

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION AND HOMELAND SECURITY**

**Seventy-third Session
March 24, 2005**

The Senate Committee on Transportation and Homeland Security was called to order by Chair Dennis Nolan at 1:41 p.m. on Thursday, March 24, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dennis Nolan, Chair
Senator Joe Heck, Vice Chair
Senator Maurice E. Washington
Senator Mark E. Amodei
Senator Michael Schneider
Senator Maggie Carlton
Senator Steven Horsford

GUEST LEGISLATORS PRESENT:

Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Stephanie Landolt, Committee Intern
James Puffer, Committee Intern
Sherry Rodriguez, Committee Secretary

OTHERS PRESENT:

Virginia (Ginny) Lewis, Director, Department of Motor Vehicles
Paul E. Masto, Special Agent, United States Secret Service

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CHAIR NOLAN:

Ginny Lewis from the Department of Motor Vehicles (DMV) and Special Agent, Paul Masto from the United States Secret Service will be giving a formal presentation concerning the events that occurred during the recent DMV break-in and robbery in southern Nevada. After the presentation, we will have a work session and will not be taking public testimony.

We have four bill draft requests (BDRs) presented before the Committee for introduction.

BILL DRAFT REQUEST 43-507: Authorizes city or county to designate certain highways as permissible for operation of off-road vehicles. (Later introduced as [Senate Bill 378](#).)

BILL DRAFT REQUEST 19-611: Revises provisions relating to Nevada Commission on Homeland Security. (Later introduced as [Senate Bill 380](#).)

BILL DRAFT REQUEST 43-917: Authorizes local authority to place official traffic-control device on certain highways without prior approval of Department of Transportation under certain circumstances. (Later introduced as [Senate Bill 379](#).)

BILL DRAFT REQUEST 43-1325: Enacts provisions relating to commercial coaches. (Later introduced as [Senate Bill 381](#).)

SENATOR HECK MOVED TO INTRODUCE BDR 43-507, BDR 19-611, BDR 43-917 AND BDR 43-1325.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS WASHINGTON AND SCHNEIDER WERE ABSENT FOR THE VOTE.)

VIRGINIA (GINNY) LEWIS (Director, Department of Motor Vehicles):

With me today is Thomas Newsome, Supervising Investigator for the fraud unit of the Department of Motor Vehicles (DMV) and Paul Masto, Special Agent, U.S. Secret Service. We will provide you an overview of what happened with

regard to the DMV burglary and what the Department is doing to take care of the constituents affected. Obviously, only limited information can be provided.

March 7, 2005, at approximately 1:30 a.m., a vehicle drove through the back door of the DMV's Donovan office in North Las Vegas. This office is our primary drivers' license office. It services the entire Las Vegas Valley; it is not limited to one district. The building was alarmed. The system used to create the drivers' licenses or identification (ID) cards was stolen. The perpetrators stole the printer, hard drive, capture station and the camera. They also took supplies secured in cabinets. Of those supplies, they stole 1,700 white cards used for printing licenses. Also taken were ribbons and some secured laminate which goes on top of the license; that is the portion that contains the hologram.

The stolen hard drive contained personal information on 8,738 individuals. The data on the hard drive was stored in a file which contains three components for an individual: signature, portrait image and personal data including social security numbers.

Once it was realized the burglary went beyond just the theft of equipment and supplies, and that the stolen hard drive contained personal information, this was alarming to the DMV. Immediately, I met with the Office of the Governor. On Friday, March 11, 2005, a press conference was held. We have been working with the system vendor.

It just so happened that on Thursday night, March 3, 2005, the system had cleared the hard drives of information stored for the 21 offices statewide. The vendor has assured us that at the end of the day, when the offices were closed down, there was no personal information remaining on those hard drives. As the process works, when we close out a day, by midnight of that night, the portrait images, signatures, and social security numbers are uploaded to the DMV digital server in Carson City.

Our first response was to take care of the customer. We needed to give them a new driver's license and ID card with a new driver's license number. Fortunately, technology allows us to do this without a customer coming into an office because their information has been stored in our data system. We worked with the vendor and started recreating and reprinting driver's licenses and ID cards. We knew what customers conducted business with the DMV and the

type of business that was conducted between the period of November 25, 2004, through March 4, 2005.

We created a letter and mailed it along with ID cards and drivers' licenses to the affected individuals. They have all been sent certified mail. Once the return receipt for the certified mail has been returned, the old drivers' licenses or ID cards are deactivated. If law enforcement should stop someone and the old card is used, the officer will receive a message stating the information may have been compromised, and further research of the individual is required.

We have worked with Trans Union, a conduit between the three major credit bureaus. We have entered into a contractual agreement with them, and we have given them a download of all the records. Trans Union can then download this information to the major credit bureaus. A fraud alert is being placed on every one of these records. They will also send a letter to each customer notifying them of what is being done. Trans Union is going to send a follow-up letter advising individuals what they need to do if they choose to opt out, or want the fraud alert removed from their record. This is a process being implemented this week.

