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BEFORE THE STATE OF NEVADA TAXICAB AUTHORITY

In the matter of the Livery Operator's
Association's Application to Adopt Regulations
Pertaining to NRS 706.8846

**RESPONSE TO THE LIVERY OPERATORS ASSOCIATION'S
APPLICATION TO OPEN A REGULATORY RULEMAKING DOCKET TO CLARIFY
PROVISIONS RELATING TO NRS 706.8846**

COMES NOW, Ronald Grogan, Taxicab Authority Administrator ("Administrator"), by and
through Janette Reyes-Speer, Administrative Attorney of the Nevada Taxicab Authority, hereby submits
this Response to the Livery Operators Association's Application, and is supported by all the papers filed
herewith, the attached Points and Authorities, and any oral arguments made before the Nevada Taxicab
Authority Board.

DATED this 23rd day of October.



Janette Reyes-Speer, Bar No. 7877
Administrative Attorney
Nevada Taxicab Authority

1 p.5. Similar to the discussion during the February 2017 board meeting, participants discussed how the
2 long haul statute had not kept up with creations of new roads and infrastructure in the city. *Id.*

3 Brent Bell, President of Henderson Whittlesea and the Livery Operators Association, stated that
4 the industry was hoping that the language in NRS 706.8846(3), "...than is necessary," would allow the
5 Board to adopt alternate routes as identified by the industry. *Id at 6.* Mr. Bell, however, understood
6 after speaking with Administration that the industry would have to address alternate routes with the
7 legislature because *the Taxicab Authority stated it cannot legally approve alternate routes. (Emphasis*
8 *added).* *Id.* The industry at this time already submitted a bill draft request to the Legislative Counsel
9 Bureau. *Id.*

10 During the April 20, 2017 board meeting, Deputy Attorney General Sophia Long ("DAG Long")
11 advised that adopting parallel routes by the Board technically makes this action a regulation and
12 therefore requires adherence to the rulemaking process. *See 4/20/17 Board Meeting Minutes, Agenda*
13 *Item 12, page 4.* DAG Long acknowledged that AB 487 was currently before the legislature and
14 contained language to allow the Board authority to adopt alternate routes. *Id.* She mentioned that if AB
15 487 did not pass, the Board can go through the rulemaking process by submitting regulations to the
16 Legislative Counsel Bureau on July 1, 2017. *Id.*

17 Further, DAG Long responded to Member Aguilera's inquiry about the Board's ability to
18 interpret the long route statute. DAG Long stated, "It is clear when the statute was written long hauling
19 referred to distance. The proposed parallel routes are longer in distance." *Id.*

20 Although the industry proposed that the Board use the language under NRS 706.8846(3), "...as
21 necessary," to approve parallel routes, the Board declined to take any action on this matter because it
22 was currently before the legislature. DAG Long advised that "...the Board should not issue an order
23 regarding a matter that is currently before the legislature as it is premature. *Id.*

1 On March 27, 2017, Assembly Bill 487 ("AB 487") was introduced to the legislature and had
2 undergone several revisions until its approval by the Governor on June 12, 2017. *See Assembly Bill 487*
3 *of 79th (2017) Nevada Legislative Session*. It suggested language that specifically authorized the Board
4 to adopt different routes under NRS 706.8846. For instance, the initial language introduced stated:

5 Sec. 13. NRS 706.8846 is hereby amended as follows:
6 706.8846 1. With respect to a passenger's destination, a driver shall not:
7 (c) Take a longer route to the passenger's destination than is necessary, unless:
8 (3) *The longer route has been approved by the Taxicab Authority. (Emphasis added.)*
9 *Id., Amendment 237, p.13-14, lines 43-45, 5-6, 12-13.*

10 In the first reprint, the proposed language changed to the following:

11 Sec. 13. NRS 706.8846 is hereby amended as follows:
12 706.8846 1. With respect to a passenger's destination, unless a different route is
13 requested or agreed to by the passenger, or a *different route has been approved*
14 *by the Taxicab Authority*, a driver shall take the most direct route when
15 transporting a passenger to his or her destination. A driver shall not:
16 (c) Except as otherwise provided in this subsection, intentionally take a longer
17 route to the passenger's destination than is necessary. *(Emphasis added.)*
18 *Id., Amendment 1055, p.13-14, lines 40-45, 5-9.*

