

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

**Seventy-fifth Session
February 3, 2009**

The Senate Committee on Energy, Infrastructure and Transportation was called to order by Chair Michael A. Schneider at 8:10 a.m. on Tuesday, February 3, 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

STAFF MEMBERS PRESENT:

Laura Adler, Committee Secretary
Pat Devereux, Committee Secretary
Sandra Hudgens, Committee Secretary
Betty Kaminski, Committee Manager
Josh Martinmaas, Committee Secretary
Matt Nichols, Committee Counsel
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Scott Jackson, Chief, Investigation Division, Department of Public Safety
Bob Gastonguay, Nevada State Cable Telecommunications Association
Brian McAnallen, EMBARQ Corporation
Frank Adams, Nevada Sheriffs' and Chiefs' Association

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Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office

CHAIR SCHNEIDER:

I have prepared the Senate Committee on Energy, Infrastructure and Transportation standing rules for the 75th Legislative Session ([Exhibit C](#)).

SENATOR CARLTON:

Committee standing rule 5 states, "A majority of the full committee is required for committee introduction of a bill." This means at least four members need to be present for a bill to be introduced. Is that correct?

CHAIR SCHNEIDER:

Yes.

SENATOR NOLAN MOVED TO ADOPT THE SENATE COMMITTEE ON ENERGY, INFRASTRUCTURE AND TRANSPORTATION STANDING RULES FOR THE 75TH LEGISLATIVE SESSION.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

I want to make a few remarks about the direction I see the Committee taking this Session.

As we approach term limits, we want to ensure we get the most out of the experience of legislators before they leave, so their knowledge and insights can be passed on to the newer legislators. I am thinking particularly of Senator Carlton and Senator Townsend. I especially want to make sure that Senator Breedon and Senator Cegavske, who will be here for years to come, get up to speed on all these issues. Some of the issues we will be tackling are vast and have a huge learning curve, so we will have a number of informational presentations from staff members in the first weeks.

One focus of the Committee will be to look at existing programs the Legislature has established to get a sense of how well they are meeting their original goals, whether they are still necessary and what modifications are needed. The goal is not to criticize or find fault; rather, it is to review their effectiveness and see how they can be improved. For example, this week we will look at some of the State energy-efficiency programs and the alternative-fuel vehicle program. We are also going to stress the linkage between energy issues and transportation issues, looking at areas where they overlap and studying policies that can advance both at the same time. One example of this is a truck stop electrification bill I plan to introduce.

One area I want to emphasize is the importance of understanding the respective roles of the Legislature and the Executive Branch agencies. The Legislature sets policy, and the agencies carry out those policies. Agencies have a great deal of expertise in their respective fields, and we respect and value that expertise and want to draw on it to determine the best public policy. However, once that policy has been formulated, we expect agencies to implement it in accordance with the intent of the Legislature. Sometimes when agencies disagree with policy, they decide to implement it the way they want, or they avoid or delay implementation. We are seeing an increasing number of agency regulations returned for reworking at the Legislative Commission. This is a waste of time for the agency, the interested parties who participated in producing the regulations and the Legislators who thought they made the policy clear in the first place.

Sometimes these misunderstandings are our fault. If the agencies feel a policy being discussed during the Legislative Session is not the best choice or is not clearly delineated, they need to speak up during the process. Do not hang back and assume you can just deal with it in regulation. If you encounter problems with implementation, seek guidance from the Legislators who approved the policy. Most importantly, if a program encounters problems over time, do not wait for it to collapse or for the problems to come to light in a legislative audit. Bring the issue to us so we can apply the combined wisdom and experience of both branches to solve the problem for the benefit of the public.

We have three bill draft requests (BDRs) to introduce today.

BILL DRAFT REQUEST 43-20: Makes failure to wear a safety belt in a motor vehicle a primary offense. (Later introduced as [Senate Bill 116](#).)

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BILL DRAFT REQUEST S-280: Requires certain governmental entities to work cooperatively to establish the Henderson to North Las Vegas Fixed Guideway Corridor. (Later introduced as [Senate Bill 115](#).)

BILL DRAFT REQUEST 58-380: Makes various changes relating to systems for obtaining and using solar energy and other renewable energy resources. (Later introduced as [Senate Bill 114](#).)

SENATOR LEE MOVED TO INTRODUCE BDR 43-20, BDR S-280 AND BDR 58-380.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR SCHNEIDER:

I will now ask staff to give you a presentation on some of the issues we will consider in the next few months.

SCOTT YOUNG (Committee Policy Analyst):

"I will make the standard disclaimer that staff always make: that we are nonpartisan staff. We do not advocate for or against propositions."

I have prepared a Committee Brief ([Exhibit D](#), original is on file in the Research Library) with an overview of some of the issues the Committee will tackle during this Legislative Session and some general information. This brief includes: measures considered during the 74th Legislative Session by the Senate Committee on Commerce and Labor and the Senate Committee on Transportation and Homeland Security, a synopsis of the Committee's jurisdiction, reports to the Committee, some issues that may come before the Committee this Legislative Session, a selected list of State agency and interest group contacts and a list of acronyms particular to the issues of energy and transportation.

