

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION AND HOMELAND SECURITY**

**Seventy-fourth Session
March 6, 2007**

The Senate Committee on Transportation and Homeland Security was called to order by Chair Dennis Nolan at 3:30 p.m. on Tuesday, March 6, 2007, in Room 2149 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 Dennis Nolan, Chair
Senator Joseph J. Heck, Vice Chair
Senator Maurice E. Washington
Senator Maggie Carlton
Senator Joyce Woodhouse

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei (Excused)
Senator John J. Lee (Excused)

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7
Assemblyman John Ocegura, Assembly District No. 16

STAFF MEMBERS PRESENT:

Elana Graham, Assistant to Committee Manager
Lynette M. Johnson, Committee Secretary
Dan Lindholm, Intern to Senator Nolan
Nicholas Marquart, Intern to Senator Nolan
Matt Szudajski, Committee Policy Analyst
Sharon Wilkinson, Committee Counsel
Carolyn Allfree, Committee Secretary

OTHERS PRESENT:

Joseph Guild, III, Union Pacific Railroad
Joseph R. Bateman, Union Pacific Railroad
Charles Cerocke, Chief, Intermodal Division, Nevada Department of Transportation
Jacob Snow, General Manager, Regional Transportation Commission of Southern Nevada
Heather Fisher, Nevada Scenic Byways Coalition
Orion Fisher
Gregory Billingsley
Robert Matthews
Jared Fisher
Paul Enos, Nevada Motor Transport Association
Donovan Hansen, Battalion Chief, North Las Vegas Fire Department
Kimberly McDonald, City of North Las Vegas
Mike Scalzi, Labor Relations Manager, City of North Las Vegas
Al H. Gillespie, Fire Chief, North Las Vegas Fire Department
Joshua Martinez, Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association
Rusty McAllister, Professional Firefighters of Nevada
Stephen J. Dahl, Justice of the Peace, North Las Vegas Township Justice Court, Department 1, Clark County
Kevin Higgins, Justice of the Peace, Sparks Justice Court, Department 2, Washoe County; Nevada Judges Association
Laurel A. Stadler, Mothers Against Drunk Driving, Lyon County Chapter

CHAIR NOLAN:

We will start with a presentation on behalf of the Union Pacific Railroad.

JOSEPH GUILD, III (Union Pacific Railroad):

With me is Joseph R. Bateman, Senior Assistant Vice President for Government Affairs for the Union Pacific Railroad. Mr. Bateman will provide a pertinent, timely presentation to the Committee ([Exhibit C](#), original is on file in the Research Library).

JOSEPH R. BATEMAN (Union Pacific Railroad):

There are huge changes in our industry now and it is incumbent upon us to communicate that to the officials with whom we work across the system. This

is a diverse industry. We have over 600 railroads, most of which are small. We have 180,000 miles of track in the United States. The majority of railroads are freight railroads. They are tax-paying, for-profit operations owned in the private sector, in contrast to most places in the world where the industry is either partially owned or wholly owned by the national government. Our aggregate annual freight revenue is approximately \$55 billion.

MR. BATEMAN:

Coal was our largest commodity nationwide, but it has now been supplanted by intermodal business, trailers on flatcars. Manufacturing is a huge business for us. Coal is next.

Generally, we own and operate the track. Access to the track is voluntary and negotiated voluntarily. Historically, we have had low, or no, government funding. There is now some government funding for the short line industry. Freight and passenger service is separate.

There has been an effort for approximately 20 years to increase regulation on railroads. We were partially deregulated in the 1980s. People get the impression we are not regulated, but we still have lots of regulation. Currently being adjudicated at the Surface Transportation Board (STB) are small and medium rate cases. We will try to get that solved this year. It is difficult for a small shipper to afford protesting a rate. We are trying to provide better access to the STB for the smaller shippers.

We are regulated for safety by the Federal Railroad Administration and the U.S. Department of Homeland Security. Now, in response to concerns about security, we are in the process of changing how we handle materials which are toxic by inhalation.

In 1980, before partial economic deregulation, the industry was on a downward spiral, and much of the industry was in bankruptcy. We met as an industry and set rates and the highest-cost railroad won the day; rates started spiraling upward and our business was spiraling down. When we were deregulated during the President Carter Administration, things changed drastically. We were able to make contracts, change our rates and introduce productivity advances.

