

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON NATURAL RESOURCES, AGRICULTURE, AND  
MINING**

**Seventy-Third Session  
March 7, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:34 p.m., on Monday, March 7, 2005. Chairman Jerry D. Claborn presided in Room 3161 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mr. Jerry D. Claborn, Chairman  
Mr. Kelvin Atkinson, Vice Chairman  
Mr. John C. Carpenter  
Mr. Mo Denis  
Mr. Pete Goicoechea  
Mr. Tom Grady  
Mr. Joseph M. Hogan  
Mrs. Marilyn Kirkpatrick  
Mr. John Marvel  
Ms. Genie Ohrenschall  
Mrs. Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Heidi S. Gansert, Assembly District No. 25, Washoe County  
Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County

**STAFF MEMBERS PRESENT:**

Amber Joiner, Committee Policy Analyst  
Mary Garcia, Committee Secretary

Matthew Mowbray, Committee Assistant

**OTHERS PRESENT:**

Beverlee McGrath, Director, Western Region, Doris Day Animal League  
Samantha Fearn, Manager of Government Relations, Honeywell International, Inc.  
Joseph Johnson, Legislative Advocate, representing Toiyabe Chapter, Sierra Club  
Joseph Coli, D.V.M., Chairman, Legislative Committee, Nevada Veterinary Medical Association  
Susan Asher, Executive Director, Nevada Humane Society  
Larry Matheis, Executive Director, Nevada State Medical Association  
Ray Bacon, Executive Director, Nevada Manufacturers Association  
Bill Bradley, Member, Board of Governors, Nevada Trial Lawyers Association  
Don Henderson, Director, Nevada Department of Agriculture  
Chris Mason, Ph.D., Chief Chemist, Plant Industry Division, Nevada Department of Agriculture  
Jason Geddes, Ph.D., Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno  
Woody Wright, Hazardous Materials Program Officer, Environmental Health and Safety, University of Nevada, Reno  
Leo Drozdoff, P.E., Administrator, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources  
Robert Sack, Division Director, Environmental Health Services Division, Washoe County District Health Department  
Kaitlin Backlund, Political Director, Nevada Conservation League  
John Pappageorge, Legislative Advocate, representing Republic Silver State Disposal  
Ray Bacon, Executive Director, Nevada Manufacturers Association  
Doug Busselman, Executive Vice President, Nevada Farm Bureau  
Russell Fields, President, Nevada Mining Association  
Irene Porter, Executive Director, Southern Nevada Home Builders Association

**Chairman Claborn:**

[Meeting called to order at 1:34 p.m. Roll called.] Today we will hear three bills: A.B. 25, A.B. 65, and A.B. 86. We will start with Mrs. Gansert's bill, A.B. 86.

**Assembly Bill 86: Requires addition of bittering agent to certain antifreeze to render it unpalatable. (BDR 51-999)**

**Assemblywoman Heidi S. Gansert, Assembly District No. 25, Washoe County:**

The reason for this bill is that currently, in the state of Nevada, antifreeze does not have any bittering agent. It is required in both California and Oregon, and has been so required in Oregon for ten years. As you can see from this measuring cup [held up glass cup of liquid], antifreeze is a very nice color. It is attractive to children; it looks like Kool-Aid, and it doesn't taste bad. Antifreeze is so toxic that two teaspoons will kill a small child, and one teaspoon will kill a small animal. You don't have to ingest a lot of it. The point of this bill is to add a bittering agent to make it unpalatable so children will not ingest it.

You were provided a table ([Exhibit B](#)) that shows the number of exposures annually. This information was provided by the American Association of Poison Control Centers. You can see in 1990 we started out with about 2,600 exposures. That has risen to about 6,000 in 2002. Antifreeze is commonly ingested and is a problem, particularly for children, of whom 753 under the age of 6 consumed some in 2002.

**Beverlee McGrath, Director, Western Region, Doris Day Animal League:**

[Held up glass cup of liquid.] This is ethylene glycol antifreeze. You all probably have it in your garage. You can buy it at Wal-Mart, any auto store, and most supermarkets. If you drink this, it will kill you. If you don't drink all of it, it will cause permanent kidney damage, and it tastes wonderful, which is the problem. Children get into it in open containers, despite the child-proof caps. Animals and wildlife get it from radiator spills and broken radiator hoses. It causes birth defects.

Ethylene glycol antifreeze would not be approved by today's standards; that's how toxic it is. It was determined to be a hazardous substance and a hazardous air pollutant by the Clean Air Act [42 USC 85 §7401-7661], the Superfund Act [Comprehensive Environmental Response, Compensation and Liability Act, or CERCLA (42 USC 103 §9601)], and the Resource Conservation and Recovery Act [42 USC 82 §6901]. It is so readily available, and there are so many accidental exposures that we would like to see the bittering agent added as it is in California and Oregon. A.B. 86 would do that.

Adding denatonium benzoate, the proposed aversive agent in the bill, costs between 1 cent and 5 cents a gallon. It has been used for over 40 years in household products. The amendments ([Exhibit C](#)) specifically exclude any other aversive agent. The reason for that is denatonium benzoate has been approved

by the U.S. Food and Drug Administration, The U.S. Environmental Protection Agency, The U.S. Department of Agriculture, and the Occupational Safety and Health Administration (OSHA). We feel, because of the regulatory approval, it makes sense for denatonium benzoate to be the exclusive bittering agent added to the antifreeze. It is the agent added in California and Oregon.

[Beverlee McGrath, continued.] The first amendment ([Exhibit C](#)) I submitted to you. The other amendment ([Exhibit C](#)) dealing with damage to the environment and the limitation on liability does not exclude anyone from liability for the ethylene glycol exposure and related problems. It only excludes them from problems caused by the denatonium benzoate portion of the antifreeze.

The proportions are 1 ton of ethylene glycol to 1.5 ounces of denatonium benzoate. The denatonium benzoate has been classified as an inert ingredient and been found by the California Environmental Protection Agency to be nontoxic and to be acceptable as a bittering agent. As you all know, California has very stringent environmental protection regulations.

Number 5 (of [Exhibit C](#)) is another amendment to the bill that would specifically exempt the 55-gallon drums of antifreeze and the new cars that are brought into your state with antifreeze in them from this mandatory regulation. The reason for that is that all of the problems from ethylene glycol, all of the exposures to children, are related to the 1-gallon containers. It has been determined that the 55-gallon drums transported into the state do not pose a problem to children.

**Assemblyman Marvel:**

How many exposures and deaths have we had in Nevada?

**Beverlee McGrath:**

In northern Nevada, there were 14 exposures and no deaths in 2004.

**Assemblyman Marvel:**

Is that just child exposures, or does it include animals?

**Beverlee McGrath:**

Many of the exposures were intentional ingestions. There was 1 child under the age of 1; there were 2 children over age 6, and 11 over age 20. Twelve of those exposures were classified as unintentional.

This is such an easy fix. Antifreeze is such a toxic, sweet-tasting product; let's put something really bitter in it so if children were to take a sip, they would not take a second sip.

**Assemblyman Goicoechea:**

What is the approximate cost of putting this in?

**Beverlee McGrath:**

The industry has determined it will be between 1 cent and 5 cents a gallon.

**Assemblyman Carpenter:**

How do the manufacturers determine that this antifreeze is going to be sold in California or Oregon, and now Nevada? When do they have to add this bittering agent?

**Beverlee McGrath:**

They add it at the manufacturer, and it is determined at the manufacturing level which state it will go to. A lot of antifreeze that comes into Nevada currently has some denatonium benzoate in it, so this would make it a universal standard.

**Assemblyman Carpenter:**

Why don't we make this nationwide, then, so they could put it in automatically?

**Beverlee McGrath:**

That's what we're trying to do. These amendments in front of you are from the Consumer Specialty Products Association, which is the regulatory organization for all antifreeze in the nation. There is now a federal bill with exactly the same language in it. However, they're looking to see what Nevada will do, so this bill has far greater implications than just a state mandate.

**Assemblywoman Smith:**

Is the effective date of July 1 reasonable or realistic?

**Beverlee McGrath:**

The effective date is January 1, but the manufacturing date is July. The bill applies to products manufactured after July 1, 2005, and sold in this state beginning January 1, 2006.

**Assemblywoman Gansert:**

The product exists now, so the change will be in the distribution channel.

**Assemblywoman Smith:**

So the product on the shelves now is fine, or how does that work?

**Assemblywoman Gansert:**

They have until 2006 to pull that stock if there is any left.

**Beverlee McGrath:**

The antifreeze companies have assured me that there is not a huge stockpile of antifreeze sitting on shelves.

This is an issue I feel is very important. I'm sure you're aware of two recent attempted murders with ethylene glycol antifreeze. We feel this will eliminate attempted murders, attempted suicides, and exposures to children, wildlife, livestock, and household pets.

**Assemblyman Denis:**

Is this going to create any undue work for State employees? Will A.B. 86 have a fiscal note?

**Assemblywoman Gansert:**

At this point, there is no fiscal note attached. This just changes the formulation, which already exists, and modifies the distribution channels.

**Assemblyman Denis:**

Who will monitor it to make sure what's coming in has been modified?

**Beverlee McGrath:**

The Consumer Specialty Products Association on a national level oversees all of the antifreeze in the nation, including all the antifreeze shipped into California, Oregon, and Nevada.

**Assemblyman Denis:**

Would they actually monitor it as it comes into Nevada or as it leaves the manufacturer?

**Beverlee McGrath:**

At the manufacturing level. You have no manufacturers of antifreeze in Nevada, so they would oversee it on a national level because of this state mandate. That's their job.

**Assemblyman Denis:**

So we would be assured of getting the proper stuff, as opposed to something meant for somewhere else that doesn't have this requirement.

**Beverly McGrath:**

It would probably take civil action at that point to determine that it is not included. We have a guarantee from the Consumer Specialty Products Association that they will oversee it, that it will be mandated, and that there

won't be an issue with it. We've been working very closely with them since the last time this legislation was proposed in Nevada.

**Assemblyman Carpenter:**

I don't have a problem with putting this in antifreeze, but I wonder about the mechanics of it. In the eastern part of the state, a lot of antifreeze comes in from Utah and Idaho. Unless it's a national requirement, how is it going to be regulated? What happens if somebody goes to Idaho, where they don't have this bittering agent, brings it back to Nevada, and something happens? Does this bill make them liable?

**Beverlee McGrath:**

It's been mandated in Oregon for ten years, and they have not had any regulatory problems. Neither have there been any regulatory problems in California. It's done at the manufacturing level, and anything that is sold in the state contains denatonium benzoate when it is shipped.

**Assemblyman Carpenter:**

I'm still worried about it.

