

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
February 25, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 9:03 a.m. on Monday, February 25, 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 Kelvin Atkinson, Vice Chair
Senator Joseph P. Hardy
Senator Donald G. Gustavson

COMMITTEE MEMBERS ABSENT:

Senator Pat Spearman (Excused)

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Andrew J. MacKay, Chair, Nevada Transportation Authority, Department of
Business and Industry
Julie Butler, Records Bureau Chief, Records and Technology Division,
Department of Public Safety
Deborah L. Cook, Administrator, Administrative Services Division, Department
of Motor Vehicles

Senator Manendo:

We will start the meeting today with a hearing on Senate Bill (S.B.) 12.

SENATE BILL 12: Clarifies the authority of the Nevada Transportation Authority to submit fingerprints to the Federal Bureau of Investigation. (BDR 58-356)

Andrew J. MacKay (Chair, Nevada Transportation Authority, Department of Business and Industry):

I support S.B. 12. This bill was submitted by the Senate Committee on Transportation on behalf of the Nevada Transportation Authority (NTA), Department of Business and Industry (DBI). It is a simple bill that came about after a routine audit of the NTA by the Department of Public Safety (DPS). The audit looked at our processes for conducting background investigations. The DPS informed us that the Federal Bureau of Investigation (FBI) requires licensing agencies in all states and municipalities to have specific statutory language authorizing them to do the background investigations. Until now, the NTA has relied on a general enabling statute, *Nevada Revised Statutes* (NRS) 239B.010.

Rather than creating new language, NTA is using language from S.B. No. 36 of the 76th Session. This bill was drafted after a DPS audit of the State Board of Podiatry found the same lack of specificity in the enabling statute. The NTA has taken the language used by the State Board of Podiatry and applied the specific authorities we need to conduct background investigations. These include common motor carrier authority, contract carrier authority, certificates to operate tow car service in Nevada and certificates to operate intrastate charter bus service.

Senator Gustavson:

Has the NTA been conducting background and criminal history checks for some time now?

Mr. MacKay:

Yes. Checks have been conducted for at least as long as I have been at the agency.

Senator Gustavson:

What kind of criminal history are you looking for in these background checks?

Mr. MacKay:

The answer is nothing in particular. Background investigations can turn up a variety of findings including charges for felony driving under the influence

(DUI), causing bodily harm, theft of property and more. No particular violation found in a background search will preclude anyone from obtaining a certificate. Every case is unique with its own set of fact patterns. One person's history check might reveal a 23-year-old DUI charge with no other trouble. Will that one charge preclude the person from obtaining a certificate? It is highly unlikely. However, the record for someone else with four or five charges in the last 6 years will raise a flag. At a minimum, additional inquiry will be required. The NTA is not looking for specific findings. Whatever is found will be judged accordingly.

Senator Gustavson:

I asked because criminal background checks are done for many reasons such as Concealed Carry Weapons (CCW) permits, teacher licenses and day-care center licenses. There are specific reasons for these checks.

Mr. MacKay:

The focus is on safety. A reckless driving or DUI charge clearly is relevant to owner-operators driving vehicles. These will raise flags. I recall one check that tagged the applicant's background with pedophilia-related violations. Generally, the checks are related to motor vehicle safety. Another time we found a felony background for a person who had defrauded a union pension fund in Las Vegas. Coupled with several convictions this person had for tax evasion, it raised a concern about that person's ability to run a legal operation. We look at everything in totality. In several instances, we have had tow operators apply whose background checks revealed theft-of-property violations. Upon further investigation, we found the charges occurred when the operators were young people. They had been immature and learned their lessons. Safety is the primary focus of the background checks.

Senator Gustavson:

I agree that safety should be primary. People with several felonies need to be examined closely. Do we want them in this industry?

Senator Hardy:

You said the language for the bill was taken directly from the podiatry statute.

Mr. MacKay:

I may have expressed myself "inartfully." The NTA looked at what the State Board of Podiatry did and utilized similar language. The key is probably in the

respective editions to statute. We used these words: authorizing the Authority to forward the fingerprints to the Central Repository for Nevada Records of Criminal History. I was using the State Board of Podiatry as an example of another agency that had a similar experience with a DPS audit uncovering the lack of authority and having to go before the Legislature to request permission to continue to conduct background checks.

