

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

**Seventy-Third Session
March 2, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:36 p.m., on Wednesday, March 2, 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:

None

STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Mary Garcia, Committee Attaché
Matthew Mowbray, Committee Assistant

OTHERS PRESENT:

Don Henderson, Director, Nevada Department of Agriculture
David Thain, D.V.M.; State Veterinarian; Administrator, Division of
Animal Industry, Nevada Department of Agriculture
Doug Busselman, Executive Vice President, Nevada Farm Bureau
Kent Lauer, Executive Director, Nevada Press Association, Inc.
Mike Montero, Board Member, Nevada Cattlemen's Association
James Settlemyer, Owner, Settlemyer Ranches; Chairman, Carson
Valley Conservation District; and Chairman, State Conservation
Commission, Department of Conservation and Natural Resources
Olivia Fiamengo, Director, Comstock Wild Horse & Mining Museum; and
representing Least Resistance Training Concepts and the Wild
Horse Preservation League
Gil Yanuck, Vice Chairman, Carson City Advisory Board to Manage
Wildlife
Gerald Lent, President, Nevada Hunters Association
Tina Nappe, Private Citizen, Reno, Nevada
Steve Robinson, Natural Resource and Rural Advisor, Office of the
Governor
Bill Bradley, Chairman, Nevada Board of Wildlife Commissioners
Chris MacKenzie, Vice Chairman, Nevada Board of Wildlife
Commissioners

Chairman Claborn:

[Meeting called to order. Roll called.] We have a bill draft introduction today.
This bill draft, BDR 45-333, is for the benefit of Clark County.

- BDR 45-333—Expands number of members of County Advisory Board to
Manage Wildlife in larger counties. (A.J.R. 159)

ASSEMBLYMAN ATKINSON MOVED FOR COMMITTEE
INTRODUCTION OF BDR 45-333. (A.B. 159)

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED. (Mrs. Kirkpatrick and Ms. Ohrenschall were
not present for the vote.)

Chairman Claborn:

Today we have planned hearings on two bills, A.B. 32 and A.B. 90. First
I would like to open the hearing on A.B. 32.

Assembly Bill 32: Makes certain information collected by State Department of Agriculture confidential. (BDR 50-657)

Don Henderson, Director, Nevada Department of Agriculture:

The Department has a very broad scope. It deals with the industry and with the public on a variety of issues. Because of that, we collect a lot of information. Some of that information is, by statute, mandatory information that needs to be submitted to the Department. This is a bill that attempts to build some protection into some of the proprietary and business and personal information that the Department holds.

David Thain, D.V.M., State Veterinarian; Administrator, Division of Animal Industry, Nevada Department of Agriculture:

The premise of this bill is to protect proprietary information relating to ownership. I came to the Department of Agriculture in 1998 and started to look at some of the needs here in Nevada regarding disease reporting, emergency planning, and the ability to respond to animal disease outbreaks. In 1999, I came to the Assembly with a bill to protect confidentiality of animal disease reporting. We have a requirement that certain diseases be reported in a timely manner to the Department that relate to zoonotic diseases that affect both animals and man, and a variety of other diseases like brucellosis in cattle that are very important. We had producers and veterinarians who were concerned about confidentiality, so I brought that bill at that time.

At the time, I knew it wasn't broad enough to protect everything we go out and capture, because we started planning for emergency management planning—how to respond to an animal disease outbreak. Foot-and-mouth disease is the big one that scares us, because it's so broad in scope and rapidly expanding, but we have a variety of other diseases that are not as well known. The latest one, of course, is West Nile disease that came to the state last year.

After the big foot-and-mouth disease outbreak in the United Kingdom in 2001, it became clear that we needed to start to put some plans on paper on how we were going to approach a disease outbreak. Of course, the minute we go out and visit with some of our producers and start to draw contingency plans, that then becomes part of our documentation, currently not protected by statute.

September 11, [2001], of course changed our approach to terrorism and bioterrorism. The latest case of mad cow disease in a Canadian dairy cow up in the state of Washington has really pushed forth the concept of the National Animal Identification System (NAIS), through which we'll be able to track animals from their place of birth, to when they go to slaughter, to the

supermarket, and to the table. We can follow that animal all the way through. We have producers who are gravely concerned about confidentiality issues with us capturing that kind of information.

