

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

**Seventy-fifth Session
March 10, 2009**

The Senate Committee on Energy, Infrastructure and Transportation was called to order by Chair Michael A. Schneider at 8:15 a.m. on Tuesday, March 10, 2009, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Maggie Carlton, Vice Chair
Senator John J. Lee
Senator Shirley A. Breeden
Senator Randolph Townsend
Senator Barbara K. Cegavske
Senator Dennis Nolan

GUEST LEGISLATORS PRESENT:

Senator Mark E. Amodei, Capital Senatorial District
Senator Maurice E. Washington, Washoe County Senatorial District No. 2

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Laura Adler, Committee Secretary

OTHERS PRESENT:

Rusty McAllister, President, Professional Fire Fighters of Nevada
Ted J. Olivas, Director, Government & Community Affairs, City of Las Vegas
Brett Primas, Captain, Homeland Security Bureau, Las Vegas Metropolitan Police
Department
Greg Gammon, Fire Chief, Las Vegas Fire and Rescue

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Les Lee Shell, Finance Department, Clark County
Martha Barnes, Administrator, Division of Central Services and Records,
Department of Motor Vehicles
Derek W. Morse, P.E., Interim Executive Director, Regional Transportation
Commission of Washoe County
Bob Gastonguay, Executive Director, Nevada State Cable Telecommunications
Association
Pete Reinschmidt, Division of Emergency Management, Department of Public
Safety
Robert D. Fisher, President and Chief Executive Officer, Nevada Broadcasters
Association; Nevada Commission on Homeland Security
Charles M. Benjamin, Ph.D., J.D., Director, Nevada Office of Western Resource
Advocates
Steven Michel, Chief Counsel, Energy Program, Western Resource Advocates
Judy Stokey, Director, Government Affairs, NV Energy
Kirby Lampley, Director of Regulatory Operations, Public Utilities Commission of
Nevada

CHAIR SCHNEIDER:
We will review Senate Bill (S.B.) 144.

SENATE BILL 144: Enacts provisions governing public safety bomb squads.
(BDR 42-909)

This bill addresses bomb handling based on discussions between police and fire. One issue is if there is a response to a bomb call at the airport, the response team has to go through the airport's procedures instead of their regular procedures. It seems there should be one procedure no matter where the bombs are located.

RUSTY MCALLISTER (President, Professional Fire Fighters of Nevada):
Based on earlier testimony, the Las Vegas Fire Department and the Las Vegas Metropolitan Police Department (Metro) are currently working on a memorandum of understanding (MOU) to clarify responsibilities regarding bomb operations and other items with regard to the Metro All-hazards Regional Multi-agency Operations and Response (ARMOR) team.

During previous testimony, I said I was willing to work with members of the other parties to develop language for the bill as this is Statewide, not about any

MOU in Las Vegas. At this point, they have not brought any concerns to me regarding the bill.

I know the sheriff has talked to members of the council in Las Vegas expressing concerns about the investigative part. As yet, I have not had any discussions with the parties involved. It appears the MOU being worked on is specific to Las Vegas and would not address this bill.

SENATOR MARK E. AMODEI (Capital Senatorial District):

Returning to the initial hearing on S.B. 144, the charge was that there appears to be room for clarification of a Statewide statute, and I would encourage clarification. Where the Committee makes the value judgments in terms of how to clarify the bill and how far to go is up to whomever has the first four votes on this Committee. I would submit that there is an issue in the statute. You have an example of the symptomology based on what I did hear of the testimony in the initial hearing that indicates the potential for a horse race over who has jurisdiction over what.

I do not need to remind this Committee that our ability to make a statement on policy in this area for the next 28 months is within the next 80 days. To do nothing, will be to allow horse races like this to continue to go around the track. It is in an area of public-safety that is not smart public policy for the State. I am not picking on the public-safety people in Clark County who are good on all sides. I am not opposed to giving a little more time since there is an MOU discussion, but if it goes on till June, then we have two more years. I would submit that jurisdiction over explosives and any public-safety context that indicates a grey area we ought to make it a black or white area.

I do not know if that is the pleasure of this Committee, but if this is a working on an MOU thing, then we can do better as a Statewide policy. I defer to the wisdom of the Committee members. I would prefer we do something in this area as opposed to hoping an MOU comes about that would or would not address something that may occur in a different metropolitan area of the State or reoccur in the same metropolitan area we are talking about.

SENATOR CARLTON:

I agree with Senator Amodei's remarks. Maybe the option is to move the bill out of Committee. If things develop after the bill is out of Committee, we can withdraw it or put it on the desk or require any of numerous procedures, but we

cannot keep coming back week after week as we have limited time. I support sending a message that this Committee takes this as a serious issue and wants to see it resolved quickly.

SENATOR CEGAVSKE:

I agree that we need to move on, that something needs to be done. Since we have had one entity testify, I would like the other side to testify or explain to us what the issue is.

CHAIR SCHNEIDER:

We do have a proposal by Ted Olivas. I understand they are close to a resolution. We know this problem has been ongoing for five years. It can get dangerous with everyone running around asking who is in charge.

TED J. OLIVAS (Director, Government & Community Affairs, City of Las Vegas):

I was not here for the first hearing; however, it is my understanding that as a result of that hearing we go back to work with Clark County and Metro on an MOU to clarify so this bill potentially goes away. Because of that, I have not worked on modifying this bill knowing there was discussion between the parties in southern Nevada. We want to make sure you have a document so you can see if, in fact, any progress was being made ([Exhibit C](#)). I have not been a party to those deliberations. I have not talked with Senator Amodei about this fifth revision as I am not sure of the details. It takes time when seeking approval by all the legal people.

SENATOR CEGAVSKE:

When Mr. McAllister testified, he indicated no one has talked to him. Is that correct?

MR. OLIVAS:

I have not talked to Mr. McAllister about the bill in its current form. I got involved because I was not sure if there was any communication between the people in the south regarding an agreement and this Committee. I was focusing on the MOU rather than on S.B. 144.

SENATOR NOLAN:

To clarify, there have been discussions between the Las Vegas Fire Department and Metro. This latest MOU has been delivered to the people here. Is that correct?

MR. OLIVAS:

That is correct. Chief Greg Gammon and his team are working on this agreement with Chief Smith of Clark County and with Metro.

SENATOR AMODEI:

I would like to leave you with this thought. The way I see it, the MOU is ultimately none of my business. I would suggest that we have done this in the past where when you look at the statute you say something along the lines of, in the absence of an MOU between the prospective agencies, here is the rule. Because to say, let it go away, when there is an MOU in 2009, does not mean it will stay in effect. It does not mean you can start sharpshooting with Committee Counsel about the exit provision of this MOU, when it expires, or renegotiate when it does. In a public-safety context, if these parties get together on what is to happen, that is great. That takes care of what is going on so long as this particular MOU is in existence between these agencies and this county. However, there are other jurisdictions, other metropolitan areas, and this bill provides a backstop so that now you are in the area of State statute and policy. You have had a chance to potentially deal with a contingency.

