

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

**Seventy-fourth Session
April 12, 2007**

The Senate Committee on Transportation and Homeland Security was called to order by Chair Dennis Nolan at 2:41 p.m. on Thursday, April 12, 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 Mark E. Amodei
Senator Maggie Carlton
Senator John J. Lee
Senator Joyce Woodhouse

STAFF MEMBERS PRESENT:

Jason Funk, Intern to Senator Heck
Wes Henderson, Intern to Senator Nolan
Nicholas Marquart, Intern to Senator Nolan
Matthew Prichard, Intern to Senator Carlton
Josh Selleck, Assistant to Senator Nolan
Matt Szudajski, Committee Policy Analyst
Sharon Wilkinson, Committee Counsel
Lynette M. Johnson, Committee Secretary

OTHERS PRESENT:

Ray Flynn, Las Vegas Metropolitan Police Department
Frank Adams, Nevada Sheriffs' and Chiefs' Association
Cotter C. Conway, Washoe County Public Defender

Senate Committee on Transportation and Homeland Security
April 12, 2007
Page 2

CHAIR NOLAN:

We have scheduled a work session ([Exhibit C](#), original is on file in the Research Library) for today and will begin with Senate Bill (S.B.) 241.

SENATE BILL 241: Waives certain license plate, title and registration fees for a hybrid vehicle in certain circumstances. (BDR 43-780)

MATT SZUDAJSKI (Committee Policy Analyst, Research Division, Legislative Counsel Bureau):

Senate Bill 241 exempts the purchaser or long-term lessee of a hybrid vehicle from the initial license plate, title and registration fees charged by the Department of Motor Vehicles (DMV). There are no proposed amendments for this bill.

CHAIR NOLAN:

We heard this in a previous work session in which no action was taken by the Committee. The sponsor of the bill, Senator Titus, asked that we consider referring it to the Senate Committee on Finance.

SENATOR CARLTON MOVED TO REREFER S.B. 241 WITHOUT RECOMMENDATION TO THE SENATE COMMITTEE ON FINANCE.

SENATOR WOODHOUSE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR AMODEI WAS ABSENT FOR THE VOTE.)

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CHAIR NOLAN:

We will discuss S.B. 451.

SENATE BILL 451: Requires the preparation and filing of certain reports by certain charitable organizations in connection with certain special license plates. (BDR 43-860)

MR. SZUDAJSKI:

The Committee heard this bill on April 3, 2007, and decided on several amendments. The Committee will review the amended version of the bill.

Any charitable organization receiving revenue from a special license plate must prepare a balance sheet or engage the services of a certified public accountant to audit its records each fiscal year for submission to the Legislative Counsel Bureau's (LCB) Audit Division. The certified public accountant audit requirement is for organizations whose revenue is \$50,000 or more. This was a point the Committee focused on during the hearing and was deleted in the amendment. As amended, all charitable organizations would be required to submit a balance sheet provided by the LCB auditor. An LCB auditor will review the financial submissions. After reviewing those submissions, the LCB auditor will prepare a report and forward it to the Commission on Special License Plates (Commission). If the Commission determines there were improper financial practices or that the financial information was not properly submitted, the Commission may suspend the fees and production of the special license plate after holding a hearing. Please refer to your work session documents for additional amendments.

CHAIR NOLAN:

These amendments were based on the Committee's recommendations. Mr. Szudajski, did the Committee previously take a motion on this bill?

MR. SZUDAJSKI:

We did not take a motion on S.B. 451. We advised Ms. Wilkinson, Committee Counsel, to draft an amendment for the Committee's review.

CHAIR NOLAN:

To my knowledge, this amendment includes everything we discussed.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 451 WITH AMENDMENT NO. 160.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR AMODEI WAS ABSENT FOR THE VOTE.)

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CHAIR NOLAN:

We will discuss S.B. 452.