CHAIR SCHNEIDER:

I would also like to lay down some ground rules for those testifying before this Committee. When you testify, please provide the Committee Secretary with

your business card, fill out the witness form and sign in on the Attendance Roster ([Exhibit B](#)). If you wish to submit an exhibit, please provide that to the Committee Secretary before you begin your testimony. Be sure to put your name and the date on it and provide us with 25 copies for Committee members, staff and the public. If you wish to submit an amendment, it must be typed and must include your name, the date, the bill number and a statement of intent that clearly and succinctly states why the proposed change is necessary and what it is designed to accomplish. We also require 25 copies of amendments. Amendments will not be accepted unless provided in this format.

Please remember that statements you make to Legislators, both in and out of this Committee, must be truthful and accurate to the best of your knowledge. If they are not, you are guilty of a misdemeanor or gross misdemeanor according to Nevada Revised Statute (NRS) 218.5345. Witnesses are protected when they testify and are privileged when testifying as part of these proceedings. That also falls under NRS 218.5345.

I will open the hearing on Senate Bill (S.B.) 51.

SENATE BILL 51: Revises provisions governing the subpoenaing of public utility records by a law enforcement agency. (BDR 58-337)

SCOTT JACKSON (Chief, Investigation Division, Department of Public Safety):
Current law, NRS 704.201 and 704.202, authorizes law enforcement agencies to obtain subscriber information, specifically name and address, from public utilities via subpoena. This bill would expand the scope of that information to include social security number (SSN), date of birth and passport number. It would also include usage records for utilities and telephone toll records.

SENATOR CARLTON:

I would like to disclose that my husband is an employee of the Nevada Department of Public Safety, which is a law enforcement agency. Under [Senate] Standing Rule [No.] 23, I do not believe that I have a conflict of interest that requires me to abstain from voting on this bill. ([Exhibit E](#))

CHAIR SCHNEIDER:

If we have each Committee member read their disclosure information for the record in the next week, will that cover us for the whole Session?

SENATOR TOWNSEND:

With Senate Standing Rule No. 23, we attempted to accommodate the ruling that came out of a court case involving one of our members. That ruling is currently being appealed to the Nevada Supreme Court. Until that is resolved, we are all required to provide to each committee, the Senate Floor and the Legislative Counsel Bureau a disclosure of our outside interests, what our spouses do, what our investments are, and so on, so that can be on file. We must read those disclosure statements when a matter comes up that may represent a possible conflict, but we need not read them for every bill. We will refer back to it when other bills come up with a statement such as: "I am reminding the body that my disclosure is on record." The Supreme Court's ruling may change this, of course.

SENATOR CEGAVSKE:

In section 2 of S.B. 51, why are you requesting usage records for power, electricity, gas and water? What does that tell you?

MR. JACKSON:

There may be some redundancy with the terms "power" and "electricity." Usage of electricity can alert law enforcement to the existence of an indoor cannabis operation due to the use of halogen lights.

SENATOR CARLTON:

What evidence do you need to apply for a subpoena of this type?

MR. JACKSON:

A reasonable suspicion is what is generally required for a subpoena, meaning that we have received some information or have some type of interest in a criminal investigation that would require us to pursue that lead through a subpoena.

SENATOR CARLTON:

The person who gets the utility bills may not be the person living in the house. Are you going to contact the landlord and go from there?

MR. JACKSON:

The problem has been that if we subpoena information for a utility based on a residential address, we are typically only given the name and address on the bill. We do not have the identifiers needed to identify the subscriber. Having that

information would give us additional leads to pursue through that investigation. Knowing the subscriber's information will allow us to discover who lives at the address. With twenty-first-century issues like fraud, identity theft and some of the foreign nationals who come into the country, we want to be able to identify them specifically and beyond a name. We want to be able to prove the identity of those we are investigating.

SENATOR CARLTON:

If you receive this information and there is no SSN or valid passport number, would you relay that information to immigration authorities?

MR. JACKSON:

It depends on the information available. If we have a full name and date of birth, we are able to do additional follow-up to identify the individual. If we find we have a potential illegal alien or some other immigration issue, we would report it to the U.S. Citizenship and Immigration Services or to U.S. Immigration and Customs Enforcement.

SENATOR CARLTON:

This is just under a reasonable suspicion. There may not even be an arrest. Would you still report it?

MR. JACKSON:

Yes, if we felt there was a violation of federal law. If we felt they were illegal aliens, it is our duty to report any violation of State or federal law.

SENATOR CARLTON:

I have some real concerns about a state agency acting within immigration policy. I understand what you are trying to do.

