

MEMBERS PRESENT

Chairman Dini  
Mr. Marvel  
Mr. Fitzpatrick  
Mrs. Westall  
Mr. Harmon  
Dr. Robinson  
Mr. Craddock  
Mr. Jeffrey  
Mr. Getto  
Mr. Bedrosian  
Mr. Bergevin

GUESTS PRESENT

See Guest List attached

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Chairman Dini called the meeting to order at 8:00 A.M. He stated the order of business would be AB 97 and AB 103.

AB 103 - CREATES DEPT. OF TRANSPORTATION

Mr. Grose stated AB 103 arose out of an interim study on feasibility creating a commission to regulate transportation. He stated that Nevada has a traditional government structure in the area of transportation; each mode of transportation or specialized transportation function is in its own area, department, or agency. He stated there ought to be one department or agency charged with regulating and assisting in the movement of both people and goods by all modes of transportation. He advised the Committee that in 1966 the creation of the Federal Dept. of Transportation meant that as a practical matter states that had a DOT were more likely to be able to work effectively with the Federal Government with a view towards getting more money. He stated a DOT was a more rational structure than was had at the present time. He said the first thing was to change the name from Highways to Dept. of Transportation. He advised the Committee the second basic element of the Bill is the elevation of the planning function to division status and giving it a statutory charter. Mr. Grose advised that the sub-committee recommended that a Dept. of Transportation be created from the present Highway Dept.; it should be headed by a director who should not have to be an

engineer; there should be a Deputy Director who does not have to be an engineer; and there should be four assistant directors, each supervising a division, one of which will be a planning division with clear statutory authority from multi-module integrated transportation planning.

Mr. Grose then proceeded to go through the Bill outlining the pertinent sections; section 3 changes engineer to director and it removes the requirement that the department head be a registered engineer. The feeling of the sub-committee was that first and foremost he should be a proven administrator and manager since the person at that level is not doing much real engineering. Mr. Grose stated that section 6 of the Bill changes two present Deputy Highway Engineers to two Deputy Directors who also do not have to be engineers. He stated that was not exactly what the sub-committee recommended and if the Bill is processed it is the recommendation of the sub-committee that it be changed to one Deputy Director. He said the crux of the organization proposed is the elevation of the planning function to a division level.

ASSEMBLYMAN KAREN HAYES

Mrs. Hayes stated the sub-committee was concerned about mass transportation and being able to get funds from the Federal Government. She stated that 32 states presently have Depts. of Transportation. She stated that the sub-committee felt that did not want to create a new level of government and what they are doing is actually using the structure already operating within the State and just reorienting it.

ASSEMBLYMAN GLOVER

Mr. Glover stated the Bill could be used as a mechanism to capture more federal money. He stated in his opinion the important parts of the Bill were in moving the planning division up, changing responsibilities and qualifications for the administrator, and the fact that it would not cause a lot of turmoil in the Highway Dept.

JOE SOUZA, State Highway Engineer

Mr. Souza stated it was his feeling that since the department is fully engineering oriented that the director or deputy director should be an engineer. He stated he thought that qualification should be left in the Bill. He further stated that division chiefs in the reorganization should be classified which would keep the department stable in the case of a change of director, deputy

directors, etc.

GENE PHELPS, Business Manager, Highway Dept.

Mr. Phelps stated that the loss of federal funds has been a lack of matching on a local level and not due to the lack of a DOT. He stated that this was a skeleton Bill and by the time it was implemented it would be very thick and quite a bit of work to do. He stated the fiscal impact would not be significant but there would be some.

Chairman Dini asked Mr. Phelps how much time he thought would be needed and Mr. Phelps mentioned a 6 month transition. Mr. Phelps mentioned they had a lot of highway signs scattered throughout the state that would have to be changed or replaced to accommodate the name change transition.