**Beverlee McGrath:**

You have to look at the Consumer Specialty Products Association, which oversees all antifreeze and all the antifreeze manufacturers in the nation. They don't have a problem with it, and they think it is in the best interests of human safety to add the denatonium benzoate and that it can be done, and the cost is between one and five cents a gallon. Since they're in the business of regulating and overseeing, and they don't have a problem with it, then we really shouldn't, either.

**Assemblyman Carpenter:**

It seems the best way would be if the manufacturers would do it, no matter where they ship it.

**Assemblywoman Gansert:**

It really stems from the manufacturer. If someone receives shipments, they should be directly from the manufacturer. They should not go from Utah to Nevada because this is a controlled substance due to its toxicity. Having the manufacturer be the source of the distribution is going to help significantly.

No matter what happens, adding a bittering agent is a step in the right direction. The nation is looking to the State of Nevada to raise the standards on this. This will help promote legislation at the federal level so we won't run into the

difficulties you mentioned. No matter what, we're better with the bittering agent than without it.

**Assemblyman Atkinson:**

I think it's a great bill, and something that should be done. However, I am concerned about who is going to oversee it if we have the regulation here, but our neighboring states do not. We all know Las Vegas is very transient. People bring things in all the time.

You make it sound simple—if they don't have a problem, we don't have a problem. It may sound simple to you, but it doesn't sound simple to us. In order for us to vote yes on this, it needs to be clear.

**Assemblywoman Gansert:**

Again, it's from the manufacturer, so if someone brings something over the state line, they wouldn't have a problem.

**Samantha Fearn, Manager of Government Relations, Honeywell International, Inc.:**

We are the manufacturer of Prestone. Our preference on this bill would be to see a federal standard, but we are not objecting to A.B. 86. There were comments made concerning interstate commerce and antifreeze distribution systems. We are one of the largest manufacturers of antifreeze products at the retail level.

All of our product that would be shipped into Nevada if this statute were to go into effect would be coming of our Torrance, California, facility, which is already manufacturing bittered antifreeze with denatonium benzoate, so we would not have a distribution problem. That also goes for the other manufacturers of antifreeze. They are not making it in Torrance, but Old World and Texaco are also making it for the states that require the addition of the bittering agent. We're not terribly concerned from a distribution standpoint.

As the bill is written, if you bought the product in a nonregulated state and happened to transport it or have it in your radiator, it would not be regulated by the statute. You would not be subject to any penalties, nor would the manufacturer, because the distribution and the batch numbers would be routed specifically to another state. We will control those processes.

Ms. McGrath mentioned the Consumer Specialty Products Association. It is a trade group, and Honeywell and the other antifreeze manufacturers are members of that Association. The actual regulatory body that would oversee



antifreeze standards at the federal level would be the Consumer Product Safety Commission.

[Samantha Fearn, continued.] There is actually an antifreeze act in Nevada State law that specifically covers the various aspects of antifreeze. If your antifreeze that is shipped into the state or manufactured in the state does not meet any of the requirements of the antifreeze act, one of the penalty provisions is that the manufacturer can be restricted from ever selling antifreeze in Nevada again. There are some civil penalties associated with that as well. I believe antifreeze in this state is tested and regulated by the Nevada Department of Agriculture.

We would prefer a federal regulation. However, in the West, where we do have economies of scale, we can supply the market with product, as can the other manufacturers.

**Assemblyman Grady:**

Do you know if Idaho, Oregon, or Washington has this same legislation, or anything like it?

**Samantha Fearn:**

Oregon was actually the first state to pass such a statute ten years ago. There was litigation between the state and the manufacturers. California's act went into effect at the beginning of last year. Washington and Idaho do not have the provision, but New Mexico does. Four municipalities in New Mexico have adopted ordinances on their own. As you can imagine, individual city ordinances create nightmares from a distribution standpoint. Those are the only states that have enacted it, but there is federal legislation on this issue.

**Assemblyman Hogan:**

Would it be possible for the manufacturers to voluntarily add a bittering agent, at least for some other western states, so you have uniformity? Is there a prohibition against doing that voluntarily?

**Samantha Fearn:**

There is actually no federal prohibition against doing it voluntarily. One of our concerns is related to the chemical additive we are being asked to add to our product. Denatonium benzoate is a chemical that is used as an aversive agent in a number of small-volume products.

However, in the volume of antifreeze used, we have some concerns because the data is not complete on the effects of denatonium benzoate. We have repeatedly requested data from the manufacturers of denatonium benzoate, both of whom are overseas manufacturers, and have not had full cooperation in

receiving that data. That is why manufacturers are concerned, from a liability standpoint, about going ahead with that and then having denatonium benzoate shown to have harmful effects. Because that information gap is there, we have waited for the states or the federal government to take the initiative. Then we would be required to do it, and we would have an affirmative defense.

**Assemblyman Carpenter:**

Who makes the off-brands you can buy for about one-third of what Prestone costs?

**Samantha Fearn:**

There are a number of manufacturers. Old World is another manufacturer that makes a number of brands you see under various labels. Texaco makes some. I think Valvoline makes some as well, but I'm not sure if Chevron is still in the business. They market it under their brands as well as off-label brands.

**Assemblyman Carpenter:**

Is any manufactured overseas?

**Samantha Fearn:**

I don't know. Our facilities for the manufacture of Prestone for sales here are all in the United States, but I don't know if other products are shipped in from overseas. However, they would still be subject to this either way.

**Joseph Johnson, Legislative Advocate, representing Toiyabe Chapter, Sierra Club:**

We support this bill. We think it's a meritorious piece of legislation.

**Joseph Coli, D.V.M., Chairman, Legislative Committee, Nevada Veterinary Medical Association:**

I'm here today to represent our Association in supporting this legislation.

**Assemblyman Marvel:**

Do many animals get exposed to this?

**Joseph Coli:**

Yes. We don't have hard figures, but in discussing the issue with colleagues in the Reno area, most of the practices treat a minimum of six to ten cases annually. Animals, if not treated within eight hours of exposure, have an extremely high mortality rate.

**Assemblyman Carpenter:**

How do most animals become poisoned? What if a hose breaks on your automobile and the antifreeze leaks out? In Elko, it's diluted at least halfway because of the cold.

**Joseph Coli:**

It can be, but it doesn't take very much. Small animals can even get into a leak in a driveway that leaves a puddle, and it can be toxic. It is felt that a cat that walks through a puddle of antifreeze and licks its paws to clean them may achieve a toxic dose. It's an extremely toxic substance, and the bittering agent would help prevent exposure for many of those animals.

**Susan Asher, Executive Director, Nevada Humane Society:**

I have worked for the Nevada Humane Society for almost 25 years. One of the first winters I worked there, I was alarmed at the number of animals we heard about through people calling and saying, "I didn't know antifreeze was poisonous. I can't afford the vet bill to save my cat's life."

Back in the old days, before we had as many advances in veterinary medicine, mortality rates were virtually 100 percent. Now you can do kidney transplants on cats and dogs, and some people choose to do that.

Wildlife is a particular interest of ours because we do full-service wildlife rehabilitation. Even an eagle that picks up a mouse that has ingested the antifreeze can be subject to extreme agony while it processes it through its body. It may die. In my written testimony ([Exhibit D](#)) I mentioned a case we handled with Washoe County Animal Control and the Nevada Division of Wildlife several years ago in the Callahan Ranch area off of Mt. Rose Highway. A gentleman who apparently didn't like animals or any of his neighbors set out little bowls of antifreeze throughout his property, not only to get the dogs he felt might be roaming at large in violation of local ordinance or to get the cats that might be hunting the birds on the property, but also specifically to target wildlife. Unfortunately, quite a few animals died.

Also, a close friend of my family committed suicide this way. It is not a good way to die. If, by passing A.B. 86, we have the ability to make a small change that probably will be followed through on the federal level, we can protect that many more animals, children, and wild animals in this state.

**Larry Matheis, Executive Director, Nevada State Medical Association:**

We support this measure. As you know, unintentional poisoning is one of the major reasons for childhood visits to emergency departments. Nationwide, this has caused a number of serious incidents and deaths.

[Larry Matheis, continued.] A number of years ago, when I was in graduate school, I worked on a project dealing with ingestion of lead paint among children. This had become a major problem during the renovation of inner cities. One of the talking points was that children ate lead paint because it tasted sweet. I had to know if that was true, so I ingested some, and it did taste sweet. I could see how to a child, especially one with pica, the desire to ingest nonfood substances, that might be encouraging. I haven't had the courage to taste antifreeze—it takes far less to do much more damage.

One of the problems, of course, is the developmental delays, but the destruction is to basic organs. We certainly support this and hope you will be able to process the bill.

**Ray Bacon, Executive Director, Nevada Manufacturers Association:**

I have a couple of concerns with the bill as written. The latest data we have, which last session led the Senate not to pass this legislation, is that the largest consumption of antifreeze by animals is typically a result of the mishandling of waste antifreeze, not new antifreeze. Once antifreeze is heated, the bittering agent becomes less effective. The vast majority of the antifreeze in most cars is what came originally from the factory, and we have required bittering in neither the factories nor the 55-gallon drums at the service centers that deal with a large portion of the vehicles on the roads. The way this is written, you will not fix the waste antifreeze, which has poisoned the vast majority of the animals. This legislation will get to the people who are using it as a deliberate poison, and it will affect the children who get into new containers.

The Consumer Product Safety Commission has the authority to act on its own. If the Commission felt this measure was really going to do any good, it could have enacted it already and required the bittering agent on a national level without legislation. Also, the bittering agent is so strong that about 40 gallons of the bittering agent could contaminate Lake Tahoe enough to make it permanently undrinkable. There is no way to take it out, and water is a vital issue in Nevada.

I don't know what controls are in place on denatonium benzoate. I would assume it's a hazardous substance. It may not be, but you when you start talking about even the possibility of contaminating the water supply to make it unusable by human populations in this state, you've got a real issue. Some of the complexities of these issues are the reasons the Consumer Product Safety Commission has not acted.

There is a nontoxic antifreeze. The State absolutely could encourage the use of that as a viable alternative. We're not necessarily opposed to A.B. 86. It

certainly prevents the use of antifreeze for suicide. However, it has its problems. This is not a simple solution.

**Assemblyman Goicoechea:**

The more people testify, the more issues we seem to have with the additive.

**Samantha Fearn:**

The denatonium benzoate is currently not regulated as a hazardous substance, nor, despite prior testimony, is antifreeze. Antifreeze is not regulated under the Superfund Act, or CERCLA. It is heavily regulated, certainly, and there are components of it that can become problematic in groundwater, et cetera.