Senate Committee on Transportation and Homeland Security
April 12, 2007
Page 4

SENATE BILL 452: Makes various changes to provisions governing the regulation of motor vehicle manufacturers, dealers, distributors, brokers, rebuilders and lessors. (BDR 43-644)

MR. SZUDAJSKI:

This bill was heard on April 3, 2007. Please refer to the extensive summary in the work session packet. We have received two proposed amendments for S.B. 452 and I am available for questions.

CHAIR NOLAN:

We received the amendment the DMV proposed during the hearing on this bill. The second amendment is from a concerned citizen, Mr. Howry.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED S.B. 452 WITH THE AMENDMENT AS PROPOSED BY THE DEPARTMENT OF MOTOR VEHICLES.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR AMODEI WAS ABSENT FOR THE VOTE.)

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CHAIR NOLAN:

The Committee will review S.B. 207.

SENATE BILL 207: Makes various changes to provisions concerning bicycle safety. (BDR 43-130)

MR. SZUDAJSKI:

This bill requires the Department of Public Safety to designate standards for bicycle helmets and makes it illegal for a parent or legal guardian to knowingly allow a child to ride a bicycle without a helmet. There are no proposed amendments for S.B. 207.

CHAIR NOLAN:

I am a cosponsor on this bill and think it is important for children to wear helmets when riding bicycles. The Committee members echoed my sentiments.

Most of the discussions lead to parental involvement and supervision over their children. However, the numbers regarding head injuries to children riding bicycles without helmets were compelling. The objections to this bill were how to enforce and ensure compliance and law enforcement's role for children riding bicycles without helmets. I am sympathetic to both sides of this argument. If the Committee has a motion, I would support it. No Committee member has made a motion; therefore, we are not taking any action on this bill.

We will process the next bill, S.B. 236.

SENATE BILL 236: Requires vehicles transporting certain materials to cover those materials with a tarp. (BDR 43-926)

MR. SZUDAJSKI:

This bill requires any person operating a vehicle with a load of loose material to cover the load with a tarp or other device. There are no proposed amendments for S.B. 236.

CHAIR NOLAN:

As I recall, there was extensive testimony on this bill. Senator Heck chaired the discussion on this bill.

SENATOR HECK:

This bill was brought forward by Senator McGinness in response to a constituent request. We heard compelling testimony from those primarily affected, especially with regard to the cost to retrofit vehicles for tarping systems. For some companies, the cost would exceed \$1 million. The option of using standard canvas tarps to cover the load would pose a safety risk to the public as well as employees. Testimony established that the debris kicked up came off of the bumper or from the tires and not from the actual load.

CHAIR NOLAN:

Is there additional discussion or would a Committee member like to take action on S.B. 236? After hearing none, the Committee will take no action on the bill.

The Committee will proceed with S.B. 286.

SENATE BILL 286: Authorizes teachers who hold permits to carry concealed firearms and who have completed a specified program of firearm training to carry concealed firearms on school grounds under certain circumstances. (BDR 19-1018)

MR. SZUDAJSKI:

Senate Bill 286 allows a teacher to carry a concealed firearm while on the property of a private or public school if the teacher has a permit and has successfully completed a course in firearm training. The Committee has two proposed amendments, one from the Nevada Sheriffs' and Chiefs' Association (Association) and the second from the Committee.

CHAIR NOLAN:

The testimony brought to light and caused us all to pause regarding the level of security in our public school systems. Large school districts have an armed officer on duty at the high schools or are at least patrolled; however, smaller school districts do not have this level of protection. Elementary and middle schools are patrolled by officers that are not regularly stationed at those schools. The bill's author voiced concern because of incidents that have happened around the nation. Policies do not appear to be in place other than to shelter in place. In these situations, that is not always practical or the best course of action. It was a sobering discussion. The Committee amendment provides one potential solution by allowing school districts to use reserve police officers who have undergone the appropriate training. The bill's author has conceded that if the bill is not processed in its original form, and he did not have an amendment to offer, then he would like to see the bill die. If this Committee decides that the proposed amendments are sufficient, then we can pursue that path. We can also choose to take no action on the bill.

