MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
April 23, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 9:07 a.m. on Monday, April 23, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Laura Adler, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Jeanine Wittenberg, Committee Secretary

OTHERS PRESENT:

Fred Schmidt, PowerLight Corporation; Southern Nevada Water Authority
Judy Stokey, Sierra Pacific Power Company; Nevada Power Company
Teresa B. McKee, Nevada Association of Realtors

CHAIR TOWNSEND:
I will now open the hearing on Senate Bill (S.B.) 437. We have proposed Amendment No. 398 (Exhibit C, original is on file in the Research Library).

SENATE BILL 437: Revises provisions concerning generation and consumption of energy. (BDR 58-232)

FRED SCHMIDT (PowerLight Corporation; Southern Nevada Water Authority):
The first sections of the proposed amendment were sections on the solar program taken from Senator Titus's S.B. 427. In section 25, it increases the amounts for school properties, public properties and private residences above levels currently in place. It is not a huge increase. Other parts of S.B. 427 were "watered down" or eliminated to gain the support of all the interested parties in developing this bill. The specific rebates that were mandated as a number were eliminated in place of a sentence that mandates there be an incentive. This allows the Public Utilities Commission of Nevada (PUCN) the discretion to set the incentive.

SENATE BILL 427: Makes various changes relating to energy, net metering and the portfolio standards. (BDR 58-677)

CHAIR TOWNSEND:
Is that only for the solar program?

MR. SCHMIDT:
Yes.

JUDY STOKEY (Sierra Pacific Power Company; Nevada Power Company):
We have spoken with Mr. Schmidt about putting something in section 29 similar to what is in the wind and other programs. We want to make sure the credits belong to the utility if the utility has somehow participated monetarily to install the system.

MR. SCHMIDT:
This is the section that was five sections in S.B. 427. There was a mechanism for sharing the credits between the utility and the customer or allocating them directly to the customer. Some parties do, and some parties do not want that type of mechanism to remain in the bill. The Assembly decided to take out that provision in lieu of making sure the utility clearly got the credits in the bill in section 85 and section 104, which is where the wind and the water power programs are. The utility clearly gets the credits if those sections 3 through 5 that were in this section before are taken out. Then I would have no problem with Ms. Stokey's suggestion that we clarify that the utility is entitled to the renewable energy credits if it is paying an incentive to the customer who installs the solar system.

CHAIR TOWNSEND:
Mr. Keane, do you understand the statement made by the two participants? Would that require a change in section 29?

WIL KEANE (Committee Counsel):
Thank you, Mr. Chair. As I understand what Mr. Schmidt is saying, we would include something along the lines of subsection 2 of section 85 with obviously the wind changed to solar and just include that.

CHAIR TOWNSEND:
Ms. Stokey, would that be okay?

MS. STOKEY:
Yes.

MR. SCHMIDT:
I want the Committee to know that I am neutral on this issue. I see the logic for both party's positions.

Section 30 is where the school pilot program for the Clark County School District starts.

CHAIR TOWNSEND:
In section 33, subsection 3, paragraph (a), the 150 percent of poverty level was removed because of concerns of Senator Carlton. We changed the definition to encompass more individuals.

SENATOR HARDY:
Can someone remind me why we came to 80 percent of the median gross income?

CHAIR TOWNSEND:
I believe it was Mr. Nielson from the Washoe County Senior Law Project. Was there a specific reason?

MR. YOUNG:
Essentially, it was to allow people of low income to be able to access the surplus funds from the Universal Energy Charge. It was general consensus that no one would qualify at the 150 percent level. At 80 percent of the median

income there would be eligible people. I believe that language is in one of the other Assembly bills that came out of the interim study.

SENATOR HARDY:
If this bill passes, I would like to get a report on the 80 percent next session. I think this may be something that arises again and we will need to have the information. I want to know if the 80 percent is the number that works.

CHAIR TOWNSEND:
On page 20, line 16, Exhibit C, the "or before" is a result of a technicality. If you did not file on or before March 1, that would have been a problem and you would have been precluded from filing until the following year.

On page 21, beginning on line 49, this leaves the PUCN in charge of doing the net metering.

MR. SCHMIDT:
This language was taken from the net metering bill that went out of the Assembly.

If you look at the language on the bottom of page 23, starting on line 44, we may not need the correction Ms. Stokey was asking for. I think that language is clear enough. If Mr. Keane agrees, then I do not think there needs to be a change in section 29.

MR. KEANE:
We did discuss this and it is my understanding that in the solar, wind and water programs the utility would always be paying for at least a portion of the net metering system. If that is the case, then they would always get the portfolio energy credits.

MR. SCHMIDT:
That is partly true but there are circumstances where the customer would actually pay for everything. In that case the utility would have to purchase the credits. That is a rare situation, but my client, the Southern Nevada Water Authority, has done that.

MR. KEANE:
The only clarification I would want to make is that the language we pointed out in section 85, subsection 2, which is on page 36, specifies that the portfolio energy credits will go to the utility without regard to who pays for any net metering system.

