

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TRANSPORTATION**

**Seventy-Eighth Session
February 5, 2015**

The Committee on Transportation was called to order by Chair Jim Wheeler at 3:16 p.m. on Thursday, February 5, 2015, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office. (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Jim Wheeler, Chair
Assemblywoman Jill Dickman, Vice Chair
Assemblyman Nelson Araujo
Assemblyman Richard Carrillo
Assemblywoman Victoria A. Dooling
Assemblywoman Michele Fiore
Assemblyman Edgar Flores
Assemblyman Brent A. Jones
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman P.K. O'Neill
Assemblyman Stephen H. Silberkraus
Assemblywoman Ellen B. Spiegel
Assemblyman Michael C. Sprinkle
Assemblywoman Melissa Woodbury

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Michelle L. Van Geel, Committee Policy Analyst
Melissa N. Mundy, Committee Counsel
Henri Stone, Committee Secretary
Trinity Thom Committee Assistant

OTHERS PRESENT:

Carl Hasty, District Manager, Tahoe Transportation District
Rudy Malfabon, P.E., Director, Department of Transportation
Robert Nellis, Assistant Director, Administration, Department of Transportation
Sean Stewart, Executive Vice President, Nevada Contractors Association and the Associated General Contractors of Las Vegas
Lori Chatwood, Deputy Treasurer, Debt Management, Office of the State Treasurer
Craig Madole, Assistant Executive Director, Nevada Chapter, Associated Contractors of America, Inc.
John Wagner, representing the Independent American Party of Nevada
Victor Joecks, Executive Vice President, Nevada Policy Research Institute
John M. Terry, P.E., Assistant Director, Engineering, Chief Engineer, Department of Transportation
Steve Walker, representing Carson City and Douglas County
Richard (Skip) Daly, Business Manager, Local 169, Laborers International Union of North America
Barry Smith, Executive Director, Nevada Press Association

Chair Wheeler:

[Roll was taken and Committee rules and protocol were reviewed.] In regard to Rule 57, I made a mistake on this yesterday. Following a vote by the Committee, we may vote on a bill the same day that we hear it, but it will take a vote by the Committee to approve that. We are going to start with an overview of the Tahoe Transportation District.

Carl Hasty, District Manager, Tahoe Transportation District:

I am here this afternoon to give you an overview of the Tahoe Transportation District and its role at Lake Tahoe. You have our presentation ([Exhibit C](#)) and I am going to walk you through what you have in front of you.

Assemblyman Sprinkle, it is good to see you again. Assemblyman Sprinkle chaired the committee at Tahoe, and we had a good discussion about transportation this past year.

If you have been to Lake Tahoe, you know how beautiful it is. You may not be aware of how much public land ownership there is. When you look at the basin from the Truckee/Interstate 80 corridor down to the South Shore, you have about 70,000 full-time residents. We now know that we have at least 8.5 million visits a year that are made to the Lake Tahoe area to recreate. Most of that is the drive-up market from Northern California. When you look at the larger region and all the visitations, those numbers grow rapidly.

You may not be aware, however, that the relationship between water clarity at Lake Tahoe and the transportation system is very close. What affects Lake Tahoe's clarity largely is fine sediment and nutrients. Seventy percent of the pollutants are coming from developed areas, most of which are related to the transportation system. The District is in place to work toward a system approach to the region to address these issues, partnering with Nevada and California, and playing a leadership role in getting a regional transportation plan in place.

My organization was established by the Bi-State Compact of 1980; Public Law 96-551, Article 9, gave us the authority [page 5, [Exhibit C](#)]. We are a bistate special district, which is unique. In that regard, we do not now participate in the Nevada budget process. Nonetheless, we do play a role in delivering transportation system improvements and treating the area like a system. If you do not look at it like a system, you essentially have eleven different transportation entities implementing transportation at Lake Tahoe.

The other part of our mission is to complement the Tahoe Regional Planning Agency in their objective of attaining environmental carrying thresholds, those environmental indicators that are important to the lake. The regional transportation plan is part of contributing to that.

The Tahoe Transportation District Board of Directors comprises 11 people—six local governments, three private sector members. You will note that the Department of Transportation (NDOT) and California Department of Transportation (Caltrans) members are ex-officio.

I would like to walk you through some current projects and the transit system services that we provide [page 7, [Exhibit C](#)]. If you have been up there, you have seen that a roundabout now exists at the intersection of Nevada State Route 28 and Mount Rose Highway. That is the first roundabout in the

Tahoe Basin. More are being constructed in the Kings Beach area on the California side adjacent to the state line. This reflects the approach of collaboration that we take at Lake Tahoe. There are really no unilateral decisions. It is a highly politicized arena. We know how to work through that. This is a very process-informed public. Success is based on collaboration exemplified by the construction of the roundabout that the community had requested. We worked very closely with the Incline Village community, even helping them to raise the money for the sculpture elements in the center of the roundabout, engaging with the NDOT to get that done. The Department of Transportation could not do that given all the responsibilities it has.