Extensive information has been placed on our Web site, and we have increased out phone room staff as a source for the public. I am hoping the information we are providing to the public is clear and understandable. That is what the Department has done so far. Certainly, it is not over yet. There will be questions that come up; the public is concerned. We have responded quickly and will continue to work with constituents.

When this break-in occurred, we had to respond assuming the worst-case scenario. This was a very serious situation; the measures the DMV has taken indicate that. We have not taken this lightly.

PAUL E. MASTO (Special Agent, United States Secret Service):

In 1865, the United States Secret Service was established to protect the financial infrastructure of the United States. Our duties have expanded. We now have primary federal jurisdiction for identity theft, credit card fraud, counterfeit currency and cyber crimes.

Since the tragedy of September 11, 2001, when the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct

Terrorism Act of 2001 (USA PATRIOT ACT) was passed, section 105 of the act deals with the Secret Service. It directs the director of the Secret Service to create a network of electronic crime task forces to detour and detect cyber crimes and other identity-theft issues.

We have established two task forces in the Las Vegas field office. One is the Southwestern Identity Theft and Fraud Task Force (SWIFT) and the other is the Las Vegas Electronic Crimes Task Force. Primarily, SWIFT deals with identity theft. It is the fastest growing crime in the world. Unfortunately, Nevada is number two in the statistics for identity theft in the United States. Arizona is number one. California is number three. The crime seems to migrate in the same direction that the methamphetamine industry has migrated, starting in Arizona, coming to Nevada and then moving over to California.

The U.S. Department of Education requested the Secret Service to do a study on school shootings after the Columbine High School shooting of April 20, 1999, since we have the expertise regarding people who threaten or stalk. We did an examination of various school shootings and put together a summary of things that happen along with best practices and guidelines that educators and law enforcement individuals can use. I have left copies of those documents for the Committee. One is titled: "The Final Report and Findings of the *Safe School Initiative*" ([Exhibit C](#), original is on file at the Research Library), and the other is titled: "Threat Assessment in Schools" ([Exhibit D](#), original is on file at the Research Library).

We are also in partnership with the Federal Trade Commission (FTC). There are Secret Service agents assigned solely to the FTC. They have put together another document titled: "Identity Crime: When Bad Things Happen To Your Good Name" ([Exhibit E](#), original is on file at the Research Library). This document explains how to prevent becoming a victim of identity theft and steps to take if that happens.

Our task force includes people from academia and the private sector who bring research and development knowledge and many other things to the table. The criminal aspect will always be in the hands of law enforcement. Everyone must leverage what few assets we all seem to have, whether they are manpower, equipment or training. The Secret Service prides itself on doing a good job. We work together with all law enforcement agencies. We rely on those

partnerships; everyone brings something to the table. We feel as though therein lies the strength.

I will answer your questions, but I am not going to discuss any methods or sources we are using. The case is ongoing. We have several good leads we are working on right now. We hope to bring this to a quick conclusion. We want to retrieve that hard drive, and get that information back before it causes any more damage. We are working this case 24 hours a day to make that happen.

CHAIR NOLAN:

Are there any questions from the Committee at this time?

VICE CHAIR HECK:

The sensitive issue here is the hard drive with personal information contained on it. I have a few questions concerning the policy of the DMV with regard to that type of information.

Does DMV have a security policy in place to protect and safeguard consumer data? If so, how often has that policy been reviewed and when was the last time it was updated?

Ms. LEWIS:

The DMV's entire database is stored on the Department of Information Technology's (DoIT) mainframe. The DMV has a partnership with the vendor who handles the production of the digital technology. The information stored on the hard drive stolen from the Donovan office, we felt had reasonable security measures in place. The system is five years old and obviously, in hindsight, the security was not at the level it should be today. Are there different security measures that can be put in place? Absolutely, that is what we are doing.

We have learned a hard lesson. I hope all state agencies are paying attention. We are entrusted with the State's data; some is very sensitive data. I take that responsibility seriously.

If someone wants something in our building, they will find a way to get it regardless of the security system. I can say they are not going to be able to steal any personal data. That is an assurance I can give you.

Can I tell you that DMV's overall data is protected? I cannot. I do not control it; the information resides on DoIT's mainframe. I suspect they have some strong security measures in place.

I cannot assure you that DMV's data is secure.

VICE CHAIR HECK:

Does the DMV rely on DoIT's security policy for the information stored? Does the DMV not have its own security policy concerning the data it collects?

Ms. LEWIS:

There was discussion about encryption. Should this information have been encrypted? If there had been encryption, that would have been a deterrent. The encryption was not done because we were assured the data was uploaded at the end of each day to Carson City and that the hard drive would be cleared off. The DMV believed there was that security and the security of passwords. There were different levels of security required to get into the hard drive.

VICE CHAIR HECK:

Was encryption not used?

Ms. LEWIS:

No.