19 Although this language remained through the second reprint of the bill, the language was removed in
20 the third reprint of the bill when it stated as follows:

21 Sec. 13. NRS 706.8846 is hereby amended as follows:
22 706.8846 *With respect to a passenger's destination, unless a different route is*
23 *requested or agreed to by the passenger, a driver shall take the most direct route*
24 *when transporting a passenger to his or her destination*. A driver shall not:
25 3. Except as otherwise provided in this subsection, intentionally take a longer
26 route to the passenger's destination than is necessary. *(Emphasis added.)*
27 *Id., Third Reprint, p.14, lines 3-7, 12-14.*

28 The legislature's final adoption of AB 487 struck any language authorizing the Board to approve
"different routes" under the long haul statute. The legislature, despite its opportunity, declined to adopt
language that permitted drivers to take anything but the *most direct route to a passenger's destination*

1 *absent the permission of the passenger.* The language in NRS 706.8846 continues to protect
2 passengers' right to choose how to get to their destination(s).

3 II. STATEMENT OF THE PROCEDURES

4 Although no written application was filed, the industry during the February 23, 2017 board
5 meeting orally requested the Board to approve alternate routes under the long route statute NRS
6 706.8846. This matter was discussed in subsequent board meetings until the board declined to take
7 action on approving alternate routes pending the outcome of AB 487. *See 4/20/17 Board Meeting*
8 *Minutes, Agenda Item 12, p.4.*
9

10 The industry, through the Livery Operators' Association, has now submitted its Application to
11 Open a Regulatory Rulemaking Docket to Clarify Provisions Relating to NRS 706.8846.

12 The Taxicab Authority Administration now submits its Response to the Livery Operators
13 Association's Application as contained herein.

14 III. ARGUMENTS

15 A. The Legislature Passed Assembly Bill 487 But Removed Any Language That 16 Authorized the Approval of Different Routes.

17 The legislature recently amended the long route statute under NRS 706.8846 in the 79th Legislative
18 Session in AB 487. Although given the opportunity, the legislature deliberately declined to accept
19 language that authorized the Board to approve "different routes" for drivers to take. Instead, it once again
20 protected passenger choice and further expanded the type of route approval passengers may give their
21 drivers.
22

23 The legislature recently had the opportunity to revise the language in NRS 706.8846 just this past
24 legislative session. The industry submitted proposed language in AB 487 that directly affected the long
25 route statute. In particular, the industry originally requested that the Taxicab Authority be able to approve
26 a longer route. The language in AB 487 as introduced stated:
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1 Sec. 13. NRS 706.8846 is hereby amended as follows:

2 706.8846 1. With respect to a passenger's destination, a driver shall not:

3 (c) Take a longer route to the passenger's destination than is necessary, unless:

4 (3) *The longer route has been approved by the Taxicab Authority. (Emphasis added.) Id., Amendment 237, p.13-14, lines 43-45, 5-6, 12-13.*

5 The language changed during the first reprint of the bill as follows:

6 Sec. 13. NRS 706.8846 is hereby amended as follows:

7 706.8846 1. With respect to a passenger's destination, unless a different route is requested or agreed to by the passenger, or a *different route has been approved by the Taxicab Authority*, a driver shall take the most direct route when transporting a passenger to his or her destination. A driver shall not:

8 (c) Except as otherwise provided in this subsection, intentionally take a longer route to the passenger's destination than is necessary. *(Emphasis added.)*

9 *Id., First Reprint, p.13-14, lines 40-45, 5-9.*

10
11 Despite the industry's proposed language, the legislature struck out any language authorizing the
12 Taxicab Authority Board to approve "different routes" under the long hauling statute. The final bill as
13 approved by the Governor on June 12, 2017 contains *no language permitting a "different route"*
14 *approved by the Taxicab Authority. (Emphasis added.)* It stated:

15 Sec. 13. NRS 706.8846 is hereby amended as follows:

16 706.8846 *With respect to a passenger's destination, unless a different route is requested or agreed to by the passenger, a driver shall take the most direct route when transporting a passenger to his or her destination.* A driver shall not:

17 3. Except as otherwise provided in this subsection, intentionally take a longer route to the passenger's destination than is necessary. *(Emphasis added.)*