Mr. Phelps responded no in answer to a question by Mr. Getto concerning matching funds that are lost because they are not designated as a DOT. Mr. Phelps also stated at the present time there were no mandates in the Federal law that says they have to be a DOT in order to be eligible. Mr. Phelps said they did not anticipate any significant costs in terms of reorganization because they were only going to shuffle some positions around and he went to the blackboard and drew a diagram to indicate what he was talking about. The same diagram had been passed out to the Committee for their perusal earlier.

Mr. Getto wanted to know what improvement would be seen and that he, as a layman, wanted to know if the DOT would function better in the planning end of it or would it just be a change of name and personnel. Mr. Souza responded that that those things in the planning end have been due to a lack of funds. Mr. Phelps said this would provide the legal basis for comprehensive transportation planning should the federal funds become available for that purpose.

DARYL E. CAPURRO, Nevada Motor Transport Assn.

Mr. Capurro stated it was his group's feeling that the Director, Deputy Director, or both, should be registered professional engineers and the requirement should be rewritten back into the Bill.

VIRGIL ANDERSON, AAA

Mr. Anderson indicated his support for the concept of AB 103.

SAM MAMET, Management Analyst, Clark County

Mr. Mamet stated they generally support the concept of the Bill. However, he said, some departments had several reservations specifically directed at Section 10 of the Bill. Mr. Mamet advised that the Clark County Aviation Dept., which operates McCarran International Airport, is disturbed about including aviation planning within the scope of this department, and it is felt the presence of some type of state agency may ciphon off certain federal funds which they are receiving at the present time. He further stated it was their hope that the department would provide technical assistance especially to the smaller communities, and that this department does not get into the business of having some type of veto power over local transit planning. He indicated there is no provision in the Bill concerning same but did want to offer the cautionary remarks.

Chairman Dini announced the testimony was concluded on AB 103.

AB 97 - CREATES BOARD TO REVIEW DECISIONS AND ORDERS OF STATE ENGINEER

Chairman Dini stated the Bill was introduced at his request and briefly reviewed the Committee theory behind the review board. He stated several years ago in the draught a lot of people were denied wells and his constituency felt the only relief they had was to go to Court and by creating this water resources review board they could go to the board, ask for a hearing, and overturn the State Engineer's decision.

BILL COZART, Nev. Assn. of Realtors

He stated his group strongly supports the concept of the Bill. He stated that under present law the only recourse for an applicant is an appeal in the District Court which is often time consuming and costly. He stated an administrative review would be less time consuming and

costly, this Bill would propose to amend and provide the applicant with the alternative of appealing to an administrative body. He stated it would provide the applicant with an informal and inexpensive determination. He then referred the Committee to the material prepared for their benefit outlining their suggested amendments. A discussion ensued as to how much time and money would actually be saved between going to Court and appealing to the Review Board.

RAY KNISLEY

Mr. Knisley stated he was appearing as an individual and said that the Bill is, technically, a very poor Bill. He stated the Bill creates many more problems than it solves. He discussed the fact that it puts a committee in the State Engineer's office and probably a division of Water Resources would have to be created and personnel furnished; that the Commissioners are appointed by the Governor but no terms set for them; that legal counsel would have to be provided for the committee; and it opens up a can of worms on third party rights. He stated the Bill needed extensive rewriting with particular attention to the home of the Board and the funding of it.

REESE HARPER, Trico Development Co.

Mr. Harper stated he had comments in opposition to the Bill. He said the Board would create one more step in a very lengthy and costly process already, and expressed concern in connection with the qualifications of the Commissioners. He said he also questioned who would serve on the Board. He stated that if laymen served on the Board they would need a staff and would not have all the information they would need.

ROSS deLIPKAU, Attorney

Mr. deLipkau opened his remarks with a history of water rights in Nevada. He stated AB 97 was written in the political area rather than the engineering arena. Mr. deLipkau went on to elaborate on the court process and his experiences and involvement in hearings concerning water rights. He stated the expense of the administrative hearing before the State Engineer in his experience has cost the applicant as much as \$5,000. Mr. deLipkau stated he was against AB 97 and the amendments.

