

**MINUTES OF THE
SENATE COMMITTEE ON ENERGY, INFRASTRUCTURE AND
TRANSPORTATION**

**Seventy-fifth Session
May 1, 2009**

The Senate Committee on Energy, Infrastructure and Transportation was called to order by Chair Michael A. Schneider at 9:31 a.m. on Friday, May 1, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Maggie Carlton, Vice Chair
Senator Shirley A. Breeden
Senator Barbara K. Cegavske
Senator Dennis Nolan

COMMITTEE MEMBERS ABSENT:

Senator John J. Lee (Excused)
Senator Randolph Townsend (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Chad Christiansen, Assembly District No. 13
Assemblywoman Marilyn K. Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Matt Nichols, Committee Counsel
Lorne J. Malkiewich, Director, Legislative Counsel Bureau
Paul V. Townsend, Legislative Auditor, Audit Division, Legislative Counsel Bureau
Scott Young, Committee Policy Analyst
Patricia Devereux, Committee Secretary

OTHERS PRESENT:

Trent Baldwin, P.E., MBA, Project Manager, Engineering and Construction,
Reno-Tahoe International Airport
Joseph E. Cacioppo, P.E., Vice President/Civil Engineer, Resource Concepts,
Inc.; President, Nevada Section, American Society of Civil Engineers
Scott Gibson, P.E., Project Manager, Regional Transportation Commission of
Washoe County
Rick Eaton, Director, Office of Homeland Security
Dr. Dale Carrison, Chair, Nevada Commission on Homeland Security
Thomas J. Schoeman, AIA, LEED AP, President, JMA Elevated Architecture
Gustavo "Gus" Nunez, P.E., Manager, State Public Works Board

CHAIR SCHNEIDER:

We have been given several articles concerning renewable energy ([Exhibit C](#)). "U.S. Natural Gas Fields Go from Bust to Boom" says we have about 100 years left of natural gas. "A potential breakthrough in harnessing the sun's energy" talks about using molten salt to store photovoltaic energy.

At Senator Cegavske's request, the Legislative Counsel Bureau's (LCB) Research Division, Research Analyst Wayne Thorley has given us an explanation of how compact fluorescent lightbulbs and electronic waste are disposed of in Nevada ([Exhibit D](#)). This will help the Committee find out what happens at the back end of some of the renewable-energy-conservation technology we are promoting.

TRENT BALDWIN, P.E., MBA (Project Manager, Engineering & Construction,
Reno-Tahoe International Airport):

The American Society of Civil Engineers (ASCE) has about 2,000 technical engineers who are members in Nevada. We work daily on the State's infrastructure: water, sewer, gas, electric, transportation, airports and schools.

In 2007, when the State economy was still strong, ASCE issued a "report card" ([Exhibit E](#) and [Exhibit F](#)) rating Nevada's infrastructure. The overall grade was C, which indicated that, on average, we fund our infrastructure at about 70 percent. At that time, it was estimated we needed an additional \$5 billion over the next 5 years to raise that grade to B.

Since 2007, the State income has slowed, as has funding for infrastructure. If this trend continues, we may have a crisis in the quality of life we have grown

to expect. Civil engineers are problem solvers, so we are presenting long-term, sustainable solutions to Nevada's infrastructure problems.

JOSEPH E. CACIOPPO, P.E. (Vice President/Civil Engineer, Resource Concepts, Inc.; President, Nevada Section, American Society of Civil Engineers):

Infrastructure impacts every aspect of our lives: transportation, flood-control measures, drinking water, solid waste, schools. The ASCE report card covers these issues, but we are here to talk about three specific areas. We are asking Legislators to support and fund local initiatives that address infrastructure. We ask you to make it a priority to fund infrastructure projects.

In the twentieth century, we had the infrastructure to support our growing nation, and enacted the federal Clean Water Act and those types of programs. In the twenty-first century, those components are still in place but are aging. That infrastructure needs attention, which requires funding.

The ASCE in Nevada is a resource base which we are asking you to use. We design and maintain these systems, and we ask you to work with us to solve infrastructure issues.

SCOTT GIBSON, P.E. (Project Manager, Regional Transportation Commission of Washoe County):

You may have heard President Barack Obama mention the national ASCE report card, and many infrastructure issues are associated with the economic-stimulus package. The 2009 United States' report card grade was a D-, so in Nevada we are actually in pretty good shape. Part of the reason is we are newer than many states and have grown so rapidly and built so much new infrastructure. This masks older things that have deteriorated.

At an acquired immune-deficiency syndrome (AIDS) conference, a doctor held up a glass of water and said, "If the cure for AIDS were a clean glass of water, half the world would not have access to treatment." We take a lot of our infrastructure for granted. An engineer in the power-supply field said, "If they flip the switch and the light comes on, I get ignored. If they flip the switch and the light does not come on, I get complaints. My job is to be ignored." If we do our job well, our infrastructure is seamless—you can drive at 70 miles per hour while talking on a cell phone because things are well-designed and safe. Nevertheless, these systems are deteriorating, and their maintenance must be funded so they can continue to be a huge economic generator.

An insert in the report card, "Raising the Grades: 5 Key Solutions," lists steps about which Nevada Legislators and the Nation need to make decisions. We must increase State leadership to address the looming crisis. We must promote sustainable design that withstands natural hazards and is economically viable. We must develop consistent, all-encompassing State and regional infrastructure plans. We must address life-cycle and maintenance costs to keep infrastructure operating at a high level well into the future. We must increase and improve the way we fund sustainable infrastructure. Senate Bill (S.B.) 201 addresses the devastating impact of inflation on revenue streams for Nevada infrastructure.