There are data gaps relating to denatonium benzoate (DB). It has not been declared a hazardous substance by the federal EPA. California EPA has done some studies on it, but they have relied heavily on data provided by the manufacturer of DB. There is certainly an unknown, and I don't want to convey to this Committee that we are fully comfortable with DB. This is the reason we prefer federal legislation, and why we prefer that the National Academy of Sciences force a study of the chemical additive.

**Assemblyman Goicoechea:**

How about Mr. Bacon's statement that, as this product becomes heated, it loses its effectiveness as a bittering agent? Do you know if that's true or not?

**Samantha Fearn:**

We have had that concern for a number of years. There are some cases where, in very high-intensity heat situations, the bittering agent will degrade to some level. It doesn't degrade down to an undetectable level, but it does degrade depending on the amount of time the cooling agent is exposed to very high, extreme temperatures. There can be some degradation of the bittering effect of the agent, so it may not be as effective as when first poured in the radiator, but it may, in the end, help deter some types of accidental ingestion from occurring, even if it spills out.

**Assemblyman Goicoechea:**

If it's not going to be effective, if it's an issue with the environment, and if most accidental poisoning with antifreeze occurs after you boil it and crack the head and dump the antifreeze out on your shop floor, then I have some concerns.

**Beverlee McGrath:**

According to the C Tech Corporation that manufactures Aversion, one of the major-selling denatonium benzoate products in the United States as well as

overseas, the denatonium benzoate breaks down at 332 degrees Fahrenheit. A radiator boils over at 212 degrees Fahrenheit.

[Beverlee McGrath, continued.] Assemblyman Carpenter, you were concerned with antifreeze being brought in from overseas. There is no antifreeze coming in from overseas, but if there were, it would contain denatonium benzoate. They use denatonium benzoate in almost all antifreeze throughout Europe, and ethylene glycol is so toxic they have completely banned it in Austria and Switzerland.

There are no antifreeze manufacturers in the state of Nevada. This does not affect any manufacturers in Nevada. The new cars that are brought in have very good radiator hoses, so broken radiator hoses in new vehicles really aren't an issue. It's the older vehicles that have the broken radiator hoses that expose animals. I have a video tape of puppies dying from just three licks of antifreeze. I'm just trying to explain how lethal it is, how appealing it is.

Certainly you all vote on issues of safety, even though there are no antifreeze manufacturers in your state. It would be wonderful if it were uniform and a nationwide issue. That depends on the outcome of this issue and your decision.

**Bill Bradley, Member, Board of Governors, Nevada Trial Lawyers Association:**

The testimony here today has cemented what we had a concern about. Both in the original bill and in the amendment, there is immunity given to the manufacturer of the antifreeze that contains denatonium benzoate. We are opposed to this bill allowing foreign manufacturers of DB to put a product no one knows the effect of into antifreeze. This bill is going to give them immunity for any injuries caused by the agent when no one knows what it does.

Although I am in favor of protecting wildlife, I am also in favor of protecting people's right to bring an action when a product is misbranded, mismarketed, misdistributed, and missold. This bill, by extending immunity to manufacturers, is a step in the wrong direction in terms of Nevada protecting its citizens from overly aggressive marketing of a caustic agent that injures them. That is why the Nevada Trial Lawyers are opposed. This bill creates immunity, and it should not.

The original bill said people still might be able to sue in cases of willful misconduct or gross negligence, but the amendment absolutely eliminates that right altogether. When I told Ms. McGrath I would support it if they could just take out the immunity, she said if we take out the immunity, the manufacturers are going to oppose this. I think we have a long way to go before we can start

putting denatonium benzoate into our state and giving immunity to people who use it and sell it.

**Assemblyman Carpenter:**

If I went to Idaho or Utah and brought back some antifreeze, and later on we had a leaking hose and someone's pet died, would we or would we not be liable, in your estimation?

**Bill Bradley:**

I believe you would be liable because you brought in an agent. In fact, I would try to use this statute against you and say that people who sell new antifreeze get immunity. However, because you went across the state line and brought in some that the State of Nevada has issued a public statement saying they don't want coming in, I would try to use that statute against you to prove you were negligent in bringing across a product that did not contain the same additive that Nevada Legislature required in products sold here in Nevada.

It's hard to oppose this, but to grant blanket immunity to a product that nobody knows the effect of and is produced by manufacturers outside this continent, to me, is a frightening situation.

**Assemblyman Atkinson:**

I had the same concern. I would like you to expand on that. If I go out of state and have some work done, and antifreeze is put in my car that does not contain the bittering agent, what is my liability?

**Bill Bradley:**

First of all, we are going to have to distinguish between a person's pet, an expensive type of unique pet, and a child. If you negligently allow this product, with or without DB, to fall on the ground and a child or an animal gets into it, then you could be liable for either negligently not maintaining your vehicle to prevent the spill, negligently not cleaning it up, or negligently not notifying authorities that there's a toxic substance out there that you created. All of those may give rise to liability. I've never heard of that liability because I think, really, we're directing this toward cats and small animals and people who put it out in bowls to rid their property of what they consider pests. But there would possibly be liability there.

Do you all have a copy of the amendment offered by Mrs. Gansert and Ms. McGrath? If you take a look at the original bill, A.B. 86, page 2, Section 1, subsection 3, limits the liability. It says, "A manufacturer . . . that is required to include the bittering agent is not liable to any person for bodily injury, death, or damage . . . unless the personal injury, death, or damage to property results

from willful or wanton misconduct." So in the original bill, which we were opposed to, there is a limitation of liability that can be overcome if you show particularly egregious conduct.

[Bill Bradley, continued.] The same section in the amendment starts off with, "A manufacturer, packer, seller, distributor, or recycler of antifreeze that is required pursuant to this section to include a bittering agent is not liable to any person." It automatically, without question, prohibits any claim if that injury was related to the denatonium benzoate. What concerns me is that, because manufacturers don't know what its effect is, saying we're going to extend immunity to a product we don't even know the effects of is certainly putting the cart before the horse.

**Chairman Claborn:**

It's a little scary.

**Bill Bradley:**

I think their intent is very well founded. However, until we have better information on denatonium benzoate from the Consumer Product Safety Commission, not the trade group, there's not enough known about DB to warrant putting it in our products or creating immunity.

**Assemblyman Denis:**

Do we have any information on how other states that require this bittering agent have handled the issue of liability?

**Bill Bradley:**

I don't know, but I will look into it and get a report back to you on what those bills contain in terms of liability exclusion. It sounds to me like they must have put some liability immunity in there. Otherwise, the manufacturers would have tried to kill the bills.

**Assemblyman Denis:**

Could you also include any case law that showed any problems someone has litigated against somebody because of this?

**Bill Bradley:**

The other problem this creates is if you have a serious injury caused by DB or the antifreeze itself, I don't know how you would prove that the injury was caused by the ethylene glycol component of the antifreeze as opposed to the DB. Because there is insufficient information about the effects of DB on the human kidneys or other organs, I think it would be very hard to prove, one way or another, what effect DB played in the injury of that person.



**Assemblyman Marvel:**

Do the other states have this same problem? Are their statutes written the same way with that limited liability?

**Bill Bradley:**

I don't know, but I'll research it and get back to the Committee on that.

**Assemblywoman Gansert:**

As far as the limited liability, it is not for the antifreeze, but only for the bittering agent, the same bittering agent that is in all of these products right now. That agent has also been approved by OSHA. California did include a limitation of liability. You are liable if anything happens with the antifreeze. This limitation is only related to the bittering agent, which is commonly used in all of these products.

**Bill Bradley:**

I understand that, and that's what the bill says. The problem is when the manufacturer gets up and says, "We don't know what DB causes, or its effects, and the only way we're going to go along with this is if you immunize us for a product when we don't know how it works." I struggle with why we are going to give immunity to an agent whose caustic effects on human beings we're still not sure of.

**Assemblywoman Gansert:**

It's just the bittering agent, which is commonly used and has been approved by OSHA in all these products. The concern the industry voiced to me was that the DB is manufactured outside the United States. However, it is used in all sorts of American-made products.

**Bill Bradley:**

If that were the case, and the manufacturers are not worried about it being caustic, then there shouldn't be any issue here, and we should just pass the bill without the liability immunity. That would settle it.

**Don Henderson, Director, Nevada Department of Agriculture:**

By virtue of my position, I am also the State Sealer of Weights and Measures. If this bill succeeds, it will fall to the Department of Agriculture to make sure that all antifreeze sold in the state contains the bittering agent. There were some questions from the Committee earlier as to the effect this might have on State agencies. With your indulgence, I would like to turn it over to Dr. Chris Mason, the senior chemist with our fertilizer and antifreeze lab.

**Chris Mason, Ph.D., Chief Chemist, Plant Industry Division, Nevada Department of Agriculture:**

It's my responsibility to register and monitor all the antifreeze that's sold within the state. We also deal with the analytical backup to support that. We did do some work. We are capable of doing the analysis for this project at this point in time. If you need some fiscal information, I'm sure we can provide it for you.

**Assemblyman Marvel:**

What do you know about denatonium benzoate?

**Chris Mason:**

I know there are only a limited number of manufacturers, and they are all outside the United States. I believe they're in India.

**Don Henderson:**

We are in the process of putting together a fiscal note on this. At this point, we do not anticipate a significant effect on the Department. As Dr. Mason indicates, we have the instrumentation to do this. We collect a fee from antifreeze, and we anticipate the cost of doing this testing will fall within the existing fee structure. As such, the Department is neutral on this bill.

**Assemblyman Denis:**

So you guys are prepared and you have everything you would need to be able to test this? The way this wording reads, you would test it once a year. Is that correct?

**Chris Mason:**

The equipment we use for analyzing pesticides is perfectly good for analyzing this component. We've checked on the methodology. We would normally do a portion. We have about 300 brands and somewhere between 60 and 90 different formulations. Our target analysis would normally be 10 percent to 20 percent of that a year.

**Assemblyman Carpenter:**

You said there were 300 different brands of antifreeze. Are a lot of those brands manufactured by the same companies who put different names on them and sell them for different prices?

**Chris Mason:**

Yes. There are about four major manufacturers and one or two smaller ones. The bulk of the brands are made by Honeywell, Old World, Valvoline, and Texaco. There are different varieties: low silicate, long life, all the ones you see on the shelves. Also, each automotive manufacturer likes to put his own stamp

on, so you'll get the Ford, Chevy, and Jaguar brands, et cetera, and they sell that as the part.

**Chairman Claborn:**

Are there any more questions? Seeing none, I'll close the hearing on A.B. 86 and open the hearing on A.B. 65.