Since that time, we have had big increases in our productivity, huge safety gains, increased technology and growth of the non-Class I carriers. We are

much closer, now, to being financially viable. The chart, [Exhibit C](#), page 6, demonstrates what has happened since 1964. From 1964 to 1980, the industry was flat. We took off after 1980, when we were deregulated. Productivity increased 167 percent, volume went up 86 percent, revenues went down 21 percent and prices decreased 57 percent. It was a good thing, because with the volume we were able to grow our business.

MR. BATEMAN:

About five years ago, the highway transportation officials conducted a study concerning the infrastructure for the highways and where the railroad industry was going. They determined that increased investment in the railroads would help take pressure off congestion on the highways. Increase in the price of fuel has been an advantage to the railroad industry because we are so fuel-efficient. Grain-export markets have been an advantage to us. Increase in the gross domestic product has been an advantage. Trade with the Far East has been a boon to the industry. Coal has taken off because of the increase in the price of natural gas. Highway congestion has made it tough for truckers and many people have come back to the railroad option for shipping their goods.

As a result, we are reaching capacity for the first time since about World War II. From 1980 to 2005, traffic density was up 216 percent, on average. We have been aggressively hiring; we have had aggressive infrastructure investments; we have changed our operating plans to be more efficient; and we have more cooperative alliances with other railroads. We are working with our customers to load cars seven days a week, instead of five. We are experimenting with added traffic-control systems to move more trains through the same corridors. The railroad industry consistently puts 17.8 percent of its revenues back into the industry. The average for manufacturing is only 3.5 percent.

I have given you some specific data on Nevada, [Exhibit C](#), pages 12-19. We support the coal and chemical businesses, aggregates, lumber and consumer goods industries in Nevada. We have 1,200 miles of track and almost 1 million carloads and 44 million tons of freight each year. We have operations in north Reno and crew-change points in Sparks, Elko, Winnemucca and Las Vegas.

We make a big investment in Nevada. We expect to spend about \$46 million this year on our infrastructure here. We have about 1,000 employees, most

Senate Committee on Transportation and Homeland Security
March 6, 2007
Page 5

working in freight. Our average wage and compensation is about \$91,000 an employee. There are 3,462 people in the retirement system.

SENATOR CARLTON:

Are your rail employees covered under collective bargaining?

MR. BATEMAN:

Yes, most are under collective bargaining.

SENATOR CARLTON:

I appreciate that. Is it true on the freight side?

MR. BATEMAN:

Yes, about 85 percent of our employees are covered under some sort of collective-bargaining contract.

SENATOR CARLTON:

I have heard that some people are having a hard time appealing the small rate cases. Can you explain how revamping the small rate cases will help those smaller suppliers?

MR. BATEMAN:

It is our biggest problem in Washington and in talking with governors and state officials. We have disagreements with big customers all the time. People think it is just one big business against another, but a small customer is special. We have had some problems in defining a small shipper. Some of the bigger shippers say they should qualify as a small shipper when they ship just one of their commodities. So, we are fighting over the definition. However, we will get past that and come up with a way they can protest a rate without hiring an expensive attorney and an expensive accountant.

Beyond that, we have set up a committee at Union Pacific which works with the small shippers on high-density lines. We are trying to find ways to accommodate those customers. It is a small thing in terms of revenues, but a big thing to the officials with whom we work.

SENATOR CARLTON:

Are some rates being adjusted because some things being shipped are a little more dangerous, require more security or have a little more of a responsibility? Does that play into it or is it just that the trains are full?

MR. BATEMAN:

What we look at are our costs, but mostly it depends on the market for a commodity. For example, we have commodity groups that worry only about sand and gravel in Texas and how to make it competitive to move as much as possible. The value of a commodity can make it easier to charge more. We can charge more to ship a very expensive chemical, for example, because we are a smaller part of the whole transaction.

CHAIR NOLAN:

Thank you. We will now open the hearing on Senate Bill (S.B.) 128.

SENATE BILL 128: Requires the Department of Transportation to fix a reduced maximum weight limit for vehicles traveling on certain highways. (BDR 43-211)

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

Natural treasures in our State need to be identified so we can better protect and preserve them for future generations. We are fortunate to have people come to Nevada and spend time seeing the other side of the Strip and gaming and glamour. That other side involves hiking, camping and traveling throughout the scenic areas. In recognition of the important place tourism has in our State, the Legislature passed S.C.R. No. 35 of the 73rd Session, which I sponsored, to ensure the areas which are natural treasures remain accessible and viable.