SENATE BILL 201: Authorizes certain counties to impose additional taxes on fuels for motor vehicles. (BDR 32-233)

SENATOR CARLTON:

Is the report card basically based on funding mechanisms, not necessarily on the quality and quantity of systems?

MR. CACIOPPO:

It is a combination of those three factors. It predominantly looks at funding because Nevada's infrastructure is aging, and many of our issues are the upgrading of systems and ongoing maintenance, which are inadequately funded.

SENATOR CARLTON:

The solid-waste grade of C- surprises me. Could you expand upon that?

MR. BALDWIN:

The grade does not necessarily reflect the systems' quality. I am employed by the Reno-Tahoe Airport Authority. When my colleagues saw Nevada had received a D in aviation, they thought people would think the airport was unsafe. That is not true; the infrastructure is there. The D grade is consistent with national aviation standards. A lot of Reno-Tahoe International Airport funding is from Federal Aviation Administration (FAA) grants. My airport and McCarran International Airport have a lot of demands as our State grows, plus with a tourist-based economy, our facilities are stretched. The FAA typically funds only 60 percent of what Nevada's airports actually need to keep up with growth. That is why there is such a big delay between the demand for and planning of infrastructure: it takes a long time to fund that.

SENATOR CARLTON:

Why did Nevada get a C- on solid waste?

MR. CACIOPPO:

In general, Nevada does just fine with transporting solid waste, but the issue is our rapid expansion. Rural communities have grown quickly, and getting waste from homes to landfills requires curbside pickup and transfer stations. We are having a hard time supplying that.

MR. BALDWIN:

The driver for solid waste is the pounds of waste per capita. The national average is 4.5 pounds, but in Nevada, it is 8.8 pounds per person. Our intent is the Committee can use the report card to determine infrastructure areas that need to be improved and focus its attention on funding them.

SENATOR CEGAVSKE:

Your literature says, "Each category was evaluated on the basis of condition and performance as reported by local and state sources" That means your airport colleagues are right to be fearful. Your first premise is the grade is an evaluation of condition and performance. Then it says "capacity versus need; and current and pending investment of [the] state ..." Are you saying the State plans well, but does a poor job of securing funding?

The bridge that collapsed in Minneapolis, Minnesota, was very old and not built for current capacity. Nevada is a much younger state; are we looking at our bridge capacity?

MR. GIBSON:

The ASCE community is made up of private consultants and public employees. Overall, Nevada has an outstanding engineering community, including the Nevada Department of Transportation and its planning capabilities. I work for the Regional Transportation Commission of Washoe County, and I am continually impressed by the staff and planning resources available for us in this State.

A constant issue is how to sustainably fund and address the public's needs; more engineers are being asked to do more and more with less and less. At some point, that begins to break down.

SENATOR CEGAVSKE:

If I looked at your report card, my first impression would be your evaluation is based on "condition and performance," which is contrary to your answer.

MR. CACIOPPO:

When we talk about "condition and performance," they are partly intertwined. Not everything is solely based on money, and we are not here to paint a grim picture. Nevada is a younger state with some success stories of which we are all proud. We are looking at engineering students in the State, and there is a shortage now and for the future. It is expensive to obtain an engineering degree in four years. We are not only trying to guarantee enough qualified people to help with technical issues, but when we are maintaining and operating infrastructure facilities, we need educated people with funding and resources available.

MR. GIBSON:

Our infrastructure plans are tied directly to our higher-education system. The University of Nevada, Reno has an outstanding, national-caliber civil engineering department. Students from the university won the 2008 national Concrete Canoe Competition. As we face infrastructure problems, there are threats to education that impact outstanding engineering programs.

SENATOR CEGAVSKE:

Are you saying the State has a great plan to replace or maintain every piece of infrastructure with a limited lifespan?

MR. BALDWIN:

Yes.

SENATOR CEGAVSKE:

I am also disappointed with the State's solid-waste grade. I dutifully separate my recyclables, then it is dumped into the same bin and taken to a landfill to be processed. It is hard for me to believe Nevada is not doing better along those lines. Can you engineers help us with our recycling problem?

CHAIR SCHNEIDER:

Under the report card's flood-control and dam section, it says Nevada has 58 State-deficient dams. That is scary, since we had a levee break in winter 2008. Can you get a copy of the deficient-dams list for the Committee?

MR. CACIOPPO:

Yes. Dam deficiencies are not always physical. Dams must meet federal and State requirements, including emergency-action planning and making sure the technical aspects of the dam and paperwork are in order.

CHAIR SCHNEIDER:

On the City of Henderson's Water Street, the water main is made of redwood. It has not been replaced in about 85 years. How efficient is that? Senator Cegavske has passed out an informational sheet about a May 2 event in Reno to recycle electronic waste ([Exhibit G](#)).

SENATOR CEGAVSKE:

This is an issue about which I am very concerned. I am hoping we can do something like this in Las Vegas since we have the largest population concentration in the State.

CHAIR SCHNEIDER:

We will open the hearing on Assembly Bill (A.B.) 284.

[ASSEMBLY BILL 284 \(1st Reprint\)](#): Revises provisions governing homeland security. (BDR 19-517)

ASSEMBLYWOMAN MARILYN K. KIRKPATRICK (Assembly District No. 1):

I want it to be on the record how A.B. 284 came to be. I submitted the proposed personal amendment ([Exhibit H](#)) as Chair of the Assembly Committee on Government Affairs. Assemblyman Chad Christiansen and I believe tightening the amendment's language was important, but my chief purpose was so this Committee knows why LCB representatives will testify about the amendment's necessity. We understand that the Nevada Commission on Homeland Security (NCHS) has an issue with the bill, and I have told NCHS Board Chair Dr. Dale Carrison that I will work with his office.