[David Thain, continued.] On page 2 of my handout ([Exhibit B](#)), you'll notice the distribution of poultry and cloven-hooved livestock throughout the United States. If that was brought into closer detail, you could actually identify the locations of those premises. We don't ever want to have that available as a public document to be used by potential terrorists, domestic or foreign.

The agricultural economic impact in the United States is huge—more than \$1 trillion, and \$50 billion in exports nationally. Agriculture is a significant economic engine within many of our rural communities. In Elko County and Humboldt County, for example, agriculture is a major economic engine behind the mining industry. For an example of what happens with a disease outbreak, foot-and-mouth disease in Great Britain in 2001 not only had a \$5 billion impact to the agricultural community, but had a \$5 billion impact on the tourist industry. It can have significant impact.

Just two years ago, we had an outbreak of foreign animal disease in Las Vegas. It was exotic Newcastle disease, which is a disease of poultry. We had a unique situation in Las Vegas in that it was in backyard poultry, where folks were keeping a variety of different kinds of poultry. We contained it. That outbreak alone cost over \$14 million. Most of that money was covered by USDA/CCC [U.S. Department of Agriculture/Commodity Credit Corporation] funds. The disease end of it was kept very confidential, and it was very important those were confidential issues.

Homeland Security Presidential Directive 9 talks about agriculture and how important it is to protect it within the United States. On the next page (page 3 of [Exhibit B](#)), we have the infamous quote by former Health and Human Services Secretary Tommy Thompson. It's something I'm not sure I'd like to go out on national press and say, but I tend to agree. Probably the reason we haven't seen it yet is that it doesn't have that immediate, spectacular impact that we saw with 9/11 [September 11, 2001]. Financially, though, it would cripple our nation. With the introduction of foot-and-mouth disease, classical swine fever, a disease for corn, a disease for wheat, a disease for soy beans, in one year we could turn this nation from an agricultural producing nation into one that would have to import our foodstuffs. It's that kind of consequence that brings us here today.

[David Thain, continued.] We have a variety of producers that, if they want to participate, want some assurance that animal identification would be kept confidential.

At the bottom of the page (page 3 of [Exhibit B](#)) we have some translated notes that come out of an Al Qaeda camp in Afghanistan relating to how easy it would be to attack our national infrastructure here in the United States with agriculture. On the next page (page 4 of [Exhibit B](#)), that fire blazing was set by the Animal Liberation Front, a domestic terrorist organization. That building was located on an agricultural unit in Provo, Utah.

Assemblyman Goicoechea:

During the exotic Newcastle disease outbreak in Las Vegas, at what point did you start notifying adjacent producers with backyard flocks of chickens? When does it become public information?

David Thain:

What we did was door-to-door notification of what was going on and found out where poultry was located. Our approach on that outbreak was that any outdoor poultry within a one-kilometer zone of an infected premises was destroyed, and that premises was cleaned and disinfected. A quarantine notice was issued to the property owners. There was a public news release that there was a quarantine in the greater Clark County/southern Nye County area regarding a poultry disease and that bird movements were prohibited. That was enforced.

We never did release particular information. Some poultry producers went to the press, which is their right, but we never did publicly notify. There was indemnity paid for those producers. None of that information was ever released, even though there were information requests sent to us and to the U.S. Department of Agriculture (USDA). We did refuse to release it, as did the USDA.

Assemblyman Hogan:

You apparently have the authority to decline to release that information in the case of you were addressing. Is that authority not adequate to cover the cases you're anticipating?

David Thain:

It isn't adequate if we do preplanning and try to identify where all these locations are. In fact, if someone came and asked me what all the poultry operations were that we found within this area, I would be hard pressed to protect that data right now because we could prevent release of information

relating to the infected premises. That was an active disease, and we're protected under this statute. Unfortunately, if somebody came and wanted all the information we have to know about producers for emergency planning, that information is not protected. What I don't want to ever have happen is the information get into third-party hands and be used for a terrorist activity.