A 2005-2006 interim subcommittee to study the protection of Nevada's natural treasures, which I had the privilege of chairing, provided us with an opportunity to identify natural treasures and various areas in Nevada and to look at the ways they might need special, extra protection. We took input from interested parties and fostered cooperation among all different levels of government. At many of our meetings, we received testimony that safe roads are absolutely essential to exploring the State's natural treasures. The Nevada Department of Transportation (NDOT) has identified 20 scenic byways with unique scenic, historical or cultural qualities that should be protected ([Exhibit D](#)). We are concerned that visitors and residents using these byways as commuter roads or

for business purposes are causing unsafe conditions for both the public and the environment.

To focus on one example, the one on which we had the most testimony and which had the most serious problems, I draw your attention to Red Rock Canyon and State Route 159 ([Exhibit E](#)). This is one of the most prominent natural treasures in southern Nevada. It is known internationally for opportunities for climbing and is visited every weekend by families, bicyclists, bird-watchers, hikers and people driving by to enjoy the scenery. However, this scenic byway has turned into a commuter speedway. The mix of cyclists, motorists, truckers and wildlife has proven to be dangerous for all concerned. In recent years, there have been several fatalities along the scenic road, and you often find wild horses and burros that have been struck by cars.

SENATOR TITUS:

In short, this sort of traffic-congestion mix, which is the result of growth in southern Nevada and the expansion of the urban areas, is having a negative impact on the natural treasure. This is recognized by many people in southern Nevada. We have received many e-mails and calls. I have brought copies of those in favor of this legislation to add to the record ([Exhibit F](#), original is on file in the Research Library).

We shared with the public our concern that people and the environment were at risk. That is why we requested S.B. 128. This bill is a requirement for the NDOT to fix weight limits on scenic byways. The idea was that this would be a way to eliminate some of the heavy construction vehicles, such as gravel trucks, driving on these byways where they do not belong. Since the bill was proposed, I have met with a number of people and have recognized there are some problems with it. We have come up with some possible solutions which I would like to present to you as a suggested amendment.

I have spoken with the Nevada Motor Transport Association, various utility companies and representatives of the NDOT. Some of the things in the legislation that have been brought to my attention deserve some correcting. Our amendment will allay some concerns. First, I recommend amending the bill to narrow the focus specifically to southern Nevada State Route (SR) 159. It is called the Blue Diamond Road or the Red Rock Road. Second, rather than requiring the NDOT to impose weight limits, which technically they can already do, the way to address this is to have them post signs that say, "No Through

Trucks." This will take care of the problem for the utility companies, garbage companies, delivery trucks and those trucks needing to get into the area but not using the road as a cutoff.

I am willing to support this amendment only with the assurance that the signs will be posted in a timely fashion, will be enforced by the Nevada Highway Patrol and penalties will be imposed. I would like to have that assurance on the record. The inconvenience will not be great because the NDOT has other projects in the planning stages to allow for this traffic to take other routes in the near future. It has been brought to my attention that there is money available from federal matching dollars to do upgrades along byways.

I will provide you with a copy of the proposed amendment.

CHAIR NOLAN:

Ms. Wilkinson, can you read the proposed amendment to us?

SHARON WILKINSON (Committee Counsel):

The NDOT will post signs stating "No Through Trucks" and they will be posted in a timely manner, would be enforced by the Nevada Highway Patrol and penalties would be provided. The maximum weight limits would be deleted. Federal matching dollars will be pursued.

SENATOR TITUS:

We are going to lift up the title, pull out the guts and create a new bill. First, instead of focusing on all the scenic byways, we want to focus on just SR 159. Second, rather than requiring the NDOT to impose weight limits, we want to mandate that the NDOT post signs that say "No Through Trucks." Third, if there are not penalties already available for this kind of violation, we will need to address that in this bill.

CHARLES CEROCKE (Chief, Intermodal Division, Nevada Department of Transportation):

I work at the NDOT and we would be able to put up those signs. We are working together with the Regional Transportation Commission of Southern Nevada (RTCSN). Studies are being conducted right now to look at different corridors off State Route 160 heading toward Interstate 215. Those studies should be completed within two or three months. They are called "high-speed

arterials," and we are looking at a number of alternatives. Typically, they would have less restrictive signalizations. I do not have information on fines.

CHAIR NOLAN:

Do you know how many commercial trucks that currently travel SR 159 would be affected by this?

MR. CEROCKE:

We would have to conduct an origin-and-destination study to truly determine the number of through trucks versus the number of delivery trucks. We have not done such a study for many years and all the data would be old.