SENATOR CARLTON:

Did I hear you correctly that the bill's sponsor wants the bill in its original form or not at all?

CHAIR NOLAN:

Yes, that is what he indicated to me.

SENATOR CARLTON:

My biggest concern was the discussion about the teacher being confused for the criminal. I am curious about the proposed amendment from the Association. Are reserve officers prohibited from volunteering their time in a school?

RAY FLYNN (Las Vegas Metropolitan Police Department):

Our agency has guidelines regarding the places that reserve officers can operate. If the reserve officer is working for the law enforcement agency itself, they would need permission to work elsewhere.

SENATOR CARLTON:

Would they need statutory authority for that?

MR. FLYNN:

Statutory authority is provided as long as they are a reserve officer in that jurisdiction.

CHAIR NOLAN:

I will have Senator Heck talk about an image on his computer screen.

SENATOR HECK:

I applaud Senator Beers for bringing forward this controversial topic. In the 1990s, there were nine significant school shootings. The one most people are familiar with occurred on April 20, 1999, in Littleton, Colorado, where 12 people were killed and 20 people were wounded. A year earlier, there was a school shooting in Springfield, Oregon, that left 4 people dead and more than 20 wounded. Through the 1990s it was terrible. In 2004, the Beslan Massacre occurred. That incident had law enforcement thinking twice about school violence. The list goes on and on. Unfortunately, this is something not out of the ordinary, and I recognize the concerns that were expressed during the hearing. I have to go back to Senator Beers' position in that what we are proposing is actually more restrictive than current law. The school principal can allow a teacher to carry a firearm to school. We are moving towards site-based management; therefore, that decision is probably better left to the principal. Do we have reserve officers in the Las Vegas Metropolitan Police Department (Metro)?

MR. FLYNN:

We no longer have reserve officers because people did not want to go through the extensive training.

SENATOR HECK:

Based on that, the option of having reserve officers is not going to help the schools in Clark County. Therefore, I would defer to the bill's sponsor because we are actually making it more restrictive versus less restrictive than current law.

FRANK ADAMS (Nevada Sheriffs' and Chiefs' Association):

Metro does not have a reserve program; however, the cities of Henderson, North Las Vegas, and Boulder City do have reserve programs. There are many agencies that depend on their reserve officers. The reserve program is viable and that is why it is included in the Peace Officers' Standards and Training program.

CHAIR NOLAN:

Is there anything that prohibits a school district from allowing an employee to go through the reserve officer training or adopting policy to use that person in the capacity being proposed in the Committee's amendment?

MR. ADAMS:

I do not believe so. I would need to review the statutes as to whether or not they allow a school district to have a reserve component. School districts currently have police departments, so I would think they could also have reserve officers.

CHAIR NOLAN:

Along those same lines, this Committee passed S.B. No. 365 of the 73rd Session specifically for this purpose. We encouraged municipalities to adopt comprehensive policies and procedures dealing with school shooting incidents. I will have staff recall S.B. No. 365 of the 73rd Session, have the Committee review it and possibly issue a resolution or a letter to the school districts with regard to our concerns about these incidents.

SENATOR WASHINGTON MOVED TO DO PASS S.B. 286.

SENATOR HECK SECONDED THE MOTION.

SENATOR WOODHOUSE:

I speak against the motion to do pass S.B. 286. As a former teacher, I did not want to be trained nor carry a firearm on campus. My job was to teach children. When I was a school administrator, my job was to conduct the business and take care of the students. It was never to be a police officer and I am adamantly opposed to this bill.

SENATOR CARLTON:

I also would be opposed to this bill for the reasons I stated earlier. We could end up hurting the people that are trying to help. Someone, a couple of months ago, made a statement about bringing a firearm into what we would hope to be a sterile environment that is there to protect our children.

THE MOTION FAILED. (SENATORS CARLTON, LEE, NOLAN AND WOODHOUSE VOTED NO. SENATOR AMODEI WAS ABSENT FOR THE VOTE.)

