

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
March 13, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 10:02 a.m. on Tuesday, March 13, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Lora Nay, Committee Secretary

OTHERS PRESENT:

Steve K. Walker, City of Carson City; Douglas County; Lyon County
Patti Bakker, Truckee River Project Manager, The Nature Conservancy
Janet R. Phillips, President, Tahoe-Pyramid Bikeway Incorporated
Debbie A. Shosteck, Tahoe-Pyramid Bikeway Incorporated
Matthew L. Sharp, Nevada Trial Lawyers Association
Carrie C. Sandstedt, Nevada Responsible Trails Alliance

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Nicolas Anthony, City of Reno
Santana Garcia, City of Henderson

SENATOR HORSFORD:

I want to introduce Nikki Peterson and submit her written biography ([Exhibit C](#)). She is my intern this Legislative Session from Western Nevada Community College.

CHAIR AMODEI:

We will open the hearing on Senate Bill (S.B.) 132.

SENATE BILL 132: Makes various changes concerning the liability of trailbuilding organizations and landowners, lessees and occupants of land to persons using premises for recreational activities. (BDR 3-212)

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

I am here to present S.B. 132 and provide my written testimony in support of this bill ([Exhibit D](#)) that includes a report concerning proposed changes to the recreational use statute in *Nevada Revised Statute* (NRS) 41.510.

SENATOR MCGINNESS:

Would this apply to other trails being built? I know Lincoln County is working on some.

SENATOR TITUS:

The bill is not specific to this bikeway, but is specific to any organized group that builds a trail, wherever it might be.

STEVE K. WALKER (City of Carson City; Douglas County; Lyon County):

I am representing Carson, Douglas and Lyon Counties in support of S.B. 132. In a more informal manner, I am also representing the Tahoe Rim Trail Association that supports this. Opportunities to build trails for public use, particularly along the river corridors, by anybody who can do it enhances quality of life.

PATTI BAKKER (Truckee River Project Manager, The Nature Conservancy):

We support S.B. 132. The Nature Conservancy's mission focuses on species protection and the habitats the species depend upon. One priority we identified as a state chapter in Nevada is the Truckee River. Quite a bit of our resources have gone to this project. While focusing on habitats, we are also developing

a public access program and have started to work with Washoe County on public access opportunities along the entire lower river. Partnerships with other trailbuilding organizations are a great benefit.

JANET R. PHILLIPS (President, Tahoe-Pyramid Bikeway Incorporated):

We are a nonprofit organization devoted to creating a trail along the entire length of the Truckee River as described by Senator Titus. A map in your packet ([Exhibit E](#), Original is on file in the Research Library) shows the 116-mile trail route. The green section shows parts of the Truckee River you can traverse now, and the red section is not yet available for passage. Our focus is creating a trail through the red section.

We have a great deal of public and private support in the community. Our first, brass plaque mock-up indicates we have support from cities, counties, states the federal government and many private foundations. Our funding comes from both private and public sectors. We are an all-volunteer group. I am a full-time volunteer. Debbie Shosteck is our legal counsel who provides pro bono services.

We have had success in getting some sections of the trail finished. [Exhibit E](#) has photos of typical trail sections. This is a variable trail project. The first picture shows a little dirt flume road following the historic hydroelectric flumes in the Truckee Canyon owned by Sierra Pacific Power Company. Our concept is to get an easement to use that road, as is, for a bike trail. It is a good little road for a dirt bike or a mountain bike. It really does not need anything. We intend to put up signs and provide fencing where required by a property owner, and that is all. We are talking about a low-level construction effort. That is one end of the spectrum. The second thing in this area represents the high end of the spectrum. The next picture is west of Reno. The popular ride was to go from Reno to Verdi on the freeway as there was no other way to get there. Our group created a trail to bypass the freeway, and that trail is shown in the picture. This top end of the range of trails is called a Class 1 trail. In this case, the trail is owned by the City of Reno. Our group built it, financed it and gave it to the City. We have these two extreme ranges of trail types.

East of Reno and Sparks, the country looks like the third picture. It is unimproved land with dirt roads throughout most of it. Our hope is to identify those dirt roads as part of the trail. A typical example in the next picture shows a little, dirt double track suitable for mountain bike riders to use as is. However, the whole range of property east of Sparks, 27 miles to Wadsworth, is private

property. The Nature Conservancy is one of the major property owners, with others including the Union Pacific Railroad Company, Sierra Pacific Power and many individual parcels. There is a property map in your exhibit.