LORNE J. MALKIEWICH (Director, Legislative Counsel Bureau):

This issue arose from an audit of the Division of Emergency Management conducted by LCB Legislative Auditor Paul V. Townsend. A conflict arose concerning statute and access to information as outlined in my handout ([Exhibit I](#)).

Nevada Revised Statutes (NRS) 239C.210 says a record "is confidential, not subject to subpoena or discovery, not subject to inspection by the general public ... if the Governor determines, by executive order, that the disclosure ..." etc., would create a substantial threat. If the Governor issues such an order, all of this information is confidential; the Governor has, in fact, issued such an order.

On the handout's second page, NRS 218.780 outlines the authority of the Legislative Auditor. It says, "all ... agencies of the State shall make available to the Legislative Auditor all ... records ... confidential or otherwise." This statute says even if the record has been determined as confidential, in the course of an audit, the Auditor may look at it. Subsection 2 says access to confidential information is not absolute; the Legislature has exempted a couple of other provisions. There are specific exemptions for NRS 665.130 and NRS 668.085.

Our reading of NRS 239C says certain information is confidential, and a provision in NRS 218 says the Auditor is allowed access to confidential information. This statute is not listed as an exception, so our interpretation is that we should have access. The Office of the Attorney General disagreed with that, but Mr. Townsend will not re-litigate that issue or anything in the audit. That is what caused the concern. We worked it out in the audit and got some access to information, but we had a concern about the statute's effect.

Assembly Bill 284 and the amendment to NRS 239C.210 were proposed, adding additional information to the statute concerning vulnerability assessments and the inclusion of emergency-response plans. Our concern was that we still had ambiguity as we were adding areas covered by the bill. We asked Assemblywoman Kirkpatrick to put on the record that the bill does not affect the Auditor, and that it does not address whether the statutes conflict or certain information is available for conducting an audit.

The amendment expands upon that and includes a lot of information under subsections 2 and 3. There is a legitimate concern by State agencies about subsection 3 of NRS 239C.210, which says a person who unlawfully discloses this document is guilty of a gross misdemeanor or category C felony. I can understand someone not wanting to take our word for it that information can be released to the Auditor, when they are risking committing a felony. I spoke with Assemblywoman Kirkpatrick, and she agreed to present a personal amendment clarifying that the Auditor has access to this information.

The response was there are concerns about federal law, and that turning information over to the Auditor will increase the chance it will be made public. I do not think we could override federal law even if we wanted to. We could pass a statute saying the information would be completely public, no matter what federal law says. However, a supremacy clause like that would have no effect. If the U.S. Department of Homeland Security's Protected Critical Infrastructure Information initiative says information must be confidential, the State cannot make it public; that is a separate issue. The issue is NRS 239C.210 makes the information confidential, and that is incorrect.

Mr. Townsend will discuss how his office handles confidential information, which should make everyone more comfortable with whatever resolution is reached. When the Auditor looks at confidential information, that does not mean the next day it is on the front page of the *Reno Gazette-Journal* and the *Las Vegas Sun*.

SENATOR NOLAN:

The statute section to which we are referring concerns currently confidential documents and records the NCHS would use to prevent or respond to an act of terrorism. I must disclose I am a member of the NCHS. Does the LCB have the authority to audit various security and emergency-response agencies?

MR. MALKIEWICH:

One of the issues is what sort of authority do we want the Legislative Auditor to have? An option is to amend NRS 218.780 to say among the exceptions to access information is NRS 239C.210, and the Auditor cannot look at that information. However, if the Auditor is auditing an agency that has information classified as confidential under NRS 239C.210—which outlines the agency's emergency-response plan—and Legislators want to know if agencies have adequate emergency-response plans, they would direct the Auditor to conduct the audit to determine if the agency is prepared for, let us say, a pandemic. If that provision is added to statute, agencies have a very good argument: "You cannot look at those plans because they are all confidential."

Again, how much authority do we want to grant the Auditor, versus concerns about keeping this information confidential? We are looking for a middle ground where Legislators can get information they need from the Auditor and confirm the statutes they pass are being carried out as intended, plus we can avoid the risk of having confidential information made public.

PAUL V. TOWNSEND (Legislative Auditor, Audit Division, Legislative Counsel Bureau):

I will give you a briefing on how we handle confidential records. I appreciate the concern over sensitive information; however, consideration of existing statutes, professional standards and internal policies governing the audit function will provide assurance the confidentiality of information is properly addressed.

Statute policies and standards are designed to ensure the Audit Division assists the Legislature in its oversight and responsibilities in a competent and credible manner. Regarding confidentiality, NRS 218.870 states all working papers from an audit are confidential. Exceptions are papers that shall be released upon subpoena by a court or made "available for inspection by an authorized representative of any other governmental entity for a matter officially before him or by any other person authorized by the Legislative Commission." These exceptions rarely occur, and only regarding criminal investigations by the Office of the Attorney General.

Our internal policies require we take extreme care to ensure the confidentiality of information obtained during audits. Specifically, Audit Division staff must not disclose information about an audit, except within the Division and the agency being audited. That is only as necessary during the course of the audit. Information we collect, copy or review during the audit is kept secure and never released to the public.