**Assembly Bill 65: Requires State Environmental Commission to adopt regulations prohibiting disposal of electronic waste in landfills and establishing program for recycling of such waste. (BDR 40-489)**

**Assemblywoman Peggy Pierce, Assembly District No. 3, Clark County:**

Assembly Bill 65 deals with electronic waste (e-waste). This bill calls for the State Environmental Commission to develop regulations banning the disposal of electronic waste in landfills and regulations to create a program for recycling of electronic waste, such as televisions, computers, cell phones, printers, fax machines, and microwave ovens.

However, more than any other municipal solid waste, e-waste is larded with heavy metals that can leach into groundwater. Chromium, zinc, lead, copper, manganese, selenium, cadmium, mercury, and arsenic are all common components of electronic waste. For instance, computer monitors and televisions contain four to ten pounds of lead each. Lead exposure is linked to juvenile retardation, hearing impairment, stroke, kidney disease, and cancer. We no longer allow lead in gasoline or paint because of its danger to public health.

The health effects of cadmium are not clear, but possible effects are kidney and lung damage, and it is probably a carcinogen. The United States Environmental Protection Agency (EPA) has set limits on how much cadmium can be found in water and food. Exposure to high levels of mercury can permanently damage the brain, kidneys, and developing fetuses. It is also a possible carcinogen. Small amounts of copper are essential to human health. High-level exposure can cause damage to your liver and kidneys. We do not want these materials leaching into the groundwater from our landfills.

How big is the problem? Estimates vary, but between 300 million and 600 million computers will need to be disposed of in the next few years. The 2006 switch to digital television will make 230 million to 280 million cathode ray televisions into dinosaurs. By 2010, 3 billion pieces of consumer electronics will be heading to scrap. This means 1.2 billion pounds of lead, 2 million pounds of cadmium, and 4 billion pounds of plastics are heading into the waste stream.

[Assemblywoman Pierce, continued.] Most of this has not entered landfills yet. Much of this waste is in storage in warehouses and in our attics and garages. We don't know what to do with it, but we instinctively know that it should be disposed of carefully. The EPA already requires businesses to treat cathode ray tubes, the toxic part of TVs and computer monitors, as hazardous waste. That is what my bill is aimed at—the responsible disposal of e-waste, disposal that protects the groundwater, recycles the valuable metals and plastics in the products, and saves space in our landfills.

What is the solution? The European Union has taken the lead in dealing with the mounting e-waste problem with two directives. One requires manufacturers who sell computers in Europe to phase out some of the more dangerous toxins, including lead, mercury, and cadmium, from their products by 2006. The other directive requires that manufacturers be responsible for the end of life of their products.

Meanwhile, in this country, a wave of e-waste regulations like mine is beginning to appear. A new law in California assesses an up-front fee for every cathode ray tube product purchased to cover recycling costs. It also bars the export of e-waste and requires the phase-out of toxic substances, as the European directive does. California, Minnesota, Massachusetts, and Maine have new laws banning the disposal of e-waste in landfills. New York, Rhode Island, Texas, and Washington are considering laws that will make manufacturers responsible for the end-of-life disposal. In all, more than 24 new bills are making their way through state legislatures.

Our colleagues from the rural counties know Nevada is on the verge of becoming a major importer of municipal waste. This isn't the nuclear stuff; this is household garbage, mostly from our neighbor to the west. There are companies looking for sites in the rural counties for new landfills, and small, established landfills are asking for permits to expand to sizes that will accommodate the needs of California for the next 100 years.

I have a twofold plan to ensure that we keep our groundwater safe from toxic leakage from these mega-landfills. The first part of that plan is this bill, A.B. 65. The second part is a bill to require that landfills be lined, which will be here in the next couple of weeks. A.B. 65 requires the State Environmental Commission to adopt regulations prohibiting disposal of electronic waste in landfills and regulations to establish a recycling program for electronic waste.

My bill has a deadline of December for banning electronic waste from landfills and for the State Environmental Commission to come up with regulations. I believe that between now and December is not enough time to come up with

regulations, so I am going to bring an amendment to change that date and give them a year. I have been speaking with the people at the Nevada Division of Environmental Protection (NDEP), and I will work with them about any other things we need to do to fix this bill, but the basic bill is here. We need to be proactive in protecting the groundwater of our state and in disposing of electronic waste in a way that's responsible, that recycles the heavy metals, and that protects our environment into the future.

[Assemblywoman Pierce, continued.] Besides the bills making their way through state legislatures, there are also a couple of bills in Congress. An ideal situation would certainly be a national program. However, there have been bills like this before, so I don't have a lot of confidence there will be a national program any time soon. One way to move Congress in a certain direction is with bills in state legislatures. That's why I'm hoping we will join other states in coming up with a solution for e-waste in Nevada.

**Assemblyman Atkinson:**

Who is going to regulate this, and who will be responsible for it afterward?

**Assemblywoman Pierce:**

The State Environmental Commission would come up with regulations for this, and NDEP would be responsible for it.

**Assemblyman Goicoechea:**

I would like to see a little more direction for the State Environmental Commission. In the language of the bill, it's fine to talk about recycling. I envision a landfill site separated away, just like we do white goods, old cars, and batteries. That makes sense. However, I get a little nervous when the regulations are all left up to the Environmental Commission and NDEP. I would be a little nervous about the ultimate goal and where we're headed. I commend you on the bill. I agree with you on the need to separate the e-waste. I'm just a little nervous about what we, as a legislative Body, intend for them to come up with in the end.

**Assemblyman Carpenter:**

Ms. Pierce, have you read this paper from Hewlett-Packard ([Exhibit E](#)) regarding what they're doing?

**Assemblywoman Pierce:**

They are one of the companies, along with Dell, who are taking back computers at the end of life. They have a facility in Roseville, California, that is recycling computers now. They have a pretty extensive program.

**Assemblyman Carpenter:**

They say anything the Environmental Commission does has to be very flexible, and that would probably happen. Maybe these private companies will take care of the problem without having legislation in place that actually harms them more than it helps them.

**Assemblywoman Pierce:**

I wish that were true. Japan and Europe already require manufacturers to take responsibility for their computers at the end of life, but my reading is that these same companies are resistant to that kind of solution in this country. They are already doing this in other places, but they have not volunteered to do that here, except for a couple notable companies: Dell and Hewlett-Packard. I still think we need to move forward legislatively.

As for Assemblyman Goicoechea's concerns, I agree. I have been talking to NDEP about the direction of this, and, in an amendment, we could come up with something more concrete. There are a number of ways to go. California has gone one way. Maine has chosen to go in a different direction, but they just passed a very extensive program.

There have been private and public partnerships, especially in Washoe, where there have been collection dates for electronic waste a couple of times a year. One of the things we're talking about is having a couple of collection dates in the urban counties so once or twice a year, for a small fee, it would get disposed of properly. There would need to be a certification program for the companies we allow to recycle this, because there have been examples of companies that say they are in the business of recycling this material, but they just dump it in a field. There clearly will be a different program for the urban counties than for the rural counties. There is less waste and farther to travel in the rural counties. Collection dates work very well in the urban areas. That is part of what the continued discussion will be, and I will bring that back to the Committee.

**Assemblyman Marvel:**

When you talked with the Nevada Division of Environmental Protection, did you discuss what the fee would be? There will certainly be some cost to them if they are going to monitor the program.

**Assemblywoman Pierce:**

We have not nailed down what the fee will be. NDEP has told me they will hold a couple of collection days in the urban counties before the regulations take effect, and they can do that out of their current funds.

**Assemblyman Marvel:**

I think the operators of the landfill companies are going to need some kind of reimbursement. There's going to have to be special procedure for the disposal of these products, and I don't think they're going to do it for free. [Assemblywoman Pierce agreed.]

**Assemblyman Goicoechea:**

Who is going to pay?

**Assemblywoman Pierce:**

In California, the consumer pays a small fee, between \$6 and \$10, upon purchase of these products. That money goes to the recycler at the end of life. The program conducted in Washoe County a couple of times had a small fee; it also had some grant money. As these programs get larger and more of the waste stream gets recycled, those kinds of fees will come down. That will happen over a period of time.

**Assemblyman Hogan:**

We're here trying to project some of the potential costs and some of the regulatory questions that may come up. We also need to project the incredibly rapid growth of the use of electronic devices of all kinds.

There is some urgency to working through these valid concerns and getting something in place to protect the environment in this state. We have to balance the need to do something in this area with the need to ensure that what we do does not compound our problem or cause other problems. I don't think we should say that, until those problems are solved a hundred percent, we ought to do nothing more about the problem. I am convinced by your initial remarks that the problem is not just that we may be putting lead and other dangerous substances into the groundwater, but that we're going to be doing that at a rapidly multiplying rate. I want to underline the importance of staying with this effort until we find a sensible way to get it done.

**Assemblyman Denis:**

The picture ([Exhibit F](#)) shows all the bad elements of e-waste. Is there anything in this that is of value and that we could use to pay for getting rid of the bad?

**Assemblywoman Pierce:**

The plastics can be recycled. The huge amount of lead can be used again, as can the other metals. As the recycling business gets larger, and there is more to be recycled, the recycling will become more efficient and less expensive.

**Jason Geddes, Ph.D., Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno:**

We are the group that has put on the e-waste event in Reno the last couple of years. I want to answer a couple of questions you brought up about the event. We started doing the event in Reno because we were generating so much electronic waste on the university campus that we needed to figure out a way to get rid of it. The very first year, we went into the Hewlett-Packard program, and we were paying \$27.50 a computer to get rid of it. That was a very high cost to the university for waste disposal, and it was nothing we had built into the budget. We got funding from Dell to put on the first community-wide e-waste event in Reno. The first year, we opened it to anyone in the community to bring in their computers, and we collected 86,000 pounds of electronic waste.

The Lockwood Regional Landfill in Storey County has a ban on electronic waste going into the landfill from businesses or corporations. For residents, it is legal to put one monitor a week in their garbage cans. It's a voluntary ban that they have imposed, so all the big companies have to look for someplace else to get rid of their waste, but the individuals can haul them away.

At the community-wide e-waste event, we take computers from everybody, and then, through a grant from the Nevada Division of Environmental Protection, the Dell grant, and private donations, we pay for the cost of disposal. The cost was \$27.50 to get rid of a monitor the first year. The first year of the e-waste event, we collected 86,000 pounds, and we were able to get rid of it for just over \$0.17 a pound. When we did the event again last year, we went up to 201,000 pounds in the community, with over 700 different cars coming in and dropping off computers. When we did that, we got the price down to \$0.12 a pound, so the price is coming down.

Part of that price decrease was because two years ago, we didn't have any recyclers in the area to partner with. We were working with Dell, and they were partnered with a recycler in Los Angeles. This last year, we went out to bid and found a company located in Reno, so we eliminated all our transportation charges as well as the recovery of those recyclables. The rate that they get out of it changed, so the cost was able to come down based on the volume we were able to bring in.