SENATOR TITUS:

There is a Sheetrock plant at the end of the road, but it is outside the byway and has access to the road to Pahrump. Because widening the road to Pahrump has been so slow and the traffic backs up from Rainbow Boulevard to Interstate 15 (I-15), some of the construction trucks for the new housing, instead of going up to I-15, take the cutoff to Charleston Boulevard along the Blue Diamond Road. That is where the accidents occur. Trucks should not be on that road.

SENATOR CARLTON:

This sounds good. We have cars and bicyclists on this road. Did you say something about widening SR 159? What stage are we in? How will it be done?

MR. CEROCKE:

We are in the process of widening the shoulders on SR 159. We are interested in providing safety for the vehicles, too. Some rumble strips will be installed to allow vehicles to maintain their lane. We had a target date of last fall, but it was not completed. I would anticipate it to be done by the end of spring or early summer.

SENATOR CARLTON:

Are you talking about adding three feet to what already exists? So, there could be 3-feet to 4-feet clearance between cars going 55 miles an hour and the bicyclists?

MR. CEROCKE:

No, it will be the shoulder which will be three to four feet wide. We also did wider striping, which gives an impression to drivers of a narrower lane. They tend to slow down. We were going to let the traffic acclimate, then do another speed study. We have to allow for the acclimation.

SENATOR CARLTON:

My concern is the bicyclists being so close to the traffic and not having enough room to get away from the cars.

MR. CEROCKE:

I understand your concern. From a scenic-byway standpoint and money from the Bureau of Land Management (BLM), there are plans to have a multiuse path adjacent to the highway which would accommodate recreational bicyclists. I do not know when that might be completed.

SENATOR TITUS:

A lot has been done out there. We have widened the road, they are building a separate recreational path and the BLM has put up a fence to try to keep the horses and burros off the road. We would like to see the speed limit come down after this study is done. Taking the through trucks off will go a long way to preserving this natural treasure, preserving the environment and saving lives.

MR. CEROCKE:

We would want to do a public outreach prior to posting the signs.

SENATOR TITUS:

It is fine to have public outreach, but I do not want the notion of putting up the signs dependant on somebody's interpretation of that outreach. The agreement was that we would have the signs put up, and that would be written into the bill.

CHAIR NOLAN:

Jacob Snow, I have a question for you on the RTCN's progress with regard to the express arterials you are working on to take some of the traffic off State Route 160.

JACOB SNOW (General Manager, Regional Transportation Commission of Southern Nevada):

Over the past year, we have identified a number of alternatives on how we might be able to draw traffic away from SR 159 so it has a better, faster and safer way to navigate around the valley. Of the dozen or so alternatives studied, the one that seems to have the most support from the BLM, Clark County, neighborhood groups and the task force is an extension of Town Center Drive, at the Town Center Drive interchange with the Beltway. It would go south to about a mile from the SR 159–SR 160 interchange. The study is approximately 70 percent completed and we expect to have it wrapped up by early summer of this year. We are in the process of finalizing the options and applying our best-cost estimates to them. We went to great lengths to find the funds needed. Costs to build this facility are in the \$100 million range. We do not have an identified source of funding.

HEATHER FISHER (Nevada Scenic Byways Coalition):

I am here on behalf of the Nevada Scenic Byways Coalition. We have been working for three years to make Red Rock Canyon a safer, more serene place for visitors. We support this legislation. Two scouts are with me and they would like to express their support.

ORION FISHER:

We like to hike in Red Rock Canyon.

GREGORY BILLINGSLEY:

We want the roads to be safer.

SENATOR WASHINGTON:

I have a question for Mr. Cerocke. How do you determine the designation for a scenic route? Are there certain criteria to be met?

MR. CEROCKE:

There are intrinsic values for the designation: the scenic beauty, the historical significance, the cultural aspect.

SENATOR WASHINGTON:

Does the NDOT make the determinations based on those criteria?

MR. CEROCKE:

Interested parties typically find a sponsor and submit an application. A committee drives along the corridor and evaluates it and makes a recommendation to the director of the NDOT, who has the authority to designate.

Senator Titus:

I have a list of the intrinsic qualities considered for designation of a national scenic byway ([Exhibit G](#)).

ROBERT MATTHEWS:

I am the chair of the Red Rock Citizens Advisory Council. I live approximately a mile and one-half east of SR 159. Most of my travel is on State Route 160 to get into Las Vegas. State Route 160 is the better alternative for most of the larger trucks. I bicycle on SR 159 on occasion and hike in Red Rock Canyon. There are too many people stopping and taking pictures of the "Welcome to Red Rock" sign. They are going from 60 to 0 miles an hour in record time. I see trucks carrying heavy weights. It takes too long for them to stop. It is a dangerous situation. This proposal is good for the area.