VICE CHAIR HECK:

You stated that normally the data is uploaded to Carson City and the hard drive is cleared out by midnight. If this occurred at 1:30 a.m., what happened? Why was the hard drive not cleaned before then?

Ms. LEWIS:

It was our understanding that when the system went live the data would be cleared off. Each of the 21 offices have data stored on the capture station hard drive in the event of a catastrophic failure should the upload not occur each night. Of the three components in that .poff file, my understanding is the image was encrypted, the signature was encrypted, but personal data was not at a level of encryption or secured as we would have liked.

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VICE CHAIR HECK:

I guess I do not understand this. Information is uploaded to the mainframe and the hard drive is supposed to be wiped clean, yet it is still being stored on the individual hard drives at the workstation.

Ms. LEWIS:

That is correct.

VICE CHAIR HECK:

What has been done to make sure this does not happen again?

Ms. LEWIS:

The vendor removed all data from the hard drives. So at the end of the day, there is no data on any hard drive anywhere in the State. Even in the event of a catastrophic failure, I would rather lose some records than go through what we have just experienced.

SENATOR CARLTON:

How can we be sure the hard drives are clean?

Ms. LEWIS:

Our information systems staff is the check and balance for the vendor who handles this system. They can go in and look at these hard drives to ensure they have been cleared.

SENATOR CARLTON:

You quoted the dates November 25, 2004, through March 4, 2005; are you absolutely sure that no one who did business in any of your 21 offices before November 25, 2004, has been put in any jeopardy?

Ms. LEWIS:

We are absolutely sure.

SENATOR CARLTON:

We have dealt with the incident; now we need to deal with our constituents trying to straighten this out.

MS. LEWIS:

We are going to deal with each constituent on a case-by-case basis. There are some unique cases.

SENATOR HORSFORD:

We cannot prevent someone from crashing into the side of a building. What additional security measures can or should we be taking? Are there recommendations or suggestions on resources this Legislature may need to allocate?

Can you tell us where we are in the investigation? Do you have any leads? There was some concern about national security; has that been ruled out?

MS. LEWIS:

When asked what the Legislature could do to help, I took that opportunity to solicit bids for our field offices. All our offices are alarmed, but obviously there are more security measures that can be done. First and foremost are internal and external surveillance cameras.

I have spoken with Frank Siracusa from the Department of Public Safety regarding obtaining some homeland security money. I asked Mr. Siracusa if there was any money left in the 2005 budget. There is not. Mr. Siracusa stated that if we could wait until 2006, the application process for grants would start in August or September 2005. I asked if the DMV would be a good candidate and stand a chance of getting a grant approved. He said absolutely. There are limited funds, but if we came in with a reasonable request, we should be successful.

We would need approximately \$400,000 to put surveillance cameras inside and outside all DMV offices. That is one step. There are certainly other measures that could be pursued. Technology in this day and age has amazing capabilities. If it is a matter of more biometrics or a matter of a thumb print to access a computer, those are things that could be pursued. I believe an immediate measure would be surveillance cameras.

SENATOR HORSFORD:

Would that cover all DMV facilities statewide?

Ms. LEWIS:

Yes, that would cover all 21 offices.

SENATOR HORSFORD:

To your knowledge, is there any other state department which maintains this level of information? Has the Governor identified any other agencies that obtain this type of information? Are these agencies taking precautions?

Ms. LEWIS:

I cannot speak to the data contained by other state agencies. All I know is that DMV's data is stored on DoIT's mainframe. The Department of Human Resources would certainly have confidential, private information. The one type of data they did not steal from us was anything relating to credit cards or bank accounts. That is information the DMV does not have.

SENATOR HORSFORD:

The backup that did not happen was an issue of a glitch in the backup process from November 25, 2004, through March 4, 2005, is that correct?

Ms. LEWIS:

The data that was on the hard drive was there in the event of a possible catastrophic failure. So, on the daily upload to Carson City, if there was a failure, the data was still on the hard drive for them to obtain if necessary. That was the purpose.

SENATOR HORSFORD:

At the time of the break-in, was it never the intent for the vendor to download information and get rid of it from the hard drive every night like you are doing now?

Ms. LEWIS:

It is our understanding that the hard drive would have been cleared upon the upload to Carson City every night. That did not happen. There was an assurance made to us, but it did not occur.

SENATOR HORSFORD:

Related to that specific issue, where are we with that vendor? I know we are correcting it from here forward, but that is a pretty serious breach. There should

be some consequence for that vendor for not maintaining the assurances as they are now.

Ms. LEWIS:

After this break-in occurred, the Department looked through our files and I know the vendor has done the same thing. The vendor interviewed anyone left in the company who was still on the project. Unfortunately, we have had a turnover and do not have that institutional knowledge. We have sifted through paperwork and contracts. I think it was simply a breakdown in communication.

SENATOR SCHNEIDER:

It is my recommendation that this Committee send a letter to the Senate Committee on Finance requesting money right away to secure all the DMV offices in Nevada. If Bank of America had this situation, they would not wait until next year when finances were a little better. They would be terminally liable. I do not think we can wait any longer. We need to secure the public's information immediately.