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CHAIR NOLAN:

We will continue with S.B. 392.

SENATE BILL 392: Authorizes certain governmental entities to establish, construct and operate toll roads and toll bridges. (BDR 35-815)

MR. SZUDAJSKI:

This bill authorizes the Nevada Department of Transportation (NDOT) and certain municipalities to establish, construct and operate toll roads and toll bridges. The Committee has proposed an amendment to amend the bill as a whole. The mock-up amendment is provided in your work session documents.

CHAIR NOLAN:

Not all Committee members were available to attend the presentation that was provided by nationally known experts on public-private partnerships. The NDOT is working with consultants in this area and we need more than one discussion to make an informed decision. The amendment would provide for an interim study on tolling and public-private partnerships, which changes the bill to a resolution.

SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 392 BY AMENDING AS A WHOLE.

SENATOR HECK SECONDED THE MOTION.

SENATOR CARLTON:

I agree with an interim study; however, I need more information before I can make a decision. The problem I have with this amendment is how interim committee members will be assigned. The current language gives preference to the Senate's Majority Leader and committee chairs. There are several other members of this Senate who should have the opportunity to serve on that interim committee. I realize this bill will be heard in the Assembly.

CHAIR NOLAN:

I appreciate your position. If passed, this bill will be heard in the Assembly and they will have an opportunity to revisit this issue and amend the bill.

SENATOR CARLTON:

There are several interim committee models that we have used and we could find one that would give us a good mix for this interim committee. The last thing you want to do is have a lot of people put time and effort into it and then have it return to this Committee where you have uneducated members taking action. I will trust my colleagues to take care of this issue.

CHAIR NOLAN:

I agree with you.

THE MOTION CARRIED. (SENATORS CARLTON AND WOODHOUSE VOTED NO.)

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CHAIR NOLAN:

We will discuss S.B. 394.

SENATE BILL 394: Makes changes relating to certain traffic violations. (BDR 43-991)

MR. SZUDAJSKI:

This bill makes changes to certain traffic violations and has five essential points. Please see your work session documents for specifics. There are three amendments for this bill: the Nevada Highway Patrol (NHP), the Regional Transportation Commission of Washoe County (RTCWC) and the Committee.

CHAIR NOLAN:

This bill came about through discussions with law enforcement and traffic safety organizations primarily in southern Nevada where reckless driving is rampant. There are several components to the bill and we will address each one separately. We have also received a sheet summarizing current law with the proposed changes ([Exhibit D](#)).

The first amendment has been submitted by the NHP. It would eliminate the \$50 fee for the third and each subsequent conviction of a moving traffic violation.

SENATOR HECK:

If I remember the discussion, the NHP had concerns about the constitutionality of being paid out of funds that are collected in this manner. When law enforcement is questioning the constitutionality of something, we should probably take heed.

CHAIR NOLAN:

We will take Senator Heck's comments as an informal motion to adopt the NHP's amendment. No other Committee members are opposed to this amendment; therefore, we will adopt this amendment.

The second amendment was from the RTCWC. There were brief discussions from Committee members addressing that most bus stops are located either in turnouts or directly on the streets in close proximity to intersections. Having vehicles stop would cause a backup in traffic, possibly blocking intersections and creating a traffic hazard. No Committee members wanted this included in the bill.

The third amendment is a Committee amendment and addresses section 6 of the bill. The intent is to allow those people who are calling in to report reckless, aggressive or dangerous drivers to personally appear to a law enforcement agency to file a written complaint. I understand Metro had a similar program at

one time. I talked to Metro and they said this was doable. Essentially, what we are saying to reckless or aggressive drivers is that other drivers are watching and can take action.

