MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION

Seventy-ninth Session
April 11, 2017

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:10 a.m. on Tuesday, April 11, 2017, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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 Don Gustavson
Senator Scott Hammond
Senator Patricia Farley

STAFF MEMBERS PRESENT:

Michelle Van Geel, Policy Analyst
Darcy Johnson, Counsel
Tammy Lubich, Committee Secretary

OTHERS PRESENT:

Brian McAnallen, City of Las Vegas; Transportation Infrastructure Committee, Southern Nevada Forum
Scott Scherer, Regional Transportation Commission of Southern Nevada
Jonathan P. Leleu, National Association of Industrial and Office Properties of Southern Nevada; Nevada Bus and Limousine Association
Lee Gibson, Executive Director, Regional Transportation Commission of Washoe County
Justin Harrison, Las Vegas Metro Chamber of Commerce
Chris Ferrari, Nevada Contractors Association
David Cherry, City of Henderson
Kimberly Maxson-Rushton, Executive Director, General Counsel, Livery Operators Association of Las Vegas

VICE CHAIR ATKINSON:
We will begin the hearing on Senate Bill (S.B.) 448.

SENATE BILL 448: Revises provisions relating to public works. (BDR 28-603)

SENATOR SCOTT HAMMOND (Senatorial District No. 18):
Senate Bill 448 is another piece of legislation that came from the Southern Nevada Forum to the Committee.

Senate Bill 448 creates the framework for a public-private partnership (P3), which is an innovative financing and project delivery mechanism for important infrastructure projects. It is a contractual agreement between public entities and public enterprises that allow the private sector to assume additional project risks and responsibilities. Some P3s are in existence here, and in other states it is more extensive. The P3 projects that we traditionally think of are infrastructure projects which are built on public design and financing. However, today more projects are done based on a design build procurement where the private contractor is responsible for both the design and construction of a project for a fixed price. Senate Bill 448 expands the types of projects that may use P3s to include a wide range of transportation projects, including transit, which was our main emphasis for doing this. We saw the success that other areas had using this model. Senate Bill 448 will also make sure that all P3 models that would serve the public interest would be available for transportation projects, including models, where the private sector would be responsible for designing, building, operating and maintaining project.

Like many of the other bills that have been brought before the Committee this Session, the genesis of this particular bill came from the Denver trip. We saw the success of P3s and the ability to leverage these into much larger projects. Now that Denver is 100 percent on line with their light- and heavy-rail commuter projects and everything you can think of, Denver has a very nice system with many modalities of transportation. We saw how effective P3s could be in designing this infrastructure. They have utilized P3s in renovating Denver Union Station and expanding its rail lines. That was the jewel of the trip to see what they did to the Denver Union Station and the area surrounding it. The trip was centered on looking at the light rail, heavy rail and transportation. We also saw that the areas around the blighted areas disappeared and are now thriving communities. A lot of that can be attributed to the P3 projects. The use of P3 has helped move these critical projects forward and unlocked private

financing. In the Eagle P3 project where Denver expanded it rail lines, Denver received $450 million in private financing for the project. Overall benefits of P3s are access to private capital, innovation and efficient project management. This is the genesis of S.B. 448. This last infrastructure piece needs to be put together. This will prepare us to expand and get ready for the infrastructure Nevada may need.

SENATOR MARK A. MANENDO (Senatorial District No. 21):
Senate Bill 448 is the third and final piece of the puzzle that came out of the Southern Nevada Forum. All three bills are about providing additional bills for our public agencies to address transportation infrastructure needs. As we continue to grow as a State, we are going to be faced with decisions on transportation infrastructure, and we must have the innovative tools necessary to effectively and efficiently address the issue. Expanding the authority to use P3s will give public entities the flexibility to procure projects in whatever way benefits the public the most. There is nothing in the bill that requires the entity to use this method in place of other traditional procurement methods. If entities find that using a P3 will lead to more access to private financing, more effective project management or other benefits not available through traditional procurement methods, then I believe that the public entity should have the flexibility to use the P3s where appropriate.

BRIAN MCANALLEN (City of Las Vegas; Transportation Infrastructure Committee Southern Nevada Forum):
Senate Bill 448 will get Nevada prepared for any and all federal funds that may be available. As the Chairs have noted, this bill is part of the package from the Southern Nevada Forum bills that were a priority and with the thoughtful direction of our Transportation Infrastructure Committee, we were able to pull these bills together in preparation of where Nevada needs to be and to be prepared for every and any opportunity. The City of Las Vegas is in support of S.B. 448.