JARED FISHER:

I am a member of the Nevada Bicycle Advisory Board, although I am not here representing them. I have been to numerous meetings over the past two and one-half years and heard testimony from cyclists and others involved with bicycle lanes and the safety of bicyclists and pedestrians. Without a doubt, giving Red Rock Canyon the recognition of what it is, a national recreation area, is important. It is important not just for the safety of cyclists and pedestrians. Runners, perhaps 100 on a Sunday afternoon, are on the road with semitrailers. Keeping big trucks off the road is vitally important.

People from all over the world have come to appreciate the beauty of the Red Rock Canyon. It is difficult to appreciate the beautiful cliffs when a truck is whizzing by at 75 miles an hour. I support this bill.

PAUL ENOS (Nevada Motor Transport Association):

We oppose S.B. 128. However, we do appreciate Senator Titus's willingness to work with the bill. We still have some concerns we hope we can address. Are we going to have restrictions on roads without having the NDOT determine whether trucks actually cause a road to be unsafe? How will we know whether

trucks are through-traffic? Are we going to stop every truck? Those are some concerns. I will address these concerns with Senator Titus in working with her on this bill.

CHAIR NOLAN:

We will close the hearing on S.B. 128 and open the hearing on Assembly Bill (A.B.) 51.

ASSEMBLY BILL 51: Revises provisions pertaining to the disclosure of certain information regarding an applicant for a position as a firefighter with a fire-fighting agency. (BDR 19-247)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):

I agreed to introduce this bill because, in my daily job, I see its importance firsthand. Assembly Bill 51 would allow firefighting agencies to request information about employment history of an applicant in the same way law-enforcement agencies are currently allowed. Former employers would be able to answer questions related to attendance, compensation, performance and any disciplinary actions taken against a former employee who applies to work for a fire department, without the fear of civil liability. It is imperative that only the best, most reliable and honest individuals be allowed to work for a fire department. Even more than police officers, firefighters are often in the homes of citizens, with unfettered access to their most valuable possessions at a vulnerable time.

MR. OCEGUERA:

Unlike the police, firefighters do not have to knock first and request permission to enter a home. When an emergency is in progress, citizens deserve to know they can trust individuals who are hired to be on the front lines.

Today, I am honored to have with me Battalion Chief Donovan Hansen. Earlier this year, Chief Hansen went to Birmingham, Alabama, and learned to do these background investigations. North Las Vegas is the second fastest-growing city in the country, and we need the ability to research people who want to be employed by us, as do all the fire-department agencies throughout the State.

DONOVAN HANSEN (Battalion Chief, North Las Vegas Fire Department):

I have provided you with a written copy of my statement ([Exhibit H](#)). The purpose of A.B. 51 is to ensure firefighting agencies can conduct thorough

background investigations on applicants while giving their previous employers immunity from civil liability when providing information about their employment history.

The North Las Vegas Fire Department takes pride in the caliber of people we hire. I have provided a handout describing our vision, our mission and our values ([Exhibit I](#)). When we ask a former employer about an applicant's employment history, we are able to determine whether the person is likely to fit with our vision, mission and values. The former employer is one of the most reliable sources for this information.

I have also provided a copy of the application packet, which includes an Online Employment Application, an Authorization to Obtain Credit Report, an Authorization for Release of Information and Waiver of Privilege and an Application Inquiry Form Requirements ([Exhibit J](#)). Each of these forms includes a waiver and signature area.

CHAIR NOLAN:

Will this apply to applicants going forward from the time of enactment or would you be subjecting people already in the department to background checks?

CHIEF HANSEN:

The checks would be from this point forward. We started conducting background investigations on all of our new hires about a year ago. We are trying to make this change to help us in that endeavor.

SENATOR HECK:

I see that the applicants sign a release. A provision in the current law says an agency is allowed to release the information to another public-safety agency, yet that is not made known to the applicant in the release. I have some concern about turning information over to another public-safety agency where the person may be an applicant. That is on page 3, line 9 of the bill. Section 1, subsection 5, says the information is confidential, but the agency may share the information.

CHIEF HANSEN:

What we are reading is current law.

CHAIR NOLAN:

Do you have criteria for things in a criminal record that may disqualify an applicant? Are the criteria standard among agencies? Would you disqualify an applicant for something for which another agency may not disqualify them? I am concerned about your handing a record to somebody who may not have the same criteria for hiring as you have.

