):

Yes. The only person exempted from having an open container of an alcoholic beverage will be the driver of a vehicle for hire or a recreational vehicle. Someone in the back of an RV, away from the driver, legally could possess an open container. Passengers on party busses and in taxis and limousines also can have open containers of alcoholic beverages. The drivers of these vehicles may not, however.

Senator Hardy:

Could you point out this exemption for a limousine? Is there a glass partition between the driver and passengers?

Mr. Malfabon:

Subsection 2 of section 1 states, "Except as otherwise provided ... the passenger area ... " of those types of motor vehicles hired for that purpose of transportation. The passenger areas of taxicabs, limousines, shuttle buses and the like qualify as acceptable locations for open containers.

Senator Hardy:

Are you saying there can be an open container in a taxicab?

Mr. Malfabon:

Yes, for passengers.

Senator Hardy:

In this bill ...

Mr. Malfabon:

Yes. The NHTSA's review found that we had not made it clear that drivers are prohibited from having open containers in their possession. Passengers are allowed to have them, however. This is acceptable to the NHTSA.

Senator Hardy:

Sometimes when I am in a taxicab, I sit in the front seat. Since I do not drink, the driver will not see an open container in the front. When the bill says "the passenger area of a motor vehicle," this technically can include the front seat. Can someone have an open container in the front seat of a taxicab but not share it with the driver?

Mr. Malfabon:

Yes.

Senator Hardy:

This bill is not going to stop people from having open containers in taxis. It will allow open containers in taxis, but not in the driver's area of a taxi.

Mr. Malfabon:

That is correct.

Senator Gustavson:

Section 1, subsection 2, paragraph (a) states, "The passenger area of a motor vehicle which is designed, maintained or used primarily for the transportation of persons for compensation." You mentioned that this means the driver is being paid. The way this is written could eliminate a cab or limo driver, for example, while transporting another employee without being paid, from having a drink or open container. Is that correct?

Mr. Malfabon:

Because of the change in that part of the bill, this applies to the driver in your example. He or she is not allowed to have an alcoholic beverage.

Senator Gustavson:

I want to make sure they are not allowed to have an open container even if they are not being paid. I have driven charter buses and limousines in which we carried alcoholic beverages for the passengers. Sometimes we had to store the beverages on the floor of the front passenger seat because the trunk was full of

luggage. We had to take the beverages from the floor of the front seat to stock the bar in the back of the vehicle. Of course, we did not drink, but the open container was right next to us. This bill still allows such a situation.

Lt. Lawson:

The Nevada Highway Patrol (NHP) supports A.B. 21. The intent of the federal law is reflected in section 1, which prevents drivers of vehicles for hire from drinking alcoholic beverages while on the job. Section 2 clarifies that crash reports must be submitted by members of the public to the DMV if they are not submitted by a law enforcement agency. Section 3 adds a penalty for providing false information to a crash report submitted electronically to the DMV.

Section 4 requires the DPS to record crash data it collects in a central repository. The NHP is neutral on this part of A.B. 21. We have a concern that employees at the NDOT are manually entering crash reports. These reports, therefore, are not connected to the electronic database. This part of A.B. 21 will require the DPS to take over this duty from the NDOT. Presently, one full-time equivalent employee documents approximately 1,500 crash reports each year by hand. During this bill's hearing in the Assembly Committee on Transportation, Chuck Reider of NDOT stated his agency would negotiate this duty with the DPS through a memorandum of understanding. If the DPS takes over this responsibility, there will be a fiscal impact because the department does not have a position available for it. Therefore, if this memorandum of understanding does not materialize, the DPS will experience a fiscal burden.

Section 5 of A.B. 21 notes that the DPS will continue the current practice of generating the data-collection form for accident investigations. The cost for this is included in the budget of the DPS.

Chair Manendo:

The bill says there is no fiscal note. I am puzzled by what you said about a fiscal note. Was no fiscal note requested?

Lt. Lawson:

I am not sure. However, we worked with the authors of the bill on an amendment, and there was testimony at the hearing that resulted in this negotiated agreement.

Mr. Malfabon:

The NDOT supports the memorandum of understanding with the DPS regarding section 4 of A.B. 21.

Senator Spearman:

Did you say the NDOT is entering data for 1,500 crashes per year by hand?

Lt. Lawson:

Yes. Not all category I law enforcement agencies enter the data electronically into a local database or submit it to the statewide repository. This is a goal of the Nevada Citation and Accident Tracking System (NCATS). Through this system, the NHP partners with law enforcement agencies statewide and the NDOT, DMV and the Administrative Office of the Courts. The agencies without the electronic capability submit physical reports to the NDOT whose employee enters the information into the central repository.

Senator Spearman:

This means some agencies are not using or participating in the technology. Is this because it is not available or cost-efficient? If all the entities had access to the technology, the possible fiscal note would not be as great. Secondly, how close is the State to reaching the goal you mentioned?

