

**MINUTES OF THE
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-sixth Session
June 3, 2011**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair Michael A. Schneider at 2 p.m. on Friday, June 3, 2011, 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 Shirley A. Breeden, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator James A. Settelmeyer
Senator Elizabeth Halseth

COMMITTEE MEMBERS ABSENT:

Senator Michael Roberson (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblyman David P. Bobzien, Assembly District No. 24
Assemblywoman Maggie Carlton, Assembly District No. 14
Assemblywoman Marilyn Kirkpatrick, Assembly District No. 1

STAFF MEMBERS PRESENT:

Scott Young, Policy Analyst
Matt Nichols, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Judy Stokey, NV Energy
Debra Gallo, Southwest Gas Corporation
Kyle Davis, Nevada Conservation League
Randy Soltero, Sheet Metal Workers Union, Local 88
Joanne Levy, Nevada Association of Realtors
Kelly Thomas, Nevada Building Performance Professionals
Monica Brett, Southwest Energy Efficiency Project
Jeremy Drew, Director, Coalition for Nevada's Wildlife, Inc.
Gregg Tanner, Nevada Wilderness Project
Garrett Gordon, Large Scale Solar Association; First Solar
Tom Clark, Sempra Generation
Jesse Wadhams, Ormat Technologies
Kathleen Conaboy, LS Power; GA Solar
Stacey Crowley, Director, Office of Energy, Office of the Governor
Ken Mayer, Director, Department of Wildlife

CHAIR SCHNEIDER:

I will open the hearing on Assembly Bill (A.B.) 432.

ASSEMBLY BILL 432 (2nd Reprint): Enacts provisions relating to energy auditors. (BDR 54-136)

ASSEMBLYWOMAN MARILYN KIRKPATRICK (Assembly District No. 1):

During the interim, we adopted some energy audit regulations based on legislation passed in 2007. For a variety of reasons, no one liked those adopted regulations. For one, they did not give authority to the Nevada Energy Commissioner (NEC), Nevada Renewable Energy and Energy Efficiency Authority, Office of the Governor, to do what this bill proposes. All the interested parties worked together during the interim to make a place for energy audits in our State. The result is this proposed bill intended to clarify, among other things, whether homeowners need to get an energy audit to sell their home. Another clarification in this bill is an audit provision which will help people get some value back for doing green projects or upgrades on their home.

We think it is important that Nevada have standards for energy audits. There are federal standards from the Building Performance Institute, Inc. (BPI); and Residential Energy Services Network (RESNET); as well as an energy audit pilot

program. Typically, when we pass legislation, we do not like to recommend one specific group to be used for the audit, so our bill covers both BPI and RESNET standards. During the interim, as the regulations were being adopted, many companies had home energy audit programs in place. We took that into consideration.

This bill, A.B. 432, is effective upon passage so we can eliminate the existing regulations. This bill will not require any regulations because it is very detailed. Energy audits serve a purpose in the State; they bring value to our homes. People can get mortgages now for home energy audit improvements, so this is a great start. We worked with the home energy audit professionals on this during the interim.

This bill did have to go to the Assembly Committee on Ways and Means because it will require the Real Estate Division (RED), Department of Business and Industry (DBI), to hire one employee. The fee is consistent with home inspectors, and is annually paid. I have worked with Assemblywoman Teresa Benitez-Thompson since the beginning of Session on this bill.

SENATOR SETTELMAYER:

One of the concerns we had in the past was that the audits would be mandatory before people could sell their homes. Is that still the case?

ASSEMBLYWOMAN KIRKPATRICK:

No, this bill does not require homeowners to get an energy audit before selling their home. The average home in my district is 25 years old, and we do not want people to have to further deteriorate the value of their homes.

ASSEMBLYWOMAN TERESA BENITEZ-THOMPSON (Assembly District No. 27):

The U.S. Department of Energy (USDOE) does not have any specific guidelines about an energy audit and energy auditor. The definition has been up to each state. When I contacted the USDOE, they referred me to the two industry leaders, BPI and the Home Energy Rating System Program (HERS), which is facilitated through RESNET.

The main part of this bill, section 5 and section 6, came with a sign-off from BPI ([Exhibit C](#)). We also vetted the bill's language through the HERS Program so those seeking energy audits could go through either of these respected organizations.