One of the other things we have implemented in the Washoe County portion is an East Shore Express shuttle. If you have been on that State Route 28 corridor in the summer, you know how crazy it gets. Sand Harbor State Park alone gets over one million visitors a year, and most of them are there in the summertime. The people that park directly on the highway—they kind of lose their minds thinking "I am on vacation"—walk down the highway lane of Highway 28 thinking they are on their own personal sidewalk. It stops traffic. It really has been a very dangerous situation and it has been a real problem. One of the solutions we have used is to look at this as a resource problem as well as a parking management and access problem. As a result, we instituted a seasonal shuttle service and started to provide an alternative for folks to get to their destination and access the beaches. It has been very successful. We have completed our third year. Twelve thousand or more seasonal riders are a good success. The Division of State Parks has seen a large improvement; Nevada Highway Patrol has seen a large improvement. It is one of the approaches we are taking to address access and protect the environment at Lake Tahoe. This is part of a larger scenic byway project for the entire stretch of State Route 28 from the north state line to Spooner Junction at U.S. Highway 50. These are some of the organizations we have worked with [page 10, ([Exhibit C](#))]. For example, to run the shuttle we rent the parking area from Washoe County School District where there is a closed school. We interact with the North Lake Tahoe Transit System, which is bringing people to Incline Village. We work with the Division of State Parks, the Nevada Highway Patrol, et cetera. All of this is necessary to have a successful operation.

This next photo gives you some idea of the traffic problems and the pedestrian problems we have at Lake Tahoe [page 12, ([Exhibit C](#))]. We ended up with an implementation plan for Lake Tahoe, our way of innovation for the Lake Corridor plan you will hear about. For us it is, how do we more aggressively get implementation on the ground and larger, area-wide solutions? In this case, it meant having agreement among 13 different management agencies within

an 11-mile stretch. That is what it requires to get things done. This has been a very successful venture thus far.

I would like to make you aware of a new development under the current Federal Transportation Plan that has been a very successful and important program for Lake Tahoe. That is the Federal Lands Access Program. In the 28 Project, we have applied for funds to address further solutions such as bike trails, expanded parking lots, and other safety improvements. We were able to put together funds. Typically, we have to cobble together funds. We do not have Formula Funds at Lake Tahoe. We were successful in securing \$12.5 million through the NDOT and Federal Highway Administration process to match almost another \$12 million to address three miles—the bike trail, expanded parking to get it off the highway, et cetera. We will be starting construction of that first mile this summer. It is part of a bikeway project that is extremely important to Lake Tahoe because we are not in the business of expanding highways at the Lake. To address mobility means to provide alternatives. That means the Complete Streets project done as part of the National Complete Streets Coalition program. For us that is trails, transit, highway improvement, and operational projects.

The biggest single project in the Tahoe Basin is the US 50/ South Shore Community Revitalization Project [page 19, [Exhibit C](#)]. This is a realignment of a 1.1 mile section of U.S. Highway 50 crossing the state line, proposed to go around the mountainside behind the casinos and, as a consequence, would create the first and only local main street at Lake Tahoe. The existing road that cuts through the casinos right now would become a local street. This enables the street to be closed to vehicular traffic for local events. The area includes 70 percent of the Lake Tahoe bed base. From a destination vacation perspective, it fits with the long-term vision of what is needed. The gondola for Heavenly Village comes down to that area right now. That redevelopment project is 20 years old and now we are ready to complete the environmental document.

At Lake Tahoe, to give you an illustration of some of the complexity of the process, we must address the National Environmental Protection Act (NEPA). Since we are in California, we will have to address California. Since we are at Tahoe, we will have to address the Tahoe Regional Planning Agency (TRPA). We are going to release that document later this year and be moving to a decision on the preferred alternative for that project as well. It is an important project for the revitalization of the area. It is a good example of how a public investment can stimulate private sector investment. The economic analysis of this project, which has a total price tag of \$72 million, could generate as much as a billion dollars of private sector investment in adjacent properties and

increase retail sales by \$16 to \$25 million a year. It is our largest project at Lake Tahoe.

Regarding transit, the District operates the transit system at South Shore. We also connect to the Carson Valley on the east side—that is Minden, Gardnerville, and Douglas County into Carson City. We work closely with the transportation system at North Shore.

That moves me into the last big project that we have in the pipeline. We do not have an environmental document out on this yet. We hope to reinstitute passenger ferry service to Lake Tahoe in order to connect North Shore to South Shore [pages 24 and 25 ([Exhibit C](#))]. That would mean we would actually have a regional transportation system at Lake Tahoe, which currently does not exist. It is important for our future to offer a choice. As I noted earlier, we are not in the business of expanding highway infrastructure. The Bi-State Compact actually says not to do this. This plan is in the environmental analysis process now.

I would like to make you aware of the SR 89/Fanny Bridge Community Revitalization Project in Tahoe City, on the California side. We will have a decision on that in March or April. We do have the funding we will need. This is another Federal Lands Access Program project. We have \$25.5 million in federal money, \$3.5 million in local funds. We are looking at another \$5 million in state money to deliver that project. We will potentially be breaking ground this season. If not, we will be going to construction next season. That is another realignment project of a short stretch of California State Route 89. Anyone who has been up to what is known as "Fanny Bridge"—because of the people leaning over the side of the bridge watching the fish in the Truckee River coming out of the Lake—has seen a two-lane bridge, approaching nine years old, and past its useful life. We need to have a second safety access to the West Shore. We need to alleviate the queuing that happens there. There are other elements going on, including streets that need to be more "complete" for the Tahoe City community.