Assemblyman Hogan:

It's of very high importance that everything government does—the Legislature and everyone else—be as publicly available as possible. The history of the federal Freedom of Information Act [5 USC 552] has been very instructive in terms of starting with a complete commitment to disclosure, with only certain very specified exceptions in the statute, to the point where it varied from one administration to another as to how strongly that concept was defended. Currently, it is in a very tight phase, where almost nothing the federal government does will be released upon request without a lawsuit.

To me, in balancing these interests—the interest of the public knowing as completely as possible what its government is doing, the need to protect our homeland security, and the efforts to prevent and deal with agricultural diseases—they're very important concepts. My hope would be that the language chosen for the statute is as tightly drawn so it protects what needs to be protected, but it doesn't offer a safe place to hide other information that might just be embarrassing and not dangerous. My initial impression is that this bill doesn't seem to limit the restriction to health-related situations or the narrowest possible protection we need.

Don Henderson:

I certainly understand your position, and I support that. I think that's the policy of Nevada State government, the Executive Branch also. The Department runs such a variety of programs, and because of the breadth of the agency, it's very difficult to define specifically and anticipate all situations. Our statutes related to public information are much more liberal than what the federal Freedom of Information Act allows for today.

Assemblyman Carpenter:

Other than homeland security, what other events do you think should be kept secret? You mentioned West Nile virus. To me, that's something that needs to be public so the people can be aware of it and take precautions. Other than terrorism, what advantage do you think keeping things from the public might be to you or to the public?

David Thain:

Last year, when we had our first cases come out, we had several horses that came down with West Nile. That information specific to the producer was kept confidential. However, the general area was put out to the press, to the public, and also to the vector control agency, so they could take corrective measures on mosquito abatement to bring down the number of infected mosquitoes.

[David Thain, continued.] We don't want to prevent the dissemination of general knowledge in that we have X number of producers, but we don't want to put specific information out so that specific producers or specific operations can be identified. For example, if we started specifically talking about hog operations in Clark County, that limits it to one producer. If we talk about hog operations in Churchill County, we can talk in general because it wouldn't locate the specific producer involved. That protects the producer appropriately from terrorist actions, et cetera. The intent of this is not to prohibit the public knowledge of what goes on, but to protect information on the producer level.

Assemblyman Marvel:

What does this amendment do?

Don Henderson:

The amendment is from the Nevada Farm Bureau ([Exhibit C](#)). It is somewhat more restrictive than what we originally proposed. It would say that all proprietary information that the Department had—there's a definition in the presentation Dr. Thain went through that shows you what the common legal meaning of "proprietary" is—relating to a natural person, corporation, company, or other entity would remain confidential. There would be no other opportunities. The one instance I can give you where this would be in conflict is our brands book. We are required by statute to collect brand information, register brands in the state, and to publish that inventory of brands. This proposed amendment, as it's worded, would either prevent or at least cause a conflict with this statute and that brand statute.

One thing we might do, if you wanted to consider this amendment ([Exhibit C](#)), is, instead of deleting the last part of that sentence, say "except as otherwise permitted by *Nevada Revised Statutes* (NRS) or *Nevada Administrative Code* (NAC). That might clear up any inconsistency we have with other existing laws.

Doug Busselman, Executive Vice President, Nevada Farm Bureau:

Our intention in proposing the amendment we did was to clarify and to narrow what types of information would be held in confidentiality. Our concern was with the wording, ". . . unless the director determines that the release of the information will not be detrimental." That could be somewhat arbitrary.

[Doug Busselman, continued.] We didn't know what the criteria were going in, so our approach was to put a period after the word "confidential" and leave it at that. That's what our thinking was. Our purpose in the whole thing has only ever been to maintain proprietary information in a confidential status, which follows more closely with the Freedom of Information Act requirements at the federal level.

[Read from prepared testimony, [Exhibit D](#).] We are here today to speak in support of [A.B. 32](#), a measure that seeks to protect proprietary information from being released by the Nevada Department of Agriculture. We appreciate the Nevada Department of Agriculture coming forward with this proposal, and we think this approach is needed. Our experience has been with information collected by the Nevada Department of Agriculture for one purpose, and having an entity collect the information for a totally different purpose.