When we talk to property owners about granting an easement to use their dirt road as part of a trail, one of the first things out of their mouths is, "I may not mind the trail too much, but I can't stand the liability." Existing statute protects them quite a bit, but we are trying to make it better and give them a little more comfort because we expect these easements for free. We are asking for donated easements, and we need to remove the impediments property owners may have to saying yes.

The last section of the trail is on the Pyramid Lake Paiute Tribe's Reservation. It is the southern, downstream end of the river about 25 miles long. The Pyramid Lake Paiute Tribe was enthusiastic and granted us permission to put the trail across the entire Reservation on page 16 of [Exhibit E](#). There were existing dirt roads on the Reservation, and all we have done is designate them as part of the trail.

One situation we have done only once because it is a lot of work is shown in the picture of the single track which is three feet wide and not fancy but we had to construct it because there was no existing dirt road. The pictures show you the types of trails and situations we are dealing with.

DEBBIE A. SHOSTECK (Tahoe-Pyramid Bikeway Incorporated):

I am serving as pro bono counsel for the Tahoe-Pyramid Bikeway. I want to give you background on the recreational use statute which is NRS 41.510. A recreational use statute exists in some form in every state in the United States. Nevada's recreational use statute is a relatively bare-bones statute. Other states have more specific provisions and provide more explicit protections. The goal of these recreational use statutes is to promote recreational access to private lands. There is a lot of interest among the public to engage in recreational activities, enjoying the outdoors and the natural environment existing in Nevada. A lot of land is closed next to where most people live and is not publicly owned. Recreational use statutes seek to promote recreational activities by encouraging landowners to open their property for recreational purposes. Recreational use statutes make it so landowners are not liable to recreational users as long as they do not charge for any use on the property. Landowners are not liable unless they act willfully or maliciously. This

ensures landowners do not have to constantly check to make sure everything is safe

When we seek easements from private landowners, we encounter legitimate reluctance to open property because they are concerned about liability and getting sued. They understand the recreational use statute exists but feel they are going to get sued either way. At one end of the spectrum, the Union Pacific Railroad Company is considered a deep pocket and their primary concerns are liability and defense costs. On the other end of the spectrum are much smaller landowners who do not have resources to mount a defense if they get sued by someone who happens to fall on a trail or dirt road already existing on their property. It creates a barrier for us to connect the route from Lake Tahoe to Pyramid Lake.

Our goals in S.B. 132 are to remove some impediments we encountered. We are seeking to clarify the recreational use statute as it exists in Nevada providing protection for recreational activity on premises, and we seek to include language clarifying that premises include trails and access points to trails.

We want to clarify that a recreational activity includes bicycling, snowshoeing and cross-country skiing. These are activities considered recreational, but the statute excludes them. We ask that the statute include those activities in the definition.

We also want to create a provision allowing for cost and fee recovery by a prevailing landowner should the landowner get sued because somebody rides across the property on a dirt road, falls down and gets hurt. This creates a threshold to prevent frivolous lawsuits.

We would like to provide protections for nonprofit trailbuilding groups like ourselves. We are all volunteers, and the exposure is too great. Liability insurance is prohibitively expensive for nonprofit organizations; it is not feasible for us to address exposure simply through insurance.

Ms. SHOSTECK:

We have presented proposed amendments ([Exhibit F](#)). The first two respond to initial discussions with the Nevada Trial Lawyers Association (NTLA). They had concerns regarding the breadth of language as initially drafted. The first amendment to section 1, subsection 2, paragraph (b) deletes, "or any employee

of, volunteer for, or other person performing services on behalf of, the trailbuilding organization." We are looking for liability for the organization itself.

The second amendment cleans up the definition of a recreational trail. There was concern the term "any adjacent support parcel" was too inclusive. We narrowed that down to "a pathway or roadway, including a trailhead or access point, used for a recreational activity."

The final amendment clarifies the definition of "Trailbuilding organization." The original language states an "organization whose sole mission is to design, construct, maintain or improve a recreational trail." We want to remove the word "sole" because we heard from a lot of trailbuilding organizations that this is one thing they do but not the only thing. They should not be punished because trailbuilding is not the only thing they do.