CHAIR NOLAN:

That is not an inappropriate request. The most obvious thing we as the Legislature can do to help is provide the resources needed to make sure our citizens' information remains secured and protected.

As part of the Nevada Commission on Homeland Security, we are in the process of attempting to conduct a vulnerability and threat assessment statewide. This is one of those areas we absolutely need to assess at a higher level. It does not take a lot of assessment to know which agencies collect and store critical, vital data about our citizens.

What kind of capital improvements would need to be done on these buildings, not just cameras to see who did it, but what do we need to do to prevent it from happening again?

Ms. LEWIS:

I believe that every one of our offices needs to have a risk assessment conducted.

CHAIR NOLAN:

Mr. Masto, I know that identify theft is rampant. There are a lot of people creating fake IDs for the purpose of allowing underage teens the ability to purchase alcohol. Clearly, the individuals involved in this break-in had some other intention. Those types of illicit ID's were not good enough; they wanted the real thing for some purpose other than to sell them to a bunch of kids.

What is going on at a national level? With respect to the circumstances around this event, what do you perceive is the intent of the people who committed this act? If you cannot divulge this information, that is fine.

MR. MASTO:

There is no indication of terrorist involvement linked to this break-in. My office has assigned a permanent Secret Service agent to the Federal Bureau of Investigation's joint terrorism task force so we can have a timely, accurate flow of information about what is happening around the world and what is happening with our cases. Driving a vehicle through a solid wall and then making entry was not a sophisticated crime.

When you look at the larger picture of identity theft, a lot of our personal information is already out there. There are companies that exist solely to gather this type of information. The federal government spends millions of dollars every year to use these resources in our criminal investigations to find out information about people. Anyone who wants to get on the Internet and pay for that information can get a date of birth or social security number.

People used to clone cell phones by using a black box that would capture the electronic signal being sent out. When your cell phone is turned on, it emits a signal with two pieces of information; the electronic serial number and the mobile identification number. Once someone captures that information, they can download it to another phone. Now they are cloning you. They are becoming you; they are taking your date of birth and your social security number. They are buying houses, cars and motorcycles in your name. They actually pay the mortgages; they will go six months into it.

Listening to the stories of people who are victims of identity theft is really heart-wrenching. Imagine the time, energy and money it would take to get police reports and contact credit bureaus. [Exhibit E](#) advises you to use shredders

and have passwords on all of your accounts. I hope I have answered your question. It is a huge problem.

Children need their information protected. There is no reason for a child's social security number to be accessible unless it is required to open a bank account in their name. We need to have our social security numbers taken off all documents except our social security cards.

CHAIR NOLAN:

Are there additional questions from the Committee?

SENATOR CARLTON:

I received an e-mail from an individual who had their license stolen. They are wondering why someone has not contacted them and given them information on how to protect themselves. What is the next step? It is my impression that they are caught in the middle. A crime has been committed, not against them but against the State. Yet, it is their identity that has been put in jeopardy. How do we deal with that issue? What advice would you, as an agent, give them on how to handle this situation?

MR. MASTO:

The Federal Trade Commission (FTC) has a toll-free number and a Web site www.consumer.gov/idtheft. They can go to the FTC Web site and get a copy of [Exhibit E](#). This brochure gives ideas and examples of best practices on how to prevent identity theft. The people affected by this break-in, as far as we know, have not become victims. We are hoping to resolve this before that happens. I empathize with your concern. Unfortunately, break-ins are not unique to Nevada.

These suspects or individuals are like a virus; they have evolved and are getting smarter. It used to be when these individuals broke into a doctor's office they were there for the drugs and would occasionally take a television or computer. Now, when they break into a doctor's office or perhaps an office where tax returns are prepared, they are just after the hard drive of computers. That is where the valuable information resides.

There are things that can be done as preventative maintenance. Traditionally, law enforcement was not concerned with preventing crimes, they were there

only to pick up the pieces. Now, we are trying to adopt a more proactive approach to prevent such things.

SENATOR CARLTON:

I would augment what Senator Schneider said earlier. Hopefully, these 8,738 individuals will be fine, and we will be able to put this down as a hard lesson learned. But, two years from now we could have a number of constituents having serious problems as a result of this incident. In our recommendation to the Senate Committee on Finance, we should also include a request for a position in the Department solely to deal with people who have this problem. We need to create an advocate within the Department to make sure individuals know where to go, what to do and who to contact. These constituents are going to look to us to be a resource for them.

CHAIR NOLAN:

Ms. Lewis, on behalf of this Committee, I will direct staff to compose a letter to accompany a formal list from you as to what you need to have to protect the data at your facilities. You already have some idea about capital expenditures with regard to cameras, barriers, alarm systems and whatever else you need internally to make sure it is very difficult to get at this type of physical equipment.