We're in support of anything you can do to move the process forward and help take care of this. There will be a cost associated with it. Until those costs come down, or the costs for recycling go up, there will be a charge. We work with groups in the community. We had over 800 monitors from the university, over



800 monitors from the Washoe County School District, and over 1,000 monitors from the Salvation Army that we recycled.

[Jason Geddes, continued.] I have with me Woody Wright, who is in charge of hazardous materials for the Environmental Health and Safety at the University of Nevada, Reno. He secured the Dell grant in our first year, and he does all the heavy lifting at the event.

**Assemblyman Marvel:**

How do you dispose of this garbage?

**Jason Geddes:**

At our e-waste event last year, we collected everything in either large gaylords or on pallets. We hauled it up to the recycler in town, who pulled the computer monitors apart, took the plastic off, and shipped the plastic by rail to a plastic recycling facility. The rest of the monitor—the glass and the electronics—they shipped to another facility in Tampa, Florida, by rail. There, they broke them apart. They smelted the glass to remove the leaded glass, and they smelted it down to get out some of the components after they ripped out the wiring and other small plastics.

**Assemblyman Marvel:**

But none of it stays in Nevada; it's all shipped out?

**Jason Geddes:**

It is all shipped out. The computer systems that are reusable go out to local nonprofit agencies for redistribution, but all the broken ones go out of state. The initial demanufacturing is done here in town with a group we used last year, and there are a few in the state that will do the initial demanufacturing here, but they don't do any of the smelting and refining here.

**Assemblyman Hogan:**

Do you have a sense of whether the rather rapidly declining cost per pound is a result of generating so much more volume, or whether it's a result of the people being able to recover and, in some way, resell the reusable components? Can we expect it to continue plummeting?

**Jason Geddes:**

I think it's a combination of both. I really don't expect the cost to keep plummeting. We're anticipating our costs going up this year based on some of the volume. The other issue you have is that there is a big surge coming through of the standard cathode ray tube (CRT) monitors with the high lead, but most people are switching to plasma screens or the flat-panel screens, and

those have a lot less of the recoverable metals in them, so you're not going to recover as much valuable material from recycling those. It's really hard to tell until that transition from CRTs to flat panels happens.

**Woody Wright, Hazardous Materials Program Officer, Environmental Health and Safety, University of Nevada, Reno:**

We started this program at the university primarily to save ourselves. Because of our introduction to Dell through the National Recycling Coalition, we were able to partner within the first year to get started. It certainly mushroomed, going from 86,000 pounds to over 200,000 pounds in 2004. Something definitely has to be done. The questions are what, how, is there going to be a cost, and will it be a reasonable cost. The residents of Nevada want to do the right thing, but, at the same time, if it's too expensive for them, you're bound to find e-waste in dumpsters and on the side of the road.

**Jason Geddes:**

Hewlett-Packard and Dell currently have take-back programs in operation. They charge for the shipping cost of that system, based on weight, plus \$5 to \$15 to dispose of the computer. There is a moratorium at the landfill on businesses and large companies. Private citizens are the ones who can dispose of their computers that way, and, given the choice of paying \$5 to \$15 or throwing the computers in a dumpster, only those who are civic-minded will have theirs properly disposed of. Most people will throw them into their garbage cans rather than pack them up, take them to UPS [United Parcel Service], and pay the \$35.

I would encourage some sort of drop-off program, such as the one we have for refrigerators and the like, with a central point where everyone can drop them off and have a fee assessed, so the waste management company can cover the cost of storage and disposal.

**Chairman Claborn:**

That's a very good idea.

**Leo Drozdoff, P.E., Administrator, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources:**

Assemblywoman Pierce has sought our opinions and input on A.B. 65. Management of electronic waste is the concern of waste managers and government and industry across the country.

The public needs to be able to dispose of their electronic waste in a way that is both affordable and environmentally responsible. Nationally, it is estimated that more than 63 million personal computers will be replaced this year alone. The levels of hazardous materials in this waste, if not properly managed, can have a

negative impact on the environment. For example, cathode ray tubes contain an average of four pounds of lead. In addition to lead, electronics can contain a number of other metals, including chromium and mercury.

[Leo Drozdoff, continued.] Over the last several years, the U.S. Environmental Protection Agency (EPA) has attempted to lead an effort on this front. EPA formed the National Electronics Product Stewardship Initiative that brought together stakeholders from all segments of the county to address the issue. NDEP has kept itself current on this initiative. Unfortunately, after more than two years of this effort, the group was unable to come to a consensus on a solution.

While these national efforts continue on many fronts, including a number of industry-led initiatives, proposed legislation in Congress, and continued efforts by the EPA, we still do not have an agreement on a national solution. Since it is apparent that a national solution is not forthcoming, states are beginning to address the issue.

Massachusetts has banned CRTs and provided recycling grants for collection programs since 2000. California and Maine have recently adopted legislation and are beginning to implement programs for electronic waste management. In Nevada, voluntary collection events for electronic waste have been held in Reno and Las Vegas. These events have been sponsored by Dell, the university, and a number of local groups, including our agency, NDEP. The event held last October in Reno collected more than 1,000 tons of electronic waste. NDEP does anticipate participating in future events like this.

The varied programs in other states provide some examples for us to look at. However, we need to carefully evaluate the unique aspects of Nevada in regard to cost, infrastructure, and geographic area before a program is developed. We have prepared a fiscal note that reflects the costs we believe NDEP will incur to evaluate and begin implementation of the activities directed by A.B. 65. These are fairly modest costs that include one new staff member to lead the effort.

The fiscal note does not reflect the costs that would be incurred by the solid waste management authorities in Clark and Washoe Counties or the costs to smaller municipalities that operate solid waste disposal sites. The total cost of the program directed by A.B. 65 would be quite large and needs to be carefully considered. Given the complexity of the issue and the number of stakeholders involved, we think it may be unrealistic to adopt a comprehensive regulatory program within the time frame prescribed in the bill.

[Leo Drozdoff, continued.] NDEP is officially neutral on the bill. The Division recommends an interim study committee be formed. That way, before Nevada commits to implementing a specific program, we should carefully evaluate human health and environmental issues, as well as potential program costs. Pursuant to the direction of the interim study, the Division could work with Assemblywoman Pierce, along with other solid waste management agencies and interests in Nevada. We can report back to the Committee prior to the next session.

**Assemblyman Marvel:**

What was the fiscal note you developed?

**Leo Drozdoff:**

We came up with one staff person and travel. We anticipate that person would initially spend his time working with the solid waste management agencies on revising their plans. I imagine the waste would be segregated, so we would have to work with them on plans for appropriate ways to segregate the waste. Then, once it was up and running, we would be in the position of making sure that work was being done in accordance with the management plan.

**Assemblyman Marvel:**

Can't you include this fee in the regulation you would have to draw up?

**Leo Drozdoff:**

No, we would have to take a look at our fee rates.

**Assemblyman Marvel:**

You'd have to add new ones because you've got a new program here.

**Leo Drozdoff:**

That's correct.

**Assemblyman Marvel:**

What's the approximate dollar amount we're talking about?

**Leo Drozdoff:**

We believe an Environmental Scientist III, including salary, fringe benefits, travel, and operating costs, would be roughly \$70,000. Clark and Washoe Counties have their own solid waste management agencies, and they're going to have their own infrastructure and personnel responsibilities.

**Assemblyman Marvel:**

Are they handling these products now, TVs and whatnot?

**Leo Drozdoff:**

They do, in fact handle the products. They have different voluntary programs in place, but right now there is not an outright ban on these products.

**Assemblyman Marvel:**

They can be handled at the Lockwood Landfill, then? [Mr. Drozdoff replied in the affirmative.] And they're going in there like any other disposable?

**Leo Drozdoff:**

Other than the one caveat from businesses, yes, I believe that's correct.

**Robert Sack, Division Director, Environmental Health Services Division, Washoe County District Health Department:**

We're taking a position of neutral support on this. We promote recycling; that is one of the charges the Legislature has given us in the health districts and the State NDEP. We have some concern about this in that there is a pass-through in the requirements to us. The enforcement within the health districts is by the health districts. The State authority does not apply. However, we do have to be consistent with State law, so whatever State law is passed that the State Environmental Commission has to come up with regulations for, they will then pass that requirement to us to make sure we are consistent with the State.

We would be the agency charged with enforcement within Washoe County and at the Lockwood Landfill. That would range from complaints regarding the illegal disposal of these types of waste to regulating the landfill, the transfer stations, and any recycler that may want to go into business within our jurisdiction, so there are costs associated with it. However, this is an area that does need some attention. There is a lot of waste being produced here, and there is not a really good handle on the markets. Probably the biggest problem right now is that there's not a consistent market out there. The roundups that have been done in the past are one time only. They have not really been designed, as far as their costs go, to support the ongoing, everyday receipt of material from the public.

**Assemblyman Marvel:**

Do you feel there's any contamination going on now from past practices?

**Robert Sack:**

Landfill contamination is a tough thing to read. There's a lot of regulation of the landfills. There's a lot of sampling being done, but it takes a long time for toxic or hazardous waste to move into a groundwater system, especially in our state, where it's so dry.

**Assemblyman Marvel:**

Do you monitor the groundwater in that area at all?

**Robert Sack:**

We do. There's ongoing monitoring required by the landfill, which is permitted by us.

**Assemblyman Marvel:**

Have you found any contaminants in it?

**Robert Sack:**

Not of these types of materials. That doesn't mean it couldn't happen.

**Assemblyman Marvel:**

Is the landfill lined or not?

**Robert Sack:**

The Lockwood Landfill is not lined, but it does meet a standard dictated by the federal government to be similar.

**Assemblyman Marvel:**

I think we have problems in some of the other counties where they had to go in and line their landfills. It's very expensive to do. [Mr. Sack concurred.]

**Joseph Johnson, Legislative Advocate, representing Toiyabe Chapter, Sierra Club:**

I would like to commend Assemblywoman Pierce for bringing this bill. It addresses an issue that certainly deserves legislative attention. Last week I had an opportunity to speak with the First Secretary of the Federal Republic of Germany stationed in Washington, D.C. Assemblywoman Pierce mentioned that the Europeans have adopted a very different approach much like the model that California has begun to implement. This bill is really a very limited approach to the hazardous materials.

Earlier, there was some question about the other valuable components of electronic waste. Primarily, one of the precious metals, gold, is used in the solder and in boards and other electronic components, and is routinely salvaged out of these products, oftentimes sent overseas for processing in unregulated environments. There are, as has been mentioned, numerous hazardous materials and toxic materials that also accumulate in the waste. Many of these have salvage value.