We are working with NTLA to reach mutually acceptable language. The problem is that these trails will go unbuilt and people will not have recreational access if a fear of liability continues. Everybody feels hamstrung in moving forward because of liability. I understand trial lawyers feel the existing recreational use statute is adequately protective. In our experience, that is not true. The goals of completing trails are not achieved because of these impediments.

The NTLA sees insurance as part of the solution. The onus should not be on a private landowner—who chooses to open up their property for recreational purposes—to find a policy covering the exposure and pay the associative premiums. If that is the case, there is no incentive to private landowners to open their property, and we are stuck in the same situation.

Concurrent legislation, S.B. 195, deals with trails as proposed by Douglas County. We are working with them on compatible language between the two bills.

SENATE BILL 195: Enacts provisions governing the operation and use of a recreation area. (BDR 40-492)

MATTHEW L. SHARP (Nevada Trial Lawyers Association):

I speak in opposition to S.B. 132. We do not oppose the concept; our members and clients want access to recreational activities. Conceptually, this Committee

makes decisions regarding the manner liability protection is extended, and if extended, whether it is in a prudent and thoughtful manner.

There are two basic issues. The first deals with landowners. Landowners already have the protection S.B. 132 proposes; if anything, the bill takes away some of that protection. I am not aware of an instance where anybody has been sued under this statute. The statute provides a limited exception to suing landowners who provide access for recreational activities if their conduct arises to willful and malicious which, in everyday wording, is almost intentional. I am not saying it is not out there, but I am not aware of it. I have talked to my colleagues; the way we read the statute, the owners granting easements are already protected. I am curious to hear why landowners think they are not protected.

The primary thrust of S.B. 132, in terms of changes to Nevada law, is whether a trailbuilding organization gets immunity from liability, and that is a fair debate. Contractors hired for pay by the trailbuilding organization should not get protection, and we are working on language to address that issue. We have to consider, as we build these recreational activities and trailheads, they only work to the extent safety is provided people who use them. With responsibility comes safety. Limited liability has a direct correlation to safety. One example to consider is somebody who rides down a recreational trail, comes off a blind turn and confronts a backhoe in the middle of the blind turn left by the trailbuilding organization. The person hits it and ends up with serious injuries. Where is their recourse?

I am not saying we should stop the trailbuilding organizations. We are willing to listen and provide them liability protection, but it has to be done in a thoughtful and prudent manner. Regarding section 3 and the attorney fee provision, I hear a lot about the fear of frivolous lawsuits in my duties here at the Legislature. This Committee, in particular, previously dealt with that and changed the attorney pay statute. In frivolous lawsuit, the court shall award attorney fees, against the party bringing the suit and the attorney. The attorney should be responsible. That provision within statute is not necessary; it has already been dealt with on a global basis.

CHAIR AMODEI:

You said you had two issues. One was to separate out the organization; you were focusing on the organization, did I hear you right?

MR. SHARP:

That is correct. Previous comments said the bill is necessary to protect landowners. Landowners already get protection under existing statute. I am not aware of an instance under this statute where you would sue the landowner. If you parsed the words from this bill, you might even expand the liability. Owners are adequately protected under existing law.

CHAIR AMODEI:

That existing law references chapter 41 of NRS?

MR. SHARP:

It is NRS 41.510; the primary thrust of S.B. 132 extends immunity to the trailbuilding organization.

SENATOR CARE:

What maintenance is required? Are there bridges or culverts to maintain? We are talking about something a mountain biker finds appealing but is basically just terra firma, up and down, and not the convoluted maintenance we might see with an intercity trail.

MR. SHARP:

From proponents of the bill, you are correct, but the language of the bill extends to other trailbuilding organizations. The word "maintains" concerns me as to the asphalt situation or the description in my example.

MS. SHOSTECK:

Our organization makes mostly existing dirt roadways into accessible public pathways which are distinguishable from something existing in a city. The Committee should note we are not looking at major improvements; we are looking at creating access.

What we seek in this bill is not unprecedented. Every state has a recreational use statute. Many have more specific provisions than those existing in Nevada. The attorney fees provision creating protections exists in Maine, Colorado and California. Mr. Sharp said he had not heard of any landowners being sued; this is because a lot of landowners do not open their property in the first place. We are at a standstill in terms of access.

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SENATOR WIENER:

Of the 116 miles of trails, how much does legislation address? How much of it represents the questionable landowner who seeks more protection before giving permission?