If you would put together a formal list of what DMV needs to ensure the protection of such information, we will accompany it with a letter urging the Governor, the Assembly Committee on Ways and Means, and the Senate Committee on Finance to provide you with emergency funding. We would be glad to do that.

Additionally, I think we should circulate a second letter to Dr. Carrison, Director, Nevada Commission on Homeland Security, regarding the vulnerability and threat assessment which they currently have in progress. This is the most expedient way to examine vulnerabilities of other state agencies as well. The DMV should be a priority in that assessment with the request for capital funding for security cameras.

Ms. LEWIS:

I appreciate the support you are giving us. Getting appropriations for some capital improvements for our facilities this way will be a lot faster than through homeland security grants. That would be a lengthy process.

To follow up with Senator Carlton, the DMV Web site has links to help consumers. You are absolutely right; consumers try to get a copy of the police report, but cannot because they are not the victim. The Department has stepped in to be that conduit with the credit bureaus. With a letter from our Compliance Enforcement Division, which is the law enforcement arm of the Department, the credit bureaus will do the fraud alert for each one of these individuals. Again, the consumers are not the victim, but they are very frustrated and I can appreciate that.

SENATOR HORSFORD:

I do not think we should focus only on the credit report. With an ID a bank account can be opened. I would like to know what other preventative measures we can take to prevent someone's credit being ruined, credit being extended to the wrong person, an account being opened or checks being cashed. I do not know if such prevention should be in the form of an advocate in your office, but there should be some preventative things to help people.

This is something that happened to these identity-theft victims through no fault of their own, and they should not have to jump through hoops to protect themselves. We should help them any way we can.

MS. LEWIS:

Senator Carlton came up with the idea of an ombudsman, but we do not have the skills. Perhaps, the way to handle that would be a contract position, someone who does have the skills and is also bilingual. I am not sure we should hire someone; we are not even sure we have a problem. I would hope that we do not. If we do, we would have a resource available to guide affected individuals through the process.

CHAIR NOLAN:

On your list of things, if you would consider putting the proposal of an ombudsman in and identifying that as a recommendation, you could also indicate this Committee supports that recommendation.

MR. MASTO:

People have to take responsibility for their own credit history. We must be proactive.

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CHAIR NOLAN:

Thank you for taking the time to provide this Committee with an update on the DMV break-in. If there is any additional support we can provide, we would be glad to help.

We were scheduled to hear testimony on Senate Bill (S.B.) 13, but at the request of Ben Graham that hearing will be postponed.

[SENATE BILL 13](#): Revises provisions governing authority of peace officers to make arrests for certain offenses. (BDR 43-363)

We will now enter into the work session of today's hearing. Patrick Guinan is going to provide us with an overview of S.B. 139.

[SENATE BILL 139](#): Changes composition of Board of Directors of Department of Transportation. (BDR 35-718)

PATRICK GUINAN (Committee Policy Analyst):

I have prepared a summary ([Exhibit F](#)) and a mock-up ([Exhibit G](#)) of S.B. 139 for this Committee.

CHAIR NOLAN:

With regard to legislative auditors, is the language in section 2 of the mock-up the language which Senator Titus agreed to? I know that she wanted to delete the audit portion. Does this reflect current practice?

MR. GUINAN:

It reflects what is currently in the law. We have not received any proposed amendment with regard to the audit section.

CHAIR NOLAN:

Senator Titus had expressed some support of what was more my interest in the bill. This came to me by way of a number of communications through people who work with the Nevada Department of Transportation (NDOT). The Board members would like to see more experience on the Board and perhaps more of an opportunity for people with experience in transportation and planning, not just an interest in transportation.

Perhaps, we should provide for a four-year term for board membership and give other experts an opportunity to serve on the Board. The provision in this amendment for both Regional Transportation Commission (RTC) chairmen to serve on this Board in an advisory capacity was presented to us by members of this Committee as well. The contributing factor behind that was the Committee members did not want to create a situation of fighting over revenue dollars and projects by voting members on the Board, especially those members who have a financial interest. So, we offered both posts as advisory positions to the Board.

Mr. Guinan will go over each amendment for us.

MR. GUINAN:

Amendment 1 restores language designating the Attorney General and State Controller as members of the Board of Directors that the bill originally took out.

Amendment 2 specifies that regional transportation chairmen serve on the Board in an advisory capacity.

Amendment 3 deletes language in section 1, subsection 2 requiring that the three persons appointed to the Board by the Governor be "informed on and interested in the construction and maintenance of highways" The amendment proposes instead that these persons be residents of Nevada "with knowledge of and experience in the construction and maintenance of highways"

Amendment 4 deletes from section 1, subsection 2, paragraph (b) the requirement for expertise in "financial matters and business administration," and requires instead expertise in "transportation safety, planning or design."

Amendment 5 deletes from section 1, subsection 5 the word "terms" and replaces it with the phrase "one term."

SENATOR DINA TITUS (Clark County Senatorial District No. 7):

How many members will be on the Board?