[Joseph Johnson, continued.] We certainly support this bill and would like to work with the Assemblywoman, as well as with the NDEP, in ironing out some of the details. We have a concern in Section 1, subsection 1(a), about other disposal sites being limited. There probably are, in the process of salvage, some parts of the equipment that may need to go to a disposal site instead of being recycled. That is something the State Environmental Commission could restrict by regulation if it is not restricted in statute.

We do not support an interim study. We feel that, although the issue is fairly complex, the implementation of the statute could be worked out over the next year if the time frame is extended for the Commission and regulation. The fiscal note is obviously expensive; there is still a cost to this recycling program. In the university program, we're talking about 200,000 pounds at \$0.12 a pound, which was probably much less than the fee that Hewlett-Packard or Dell would charge. Nevertheless, at a cost of \$20,000 to \$25,000, some of which was made up of grants, it is costly.

We would anticipate that, as companies become involved at the local level with some guarantee of a continuous stream, the processing cost would go down. The shipping cost is problematic. In many recycling programs, sometimes the value is for the people who perceive it, not necessarily an economic value. In this case, there is some really harmful material involved, and we should consider some of that cost offset by the public good.

Again, we'd like to volunteer to work with the stakeholders in this. We would encourage your adoption of the amended bill.

**Kaitlin Backlund, Political Director, Nevada Conservation League:**

We support the bill. We would also like to be involved with the stakeholders in working out some amendments, along with the Nevada Division of Environmental Protection. We would not support an interim study at this time, as we feel there is an urgency in moving this issue forward this session. There are people in this room who can make that happen, and I have a lot of confidence in those folks.

**Assemblyman Carpenter:**

It seems to me that it would be better to collect this money up front when somebody buys one of these products, rather than to try to do it at the end. If it costs a lot, people are just going to throw them along the road. It seems to me that, if you can collect it up front, you're in a lot better shape.

**John Pappageorge, Legislative Advocate, representing Republic Silver State Disposal:**

We, too, are in favor of the bill. In Clark County right now, if someone wants us to come pick up their computer, we give them the phone number to the Clark County Public Education Foundation. Then that computer is given to the Foundation and recycled for education, which is a good thing, but I can't tell you if it's been one computer or a million computers. I have no idea, and neither does anyone else.

Computers do wind up in the landfill now, but there are special projects where people contract with us to come and pick up a large number of computers, and we prepare those computers for disposal. Then they go to the Beatty dump and are disposed of at that location. If a person comes in with one computer and wants us to take it, we put that in our hazardous landfill in Clark County.

**Assemblyman Marvel:**

What kind of precautions do you have at your hazardous landfill? Do you have lined pits?

**John Pappageorge:**

Yes, our landfills are all lined. The hazardous materials landfills are double-lined.

**Assemblyman Marvel:**

How expensive is that?

**John Pappageorge:**

It's pretty expensive, but it's a requirement that we have maintained. When we bought the landfill, it was brand new. It has been lined from day one, so there are, as far as we know, no contaminations. We, too, monitor the landfill.

**Assemblyman Marvel:**

What about Beatty?

**John Pappageorge:**

I'm not sure about Beatty. I would imagine it would have to be much stricter than any municipal landfill because of the materials they put in there.

**Assemblyman Carpenter:**

What kind of luck are you having now with your recycling? One time we were down there you had mountains of plastic that you couldn't get rid of. Are you having any better luck getting rid of those recyclable materials now?



**John Pappageorge:**

I can find out that answer, but I know that getting rid of recyclable materials depends on the market. Sometimes there are mountains of glass, but if there is a market for recyclables, you can get rid of it. If not, it's going to sit there until the market changes. Aluminum usually doesn't sit around too long.

**Ray Bacon, Executive Director, Nevada Manufacturers Association:**

We are not opposed to the bill. We do think the December 31, 2005, time frame is incredibly tight. The second thing is, we would propose an amendment that, if you wind up with a federal program, this bill automatically sunsets one year after that date, so you wind up with consistency across the country instead of a program where we are out of step with everybody else. The third thing, which Mr. Pappageorge alluded to, is that it is sometimes difficult to get rid of your miscellaneous wastes, such as plastics.

Ms. Pierce, in her testimony, mentioned that the California bill has a prohibition against exporting e-waste. With the loss of the manufacturing base in this country over the last two or three years, one of the things which has happened is that the low-end plastics business is very rapidly moving to China. Molding shops and extrusion shops in this country are shutting down on a regular basis. I would strongly urge you not to put in that kind of prohibition. If you're going to get rid of the plastics at some point in time, it is going to be shipped overseas.

**Assemblyman Atkinson:**

You said the date of December 31, 2005, was too tight?

**Ray Bacon:**

It typically takes the Environmental Commission nine months to get through regulations and hearings and arrive at good solutions. In my dealings with the Environmental Commission, which go back about 14 years, I don't think they've done one in nine months that's fairly complex. This is not simple; it is fairly complex.

**Assemblyman Atkinson:**

Would it be up to them to determine if that is too tight or not?

**Ray Bacon:**

This is not going to be an easy thing to come up with regulations on. I think they're going to need at least a year from when the bill passes.

**Chairman Claborn:**

I'm going to close the hearing on A.B. 65 and open the hearing on A.B. 25.

**Assembly Bill 25: Revises membership of State Environmental Commission.  
(BDR 40-661)**

**Leo Drozdoff, P.E., Administrator, Division of Environmental Protection, Nevada  
Department of Conservation and Natural Resources:**

The purpose of A.B. 25 is to adjust the membership of the State Environmental Commission in order to provide a more balanced representation of stakeholders. Specifically, the bill would remove membership by the State Forester and replace him with a person who has experience advocating for conservation issues and is appointed by the Governor. The State Environmental Commission (SEC) serves as the Division's rule-making body and appeals board.

The Commission is currently composed of six designated public officials and five members appointed by the Governor. The public officials include the State Engineer, the Director of the Nevada Department of Wildlife, the Administrator of the Division of Minerals, the Director of the Nevada Department of Agriculture, the State Forester, and a member of the State Board of Health designated by that Board. Of the five current members appointed by the Governor, one must be a licensed general engineering or building contractor, and one must have experience with mining reclamation.

Although the State Forester has always been an active and willing participant on the Environmental Commission, in reality, the business of the Commission rarely involves the areas of responsibility and expertise of the State Forester. Consequently, we recommend replacing this position with a member who represents conservation interests and is appointed by the Governor. We have discussed this recommendation with the State Forester, and he is in agreement.

**Assemblyman Carpenter:**

Are you in agreement that the State Forester should be taken off?

**Leo Drozdoff:**

Yes, I am. The State Forester has been an active participant for us on the SEC, but we really haven't had a whole lot of issues that pertain to him. The SEC has evolved since it was formed in 1973. They have added new members and replaced members by statute.

**Assemblywoman Kirkpatrick:**

In Section 1, line 19, that seems a little vague. What is your intent there?

**Leo Drozdoff:**

It isn't intended to be a wide net. This will be a Governor appointee, so the way we envision it is that you would have a variety of interests that felt they filled the bill. It would be incumbent upon them to make their case to be considered and ultimately appointed. However, it is, by design, not narrowly targeted.

**Assemblywoman Kirkpatrick:**

Every one of us here has a different perspective. I think it's too vague. The bill needs to define it a little more so we have a wide variety of perspective, but so that we have folks that are a little more experienced. I am learning daily about mining, but I don't know if I would volunteer to be on that board. Is there a reason why we need to change it from its current setup?

**Leo Drozdoff:**

That's a fair question. The current composition of the State Environmental Commission has worked well, and I'm not trying to give you the impression it hasn't.

We're a Division of Environmental Protection within the Department of Conservation and Natural Resources. We are losing a sister agency in the Department of Conservation and Natural Resources. That word has meaning to us. The State Forester is also within the Department of Conservation and Natural Resources.

I understand what you're saying, and I don't totally disagree with it. Within the Department of Conservation and Natural Resources we have Water and Forestry and a variety of other items, so that's the mindset we had in proposing this. Being the Division of Environmental Protection, we would have that conservation mindset.

**Assemblyman Goicoechea:**

In the first line of the bill, when it says, "the State Environmental Commission within the Department," are we still reflecting the Department of Conservation and Natural Resources or a stand-alone department?

**Leo Drozdoff:**

It is the Department of Conservation and Natural Resources.

**Assemblyman Goicoechea:**

Why is it then deleted? It actually takes the Conservation and Natural Resources out and just reflects the Department.

**Leo Drozdoff:**

I think that is a change that the Legislative Counsel Bureau made to be consistent with how the Department of Conservation and Natural Resources is mentioned in the statutes.

**Assemblyman Marvel:**

I have the same problem Mr. Goicoechea has. The way this is written, it sounds like it's heading to be a stand-alone department. Under Section 7, it says, "The Department" and deletes the Department of Conservation and Natural Resources. The way I interpret it, you're a stand-alone department.

**Leo Drozdoff:**

That is absolutely not the intent, and we will get whatever clarification we need.

**Assemblyman Carpenter:**

It seems to me that the State Forester deals with as much, if not more, environmental issues as some of the other people here. He has to be concerned with fire, rehabilitation, wildlife, ranching, and the whole nine yards. Frankly, I have a problem taking him off.

**Leo Drozdoff:**

The State Forester has been an active participant. He wouldn't have been in the statutes otherwise. What this boils down to is that we felt it was appropriate to add this conservation voice, and, in so doing, we went down the list looking for who we dealt with least, not who we didn't deal with at all. I don't disagree that the Forester has a role in some of the work we do.

**Assemblyman Carpenter:**

You could include that requirement with the people the Governor appoints. He has to appoint people who have other areas of expertise, so you could make one of those he already appoints your environmental person, if that's what you're looking for.

**Leo Drozdoff:**

That is correct. I talked about the appointees by statute. That means if there are five Governor appointees, there is one who represents mining reclamation, there's someone who represents development interests, and then there are three public appointees with no further qualifications.

**Assemblyman Hogan:**

Isn't it rather a sure thing that if issues were coming before the Commission that involved forestry, they could obtain the expertise of the State Forester in

future meetings? [Mr. Drozdoff replied in the affirmative.] So, in effect, we're not ushering him out, not to be heard from again, but rather trying to perfect the balance of the interests being represented and making that shift without actually giving up the benefit of the Forester's advice.

**Leo Drozdoff:**

That's a better way of putting it. That is correct. We think the SEC does work well. Our intent is not to show people the door; it's an attempt to fine tune it. We feel that, in the year 2005, a dedicated conservation slot just makes sense.