We want this level of detail in statute to prevent what is starting to happen in other states like Texas and Maryland. There, counties are starting to adopt ordinances to say that an energy auditor is someone certified by BPI, or in Maryland they are defining an energy auditor as someone certified by HERS/RESNET. Defining it county by county results in a patchwork that requires one certification in one county and another certification in another county. Certifications cost money and take time, so we want to make it more uniform and fair to the industry.

I have a PowerPoint presentation and handout ([Exhibit D](#)). Both RESNET and BPI recommend a written report be given to the homeowner with illustrations and charts to guide them through changes needed to make their homes more energy efficient. These energy audits are intended to put something tangible into homeowners' hands to serve as a resource.

SENATOR SETTELMAYER:

On page 5, line 10 of A.B. 432, I understand the concept of giving the energy audit to the homeowner, but why are we also sending it to the USDOE?

ASSEMBLYWOMAN BENITEZ-THOMPSON:

I understand the USDOE has pilot programs to collect data and work on software for the industry to make the process easier and more efficient. We are also using the data for the State in the Office of Energy (OE), Office of the Governor.

JUDY STOKEY (NV Energy):

We support this bill. It is an improvement on what we had in the past.

DEBRA GALLO (Southwest Gas Corporation):

We also support the bill. We participated in the interim on the regulations and had some concerns, but they have been fixed in the current version of the bill.

KYLE DAVIS (Nevada Conservation League):

We support the bill also.

RANDY SOLTERO (Sheet Metal Workers Union, Local 88):

We support this bill. Regarding the training mentioned in the bill, the sheet metal workers are already doing this and have been doing it for the last two years in preparation for this energy audit legislation to happen. Upon passage of this bill,

we will be working with the RED to establish a benchmark of what a good training program will be. This bill has had bipartisan support, and it creates jobs.

JOANNE LEVY (Nevada Association of Realtors):

We support this bill. Section 30 of A.B. 432 removes the mandate that sellers provide a written evaluation of energy consumption. Currently, a seller is required to fill out a four-page form and provide the previous 12 months of utility bills to the buyer. The buyer and seller may choose to waive this requirement. This has caused issues for sellers in this tough real estate market. The form is extremely detailed and really only provides the buyer with limited information concerning the energy consumption of the house.

KELLY THOMAS (Nevada Building Performance Professionals):

We support this bill. We have been involved in the development of the regulation on this issue.

MONICA BRETT (Southwest Energy Efficiency Project):

I represent the Southwest Energy Efficiency Project (SWEET), a nonprofit think tank. Toward the end of 2009, the former NEC asked SWEET to coordinate stakeholder input into the regulations this bill would delete. We worked to develop a consensus audit to provide home buyers useful information about a house's energy efficiency. Unfortunately, the regulation adopted did not serve this goal and was not satisfactory for many parties, including the main parties that would be impacted—the realtors, auditors and public.

The aim of this bill is to create a remedy to this unsatisfactory regulation, but we at SWEET feel it will tie the hands of the building performance industry by defining audit standards within legislation. The USDOE will soon release energy auditing standards, and any new protocol would not be included for auditors.

The energy auditing industry is well-established, with standards from RESNET and BPI readily available to auditors. They do not need to be mandated via legislation. The complicated specifications in the bill deter a market-driven approach and a broad range of energy offerings for Nevada homeowners. Given that the current regulation requiring an energy audit when a home is sold is flawed, SWEET recommends someone who understands building science and energy efficiency be given an opportunity to revise the regulations under the existing law. We oppose this bill.

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ASSEMBLYWOMAN BENITEZ-THOMPSON:
I am hearing this opposition for the first time.

CHAIR SCHNEIDER:
I know this is the first step for putting legislation in place for energy audits. I would recommend working with SWEEP over the interim. I have received a letter with concerns about this bill from Lesley Greninger of Home Star Building Solutions, Inc. ([Exhibit E](#)). I will close the hearing on A.B. 432.

SENATOR BREEDEN MOVED TO DO PASS A.B. 432.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:
I will now open the work session hearing on A.B. 74.

[ASSEMBLY BILL 74 \(1st Reprint\)](#): Revises various provisions relating to the regulation of the insurance industry. (BDR 57-472)

CHAIR SCHNEIDER:
We do have some amendments in the work session documents ([Exhibit F](#)).