What I would like to leave you with is that to address Tahoe and these transportation issues extend beyond the Tahoe Basin. Our constituency, as noted by visitation numbers, far exceeds our permanent population. The Trans-Sierra Transportation Coalition is a group of 11 counties, 6 on the California side and 5 on the Nevada side. The Nevada counties are Washoe, Carson City, Douglas, Storey, and Lyon. We have just completed a report that talks about a business case analysis of this area and what it would mean if we were to implement everyone's regional transportation plan. What would it mean economically and to the quality of life? What would it mean to this region

where we have a lot in common? We have a lot of federal land ownership in these 11 counties. The population of those 11 counties only totals 1.2 million people. We are too small to do this individually. If we leverage and work together to make sure that these plans come to fruition, when we look at the freight coming out of California and the businesses settling here in northwestern Nevada, and what that could mean to the economy, it is a really powerful message for us to start to work together to address. Thank you for your time and the opportunity to speak here today.

Chair Wheeler:

Thank you for your presentation. You are lucky to work in such a beautiful place. Are there any questions for Mr. Hasty?

Assemblyman Sprinkle:

The one thing that continues to be of real interest to me is the water shuttle, the water taxi. As you know, I support it. You said that the environmental impact statement was being done right now. Is this something you are doing internally? Who is actually doing the research for that statement?

Carl Hasty:

We have consultants preparing that document. Our expectations are that it will require the remainder of the calendar year. I would expect us to be releasing that environmental analysis early next year. We are moving toward a decision on the preferred alternative, while at the same time, as with all of our projects, we are already in pursuit of construction dollars. I think that this project represents our best potential opportunity to access a public-private partnership (P3) operation, especially since we are working with two privately owned marinas. At Tahoe, we look at this project as being our equivalent of light rail. When you look at those terminuses as stations, there is some real potential there that could be exciting and accelerate the implementation of the project itself.

Chair Wheeler:

Any further questions? [There were none.] We are going to move on to Assembly Bill 21.

Assembly Bill 21: Extends the maximum period of maturity for certain special obligation bonds issued to provide funding for highway construction projects. (BDR 35-375)

Rudy Malfabon, P.E., Director, Department of Transportation:

Sean Sever, our communications director, and Robert Nellis, our assistant director of administration over our finance department, are here with us today. We are here to give a presentation ([Exhibit D](#)) on Assembly Bill 21.

Robert Nellis, Assistant Director, Administration, Department of Transportation:

I have a brief presentation on *Nevada Revised Statutes* (NRS) 408.273. We believe this is a straightforward amendment, simply extending the number of years that the Department of Transportation (NDOT) can bond from 20 years to 30 years. There are three primary benefits from doing this. First, it provides repayment flexibility for the Department. Depending on funding sources in any given year or projected funding sources, we can look at those and have more flexibility over a 30-year period than over 20 years. It also offers us the ability to potentially lower our annual payments. We can look at this like a 30 year mortgage versus a 20-year mortgage. If we have more money to put toward other projects versus paying down debts; that helps the department. It also protects our credit rating. We received a triple-A credit rating from Standard & Poor's when we sold our last bond in February of last year. That was for \$100 million. Slide 3 [Page 3, ([Exhibit D](#))], shows how our repayment curve looks over the coming years from 2014 through 2026. We are paying off the debt from our past bond payments. The red line on the graph shows the \$89 million level that maintains our triple-A credit rating for the next several years.

Now, of course we are planning to bond for Project NEON [Page 4, ([Exhibit D](#))]. We anticipate \$500 million in total sales between 2016 and 2019. In the *Executive Budget*, we are looking at a sale of around \$100 million in 2016 and \$150 million in 2017. We anticipate the mirror image of that in 2018 and 2019. That is a total of \$500 million. If we look at the next slide [Page 5, ([Exhibit D](#))] and add that \$500 million onto our existing bond payments, you get the repayment curve on the blue line that takes us out to 2039. That takes us from about \$68 million in 2016 up to about \$89 million in 2021 and then sharply drops off all the way through 2029. This would be adding on top of our existing bond repayment debt without any refinancing. This is looking at a 20-year repayment curve, not 30 years.

Looking at this, I would like to make the point that we do not necessarily need the 30 years when we are looking at Project NEON, but it is an added benefit. It may be needed on other projects beyond Project NEON. It is an added enhancement to our current bond program, which allows us to take advantage of lower interest rates over a 30-year term, if that should benefit the department and the state. It gives us an additional tool in our toolbox if in the future the need arises beyond Project NEON. Although we do not necessarily

need it for Project NEON, if there are additional bonds we need to sell in the future, it gives us that opportunity to extend them out to 30 years if need be. Of course, this does not change anything regarding approval of the State Board of Finance or any approvals with our Department of Transportation Board of Directors. If we need to sell any bonds in addition to what is approved in our budget, we would need to go back to the Interim Finance Committee. We also have the Deputy Treasurer of Debt Management for the Office of the State Treasurer, Lori Chatwood, in support of this bill.

Chair Wheeler:

Thank you. Does anyone have questions for Mr. Nellis?

Assemblywoman Fiore:

What is the difference in the rate of the 20-year versus the 30-year interest rate?

Robert Nellis:

The interest rate right now is unknown. At the time we sell the bonds, we would be looking at the actual market conditions. We would assume a higher interest rate going out 30 years versus 20. Right now, we are looking at 3 to 5 percent with interest rates getting higher the further out you go.

Assemblywoman Fiore:

So we really do not know what it is going to cost to extend this?