Furthermore, NRS 218.770 requires audits to be conducted in accordance with government standards as issued by the Comptroller General of the United States, who is also head of the Government Accountability Office (GAO) and serves in a similar capacity for the Congressional Audit Division. Standards provide guidance for consideration of information that should not be publicly disclosed. They recognize certain information may be classified, and the circumstances associated with public safety and security concerns should not be publicly disclosed. We have a process that ensures only appropriate and necessary details are included in audit reports that do become public. In my 21.5 years with the Division, I have not seen a single instance in which confidential information has been inappropriately disclosed.

The federal government views our Audit Division as a partner in ensuring effective oversight and accountability through accessing confidential information and conducting performance audits or the single audit of the State government,

which is conducted by a contracted certified public accountant. In fiscal year 2008, more than \$2.4 billion in expenditures of federal funds fell under the purview of the single audit. This is the responsibility of the Legislative Auditor, and includes U.S. Department of Homeland Security funds.

When conducting audits, access to information deemed confidential under federal law is frequently granted and considered necessary to ensure accountability. Examples the Division routinely accesses include information protected by the Health Insurance Portability and Accountability Act, regarding health information; the Civil Rights of Institutionalized Persons Act, regarding the juvenile-justice system; and the Child Abuse Prevention and Treatment Act, regarding child fatalities. My staff undergoes background checks on the State level through the "Criminal History Repository" and by the Federal Bureau of Investigation.

The federal government has recently contacted all state auditors regarding stimulus package funding. In the past two months, I have participated in conference calls with virtually every state auditor, GAO management, the U.S. Office of the Inspector General and the federal Office of Management and Budget. The clear message is the government expects a high level of state Legislative Auditor oversight of the stimulus funds. Limiting access to documents could weaken the audit process and restrict our mission of reporting accurate and objective information to the Legislature.

SENATOR NOLAN:

I have no question as to the Audit Division's ability to dive into just about anything, understand it and provide a thorough report to the Legislature. With regard to what prompted this amendment, were you conducting an audit of the State Emergency Response Commission or another agency and came across resistance? What types of documents does the Division need to access to carry out its mission?

MR. TOWNSEND:

This issue arose from an audit of the Division of Emergency Management. Existing statutes cover school districts, State agencies, local jurisdictions and resort hotels that have emergency-response plans. Those plans are required to be filed with the Division of Emergency Management (DEM), Department of Public Safety. When we audited that Division, we wanted to see if those plans had indeed been filed, but we ran into difficulties. Access was initially denied,

but after a few months, we got very limited access—which showed about half the plans in our sample had not been provided. The delinquent entities were listed in our report.

We are careful in how we report this information. We did list the State agencies and local jurisdictions that had not submitted plans; we did not list the resort hotels. This is an example of how we are working within the GAO auditing standards. We were not getting at the qualitative nature of the plans, rather trying to verify if the plans had been filed. If not, there is no certainty from the DEM side that the plans have even been prepared. We went to some local jurisdictions to verify they have plans, but that one step of filing with the DEM is all we were trying to ascertain during the audit.

SENATOR NOLAN:

When the DEM provides a list of which entities have provided plans, usually it is public information. However, some of the plans are provided to the NCHS in written form.

This is for the same reason that the Audit Division would not disclose in an audit report which public or hotel facilities have emergency-response plans designed to prevent terrorism. That information is given to the NCHS, which can then work with entities to help them provide the plans. Did that type of information surface when you conducted the audit?

MR. TOWNSEND:

We noted areas that needed improvement. There is no good process to track who had submitted plans at the time of the audit. We saw no evidence when entities had not submitted plans that they were immediately informed the plans were due. Some plans that are required to be updated annually were several years old. Administrative functions needed improvement, and the audit addressed that with recommendations the DEM accepted.

SENATOR CEGAVSKE:

Is the DEM, which is under the Governor, funded by the taxpayers?

MR. TOWNSEND:

The DEM is part of the Department of Public Safety. A small part of its funding comes through the General Fund; the majority comes from federal grants.

SENATOR CEGAVSKE:

Is the funding source still strictly taxpayers' dollars? Were you able to complete the audit?

MR. TOWNSEND:

We completed the audit to the extent we felt necessary to answer our objective of ascertaining if the audits had been received. We are going through the audit follow-up process to see if weaknesses have been corrected, and the DEM will discuss its progress at the next meeting of the Legislative Commission's Audit Subcommittee.

SENATOR CEGAVSKE:

Were you unable to complete everything you felt was needed for a total audit?

MR. MALKIEWICH:

I really wanted to avoid rearguing the audit today. The DEM was unhappy it had to disclose as much as it did, and the auditors probably would have liked to have seen more. This is an issue of balancing the need to keep information secure versus what level of audit we want.

If Legislators want the Auditor to determine the adequacy of the response plans, he needs access. If you just need to confirm the plans have been filed, some limited access would be sufficient. If you want to say the security of these documents is more important than the ability to perform an audit, then put it in statute as an exception that cannot be looked at. The Legislative Commission's Audit Subcommittee has had extensive discussions on this issue, and the audit was completed.

SENATOR CEGAVSKE:

I am asking this because I need to see where we are going with this. I can see a definite need for the proposed amendment.

VICE CHAIR CARLTON:

I see this as all about process and making sure current statutes are being followed. Is that correct?

MR. MALKIEWICH:

That is the case. I do not want to overstate this. I wanted Mr. Townsend's testimony on the record as there may be legitimate concerns about turning over

information if there is a risk it will be made public. We want the people we ask to develop emergency-response plans and vulnerability assessments to feel comfortable that when they turn them over to the DEM and NCHS, the information will not be made public. If so, we need to make sure the authority of the Auditor includes gaining access to information entities need not fear will be disclosed.