Agricultural producers who complied with the requirements to provide the information were then subject to a whole set of different criteria for having provided the information that they gave. When this instance took place, we seriously objected to the release of the information. We also found the release of the information for State-held information to be far more open than even the federal requirements covered by the Freedom of Information Act.

We began working with the Department of Agriculture at that time to establish a protection method for proprietary information that does not belong open to public release. Our point of view is simply to either provide confidentiality for proprietary information or change the process of collecting information to keep proprietary information from being disclosed or maintained by the Department of Agriculture.

What we're trying to do there ([Exhibit C](#)) is to tighten up what the confidential information would be. We understand that others might object to the broad base of information subject to this bill, and that's part of the reason we deleted "and other information" in the beginning of point 2. If the Committee would be willing to strike this language, we would go along with that.

Assemblyman Marvel:

What type of information you like to see maintained as confidential?

Doug Busselman:

I think the specifics would be the name and address of an individual producer, as well as the number of animals they might have or that kind of proprietary information. From an agricultural producer's standpoint, the number of animals we have in our farming or ranching operations is, to us, no different from an urban person not wanting to disclose what their IRS Form W-2 Wage and Tax Statement says. To us, there is certain business information that doesn't belong open to public disclosure.

Assemblyman Marvel:

Do you require financial statements or profit and loss statements from any of the people you regulate?

Don Henderson:

It seems to me we do. One area where we might is quite often in bonding requirements for purchases or sales of livestock or other agricultural products. That's one area where there could be some financial statements or financial information relayed to us. I know in the past we have requested financial information from producers.

Assemblyman Marvel:

Some of that, I think, may be subject to confidentiality, similar to what Gaming Control has.

Don Henderson:

That's our dilemma. Nevada State laws, the way they're interpreted and used, unless the Legislature deems through statutes something is confidential, it is open for public records. That's the way it stands today.

Just to let you know, there are only two situations where I know we're afforded confidentiality at this point. One is in our Nevada medical marijuana program. The registry information in that program is confidential, as is also, as mentioned by Dr. Thain, animal disease reporting to the Department, outside of what is deemed a public health issue. Those are the only confidential statutes that I'm aware we have today.

Assemblyman Goicoechea:

When it comes to licensing for herbicide, pesticide, fertilizer, there is some data collected there that clearly would be proprietary under the amendment offered by the Farm Bureau. We're saying "proprietary" relates to that one owner, but I think the interpretation might be a little bit sticky yet.

Assemblywoman Kirkpatrick:

Federally, all the farms and the transporters are required to give their information as to what farm they got it from, who is transporting it, what name it's coming under, and they're required to keep that for up to 18 months, correct?

David Thain:

The new FDA [U.S. Food and Drug Administration] rules and regulations will require record-keeping for up to five years.

Assemblywoman Kirkpatrick:

They're only allowed a small amount of confidentiality with the new regulations that are moving forward. Since I sell food wholesale, it's very important that we know that the chickens are bad, or about mad cow disease. Will you keep this information private, for how long, and will there be a database? I think we're allowing you to keep it quiet, but what kind of record-keeping are you going have with this?

David Thain:

We currently have a retention schedule within the state. The majority of these are at three years. After three years, the data is destroyed and the records are disposed of. I can't speak to the prepared food side. I've worked a little bit with the FDA, but that falls to the Division of Health, and I don't know the specifics.

With regard to the animal record-keeping from the USDA standpoint, they have some excellent proprietary statutes and regulations to keep this information confidential. They're typically keeping records on herd health issues up to 20 years now, because as we look at diseases such as bovine tuberculosis and BSE [bovine spongiform encephalopathy], or mad cow disease, where we have long, long incubation periods—5 years, 10 years, 15 years—they're finding they need to keep that information for that length of time.

Doug Busselman:

I think one of the things we need to stress in the discussions of confidentiality is that in no way limits the Department of Agriculture from taking corrective action or doing their job. What it does is protect any individual without any reason for knowing from coming in the door and asking for that information, so any Tom, Dick, or Harry doesn't get the information just because they asked, which is basically where we are today.