Lt. Lawson:

A number of agencies are not participating for several reasons. I cannot speak on their behalf. At this time, the DPS is changing vendors for the accident tracking system. We have solicited participation from law enforcement agencies for the NCATS repository. The large agencies in Las Vegas, North Las Vegas, Henderson, Reno, Sparks and smaller agencies, including the one in Mesquite, are participating with the DPS on a planning committee. Modifications to the system remain in the development phase. The NHP, as the new system's principal user, is testing it now. Once the database is stabilized and the vendor is supplying an acceptable product, we intend to share it with as many agencies as possible. Grants are available through the Office of Traffic Safety to help provide equipment. Some of the agencies would like to have the system now, but we cannot do this until the testing is finalized.

Senator Spearman:

Every committee meeting I have attended this week has had discussions of fiscal notes requiring additional employees. Technology is available, but

agencies either do not have it or are developing their own protocols. The computer systems cannot share data. This situation amazes and baffles me.

Chair Manendo:

I will close the hearing on A.B. 21. I will open the hearing on A.B. 305.

ASSEMBLY BILL 305 (1st Reprint): Revises provisions relating to highways.
(BDR 35-1030)

Assemblyman William C. Horne (Assembly District No. 34):

I am one of the primary sponsors of A.B. 305. Whitney Morfitt, an intern in my office, has been working on the bill. She will present its details.

Whitney Morfitt (Intern, Office of Assemblyman William C. Horne):

I have a short presentation and written testimony ([Exhibit E](#)). Commercial electronic variable message signs are also known as electronic billboards and digital billboards.

Chair Manendo:

Was there any opposition to the bill in the Assembly?

Ms. Morfitt:

No. Prior to the hearing, the NDOT expressed concerns about how the bill defined commercial electronic variable message signs. An amendment in the Assembly Committee on Transportation changed the definition to comply with the U.S. Department of Transportation's (USDOT) Federal Highway Administration (FHWA) regulations. No other opposition has arisen.

Senator Spearman:

The bill does three things. The first is it clarifies the jurisdiction or the responsibility of the NDOT to regulate these signs. The second is it synchronizes the language between the State and federal levels. Does this also authorize more billboards to be installed? I ask this because I have received many emails suggesting A.B. 305 will allow more billboards, but that is not what I have heard you say. You have said the bill has nothing to do with the quantity of billboards but with the NDOT's jurisdiction to regulate this kind of billboards.

Ms. Morfitt:

I will defer to Jennifer Lazovich to answer your question.

Jennifer Lazovich (Lamar Outdoor Advertising):

No. This bill does not authorize more billboards. In southern Nevada, no more billboards can be built for several reasons. Either a moratorium has been passed or established billboard zones have no more space available. Digital ordinances, however, allow existing static billboards to be converted to digital billboards. No additional billboards are allowed.

Senator Spearman:

Once again, I am amazed and baffled.

Senator Hardy:

Is the moratorium on billboards in southern Nevada only in urban Clark County, or does it include rural areas outside of Laughlin, Mesquite, Logandale, Searchlight and other parts of my district?

Ms. Lazovich:

All of the places you have named are in Clark County, and there is a moratorium in Clark County prohibiting new billboards.

Senator Hardy:

Is the moratorium a Clark County ordinance?

Ms. Lazovich:

Yes.

Senator Hardy:

Can ordinances change?

Ms. Lazovich:

Yes. This particular one has been in effect for many years. Some discussion in the past occurred about changing it to allow more billboards. Ultimately, the majority of the elected officials have chosen to retain the moratorium.

Senator Hardy:

When static billboards are converted to digital ones, is more electricity used compared to billboards operated by solar panel batteries?

Ms. Lazovich:

Are you asking if digital billboards use more electricity than static billboards?

Senator Hardy:

Yes. To convert billboards out in the middle of nowhere, will electrical lines need to be connected?

Ms. Lazovich:

My experience in southern Nevada leads me to say there are no digital billboards beyond the urban core for this reason. Power connections must be run to the digital billboards from solar panels. If the distance is too far, it is not feasible.

Lamar Outdoor Advertising supports A.B. 305. I have submitted information from the USDOT and the *Nevada Administrative Code* (NAC) ([Exhibit F](#)) that further explains the issues at hand.

Senator Spearman:

Here is an example of the emails I have received:

If passed, A.B. 305 for the first time implies that digital billboards are legal on Nevada's highways and allows the state Board of Transportation to regulate them. This ploy will benefit only the billboard industry at the expense of public safety and scenic beauty.

By implication, this person thinks this bill will result in erecting more billboards. Based upon what I have heard today, that is not the case.

Ms. Lazovich:

I will answer that in two parts. In order to erect a new billboard, a company must comply with local ordinances. These ordinances may allow billboards in certain areas at certain distances apart, or will disallow them. Another testifier will speak about northern Nevada, while I can speak about the situation in southern Nevada. Virtually all of the viable locations for billboards already have them. Assembly Bill 305 simply will direct the NDOT to adopt operational requirements for regulation of digital signs. For example, movement is not permitted on digital billboards. Static images only are allowed on these billboards. This bill does not allow any new billboards because that is a local decision. Even if a new billboard could be built within local rules, A.B. 305 is not applicable. For static billboard conversions, A.B. 305 will define operational requirements including only static images and timing of changes in messages.