Robert Nellis:

Right now, we are just saying the term we could go out to would be 30 years. It really depends on when we sell the bond. We may sell one bond next year at \$100 million, depending on market conditions at that time. We will know better then what the interest rates are and what the actual cost would be. Those costs would be presented to the State Board of Finance and the NDOT Board of Directors so they can make a decision on the best number of years.

To give you an example, with Project NEON we sold the \$109 million right-of-way bond. We had the option to go out to 20 years, but when we took into account all the market conditions, 12 years ended up being the best term. We ended up saving the State about \$5 million from that bond sale.

Assemblywoman Fiore:

So you are not set on the 30 years. It is just an option.

Robert Nellis:

That is right. It is just an option.

Assemblywoman Woodbury:

Did you say that extending the term to 30 years would help protect the triple-A rating and if so how?

Robert Nellis:

Extending the term to 30 years, depending on the amount of bonding we have to do, would allow us that flexibility. If we needed for some reason to do Project NEON for \$500 million, and then we had to add another \$200 million on to that amount for some future project, we would have the option rather than violating the \$89 million annual payment level, which could potentially lower our credit rating. Instead, we would stretch those payments out over 30 years and keep our annual payments down.

Assemblywoman Spiegel:

How many states have this capacity and what are those states? Would Nevada be first? Alternatively, are we somewhere in the middle?

Robert Nellis:

We reached out to other states trying to see what their total bonding terms are currently. We got responses from 16 states. Arizona, Florida, and Washington have a maximum term of 30 years. We found that approximately 63 percent of the respondents had terms greater than 20 years.

Assemblywoman Kirkpatrick:

I just want to be clear that enabling this legislation would be the best decision for the state so that we can keep projects going. It gives us the flexibility to determine what is in the best interest of the state. Since we never know where the federal dollars are, it would enable us to utilize our own money to keep projects moving.

I do want to ask about Project NEON since you brought it up. Would this allow you to go out and get a better rate to do the entire project at once, as opposed to doing it in the phases we are currently talking about? Does this give you an ability to leverage more dollars for the longer term with smaller payments so that we can do some of these bigger projects sooner rather than later?

Robert Nellis:

We have to be careful when selling the bonds that we spend those funds within a two-year period. Even if rates looked good right now, we could not spend \$500 million right now, so we would not bond for the full amount at this time. We would bond for what we believe we would actually spend.

Assemblywoman Kirkpatrick:

What is the benefit for the public besides the lower payments? I understand that bonds are based on market value all of the time. What is the benefit if my constituents were to ask me about it today? I understood it to be that we would have a little more flexibility and leverage to go out and do more projects with lower rates and to have ongoing dollars that were available. I just need to be clear so that I can explain it to my constituents in layman's terms.

Rudy Malfabon:

That is correct. It gives us more flexibility. What we were looking for specific to Project NEON was a pinch point where money was going to be tight because of existing bond payments at that time for a five-year period in the future. If we were able to structure the payments, we could look at bonding as an option and get past that pinch point. That is the type of flexibility we are looking at.

Assemblyman Jones:

Do most of the bonds get paid off in 2022? Is that why it drops so significantly?

Robert Nellis:

Yes. To give you an example, our series 2005 bonds are paid off completely in 2016. The effect that you are seeing there is due to the 2012 bonds that have a seven-year term and are to be paid off in December 2019. That is why you see such a steep cliff there.

Chair Wheeler:

Who is it in your department, a committee or one person, that makes the decision on how these bonds are issued? Who decides whether it is 15 years, 20 years, or 30 years? What are the checks and balances for that, so the Committee knows?

Robert Nellis:

It is actually coordination between our office and the Office of the Treasurer. The Treasurer's Office is charged with the bond sale. We look at the bond amounts that need to be sold and discuss these with the Treasurer's Office. For example, with the \$100 million right-of-way bond that needed to be sold last year, we were originally looking at 20 years, the maximum term. However, the Treasurer's Office suggested that 12 years was the most advantageous term, the sweet spot. Working together with them, as well as getting approval from the Board of Finance and our own Department of Transportation Board of Directors, in a system of checks and balances, we reached a conclusion.

Chair Wheeler:

There is a system of checks and balances including an elected official, correct?

Robert Nellis:

Yes sir, Mr. Chairman.

Chair Wheeler:

Are there any questions? Las Vegas? I would like to invite all who would like to testify in favor of A.B. 21 to the dais. Let us go to Las Vegas first.

Sean Stewart, Executive Vice President, Nevada Contractors Association and the Associated General Contractors of Las Vegas:

We support this bill, which gives NDOT more flexibility with its bonding and payment structure.

Lori Chatwood, Deputy Treasure, Debt Management, Office of the State Treasurer:

I am testifying in support of A.B. 21. Modifying the maximum term for major highway projects financed by revenue bonds will provide NDOT with increased budget flexibility to finance the construction of major infrastructure projects over the next decades within the revenue constraints facing the department.

The longer amortization helps to spread the cost of certain long-lived 30 to 40 year assets over the useful life of that asset, which may be more fair and equitable or intergenerational equity, for whomever is using that new project. The longer term creates an opportunity for NDOT to take advantage of market conditions and favorable long-term rates, when they exist, and allows NDOT to access the cheapest form of financing being tax-exempt public debt, rather than turning to more costly forms of financing such as P3 projects, which are not limited to a 20-year amortization and carry a higher cost of interest. The State of Nevada already has precedent for state-issued debt with terms longer than 20 years. Current statutes allow for longer terms for bonds not subject to the constitutional debt limit, as well as special obligation bonds and for lease of property in a lease purchase project of 35 years. Even though we have that on the books, almost all of our debt is 20 years or less. We do not utilize that unless there are particular reasons that show it is beneficial to the state.