CHAIR SCHNEIDER:

This Committee gave these people five working days. I extended the time last week to this work session. You have presented an appropriate verbal amendment, and we will put it into action if we cannot come to a resolution.

BRETT PRIMAS (Captain, Homeland Security Bureau, Las Vegas Metropolitan Police Department):

There has been an MOU in place for about three years. The main issues have stemmed, not Statewide nor necessarily between Metro and the City of Las Vegas, but between the ARMOR team's responsibility, which is "all-hazards," that handles the chemical, biological, radio-nuclear components as well as some explosive components. The bomb squad is part of the ARMOR task force. The task force was created to take all of our capabilities within the valley to include the Federal Bureau of Investigation (FBI), Bureau of Alcohol, Tobacco and Firearms (ATF), Henderson, North Las Vegas, Las Vegas and county fire, and train them to respond as one while using those disciplines to handle an event effectively and efficiently to properly mitigate that event. In this world of terrorism, there are many threats that, fortunately, we have not been hit with, but we are at the top of many lists. As for coordination between Metro

and the city bomb squad, Deputy Chief Fuller and I have met numerous times to revise the original MOU language to satisfy both parties.

In fact, last week, Chief Fuller and I met with Chief Smith from the county, Chief Gammon from the city and Sheriff Gillespie, and we all agreed the ARMOR task force is an appropriate way to go for public safety. The main reason we opposed S.B. 144 was because the way it was written it would limit the task force's ability to handle certain situations, specifically unattended packages. There are many unattended packages people call about on a daily basis. The way the bill was written, if enacted, it would give the city bomb squad total authority and autonomy. Nobody else wants to be a bomb squad in southern Nevada. Our issue is public safety. How do we know that an unattended package is not full of something of a chemical nature, biological nature or a dirty bomb? We have the capabilities in the ARMOR unit, as well as the capabilities of the Las Vegas Fire Department and their Chemical, Biological, Radiological, Nuclear and Explosives 8 (CBRNE 8) unit to do testing and preliminary investigation before it is turned over to the bomb squad.

I have not specifically called Mr. McAllister as I have been working with the heads of the agencies involved to resolve this issue. Further, before this bill was presented to us, we did not hear anything about it. Therefore, we could not work on it from a union or any other point of view. The bill is presented as Statewide, but this is directly related to the Las Vegas bomb squad and ARMOR.

CHAIR SCHNEIDER:

I detect a bit of angst in your voice. I see Mr. Gammon waiting in Las Vegas; have you been negotiating with him?

MR. PRIMAS

Yes. And is there a bit of angst? There is. As mentioned in previous testimony, this issue has no business rising to this level. All parties have more important things to do. These issues can be worked out. Yes, we have been talking to all three agencies.

CHAIR SCHNEIDER:

Would Mr. Gammon say you are close to a deal?

MR. PRIMAS:

I would say so. The changes to the last MOU draft you have were added by Clark County Fire Department because the ARMOR concept is all agencies working together to respond to whatever incident or terrorist attacks may come.

CHAIR SCHNEIDER:

Mr. Gammon, would you come forward and tell this Committee how negotiations are going from the fire department side, and when you expect to have an agreement.

GREG GAMMON (Fire Chief, Las Vegas Fire and Rescue):

Captain Primas is correct that we have been working on an MOU in southern Nevada. We have met numerous times. We agree on most procedures needed to be followed under the bomb squad MOU. What we need to look at is that it is a bomb squad MOU. Part of the delay is the hazardous materials and CBRNE 8 portions. Your earlier direction to us was to come back with a bomb squad agreement which seems to be slowing us down. We have made strides but are not yet in total agreement. To clarify, what we are working on is an MOU, and what you are working on is a Statewide bill which we have not worked on. I have not had any part of the bill, but we are working closely with Metro to get an MOU put together.

As Senator Amodei said, the MOU is good. It could be good for a year; it could be good for two or three years. The MOU is only good until one of the three parties decides it is no longer good.

CHAIR SCHNEIDER:

Committee, it appears we have two departments in conflict with each other over territory. I will let the Committee decide if we give them more time or proceed with Senator Amodei's verbal amendment.

SENATOR TOWNSEND:

I do not find where in the debate or material we have heard from Carson City or Washoe County as to how this may affect them. Was there testimony?

LES LEE SHELL (Finance Department, Clark County):

Initially, Clark County did submit an amendment to exempt our department of aviation ([Exhibit D](#)). There may be potential conflicts with the federal Transportation Security Administration (TSA) required mandates about when a

bomb threat or a bomb squad is on premises who decides whether or not the operation should be closed down. These federal requirements may supersede what a local bomb squad might want to do.

CHAIR SCHNEIDER:

Somebody has to be in charge. If you have a live bomb and the bomb squad shows up, are the TSA agents going to decide?

MS. SHELL:

Currently, if we do have a bomb threat or scare at the airport, there is a protocol for who is called. We do call the bomb squad. Once the bomb squad is on airport premises, they can follow their protocol.

CHAIR SCHNEIDER:

Which bomb squad is called?

MS. SHELL:

I believe it is the southern Nevada bomb squad.

MR. PRIMAS:

The issue with the airports is specifically related to today's climate and culture where, with good reason, a lot of people look for suspicious activity. Maybe this is some paranoia in seeing an unattended bag, backpack or someone this person thinks looks suspicious and calls to report what they saw. If this happens at the airport, and if the bomb squad responds as S.B. 144 is written, they will have total authority and autonomy to handle that unattended package, and with that, comes extreme delays. It could be a fiscal impact to airports because operations could be shut down for hours, and that is the bigger picture. With unattended packages, there are many things that could be done with preliminary investigations, intelligence gathering and analytical components before a decision is made on what to do with that package. That is the crux of it. If it is an actual bomb or device, there is no question that the bomb squad will take care of it. Before that point is what we are talking about.

CHAIR SCHNEIDER:

Senator Townsend, Scott Young has reviewed his notes, and no one from the north has testified previously.

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SENATOR CARLTON:

Captain Primas, you heard Senator Amodei's suggestion that in the absence of an MOU, this is the policy we get to make. How do you feel about that policy?

MR. PRIMAS:

About what is written or the current policy?

SENATOR CARLTON:

Senator Amodei proposed in the absence of an MOU, this would be the State policy to deal with these particular issues.

MR. PRIMAS:

I would be opposed to the portion in S.B. 144 where it states the bomb squad would have authority on unattended packages.

SENATOR CARLTON:

Chief Gammon, you heard Senator Amodei's suggestion, and just heard me phrase it to Captain Primas. What is your opinion about that suggestion?

MR. GAMMON:

We are willing to work with Metro, and have been working with them on what might take place versus a suspect package in the airport. We do understand the impact where a bomb may be called in at an airport or state building, and what that may do. That is the concept of ARMOR where we work together on specific calls like that. We do not have an issue working closely with ARMOR. We believe the ARMOR concept is a good concept. I do not want to speak for Chief Smith of the Washoe County Fire Department, but in speaking with him, he does feel the same way that the ARMOR concept is a good concept. It does provide for the safety of the citizens in southern Nevada. What we disagree about is certain aspects that those who are the best trained in the area are being delayed in implementing the procedures they have been trained to do to stop a potential hazard at an airport, state building or a hotel.