SENATOR CARLTON:

I have concerns that someone might be falsely cited. I represent people in different types of matters. Sometimes in employee grievances, things do not turn out the way the employee thinks they should and they do not speak to me for a couple of weeks. They know my license plate number and car. How is law enforcement going to determine that a witness does not know the driver? There is the basic principle of being able to face your accuser. I have concerns with these types of complaints and law enforcement being able to issue a ticket based on them. I have called 911 when I have been behind someone who I thought was intoxicated and the dispatcher took the information. I do not know if law enforcement followed up on that call, but allowing law enforcement to issue a citation is my main concern.

CHAIR NOLAN:

This bill, as I indicated, has multiple components to it. I understand that this part of the bill could be problematic. We will look at section 6 separately and we may end up voting on the bill as a whole or, if there are some redeeming values in parts of the bill, then we will take those out and amend the bill.

We are still reviewing the third amendment. Section 7 enhances the penalty to a category D felony. This section was attempting to get at those individuals who were involved in accidents and who are driving under the influence (DUI). Understand that if it is a second or subsequent DUI for the offender, it is probably advantageous for them to evade law enforcement to avoid being tested for drugs or alcohol. It is common knowledge that the offender might be better off fleeing the scene, at least for a couple of hours. This particular penalty is to address those individuals who flee the accident scene to avoid a DUI.

SENATOR HECK:

Would the enhanced penalty be assessed for fleeing the scene only if the individual is convicted of a DUI as well?

CHAIR NOLAN:

Yes. Is there any objection to keeping this section in the bill?

SENATOR CARLTON:
I do not know.

SENATOR LEE:
I think there are enough laws already that address this. The case has not been made that this should be included in the bill. I will vote against this section.

SENATOR WOODHOUSE:
I will not vote for this part of the amendment either.

SENATOR LEE:
I think these issues should be handled in the Senate Committee on Judiciary versus our Committee.

CHAIR NOLAN:
It is our bill and we should be addressing these matters. I have a sense that this part is going to be problematic. I hear the opposition. I would like the Committee members to review the handout, [Exhibit D](#). The intent of the changes was to increase the penalties for individuals who are convicted of reckless, aggressive or dangerous driving. The message is that after the first offense, if they do not get the message, then they will be heavily fined on the following offenses.

SENATOR HECK:
I like this fee increase.

SENATOR LEE:
I like the current fines and do not support the increases.

CHAIR NOLAN:
The penalties for the initial offenses were going to stay the same with the exception of a minimum fine. The intent is to get the attention of these aggressive drivers so that they do not commit subsequent offenses. If they do it a second time, then shame on them. However, if they do it a third time, my feeling is that they should be severely punished.

Based upon the discussion, we are including the amendment from the NHP and not including the amendment from the RTCWC. I would like to take a vote on

the third amendment from the Committee, which is fleeing the scene of an accident while you are under the influence. I will take a motion.

SENATOR HECK MOVED TO AMEND S.B. 394 WITH THE THIRD AMENDMENT.

THE MOTION FAILED FOR LACK OF A SECOND.

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CHAIR NOLAN:

We will reopen the work session. Senator Washington had another obligation and will return shortly. We will continue the discussion on S.B. 394 when he returns.

The Committee will continue with S.B. 434.

SENATE BILL 434: Revises provisions governing off-highway vehicles. (BDR 43-400)

MR. SZUDAJSKI:

This bill relates to the regulation of off-highway vehicles (OHVs) as summarized in your work session binders. There are a variety of proposed amendments for this bill.

CHAIR NOLAN:

We have heard this issue repeatedly. This Committee feels there are good people that are off-road enthusiasts and have to share the trails and open lands. We need to work in a cohesive manner to improve those trails and to have enforcement when necessary. All parties felt that registering an OHV would conform to other state requirements. This Committee did not have objections. It seems the controversy is with the advisory board and the collection and distribution of money. Collectively, all parties agreed that the money should go towards the law enforcement component. There have been formal and informal discussions among Committee members and we have another option.

SENATOR LEE:

Senate Bill 434 is probably the best bill we will hear that protects Nevada lands. Everyone coming forth has genuinely been concerned about that. Senator Heck

and I have an amendment. We propose removing sections 9 and 10 regarding the advisory board. It also removes references to the Fund for Off-Highway Vehicles (Fund) or section 8. Senator Heck will address the advisory board.