As we said before, many other states have the capability of issuing longer than 20-year debt. Having this tool to amortize the future debt within 30 years is not a mandate to have 30-year debt. We can look at the needs of the project overall, the portfolio of the highway fund now, what projects we have to do in the future, or the market. All of these things we prudently evaluate. With each

sale, we run scenarios. We try to get the amortization where the market provides the best rates. It is just a tool to use. It does not mean that every bond we issue in the future we are going to go out and have a 30-year amortization. There do have to be reasons to do it, and one of those may be if we have a pinch point like we talked about. One bond may have to go longer to ease us past that 30-year limit. It does not mean every bond will. It might be that we do not need it at all, but the rates and where we are at and the amortization that we choose, maybe it is 18 years. Again, this is a tool to use. It is not a mandate.

Chair Wheeler:

Future testifiers please do not give repetitive testimony. "Ditto" works just as well.

Craig Madole, Assistant Executive Director, Nevada Chapter, Associated Contractors of America, Inc.:

We support this measure. Currently, the state has approximately \$4 billion in infrastructure needs for capacity projects and almost \$700 million in deferred maintenance of its roads and infrastructure. We feel that this is a tool that will help to address those substantial needs.

Chair Wheeler:

Is there anyone else who would like to testify in favor of A.B. 21? Is there anyone in Carson City who would like to testify in opposition?

John Wagner, representing the Independent American Party of Nevada:

We think it is ridiculous to leave huge debt to our grandchildren. How much more money is the interest going to cost over the long-term span? The longer you are out there, the more interest keeps building up. If you keep adding to the debt, at the end of 20 years, you might find that you want to go out to bond, but you have so much that you are paying on that you cannot afford to bond anymore. I do not run my house this way. If I did, I would get my credit cards out, max them out, and have a good time. However, eventually you have to pay the piper. We do not support this at all.

Chair Wheeler:

Is there anyone in Las Vegas who is in opposition to A.B. 21? [There was no one.] Is there anyone in Carson City in the neutral position?

Victor Joecks, Executive Vice President, Nevada Policy Research Institute:

I thought there were some good questions raised. I would be interested in the Department of Transportation providing some numbers to back up some of the things they were talking about. I encourage the Committee to look at the

long-term consequences of A.B. 21 and ensure that this legislation does not produce a burst of new construction in the short term at the cost of needed construction in 10 or 15 years. As you know, longer and more amortization periods mean greater total interest payment. I would be interested in seeing some specific examples from the Department of Transportation as to where this would be beneficial and what the long-term opportunity costs are, especially with those greater interest rates.

Chair Wheeler:

Is there anyone in a neutral position in Las Vegas? [There was no one.] We are going to close the hearing on A.B. 21. We will move on to Assembly Bill 43. We also have a conceptual amendment to A.B. 43.

Assembly Bill 43: Clarifies confidentiality provisions governing certain documents. (BDR 35-377)

Rudy Malfabon, P.E., Director, Department of Transportation:

Let me introduce John Terry, assistant director for engineering for the Department of Transportation (NDOT) and our chief engineer.

John M. Terry, P.E., Assistant Director, Engineering, Chief Engineer, Department of Transportation:

Assembly Bill 43 clarifies provisions on confidentiality on certain documents submitted to NDOT. The Department of Transportation procures design/build procurements on our highway projects through *Nevada Revised Statutes* (NRS) Chapter 408 and procures construction manager at risk (CMAR) projects through NRS Chapter 338. In the past, NDOT has received public information requests for documents from contractor teams during the procurement of a design/build type project. The construction industry and NDOT consider proposal documents confidential until the procurement is completed. In fact, internally we require that everyone who has access to those types of documents sign confidentiality agreements stating they will not disclose information on the documents to anyone outside of the procurement team.

We are seeking an amendment (Exhibit E) to NRS to maintain the confidentiality of the proposal documents until the completion of the procurement process. This amendment does not allow the use of public information requests to obtain access to those documents. We are asking that this only apply to the documents submitted by the contractor or the contractor teams until the procurement is completed. Again, this would require revisions to NRS Chapter 408 and NRS Chapter 338. We have worked with the Associated General Contractors of Las Vegas on what we consider to be a friendly amendment to change the language from "until the contract is awarded" to "notice of intent to

award." We could work with that amendment. That is simply until the selection has been made. We are willing to work with the Press Association. The language that is on design/build is clearer because of the way NRS 408 is written, whereas under NRS 338 it simply says "any document" with very little clarity as to what those documents are. We would consider any friendly amendment that clarifies that we are talking about the contractor documents submitted specifically in response to a request for proposal.

Chair Wheeler:

Any questions for Mr. Terry?

Assemblyman Sprinkle:

Please go into more detail as to why this confidentiality is needed.

John Terry:

We are talking about multi-million dollar procurements that contractor teams have gone to great expense to prepare. We feel that the process needs fairness. Access to a team's work and documents should not be available for review by outside parties, or even worse, to other teams competing and bidding for the same job during the procurement process. A friendly amendment is needed to protect the selection process and to avoid bid protest when we get through the selection process.

Assemblyman Sprinkle:

These are design/build contracts. It is really a two-step process, correct? I am concerned that if there is a contractor who has been given the original design contract, they now have intimate knowledge about the building aspect, which is the second half of this. Any other bidders might be at a disadvantage in knowing the true costs of that second half of the contract, actually building it. Is that not the case?