CHIEF HANSEN:

Each department does have specific criteria. Each department holds that information close to the chest. I do not know, specifically, what the other agencies' requirements are. Something that may preclude someone from employment in our organization may not necessarily preclude them from employment in another organization.

SENATOR WASHINGTON:

At what point in the hiring process do you perform the background checks?

CHIEF HANSEN:

There are multiple steps in the hiring process. The first is usually a written examination. The background investigation comes in the middle or toward the end of the process.

SENATOR WASHINGTON:

Is the applicant notified before filling out the application and going through the hurdles that a background check may be required?

CHIEF HANSEN:

Yes, there is notification in the application process which outlines that a written examination, a physical agility test, a medical evaluation, a background investigation, a drug screening and so forth will be required.

SENATOR CARLTON:

I would like to know what your hiring process really is all about; what the different steps are. I have two concerns. We are giving weight to a previous employer's opinion and documentation on an employee, and we are not going to hold him accountable for what he says. We cannot always trust what a previous employer may say. I do not want to see a good person not make it through the process because they left on not-such-great terms.

The other thing that concerns me is the sharing of the knowledge. I know they ask an applicant whether he has ever applied for another job in public safety. If they find out you did not make it through background, they will not process your application. It is not a real blackball, but it is a de facto blackball. That bothers me, because you may not fit one public-safety arena, but you may be great in another. Sometimes, we get in such a hurry to process people that we do not look at them individually.

CHIEF HANSEN:

The background check is a step in a multiple-stage process. We do interview the previous employers and gather information about the candidates, but that is not the end of the process. We sit down with the candidate who has completed a personal-history questionnaire. They get to tell their side of the story. We do not take something negative we hear from a previous employer as gospel.

SENATOR CARLTON:

I would like to know the entire process you go through. How do you sift through 1,000 candidates? Are they required to take a polygraph test? Do you consider arrests versus convictions? What does the criminal-history check consist of? Is it regional or the entire scope, including a Federal Bureau of Investigation check?

SENATOR HECK:

Do you give a conditional job offer before you get into your background medical check?

CHIEF HANSEN:

A job offer is not extended until successful completion of all those steps, including medical.

SENATOR HECK:

You had better get off-line on that one, because there are a couple of federal laws regarding medical-background checks.

KIMBERLY McDONALD (City of North Las Vegas):

We wholeheartedly support this measure. It will ensure that our firefighting agency, as well as others, chooses the best and the brightest. As our Battalion Chief stated, we entrust these men and women to go into homes. We want those of the utmost character.

MIKE SCALZI (Labor Relations Manager, City of North Las Vegas):

As a representative of the human resources team for the city, I would like to go on record in support of A.B. 51. In human resources, we are responsible for recruiting and selecting qualified and competent individuals. Those city employees who respond to emergencies at a resident's home in a time of crisis must be beyond reproach. A process ensuring that will be of great benefit to the city and to its residents.

AL H. GILLESPIE (Fire Chief, North Las Vegas Fire Department):

I am President of the Nevada Fire Chiefs Association. I have provided you with a printed copy of my prepared statement ([Exhibit K](#)).

I want to be sure you understand that this process is already in place and available for the other half of public safety, our police agencies. This is an opportunity we need. By supporting A.B. 51, you will assist us in ensuring that the respect and trust the public places in members of the fire service will be earned and deserved. I would like to point out that, as we go through this process and narrow the number of candidates and get to the point of making conditional job offers, we do the background checks. Background checks do not happen for the majority of the applicants but only to the people who are successful through the process.

JOSHUA MARTINEZ (Las Vegas Metropolitan Police Department; Nevada Sheriffs' and Chiefs' Association):

We support A.B. 51. It will give the fire agencies within the State of Nevada the ability to conduct a thorough investigation, which is necessary in the public-safety realm in which we operate.

RUSTY MCALLISTER (Professional Firefighters of Nevada):

We stand in support of this legislation. These are the people with whom we work and live every day, 24 hours a day. One-third of our lives is spent with the people with whom we work in the fire station. The City of North Las Vegas, Las Vegas and Boulder City have been conducting fire-department tests together as a cost-saving mechanism. We typically have approximately 3,000 people come to take the test initially. They take a written test first. It is a pass-or-fail examination. If they pass, they move on to the next level, which is a physical-agility examination. Then, they are scheduled for an oral examination, at which time a background check is commenced.

A list is made of the 400 or 500 candidates who have been successful to this point with scores of 90 percent or higher. These candidates submit to a secondary examination after the background investigation has been completed and they have an opportunity to address anything that came up in the background check.