SCOTT SCHERER (Regional Transportation Commission of Southern Nevada):
Senate Bill 448 expands the ability to use P3s and provides more detail with regard to the requirements governing P3s. Under current law, P3s may only be used for certain transportation projects and specifically excludes toll bridges or toll roads. Senate Bill 448 expands the use of P3s to projects as defined in *Nevada Revised Statutes* (NRS) 271A, which is the chapter that governs tourism infrastructure. Senate Bill 448 has allowed P3s to be used for a broader

range of transportation facilities, including transportation facilities that use autonomous technology, multimodal facilities and certain ancillary facilities including communications, energy or related technology that may be necessary for the facilities. This will help improve efficiency and lower costs by providing better coordination and include all the necessary components in the initial construction, consistent with the desire to dig once. Finally, S.B. 448 provides more detail on the authorized processes and requirements for using P3s. Studies around the world found that major projects built through P3s have fewer cost overruns and are more likely to be completed on time. In addition, P3s provide additional methods of financing for major projects by bringing potential private financing to the table.

Section 4 defines eligible facilities and adds a project as defined in NRS 271A.050, in addition to transportation facilities.

Section 9 and 10 are the heart of the bill. Section 9 talks about the different types of P3s that a public body may enter into, and section 10 talks about the bid process and the types of process that may be used and types of evaluation and criteria that may be used. In subsection 2, the criteria were intended to be criteria that may be included and may be considered. The language is ambiguous, and we will probably have a technical amendment to address this issue. In subsection 3, in evaluating the proposals, the public body may give such relative weight to various factors, and the idea is that they will decide what weight they will give, based on the project, to each factor and include that in the bid process.

Section 11 describes the way an eligible facility may be financed. This includes federal money, private money, grants, revenue bonds and user fees. There are a number of different ways to finance. This is part of the point to bring together different sources of funds to make the projects a reality. With a lot approaching us in future needs for transportation and public facilities, it is important to have the ability to combine various funds to address those needs.

Section 12 is to combine sources to be able to accept money from the federal government and from grants.

Section 14 states that if there is a charge imposed on a motor vehicle for using a public highway and if there is any excess money, that money goes into the Highway Fund to be used in the county or metropolitan planning area where

that money was generated. Any other excess funds would go back to the Highway Fund after the cost of the project is paid. Section 14 also addresses confidentiality of the bid process and allows certain proprietary information to be maintained as confidential. We have committed to address a concern raised by a stakeholder on how this interacts with current procurement law. We want to make sure that other bidders have a reasonable opportunity to see what the bid is based on at the appropriate time so they may be able to respond appropriately. We will be working with them to get the issue resolved.

Section 15 talks about eminent domain, but the key is this State or any public entity so authorized under chapter 37 of NRS may exercise the power of eminent domain. This does not expand who can exercise eminent domain; it still limits it to the public bodies that already have that authority.

Section 17 modifies the definition of transportation facilities, similar to other bills that have been brought forth expanding the definition. This is not exactly consistent with the definition in S.B. 448; again, the intent is there will be a technical amendment to make it consistent with S.B. 448.

Sections 18, 19 and 20 are conforming amendments to align to existing sections of NRS 338.

Section 21, subsection 5 at the bottom of page 11, talks about entering into agreements with P3s; these are mandatory provisions of the agreement. One that has been added is an express agreement that a party cannot seek an injunction. The idea is to enter into a P3 for one type of transportation facility, then enter into another one for another type in an area nearby. The first party cannot say, "Wait a minute, that is going to take away revenue from my project. You entered into a contract with me, and so I am going to get an injunction to delay you from going forward with the second project." We will want delays to be factored into this process; the idea is if there are damages to be awarded because you impacted their project, you can talk about that, but the second project cannot be delayed.

This is not unusual in contracts for this project type. Any major financing for the project can still go forward even if there may be monetary damages at the end of the day. There are other provisions concerning mandatory compliance with federal and State law and standards. In subsection 6 are the paragraphs that would be permissive. These are not required paragraphs in the contract, but

there is a list here to be considered by the public bodies and these are typical provisions in this type of contract. My partner drafted the initial language and sent it to Legislative Counsel Bureau along with a laundry list he normally considers when entering into these types of agreements. Specified under technology are the circumstances establishing which public body may receive all their share of revenues. The P3s are typically more efficient because of the incentive payments and penalties. The private entity knows they are responsible when the risk is shifted to them in building a project to bring the project in under budget or on time or they could pay penalties. The same is true if the private entity has to operate the project after the fact. They are going to want to make sure the maintenance is as inexpensive as possible and will want to build it right in the first place.