John Terry:

I am going to address that in a couple of different areas. Construction manager at risk (CMAR) is a two-step process. They originally win the job based on their ability to work with our designer in developing a contract. If all works out and we accept their bid, they are awarded the final contract. In that case, what we are talking about in CMAR is protecting the privacy of the competitors when they are submitting their proposals during the design phase when it is a competitive process. Once they have been selected in that process and are just preparing documents with no competition and working with us on a final price, there is no need for protection of documents. We are talking about the procurement when three or more teams are competing for the project that what they have submitted to us is protected until we have made the selection.

Design/build, which is under NRS Chapter 408, is different. If you were part of the original design, for example, helping us, you would be precluded from being on one of the design/build teams. The design/builder people have their own designers as a part of their team.

Assemblyman Flores:

I understand that the argument cuts both ways. The current language allows for a situation where one party waits for someone to submit a proposal, the first party then mimics the proposal and then underbids the second. The other side of the equation seems to be the fear that a builder who is a good friend of the project owner could have the lowest bid revealed to him, giving that builder the opportunity to under bid the other competitors. Besides the confidentiality issue that you have mentioned, are there any other safeguards in place to ensure that type of scenario does not take place?

John Terry:

There are protections in place for the situation you describe. The documents are confidential; contact with one team would be forbidden. The selection process is well-documented and must be approved through our director and the Department of Transportation Board of Directors. I do believe that, not as part of this bill, the protections are in place.

Assemblyman Araujo:

I am concerned about the transparency component of this proposal. However, you wanted to change the verbiage from "any document" to "certain documents." What "certain documents" were you referring to?

John Terry:

If you look up A.B. 43, page 3, it says "any document" under section 6, subsection 1. If you look under NRS Chapter 408, it specifically lists that a document or other information means a submission to the department and in response to a request for a proposal. I would propose something like "the specific document submitted by proposers, contractors, in response to a request for a proposal" would be the documents we are talking about protecting. The contractor documents submitted in a competitive procurement should be confidential.

Assemblyman Araujo:

What certain documents would the public or competing contractors have access to, should this verbiage be changed?

John Terry:

They have access to all of our documents. They do not have access to their competitor's procurement documents. We are not protecting anything else under this. These documents are only protected until the procurement is made, after which they are public.

Assemblywoman Kirkpatrick:

I want to put this in layman's terms so the everyday citizen knows what this means. My number one priority is to make certain that Nevada citizens are getting these jobs. How do we know that will happen? What information can I point my constituents to so that they can see all of the Las Vegas companies that participated in the bidding process? Where would I see that within this bill? That is a bit of transparency I want to see as a Nevadan.

Rudy Malfabon, P.E., Director, Department of Transportation:

In many cases, the larger projects may be federally funded and there are restrictions. Typically, federal projects do not have those restrictions. If it is state-funded, we can have those types of limitations. In design/build projects where we hire a contractor designer team to do the project, there are technical elements in the proposal phase that ask about what their local knowledge is. We can attribute points to that. The way that we award a design-build project is partly by price. For example, with Project NEON, 60 percent is price and 40 percent is the technical score. In the technical score, you can address the local issue.

Assemblywoman Kirkpatrick:

To address the point system: the number one complaint is how the points are determined, but you are saying that I cannot see that particular piece until after the letter of intent is out. It seems that would bring more protests rather than if people were able to see the information. Why not have available something like this: contractor A of Las Vegas received the following points; contractor B of Sparks received the following points, et cetera. Why is that confidential?

Rudy Malfabon:

Typically, they use a descriptor rating, adjectives such as "very good" or "adequate" to describe the proposal so we do not get into arguments with the proposers over point disputes. We do have the opportunity for proposers after the notice of intent to award to have one-on-one sessions with our procurement team to discuss the quality of their proposals and what they can do to improve, and look at that comparison with their competitors.

Assemblywoman Kirkpatrick:

I am somewhat concerned that section 8 of A.B. 43 is in this bill because it has to do with disciplinary issues and specific records. Why are we having this discussion within this statute?

Melissa Mundy, Committee Counsel:

Nevada Revised Statutes 239.010, which is section 8 of this bill, is included because we are adding references to sections 2, 3, and 6 of the act, which specifically provide that these certain documents and other information are going to be confidential. They are just being added to the list of exceptions.

Assemblywoman Kirkpatrick:

This document does not work in Section 6. There needs to be some very specific clarification. The CMAR process and the design/build process are not consistent throughout the state. I remember giving NDOT the ability to do this in 2009. I want to have real clarity on specifics or at least a regulation or process in a regulation so people can understand what "documents" means.

Assemblyman Sprinkle:

You mentioned fairness. We are trying to protect these companies in the bidding process. If you look at NRS 408.3886, subsection 6(c), it reads, "The department shall not release to a third party, or otherwise make public, financial or proprietary information submitted by a design-build team." It seems to me the protection is already in place. I am not quite sure why we are doing what we are doing now, other than for a lack of transparency and trying to hide something. That is very disconcerting to me.

John Terry:

That specific provision in the submittals we get is limited to specific proprietary company financial information. That is not only confidential during the procurement period, but would never be released because it is proprietary financial information of those companies. We are asking for a broader confidentiality only during the procurement period for specific ideas on our projects, specific proposals on these projects, specific concepts on our projects, and many other aspects of their proposal that are in no way covered in that specific restriction. We are asking to protect much more than that specific proprietary information.