18 *Id., Third Reprint, p.14, lines 3-7, 12-14.*

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21 It is important to note that AB 487 was passed and became new law without the language requested by
22 the industry allowing the Board to adopt "different routes". The legislature, instead, permitted language
23 for passengers to either *request* or *agree* to a different route. The legislature's actions unequivocally
24 protected passenger choice. The choice of route was purposely *not* given to the board, the driver, nor
25 the industry. The language, instead, explicitly gave the power to choose a different route (if not taking
26 the most direct route) *only* to a passenger. The law as written today was crafted to protect the
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1 passenger's interest. NRS 706.8846 specifically is entitled, "Prohibited acts concerning destination of
2 passenger." Once again the legislature's intent is to protect the rights of the passenger and not to
3 empower the driver or any other party to circumvent the passenger's right to decide what is in her/his
4 best interest. The law as written is not intended to allow a taxicab driver to exercise his/her discretion
5 over the will of the passenger. If a necessity arises, the passenger should be well informed and the
6 information provided should be transparent to allow the passenger to make an informed decision. The
7 choice remains with the passenger as currently stated in NRS 706.8846. Any creation of "different
8 routes" or alternate routes as currently proposed by the Livery Operators Association would contradict
9 the legislature's position.
10

11 The Administration respectfully requests the Board deny the Livery Operators Association's
12 Application to Open a Regulatory Rulemaking Docket to Clarify Provisions Relating to NRS 706.8846.
13 It believes that Board approval of alternate routes would override the will of the legislature and current
14 law.
15

16 **B. The Long Route Statute is Not Obsolete Despite the Increase of New Roads and
17 Infrastructure within Clark County.**

18 The long route statute under NRS 706.8846, as amended, is not obsolete despite its original
19 inception in 1969. This statute has undergone several amendments in 1977 and most recently in 2017.
20 The long route statute remains flexible and continues to protect the right of passengers to choose how to
21 get to their destinations. The legislature recently amended language in NRS 706.8846 that directly
22 affected the long route statute but declined to adopt any language permitting the Board to approve different
23 routes or any language interfering with a passenger's right to choose their route to their destination.
24

25 The industry had previously argued that the long route statute was obsolete and failed to keep up
26 with the creations of new roads and infrastructure in the city. It reasoned that this statute prohibited
27 drivers from taking alternate routes that might better serve the riding public.
28

1 In an attempt to update the definition and enforcement of the long route statute, the industry in the
2 last legislative session proposed language that did the following:

- 3 • Allow the Board to approve “different routes”; and
- 4 • Limit investigations of long route violations to only situations where complaints were
5 received by the Administration. This language precluded Administration from initiating
6 contact with a driver or passenger in order to investigate a possible long haul.

7 The industry attempted to expand the definition of permitted routes under the statute as well as curb the
8 Administration’s ability to actively identify and address potential long route violations committed by
9 drivers. The Administration under both scenarios would have less authority to regulate against long
10 route violations.

11 Despite this opportunity, the legislature declined to relax the statutory definition of long hauling
12 or to reduce the Administration’s authority to regulate. It adopted amendments that protected passenger
13 choice, precluded other parties from making decisions on behalf of passengers, and declined to limit the
14 role of Administration in regulating against long hauling.

15 The legislature, even with these actions, still recognizes the changing infrastructure within Clark
16 County and the creation of new roadways or freeways. The legislature mandates that drivers take the
17 most direct route to a passenger’s destination *unless a different route is requested or agreed to by the*
18 *passenger*. The language used by the legislature suggests it knows that there are different routes to a
19 passenger’s destination like using the freeway, Koval, or Frank Sinatra. It even approves of using these
20 routes so long as passengers exercise their choice and either request or agree to another route instead of
21 taking the most direct route.
22

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24 The legislature passed AB 487 but carefully chose its words on how to amend the long route
25 statute. It struck out language that gave other parties the right to choose the route for passengers, and
26 deliberately protected passenger choice. It also struck out language that limited the Administration’s
27 ability to enforce against long hauling. The legislature’s actions in allowing passengers to *request* or
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1 *agree to* alternate routes represents its understanding that other routes aside from the most direct route
2 exist and are permissible so long as passengers choose them. The long route statute is not obsolete but
3 remains flexible enough to respond to the changing landscape.