SENATOR CARLTON:

It appears it all goes back to who gets called. You have to congratulate these people who all want to go running toward the same danger. We have a well-qualified fire department that is federally accredited, and we have ARMOR who wants to do their job. This is a tough decision, but to suggest this decision does not belong in front of us, I take exception. This Committee has given these

organizations time, and it may be time to accept Senator Amodeli's suggestion with the airport component built in to make sure the bases are covered. If this incentivizes these people to work this out, that would be great. If it does not, then we make a policy statement on how to deal with it.

SENATOR NOLAN:

The issue is weighty because it deals with public safety. It is better left to the experts. We are talking about intricate technical and operational procedures. In reading the proposed amendment, I am not sure what has been agreed to by the fire department, where anyone is with the MOU, nor do we need to understand. All we need assurance of is that there are procedures and policies in place to allow the professionals, the fire department and the police department, who inevitably will be working together when situations develop, to work in harmony, and that we are satisfied that the public's interest is taken into consideration.

I agree with my colleague that while staff is drafting language to say, in essence, that in absence of an MOU this will take place. Unless we put teeth into the bill, it would still leave open-ended the time frame in which the MOU can come together. From what I have heard so far, it sounds like the parties are coming close to working out the details. It would be nice to know you have an MOU by the time this legislation comes up for a vote in the next few days.

SENATOR BREEDEN:

Is there not a current MOU?

MR. PRIMAS:

There has been an MOU for three years.

SENATOR BREEDEN:

If that one is not working, and another is being created, what guarantee is there that this MOU would work?

MR. PRIMAS:

Although the bill is Statewide, the issue is not. The issue is coming from one entity, the bomb squad, and how to integrate them into ARMOR and responsibilities. The guarantee would be the leadership of all three agencies, specifically the management leadership, which are Chief Fuller in Las Vegas and me. Those are the people who would make sure this is in place.

When a 911 call is received about a suspicious or unattended package or anything that relates to ARMOR, the dispatch supervisor sends out a page. That pager is carried by the ARMOR lieutenant, sergeant and the bomb squad commander. That pager is paid for by Metro who gave it to the bomb squad commander, so all would get simultaneous notification of a potential incident. From that point, another assessment is done. When the decision is made that we need to roll the ARMOR package—the ARMOR package is not just Metro, it includes components in North Las Vegas, Department of Public Safety, Henderson Police Department, ATF, the joint terrorism task force, the FBI—it is a package that includes Las Vegas Fire and Rescue, CBRNE 8 unit and the bomb squad. That notice is sent out on a city-owned communicator system to over 80 people. The message is on the phone system and keeps redialing the numbers until the people pick up. The issues of notifications are not issues, they are documented and verified.

To return to your question, this all comes down to the Las Vegas bomb squad's role and responsibility, and what they think it is. Nobody else wants to be a bomb squad in southern Nevada. In previous testimonies on this bill, it was said that if this bill is enacted, it would not prevent anyone else from becoming a bomb squad. All we want is to take our capabilities to work together and get out for public safety. We need the ability to expand our capabilities, because it is possible to have multiple events happening at the same time, and we need to be ready to respond.

SENATOR BREEDEN:

If the investigation portion of the bill was addressed, would that be acceptable to you?

MR. PRIMAS:

The investigation portion of the bill was brought to us previously to make sure everybody understands the jurisdiction. That would go a long way. I do not think there is any misunderstanding as far as who has the investigation. Whether it is pre-incident for the preliminary investigation or post-incident, those issues seem clear between agencies.

SENATOR CARLTON:

The impression I got from the initial and follow-up questions was that all get notified, and all go out. But listening between the lines, I heard that you then

decide to call the bomb squad to let them know what is happening; they have to wait to get the call.

MR. PRIMAS:

That does not happen. The bomb squad is notified via the pager system the same time as ARMOR.

SENATOR CARLTON:

Are they told not to show up until you tell them to?

MR. PRIMAS:

No. I will give you an example. Somebody calls that there is what appears to be an abandoned backpack on a corner. The dispatcher takes the information and makes a call. We are not going to respond to every backpack left-on-a-corner call; we do not have the resources, until an assessment is done. The page goes out at the same time to the ARMOR lieutenant and bomb squad commander. Nobody rolls until a patrol officer arrives at the scene to verify the backpack is even there. After a preliminary investigation in the field, that person calls ARMOR or the bomb squad to report there is a situation. At that point, the decision is made to roll out the units, the communicator system is activated, everyone is notified at once and they respond.

SENATOR CEGAVSKE:

These are two entities we respect. I am not there and do not know how you operate, but the two entities would know best how to bring this together. My problem is I do not understand the disagreements. My concern is if we write Senator Amodei's suggested amendment and there is no MOU in place, then what we decide may or may not be the best answer for these entities. What I would like to do is give them a little more time, as it sounds like they are making headway. Time may favor this, and I would like to put it on our next work session and move forward from there. I would rather have these entities come to us with the solution that is best for all citizens. Also, if Clark County is the one with the concern, then why would we do a Statewide policy?

CHAIR SCHNEIDER:

My desire is to set this issue to next Tuesday morning at 8 a.m. Inform Sheriff Gillespie that if nothing has been resolved by then, that this Committee will defer to Senator Amodei and take action. This is too important. Whether this is a labor/management issue or fire/police issue, at this point in time, we do

not care anymore. Millions of tourists come to Las Vegas every month, plus the 2 million residents of Clark County; it is our responsibility to make sure they are as safe as possible.

MR. PRIMAS:

Do you need a signed MOU by all entities by 8 a.m.? Or do you need an agreement stating this is what we are going to do?

CHAIR SCHNEIDER:

Something had better be signed since the agreement seems weak. We will now open the hearing on S.B. 134.

SENATE BILL 134: Revises provisions concerning the increased penalty imposed for certain traffic violations occurring in work zones. (BDR 43-180)

SENATOR LEE:

Mr. Chair, you gave me the responsibility to bring all sides together. The language is being written right now, so if we could also go to Tuesday, we would be prepared for the work session. Three other parties will be meeting later today to read the language and agree to it for good legislation.

CHAIR SCHNEIDER:

How about hearing it Friday morning? Will you be ready then?

SENATOR LEE:

We will be ready.

CHAIR SCHNEIDER:

Committee, we will move on to S.B. 138.

SENATE BILL 138: Establishes the means by which a self-insurer of motor vehicles may provide proof of the ability to pay judgments obtained against him. (BDR 43-224)

SENATOR NOLAN:

There were no proposed amendments to S.B. 138. The bill did raise extensive discussion mostly with the common carriers and taxicab companies in southern Nevada. As it turned out, it was a systemic issue with those who have fleet operations and would like to self-insure. A number of organizations met with the

Department of Motor Vehicles (DMV) to discuss it, and it appears the language worked.