Senator Hardy:

Periodically we are fingerprinted in whatever position we have. Is there a period of time for which a complete set of fingerprints is still valid? Or does someone have to get a new electronic set every time? Is there a time period in which one set of fingerprints already sent to the FBI is still good? Has this come up in discussion?

Mr. MacKay:

It has only happened one time at NTA that I know. A person had gone through the background process with the State Gaming Control Board and then wanted to buy a charter limousine company. He literally had just received the results from the FBI and asked the NTA if those results would be sufficient for our process. I was the presiding officer in that case. His fingerprints were no more than a month old. I decided not to send him back. This bill does not contemplate such a situation because it is a rare instance when it happens.

Senator Hardy:

We try to think of unique things when considering laws because unusual things can occur. We want to make sure we give you the leeway to do things. I am wondering about the word "operator" in sections 1, 4 and 5 and the words "the owner or operator." Are there operators, such as in section 6, other than the operators of tow cars? Does everyone who will be an operator have to have his or her fingerprints taken?

Mr. MacKay:

The term "operator" is generally the certificate holder. It also can refer to a general manager. There are instances of companies with a diverse set of ownership interests, with numerous corporations having equity in the companies. They may have one person responsible for all of the operations including drug testing, vehicle inspections and more. The term "operator" is being used for such circumstances, even though they are rare. It allows the NTA to find someone in the company who is not a nefarious individual.

Senator Hardy:

When I read in section 5, for instance, "Each owner or operator of a charter bus ... ," I read it to mean a driver. Is there a different word for an operator of a charter bus?

Mr. MacKay:

That would not mean driver. "Driver" is defined within the Department of Motor Vehicles (DMV) statutes and in other statutes, as I understand. "Operator" would be a chief financial officer, a chief operating officer or a person with operational authority over the business.

Senator Hardy:

Is it someone with authority over the business, not the vehicle?

Mr. MacKay:

Yes, unless it is an owner-operator. That is captured under the owner aspect.

Senator Hardy:

Please explain the CPCN number, MV number and other numbers involved with transportation. Are these in your bailiwick?

Mr. MacKay:

That is our bailiwick. The "CPCN" is the certificate of public convenience and necessity. It is for tow, charter bus, limousine, airport transfer service and taxicab operators. The "MV" number connotes a contract carrier permit. A contract carrier operator has an exclusive contract to provide transportation services for compensation. The NTA has authority for this area. We are not involved with any other numbers.

Senator Hardy:

Does this bill take care of all of these numbers?

Mr. MacKay:

Yes.

Senator Hardy:

But, without saying it.

Mr. MacKay:

I think it does.

Senator Hardy:

Subsection 4 of section 4 on page 6 of the bill mentions certificate of public convenience. Is that what you have described to us?

Mr. MacKay:

Yes. Section 4, beginning on page 5 of S.B. 12, amends NRS 706.4464. This is the application statute concerning tow cars. It adds new language for the background checks.

Senator Gustavson:

I do not see the MV number mentioned in the bill. Where is it mentioned? Is it in statute?

Mr. MacKay:

The reference to MV number is found in regulation. I can only speculate on why "MV" is used for contract carriers. This is what it has been called for ages. The term "MV" helps departments—the NTA; the Taxicab Authority, DBI; and the Nevada Highway Patrol, DPS—readily identify a commercial vehicle as a contract carrier rather than a common motor carrier.

Senator Hardy:

Is the MV number like a medallion on the motor carrier?

Mr. MacKay:

A medallion has an actual license plate. These are numbers on the bumpers. For example, you will see the CPCN number on the bumper of a limousine at the airport. The number identifies the operator. The vehicle markings are quite helpful. Our investigators can look at a number and tell if the numbers are correct for certain vehicles. They can uncover illegalities through the numbers. The number identifies the company. These numbers are similar to medallions, but different at the same time.

Senator Manendo:

The bill lists people who must submit a complete set of fingerprints for an NTA application. Among others, the list includes a principal, partner, officer, manager and member. Who is a manager—an office manager? One company could have

five managers and a member, such as a member of the board of trustees. Please explain what this means.

Mr. MacKay:

It can mean various things. "Manager" and "member" are usually used in the context of a limited liability company (LLC). A manager could be the local point person for an out-of-state owned company who is running the day-to-day operations.

Senator Manendo:

An office manager can run a business on a day-to-day basis.