Ms. SHOSTECK:

If you look back at the map in [Exhibit E](#) on the remaining sections, the primary trails use existing dirt roads. Sections that already exist are by Tahoe, between Tahoe City and Truckee, what goes through Reno and Sparks, and the trail on the Pyramid Lake Paiute Reservation.

SENATOR WIENER:

Are we looking at the red sections on the map?

Ms. SHOSTECK:

It is the 27 miles from Sparks to Fernley, which is the primary section.

SENATOR WIENER:

There is a little piece from Truckee to Verdi.

Ms. SHOSTECK:

That section is predominately in California.

SENATOR WIENER:

Are they doing something parallel in California to seek protection from liability?

Ms. SHOSTECK:

California has a fund for paying defense costs. They have a recreational use statute similar to ours. They differentiate between paved and dirt trails.

SENATOR WIENER:

Since we only have jurisdiction over the one red piece, is there still a question about what happens with the other red piece in another state?

Ms. SHOSTECK:

This bill mainly affects the red piece east of Sparks, at least for our project.

SENATOR WIENER:

What is gleaning?

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MS. SHOSTECK:
I do not know.

CHAIR AMODEI:
Mr. Wilkinson, the word "gleaning" is in the statute.

MR. WILKINSON (Chief Deputy Legislative Counsel):
I am not sure that is a legal question, but it is the collection of leftover crops from farmers' fields after mechanical harvesting or on fields not economically profitable to harvest.

CHAIR AMODEI:
Ms. Sandstedt, your statement will be part of the record as [Exhibit E](#). Have you seen the proposed amendment?

CARRIE C. SANDSTEDT (State Director, Nevada Responsible Trails Alliance):
No, I just heard of it today.

CHAIR AMODEI:
The proposed amendment says recreational trail means "a pathway or roadway, including a trailhead or access point, used for a recreational activity." It strikes "linear corridor and any adjacent support parcel on land or water providing public access," which is in accordance with your concerns.

MS. SANDSTEDT:
We support S.B. 132 with amendments ([Exhibit G](#)). The proposed definitions still seem too broad and could define almost anything as a trail. We would like the bill to specifically say a trail must be approved by a legal authority. Tens of thousands of miles of trails in Nevada have been illegally created or are unauthorized. We do not want to see undesignated trails automatically created as trails under this definition.

CHAIR AMODEI:
Did you have a concern that a trailbuilding organization not be responsible for safety?

MS. SANDSTEDT:
It is not good public policy to not maintain a trail. You do not build a highway without maintenance. Legally constructed trails should be maintained. We do

not want to see them degraded and possibly become hazardous and harmful for use by the public or negatively impact owners, wildlife habitat, sensitive lands or waterways.

NICOLAS ANTHONY (City of Reno):

I go on the record in support of S.B. 132. The City of Reno is adopting our Open Space and Greenways Plan, and the Tahoe-Pyramid Bikeway project squarely fits within that definition.

SANTANA GARCIA (City of Henderson):

I want to go on the record in support for S.B. 132. The City of Henderson is working with Clark County and the Regional Transportation Commission to build a regional trail, and this bill covers it.

SENATOR CARE:

I disclose that Ms. Shosteck is with the firm McDonald Carano Wilson as am I. My disclosure is on file with the Legislative Counsel Bureau, but anytime somebody from the firm testifies, I make that disclosure.

CHAIR AMODEI:

We close the hearing on S.B. 132. With respect to S.B. 30, which was the Washoe County Sheriff's bill dealing with the operational capacity issue, Senator Washington made a motion for indefinite postponement, and Senator Horsford seconded the motion. The vote was 4 to 3 in favor of the motion. Do you want to propose a motion today?

SENATE BILL 30: Revises the provisions governing the early release of prisoners from county or city jails to relieve overcrowding. (BDR 16-362)

SENATOR WASHINGTON:

Yes, I wish to rescind my actions from yesterday on S.B. 30.

SENATOR WASHINGTON MOVED TO RESCIND THE PREVIOUS ACTION
TAKEN ON S.B. 30.

SENATOR MCGINNESS SECONDED THE MOTION.

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CHAIR AMODEI:

If this is rescinded, it is my intent to put the bill back on the next work session for discussion.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR AMODEI:

There being no further business to come before the Committee, we are adjourned at 10:47 a.m.

RESPECTFULLY SUBMITTED:

Lora Nay,
Committee Secretary

APPROVED BY:

Senator Mark E. Amodei, Chair

DATE: _____