MARTHA BARNES (Administrator, Division of Central Services and Records, Department of Motor Vehicles):

We agreed to meet with all the businesses who want to be self-insured through the DMV. This is an internal policy we put in place. It does not have anything to do with the law or regulations.

SENATOR NOLAN:

If it is administrative, and the parties can work it out, then I would withdraw the bill.

CHAIR SCHNEIDER:

Committee. Senator Nolan chooses to withdraw S.B. 138. Are you all right with that?

SENATOR TOWNSEND:

We have had self-insurance for large businesses in Nevada since 1979, giving us a developed set of regulations and laws. Is there a reason why we cannot follow those, so we are consistent?

MS. BARNES:

We had an employee that handled the self-insurance for many years. When that employee retired, we looked at what was being done. If the application was properly filled out, then they were self-insured. We decided we needed to be more proactive and determine if we were actually protecting the State and our citizens. That is why we made those changes.

CHAIR SCHNEIDER:

Since Senator Nolan has withdrawn S.B. 138, we will put it on hold in case someone may need a shell later on. We will open the hearing on S.B. 18.

SENATE BILL 18: Revises provisions governing speed limits in school zones and school crossing zones. (BDR 43-384)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):

I have not had a chance to read the amendments produced by the work committee. I have been verbally told they deal with the definition of

"child present." Other things in the bill deal with apparatus such as flashing signs indicating school zone hours.

SENATOR NOLAN:

We did have a subcommittee meeting, and all interested parties were notified. Representatives from law enforcement and the various school districts were in attendance. You may recall a young man from Washoe County took this issue on as a project. He did extensive research regarding school zones and suggested that speed zones around some high schools could be lifted to accommodate a more mature population as opposed to around elementary and middle schools.

Ultimately, the consensus was that when it comes to speed zones around schools, they should be as easy and non-confusing for the motoring public as possible, so they are not encountering wide variations in speeds every time they travel through a different school zone. There was also discussion about high school students driving out of school parking lots that are the location for a number of accidents. We were proposing to allow traffic to speed up in those areas with high school children present because they are bigger, faster and, hopefully, smarter; but that does not always seem to be the case. The language adopted is in the form of amendments in your workbooks ([Exhibit E](#)). Under the first part are proposed amendments to the bill submitted by the Regional Transportation Commission of Washoe County ([Exhibit F](#)). I am not sure if these are the same as the other amendments. I would like to defer to someone who is here to testify on the bill to clarify if the amendments are the same or different.

DEREK W. MORSE, P.E. (Interim Executive Director, Regional Transportation Commission of Washoe County):

We did have someone present at that work session. The idea of having different speeds, depending on the maturity of children, is an idea whose time has not yet come. The other amendment looked clean. If the bill is processed by this Committee, I would be willing to work with this group to add our input to present a good piece of legislation.

SENATOR NOLAN:

The language on the last page of the proposed amendment under tab B, [Exhibit E](#), better defines school zones and when children are present. That was consensus agreed to by law enforcement and school district representatives.

The other thing we thought would help in this issue would be a letter from this Committee to the various school districts to encourage them to install automated flashing lights. At one time, that was a weighty expense because they had to be hardwired. Now these flashing lights can be set on timers and controlled with photovoltaic cells making them relatively inexpensive. Flashing lights are the best means for the motoring public to determine when school speed limits are in effect. There is a consensus to encourage all the local municipalities to implement flashing-light signals in school zones.

CHAIR SCHNEIDER:

These proposed amendments are hard to follow because of the many formats and colors. It was suggested to get a mock-up in the colors and formats we are used to. That way Senator Washington can also review the proposed amendments and bring this bill back Friday morning.

SENATOR WASHINGTON:

In now reading through the amendments, the apparatus described for the flashing light is fine. The language for "child present" is all right. I understand there is no interest in dealing with varying speeds depending on elementary, middle or high school. I would like to know if the working committee had designated who determines the time of day the flashing lights would be active.

SENATOR NOLAN:

The definition is shown that school days are considered Monday through Friday, 6:30 a.m. to 4:30 p.m. The consensus was they can establish within those time frames for individual schools separate times that would be posted on signs around the school. The reason for 6:30 a.m. is some school activities start at 7 a.m., and typically 30 minutes are allowed prior to those activities to accommodate children walking to school.

SENATOR WASHINGTON:

My other concern is different level schools adjacent to one another where consistency in speed is desirable. When the middle school zone posts 20 miles per hour and the nearby elementary school zone posts 15 miles per hour, it can become confusing for the motorists traveling through those areas.

SENATOR NOLAN:

That was a concern of this working group; they said the exact same thing. The bill would give them the flexibility to establish a standard speed limit where

schools are in close proximity to each other. The bill addresses the situation where a high school is near a middle school. That is where the language was going for consistency in speed limits.

SENATOR WASHINGTON:

I am fine with the amendments to S.B. 18. If the Committee desires to process the bill today, we can go with it.

CHAIR SCHNEIDER:

Is the Committee comfortable with the bill, the amendments and the form it is in?

SENATOR TOWNSEND:

I do not know what problem we are trying to solve. I have not understood that based on the testimony. It was more of an academic exercise. Have we had problems in school areas that this may solve?

SENATOR WASHINGTON:

The original bill dealt with consistency of speed and the definition of "child present." The working committee has taken out the speed part of it, defined "child present" and added appropriate language dealing with signs and apparatus that flash so motorists are more aware they are in a school zone. The bill, even though it is not in its original form, accomplishes a couple of things. It provides a definition and provides for signage to allow motorists to know it is a speed zone. It also gives a time certain, so there are not two or three different times set for school zones to make it consistent for schools that are joined together.

SENATOR CARLTON:

We want our children to be safe, but it is expensive to install all those flashing lights. Would it be your intention to have these lights installed gradually over time, or would you mandate all the apparatus be installed by a certain date?

SENATOR WASHINGTON:

As I understood Senator Nolan, it would probably be done over time as funds become available.

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SENATOR CARLTON:

Thank you. I wanted to make sure I understood how it was to be done.

SENATOR NOLAN:

The flashing-lights apparatus are less expensive now to install. It was the consensus among the group that it is the best way to alert the motoring public. It better defines operational speed limit beacon. This bill did vary somewhat from the original, but provides the mechanism to better define when children are present which has been problematic.

SENATOR NOLAN MOVED TO AMEND AND DO PASS S.B. 18 WITH PROPOSED AMENDMENTS UNDER TAB B OF THE WORKBOOK.

CHAIR SCHNEIDER:

Under your proposed amendment, would it come back to the Committee first for review before being sent to the floor?

SENATOR NOLAN:

Sure.

SENATOR CEGAVSKE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR SCHNEIDER:

We will now go to S.B. 147.

[SENATE BILL 147](#): Establishes provisions governing broadcasters during emergencies. (BDR 36-960)

SENATOR CEGAVSKE:

Included in the workbook is an e-mail from cable Sierra Nevada Community Access Television (SNCAT) in support of S.B. 147 ([Exhibit G](#)).