Furthermore, the NDOT has been issuing permits in accordance with the FHWA regulations for digital billboards. Lamar Outdoor Advertising has received supplemental permits since 2006 to convert existing billboards to digital billboards. We ask that the NRS be brought into compliance with the federal code in this matter.

Senator Spearman:

How did people interpret the bill so incorrectly?

Ms. Lazovich:

I cannot explain it.

Senator Hardy:

No matter where in Nevada, the NDOT has to ensure federal regulations are met. Local regulations may be more stringent than federal ones. Both sets of regulations must be followed. Federal regulations are the base, and anything we do over and above to regulate billboards in Nevada is acceptable.

Ms. Lazovich:

Correct. You have summarized it well.

Senator Gustavson:

The discussion has been about federal regulations dealing with federal highways. In Clark County, however, some of these digital billboards will be on roads other than federal highways. Is this correct?

Ms. Lazovich:

That is correct. Most local ordinances authorize them only along certain roads such as freeways, the Beltway in Las Vegas and roads such as these. In the tourist corridor, including Paradise Road and The Strip, Clark County officials have authorized some digital billboards they deemed appropriate. However, they went a step further in their ordinances. They included restrictions on the signs' brightness, frequency of message changes, animation and so on.

Senator Gustavson:

Can local ordinances change to be different from federal regulations?

Ms. Lazovich:

Yes, to be more restrictive.

Senator Gustavson:

Could they be less restrictive?

Ms. Lazovich:

I do not believe they can be less restrictive than the FHWA regulations. If they are, Nevada could lose federal highway dollars.

Senator Gustavson:

How many changes on a digital billboard does a company normally have? It is probably unlimited, but, in practice, is it five or six? Advertisers will want their messages to be seen as often as possible.

Ms. Lazovich:

Typically, the ads change every 6 or 8 seconds with Lamar Outdoor Advertising. This is restricted by ordinance. Studies have been done showing the optimum frequency is up to about six per minute, or roughly one ad every 10 seconds.

Senator Gustavson:

Could there be ten different ads? Is there a maximum number of ads per sign?

Ms. Lazovich:

No. Advertisers buy different packages according to their needs. Some want their ads to be seen more frequently, such as every third ad. Others are comfortable having their messages appear every tenth ad. They customize their messages to a targeted area of Nevada and combine digital and static billboard messages in their marketing efforts.

Chair Manendo:

They will package it any way the customer wants. At my other job, my employer has purchased such billboard ads. When the billboard ran only a few other ads, our business went up more than we expected. As more ads appeared on the billboard, our message was seen less often. All sorts of package deals are available.

Aaron West (Clear Channel Outdoor):

Clear Channel Outdoor supports A.B. 305. The technical term for commercial electronic variable message signs is "CEVMS." These signs are allowed within NRS in accordance with the FHWA regulations. All of the NDOT's permits for

CEVMS comply with a 2007 memo from the FHWA that recommended how to operate the signs. Proper implementation is being done in Nevada.

Clear Channel Outdoor and Lamar Outdoor Advertising are the industry leaders within this segment. We are concerned about smaller operators who might try to abuse the regulations. Amending NRS by passing A.B. 305 will lead to codification of the operating regulations in the NAC. This will prevent possible future abuse in this form of outdoor advertising.

Senator Hardy:

Are you saying that small operators could put the State's federal dollars at risk?

Mr. West:

Yes.

Chair Manendo:

I was told there would be several people here to testify against A.B. 305. Let it be noted that no opposition to A.B. 305 is present at this hearing.

Mr. Malfabon:

The NDOT is neutral on A.B. 305. No extra cost will be incurred to implement these regulations. We hold public meetings statewide in a defined rule-making process. It allows for public comment and the adoption of regulations. Furthermore, the bill complies with federal regulations that apply to the National Highway System. Included in the system are interstates, U.S. routes, state roads and local roads that meet eligibility criteria. It was created so roads with the highest volume of traffic can receive federal funds.

Senator Spearman:

Passage of this bill brings State language into compliance with federal regulations. Does this bill in any way authorize new billboards to be erected?

Mr. Malfabon:

It only codifies the regulations in Nevada. Currently, we operate under the federal regulations.

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Senator Spearman:

Does passage of A.B. 305 simply codify for Nevada what the NDOT is already doing in compliance with federal regulations?

Mr. Malfabon:

Yes.

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Chair Manendo:

I will close the hearing on A.B. 305. Having no other business on the agenda,
I adjourn this meeting at 9:14 a.m.

RESPECTFULLY SUBMITTED:

Jennie F. Bear,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	3		Attendance Roster
A.B. 18	C	1	Tom Greco	Written Testimony
A.B. 21	D	2	Tom Greco	Written Testimony
A.B. 305	E	5	Whitney Morfitt	Presentation and Written Testimony
A.B. 305	F	5	Jennifer Lazovich	U.S. Department of Transportation Memorandum and NAC Citation