Mr. MacKay:

Yes. If someone applies and has an office manager who orders supplies and keeps the boss's schedule, we are not going to conduct a background investigation on the office manager. The language is broad for the reason Senator Hardy mentioned; we need to think broadly to cover a variety of possibilities. The NTA received good advice from the DPS that I wish to put on the record. We appreciated their help with this bill. They let us know about the situation and went to bat for us with the FBI. The DPS suggested that since the FBI wants as much specificity as possible when submitting fingerprints, we should include specific categories codified in statute.

In the context I have described, it is doubtful that an office manager will be subjected to a criminal background check. Generally, the rule is an owner holding 15 percent or more of the company automatically will be required to have a background check. For an individual who has sole operating authority over the company without necessarily having any equity in it, we most likely will conduct a background investigation on that person.

Senator Manendo:

What about a "member?"

Mr. MacKay:

Members fall within an LLC and include managers and members.

Senator Gustavson:

Section 1, subsection 5, paragraph (a) of S.B. 12 includes manager, member, director or trustee of the applicant as people who will have background checks.

The variety is wide. The new wording says they "must submit." It does not say they "may submit." This does not leave NTA the leeway in choosing who is to have the background check. Will this lack of specificity cause problems for you? Is it saying that everyone is going to have this done? What about Greyhound Lines, Inc. and other out-of-state companies that get permits? Do they get local permits? I know they have to get interstate permits.

Mr. MacKay:

You are correct in saying the language is wide. It is similar when we look at the regulation for more specificity on the application process. These are stating, "If you want this operating authority, this is what you need to do." The regulations become more specific.

Regarding Greyhound, I will give an example of a company of similar size and characteristics. A multinational company in Las Vegas with dozens of holdings was not subjected to criminal background investigation. This corporation was in good standing with the New York Stock Exchange, the Stock Exchange of Dubai and so forth. Senate Bill 12 codifies Nevada's authority to conduct background checks on individuals who are required to get a background check. The FBI will see that they are managing members and know the State has the authority to do the background investigation.

I want to emphasize that this bill does not expand the NTA's process for conducting background investigations on applicants. That is not the intent. The bill is being proposed because the FBI does not like a generalized authorizing statute for the State of Nevada. I want to be clear that the NTA is not expanding what we do. That is not the intent of this bill.

Senator Gustavson:

I am still wondering if we should change "must" to "may."

Mr. MacKay:

I do not know if this will be acceptable to the FBI. I do not think it will. But I do not know the answer.

Senator Gustavson:

As it is stated here, all these people "must" do this. I know you have explained the regulations say that this is not the case. It appears this is contradicting NRS.

Senator Manendo:

Mr. MacKay, I would appreciate it if you can help our staff get an answer on this.

Julie Butler (Records Bureau Chief, Records and Technology Division, Department of Public Safety):

The DPS houses the Central Repository for Nevada Records of Criminal History. The FBI will have to review and approve the language of S.B. 12 as a condition of releasing its criminal history records. It wants to see if the language comports with the requirements of Public Law 92-544 (1972) which says there has to be a State statute that authorizes submission of fingerprints for criminal background checks and the results must go to a governmental agency. I have submitted S.B. 12 to the FBI for its preliminary review. I will keep this Committee and NTA Chair MacKay apprised of the review.

Senator Hardy:

Can we ask the FBI to give leeway for fingerprints recently submitted, such as within the past 90 days, so people do not have to submit multiple sets?

Ms. Butler:

The issue is twofold. First, the DPS repository does not have authority under existing statute to keep civil applicant fingerprints. We do not keep them on file. Second, federal law states that a person can submit fingerprints and receive results only for the purpose originally requested. In the previous example of the person whose fingerprints were submitted for the State Gaming Control Board and who was going to buy a limousine company, those purposes for the fingerprints are under two separate statutes. The FBI considers this two different uses for the fingerprints, requiring two different background checks.

There has been some movement in recent years at the FBI and the National Crime Prevention and Privacy Compact Council, which governs the use of criminal history record information for employment and licensing, to recognize all the duplicative background checks being done. Discussions have occurred about reducing the number of checks and under what circumstances information could be shared. One of the major things we try to do is protect and respect people's privacy so they know where their records are going, who will see them and why they will be used. These are some of the reasons for the prohibitions in place today.

Senator Hardy:

Is the answer that you cannot ask the FBI in advance?

Ms. Butler:

The answer is no.

