

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
March 1, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 9:32 a.m. on Friday, March 1, 2013, in Room 2135 of the Legislative Building, Carson City, 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 Mark A. Manendo, Chair
Senator Kelvin Atkinson, Vice Chair
Senator Pat Spearman
Senator Joseph P. Hardy
Senator Donald G. Gustavson

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst
Darcy Johnson, Counsel
Jennie F. Bear, Committee Secretary

OTHERS PRESENT:

D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office
John Johansen, Chair, Committee on Testing for Intoxication, Department of Public Safety
Steven Johnson, Criminalist, Forensic Science Division, Washoe County Sheriff's Office
Kristin Erickson, Nevada District Attorneys Association

Chair Manendo:

We have one bill today, Senate Bill (S.B.) 175. We will begin the hearing for S.B. 175 now.

SENATE BILL 175: Revises provisions relating to testing to determine the concentration of alcohol in a person's breath. (BDR 43-184)

D. Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

The Washoe County Sheriff's Office is in favor of S.B. 175, a straightforward bill that updates the *Nevada Revised Statutes* (NRS) regarding the testing of devices used to test the alcohol content of a person's breath.

John Johansen (Chair, Committee on Testing for Intoxication, Department of Public Safety):

I am the traffic safety representative for the Office of Traffic Safety at the Department of Public Safety (DPS). For this hearing, I speak as the Chair of DPS's Committee on Testing for Intoxication (CTI). I have a one-page handout ([Exhibit C](#)) for my testimony.

The CTI is responsible for developing regulations for the calibration of devices that test the alcohol content of a person's breath. The devices used in the State utilize an aqueous solution for verification of the calibration of the instruments. New technology uses a dry-gas solution to accomplish the same thing. The language in S.B. 175 is proposed to keep pace with the new technology.

The National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation has been in discussions with my office. The NHTSA wants us to spend some of the traffic safety funding we have received. To do this, we have a project to replace all evidentiary breath testers in the State with the newer version, the "Intoxilyzer 8000." It brings the new technology to Nevada. The machine can work with either a dry-gas solution or an aqueous solution.

The NRS and the *Nevada Administrative Code* require that the person who prepares the solution used to verify the calibration must be the same person who fills out the affidavit or declaration and testifies in court. The dry-gas solution is unable to be prepared in our labs in Nevada. It is difficult to prepare, and the equipment is expensive. Dry-gas solutions, therefore, are purchased from the manufacturer. We do not want the manufacturer's representative to complete the affidavit or to testify. The vendor of our breath-test devices is CMI, Inc. in Owensboro, Kentucky. Nevada law states that the technician who prepares the solution for the calibration must be the person who testifies. This is cost-prohibitive for us.

The forensic analyst of alcohol and the two forensic labs in Nevada are capable of verifying that the gas solution and the aqueous solution meet the

requirements to verify the accuracy of the calibration of our breath-test equipment. We are asking that the change be made in statute to allow our forensic analyst of alcohol to verify that the concentration of alcohol in the sample is accurate and can be used.

Chair Manendo:

You said NHTSA wants DPS to spend some of its resources. What is the cost of making this change?

Mr. Johansen:

It would cost \$716,000.

Chair Manendo:

Does this cover all law enforcement offices in the State? Will it take care of everybody?

Mr. Johansen:

Evidentiary breath-test devices are located throughout the State. All law enforcement officers—including sheriff deputies, police departments, troopers, some booking officers and others—are being trained on the use of the Intoxilyzer 8000. It is a relatively easy transition because the device is manufactured by the same company as our current device. The training class lasts about 2 hours for operators of the new instrument.

Senator Gustavson:

How long has the model 8000 been used in other states? How new is it?

Mr. Johansen:

To the best of my knowledge, it has been used about 5 or 6 years. The CTI placed it on the list of approved devices for use in Nevada in 2003 or 2005. It has been around for some time. Nevada had the opportunity, so we decided to take it.

Senator Gustavson:

Have there been any problems or controversies elsewhere with this device?

Mr. Johansen:

No, not that I know. It is being used in approximately 20 states. It has been used for a few years. The most recent state to use it is Maine. Oklahoma has

used the device for quite a while, and Florida uses the device. I have heard nothing to indicate it is not acceptable.

Senator Gustavson:

I want to make sure we will not run into some type of controversy and that it is a proven product.

Mr. Johansen:

Nevada is not a pilot state for this machine.

Senator Hardy:

The language in the bill, then, is modeled after somewhere else that has worked with the device? Has this language been working elsewhere?

Mr. Johansen:

The language in our proposal is not modeled after that in any other state. The language was developed when Lieutenant Spratley brought the question to the CTI during an open meeting. We debated the language. Since the forensic analyst of alcohol can verify, we chose this language to add to the statute. I do not know what other states have done. Their language is probably similar. I cannot say. Like all states, we are trying to avoid costs involved in bringing an expert from Kentucky to attend a driving under the influence (DUI) court hearing.

Steven Johnson (Criminalist, Forensic Science Division, Washoe County Sheriff's Office):

I am a criminalist and a forensic analyst of alcohol. The language in this bill is to allow a forensic analyst of alcohol to verify that the gas or solution is suitable to check the calibration of a breath-testing instrument. Verification would be done using appropriate and up-to-date scientific methods. That can be done at the laboratories. The other language change in this bill is to add the words "or verifying the calibration of" to the statute so that the solution or gas may be used to calibrate and to verify the calibration of a breath-testing device.

Scientifically, there is a distinction between a calibration and a calibration verification. The calibration is a big picture, a process. It is everything that is done to ensure an instrument is working properly. That can include various diagnostic checks. Calibration verification can be done during a calibration, but verification of the calibration of an instrument can be done without doing

a calibration. It is an important distinction between the two to note that the solution or gas can be used in both a calibration and a verification of the calibration of the device.

Kristin Erickson (Nevada District Attorneys Association):

I am testifying on behalf of the Nevada District Attorneys Association. We are in favor of S.B. 175, as this is a critical piece in successful prosecution of DUI cases.

Chair Manendo:

I will close the hearing on S.B. 175.

SENATOR GUSTAVSON MOVED TO DO PASS S.B. 175.

SENATOR SPEARMAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Manendo:

Hearing no other business, I adjourn the meeting at 9:47 a.m.

RESPECTFULLY SUBMITTED:

Jennie F. Bear,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
S.B. 175	C	1	John R. Johansen	Written testimony