WILLIAM J. NEWMAN, State Engineer

PETER G. MORROS, Ass't. Director, Conservation

Mr. Newman elaborated on the extent of the duties of the State Engineer's Office. He stated they felt the review board should be separate from the State Engineer's Office. Mr. Newman stated that in regard to the qualifications it would be difficult to take some man off the street and permit him to make technical decisions. Mr. Newman stated the Bill states the Attorney General will represent the Board but the Attorney General also represents the State Engineer. He also said the way the Bill is written the State Engineer would not have the right of appeal and he said they felt they should have the right to appeal.

Mr. Morros stated he was largely responsible for the fiscal note and felt it was very conservative. He stated he had been told his figures wasn't even in the ball park.

Chairman Dini opened questions from the Committee and a discussion ensued. Mr. Craddock was interested in the degree of success by the State Engineer's Office in Court and Mr. Morros responded about 95% successful. Mr. Craddock requested the history on same in specifics and Mr. Morros advised he would get the data.

GEORGE PEET, Developer and Realtor

Mr. Peet stated he supported the amendment. He stated he was very much in favor of a Board in between the court and the State Engineer.

Chairman Dini announced the testimony on AB 97 was concluded.

Chairman Dini then opened discussion on AB 103. He advised the Committee of the amendments that would have to be voted upon and general discussion ensued. Mr. Jeffrey stated he had served on the interim committee for the Bill and he stated it was the opinion of the committee that a better administrator was needed for the DOT rather than an engineer. Mr. Getto moved that the director of the DOT have administrative ability and be a registered, professional engineer which was seconded by Mr. Bedrosian.

A discussion then ensued between committee members pro and con on the motion, and then a general discussion ensued concerning the amendments.

COMMITTEE ACTION:

AB 103 - Mr. Getto moved that the director of the Dept. of Transportation be an administrator and a registered licensed engineer, seconded by Mr. Bedrosian, unanimously carried, Mr. Jeffrey, Mr. Craddock, and Mr. Fitzpatrick opposed.

Dr. Robinson moved that lines 11 and 12, on page 2, referring to the "Chief Accountant" (the Committee had been advised it was obsolete) be deleted, seconded by Mr. Craddock, unanimously carried.

Mr. Marvel moved that the four Assistant Directors be classified, seconded by Dr. Robinson, and unanimously carried.

Dr. Robinson moved that there be one Deputy Director, seconded by Mr. Marvel, and unanimously carried.

Mr. Bergevin moved to AMEND and DO PASS AB 103, seconded by Mr. Marvel, and unanimously carried.

Chairman Dini turned the chair over to Dr. Robinson on the next Bill.

AB 97 - Mr. Dini moved that the Bill receive NO FURTHER CONSIDERATION, seconded by Mr. Harmon, and unanimously carried.

AB 25 - Mr. Fitzpatrick moved the Bill receive NO FURTHER CONSIDERATION, seconded by Dr. Robinson, and unanimously carried.

AB 137 - Committee in general agreement that this Bill should be held until they see future action by taxation committee.