Assemblyman Sprinkle:

That goes back to my original concern that this is going to give a competitive bid advantage to whoever is starting off with the initial contract of the one-two step once they get to that second building part. That is my concern.

Assemblyman Araujo:

I was curious if you had any data on how many contractors who start with the design project end up being selected for the final contract.

John Terry:

If you are referring to our CMAR projects, we have not yet gotten to the point where we did not award the construction of a CMAR from the CMAR contractor that was selected for the design phase and had to go out to bid because we could not come to agreement with them. We have only had four CMAR projects get to that point. We have had some pretty intense negotiations to get to an agreed guaranteed maximum price, but we have never gone to final construction with a CMAR so far.

Chair Wheeler:

Anyone who is in support of A.B. 43 from Carson City? Mr. Stewart in Las Vegas?

Sean Stewart, Executive Vice President, Nevada Contractors Association and the Associated General Contractors of Las Vegas:

We support the efforts of the NDOT in this matter. We have spoken with them, and there is a friendly amendment in place to change the language from "award of the project" to "notice of intent to award." I think that addresses some of the concerns I have heard from you today on a little bit of transparency. The "notice of intent to award" is obviously done prior to final award and would give some period of time in which a review could be done if there was some egregious error or something that was brought to the attention of other contractors. That was our concern, and NDOT has been very gracious in working with us on this amendment, and we support their efforts on this matter.

Craig Madole, representing Nevada Chapter, Associated General Contractors of America:

We are supportive of this measure. We feel that it is very beneficial to the contractors performing this type of work.

Steve Walker, representing Carson City and Douglas County:

I have been directed by the public works directors of both Carson City and Douglas County to support the change in the design/build process. I also assume that the amendment—although I do not have approval from the entities I just mentioned—would work. If not, I would inform the chair. It is specific to section 6 and not to the Department of Transportation. Also, anticipating a question about how these entities use design/build or how often, I do not know but will get back with you if you need that information.

Chair Wheeler:

Thank you. We would appreciate that. Any questions for Mr. Walker? Anyone opposed to A.B. 43 in Las Vegas? [There was no one.] Anyone opposed in Carson City?

Richard (Skip) Daly, Business Manager, Local 169, Laborers International Union of North America:

I would like to extend an offer to work with NDOT to clarify what their intent is. They say they are trying to clarify what the law already says. I would say that is not exactly correct as I read it. *Nevada Revised Statutes* 239.010 says that all documents are open unless otherwise declared by law to be confidential. Their first opening testimony was that they would always choose to view these to be confidential. They now want to expand confidentiality to all the documents that would be submitted. Some of the testimony was conflicting. They said we only want to declare to be confidential documents that are required to be submitted and then they list the specific requirements in the bill. However, when Assemblywoman Kirkpatrick asked about the scoring matrix for step one and step two and design/build, or in CMAR, they said that would also be confidential which is not clearly spelled out. Those are not documents submitted by the contractor. Those are documents generated by NDOT or whatever agency it would be.

I will try to answer some of the questions that I heard from this group before all of the exemptions that were listed here were added to the exclusion by an attorney general bill last session in Government Affairs. Assemblywoman Woodbury was the only one also on that Committee at the time. These are all the exemptions that currently exist. There are plenty of exemptions that NDOT can and has used to exclude the very information they are concerned about being given out. There are exemptions for trade secrets, so all of the information on how they would build the projects is already excluded, and there is language in the law that allows them to do that. They have given me documents and claimed those exemptions before when I have asked for it. The same thing with financial information in numerous places. Assemblyman Sprinkle pointed out one, and there are several others where financial information would be held.

After listening to the testimony, I still have some concerns. The Department of Transportation says they just want to be confidential in these specific areas at these specific times and various things, but I can tell you in the course of my regular job, we make information requests quite frequently for a variety of reasons. We made an information request on Project NEON for the request for proposals and qualifications that went out, because we wanted to find out who the actual proposers were. When we sent in the email, we did all the stuff like

we were supposed to do, and they sent back to us that they were claiming an exemption under NRS 333.345. That statute concerns state government purchasing which specifically only applies to purchasing for the Public Employee Retirement (PERS) system. So I called them on that. I said, I do not think you can claim exemption for NRS Chapter 338 bidding procedures or NRS Chapter 408 bidding procedures under state general purchasing procedures for PERS specifically. They did answer my question. They did send me back the information. However, for 99 percent of the submittal documents they sent back, they claimed an exemption and redacted it.

They have plenty of protections in place now. But under this, they could liberally construe whatever rule gets put in—that all of it is held confidential. When people put in submittals, just requests, would I be able to get the name of who actually submitted a proposal? They could say no. When a person submits a proposal under the CMAR provisions, you request the prequalification, and there are specific things in the statute that they have to ask for. They have to give a relative weight for that. There is a scoring matrix. They do get scored 1 to 10 or however they do it. They have five different raters generally. There are specific requirements for who those raters have to be. The majority of them have to have qualifications in the construction industry. We have asked to see who the raters were and what their qualifications were and people have tried to tell us no.