MR. MALKIEWICH:

I will walk through the amendment mockup. Our chief concern is that information given to the Auditor will become public. Another concern is federal law. There are many citations to federal law, Protected Critical Infrastructure Information and similar regulations. We cannot override federal law.

The mock-up addresses the issue of comfort levels, [Exhibit H](#). Section 2, subsection 1 gives the Auditor conducting a post-audit the authority to access documents “unless prohibited by federal law.” On lines 31-34, “Any information that is inspected by or released to the Legislative Auditor pursuant to this subsection is not subject to the exception from confidentiality set forth in NRS 218.870.” As Mr. Townsend mentioned, there is an exception to the confidentiality of working papers under subpoena—but this says even that exception does not apply. The working papers would remain completely confidential.

Similar language concerning disclosure is added to the proposed amendment’s section 3, subsection 4: “... or unless prohibited by federal law” That would be true without saying it, but it makes people comfortable we are not purporting to override federal law. The other provision is especially substantive, saying even those limited, potential, theoretical exceptions have never been made public. If the Attorney General said she was doing a criminal prosecution and needed that kind of information, this provision would say it was confidential. The NCHS has some other options on which we would be glad to work with them.

There is a small misunderstanding of how the population thresholds work. The 400,000-person threshold for Washoe County will not be exceeded until at least June 30, 2011, not because it will not exceed that amount, but because of the statutes’ language. The preliminary statute, NRS 0.050, says population figures must be used from the last United States Census, which remains in effect until

June 30, 2011. Washoe County will not grow into that, for the purpose of membership on the NCHS, until that date.

SENATOR NOLAN:

Have you shared this amendment with the DEM or Office of Homeland Security?

MR. MALKIEWICH:

I mentioned it to a couple of people in the hall on the way into this hearing, but we would be glad to go over it with those agencies.

SENATOR NOLAN:

It was not necessarily that the DEM was being obstinate or uncooperative, it was because the conflict in the statute says because the Legislative Auditor may not have clearance to view these documents considered otherwise confidential. The DEM was reluctant to cooperate because of the criminal provision. Is that correct?

MR. MALKIEWICH:

There are both State and federal criminal provisions, and I indicated I understand that concern. I do not want to reargue those issues. There was a disagreement over the interpretation of the law, and that is why we sought this amendment. It clarifies that the statute says the Auditor has access to confidential information that includes this content.

ASSEMBLYMAN CHAD CHRISTIANSEN (Assembly District No. 13):

Assemblywoman Kirkpatrick began the dialogue on the proposed amendment 4702 to A.B. 284, and many of our concerns have been addressed. Another component of the bill concerns the makeup of the NCHS. Currently, there are 14 seats; this bill would create 2 more. Two of the new seats would go to tribal representatives, one each from the north and south. Of the 14 seats, 1 is vacant until we would assign it to a tribal member. Upon passage of the bill, the other two seats would be assigned as per current statute. Instead of leaving an at-large, vacant seat, we would assign it to a tribal representative. One or perhaps both seats would go to Washoe County because of its predicted population threshold.

The bill's other main component deals with getting confidential information for critical infrastructure. Currently, because the law has been loose on the topic, groups are hesitant to turn over their plans and documents because, in many

cases, that may contain their "secret sauce." If an energy or gaming facility has plans that make them unique, they may not want the public or their competition to access that.

That makes sense to me. I serve on the National Conference of State Legislatures Homeland Security Task Force, and this is something we have discussed at length. How do Legislators make sure we create an atmosphere in which enterprise is interested in working hand-in-hand with emergency response?

SENATOR CARLTON:

We currently have a 14-member Commission. There is 1 seat vacant, and a tribal representative would fill that vacancy, bringing the total to 14. The bill seems to read there would be one tribal representative from the north and one from the south. In filling the vacant seat, would the tribal representative be from the north or south? Would one of the proposed other two seats go to the other tribal representative and the second be filled at-large?

RICK EATON (Director, Office of Homeland Security):

I am the advisor on homeland security to the Office of the Governor and a voting member of the NCHS. There are 14 Commission members; 1 at-large seat is vacant. We are proposing that be changed to a permanent chair for the tribes to be represented. The impetus for this is since 2002 and the subsequent formation of the U.S. Department of Homeland Security—the source of 90-plus percent of homeland security money for Nevada—the federal agency has said tribes need to be included. This sentiment is also replete through State documents.

We are seeking a permanent chair for the tribes. They are an independent entity, they have the same standing as a county and it is in the best interest of the State that they are at the table with everything we are doing. The tribes would have to provide their own representative to cover the State's 27 tribes in 4 nations. At our last meeting, there was a consensus that they would accept one tribal member and provide a nomination.

The other two seats would be based on population expansion, to Washoe County in particular and however else it works out. The numbers are not yet firm and would depend on the next census.

SENATOR CARLTON:

There is still confusion because section 1, paragraph (e) of S.B. 284 designates one tribal member from the north and paragraph (f) says one member from the south. This leads me to believe that when it goes to 16, there will be 2 members, but I am hearing there will only be 1.

MR. EATON:

Yes. That was an amendment added later, and I never testified in support of two members for the tribe.

ASSEMBLYMAN CHRISTIANSEN:

That would be a proposed amendment.

SENATOR CARLTON:

My comfort level with that provision is that there would be one tribal representative from the north and one from the south. Those are two distinct worlds. As you said, for 4 nations of 27 tribes to pick 1 representative for that population overall out of a 16-member panel, that representation would be inadequate. If we are going to go to 16 members, 1 will still be at-large.