MR. GUINAN:

The Board would increase by two members. The Attorney General and the State Controller will remain on the Board and the other recommendations from the original bill will be left intact.

SENATOR TITUS:

If the Attorney General and the State Controller serve ex officio in an advisory capacity, what does that mean? They do that now, do they not? They participate, give advice or testify; if they cannot vote, what is the point?

MR. GUINAN:

The suggestion made to me when I was drafting the mock-up was that we wanted to make clear that the chair of the RTCs would serve only in an advisory capacity. We did not address exactly what that would mean as compared to what other Board members' duties would be.

SENATOR TITUS:

I think that defeats the purpose. I do not know why you are leaving the Attorney General and State Controller on the Board. I have not heard any compelling arguments for that. But, if this Committee feels they need to leave them on, I think the RTC members should be added and not just in an advisory capacity. I do not have a problem with any of the other amendments; they are good amendments.

SENATOR AMODEI:

Testimony from a representative of the Attorney General indicated that 10 percent of the staff in the Office of the Attorney General is involved in NDOT matters. Out of the 140 lawyers on staff, approximately 15 are involved in transportation matters. This level of staffing dispels the notion that the Attorney General really does not have much to do with NDOT. One of their major advisory roles is staffing legal advice for that particular department.

SENATOR TITUS:

The Attorney General's Office staff also gives advice to the Board of Regents, but the Attorney General is not on that Board. They have lawyers that give advice to every single government agency.

SENATOR AMODEI:

I am not attempting to debate this. I am just saying when you made the statement that you did not hear anything compelling for it, I can tell you what I heard and what I felt created a link.

With respect to the other proposed Board members, one issue as stated by the Clark County RTC person was that they wanted a communication link in this. If

we want RTC input on the Board, the three individuals you will have on there by district includes: one from the third district headquartered in Elko, which is a full voting position; one from the second district, which is western Nevada; and one from southern Nevada. So, actually if you wanted to get into a one-person-one-vote discussion, that provision over-represents the third district. The third district gets the same number of votes in the at-large appointments as Clark County does.

If you wanted to err on the side of input from the RTCs, I would suggest that the population of 100,000 or more be reduced to 50,000 or 55,000 or more so that all RTCs created in Nevada have a voice. I do not know what to tell you about the Controller's Office, because I did not hear anything regarding that issue. I know there is a money connection in some people's opinion, but I think if we want expert input and we want to give the experts votes, then a vote ought to be available to all three RTCs in this State or, at least the two major RTCs and then the third voting position can rotate amongst the rural districts. I do not know if you want to get rid of the at-large people and plug three RTC slots in there.

SENATOR TITUS:

What if you take out the State Controller and make that the third RTC rotating position and leave the three private individuals? What you are doing is taking out the State Controller and putting in the third RTC member.

CHAIR NOLAN:

I would be glad to entertain whatever you would like to put forward as an amendment to this Committee for a vote.

SENATOR TITUS:

This Committee feels strongly about two RTCs functioning in an advisory capacity. I feel strongly about the State Controller being on the Board. I do not see any function there. That gives you an even number on the Board; you have three people from the three districts. You can make it an odd number by having two people from the southern district, because that is the larger populated area. How about that as an option?

CHAIR NOLAN:

Your proposal would remove the State Controller. Senator Amodei was correct in his depiction, at least from the Controller's perspective, of why that office

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has a valuable role on the Board. The State Treasurer, as you can see, is not part of this Board.

SENATOR TITUS:

Maybe the State Controller could be in an advisory capacity.

CHAIR NOLAN:

Senator Titus has offered to remove the State Controller from the Board, to include two chairmen from the RTCs in an advisory capacity and add an additional member, to the public side, from a county which has a population over 400,000.

SENATOR CARLTON:

I thought the State Controller position was going to be replaced by the rotating rural member.

SENATOR TITUS:

It does not matter. If you leave them in an advisory capacity, you can put a rural member on the Board as well. You still need an odd number of voting members. If you remove the State Controller, you still need another member to keep it an odd number. Returning to Senator Amodei's point, with this distribution everybody has an equal vote, even though the largest population is in the south. Make the Board's voting membership an odd number by adding one additional representative from the south.

CHAIR NOLAN:

This is your bill. We will take that as formal recommendation for an amendment to remove the State Controller from the Board and keep the two chairmen of the RTCs in advisory capacities. Then, increase the number from three to four people who are eligible to participate on the Board from the public sector by creating one more position from a county with a population of 400,000 or more.

SENATOR TITUS:

That is correct.

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 139.

SENATOR HORSFORD SECONDED THE MOTION.

SENATOR HORSFORD:

I support the motion, but I do not agree the chair should only be in an advisory capacity. The testimony we heard indicates the coordination between State and regional transportation boards needs to be improved. Having one or two voting voices from a regional perspective does not create internal board conflict when you have a seven- or nine-member board. I will support the motion, but I would actually support having those members as voting members. Since we hear from constituents there are problems with communication and coordination of projects, I think having them on the board would help. But, if this is what gets us a step closer, then I will support the motion.