SENATOR SETTELMAYER:
We had some discussion on Steve Watson's amendment, [Exhibit F](#), pages 15 through 18. It seems like the State was always on the hook for the liability, no matter what.

CHAIR SCHNEIDER:
That is my understanding, too. The Watson amendment is acceptable, then. We should go through all four proposed amendments. Is the amendment from Commissioner of Insurance (COI) Brett J. Barratt, Division of Insurance, DBI, [Exhibit F](#), pages 4 through 9, one that the Committee wants to accept? Seeing all of you nodding, we will accept that amendment and will move on to Helen Foley's amendment, [Exhibit F](#), page 11.

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SENATOR PARKS:

That amendment conforms with the latest correspondence we received from Ms. Foley. I am fine with it.

CHAIR SCHNEIDER:

The next amendment to look at is Assemblywoman Maggie Carlton's, [Exhibit F](#), page 13.

ASSEMBLYWOMAN MAGGIE CARLTON (ASSEMBLY DISTRICT NO. 14):

I would like to withdraw this proposed amendment. I still have some concerns, especially going into the federal Affordable Care Act and health exchanges into the future. As we go into the health exchanges, the navigators are going to be very important, which was one of the factors I had in mind when proposing the language of this amendment. I now think we would be better off addressing this in the upcoming Session. We will also need to make sure the navigators are well qualified, responsible and held accountable to the COI into the future.

CHAIR SCHNEIDER:

We need to look at Jack Kim's proposed amendment now, [Exhibit G](#). We are in agreement with accepting this proposed amendment along with the other two, excluding Assemblywoman Carlton's withdrawn amendment, so I will close the work session hearing on [A.B. 74](#).

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED [A.B. 74](#).

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

I will open the hearing on [A.B. 307](#).

[ASSEMBLY BILL 307 \(2nd Reprint\)](#): Enacts provisions governing energy development projects. (BDR 45-872)

ASSEMBLYMAN DAVID P. BOBZIEN (Assembly District No. 24):

Recently, the U.S. Fish and Wildlife Service (USFWS), U.S. Department of the Interior, decided a listing of the sage grouse onto the federal Endangered Species List (ESL), was warranted but precluded under the Endangered Species Act (ESA). The sage grouse has been called potentially, "the spotted owl of Nevada," because if it were listed, it would have dramatic impact on many land uses in the State. We would like to keep the sage grouse off the ESL and still maintain State sovereignty and jurisdiction over the species. The way to do this is by being more proactive in managing this wildlife resource.

Each time the USFWS looks at a candidate species for the ESL, they make a data call to the individual states, looking for biological data on the species as well as information on the specific state's efforts to preserve the species.

This bill moves us forward specifically related to energy development projects. We can balance environmental concerns with energy development. The original bill proposed a large fee for energy developers to compensate the State's Department of Wildlife (DOW) for the surveys and plan reviews they already do to evaluate projects on both federal and private lands.

Working with the various conservation organizations and the Office of the Governor, we are proposing a cost recovery approach to how the DOW does plan review. It is very similar to what the U.S. Bureau of Land Management (BLM), U.S. Department of the Interior, and other federal agencies do under the National Environmental Policy Act (NEPA) Process.

When a developer brings a project to the BLM, the interested parties determine a scope that will be reviewed as part of the NEPA process. Once that determination is made, a cost-recovery mechanism is set up to cover all the science and survey work needed for the project. The developer pays this cost.

The DOW is currently funded almost exclusively with user's dollars, through fees for hunting and fishing licenses and federal excise taxes on the sale of guns, ammunition and other outdoor equipment. The DOW receives almost no General Fund money and are at capacity with the work they do for energy projects. If the State renewable-energy industry takes off as we hope it will, DOW will have an increased burden doing the plan reviews, surveys and studies necessary for those projects. This bill, A.B. 307, will ensure the DOW is

properly compensated for the work they do in responding primarily to federal agencies' requests for State wildlife data.