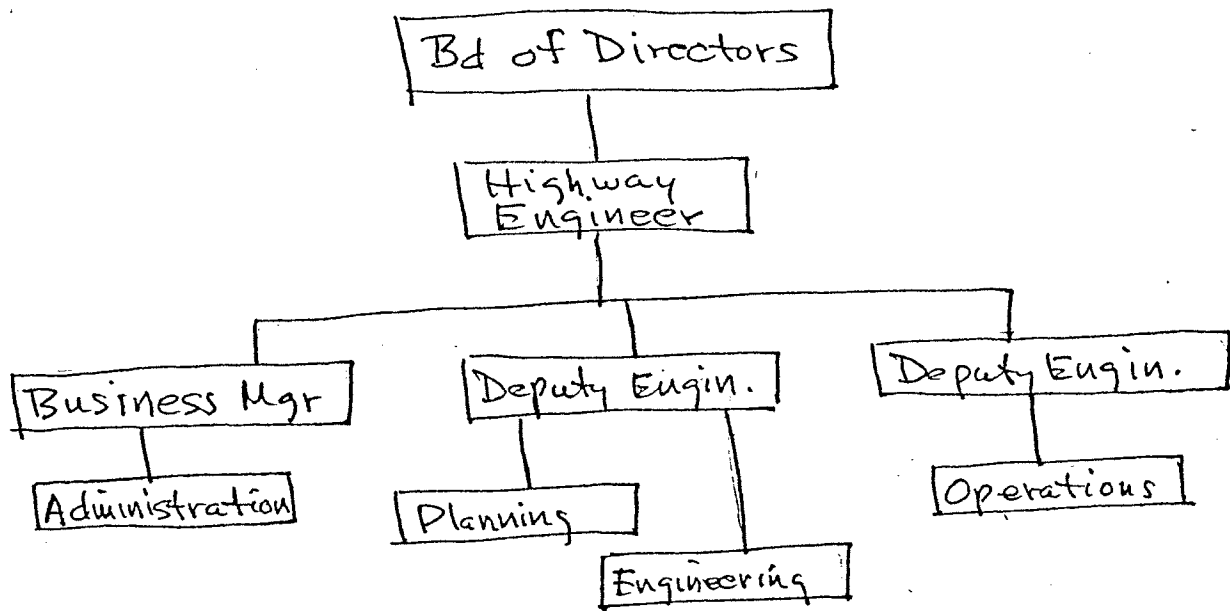
Respectfully submitted,

*Sandra Shatzman*  
Assembly Attache

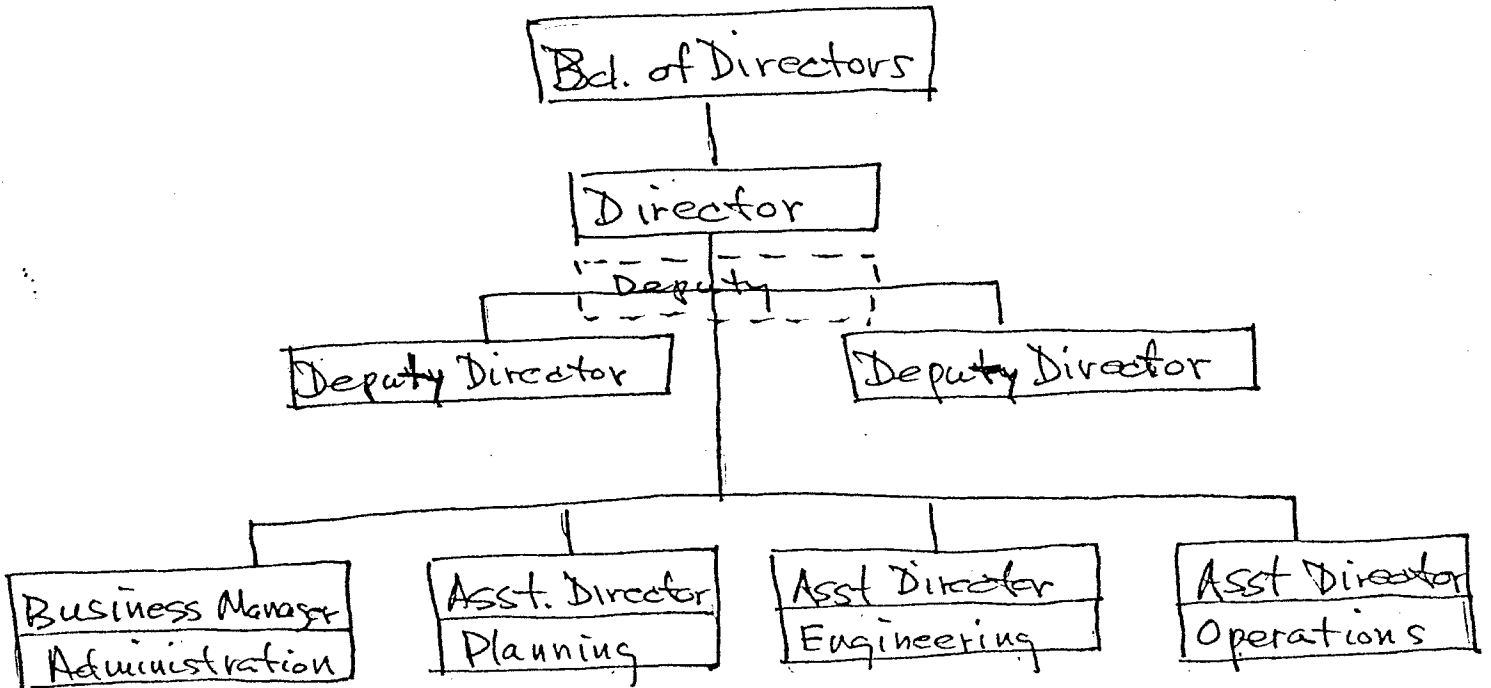




Present



Proposed



533.371 Appeal from endorsement.

1. In addition to the remedies provided by NRS 533.450, any applicant feeling himself aggrieved by the endorsement made by the state engineer upon his application, may, in writing, in an informal manner and without pleadings of any character, appeal within 30 days of the date of such endorsement to the water commission for an examination and reversal of any such action by the state engineer.

2. Upon receipt of such an appeal, the water commission, as early as may be possible, shall hear the appeal.

3. All parties directly interested in the appeal and those who claim an adverse interest thereto, shall be duly notified and shall be heard at such hearing if appearance is made.

4. The appellant shall pay all costs of the appeal to the water commission.

5. Any person feeling himself aggrieved by any order or determination of the water commission may seek judicial review pursuant to the provisions of chapter 233B.

EXHIBIT

533.372. Water commission: appointment, term, qualifications, duties and procedures.

1. There is hereby created a water commission to hear appeals provided for by NRS 533.371. The commission shall consist of 3 members who shall be appointed by the governor and hold office for a term of 4 years from the date of their appointment and until their successor is appointed and has qualified. A member of the commission shall be reimbursed reasonable actual expenses and not more than \$150 per day for actual time served, which amounts shall be deemed a part of the cost of an appeal under the provisions of NRS 533.371(4).

2. No person shall be appointed to the commission who does not have training in hydraulic and general engineering and possess such practical skill and experience as shall fit him for the position.