CHAIR SCHNEIDER:

In the Nevada State Cable Telecommunications Association's proposed amendment under tab A in the workbook ([Exhibit H](#)) it says, " ... and any other

providers of emergency broadcasts including broadcasters utilizing emerging technologies" I know what you are trying to get at, but, as discussed with staff, "any other providers" could be a few of my friends on this Committee with our shortwave radios putting out information like any other providers. I am not sure any of us are qualified to be "any other providers." I would be comfortable if that definition could be narrowed.

BOB GASTONGUAY (Executive Director, Nevada State Cable Telecommunications Association):

The intent of emerging technologies came from Senator Wiener who wanted to make sure that in the future should a technology develop that works in conjunction with broadcasters and is labeled a broadcaster under the *Nevada Revised Statutes* (NRS), that broadcaster could take the training to become qualified to be a first responder. The intent was not to have shortwave radio operators out there.

SENATOR CARLTON:

Tell me if this example works or not. An emergency broadcaster has a laptop that still has power and can send information over the Internet, and people can get the Internet on their phones. That would be another way people could receive information. Information would not be limited to radio or television. This provision would address the other ways people would also receive information.

MR. GASTONGUAY:

Yes. Emerging technologies could be anything. As long as they underwent training and were qualified as a broadcaster; that is the intent of the bill.

SENATOR CARLTON:

So, a broadcaster could put things out over the radio, but maybe some do not have a transistor radio or fresh batteries. There is a flood situation, and laptop and Internet are available; then there is a way to communicate with those who give emergency flashes on their phones.

MR. GASTONGUAY:

Exactly.

SCOTT YOUNG (Committee Policy Analyst):

For the record, Mr. Chairman. A suggestion that might help clarify the issue you raised is that Mr. Gastonguay has used the term ... " and any other providers" If we were to use the term "broadcaster," that is a defined term in the statute, and I will read the definition in NRS 432.310: "'Broadcaster' means a radio broadcasting station, cable operator or other video service provider or television broadcasting station primarily engaged in, and deriving income from, the business of facilitating speech by over-the-air communications both as to pure speech and commercial speech."

That would probably clarify that these were basically professionals. You could still keep the language about emerging technologies so that other broadcasters with emergency technology would be included in this. But it might be preferable to substitute broadcaster for provider, and then have Mr. Nichols refine that further.

MR. GASTONGUAY:

I have no objections to that.

PETE REINSCHMIDT (Division of Emergency Management, Department of Public Safety):

We support this bill in that the State operates under the State emergency operation center where State assets and resources are coordinated. Most importantly, we operate the joint information center that relies upon the broadcasters around the State to disperse our message to the public when disasters occur or when there is potential for a disaster. Again, we support S.B. 147 within available resources. We have partnered with broadcasters. We have had communication with the broadcasters before in supporting their training, conducting exercises and in planning efforts.

SENATOR CARLTON:

In reading the SNCAT amendment Senator Cegavske brought forward, I have concerns about volunteers with equipment going into emergency areas without the training talked about in the bill. I am concerned about volunteers putting themselves in harm's way, and the rescuers having to spend more time rescuing the people who are covering the emergency than helping the victims of the emergency. We do not need more people having to be rescued, we need fewer.

ROBERT D. FISHER (President and Chief Executive Officer, Nevada Broadcasters Association; Nevada Commission on Homeland Security):

I share Senator Carlton's concerns. It seems the way the original amendment is written, SNCAT is part of cable, and of all the things Mr. Smith talked about, such as a seat at the table and training available, volunteers were never discussed. There is enough tension at times between law enforcement and media that we would not want to have that kind of situation during an emergency.

CHAIR SCHNEIDER:

Are you satisfied with the clarification that Mr. Young read for the record?

MR. FISHER:

Yes. The definition is excellent.

SENATOR TOWNSEND:

There are two components to S.B. 147. One has to do with training and subsequently allowing those who are trained into areas to repair or replace equipment necessary to keep the airways open. They would be allowed access to those areas if they are professionally trained and have the appropriate certification. Then the bill seeps into the area of actually allowing broadcasters access to areas where law enforcement or emergency management people would now have to work around a reporter standing in the middle of a disaster. I found this in section 4 where it says, "... develop comprehensive, coordinated plans for preparing and responding appropriately to an emergency or disaster." It is one thing to allow professionals in to fix or replace equipment to keep the airways open; it is another thing to say irrespective of emergency management and law enforcement, reporters of any kind can come into the area and stand wherever they want. It appears to me that is how some portions of this bill could be interpreted. That may or may not be your intent.

MR. FISHER:

You raise some important issues. It is correct that there is access, but it is not the kind of access that was the intent of the legislation. The access is in partnership with law enforcement to ensure the public is properly informed. We have to connect the dots. Connecting the dots is when an emergency situation or disaster takes place; the news has to be filtered in such a way as to ensure the public is not put in a panic mode and there is accurate information. We are not looking for a reporter who is standing in the middle of a situation. A great

thing about this legislation is it brings law enforcement and media together with the Division of Emergency Management and other agencies to begin having the kind of planning to bring in the broadcasters. As I testified previously, we are the only homeland security commission in the United States that has a broadcaster on it. That is because both Governor Guinn and Governor Gibbons came to the conclusion that you have to connect the dots, that during an emergency situation the public has to know what is going on. The statute has to be trusted that there will be the kind of communication and ongoing planning to ensure the scene you described does not happen.

SENATOR TOWNSEND:

I agree with what you are saying; however, the bill does not say that. I will quote section 5, subsection 2, "To the extent practicable and consistent with not endangering public safety or inhibiting recovery efforts, state and local governmental agencies shall allow a first response broadcaster access to an area affected by an emergency or disaster for the purpose of restoring, repairing or resupplying any facility or equipment critical to the ability of a broadcaster to acquire, produce and transmit essential emergency- or disaster-related public information programming, including, without limitation, repairing and maintaining transmitters and transporting fuel for generators."

What that says is if you are a first-response broadcaster and a tower goes down, you can go in to repair it, but it does not say, "... and then you have to leave." Based on this bill, you could stand out there and report. Is that the intent?

MR. FISHER:

That is not the intent. The intent is for the broadcasters to do the job that needs to be done, and that is to ensure that we are on the air, we are broadcasters, that we are not put in a position where we can no longer broadcast. This bill is the product of real-life situations that have happened across the country during emergencies. I understand your concern with language. The broadcasters are not the bad guys, they are the partners. The intent of this bill is that there is a partnership with emergency management to ensure the message gets out and is not interrupted.

SENATOR TOWNSEND:

I appreciate the intent. I was not inferring that broadcasters are bad guys, because they are not. We have to deal with what is printed on the page. If sometime next Session there is a disaster with a broadcaster standing in the middle of it, and law enforcement wants to say that for that person's health and safety they need to move out of the area, and the person replies that they have access to broadcast from that spot, then you will be back here two years from now.

Some of us actually read bills. In the past, we have had to amend bills because their intent was different than what was printed on the page. This concern does not mean I am not in support of the bill; it means that needs to be on the record.