SENATOR CARLTON:

Do you now, or plan to in the future, issue a polygraph test as a condition of employment? Law enforcement is doing it now, and I am opposed to it.

RUSTY McALLISTER:

I do not know what the policies are for the local governments. We do not require polygraph testing. Not only do we have a fire-department background examination, but there is a background examination through the Las Vegas Metropolitan Police Department on each of the candidates. It does not include a polygraph examination, to my knowledge.

SENATOR CARLTON:

How many vacancies do you have?

RUSTY McALLISTER:

We are all trying to expand. Last year, the City of Las Vegas hired 16 firefighters and 11 firefighter paramedics. North Las Vegas hired 28 new people in the last year. Out of approximately 3,000 people, we hire approximately 50.

SENATOR CARLTON:

I will do some homework on this. When I read that they want to do the same thing as law enforcement, some red flags go up.

SENATOR WOODHOUSE:

I applaud you for the one-on-one interview you conduct, giving applicants the opportunity to address negative reports.

CHAIR NOLAN:

We will close the hearing on A.B. 51 and open the hearing on S.B. 41.

SENATE BILL 41: Revises provisions governing an ignition interlock device upon conviction for driving under the influence of intoxicating liquor or a controlled substance. (BDR 43-267)

STEPHEN J. DAHL (Justice of the Peace, North Las Vegas Township Justice Court, Department 1, Clark County):

I am the President of the Nevada Judges Association and a Justice of the Peace in North Las Vegas. I am here in favor of S.B. 41 which would change the mandatory language involving the use of ignition interlock devices in convictions for driving under the influence (DUI) to discretionary, changing it to "may" instead of "must." The main reason for this is that other options are available to the courts. The end of last Session, interlock was put into the law as a "must." That makes the interlock the one and only device available to use, and it must be used before any other method.

Other things are available. The technology and options are growing. Southern Nevada is experimenting with something called a Secure Continuous Remote Alcohol Monitor (SCRAM), which is a bracelet or anklet worn to monitor alcohol use 24 hours a day. Patches are being developed that monitor alcohol use. Special programs are being developed. We do not want to eliminate interlock as a possibility, but we do not want it to be the primary and only thing we might consider.

KEVIN HIGGINS (Justice of the Peace, Sparks Justice Court, Department 2, Washoe County; Nevada Judges Association):

I am a Justice of the Peace in Sparks and also here on behalf of the Nevada Judges Association. I was a judge who used interlocks before they were mandatory. It was appropriate to make sure people who are serial drunk drivers are dealt with. However, it is not a one-size-fits-all issue. We need to discuss the pragmatics of the situation. Only one provider, located in Reno, provides interlocks for the entire State of Nevada. The only other option for people in southern Nevada is a company in Nebraska.

The interlock is a computer device installed in a car. A driver must blow into it to start the car and periodically when he is driving down the road. If you have any alcohol in your system it will stop your car. I have been using this in my court for four years and I have never had the interlock provider report to me that anybody was drinking and driving. It is an issue we will have to explore.

Nobody in Clark County or in rural Nevada has access to this device. There are other options. The SCRAM unit is one. In Carson City and Washoe County, we have alternative sentencing divisions and small-misdemeanor probation agents who can administer breath tests.

At the end of the day, what the interlock does is keep honest people honest. I had a man in his early 60s the other day who has not had a driver's license since he was 17. He has had multiple arrests for DUI and driving without a driver's license. Telling him that he has to have an interlock installed before he can get his driver's license back is futile. Recalcitrant drivers will not comply. The SCRAM unit would be more appropriate.

The interlock is expensive. It is \$100 a month and could run to several thousand dollars over the course of a 3-year monitoring period. For the most part, the people who appear on these charges are not financially capable of paying all the fines. The harder we make it for them to comply, the less likely it is that they will comply. They are going to walk out of the courthouse and say, "There is no way I can pay for all of this. I have to support my family." We drive them to be people who are not monitored. Any judge will tell you discretion is a good thing.

JUDGE DAHL:

Judges like to follow the law. The Legislature has told the judges they must do something. We do not have an effective mechanism to do it. It is frustrating. We do not have the product, we do not install it. We tell people to do it, and they cannot.

SENATOR CARLTON:

Tell me why we are deleting the language with the hardship clause.

JUDGE DAHL:

The law says you must require the interlock unless you find the hardship situations. If the interlock is not required, you do not need the hardship language.

SENATOR CARLTON:

Will the hardship carry any weight at all anymore?