SENATOR HECK:

We propose the Nevada Off-Highway Vehicle Advisory Board (Advisory Board) and are creating a more balanced board with seven members representing the various geographical areas, one member from a sportsman or hunting organization, one member from a registered conservation organization, one member representing the OHV promotion, one member that trains people in the safe use of OHVs, one member who must own or manage an OHV business, two members from the general public and an assortment of nonvoting members as listed in the original bill. This Advisory Board was modeled after the Bicycle Advisory Board. Some duties would be to study the need for designated OHV roads and trails, appropriate use of existing trails, reclamation and restoration of damaged land and wildlife areas, adopting state-certified education courses, advising the appropriate local, state and federal governmental agencies, etc. Administrative support would be provided by the DMV. It is important that the vehicles are titled and registered, and those fees would stay with the DMV to offset the cost of providing administrative support for the Advisory Board. We took the first step last session by establishing the pilot registration program and this is another step forward. Hopefully, this proposed amendment will continue to bring people together.

CHAIR NOLAN:

The proposed amendment is reasonable because it incorporates recommendations from both sides. Both sides should be equally frustrated that they did not get what they wanted and that is the legislative process. If this bill is passed by the Senate, it will be heard in the Assembly. The Committee appreciates what you are trying to do to preserve the environment and trails.

SENATOR CARLTON:

Will this proposed amendment only replace sections 9 and 10 while everything else stays the same?

SENATOR HECK:

Broadly, yes. The other changes would involve the funding stream by removing the Fund and having the registration fees remain at the DMV. There are also some technical changes but in substance, the bill remains the same. Also what

was referred to as an advisory committee in the original bill is referred to as the Advisory Board in the proposed amendment.

SENATOR CARLTON:

Are OHVs required to be titled, registered and will they receive a sticker versus a license plate? Will that money stay within the DMV? One item not discussed is insurance. I am not sure if we need to address mandatory insurance.

CHAIR NOLAN:

Correct.

SENATOR CARLTON:

Will the DMV be able to keep administration fees as they would with all the other programs?

SENATOR HECK:

Correct.

CHAIR NOLAN:

It is my understanding that the statutes require OHVs to have a copy of the title or registration. Ms. Wilkinson, is this correct?

SHARON WILKINSON (Committee Counsel):

The *Nevada Administrative Code* (NAC) refers to a copy of the certificate of operation.

CHAIR NOLAN:

Where is the decal affixed on an OHV?

SENATOR HECK:

The amendment does not address that because that is already in the NAC.

SENATOR CARLTON:

I understand the DMV has had problems issuing titles to OHVs. They used to do it and they stopped because there were concerns with the State Highway Fund. I think the fees are structured to be revenue neutral. I want to make sure these fees will cover the administrative costs. For clarification purposes, Senator Heck's amendment deletes sections 9 and 10 of the original bill. There is new language establishing the Advisory Board. All fees collected for OHV

registration and title will stay with the DMV. The DMV will oversee the Advisory Board and board members will be selected differently than stated in the original bill. Is this correct?

SENATOR HECK:

There is one point missing from your summarization. Our amendment eliminates section 8 and references to the Fund.

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 434 WITH THE AMENDMENT PROPOSED BY SENATORS HECK
AND LEE.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR NOLAN:

We will resume the discussion on S.B. 394. After hearing the Committee's discussion, I am agreeable to change the Committee's amendment. I want Senator Heck to offer his suggestions. I would like to include the increased penalty fees with the exception of dropping the first offense from \$500 to \$250.

SENATOR HECK:

I propose the following: deleting section 1, which deals with the collection of the \$50 fee; deleting section 6, which deals with calling in to report aggressive drivers; amending section 7 to enhance the penalty for fleeing a police officer when the driver is convicted of a DUI; and to incorporate the changes in the penalty fees with the modification mentioned by Senator Nolan.