MATT NICHOLS (Committee Counsel):

If I understand the proposed amendment correctly, the "16" would actually be removed. It would be the current membership of 14. But the Committee [NCHS] now has certain members, I understand. I am saying in the proposed amendment, the 16 would go back to 14. Right now, there are at-large members appointed to the Committee [NCHS]. One of those at-large members would become a specifically designated representative of the tribes in the State. So the 14 would stay 14, but the at-large appointees to the Committee [NCHS] would be reduced by 1, and a specific appointee would be a representative of the tribes.

SENATOR CARLTON:

Mr. Chair, what was just described to us is not in any documents we have before us so it is confusing.

MR. NICHOLS:

"That's correct. I believe this is an oral proposed amendment. I'm not sure if [Assemblyman] Mr. Christiansen's proposing it specifically, but that's my

understanding. I don't want to put words in [Assemblyman] Mr. Christiansen's mouth."

SENATOR CARLTON:

That is where I was getting confused because I am working from the two documents in front of me that both have north and south.

CHAIR SCHNEIDER:

This will take some time to fix in a work session.

ASSEMBLYMAN CHRISTIANSEN:

I realize it is confusing. We would have loved to have this written in proper amendment form, but it is something I wanted on the record as an amendment proposal. We are still looking at 16 total members when the bill passes.

On the tribal-representation issue, as Mr. Eaton has stated after meeting with the tribes, there is support for a standing member and for the tribal representative to take the at-large position. We would still propose to change the amendment as it came out of the Assembly where it designates 14 members to add 2 seats to accommodate population growth, with 1 tribal representative from the north and 1 from the south. That language would be deleted, and there would just be two open seats to fill.

MR. EATON:

A concern raised by the tribes in subsequent meetings was that they did not know if they could immediately meet their commitment of two members. Starting with just one might be a sound foundation. We desperately need the tribes involved in the NCHS. The Governor acknowledges there needs to be permanent tribal representation in our processes.

This was not initiated in a vacuum. Members of the tribes approached me to say they would like to have representation on the NCHS, be part of a statewide citizens' emergency-preparedness program and be involved with interoperability. I was delighted when they said this, and we are putting them into all of those activities. The consensus now is one member representing the tribes would work for this Session. Tribes have a lot of land and critical infrastructure issues but not a lot of people, so it is a fair balance. Nontribal members have a lot of other people working on many other issues. Tribes need to be a permanent part

of the NCHS, and this should not be subject to change down the road. Other legal entities, including the biggest counties, are already represented.

DR. DALE CARRISON (Chair, Nevada Commission on Homeland Security):
I am in a difficult position because I have many disagreements with Mr. Eaton's testimony. I was on vacation during the aforementioned NCHS meeting so I had no input on the tribal issue.

Mr. Eaton indicated the Governor is 100 percent behind this, but another source tells me, through a confirmatory e-mail from the Governor's counsel, he knew nothing about this. There has been an open position on the NCHS for a long time, during which period the Governor could have appointed a tribal member as an at-large member.

Throughout my five-year tenure as Chair of the NCHS, I have done everything possible to keep politics out of the Commission, which means addressing the needs of special-interest groups. Mr. Eaton indicated the tribes have the same standing as a community as other State entities. I have nothing against the tribes. They have been at the table, and to say otherwise is untrue. They are part of the Homeland Security Working Group and have a representative on the NCHS finance committee.

If we consider tribes the same as a county, the NCHS has no representation from small counties. I have been approached numerous times about the latter issue, to the point small counties were considering proposing legislation. Utilities do not have a seat on the NCHS; I have been asked numerous times by the Nevada Public Utilities Commission to rectify this. The agriculture industry does not have a seat, even though it wants one very badly. Transportation and airports do not have a seat.

We are in a position where we are guaranteeing a special-interest group a position on the NCHS. My concern is if there will be a future bill adding more members—at some point, the NCHS will become completely unwieldy. We cannot keep adding community members just because someone wants to be on the NCHS.

Mr. Eaton says he was approached by the tribes, and that may be true. During my tenure as Chair, not once has a tribal representative approached me about a seat. My other concern is maybe the seat will go not to a tribal member, but to

a representative. I oppose having a special-interest group put forward legislation to get a position on the NCHS. Again, had the Governor wanted a tribal member, he would have appointed one, which would have solved the problem. I leave it to this Committee's wisdom to enact this, but I hope you will deeply consider what you are doing when we start legislating special-interest groups onto the NCHS while being told fallaciously they were not already represented and that the Office of the Governor sought this.

SENATOR CARLTON:

I am concerned by classifying Native Americans as a special-interest group. We do not classify African Americans, Caucasians, Asian Americans, Filipino Americans, Italian Americans, Irish Americans, Polish Americans or anyone else as a special-interest group. These are Native-American peoples who would like to have representation. I am very uncomfortable with the term "special interest." The tribes are a population segment that should have a voice in what is going on in this State.

DR. CARRISON:

I agree with you, and I apologize if I have offended someone by using that term. That was not my intent. I have been approached by African-American and nursing groups as to why they do not have a seat on the NCHS. My problem is when we treat one group as a separate entity and give them a position, where will it go? Again, tribes have been represented on the Homeland Security Working Group, which makes recommendations to the NCHS on about allocation of all federal dollars we receive.

CHAIR SCHNEIDER:

I would like to close this hearing. Assemblyman Christiansen, will you and Assemblywoman Kirkpatrick work with these people some more? I am feeling uncomfortable with the issue, and we will bring it back next week. The hearing on A.B. 284 is closed.