It still protects the public by the Department knowing the information they need to know and being able to do their job. Our concern is that if you can't keep it confidential, in our work with producers we may have to encourage them not to

tell the information in the first place because there is no protection once they tell. That's something else that needs to be considered in the equation.

Assemblyman Hogan:

I appreciate and agree with the suggested change Mr. Busselman has brought ([Exhibit C](#)). I think it was the term "and other information" that set my alarm off. It sounded a little too broad. I think the public's right to know is extremely important, and we shouldn't casually exempt large bodies of information. Exemption from release should be the exception rather than the rule.

It seems to me that the determination that something should be protected should be an affirmative determination made within the Department, by the head of the Department, rather than declaring an entire vast category of information confidential unless the Director determines otherwise. I would be much more comfortable with language that essentially said information would be confidential if that particular type or category of records was determined to be potentially harmful. We need a way to protect information, but we really have to make a determination whether confidentiality would just be more comfortable, we'd rather the press didn't publicize it, or whether there's real potential harm that needs to be avoided, either to national security or personal privacy.

Don Henderson:

Just to make it clear to this Committee, the Department of Agriculture would support the amendment offered by the Nevada Farm Bureau with the caveat, on the latter part where it is striking language, something along the line, "except as otherwise permitted by *Nevada Revised Statutes* or *Nevada Administrative Code*, just so we don't get in conflict with some of our other statutes that are on the books today. I've given you an example where that could be a problem already with our brands book.

Kent Lauer, Executive Director, Nevada Press Association, Inc.:

Our organization opposes the bill in its current form, because it gives the Department nearly unlimited power to keep public records secret. It's out of balance right now. The bill needs to be tightened considerably to protect the public's right to know what the Department is doing.

I would be happy to work on any amendment. I think we would not object to the proprietary information, if proprietary information is defined. There is a problem in that it's still a little bit broad, so we need to narrow it down as well.

[Kent Lauer, continued.] The real danger here is giving the Department too much power to decide what is public and what is not. That becomes a nightmare and often ends up in litigation about what is public record and what is not.

There was some mention of the federal Freedom of Information Act compared to our State law. If you look in our *Nevada Revised Statutes* (NRS), we have numerous exemptions to our public records law that call for specific pieces of information to be confidential. In fact, our essential public records law says all public records are open to inspection unless a record is declared confidential by statute. So we have all these statutes scattered throughout NRS that say this bit of information is confidential.

Assemblyman Goicoechea:

Are you willing, then, to work on the definition of "proprietary"? That's the one that gives me the most problems.

Kent Lauer:

Yes. There are several examples I can pull from other statutes, including the federal statute that defined proprietary information. The key there is to make it as specific as possible. Many of the definitions talk about unfair harm, substantial harm to a person's competitive standing.

Mike Montero, Board Member, Nevada Cattlemen's Association:

I am here today on behalf of the Cattlemen's Association in support of A.B. 32. There's been a good discussion this afternoon on this bill. This has been an issue of much discussion in the Nevada Cattlemen's Association amongst its members and producers around the state of Nevada, especially in this time of heightened scrutiny focused on the safety of our food supply nationally, and also with the discussions that are taking place, both here in Nevada and nationally, on issues such as animal identification.

The producers have a genuine concern about what happens with this information we are being or may be required to furnish to agencies such as the Department of Agriculture. I fully agree, and I think the Association would agree, to support Assemblyman Hogan's view that the public has a right to know. The concern here, though, is that the Nevada Department of Agriculture doesn't become just a conduit for passing that information on to third parties that it wasn't originally intended to be for. This provides some protection.

Also, you want to make sure that there is compliance and full disclosure of information. If there are no protections to Nevada's producers, you will run the risk of not having full and complete information. To provide some protections

would encourage the full disclosure of information, which is very important when you're talking about matters of food safety.

James Settlemyer, Owner, Settlemyer Ranches; Chairman, Carson Valley Conservation District; and Chairman, State Conservation Commission, Department of Conservation and Natural Resources:

If someone were to walk up to you right now and ask how much money you have in your checking account, you'd probably look at him a little funny. You'd probably walk away from him. You're not going to give that information to him.