3. If a member of the commission determines that he has a personal interest or conflict of interest, directly or indirectly, in any case which is before him, he shall disqualify himself from hearing such case and the governor may appoint a special member who is vested with the same powers as the regular member would possess.

4. The state department of conservation and natural resources shall furnish the commission with any assistance which is reasonably required to conduct the hearing of an appeal, and the commission may require witnesses to give testimony under oath and produce evidence relevant to its

determination.

5. The state department of conservation and natural resources shall develop a set of uniform standards and procedures to govern appeals to the commission. The technical rules of evidence shall not apply.

6. The commission shall render its decision on an appeal within 60 days after the hearing.

#### RATIONALE

It is recognized that water is an important natural resource in the arid west, and the State, pursuant to its police power, can regulate the acquisition of the right to put this resource to a beneficial use. However, there is no reason to unduly delay the approval of an application to appropriate water. Presently, NRS 533.360(1) permits the state engineer to sit on an application thirty (30) days before commencing publication of the notice of appropriation which is required by law. In addition, NRS 533.360 provides no guidance pertaining to the length of time publication is required. Finally, NRS 533.370 authorizes the state engineer to postpone his approval of an application for one (1) year from the final date for filing protests to the application.

Thus, the current law requires an individual to wait up to fifteen (15) months before he can ascertain whether or not he can appropriate water. This lengthy administrative delay is contrary to the public interest of putting unappropriated water to beneficial use.