MR. SCHMIDT:
I guess the reason that was stated that way is because these are demonstration programs and are transitory in the law. The change in the solar program is going into law more permanently. I think the permanent language at the bottom of page 23, starting on line 44, clarifies that the utility making the investments gets the credits. I do not think the utility should get the credits if the customer has paid all of the cost.

CHAIR TOWNSEND:
What you are saying is that with the language on page 36, lines 1 through 3, if the utility or customer pays for the demonstration project the utility retains the credits.

MR. SCHMIDT:
Yes.

CHAIR TOWNSEND:
Under normal circumstance, those who build the project keep the credits.

MR. SCHMIDT:
Yes.

SENATOR CARLTON:
Was the issue addressed that came up in the original hearing about the credits rolling back and being able to use the energy already put into the system?

MR. SCHMIDT:
Yes, we took care of it by eliminating the month altogether and made the provision for the credits to roll continuously until they are eventually all used.

MR. KEANE:
That language is on page 22, lines 34 and 35 and is a slight revision.

CHAIR TOWNSEND:
In section 50, subsection 1, does that language become effective in 2009?

MR. KEANE:
On page 39, line 5, section 50 becomes effective on January 1, 2011.

CHAIR TOWNSEND:
That affects licensees, Ms. McKee. We also included that if the seller and purchaser agree to waive the requirements of section 50, subsection 1, they do not have to have it.

Section 54 allows for public bodies that are remodeling their facilities to decide whether or not they will move forward with an energy efficient component. We also added water conservation because of the component that electricity is to water.

MR. SCHMIDT:
Hatice Gecol, Ph.D., Director, Nevada State Office of Energy (NSOE), Office of the Governor, asked me to relay that she has no problems with the sections of the bill with one exception. She was hopeful that the standard that is applied in section 55 would not specifically be limited to the Leadership in Energy and Environmental Design (LEED) Green Building Rating System.

CHAIR TOWNSEND:
The language in section 55, page 28, line 19 allows for equivalents.

SENATOR HARDY:
For the record, I want to establish that is exactly what it means.

CHAIR TOWNSEND:
I do not think there is any misunderstanding that is why we put it that way in section 55, subsection 1, paragraphs (a) and (b). That was so Dr. Gecol could make her own choice and not be limited. There may be reasons she will want to adjust the system based upon the public building.

SENATOR CARLTON:
We usually use the term "substantial equivalent." Was there a reason it was not used?

MR. SCHMIDT:
That may be why Dr. Gecol was concerned.

CHAIR TOWNSEND:
That is a good point. We will change that. Is that okay, Senator Hardy?

SENATOR HARDY:
Yes.

CHAIR TOWNSEND:
Mr. Keane, can we adjust that or do we have to amend the bill again?

MR. KEANE:
We could adjust it but that language is actually copied from *Nevada Revised Statute* (NRS) 701.217, which is referenced on line 20 of page 28. That is the section that authorizes the director of the NSOE to adopt LEED or an equivalent system.

CHAIR TOWNSEND:
So, it just says equivalent?

MR. KEANE:
Yes sir.

SENATOR HARDY:
Mr. Keane, in your opinion does the language as drafted here and in the NRS require that it be, "Comma for comma and period for period" LEED?

MR. KEANE:
No. It would not have to be exactly the same, otherwise there would not be any point in the language saying it was the equivalent. It would have to be at least as stringent.

CHAIR TOWNSEND:
I think there is interesting debate here. There are multiple things out there and also the option for Dr. Gecol to choose. The LEED has two separate components. There is the Leadership in Energy and the second "E" which is Environment. We have not spent a lot of time on environment and if you go through the laundry list of requirements, a lot of that is environmental.

Mr. Keane, because she is the Director and chose to focus mostly on the first "E" of LEED, does that preclude her regulation from becoming effective?

For instance, she takes LEED, reduces the value of the environmental side but increases the value of the energy side. Meaning the new NSOE standard would basically be the gold standard in energy but less than the silver standard environmentally. Would that preclude that from happening or is that challengeable?

MR. KEANE:
I am not as familiar with the environmental LEED. More fundamentally, since Dr. Gecol is the entity authorized to enforce and interpret these statutes, weight would be given to her interpretation.

CHAIR TOWNSEND:
One of the things people need to remember is when the Senate adopted this portion, our focus was on energy. One of the reasons we added "or its equivalent" was because there were other standards out there. Also, there was a concern given the way the U.S. Green Building Council was interpreting these things, they were putting environment on an equal level with energy. Not that it should not be but because we had such a problem, particularly in southern Nevada, we were focused on the energy component. I wanted to make sure that was on the record and her ability to go to a draft regulation and hold a workshop. That is important. Is NRS 701.217 the one you referenced that allows her to adopt an equivalent standard?

MR. YOUNG:
Yes.