Yet my checking account is how many cattle I have. That's my liquid assets. You can go right to the Department of Agriculture and find that out. Go right to the government futures and exchange prices and tell me what cattle are going for at this time, and you know my checking account. It's the same thing with acreage. If you have all my acreage written down, and you know how much an acre is worth in Carson Valley, you know what I'm worth. That isn't something you necessarily want someone to know.

Currently, unfortunately, I'm involved in a lawsuit. They're suing for the exact amount of the umbrella. Of course, then, if they figured out how many acres I was worth, they wouldn't sue for the umbrella. They'd sue for how much land I'm worth.

You're making data potentially available to individuals for a much different purpose. There are many radicals out there, foreign and domestic. A lot of people talk about 9/11. There are certain domestic groups that may not approve of cattle being grazed on public lands. They may decide, as some have in the past, to go out and open gates. Are you going to provide a list for them of where the most cattle are, where they can do the most damage?

I would hope this information would be kept confidential in that respect. Agriculturalists are looking for a safe haven, somewhere the information can reside that will help educate and benefit the agriculture industry and the natural resources of the state of Nevada. If you create a situation where they are the police, agriculturalists are not going to be forthcoming with that information.

In that respect, I would try to support this bill to create a situation where we're still partners and not at odds with each other, because it's impossible to educate agriculturalists if they're not participating in programs for fear of reprisal from other programs. There are some government mandates such as the Clean Water Act [33 USC 26] and other issues. If they obtain this information, they can come after the individual agriculturalist.

Assemblyman Grady:

I do agree with you, but someone could walk into the courthouse and get that information just as easily.

James Settlemeier:

Right, they could get the information on how many acres Settlemeier Ranches has currently. If you can get that information so easily, why do we need to make it available to other people to begin with? That's a counterargument. Why even have a collection of this information if it can be obtained so easily? As far as the cattle, they can't necessarily get that except on a tax basis, which would, to my knowledge, be from the Department of Agriculture.

Assemblyman Goicoechea:

I know the head tax that's now collected by the State of Nevada is what drove this. Previously it was collected in the counties. As we enter into this discussion about "proprietary" and the fact that it is a tax, I don't know how you're going to be able to avoid that being proprietary or not. I think it's going to continue to be an issue. If there's a tax imposed on it, is it, in fact, proprietary, or is it public record? I think we have more adjustments to make on this bill.

James Settlemeier:

I completely understand what you're saying, and maybe some of the agriculturalists' interests might not be necessarily as fearful. Maybe it's not an issue to some agriculturalists, if not individuals, but Big Brother already has all the information they probably need, yet they are probably not organized enough to realize what they have.

Assemblyman Goicoechea:

I agree. If it couldn't be public information, let's not ask it.

Olivia Fiamengo, Director, Comstock Wild Horse & Mining Museum; and representing Least Resistance Training Concepts and the Wild Horse Preservation League:

I was asked to come today on behalf of several of the nonprofits that are active with the State Department of Agriculture in the estray adoption program on the Virginia Range. Unfortunately, they could not attend, but I have provided letters to you. The first one ([Exhibit E](#)) is from Bonnie Matton, president of the Wild Horse Preservation League.

[Read from [Exhibit E](#).] It has recently come to our attention of a bill being submitted to the Assembly by the Nevada Department of Agriculture, A.B. 32. I am writing this letter to show how important it is that the general public be able to obtain vital

information requested pursuant to the Freedom of Information and Privacy Act (FOIA).

[Olivia Fiamengo, continued.] In August of 2004, we received important information regarding possible misconduct of a certain wild horse adoption facility in Texas. The Nevada Department of Agriculture (NDA) was planning to ship wild horses to this facility, and we thought NDA should be made aware of possible problems there. Time and time again, we requested this information, but we could never obtain it, even though we had provided many documents indicating the facility should be investigated.

Finally, in December of 2004, we sent a letter to NDA requesting this information pursuant to the Freedom of Information and Privacy Act. Immediately after receiving the letter, the Director contacted me, saying they would comply with our request.