Going through the bill, on page 5, section 7, it reads, "Except as otherwise provided in section 6 of this act, a person who files an application with the Federal Government for a lease or easement for a right-of-way for an energy development project or an application to the Public Utilities Commission of Nevada or any county in this State relating to the construction of an energy development project, shall, concurrently with the filing of the application, file a notice of the energy development project with the DOW." This just gives a heads-up to both the federal government and the State DOW that the project is beginning. That procedure then determines when the cost-recovery program would be set up.

Section 7, subsection 2 of the bill requires a fact sheet be filed with the DOW. This is not an additional regulatory layer, it is not a permit. This is just for compensation for the plan review. On page 6, starting on line 1, we have a surety for the developers, assuring them we will not run up a huge bill. The cap is set at \$100,000 for projects of all sizes.

In section 8, the DOW has a responsibility to compile and maintain data about the energy development projects. This is something they already do, but we wanted it clearly in statute as it relates to the plan review and cost-recovery process.

Section 9 forms the Energy Planning and Conservation Fund (EPCF) for work not covered by cost recovery, which is only applied to plan review. The other work related to this process—the surveying, the mapping and field work—is covered by the EPCF. We are initially establishing this fund with no money, but are accepting donations. In the future we can find additional funding sources.

Starting on line 36, page 7, the State Wildlife Action Plan (SWAP) is referenced, providing a hook for what species is being referenced. Every state wildlife agency is required to establish a SWAP to qualify for federal subsidies.

We have a mock-up of a proposed conceptual amendment ([Exhibit H](#)) from Senator John J. Lee. On page 7 of the amendment, starting at line 8, the intent of these specific changes is to ensure an additional mechanism for local discussions about the impact of renewable-energy projects. There are a number

of projects in rural parts of the State that have created controversy regarding their impacts. This language gives the developer an option to facilitate communication between the project coordinators, government agencies and communities. We did incorporate this concept into the second reprint of A.B. 307, page 6, starting on line 9. However, we did not have the enumerated list as in the amendment.

I had a hallway conversation with Senator Lee who said he was not completely happy with the language of the proposed amendment. He does not like the fact the bill puts the onus on the DOW to create the regulations for this mechanism rather than on the OE, which is where he thinks it should be.

SENATOR SETTELMAYER:

I am more familiar with wetland rehabilitation work where you use the money to create the habitat. What are your thoughts on using that money, the \$100,000, for wildlife habitat rehabilitation? I am a little worried about creating a large fund for the Board of Wildlife Commissioners, DOW.

ASSEMBLYMAN BOBZIEN:

My original intent behind this bill was also to fund conservation and related projects. In my conversations with the Governor, there was some concern that this would be too broad. The hope is that by creating the EPCF, we would provide a vehicle for funding the types of conservation projects you are talking about to help implement, say, a conservation plan for the sage grouse.

SENATOR SETTELMAYER:

Are you talking about plan review with no administrative costs, just the hard costs?

ASSEMBLYMAN BOBZIEN:

There will likely have to be a certain amount of administrative overhead, but that will be made clear in regulations. The intent is that it be tight to the specific activities related to plan review.

MR. DAVIS:

We are in full support of this bill. It is the top priority of the conservation community for this Session. In working with various people during the interim, we realized this was a subject that needed addressing, especially if we want to get our renewable-energy industry off the ground. Right now, the DOW is

operating at capacity and basically in triage mode. This agency is unable to be proactive and help energy projects in terms of finding the best sites to ensure these projects move forward quickly with the least amount of impact to the landscape and wildlife habitat.

That was the original impetus for this bill. We have worked with the Governor's Office on this and with other interested parties, and I feel we have come up with a good bill that will offset costs so our State's DOW can move forward, since that is where the wildlife data is gathered and stored. Wildlife is something over which our State has jurisdiction. Federal agencies like the BLM come to the DOW for wildlife data and do not reimburse the costs of procuring or dispersing the data. As a result, we are not seeing as many energy projects being developed. By freeing money currently being spent on project review and putting it into conservation work, as well as the federal matching funds this will stimulate, it will allow us to do conservation work that hopefully will keep species off the ESL. This is a great step forward, both for Nevada's wildlife and Nevada's renewable-energy industry.

JEREMY DREW (Director, Coalition for Nevada's Wildlife, Inc.):

I am in support of A.B. 307 and have submitted my written testimony ([Exhibit I](#)). We believe this legislation would be good for Nevada's wildlife and the long-term sustainability of our energy industry.