In section 21, subsection 7 is a property tax exemption for an eligible facility. This exemption is only for the facility and not the operator of the facility. Bear in mind that even though it may be leased to the private company to operate, it is still a public facility. The facility, not the operator, is exempt from property tax.

The rest of the amendments are conforming. There will be some technical amendments being addressed with various stakeholders and we should have them by late tomorrow afternoon.

CHAIR MANENDO:
Are the prevailing wage protections automatically included in the P3s?

MR. SCHERER:
The prevailing wage would be included because public money is being used. This would be a public project, and it would have to be a public body involved in the project. Even though a private contractor is building it, the ultimate developer is the public entity.

JONATHAN P. LELEU (National Association of Industrial and Office Properties of Southern Nevada):
We are in support of S.B. 448.

LEE GIBSON (Executive Director, Regional Transportation Commission of Washoe County):
We are in support of S.B. 448. The Regional Transportation Commission of Southern Nevada will work to help with the technical amendments.

JUSTIN HARRISON (Las Vegas Metro Chamber of Commerce):
We are in support of S.B. 448.

CHRIS FERRARI (Nevada Contractors Association):
We are in support of S.B. 448.

SENATOR HAMMOND:
This is the last piece of legislation the Southern Nevada Forum put together. It is exciting to have an impact with transportation and expand our opportunities as a State. For many years, the State left the financing to the federal government, and now we are taking control. I appreciate all the work that was done during the Interim and the Session.

DAVID CHERRY (City of Henderson):
We are in support of S.B. 448.

CHAIR MANENDO:
We will close the hearing on S.B. 448 and open the hearing on S.B. 309.

SENATE BILL 309: Makes various changes relating to the Nevada Transportation Authority. (BDR 58-199)

SENATOR DON GUSTAVSON (Senatorial District No. 14):
The objective of S.B. 309 is to streamline the process for obtaining a certificate of public convenience and public necessity (CPCN). A CPCN is issued and approved by the Nevada Transportation Authority (NTA). The role of the NTA is to administer and enforce State laws that pertain to Nevada's transportation industry. Unfortunately, the Nevada Legislature enacted laws that made the process of obtaining a CPCN an arduous process that discourages new applicants from applying and existing businesses from expanding. Nevada wants to be known as a business-friendly State. A 2012 comparison of State licensing laws conducted by the Institute for Justice, found that Nevada is one of the most broadly and onerously licensed states, and this type of branding will hurt our State. We want to encourage job creation. The NTA has no choice but to apply the law as currently written. Our current statutes enable a practice that encourages an expensive and tedious progression that can drag on for months. Many applicants would qualify for a CPCN or be able to expand an existing business if the process was modernized.

Passage of S.B. 309 will restructure the application process to encourage new job creation while ensuring the NTA is able to do its job to protect consumers in the areas of health and safety as it relates to the transportation industry.

The bill I bring to you today is not the same bill I brought last Session. Senate Bill No. 183 of the 78th Session passed, but was vetoed by the Governor because he wanted to address some of the safety aspects. Jonathan Leleu went to work shortly after last Session to address the Governor's concerns. The proposed amendment (Exhibit C) is a culmination of his hard work.

MR. LELEU (Nevada Bus and Limousine Association):
As Senator Gustavson mentioned, this bill and the amendment before you is the culmination of work that began following the 2015 Legislative Session. You may recall the 2000 Legislative Session addressed the intervention process in general. The legislation resulted in a lot of consternation in the industry.

I took it upon myself to reach out to the executive director of the Livery Operators Association, Kimberly Maxson-Rushton. The industry should be working together to promote the needs of its individual members and the industry as a whole.

This particular piece of legislation was among the topics in conversations with Ms. Rushton regarding the transportation industry in general. Over the course of several months, I worked on the language, sharing it with Ms. Rushton in hopes to bring a bill before the Committee that could be supported by the entire industry. Unfortunately, this was not something Ms. Rushton could support.

We wanted to address the Governor's reasons for his veto with any legislation that would be brought before the Legislature. There was no reason to bring back a piece of legislation that was previously vetoed. We created a couple of safety backstops within the intervention process starting with the Governor's concerns first.

Section 4, subsection 8 of the proposed amendment, Exhibit C, deals with the safety backstops we created. The Governor's concern was the intervention process promoting safety was removed and could potentially hurt the traveling public. We created a system stating an intervenor may intervene in an application that goes before the NTA if the intervenor can demonstrate the petition has been filed within a period of not more than two years after the

original date of approval by the CPCN. The first backstop makes sure the operator who is applying for a new certificate or an expansion, has been in business for two years, to be sure the operator applying has a track record of safe operation, and the record can be tracked. If they have been in business for two years, then an intervention would not be appropriate, and the NTA would be a more suitable avenue to evaluate the safety concerns. If they have not been in business for two years, then the intervention is more appropriate.