MR. FISHER:

The points that have been made are important. These concerns will continue as all the partners work together to develop the best possible training. As a result of the training we have, we hope that kind of scenario will not take place. That is the purpose of training.

MR. REINSCHMIDT:

Perhaps a stipulation can be added to the bill that differentiates between on-scene reporting versus repairs of necessary equipment for broadcasting.

SENATOR TOWNSEND:

That is a wonderful amendment. However, I take the word of my long-time friend that as the process moves forward and these individuals are trained, that would be considered. The intent of this bill is admirable; it should be met, and we should pass it. But you also need to be aware these are tragic situations. We want to make sure no one gets hurt, that they are properly trained to do the needed job they are there to do on behalf of the public, including informing the public. I do not know if it is necessary to amend the bill, but as long as it is on record that this does not blatantly open up to every reporter looking for an award by standing in the middle of a plane crash because they went in to fix a tower, even though they are trained.

MR. FISHER:

We have a base-line training we use for our people who go into disaster scenes. We could suggest that broadcasters partner with us to get that training as well.

CHAIR SCHNEIDER:

That seems to be what the bill is saying. Also, this would be a State law, and if there were a large enough emergency for the federal agencies to come in to take over, then this law would be superseded by federal law.

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 147 WITH PROPOSED AMENDMENT BY THE NEVADA STATE CABLE TELECOMMUNICATIONS ASSOCIATION, KNOWING THAT "PROVIDERS" IS CHANGED TO "BROADCASTERS."

SENATOR NOLAN SECONDED THE MOTION.

SENATOR TOWNSEND:

Regarding the language of section 5 in the amendment, is the Vice Chair asking to leave in that entire wording, including emerging technologies?

SENATOR CARLTON:

With the change staff brought forward by changing the word provider to broadcaster, it would ensure that with the definition of broadcaster there would be the safety component built in.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

We will move on to S.B. 165. There are several amendments to this bill from various entities, and a few updates to some amendments.

SENATE BILL 165: Requires certain utilities that supply electricity in this State to include in the resource plan of the utility certain provisions relating to any future regulation of carbon emissions. (BDR 58-381)

CHARLES M. BENJAMIN, PH.D., J.D. (Director, Nevada Office of Western Resource Advocates):

I am not sure if the energy representatives were a part of that e-mail exchange. This handout is a consensus the parties developed of two types of languages that gets at the heart of what is being achieved ([Exhibit I](#)). The Public Utilities Commission of Nevada (PUCN) can still elaborate further through the rules and regulations process.

SENATOR CARLTON:

I understand the PUCN can do this now. Is it that the PUCN is not doing it to the standard that some people would like, and this is to require them to do it?

DR. BENJAMIN:

Yes. The Commission does have the option to do this, and they have not. The question is if it is appropriate for the Legislature to put this into statute to set public policy to demand this type of carbon accounting to be part of the integrative resource plan. That is the kind of public-policy decision the Legislature will have to make.

SENATOR CARLTON:

If I remember, part of the conversation was that as things evolve with the energy policy at the federal level, we are not sure what a number of those carbon guidelines will be. It appears we could end up doing this in compliance with federal policy in the near future. Is that correct?

DR. BENJAMIN:

If there are federal requirements, obviously, the State has to comply with them. This deals with a State requirement that every three years the utility must have an integrative resource plan. Not every state requires that, most do now, and Nevada was the leader in the development in the 1980s.

What all this says is that, as part of this integrative resource plan, the utility will be required to do scenarios that account for carbon regulation, carbon cost and related things. If there are additional federal requirements on top that would apply nationwide to every public utility commission, obviously the State would have to comply.

SENATOR CARLTON:

It seems that this is already done, that we can do this now. It is putting an asterisk at the end that says we know you can do this; we just want you to really do it.

DR. BENJAMIN:

It is not that we want you to do it, it is more like you will do it.

SENATOR CARLTON:

This bill is asking someone to do something, and I am not convinced the PUCN can. It says to their best estimate. I am concerned about the time and energy required to comply. I know these cases are complicated and costly when trying to put everything together. If we are going to use purchase cost as our basis, then it should apply here. How much are we going to ask the utility to spend?

DR. BENJAMIN:

I would point out there was an amendment to the utility's docket last fall. The order that came out of the PUCN as a result of that amendment actually ordered the utility to do this type of accounting in their 2009 integrative resource plan. In this case, the PUCN did order that for 2009. That was an option on their part. There was considerable debate among the commissioners about whether or not to require the utility to do that. The utility can do this kind of accounting. There is a lot of uncertainty out there, there is no question about it, and it is hard to do. A lot of public policy is hard to do. The question to ask is if this is important from the Legislators' perspective to mandate this kind of account.

SENATOR CARLTON:

I have respect for the PUCN and the members, but there comes a time when I have to do my business and let them make their decisions. When we start mandating what their jobs include, then I have a concern. If they are exercising their option, asking for good information and making good public decisions on what they need, then I am apprehensive about mandating certain things of them. I do not want someone telling me how to do my job, and I am sure they feel the same way. It is that level of professional respect we have to have for the different entities. I understand where you are coming from in that you want to make sure this information is always provided. I look at the PUCN as having that option and exercising it when they feel it is necessary.

CHAIR SCHNEIDER:

It is my understanding this is common practice for utilities in other western states. Can you confirm this?

STEVEN MICHEL (Chief Counsel, Energy Program, Western Resource Advocates):
I can speak to the states I am familiar with: Arizona, Utah and Colorado. When those three states undertake an integrative resource planning process, they do incorporate anticipated carbon prices into that process.

CHAIR SCHNEIDER:

Is it a required calculation?

MR. MICHEL:

The language and statute in New Mexico says anticipated or future environmental regulations. It does not specify carbon, but it does specify future environmental regulations. I do not believe the other states have a specific requirement. When you are doing an integrative resource plan, by its nature, you are looking into the future to figure out which resources over time are going to be the most economic for customers. When that is done, you must explore what costs you are anticipating those resources are going to trigger and whether they are in existence today or not. That is the rationale the other states deploy when they routinely look to the future to anticipate what is expected to be carbon regulation in the future.

CHAIR SCHNEIDER:

I know you work with Mr. Thompson who is on the PUCN. He stated that the Legislature should put its thumbprint on this and mandate it. Is that correct?

DR. BENJAMIN:

I would hesitate to speak for Commissioner Thompson, but that is my understanding.

CHAIR SCHNEIDER:

We have been fairly progressive on this energy topic for the past 25 years. Senator Townsend has been supportive, and he has a couple of questions for the company and you before we take any action on this bill.

SENATOR TOWNSEND:

The bill is commendable, but it is how we do it that is crucial to its success. The handout you have covers the entire triennial submission. It covers only demand, how you are going to fill demand and how you are going to reduce demand. That is what the NRS 704.741 addresses. The prior section, NRS 704.738, talks about optional pricing generated from renewable energy. The question that should be asked with regard to whether you use either one of these proposals is, now in a utility resource plan, you are putting in specific issues which must go into the cost analysis. Are we necessarily going to have to enumerate all the other things that must go in? For instance, do we put in one transmission line over another? The basic purpose of this statute, worked on in the early 1980s, was to decide to build plants that go under rate-based or buy power on the open market. That was the only consideration 25 years ago.