JUDGE DAHL:

Constitutionally, hardship is always an issue. In the end, the only super-enforcement mechanism we have is throwing someone in jail. You cannot put people in jail because they were too poor to comply with any requirement.

SENATOR CARLTON:

I will disagree with you. They do it on parole and probation violations all the time when fees are not paid.

JUDGE DAHL:

The lower courts do not throw people in jail when they do not have the money. If we had the patch that monitors alcohol, which is about \$1 a day, it would have a much different impact on hardship. You might just order them to have counseling and go for drug testing two or three times a week. The thing that has us hamstrung right now is, before we can consider options, by statute we have to order interlock.

SENATOR CARLTON:

I have voted against interlock for the reasons you just expressed. I did not like being locked into one particular way of dealing with this issue. But, I am afraid the hardship part will go by the wayside.

JUDGE DAHL:

We consider hardship in everything we do. We excuse fines, and they do community service instead.

SENATOR WASHINGTON:

I appreciate the option. I am not an advocate for fines because I know it can be a hardship. A lot of people will give up and go to jail. I appreciate the alternative. It makes sense. Those individuals can still at least go to their jobs, still participate in society.

JUDGE HIGGINS:

The interlock is a good option in appropriate circumstances. In other circumstances, you are piling so much on people they cannot comply. We end up with scofflaws who are never going to be licensed or insured again. When they drive drunk, people are worse off than they were before.

SENATOR WASHINGTON:

Judges, using discretion, can make a better determination concerning the fate of an individual. You should have those options available.

CHAIR NOLAN:

I appreciate the discussion we have had. You have had to live under this section of statute and you are coming to us with realities of what we have done. Sometimes our intent is different from what is practical.

LAUREL A. STADLER (Mothers Against Drunk Driving, Lyon County Chapter):

Several months ago, Mothers Against Drunk Driving, on a national level, began a campaign to eliminate drunk driving because it is a 100-percent preventable crime. One of the components of that campaign is technology, namely, the interlock.

The interlocks have had a lot of success across the country. One of the exemplary states is New Mexico. New Mexico is similar to Nevada in that it has a couple of central areas of population and the rest is rural. New Mexico has mandatory interlock for all DUI offenders. More than 11,000 devices have been installed. Apparently, the interlock devices are available and vendors will come into a state and be available if a law is in place and is used for the majority of DUI offenders.

Our campaign to eliminate drunk driving takes a multidisciplinary approach. We have supported treatment for offenders, education and many different avenues to try to solve this problem of drunk driving. The interlock is another tool to be used. Someone who drives drunk makes a decision to drink, then makes the decision to drive. If the decision to drive is taken out of their hands by having the interlock on the car, those people with the interlocks will not be driving drunk. They will not be causing crashes and will not be creating victims.

The cost of the interlock in New Mexico is \$70 to install and \$70 a month for service, rental and recalibration. It is not exorbitant to have these in place when the proper channels are established. I would be happy to work with the judges and the judges' association to find out why we have an availability problem in Nevada. It has come to our attention that there is a problem in getting the interlocks to the offenders. Rather than dump the interlock, I would like to help in solving the problem of availability. Mothers Against Drunk Driving is opposed to this bill.

CHAIR NOLAN:

I recall the debate on this and, clearly, the Legislators of both Houses were responding to the public outcry against drunk driving. Judges are the second line of defense behind law enforcement. You have identified that we have a problem and it is not working the way it was intended. If not interlock, then what will ensure that a drunk driver does not get behind the wheel? That is what we will have to work on.

JUDGE DAHL:

We have discussed possible language. Instead of saying "must impose interlock," it would say something like "shall impose a monitoring device or monitoring program designed to determine alcohol use." I am concerned. It seems as if interlock has become the Bible. Before I was a judge, I was a public defender. I know how these people think. If a lock is put on their car, they will drive someone else's car. They will not let a device stop them. I am not advocating throwing interlock out the window. Broader language which says the court shall impose something to monitor alcohol consumption would be appropriate.

CHAIR NOLAN:

I appreciate your references to what people will or will not do. But the interlock certainly does make it inconvenient for them, nonetheless. I would like to see some strong language that says, if not interlock, something else that will work.

Senate Committee on Transportation and Homeland Security
March 6, 2007
Page 24

We will close the hearing on S.B. 41. There being no further business, the meeting of the Senate Committee on Transportation and Homeland Security is adjourned at 5:28 p.m.

RESPECTFULLY SUBMITTED:

Carolyn Allfree,
Committee Secretary

APPROVED BY:

Senator Dennis Nolan, Chair

DATE: _____