SENATOR TITUS:

That is my feeling as well. I would rather see them having a voting position.

SENATOR CARLTON:

I support RTCs being voting members as well. I was hoping that we were going to move forward with this. If you would like, I will amend my motion to make them voting members.

CHAIR NOLAN:

Senator Carlton, are you rescinding you previous motion?

SENATOR CARLTON MOVED TO RESCIND PREVIOUS ACTION TAKEN
ON S.B. 139.

SENATOR HECK SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

SENATOR CARLTON:

I would like to amend my first motion to make the ex officio members actually voting members.

SENATOR CARLTON MOVED TO AMEND TO MAKE THE EX OFFICIO
MEMBERS VOTING MEMBERS ON S.B. 139.

SENATOR HECK SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR AMODEI ABSTAINED FROM THE VOTE. SENATOR NOLAN VOTED NO.)

CHAIR NOLAN:

We have what was stated previously with the exception of the two RTC members being voting members. Is there any discussion on the amending motion?

SENATOR AMODEI:

Is the State Controller in or out? How many members are on the board, who is voting and who is not?

CHAIR NOLAN:

We took a vote and passed a motion. I think it is appropriate to go back and clarify the motion. If we are going to take any further action on it, then we would require another motion.

SENATOR AMODEI:

To keep this parliamentarily clean, show me as not voting.

CHAIR NOLAN:

To clarify the motion as I understand it and what just took place, we are going to amend and do pass S.B. 139. The amendments remove the State Controller from the Board of Directors and to allow two chairmen of the RTCs who represent populations in counties of 100,000 or more to be represented on the Board. Additionally, we are increasing the number of public members represented on the Board from three to four; two of those positions will be provided to Clark County. The language we agreed on was in a county of 400,000 or more. The other language agreed upon, with respect to the qualifications of those members, in section 1, subsection 2 is to be included. The terms of those individuals are limited to one four-year term. That is my understanding of what the amended motion was in the vote.

SENATOR TITUS:

That is exactly how I have it also. I would like to say something that might make Senator Amodei feel better about this bill. You need to have an odd

number on the Board; this makes it nine. If you wanted to add a rotating member from a rural RTC, you could do that instead of increasing the public appointees in the south by one. That would still give you nine members; that might give the rural RTCs a voice. I do not know if that makes Senator Amodei more comfortable.

SENATOR AMODEI:

What we are ending up with is a nine-member board comprised of five elected members from some RTCs and some nonelected members whose selection is based on experience and other criteria in the statute. Is that correct?

SENATOR TITUS:

You are going to have five elected and four appointed members. The chairmen of the RTCs are elected officials.

SENATOR AMODEI:

They would be the locally elected officials.

SENATOR TITUS:

Correct. You will have three statewide-elected positions and two locally elected positions. Four will be appointed, two from the south and one from each of the other two districts.

SENATOR AMODEI:

I am okay with all of that. What if we have two from the south, one from the second district, which will be a Washoe County individual, and then make the fourth one the rural rotating member?

SENATOR TITUS:

I do not think the rural member has to rotate. Does the bill not already state, "must reside in a different highway district?" Does that not give you the three districts now?

SENATOR AMODEI:

It is my understanding there is not an RTC in District III.

SENATOR TITUS:

But, that is not the appointed one. Are you talking about adding to the RTC ones?

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SENATOR AMODEI:
Correct.

CHAIR NOLAN:
Senator Amodei, Carson City established a position. It is not necessarily a director of the regional transportation commission, but having reached the cap of 50,000 people a transportation committee has been established which has a representative on it. There was a recommendation at one time that the person be involved in the process. I do not think it ever came forward as a formal amendment.

SENATOR AMODEI:
Actually, I think it did. The important part is the only place that filled that criteria was Carson City. I think Mary Walker offered something specific.

CHAIR NOLAN:
I believe you are right; Ms. Walker did bring a recommendation forward.

SENATOR AMODEI:
I think the salient point right now is Carson City has reached the 50,000 population cap, but Elko, Lyon and Douglas counties are going to be there shortly. A rotation among those counties would be reasonable, and it would make those counties feel they have a voice while maintaining representation commensurate with the population. I think that is what you said, Senator Titus, when you went over the recap for me.

SENATOR TITUS:
Are the rural RTCs made up of elected officials?

SENATOR AMODEI:
Yes.

SENATOR TITUS:
So, you would add three RTC members; one north, one south and one rotating rural. Now the Board would be comprised of three statewide-elected members, three locally elected, three appointed, and we return to one rural member, one southern and one northern.

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SENATOR AMODEI:

I think you drew it up as two of the appointed members would be from southern Nevada.

SENATOR TITUS:

Now you are back to ten members.

SENATOR AMODEI:

No, the three appointed Board members will include two to District I, Clark County, one to District II, Washoe County, and then we say to the rural areas of Nevada, "You get a voting position that rotates amongst RTC members."