Things have changed. We think it provided a lot of benefits to the public that are measurable. At the end of the day, whether you have to build a coal-fired power plant, whether it is natural gas or any other renewable energy, there is a cost that can be rate-based. The disadvantage to a renewable is that it is not always there. The advantage is that once you build the plant, you do not have any ongoing costs of fuel, and they are the ones that produce the least amount of carbon. In your opinion, if we are going to put in one low-carbon emission scenario, then are we going to have to put in all the illumination? If they put in their plan what they are going to get, and these are for illustrative purposes only, such as the 25x'25 Action Plan, or where they are going to increase the renewable portfolio standard to the point where half of that is solar, a quarter is wind and another quarter is geothermal. Then do each one of those have a carbon-emission scenario attached to it? Other than having regulations come back to the Legislative Commission, it is laborious to sit through a workshop on regulations, but that is also an important part of the process to the public because that is what they have to live with. It is your public, Stokey's public, the consumer advocate's public and all of those publics. How do you see this playing out where it cannot play out now?

DR. BENJAMIN:

First of all, the integrative resource planning process that you helped create, Senator, is farsighted because it does require the utility and the public to understand the demands, the load forecast, where the State is going in growth and so on, as best that can be determined. All these things are educated guesses when it comes down to it, which at least force us to put it down on

paper. *Nevada Revised Statutes* 704.741 says it is the plan to increase supply or decrease demands. What this particular proposal is doing is on the supply side. If the utility is coming forward and saying we have load forecasts that show growth of 3 percent to 4 percent for the next 20 years, we are going to have to increase our supply of energy in various ways. What this would do is require that at least one of these scenarios be a low-carbon scenario.

The problem we have been seeing in the Integrated Resource Plan, at least in the one I am more familiar with in 2006, is that this scenario was not developed; there were about seven scenarios developed. All of them included the Ely Energy Center, which was a high-carbon intensity project.

Back in 2006, you could see the increases in carbon cost and carbon regulation coming. The scientists were telling us there were problems with carbon dioxide emissions. Now we are starting to see that federal policy makers are going to change the rules of the game. All this does is say to the PUCN we will require the utility to come up with one of your scenarios that will be a low-carbon scenario. That is the public-policy issue before you should the Legislature demand that the PUCN do that.

SENATOR TOWNSEND:

My next question is addressed to Ms. Stokey. I do not know how many scenarios you provide per resource plan. How much do you carve out one for low-carbon emissions? When we first started this, the cost to the company in 2005 was \$1 million to do a resource plan. How much does this add? I am not saying this should not be done, but do you have a sense of the cost?

JUDY STOKEY (Director, Government Affairs, NV Energy):

I cannot give an exact amount on cost. I am sure the technology is a lot better since 2005 when I was in research planning. We currently do a high and a low scenario with what we think will be the carbon tax. We do not know what it is as of yet. We already do scenarios, and the PUCN is currently going through regulations that are looking at these issues and will be making changes. We have not filed a three-year action plan since 2006. As Mr. Owens said in his testimony, things have changed and that would be seen in our 2009 filing on July 1.

SENATOR TOWNSEND:

Would you know in your 2009 filing where the federal government is going to go regarding carbon? Are they going to go "cap and trade" or with a flat tax based on tonnage?

MS. STOKEY:

With every day that goes by we should know a little more. I could not predict what they will do, but hopefully there should be an answer soon from this Congress.

SENATOR TOWNSEND:

Do we use terms such as "best estimate" of the future price of anything? Do we use that in statute?

KIRBY LAMPLEY (Director of Regulatory Operations, Public Utilities Commission of Nevada):

If memory serves me, we do not use that terminology at this point in time.

SENATOR TOWNSEND:

What you have done has value, and we can find a way to do it. However, when telling a utility its best estimate of a future price, it becomes problematic under the statute this Committee passed with regard to the Deferred Energy Accounting Adjustment (DEAA) and the prudence standard. That will be argued long after all of us are gone. When you are doing best estimates as a term in statute of a future price, that gives me concern relative to Mr. Witkoski unable to argue his case on behalf of residential/small commercial customers. The utility is saying you told us the best estimates we have, and now there are 42 smoking-gun e-mail memos. That is my concern.

I do not disagree with the bill. I think the Chair's direction is a good one. What you tried to put forward, Dr. Benjamin, is important. It is those terms that could become problematic to residential customers as we move forward. If their best estimate of a future price is way off, then who does that benefit in a rate case? That sticks with me a bit. I have to see it in action. I could be wrong, but that would give me some concern. There could be an artful way to craft this, to talk about carbon emissions has to be included in their resource plans and to do it in a generic fashion that will accommodate whatever Congress does. I am sure we all agree Congress will do something over the next 4 to 5 months to include carbon emissions as part of an overall energy package. I want to make sure we

do this correctly on how energy and the environment come together and account for it. From words on a page, I want to be sure this is crafted correctly.

As you can see, when we first did this statute, it was small and generic to accommodate the Commission, the advocate and the utility to actually do a research plan. No one had done one before. They responded to the demand by saying they were going to build a plant. That was resource planning 25 years ago. The company looked farther out because they had to meet the demand under their certificate of necessity. In support, maybe this can be tweaked where we do not put something into the statute that becomes a rate-based, a general rate case or a DEAA problem. The burden of proof in a DEAA case is so substantial of the prudence standard that I would have to think through whether this language would be detrimental to residential ratepayers.

CHAIR SCHNEIDER:

I would like to read from the Ernest Orlando Lawrence Berkeley National Laboratory report ([Exhibit J](#)).

The Lawrence Berkeley National Laboratory is weighing in to help by analyzing it. What will it cost consumers if the estimates do not adequately account for carbon? That is a question for which we would have to know the answer. We are representing the consumers, and if we do not adequately account for carbon, does it come back and bite the consumers?

SENATOR TOWNSEND:

I know Dr. Weil and Dr. Benjamin have worked hard on this, and we will have to assume since we have not talked with Commissioner Thompson, the Chair's focus is to give direction to the PUCN that they want certain things included without being so tight that the PUCN cannot do its job.

If you will go to your handout ([Exhibit K](#)) and read under the heading "alternative," I would leave out the last sentence about, "... best estimate of the future price" That is up to the PUCN to determine if they did prudently make a best estimate or they did not. The best estimate is all the analysis they take in. That should be left up to the PUCN on the standards they set.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 165 WITH THE FIRST SENTENCE UNDER PROPOSED AMENDMENT ITEM THREE OF [EXHIBIT K](#).

SENATOR CARLTON:

Are you saying we would not use the number 3 in red that is above?

SENATOR TOWNSEND:

I am using the number 3, [Exhibit K](#), under "alternative" to replace the current number 3 with the alternative number 3, and leave off the last sentence. The alternative number 3 has a better direction to meet the demand with supply or reduce the demand. That is a good statement. We all agree the cheapest kilowatt is the one you do not have to produce. That is why I would replace the number 3 wording in this amendment with the number 3 alternative wording and leave off the last sentence.