SENATOR NOLAN:

It is common practice for local law enforcement agencies with peace officer and police powers to forward the information to the appropriate authorities when they identify a violation of law, whether local, State or federal. Federal authorities also do this, forwarding information about a violation of local laws to local law enforcement.

Under section two, subsection 1, paragraph (c) refers to "any additional identifying information, including, without limitation, (1) date of birth; (2) social

security number; and (3) a valid passport number." What other information might that include? Would it include fingerprints?

MR. JACKSON:

With regard to your first statement, we are sworn to uphold the law. If we observe a violation of city, state or federal law, it is our duty to report it. We do not necessarily enforce immigration laws.

With regard to the section of the bill you referred to, other information might include billing records, method of payment, previous addresses, next of kin or other family members. It was our intent with this language to identify the specific physical identifiers for the subscriber, which would be the date of birth, SSN, and/or passport number.

BOB GASTONGUAY (Nevada State Cable Telecommunications Association):

Under section 2, subsection 4, the phrase "telephone toll records" specifically means long distance calls placed from a phone as narrowly defined under Title 18 of the U.S. Code, section 2706. My clients do not track toll calls. Therefore, incoming and outbound call records are a larger set of information encompassing all calls made and received. We will certainly supply information under subpoena; however, under applicable U.S. law, we have the right to charge for that information, and we do.

CHAIR SCHNEIDER:

How much do you charge?

MR. GASTONGUAY:

It can be considerable. I do not know the exact dollar amount. It depends on how much information is being requested.

SENATOR CEGAVSKE:

Where will the money to pay those charges come from? Can money seized in drug busts be used for this purpose? Do all the utilities charge for this service? Do they all charge the same amount?

MR. JACKSON:

We currently pay these fees, and they do vary somewhat, though they are relatively the same. We currently serve 30 to 40 subpoenas a month, and the

fees are taken out of our operational expenses. We budget for this and have a line item for it.

SENATOR CEGAVSKE:
Do they charge by the page?

MR. JACKSON:
I do not know.

SENATOR CEGAVSKE:
Will the passage of this bill increase your expenses in this area?

MR. JACKSON:
No, depending on what the companies charge for toll records. Typically, we may ask for 6 to 12 months of toll records, depending on the nature of the investigation. If we subpoena 12 months of toll records, that would be voluminous and would result in a higher fee. Over the biennium, however, we have the funding available for these expenses.

BRIAN MCANALLEN (EMBARQ Corporation):
Section 2, subsection 4 of the bill talks about the definition of telephone toll records. This definition is rather broad, and we would like to see the language focus in a bit. EMBARQ only tracks long-distance phone calls and does not track local calls at all. We do have a policy that if we get a subpoena asking us to track calls in a preemptive way, we can do that. However, we do not have a way of doing that retroactively. As long as some of these issues are clarified, we do not have a problem with the bill. EMBARQ follows subpoenas like this all the time.

CHAIR SCHNEIDER:
Do you have an amendment to suggest?

MR. MCANALLEN:
We will work with Mr. Jackson to develop that language.

FRANK ADAMS (Nevada Sheriffs' and Chiefs' Association):
We are in support of this bill. It has been a useful tool for us. The language in S.B. 51 will clarify what we expect from the utilities, and it goes a long way to help us out. We will be happy to help work on the language.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We oppose this bill because of its breadth. The Fourth Amendment to the U.S. Constitution protects people, their houses and their papers, and today "papers" is understood to include utility records and that sort of thing. Allowing law enforcement officials to simply subpoena this information without limitation is an end run around the requirement to get a warrant before searching someone's house. When law enforcement can get power and phone records without that essential judicial check, it means people are not secure in their homes.

CHAIR SCHNEIDER:

They are already doing some of this.

MR. JOHNSON:

Our concern is that amending the NRS to broaden the statute so much will make it more difficult for people to defend the right to be secure in their homes from just a subpoena. It takes away the judiciary's power to tell law enforcement they are going too far in the records they are requesting. There is not enough specificity in the bill. If law enforcement is already doing this, why is this bill necessary? Why is the language that so broadens their ability to subpoena without any check needed?

SENATOR NOLAN:

What is the difference in the standard for a subpoena as opposed to a warrant?

MR. JOHNSON:

A warrant requires probable cause. There is no such requirement noted here, which means law enforcement could get a subpoena with only reasonable suspicion. There is no check on that. Without the check the Fourth Amendment was designed to provide, you could see an overzealous law enforcement agency in a high-profile case simply doing a fishing expedition, requesting volumes of material on the off chance of finding something incriminating. No doubt the vast majority of law enforcement will be judicious in this, but the Fourth Amendment was created to counter the few who will abuse that power.

CHAIR SCHNEIDER:

I would like to see the interested parties work with Mr. McAnallen and Mr. Johnson to resolve their concerns to see if you can come up with new

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language for this bill. If you can do that, we will try to call this bill back to the Committee within the next week.

Is there any further business to come before the Committee this morning?
Hearing none, I will adjourn the meeting at 9:14 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____