**Assemblyman Hogan:**

I think so, too.

**Jason Geddes, Ph.D., Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno, and former Assemblyman:**

I submitted four handouts today ([Exhibit G](#), [Exhibit H](#), [Exhibit I](#), and [Exhibit J](#)). You can ignore the last handout ([Exhibit J](#)) entitled "Proposed amendments to A.B. 25," and just consider "Proposed Amendments to A.B. 25—Option B" ([Exhibit I](#)). [As an Assemblyman last session,] I was looking at the issue of the State Environmental Commission. After several discussions with Allen Biaggi and the LCB Research Division, I came up with a list of the compositions of environmental commissions in other states. I focused my recommendations on Idaho and Montana.

As Leo [Drozdoff] mentioned, the State Environmental Commission is a good board that they want to make a little bit better. I think we can make it a lot better. He wants to change one position from the State Forester to conservation to reflect the operations in 2005. I think we should look at changing the Commission to reflect the issues we will be facing in 2020.

You can see ([Exhibit G](#)) that the State Environmental Commission has evolved from being an air quality board to include planning and zoning; sanitation; recycling; water control; air pollution; environmental requirements; hazardous materials; alternative fuels; reclamation of land subject to mining operations; petroleum products and antifreeze; and occupational safety and health. Compare those sections of the *Nevada Revised Statutes* (NRS) the board has authority for with current SEC members, both those mandated by statute and the Governor's appointees, and who they are representing. You will notice that there are a lot of issues that go before the State Environmental Commission that don't have representation or don't have a good voice there.

What I'm proposing is a major overhaul of that board to better reflect its areas of responsibility and to deal with the issues that come forward. The handout

entitled "A.B. 25 Amendments Justification" ([Exhibit G](#)) shows the sections of NRS within the SEC's purview and the current makeup of the boards from which the six statutory appointments are chosen: the State Board of Agriculture, the Minerals Commission, the Wildlife Commission, and the Department of Conservation and Natural Resources itself. None of those other boards have members that are defined by statute as being other bureaucratic officers. They all have people representing interests, and that's what I'm proposing we do here.

[Jason Geddes, continued.] In my proposed amendments, I remove all the statutory requirements for the Department agencies and replace them with members to be appointed by the Governor representing a knowledge of or interest in a specific topic. That is the language from the Idaho and Montana regulations for their compositions of environmental boards.

In my amendment, there is one member who possesses knowledge of and interest in mineral resources. Currently, the mineral resources are represented by the Division of Minerals. That could still be the case. The Governor could appoint someone from the Division of Minerals, if that's what is needed there. If we needed somebody from the Mining Association, the Governor could appoint that person. If we needed somebody from Newmont Mining or Barrick Gold, the Governor could appoint that person.

What I want to do is open it up so the Governor has the authority to appoint people based on creating an overall balance on the board, to pull out the statutory definitions of other bureaucrats and agencies overseeing one bureaucratic agency, and to put in a lot more appointees representing specific interests. I use the one on mineral resources as an example, but we also need to add in some of the other issues. We wouldn't have had the discussion of A.B. 36 if we had somebody representing solid waste and/or recycling or hazardous waste as an appointee to this board, because that is an issue that they have the jurisdiction to deal with under NRS 444 and 444A.

I believe the SEC has the authority to move forward in dealing with those issues. Similarly, we had interim studies on air quality in Clark County. The State Environmental Commission oversees air quality. Washoe County and Clark County have agencies that deal specifically in those counties, but they must prepare and get approval of a State implementation plan through the SEC. We had an interim committee, the S.B. 237 Committee, a couple sessions ago to deal with that issue, and this is something they have the authority to deal with. If we take this opportunity to look forward with the Environmental Commission and say we would like these issues of hazardous waste, air quality, and water quality to be dealt with, we would open it up, put broader

representation on the Commission, and have them representative of industry or people who have a great interest in the area.

[Jason Geddes, continued.] I had several discussions with Mr. Biaggi during the interim, and he and I agreed to disagree on this issue. I would encourage you strongly, if you do not consider any of my amendments, proposals, or suggestions, to definitely pass what they have proposed, because it would make the board a little better. I think my amendments would make it a lot better.

**Assemblyman Goicoechea:**

I appreciate your amendments, but you talk about being able to have anyone from Barrick or Newmont representing it. However, according to Section 1, subsection 5, if they've worked for them in the last two years, they can't be there. You're going to really narrow down who can be on this board—technically somebody who is probably unemployed.

**Jason Geddes:**

That's correct, and that's one exemption that came through the air quality permit and the creation of the SEC that I didn't address in an amendment. I think it is something you should consider and look at. It would be retirees or anyone from the Mining Association, as long as they didn't hold a permit. It could also be anyone representing any of the various consultants that work for the mining industry who don't possess a permit themselves. I think there is still a lot of opportunity and a large candidate pool there. You could also consider eliminating that exemption.

**Assemblyman Goicoechea:**

I agree with you. We could consider that.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau:**

I was not aware of the proposal that would possibly remove the Department of Agriculture from the representation. We would not support that. The main thing I want to talk about is the definition of who possesses experience and expertise in advocating issues relating to conservation. As Assemblywoman Kirkpatrick mentioned, that is a very broad definition. We have no problem with it being a broad definition as long as it isn't, by default, considered to be an environmental advocate or someone more preservation oriented than conservation oriented. As agriculturalists, we believe very strongly that we have a conservation ethic that deserves recognition as well. We would want to be able to serve on this Commission under this particular category. We want to make sure that the legislative record is very clear that the definition of who is a conservation advocate is as broad and as nondescript as possible.

**Assemblywoman Ohrenschall:**

Would you clarify what you define as the difference between preservationist and conservationist?

**Doug Busselman:**

From our perspective, we would define a conservationist as someone who believes you can make the environment and other places better through the wise use of natural resources, as opposed to not being able to use natural resources, and that somehow achieves the objective of conservation. We believe you can use natural resources wisely and still have good effects or impacts. That would be a conservationist in our opinion, as opposed to a preservationist, who believes you can't make anything better, so don't do anything at all.

**Assemblywoman Ohrenschall:**

So the preservationist, according to you, says, "Don't touch."

**Doug Busselman:**

That would be our perspective, yes.

**Kaitlin Backlund, Political Director, Nevada Conservation League:**

I have submitted an amendment ([Exhibit K](#)) and the statute that defined the State Environmental Commission ([Exhibit L](#)) for your reference. In the amendment ([Exhibit K](#)), we have changed just a few words. The initial language on line 18 says, in describing this new position, "one of whom possesses experience in performing mining reclamation" and "one of whom possesses experience and expertise in advocating issues relating to conservation." We propose to change that language in an attempt to better define that as, "one of whom possesses experience and expertise in advocating for the protection of Nevada's environment."

Our organization is looking to have the viewpoint representative of advocates who keep, as their highest priority, the protection of Nevada's land, air, and water. I don't think that is necessarily reserved for people who are not ranchers or who only live in urban settings and are hikers or backpackers, but this bill actually brings that public perception right to point.

I look forward to working with this Committee and other people involved with this bill to try best to find that language. This is the State Environmental Commission, and its current composition does not include somebody who would advocate that viewpoint. What it does include in its representatives from the general public are people who come from a background of ranching and that cultural perspective, which is of value to this Commission. However, we would



like to see something in statute that would define an advocate of a different kind, not necessarily somebody who makes their living from the land, which is certainly respectable, admired, and valuable here in Nevada, but whose primary concern may be their local park or the place they hike or backpack.

[Kaitlin Backlund, continued.] In the composition, our organization would be fine with changing one of the general public members rather than removing the State Forester. I want to point out that it's essential that the decisions that come through the Environmental Commission have their entry point through the legislative process. You all represent the general public in your districts, and there is value to that. I think it would lose value if some of those decisions segued right into the Commission without coming through the Legislature, as was implied by Mr. Geddes. I think the Commission has been working just fine, but I would like to see the viewpoint that Joe Johnson, for many years, represented in a general public slot continue to be represented on that Commission.

**Russell Fields, President, Nevada Mining Association:**

I signed in as neutral today. However, now that we've heard the recommended amendments, especially from Mr. Geddes, I'd like to hear what the State of Nevada and the Executive Branch have to say about that. I have some pretty grave concerns about the amendments, especially that from Mr. Geddes.

**Joseph Johnson, Legislative Advocate, representing Toiyabe Chapter, Sierra Club:**

I would like to go on record for the Club as supporting the bill. However, I would like to speak to you as a former Assemblyman who served on this Committee. I was also a member of the Environmental Commission for six years representing the public with a particular view. I have a degree in chemistry; I am a registered geologist in the State of California and a professional geologist in this state. I worked for the federal government as a chemist with the U.S. Bureau of Mines, and later in the mineral industry as an exploration geologist. I brought to the Commission a wide and diverse educational and business background, and I think it is highly valuable for the Commission to have such representation.

The Commission acts mostly on a consensus basis, and I can say that some of the early proposals to include a member of the environmental community, which is recognized as the mainline environmental groups who are advocates, had been resisted from the SEC's inception in 1971. I would encourage you to peruse this document [Held up a small book, *The Nevada State Environmental Commission*, Alfred Balitzer, Ph.D., Ross Institute of State and Local Government, Claremont McKenna College, Claremont, California], which was

prepared around 1990. It's an old review and history of the Commission at that time. Most of the comments within this document still hold true.

[Joseph Johnson, continued.] The Commission, from my experience, worked, and still works, very well. There are some things this Committee and the Legislature could consider. One of the criticisms in the past, and one of the reasons you see an ex officio member of the Commission being removed and a member of the public, particularly representing the environmental community, being placed there, is simply that there is a dominance of administrative individuals represented, the heads of various State agencies. The Forester, in my experience, represented a wide range of issues before the Commission, as all of the Commissioners take independent action in their view of the best interests of the public.

We haven't really talked much about this Commission. It is extremely powerful, based on the authority it is given in the statutes. The Commission has the ability to set fees, hear fines, and hear appeals. It acts as a quasi-administrative law court at times on appeals. While serving on the Commission, I served on a number of appeals. I always voted with the majority in those cases. A three-member panel of Commissioners hears appeals.

An overview of the functions and status of the Commission should be considered at some time. Mr. Geddes brought up a number of issues of representation. One I would like to bring to your attention is simply that there are a lot of old white guys on the Commission. That is true of both the Wildlife Commission and the State Environmental Commission. When I first was appointed, there was one woman on the State Environmental Commission, and she was representing the public in the seat normally held by a rancher. Since her term expired in 2000, there has been no woman on the State Environmental Commission, just as there are no women on the Wildlife Commission.