Senator Gustavson:

Constituents often ask me about this. What if I wanted to work part-time as a teacher and a day care worker, sell real estate and get a CCW permit? Could I not go down one time and ask for one background check that would cover all these? Is this theoretically possible?

Ms. Butler:

The answer is no. It is not possible because these fall under different statutory authorities. They have different purposes for the background check. Therefore, you can share the record only for the purposes for which it was requested. The purpose for a CCW is different than for teaching and for selling real estate. There may be different disqualification criteria on each of these requests. The criteria to screen a realtor may be very different from the criteria to screen a teacher. It may be different from that to screen a CCW holder. The answer to your question is no.

Senator Manendo:

We will close the hearing on S.B. 12 and bring the bill back to the Committee at another time. Now we will open the hearing on S.B. 13.

SENATE BILL 13: Authorizes the Department of Motor Vehicles to suspend the registration of a motor vehicle under certain circumstances. (BDR 43-368)

Deborah L. Cook (Administrator, Administrative Services Division, Department of Motor Vehicles):

I will present S.B. 13 on behalf of the DMV. The bill allows DMV to suspend a vehicle registration if the payment for that registration was dishonored. Currently, customers continue driving with valid registrations as DMV does not have the authority to suspend these technically unpaid registrations. This creates a financial burden on every entity to which we distribute funds for registration transactions. Additionally, because the registration is still valid, law enforcement personnel have no way to know there is a problem when they research a vehicle.

Senator Gustavson:

After reading this bill, I thought DMV already had this authority. I thought we had addressed this issue a few years ago.

Chair Manendo:

Several committee members have the same thought, so would you please answer this, Ms. Cook?

Ms. Cook:

The DMV has statutory authority to suspend registrations for various reasons, but this is not one of them. We suspend them for lapse of insurance, among other things. We are adding this reason now.

Senator Atkinson:

I never knew the DMV could not suspend a registration for this reason. If someone writes a bad check, the registration cannot be suspended. How could an electronic transfer payment go wrong? Is that not paid instantly?

Ms. Cook:

Electronic payment could be a dishonored credit card or e-check.

Senator Atkinson:

Someone could use a bad credit card. In instances when people register their cars and leave DMV with registrations in hand, you cannot invalidate them if you find out later that the payments were not properly made. Is that what you are saying?

Ms. Cook:

That is correct.

Senator Atkinson:

After all these years, it is amazing we never have addressed this. Why did this come up now? The economy has been bad; we can point to that. Have you seen more of these situations because of the poor economy?

Ms. Cook:

Statistically, I am not sure, but this has always been an issue. We took this opportunity to include the authority in the statute.

Senator Atkinson:

I am all for it and do not know how the Committee cannot be for it. It is the only right thing to do. The DMV cannot take back anything else, so it has to revoke the registration.

Chair Manendo:

Has this been raised before? In years past, has the bill come up? Did it die?

Ms. Cook:

To my knowledge, it has never been brought up before now.

Senator Hardy:

Does the DMV want to include a time period in the bill after which people would pay fees and penalties if they do not make good on the payments for the registrations? What are the fees and penalties involved? Can people pay by check to make the situation right?

Ms. Cook:

Our bad-debt process involves sending notices to those involved once we have been informed of the bad payments. After bad payments occur, we may not be informed for 1 or 2 months. The notice tells them how to clear their debt. If they have not rectified their debts within 30 days, DMV sends certified letters requiring them to pay within the next 30 days. On the sixty-first day, we usually send them to collections, depending on circumstances. To suspend a registration requires a 60-day notice. In the first letter we send, we inform them of the possibility of a suspension. In the certified letter, we tell them that we will suspend their registrations at 61 days unless payments are made properly.

Senator Hardy:

Is there a reliable way to pay?

Ms. Cook:

Yes. We require guaranteed funds—money orders or cash.

Senator Atkinson:

Without this bill, do people keep their registrations during the collection process?

Ms. Cook:

That is correct.

Chair Manendo:

How often does this happen?

Ms. Cook:

I do not have statistics on how often it happens. I can tell you that 63 percent of our open bad-debt accounts are registrations. We try to collect on them, and we succeed with many of them. The authority through this bill will be another hammer we can use to collect the debts.

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Chair Manendo:

We will close the hearing on S.B. 13 and bring it back to Committee for a work session. Hearing no further business before the Committee, we are adjourned at 9:47 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	1		Attendance Roster