SENATOR TITUS:

That is right.

SENATOR CARLTON:

Chair Nolan, I do not want to confuse this any more, but we had a motion, a second, and a vote; we called for the vote. I think before we start changing things again, we need to resolve the first issue of the vote and then move on from there.

CHAIR NOLAN:

You are correct, Senator Carlton. There was a vote that included one no vote, one abstention, and the rest in favor of the motion; so the motion passed. If we want to make this type of amendment, we need to move to rescind our previous action on S.B. 139. Then, we need to make a new motion.

It sounds like Senator Amodei and Senator Titus have an understanding. Are we okay with this?

SENATOR AMODEI:

I appreciate your patience. I am in agreement with Senator Titus on the framework of the bill.

SENATOR CARLTON MOVED TO RESCIND PREVIOUS ACTION TAKEN ON S.B. 139.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

CHAIR NOLAN:

The previous action on S.B. 139 has been rescinded, whereby we took a vote to amend and do pass. Senator Titus, please outline how you would like to see this amendment proceed.

SENATOR TITUS:

There will now be a nine-member board. Three members will be statewide-elected; the Governor, the Lieutenant Governor and the Attorney General. Three members will be locally elected members of RTCs; one from the south, one from Reno and one that rotates among the rural counties. There will be three more appointed members; two from southern Nevada and one from Reno.

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 139.

SENATOR HORSFORD SECONDED THE MOTION.

CHAIR NOLAN:

Senator Titus, how often do we want to see that position rotate? How would you like to see that position appointed?

SENATOR AMODEI:

I believe we established four-year terms for the appointees. Four years is an appropriate rotation schedule; it should not be any longer than that. As long as it is not longer than that, I do not have a problem with a robust rotation amongst the rural counties. However, it is going to take a few years to get the next rural RTC online.

SENATOR TITUS:

Is there only one right now?

SENATOR AMODEI:

I believe there is only one. The major precipitating factor for having only one is the required population of 50,000. Elko County has approximately 40,000. Douglas County has approximately 40,000. Lyon County is over 40,000. I do

not know what their populations are going to be in five years. The rotation is every four years, and if after four years there is still only one county eligible, then it would be that county.

CHAIR NOLAN:

You only have one county eligible.

SENATOR TITUS:

The rural counties are going to lose their appointed person, and Carson City is going to gain an RTC vote. That is what is going to happen.

SENATOR HORSFORD:

Can we use language that does not make it sound as if they are a regional board, and by way of an agreement between the rural counties designate a rural representative?

CHAIR NOLAN:

That would require them to get along.

SENATOR TITUS:

What was Mary Walker's amendment?

SENATOR AMODEI:

I think it said something along the lines of a rural with an RTC. If you want, we can check with her.

SENATOR TITUS:

No, that is all right.

CHAIR NOLAN:

Actually, it was not an RTC but whatever the language is that encompasses the RTC. I think it was an authority, whatever they referred to here in Carson City, which is the only county that rises above the population of 50,000.

SENATOR AMODEI:

If it helps to look at her amendment, I would be happy to support that change on the floor if it is a better way to write it.

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CHAIR NOLAN:

We will take the motion the way it stands. We can then take a look at the proposed language and ask Senator Amodei to bring that amendment to the Senate floor.

My original objection to this motion remains true for this motion. This is a good bill. I was just moved by the testimony that having the RTC chairman on the Board might create some conflict.

SENATOR HORSFORD:

The only additional discussion pertains to section 2 regarding the performance audit. Can someone clarify for me what that entails?

CHAIR NOLAN:

That language currently exists in statute. It is the annual audit of NDOT by the Legislative Counsel Bureau (LCB). Is that correct?

MR. GUINAN:

Yes.

SENATOR HORSFORD:

So, just to clarify for legislative intent, does a performance audit include everything from procurement practices to employment practices?

CHAIR NOLAN:

Our legislative auditor's reports are usually very thorough with regard to recommendations based upon faulty practices and employment hiring practices. They are usually an all-encompassing, thorough audit. I do not think the absence of that information will prevent us from proceeding now.

SENATOR HORSFORD:

I have the audit. I want to ensure, in the future, that the audit spells out those areas and if it does not, that it is our intent that it will.

CHAIR NOLAN:

For the record, document Senator Horsford's intent and ensure that it goes to LCB's Audit Division to include those areas. I believe they are included, but if not, we would ask those to be included.

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We will now complete the motion before us regarding the amendments indicated by Senator Titus.

THE MOTION PASSED. (CHAIR NOLAN VOTED NO.)

* * * * *

CHAIR NOLAN:

If there is no further business to be discussed, we will adjourn the Senate Committee on Transportation and Homeland Security meeting at 3:13 p.m.

RESPECTFULLY SUBMITTED:

Sherry Rodriguez,
Committee Secretary

APPROVED BY:

Senator Dennis Nolan, Chair

DATE: _____