The second safety backstop is based on visual inspection where the NTA does a safety inspection of the vehicle itself. We wanted to adopt and expand it. If an intervenor wants to intervene in the process, they must show that the applicant has not been subjected to a safety audit or compliance review by the Federal Motor Carrier Safety Administration, the Nevada Highway Patrol, NTA or another agency from another state that has jurisdiction over motor carrier safety. We added the two safety backstops that we believe addressed the Governor's concerns.

The intervenor must produce evidence, based on fact, of actual constructive dollars relating to the safe operation issue by the applicant as a common motor carrier. There is discovery, interrogatories and possible depositions. The intervenor process was tightened and preserved but is used in very limited circumstances where safety is an issue. We adjusted the tariff language in the statute using Assemblywoman Jill Tolles' idea from her Assembly Bill 240.

ASSEMBLY BILL 240: Makes various changes relating to transportation. (BDR 58-742)

In section 3 of Exhibit C, the red area has been removed and replaced with language that allows the common motor carrier to do business in the way it is done in modern times. For instance, if a common motor carrier wants to offer a discount or if they mess up something, they cannot do that because it is statutorily prohibited to offer a discount or free ride if something is messed up. We wanted to replace the tariff language and bring it into the modern era and allow them to do business that is customer friendly.

Section 2, subsection 3, paragraph (a) of Exhibit C states common motor carriers of passengers may vary tariff schedules. We wanted to give common motor carriers the ability to dynamically price, in a similar fashion to the transportation network companies (TNC). The TNCs dynamically price and surge

price up to 5,000 percent and the common motor carrier's tariff prevents them from doing that. We added some language that will allow common motor carriers to vary their prices 20 percent up or down from their tariff rate.

In closing, I want to point out that this issue is about the process, not about the result. We did a public records request and looked at it. The NTA has denied precisely two applications for intervention over the life of the intervention statute.

The intervention process is lengthy, arduous and expensive for a small business. It is more like a litigation matter than it is an application for a permit. As a result, smaller businesses are dropping out of the process midstream or not applying at all.

We do not want to turn loose the transportation industry on the streets of Nevada and create a chaotic situation. We want to create a freer market, allow the market to dictate how many cars are on the streets and present a more business-friendly statute for those looking to enter Nevada as a transportation service provider.

DARCY JOHNSON (Counsel):
There are some concerns about the germaneness of the new sections 2 and 3 proposed by this amendment. There is nothing in this bill, as it exists, about tariffs, fares and rates, and that is what the two sections are about and propose to amend. With the Chair's permission, I will get a definite answer from the Legislative Counsel.

SENATOR GUSTAVSON:
We thought this would be a simple change and correction to the bill to address the Governor's concerns.

KIMBERLY MAXSON-RUSHTON (Executive Director, General Counsel, Livery Operators Association of Las Vegas):
I have been associated with the commercial transportation industry in Nevada since 2003, when the Honorable Governor Kenny Guinn appointed me to the then Transportation Security Administration, now the NTA.

In every Legislative Session, the bill before you today has been presented, whereby a small group of carriers has sought to make significant changes to

NRS 706 under the auspice of promoting new businesses by making the licensing requirements lax and flexible in their terms.

Similar to the comments that you heard earlier, the way the NTA processes applications and the intervenor process that is allowed to take place is not a competitive veto. As Mr. Leleu pointed out, all you need to do is look at the specific NTA figures whereby it shows that over the past two years the NTA application process works. In addition, I note that the proposed changes to NRS 706 do not apply solely to limousines. Instead, it directly impacts all commercial motor carriers operating in Nevada. That includes taxis, household goods movers, tow operators, scenic tour companies, as well as shuttle services. While the language as noted may appear to be vague and antiquated in certain places, the scope of the transportation and the meaning of those words are heavily relied on by the NTA in their oversight of commercial carriers.

In the proposed amendment, Exhibit C section 1 seeks to amend the declaration of policy and the legislative intent. That language pertains specifically to the State's obligation to ensure adequate, economic and efficient services. This is specifically applicable to the taxi industry and ensures there is an adequate supply to meet the needs of passengers and to ensure their prices are regulated in the counties in which they operate for consumer protection purposes. There is also language that has been stricken that specifically deals with the illegal operators. I am referring to section 1, subsection 1, paragraph (e) of S.B. 309 where the language to discourage any practices that would tend to increase or create competition that may be detrimental to the traveling and shipping public or the motor carrier business within the State is deleted. This is not a competitive veto but is instead used to prevent illegal carriers. This is a declaration of purpose, and the objective is to ensure that those operators that are not properly permitted in the State of Nevada are not allowed to operate. No one will dispute that illegal operators are detrimental to the safety of the travelling and shipping public.