ASSEMBLYMAN CHRISTIANSEN:

I accept that and will work with her then come back.

MR. EATON:

I understand testimony here is under penalty of perjury, and I would like to rebut what was said about my statement about the Office of the Governor's

knowledge of this issue. Dr. Carrison indicated I am not being truthful, and I would like to rebut that one issue.

CHAIR SCHNEIDER:

You can come back next week and go on record on that topic, but I am ending this hearing before tempers flare.

THOMAS J. SCHOEMAN, AIA, LEED AP (President, JMA Elevated Architecture):
We will discuss state-of-the-art renewable and sustainable systems designs for publicly funded facilities, according to my slide presentation ([Exhibit J, original is on file in the Research Library](#)). The idea of sustainability gained credibility when the U.S. Green Building Council was established. The Council created the Leadership in Energy and Environmental Design (LEED) certification program.

Leadership in Energy and Environmental Design certification is based on six components: sustainable site, water efficiency, energy and atmosphere, materials and resources, indoor environmental quality and innovative design processes. Qualifying projects must address all six of these criteria. There are four point-based LEED certification levels: basic, Silver, Gold and Platinum.

I will discuss seven projects JMA has delivered and built or is designing. The JMA is Nevada's largest architectural firm, and our work is an accurate barometer of the sustainable-design industry and the introduction of sustainable systems into distributive facilities.

The CSN Telecommunications Building was funded through the State Public Works Board and was the first LEED-certified new-construction project in the State. Solar light tubes were the primary design feature, and certification was granted for its passive design, optimization of energy, daylighting features, indoor air quality and water efficiency. The Miley Achievement Center was the Clark County School District's first LEED-certified project.

The Centennial Hills Library attained a LEED Silver rating for its indirect lighting and optimization of energy 39 percent above American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) standards. This means if a building meets energy requirements dictated by code, this design would be 39-percent better. Commercial and public buildings are designed to meet ASHRAE energy-conservation requirements. Unlike traditional libraries, there is

indirect daylighting throughout the entire facility. It will have air-conditioning distribution under the floor, which reduces energy demand.

Southwest Library has applied for Gold certification, as per the client's request. The project will optimize energy 35 percent above ASHRAE standards. The 103.5-kilowatt direct-current (KWDC) photovoltaic (PV) system will produce 12.5 percent of the energy demand. The Las Vegas PBS Technology Campus has applied for Gold certification. It will optimize energy 49 percent above ASHRAE standards. It will have 202 400-foot-deep geothermal wells to pre-cool the air-conditioning system, resulting in half of the ASHRAE-standards energy use. The campus will also have a 180-KWDC PV system producing 17.5 percent of its energy demand.

The Las Vegas City Hall project has applied for Gold certification. This slide of the site plan shows PV cells on the roofs and a PV concept in its plaza. This building addresses both sustainability and Nevada's history. The mound in the image is the Las Vegas City Council chamber, which represents the springs that started Las Vegas and southern Nevada. The building itself symbolizes current technological thinking: the hydroelectric concept of Hoover Dam. The PV system symbolizes Nevada's future. This slide shows glass elements "cascading" down the face of the building, which represent the dam's water producing hydroelectric energy. The steel "trees" in the plaza are topped by PV panels, which will produce 111.5 KWDC to meet 6 percent of the energy.

The final project is the Las Vegas Veterans Administration (VA) Hospital. At almost 1 million square feet, it will be the largest VA hospital in the Nation. The VA is looking nationwide at introducing renewable-energy systems, including on this site. This project is looking at a 1- to 3-megawatt (MW) PV system to provide 10 to 30 percent of the energy demand. This would require a \$30 million to \$50 million investment. The bottom images on the slide show the solar panel-installation options on the parking-structure rooftop or as panels mounted in a field.

My intent was to share our sensibility of where Nevada is and what is being requested in the sustainable market. We are seeing a broad public acceptance of sustainable design. Our clients in every market segment all request their projects be designed sustainably. As a state, we have made huge headway in terms of developers and hotel, commercial, health care and public clients. The demand is there for environmentally appropriate projects.

Nevada's design and construction-development industry has matured in its ability to deliver projects. In the past, you could not find a contractor who knew how to build "green"; now they are plentiful. The LEED-certification process takes a lot of documentation during design and construction. Nevada has the best climate for PV systems in the Nation—if it is going to be anywhere, it should be here.

As our clients become more sophisticated in sustainable design, they are requesting a higher level of recognition: Gold or Platinum versus basic certification. The thinking is, "If you are going to be good, why not be the best?" When a client reaches that decision, we really need to integrate renewables into the projects; otherwise, it is very difficult to achieve the higher ratings.

State policies and public-agency leadership have led the way for our sustainable design. What we are seeing today is in response to the Legislature's advancement of public policies that support sustainable design. I am asking for your continued support of some kind of LEED certification for all public buildings. We need to be creative in incentivizing the growing demand for investing in renewables systems. Today, we are under-incentivizing this reality, and while the concept of an incentives program is good, it needs to start reacting to the size of the investment. We have a cap of \$50,000 for incentives for renewables systems. Onsite distributive facilities with 2 to 3 MW of capacity require a \$40-million to \$50-million investment. The current \$50,000 is not much of an incentive to drive a developer to locate in Nevada.

CHAIR SCHNEIDER:

We have a block from the power companies. NV Energy does not want to give up its customer base by moving on to the new energy industries. Do the Las Vegas City Hall project's PV-panel trees follow the sun?