Under this provision, they would not have to tell us if the raters actually met the conditions that were in the law. Just as an example: that first score when they have say 10 bidders, they have to have at least 2 proposals submitted in order to do a CMAR. If they have 10 submitters, they have to reduce that down to no less than 3 and no more than 5. Once the first part gets done, all of those scores are now thrown out, and they have to do a second request for proposal with new scoring and new criteria. They can use the same selection panel, but what information was used and who got kicked out and why, is that information now all confidential when you are done with that section of it? No, we are still in the proposal process which can take 6 to 8 months, and you are never going to get this information.

You are never going to be able to have the transparency to tell if perhaps they had a rater that was not quite objective, or had a bias. You can see that in some of the things. People ask those questions for that reason which holds them accountable. If you want transparency and accountability, do not let them cut off the process and eliminate people from getting legitimate information. I told NDOT when we put in our request that I am not interested in financial information. I agree that information should all be confidential. I am not interested in their trade secrets and their design on how they are going to build

a better mousetrap. I think that should be kept confidential under trade secrets and they have all those provisions. To give them carte blanche on this, start to finish, is a disservice to anybody in the general public who might want to make sure that the qualifications and that the requirements are being met, who did not get selected, what matrix was being used, and how they were scored, so they can hopefully improve next time and not have to wait eight or nine months, bid on five other projects and make the same mistakes.

I know this is specific to NDOT, but NDOT is not the only one that does CMAR and design/build. You will have 10 other agencies in here saying they want to keep their stuff secret too. It is not good policy for the state. I want to work with NDOT if they will be very specific about certain things that I believe ought to be protected. If they think there is some law that is not already there, I challenge it. This is their response to me: it is about 60 pages. This whole first page lists all the things on there are withheld under NRS 338.1379, the provision they quoted that it is withheld under. They use that the whole next page, all withheld. They have plenty of opportunity to see that. If you just give them blanket, it is out. You cannot get any information. At least under this, if I wanted to I could go and challenge and say, I think they are misapplying this and potentially get a court to rule on that. If they just make it completely confidential, nobody will have that opportunity, without coming back to the Legislature, to say we went too far.

Chair Wheeler:

Would it make a difference if we were to change section 6, subsection 1, to "any document pertaining to proprietary information from contractors bidding on the project?"

Richard Daly:

I believe there is an avenue to hit the specific points that the industry wants that is not quite so broad and that NDOT wants. I will give you this example. I was reading through the bill again and got to page 2, section 3, subsection 2, "a proposal made pursuant to NRS 408.5475, and a proposal made pursuant to NRS 408.548 and any submittal required by regulations promulgated by the department pursuant to NRS 408.548" showing that the department can say they are going to declare things now that have not even been put in regulation and that you know the regulatory process for. I know that Assemblywoman Kirkpatrick does and a few others that are on the Legislative Commission. That is entirely an executive branch agency. They set the regulation. The only chance we get is for the Legislative Commission to look at it and either give it a yea or a nay. We do not get to amend it, not like anything we are doing here. So if they have anything that broad in there that they could put in two or three years from now to expand it, I still think that goes too far. I think there are

some things that could be done to narrow this down specifically if they do not already exist. However, I think this issue is already covered in existing statute.

Chair Wheeler:

If you would like to show me some new language, I would like to see it. I want to make sure NDOT gets it as well since it is their bill.

Assemblyman Carrillo:

I asked NDOT what caused this bill request for A.B. 43. They told me that they had a contractor who had placed a lot of bid information with them. It turned out that there was no way for them to protect that information if another contractor asked for it. How are you going to protect that information if you are a contractor? When it comes down to the specifics as you are stating, the "any" part, that is a broad paintbrush and it picks up a lot of other things we may not intend to put in there. I agree that "certain documents," needs to be more specific.

Chair Wheeler:

The Department of Transportation will have a chance to respond.

Richard Daly:

We have had good response on a variety of things from NDOT. I also wanted to note that this would provide confidentiality for unsolicited proposals from contractors, and I believe that is going too far.

Barry Smith, Executive Director, Nevada Press Association:

My objections are to the broad language of this bill. It needs to be very specific as to what documents are confidential and to make the case as to why those are not already covered in existing statute. I too believe that they are. "Proprietary" is already in the language of the statute.

The second issue is timing. To make it public after the decision has already been made does not help anyone. If the intent is to protect these proposals, the timing ought to be as soon as the deadline hits, they are in public record. Mr. Daly alluded to a whole process after that. Exposing the process after the decision has been made does not really make a lot of sense or help the public.

Chair Wheeler:

Does anyone have any questions for Mr. Smith? How many stories have there been on information that has been released in the past about construction projects before the contract is awarded?

Barry Smith:

I am not aware of any.

Chair Wheeler:

Is there anyone in Las Vegas in opposition to A.B. 43? [There was no one.]
How about neutral testimony in Carson City? [There was none.] Is there any
neutral testimony in Las Vegas to A.B.43? [There was none.]

We will close the hearing on A.B. 43 and open for public comment. Is there any
public comment? [There was none.] Meeting is adjourned [at 4:48 p.m.].

RESPECTFULLY SUBMITTED:

Henri Stone
Committee Secretary

APPROVED BY:

Assemblyman Jim Wheeler, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Transportation

Date: February 5, 2015

Time of Meeting: 3:16 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Carl Hasty, District Manager, Tahoe Transportation District	PowerPoint Presentation
<u>A.B. 21</u>	D	Rudy Malfabon, Department of Transportation	PowerPoint Presentation
<u>A.B. 43</u>	E	John M. Terry, Department of Transportation	Conceptual Amendment