The representation on these Commissions is subject to your consideration. We highly recommend that the environmental community is represented. It is very important that differing views be brought forward to be part of the consensus building. The staff of NDEP vets most regulations extensively before the various stakeholders in workshops. They bring a recommendation to the Commission that has heard most of the arguments already. Nevertheless, the Commission reviews the regulations and offers suggestions, which have almost always been addressed at one point or another, not always to total consensus.

In closing, I would encourage you to adopt this regulation. I would also like to recommend the amendment proposed by Kaitlin Backlund. I have not reviewed

Jason Geddes' recommendation at this time, and there may be things in there for your consideration.

**Ray Bacon, Executive Director, Nevada Manufacturers Association:**

We would oppose this change to the Commission. There may need to be minor changes, but the issues before the Environmental Commission that have taken up a substantial portion of its time and focus over the years include incidences of explosions and related issues. In every case, the input of the State Forester was critical because you had somebody that understood the dramatic impact an explosive event has. We would have no problems if you wanted to take the State Forester off and substitute the State Fire Marshal, but in many cases the State Fire Marshal has been actively involved in those investigations.

Look at Section 1, subsection 6. I once investigated how I could get on this Commission because I didn't like some of the rulings coming out at that point in time. Since I derive my income from the manufacturing sector or from companies that represent the manufacturing sector, I was disqualified by federal law.

I would contend that to put an environmental person on the Commission directly, instead of somebody representing the general public, you have the same conflict of interest that I would have had to serve, or that Russ Fields would have to serve on it for minerals, or that Doug Busselman would have to serve on it from the Farm Bureau. We are specifically precluded. If you are going to look at a group of generalists, I don't have any serious problem with the makeup of the existing Commission, but if you're going to go through and start taking a look at changes, you still have to maintain that two-step-removed requirement of somebody who is not directly involved in the industry and does not derive any income from it, including retirement income.

We're happy with what you have. You can make some changes, but, somehow or other, that fire expertise—hopefully we'll never have another explosion, but if we do, we find that fire expertise to be valuable.

**Irene Porter, Executive Director, Southern Nevada Home Builders Association:**

Throughout the many years this Commission has been around, there are times that all of us have become angry with the State Environmental Commission. However, I think they've done remarkable work over the years. With all the testimony and the various amendments you've heard today, I haven't had anybody tell me yet what's broken.

It may be nice to take the State Forester off and put someone on from the environmental community, which we all know is what this is directed at.

However, there are three appointments on that Commission that could come from conservation, environment, or anywhere else that the Governor might choose. You have to go in and present your people to the Governor to be recommended. For example, on the State Contractor's Board, we have one member from the residential community. That's because we probably haven't brought enough people forward that could be effectively considered for those slots.

[Irene Porter, continued.] My first problem with what's being done today is that I don't know what's broken. Unless there's a real problem or an overriding reason to change, we shouldn't just change for change's sake. If we are entertaining changes to this Commission—and we've heard very different perspectives on that—Mr. Geddes' amendments, Ms. Backlund's amendment—then I think the whole thing has to be examined to determine exactly what new form this Commission needs to take.

We are certainly involved in the air quality issue in southern Nevada. We've set up a joint coalition in southern Nevada to develop the best management practices, set up the air quality school to train people, and worked with the air quality agency on part of the state implementation plan. In fact, what we developed in the private sector and took all the way to the Environmental Commission has now been lauded by the U.S. Environmental Protection Agency to be used in other states on how to do dust mitigation.

We managed to do that with the Commission as it is today, and we had a member of our community on the Environmental Commission. The man had a great deal of environmental background himself and has participated in many hearings. The gentleman that's on today was brought forth to the Governor for consideration to fill that general contractor's slot. This gentleman has been serving on a city planning commission and has done other things that qualified him to fill that slot.

They should look at those other three seats and find ways that people representing those other issues could be seated. The State agency people who serve on the Commission today in the various Departments of Wildlife, Agriculture, minerals, and health have a great deal of expertise, background knowledge, and commitment to conservation issues in this state. If you want to reform the Commission, I would suggest not making any changes without a full and conscious investigation of what really should be done. I don't think this bill should go forth at this time. Perhaps, in the interim, the Environmental Commission could have some workshops and hearings with groups and put together what they'd like for next session. That wouldn't require a full-blown interim committee, but simply the agency and the public working together.

**Chairman Claborn:**

Point very well taken.

**Assemblyman Grady:**

Ms. Porter, you made a very important comment that there are spots that can be filled. That is not our responsibility; the Governor has the right to fill those spots. I agree with you: What is broken?

**Assemblyman Hogan:**

I'm struggling to understand the philosophy behind the proposed shift in the makeup of the Commission. Is the purpose to shift from representation of the industries that are heavily involved to representation of those who are experts in the ever-more-complicated science of addressing those problems? Do you see a problem, philosophically, in our perhaps concluding that in this new century, with newly evolving science, it may be more advantageous to focus on how we address and solve the problems rather than on the voices of those industries involved in the problems?

**Irene Porter:**

I think you have a great deal of representation of that wide variety of interests today by virtue of having those State department heads on the Commission. These are people who are technically trained in a wide spectrum of issues today. Agricultural interests run the gamut from milking a cow and raising the cattle to mad cow disease that could affect the health of everyone. These people from the Department of Agriculture are well trained in a wide variety of ways today. They, too, are dealing with air quality and dust regulations and other types of things. Department of Wildlife people are well trained. They have the technical background to deal with the wildlife issues. You do have a great deal of expertise.

You could have workshops in the interim with the State Environmental Commission, the general public, and the stakeholders involved to take a look at what they could do down the road to ensure this is better taken care of. Perhaps they will find they want to form a technical advisory committee composed of nothing but technical people from conservation or the university to give advice to the State Environmental Commission on an ad hoc basis. If you leave this in place the way it is, the Environmental Commission itself could work with stakeholders and the general public over the next two years to come up with some better ideas to address these issues in the future.

**Leo Drozdoff:**

By last count, there are two formal amendments and Mr. Carpenter's suggestion. In regard to Mr. Geddes' amendment, he provided us with a couple

of other alternatives. We have a great deal of respect for the work he did as an Assemblyman and the work he does do at the university. We just fundamentally disagree.

[Leo Drozdoff, continued.] I would agree with many of the comments made by Ms. Porter about the expertise that the State agency heads have. That's vitally important, and we would strongly resist any movement to take those folks off the panel. I don't think we would support the amendment provided by Ms. Backlund ([Exhibit K](#)), simply because we feel that what we put forth made some sense.

Over the last 7 years, through 2004, the SEC has approved 90 separate regulatory petitions proposed by NDEP. Eighty-seven votes were unanimous, and only 3 times were there split votes. That's endemic to how the Commission works. As Mr. Johnson said, the Commission does work by consensus.

I would agree that the SEC is not broken, not by a long shot. It works well. In the year 2005, we are seeing more appeals. I think part of the success of the SEC is that it has evolved over the years. It hasn't waited until it was broken to have a dramatic overhaul. Consequently, we would oppose what Mr. Geddes is proposing as a dramatic overhaul. However, fine-tuning has sustained the Commission over the last 30 years. I believe this change is moderate, but it does offer a chance to continue to move forward.

As to Assemblyman Carpenter's suggestion about changing one of the public members to conservation, I have no heartburn with it. We were trying to take a look at workload, but if this Body believes the State Forester is more appropriate than a member of the public with a conservation background, we would not oppose that.

I, too, brought my copy of the book Joe Johnson talked about. This was a study that the Rose Institute at Claremont McKenna College did in 1990. It is a very good book, and I would agree that many of its words, though 15 years old, are still valid. I'll quote from the introduction:

...By contrast, the Nevada State Environmental Commission was established by men and women of an essentially conservative, business-oriented disposition and political bent. Prompted by federal action, they created a single governmental body that they invested with immense power over the polluters of air, water, and soil. Perhaps the example of Nevada points the way to a solution that avoids the extremes of rhetoric and passion that presently characterize the debate, and a solution that represents a serious

attempt by government to protect the environment while also protecting other vital state interests.

[Leo Drozdoff, continued.] Our proposal is modest, but we think it's modest for a reason. It's modest because the SEC has worked well. It in no way is broken. If it's a better fit to make one of those public members somebody with a conservation background, we would support that.

**Assemblyman Grady:**

How would you answer Ray Bacon's comments about the number of incidents over the past years where the State Forester was very involved and his expertise was needed? Could you comment on that?

**Leo Drozdoff:**

The State Forester has been a contributor to the Commission and does have and has had a role. In those instances, Mr. Bacon is correct. He did help us directly. As Assemblyman Hogan said, however, he doesn't just go away. He's still there as a resource should we need him.

Our effort originally was to keep the body together at eleven members. We looked at the appointees versus the government folks and decided that, given where we were today, the Forester, though his contributions were noteworthy, was probably the one to choose. Having heard the discussion today from Mr. Bacon, Mr. Carpenter, and others, if the Forester's expertise remains valuable, we would not be opposed to changing the requirement to have one of the public appointees be the one with a conservation background.

**Chairman Claborn:**

I'm going to close the hearing on A.B. 25. Is there any old business to come before this Committee? Is there any new business? Hearing none, we are adjourned [at 4:28 p.m.].

RESPECTFULLY SUBMITTED:

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Mary Garcia  
Committee Attaché

APPROVED BY:

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Assemblyman Jerry D. Claborn, Chairman

DATE: \_\_\_\_\_



<b>Bill #</b>	<b>Exhibit ID</b>	<b>Witness/Agency</b>	<b>Description</b>
	A		Agenda
AB 86	B	Beverlee McGrath/Doris Day Animal League	American Assn. of Poison Control Centers: stats on children exposed— 1 page
AB 86	C	Beverlee McGrath/ Doris Day Animal League	Proposed amendment
AB 86	D	Susan Asher/Nevada Humane Society	Prepared testimony
AB 65	E	Marcy Eastham/ Hewlett-Packard Company	Letter describing company's recycle program and concerns with A.B. 65
AB 65	F	Assemblywoman Peggy Pierce	Illustration showing contaminants and recyclables in desktop computer.
AB 65	G	Jason Geddes/ University of Nevada, Reno	Amendment justification
AB 65	H	Jason Geddes/University of Nevada, Reno	Memorandum concerning composition of State Environmental Commission
AB 65	I	Jason Geddes/University of Nevada, Reno	Proposed amendments— Option B
AB 65	J	Jason Geddes/University of Nevada, Reno	Proposed amendments
AB 25	K	Kaitlin Backlund/Nevada Conservation League	Proposed amendment
AB 25	L	Kaitlin Backlund/Nevada Conservation League	Copy of NRS 445B.200