CHAIR SCHNEIDER:

The motion is still open. Let me ask Dr. Benjamin how Western Resource Advocates look at this.

DR. BENJAMIN:

I think Senator Townsend made an excellent suggestion. It is difficult to project price. We want to make sure that the scenario is included. Ultimately, it is a consumer issue. I might add that we are not the only ones to bring this up; the consumer advocate has also brought it and the integrative resource planning process up. They also see it as a price to consumers issue. I agree with this suggestion, and it achieves what we are all trying to achieve.

MR. LAMPLEY:

The way I read that language, from the staff's point of view, it could read that we have to consider a low-carbon emission scenario when we are looking at demand-side plans. I am not sure we want to do that. It may cause a problem in analyzing the demand side management. It might skew it one way or the other.

SENATOR TOWNSEND:

Mr. Lampley brings up a good point. That portion should come after "... of sources of supply to meet demands ...," then put in, "including at least one low-carbon emission scenario or the best method to reduce them."

CHAIR SCHNEIDER:

Senator Townsend. Would you then alter your motion?

SENATOR TOWNSEND:

Yes. This is for the record.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS S.B. 165 WITH THE AMENDMENT FROM WESTERN RESOURCE ADVOCATES TO ADD A SUBSECTION 3 TO READ: THE COMMISSION SHALL REQUIRE THE UTILITY TO INCLUDE IN ITS PLAN A COMPARISON OF A DIVERSE SET OF SCENARIOS OF THE BEST COMBINATION OF SOURCES OF SUPPLY TO MEET THE DEMANDS INCLUDING AT LEAST ONE LOW-CARBON EMISSIONS SCENARIO OR THE BEST METHOD TO REDUCE DEMAND.

SENATOR CARLTON:

Mr. Lampley. There is nothing to prohibit you from doing this now, and you have already done it, so this is saying to you, thou shalt do this.

MR. LAMPLEY:

That is correct. We actually did this in one docket for an amended resource plan in 2008. I directed my staff to actually look at the different scenarios and then present it to the commission. The Commission is ordering that and those two dockets. The Commission specifically directed the company to look at the effect of carbon regulation.

SENATOR CARLTON:

Those are my concerns because there may come a day when "thou shalt" is not the best course of action, and we will have removed any flexibility you have.

SENATOR LEE:

As a ratepayer, I would also like Ms. Stokey to give her assessment of the discussion.

MS. STOKEY:

We can already do this especially if the Commission wants us to do this. I do not think this language will hurt the ratepayer especially with the changes that Senator Townsend made. This proposed language is fine.

SENATOR CEGAVSKE:

Similar to Senator Carlton's comments; we already do this, especially if the Commission wants us to do it. I do not believe this language will hurt the

ratepayer at all especially with the changes made by Senator Townsend. This language is fine.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON ABSTAINED FROM THE VOTE.)

* * * * *

CHAIR SCHNEIDER:
We will now move on to S.B. 136.

SENATE BILL 136: Prohibits certain persons from using a telephonic device to write, send or read a text-based communication while operating a motor vehicle. (BDR 43-776)

SENATOR BREEDEN:
I met with the parties who expressed concern for S.B. 136. After several discussions, we came up with a proposed amendment ([Exhibit L](#)).

First, I would address Senator Carlton's question about operating a vehicle. Members of law enforcement and I read the statutes. To better define the language in the proposed amendment: operating a vehicle means the vehicle is in motion or stopped at an intersection that is controlled by a traffic-control signal. The definition for a traffic-control signal includes a stop sign.

Senator Cegavske had asked about stopping on a roadway or highway to respond to a text message. We read the statutes, and it means pulling off into a parking lot or your driveway but not on any roadway. Law enforcement indicated that if someone was safely pulled off to the side of the road, they would not issue a citation.

In the amendment under section 2, it was decided no one should be exempt from text messaging while driving. In the original bill, it was indicated any emergency medical personnel were exempt. If you are driving, texting is texting, so that was omitted.

SENATOR CARLTON:

This amendment eliminates any emergency medical attendant, firefighter or law enforcement personnel. A lot of them carry computers or laptops, and the cars have been retrofitted. This would not apply to that type of communication; would it only apply to a phone-type device? In the definition, it looks like it would include laptops inside patrol cars.

SENATOR BREEDEN:

In speaking with law enforcement representatives, I was told that their officers have been advised not to use the computer while driving because they have had several rear-end accidents.

SENATOR CARLTON:

This gets into a lot of other things such as a single officer vehicle running a plate on a vehicle in front of them. That opens up a whole other discussion, so I am not going there.

SENATOR CEGAVSKE:

As I understand, law enforcement can already stop someone for doing something in their car that is unsafe, be it texting, drinking coffee, reading a book, putting on makeup or shaving. I am wondering if we are putting in too much and confusing things. I agree that right now anyone in law enforcement cannot cite someone for texting while operating a vehicle. I agree with Senator Townsend's amendment that this will have the biggest impact with the children. If this is kept under the guidelines of the graduating driver's license, it is up to the age of 18. That is as powerful as the seat-belt law where we are trying to teach youth about responsibility in a vehicle. As an example, we have this article about a girl who was texting while driving 70 miles per hour; it is an incredible story ([Exhibit M](#)). I am trying to find a place where I feel comfortable with the bill even with the amendment.

CHAIR SCHNEIDER:

In the train wreck in the Los Angeles, California, area that happened a couple of months ago, the engineer was texting four seconds before he plowed into another train. I think the message in the bill is a great message. In California, the texting law is posted on their freeway reader boards where they have about 37 million people.

SENATOR BREEDEN:

We all know texting is an issue, but I do not want to limit the bill to children under a certain age. We all need to be responsible. I can say I am guilty in trying to return a text message while at a stoplight. I agree with most of Senator Townsend's amendments.

Mr. Chair, since there still seems to be some confusion, I would like a couple more days to talk to all interested parties so this bill can be finalized and moved on.

CHAIR SCHNEIDER:

Committee, I have no problem with more time. This is a huge social statement we would make that affects all of us. Everyone here has children that have grown up with these phones in their hands. Old-school people like myself and Senator Townsend do not text while driving because we do not know how to do it. However, this activity does affect a large portion of society in one way or another. Senator Breedon, bring the bill back to the Friday work session.

SENATOR LEE:

I have a problem with Senator Townsend's amendment ([Exhibit N](#)) where it says, "or engage in any activity that distracts his full time and attention" To me, that is too broad. I know I could not support a bill with that line in it.

CHAIR SCHNEIDER:

I understand. I have heard of a woman who reaches over the back seat at her children with a flyswatter. There are all kinds of situations. Senator Breedon, please get together with Senator Lee to address his concerns with Senator Townsend; I will check back with you later in the week.

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CHAIR SCHNEIDER:

Having concluded the business, the Senate Committee on Energy, Infrastructure and Transportation is adjourned at 10:39 a.m.

RESPECTFULLY SUBMITTED:

Laura Adler,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____