Section 2 of Exhibit C applies to the rates and fees charged by commercial transportation companies and are not only applicable to limousine carriers but all carriers under NTA jurisdiction. It is important for the NTA to review the tariffs to ensure that the pricing and the rates and fees that are charged do not gouge the public whether in the tow industry, the household goods movement industry or the limousine industry. You also want ensure the tariffs are in place for clarity

relative to a consumer's pricing. This is specifically governed by the NTA not only by statute but also by regulation and serves to protect the traveling public.

Section 3 of Exhibit C pertains to the carrier's ability to provide free or reduced fare transportation. This is a dangerous practice. This is a highly intense cash-based business in which there are too many opportunities for individuals in the field to accept cash without reporting it properly as they would in the gaming industry for such things as comps. This is not only a disservice to the carrier, but also to the State in the inability to record that they have the received fee and paid the 3 percent excise tax.

Of equal concern are changes to section 4, which speaks directly to the licensing standards for commercial carriers in Nevada. Nothing in NRS 706.391 prohibits a new applicant from entering the market nor does it prevent carriers from growing to meet their business demand. The NTA's figures show that applications for authority are regularly granted and seldom denied. More important is the claim that competition is allowed to dictate who is licensed in Nevada. I will respectfully submit that is absolutely untrue. The NTA does not allow competition to serve as a basis for denying an application nor do they allow competition to serve as a basis for an intervenor to participate in the matter. If you look specifically at the language in both NRS 706.151 and NRS 706.391, the language is to guide the NTA in prohibiting them in using competition as a basis.

For the edification of the Committee, the intervenor process is one that is not set forth in statute, but rather by regulation. During the course of the last two years, the applications that have been filed with the NTA have been successful. There have been no requests to open a regulation docket to modify the intervenor process. There have been no complaints other than the ones you have heard today. Based on that, I respectfully request that the bill not be passed and that you champion the NTA for its efforts in protecting the consumers and ensuring our State is business friendly, allowing both new applications and entrants to the market and expansion of operations in the market.

CHAIR MANENDO:
The wrong-pizza-delivered scenario was used earlier as an example of horrible service and a complaint. What can be done to help the relationship with the

customer, and is it permissive or not for a charitable organization, looking for a donation, to carry someone in a limousine?

MS. MAXSON-RUSHTON:
A customer, consumer or a member of the industry can file a complaint with the NTA if they see an operator acting inconsistent with their authority or operating in an unsafe manner. Thereafter, the complaint goes to the full authority for consideration and a determination is made as to whether or not to open an investigation. This is a multipronged process and not one that should be based solely on competition, but also on the safety of the operator.

In response to the second question, the language that pertains to tariff modifications and rates and fees does allow carriers to offer reduced or free services to nonprofit or individuals with disabilities.

MR. LELEU:
Most of what Ms. Maxson-Rushton stated comes as no surprise. These are the facts we discussed over the last 18 months. The reality of the situation is there are carriers in the industry that have one position and carriers that have another position. I am not sure we will agree on everything, but we are trying to agree on most. The bottom line is there is no way a carrier can make right with a customer directly. As Ms. Maxson-Rushton pointed out, there is a way the customer can seek redress through a regulatory investigation. The carriers cannot make it right themselves; it is cumbersome and puts a drain on resources. We would be happy to fix that piece. The intervention issue is not a competitor's veto and I want to change that dialogue. There is no competitor's veto, and the issue is the process not the result. If we are going to be talking about a competitor's veto, we are talking about the result and there have only been two denials based on intervention. We are talking about a process that is akin to litigation. We all know litigation is expensive. Many small businesses are trying to get into the transportation industry, and if you are going to force them to fight a court case to do it, it is going to be very difficult. We are trying to lean out the process, to do right by it, and ensure that safety is given more than just lip service.

CHAIR MANENDO:
We will close the hearing on S.B. 309. Seeing no public comment or further business for this Committee, we are adjourned at 9:07 a.m.

RESPECTFULLY SUBMITTED:

Tammy Lubich,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE:

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
S.B. 309	C	5	Jonathan Leleu / Nevada Bus and Limousine Association	Proposed Amendment