CHAIR TOWNSEND:
As we move through this we will send a notice to the Assembly Committee on Commerce and Labor staff to let them know that is something we want to make sure we address.

On page 29, lines 51 and 52, is the ad valorem exemption to hold harmless the schools.

Sections 62 through 79 go into definitions, including the wind energy system, which is the carryover from the solar energy project into a demonstration project for wind. Is that correct?

MR. SCHMIDT:
Sections 62 through 86 are a brand-new wind demonstration program for the State. This is somewhat modeled after the way the solar program started.

CHAIR TOWNSEND:
Committee, I will turn this in today and intend to ask the body's indulgence to allow us to actually adopt the amendment today so it could be reprinted tonight and then we can have the debate on it instead of debating the amendment today. That would allow all of the participants of the utility working group to at least try to touch base with every one of our members to explain what we have done.

CHAIR TOWNSEND:
I will now open the hearing on S.B. 436. We have proposed Amendment No. 402 (Exhibit D, original is on file in the Research Library).

SENATE BILL 436: Makes various changes to the provisions governing common-interest communities. (BDR 10-234)

SENATOR SCHNEIDER:
I agree with some of the audits. The elimination of the language on the bottom of page 6 starting on line 52 of Exhibit D bothers me. This is what we had before; if you send in your monthly dues they will not apply it to any fines. We took that out and then on the top of page 7, line 4, we said that they can apply any payment received from a unit's owner without written instructions as to the application of the payment; (a) First to the current or past due assessments; and (b) Then the remainder of any payment to past due fines, including the costs of collecting any such fine, unless the unit's owner has stated in writing that no amount of the payment is to be applied toward the fines or toward the costs of collecting the fines. I am not sure a unit owner will know or understand that. Some of them are in a dispute with their boards, have been fined and they are arguing the violation. In some homeowners' associations (HOAs) there is a $50 monthly assessment and people often pay a year in advance. In this case, they send in a check for $600 for dues and now they have a few hundred dollars in outstanding fines and the HOA applies the dues to the fines.

Something like that can wipe out their whole dues payment and make them delinquent on dues. Then the next month, since they now are not current, the HOA can start foreclosure proceedings, which can be costly. That is my concern.

CHAIR TOWNSEND:
Are you saying the HOA should notify the homeowner the first time they send a bill that they need to notify the HOA in writing, how to apply funds?

SENATOR SCHNEIDER:
Yes.

SENATOR HARDY:
If the homeowner writes on the check the funds are for dues, that is a written instruction.

CHAIR TOWNSEND:
I agree and am just trying to deal with Senator Schneider's concern by saying the first time you get a bill it should state that under current law the homeowner must notify the HOA how funds are to be applied.

SENATOR HARDY:
I think if someone writes a check that says "dues" that is where the money should be applied.

SENATOR SCHNEIDER:
I think that when the HOAs send out billings for the dues or fines, they have to include a statement that says you have to explain what your funds are to be applied to.

SENATOR HARDY:
I do not have a problem with that.

CHAIR TOWNSEND:
Senator Heck, would that satisfy you?

SENATOR HECK:
I agree with Senator Hardy that if you write it on your check, that is how the funds are to be applied.

SENATOR SCHNEIDER:
I am concerned about the person who all of the sudden is facing foreclosure, has $3,000 worth of fees, all because they were not aware of the fines and how the funds for dues were being applied.

CHAIR TOWNSEND:
That is the problem because you cannot foreclose on delinquent fines, but you can foreclose on delinquent dues.

SENATOR HARDY:
If you recall, the original language was put in here in 2003 to try to clear up that issue.

SENATOR SCHNEIDER:
I think the notification should be on every billing statement, not just the first one or the annual statement.

CHAIR TOWNSEND:
I need to think about this some more. There is an answer for this, but it is not coming to me right now. Are there any other concerns?

SENATOR SCHNEIDER:
On page 11, lines 9 through 12, Exhibit D, it seems to me they should be able to notify people when they are going to be meeting. This has to do with an emergency, so I think I will just let this go.

On page 13, lines 38 through 45, I am not sure that is correct. In other words, you could have money in there to cover the next year, but what happens in year 6, 7, 8, 9 and 10?

CHAIR TOWNSEND:
On page 13, line 41 and 42, it says, "The amount of reserves is equal to or greater than the amount specified in the funding plan." That means you are adequately funded.

A lot of HOAs are not even close to being adequately funded. We are trying to not drive them into a legislatively mandated fee increase.

I was just corrected by Mr. Keane. It would be, "The reserves shall be deemed adequately funded if (1) or (2) would be the floor, it is the lesser of the two." This is outlined in section 8, subsection 1, paragraph (b), subparagraphs (1) and (2).

We will get these adopted and take a look at them tomorrow on the Senate Floor.

There being no further business before the Committee this morning, the meeting is now adjourned at 10:11 a.m.

RESPECTFULLY SUBMITTED:

_____
Jeanine Wittenberg,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE: _____