SENATOR HECK MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 394.

SENATOR WASHINGTON SECONDED THE MOTION.

SENATOR LEE:

Did Senator Heck's amendment include the two witnesses?

CHAIR NOLAN:

It deleted that part of the bill. We are enhancing the penalty fines for the second and third offenses for aggressive and reckless drivers.

SENATOR HECK:

There will be increased penalties associated with the second and third offense of aggressive or reckless driving. The original fee or fine on the first offense remains the same. After that, the fees start escalating. There is a separate fee or penalty that is an increased penalty associated with eluding a police officer or fleeing a police officer if you are also convicted of a DUI in that same offense.

SENATOR WASHINGTON:

What are the definitions for reckless driving and public endangerment? Can a driver using a cell phone that swerves fall under reckless driving?

CHAIR NOLAN:

Mr. Flynn, what constitutes reckless driving?

MR. FLYNN:

To my understanding, aggressive driving is two or more violations occurring simultaneously and one of them has to be speeding.

CHAIR NOLAN:

Mr. Conway, please help us with the definition of reckless driving.

COTTER C. CONWAY (Washoe County Public Defender):

Are you asking me what would constitute reckless driving?

CHAIR NOLAN:

What would constitute conviction of reckless driving?

MR. CONWAY:

In the example that Senator Washington gave, I would be surprised if that resulted in a citation for reckless driving. It requires something far more than an inadvertent swerve. I had a case where an individual was pulled over for simply crossing the double dotted line and the judge found no probable cause of a violation. In other words, the officer needs to see something more than just an inadvertent swerve. For example, the driver would need to be constantly

swerving on and off the road, not signaling, etc. Violations like that in combination could lead to being stopped for aggressive or reckless driving.

SENATOR HECK:

Mr. Conway is correct. For aggressive driving, you have to commit multiple acts during a single continuous period of driving within the course of one mile. As outlined in the statutes, those can be one or more acts of speeding or committing two or more of the following in any combination: failing to obey an official traffic control device, overtaking and passing another vehicle upon the right, improper or unsafe driving upon a highway that has marked lanes, following another vehicle too closely, failing to yield, and anything that creates an immediate hazard regardless of its duration. All those things in combination have to happen during one continuous course of one mile. Reckless driving is, " ... drive a vehicle in willful or wanton disregard of the safety of persons or property or driving in an unauthorized speed contest on a public roadway."

MR. CONWAY:

What needs to be clear is that it has to be two or more of those types of violations.

SENATOR CARLTON:

I have always supported the reckless driving definition, but I feel aggressive is in the eye of the beholder.

MR. CONWAY:

As a defense attorney, I would agree with you and make an argument. In my 12 years as a criminal defense lawyer, I have not seen an aggressive driving violation. Law enforcement usually issues the citation for reckless driving.

CHAIR NOLAN:

How many of these are plead to a reduced violation?

MR. CONWAY:

That is a rather broad question. Are you referring to when they are charged with a felony or are you referring to being charged a second or subsequent offense?

CHAIR NOLAN:

I am referring to a second and subsequent offense on either aggressive or reckless driving. It is my understanding that both of those violations are

misdemeanors, even for a second or third offense. We are enhancing the fines but I want to know how often they are decreased.

MR. CONWAY:

This law does not exist, so I cannot answer your question. A particular case is negotiated based on the facts. If I have a situation where it is a close call and it is a second offense for reckless driving, I will and may be able to convince the district attorney to reduce it to a first offense. It is really up to the prosecution. My job is to find mitigating circumstances and suggest a reduced charge. The legislature can establish laws but the executive branch is the one that assess the penalty.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR NOLAN:

Seeing that there is no further business, this meeting of the Senate Committee on Transportation and Homeland Security is adjourned at 4:33 p.m.

RESPECTFULLY SUBMITTED:

Lynette M. Johnson,
Committee Secretary

APPROVED BY:

Senator Dennis Nolan, Chair

DATE: _____