GREGG TANNER (Nevada Wilderness Project):

I worked 32 years for the Nevada DOW as a biologist, working within the game and habitat bureaus. In the early 1980s, we had a situation emerge with an unprecedented number of migratory birds killed in cyanide leach ponds associated with new gold mines. The State was able to work cooperatively with the mining industry to alleviate some of those problems. This allowed one of the State's largest industries to continue without intervention by the federal government because of issues associated with the death of migratory birds.

That was a success story. This bill, A.B. 307, is largely modeled after what happened in that historic situation. It will allow industry and the DOW to work together to up-front identify and mitigate potential problems associated with sensitive species. It will propel the energy industry forward in a smarter way without causing problems for wildlife and habitat.

MS. STOKEY:

I signed in as neutral because of the fees. We do not typically support anything that will increase costs to our customers. We strongly support the efforts of Assemblyman Bobzien in saving the sage grouse and other species. If they were to be listed on the ESL, it would be very detrimental to the building of renewable energy in this State. We also appreciate the cap written into the bill.

SENATOR SETTELMAYER:

When NV Energy installs energy projects, do you mitigate for wildlife?

MS. STOKEY:

We have to go in front of all the local jurisdictions, as well as State agencies, to get approval to build any projects. We do a tremendous amount of mitigation. We speak to local governments and typically have to go through several kinds of agreements if it is a large project. It is really up to the local governments to tell us what needs either to be paid or done, such as some kind of mitigation requiring the land be put back as it was.

MS. GALLO:

Our gas transmission lines are mostly built by our federally regulated pipeline company, Paiute Pipeline, so we already have to work with the USFWS. Some of our concerns were about duplication, but most of this has been addressed. We appreciate the cap also. We will participate in working on any regulation on this issue.

GARRETT GORDON (Large Scale Solar Association; First Solar):

We support this bill. We worked with the sponsor and working group on several versions of this bill, and it is a good final product.

TOM CLARK (Sempra Generation):

We support this bill.

JESSE WADHAMS (Ormat Technologies):

We support this bill.

KATHLEEN CONABOY (LS Power; GA Solar):

If I correctly heard Assemblyman Bobzien say Senator Lee's proposed amendment is off the table, then we support this bill.

SCOTT YOUNG (Policy Analyst):

My understanding of Assemblyman Bobzien's testimony was that we would transfer paragraph (b) of subsection 4, section 7, to the jurisdiction of the OE in lieu of accepting Senator Lee's amendment.

MS. CONABOY:

We are in full support, then. We worked with the group on this bill and are as interested as anyone else in keeping the sage grouse off the ESL. Two points are very important to us. One is the information required by the DOW would not be any more prescriptive than what is required from any other agency. In the regulatory process, I would like to make sure we protect any proprietary information of the developers. The second point is that we are grateful to the early bill amendments allowing us to use the BLM process. The scope of the project should be defined before the fees are calculated.

STACEY CROWLEY (Director, Office of Energy, Office of the Governor):

We support this bill and worked with the Office of the Governor to ensure the fee structure was agreeable. We particularly support the idea that the filings go through DOW and then come to our office. We also support the conceptual amendment regarding moving the facilitation into our office.

KEN MAYER (Director, Department of Wildlife):

We support this bill. We have worked with the Governor's Office, the OE and Assemblyman Bobzien on the development of this bill.

CHAIR SCHNEIDER:

I am closing the hearing on A.B. 307.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 307 WITH THE CONCEPTUAL AMENDMENT, [EXHIBIT H](#).

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR SCHNEIDER:

Seeing no more business, I will adjourn the meeting of the Senate Committee on Commerce, Labor and Energy at 3:02 p.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Michael A. Schneider, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 432	C	S.L. Tiger Adolf	Letter, Building Performance Institute, Inc.
A.B. 432	D	Assemblywoman Teresa Benitez-Thompson	PowerPoint Handout
A.B. 432	E	Lesley Greninger	Letter, Home Star Building Solutions, Inc
A.B. 74	F	Michael A. Schneider	Work Session Document
A.B. 74	G	Michael A. Schneider	Proposed Amendment from Jack Kim
A.B. 307	H	Michael A. Schneider	Work Session Document
A.B. 307	I	Jeremy Drew	Testimony