MR. SCHOEMAN:

No, they are fixed. We have one tree tracking the sun just for demonstration purposes. In Nevada, we are still testing for the best PV system, but we have such abundant sunshine, I am not convinced a moving panel will increase the performance enough to justify the expense of its engineering. In climates with limited sun, tracking the sun more effectively might be important.

CHAIR SCHNEIDER:

At the project south of Boulder City, the big PV panels do not move. However, that project's parabolic-curve PV panels do track the sun.

MR. SCHOEMAN:

That is a power plant, as opposed to a distributive location.

CHAIR SCHNEIDER:

You mentioned the 200 geothermal wells used to cool air. How much does that cost?

MR. SCHOEMAN:

I can research that and get back to you.

CHAIR SCHNEIDER:

Was it cost-effective to install?

MR. SCHOEMAN:

Yes. The cost-benefit analysis was done. Public buildings typically have a minimum 50-year lifespan, and the payback was in the 18- to 20-year range.

GUSTAVO "GUS" NUNEZ, P.E. (Manager, State Public Works Board):

We have worked extensively with Mr. Schoeman, whose firm has designed several State projects. We have had some buildings achieve a LEED Silver rating through use of renewables. The University of Nevada, Las Vegas Science and Engineering Technology building recently received a Silver rating without using renewables.

To achieve a Gold rating, renewables must be used. The Greenspun College of Urban Affairs project qualified for the Gold rating with its PV panels on a courtyard shade structure. Construction began in 2006, at which time the panels cost \$20 to \$30 per watt; new technology has dropped that price to about \$3 per watt. The State did not pay for the Greenspun panels because the building's donor requested and paid for them. The payback was estimated to be more than 30 years.

The State typically does not look at any renewables project with a payback of less than ten years for many reasons. It is difficult to afford such a project up

front, and if you are looking at a payback of 20 to 30 years, in 10 years, you will be paying for old technology.

The State Public Works Board had discussed ASHRAE ratings before my tenure. An ASHRAE rating of 90.1 was always met or exceeded, we adopted the Model Energy Code and have always been very energy-conscious. We have added a criterion to our adopted standards to exceed ASHRAE 90.1 on buildings larger than 20,000 square feet. We are continuing to change with the times in order to become more cost-effective.

MR. SCHOEMAN:

When we analyzed the payback for the VA project, the time was 16 years because of the PV system's size and the reduced cost of acquisition. Prices are dropping as technology improves and manufacturing capacity rises.

CHAIR SCHNEIDER:

Is there anything specific Legislators can do to help?

MR. SCHOEMAN:

You could create incentives for private or public investors to encourage sustainable design and renewables systems. The best renewables choice would be PV due to our abundant sunshine. Taxpayers' dollars need not necessarily be used; it could be utility ratepayers' dollars assigned to incentives for renewables. We need to raise the bar and make a statement that the State is committed to all renewable-energy, distributive-generation systems, not just power plants. We need to support all renewables: power plants, distributive facilities for public and commercial use, and residential.

CHAIR SCHNEIDER:

How much more will the Las Vegas City Hall cost to build by striving for the LEED Gold rating, instead of using traditional design?

MR. SCHOEMAN:

We have analyzed the cost of LEED certification at all four levels. It varies by market, but I will give you typical figures for southern Nevada. Basic certification adds about 2 percent to construction costs for energy-management systems, indoor air-quality systems and commissioning and application fees. A Silver rating adds about 4 percent, including daylighting and indoor air-quality

controls that could extend commissioning. Gold adds 6 to 8 percent, and I do not know the cost of Platinum.

CHAIR SCHNEIDER:

What is the payback for a \$10-million or \$30-million building?

MR. SCHOEMAN:

Paybacks are rapid. For basic certification, which reduces energy optimization of 30 percent, the payback is just a couple of years. For the library project, the optimized energy is almost 50 percent, so the payback will be under 10 years, without using renewables. It takes better quality of systems and management of proper passive design. Renewable-energy systems have a longer payback of 15 to 20 years using newer technologies.

CHAIR SCHNEIDER:

Proper design and siting are very inexpensive.

MR. SCHOEMAN:

Most good design firms have always produced passively designed buildings. Some more-current designs pay attention to daylighting. Years ago, we would block western sun, but now we use that exposure because of improved window glazing and low-emissivity glass that block heat. We use an internal-louver system within the glazing to bounce the light back into the interior.

SENATOR CEGAVSKE:

What happened when we lost so much tax revenue from green-building abatements? Has that stopped? Can we get some information on what is out there and what is left?

CHAIR SCHNEIDER:

What Mr. Schoeman described requires no tax abatements; it is just in the design. When you use renewables plus proper design, there should be some sort of incentives from government or from utility ratepayers. Assemblywoman Barbara E. Buckley had the same question: where are we going on all of this, and what will it cost?

SENATOR CEGAVSKE:

Backing up to what happened in the Special Session in which we added an amendment granting tax exemptions to LEED-certified buildings, where are we

in that arena? Are we finally filtering out the exemptions? Could the LCB staff give us an update?

MR. NUNEZ:

We have provided to LCB staff the amount of additional cost for LEED certification of State buildings. When a payback analysis is done, the only portions eyed are for elements that have a payback. Many elements of LEED certification have no payback, including minimizing environmental impacts. The Public Works Board tries to use LEED criteria only when they make economic sense and provide a payback. As for the cost of the certification process, unless the affected agency or donor wants to pay for it, we typically do not include that cost in the project.

CHAIR SCHNEIDER:

Seeing no other business before the Senate Committee on Energy, Infrastructure and Transportation, we are adjourned at 11:24 a.m.

RESPECTFULLY SUBMITTED:

Patricia Devereux,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____