4 **C. Approving Alternate Routes that Are Longer than the Most Direct Route Contradicts**
5 **Legislative Intent and Exceeds Statutory Authority.**

6 Approving alternate routes that are longer in distance than the most direct route to a passenger's
7 destination contradicts the will of the legislature and statutory authority. The industry proposes that NRS
8 706.8846(3) needs to be clarified by adopting alternate routes. NRS 706.8846(3), as amended, states:

9 Sec. 13. NRS 706.8846 is hereby amended as follows:

10 *706.8846 With respect to a passenger's destination, unless a different route is*
11 *requested or agreed to by the passenger, a driver shall take the most direct route*
12 *when transporting a passenger to his or her destination. A driver shall not:*

13 3. Except as otherwise provided in this subsection, intentionally take a longer
14 route to the passenger's destination than is necessary. (*Emphasis added.*)

15 The meaning of a long route is contained at the beginning of the statute when it provides, "With respect to
16 a passenger's destination,...a driver shall take the most direct route when transporting a passenger to his or
17 her destination." As stated by DAG Long during the April 20, 2017 board meeting, "It is clear when the
18 statute was written long hauling referred to distance." The definition of a long route today remains about
19 distance even after the most recent amendments made during the 79th (2017) Legislative Session.

20 Here, the industry unnecessarily seeks to clarify subsection (3) by providing alternate routes that
21 are longer in distance for Board approval. The meaning of subsection (3) remains limited by its
22 introduction, "Except as otherwise provided in this subsection..." Any interpretation of this subsection
23 *must* be consistent with the language found at the beginning of the statute which states, "*With respect to a*
24 *passenger's destination, unless a different route is requested or agreed to by the passenger, a driver shall*
25 *take the most direct route when transporting a passenger to his or her destination.*" In other words, Board
26 approval of any alternate route that is longer in distance than the most direct route will be in direct conflict
27

1 with legislative language. The legislature may object to a permanent regulation proposed by an agency
2 when the regulation does not conform to legislative intent or statutory authority. NRS 233B.067(5)
3 provides:

4 (5) ...If the [Legislative] Commission or Subcommittee object to the regulation
5 after determining that:

6 (b) The regulation does not conform to statutory authority;

7 (c) The regulation does not carry out legislative intent...

8 The Legislative Counsel shall attach to the regulation a written notice of the
9 objection, including, if practicable, a statement of the reasons for the objection
10 and shall promptly return the regulation to the agency. *See NRS 233B.067*

11 This means that the legislature conducts the final review of regulations proposed by an agency to ensure
12 that regulatory language conforms to statutory limitations and legislative intent. It may object to
13 regulations that fail to satisfy this standard and return them to the proper agency.

14 The Administration supports clarification of statutory language so long as proposed regulatory
15 language is consistent with statutory authority and legislative intent. The Administration respectfully
16 submits that alternate routes, if longer in distance, openly contradict the legislative mandate that drivers
17 *take the most direct route to a passenger's destination unless a different route is requested or agreed to by*
18 *the passenger.*

19 IV. CONCLUSION

20 Based upon the foregoing, Administration respectfully requests the Application submitted by the
21 Livery Operators Association be denied because it contradicts the will of the legislature; NRS 706.8846
22 language is not obsolete; and any clarification of this statute that permits another party to approve


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1 "different routes" that exceed the most direct route in distance contradicts both legislative authority and
2 intent.

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4 DATED this 23rd day of October.

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7 _____
8 Janette Reyes-Speer, Bar No. 7877
9 Administrative Attorney
10 Nevada Taxicab Authority

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CERTIFICATE OF SERVICE

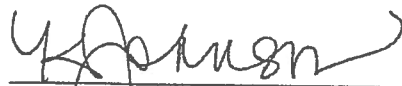
I HEREBY CERTIFY that on the 23rd day of October, 2017, I did deposit for mailing in the United States mail at Las Vegas, Nevada, a true and correct copy of the above and foregoing RESPONSE TO THE LIVERY OPERATORS ASSOCIATION'S APPLICATION TO OPEN A REGULATORY RULEMAKING DOCKET TO CLARIFY PROVISIONS RELATING TO NRS 706.8846 in a sealed envelope with first class postage fully prepaid thereon, addressed to:

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Dated this 23rd day of October, 2017.



Employee of the Taxicab Authority