In February 2005, an investigation of this facility by the Nevada Department of Agriculture and an independent investigator was completed. We feel this investigation would never have occurred without our being able to go through the provisions provided by the FOIA. We strongly urge A.B. 32 not be approved. Under certain circumstances, the general public needs and has the right to acquire information. If A.B. 32 goes through, the American people will lose yet another right to be able to obtain information from government agencies.

The other letter ([Exhibit F](#)), from Least Resistance Training Concepts, submitted by Willis Lamm, president, is similar.

[Ms. Fiamengo read from [Exhibit F](#).] It is my opinion that Nevada is successful and avoids various crises due to its commitment to open government. Therefore, I must express concerns over some of the provisions proposed in A.B. 32.

While I agree that it is important to respect the privacy of individual citizens, there are other compelling interests that counterbalance the privacy issue. One such area of consideration involves the adoption records of horses placed through the estray horse program run by the Department of Agriculture.

While we are strong advocates of this program, and I recently spoke to this Committee on the economic benefits gained from

horse adoptions, we also have to bear in mind some very horrible situations that once occurred when horses were provided to Slick Gardner and an organization called Silverwolf.

My organization is a cooperating adoption agent for Department of Agriculture horses. We keep records on our adopters and provide them to the Department. I have concerns that this information should discreetly used, but I advocate on the strongest terms against such information being withheld when there is a compelling humanitarian need. There are situations where legitimate agencies in other states and their local jurisdictions may need adopter information to check on the welfare of animals within their jurisdictions.

Therefore, I urge the Committee to avoid drafting a statute that contains absolute language that exempts adoption data from any access. At minimum, a reasonable exception should be included, on the order of, ". . .except information provided as needed to any animal control authority, or any humane organization who provides animal control services under contract to any state or local government, for the purpose of verifying and ensuring the welfare of any animals placed through any cooperator of the Nevada Department of Agriculture."

It is in the best interest of the State to provide reasonable protections for adopting citizens, but also for the animals placed through the Department of Agriculture's adoption program.

[Olivia Fiamengo, continued.] I was Adoption Manager for the Virginia Range Wildlife Protection Association in Storey County for several years. While the adoption program was being put into place, or the management program for the Virginia Range estray horses years ago, I was instrumental in helping put that plan together.

When dealing with the estrays and the adoption program, the adopters should be screened carefully by the adoption agents. The Department is often underfunded and understaffed. They depend on the cooperation of nonprofits, local governments, and private citizens participating in this program to make it happen. The nonprofits have contributed a great deal of financial assets to the adoption program. We were instrumental in helping to put the present training program in place. We help provide money for panels down at the prison holding facility. We feel that the best cooperation is obtained when the information is available to all those parties concerned.

[Olivia Fiamengo, continued.] The issue they're addressing in these particular letters ([Exhibit E](#) and [Exhibit F](#)) was that the Department of Agriculture's plan for the estray program is very loosely structured. It requires very little research and investigation on the Department's part, which is good in that it keeps it simple. A simple plan is easy to administer and to manage, but when significant negative information is discovered by participants or potential participants, a need is present for the public to investigate as needed.

We feel the whole program could be at stake if illegitimate participants are allowed to take animals under false pretenses. The public should be allowed to investigate and research those allegations. If the Department is not required to investigate thoroughly on their own, then it is of ultimate importance that the public information be available for the nonprofits and the other participants in the programs to review.

Our concern, again, is the open and loosely structured wording of this particular bill. We agree that certain information should be proprietary in most circumstances. At any time, if there are any negative accusations, we feel that information should be open to the public so it can be researched appropriately. We would just hope the Committee would look at the working very carefully on proprietary versus confidentiality.

Vice Chairman Atkinson:

I'm now going to open the hearing on Assembly Bill 90. We will take testimony in support of A.B. 90, followed by testimony against and then from the people who are neutral. The sponsor of the bill is Chairman Claborn.

Assembly Bill 90: Requires budget of Department of Wildlife to be approved by Board of Wildlife Commissioners. (BDR 45-495)

Assemblyman Jerry D. Claborn, Assembly District No. 19, Clark County:

There is only one word I'm trying to change with this bill. This is controversial, I know, but A.B. 90 changes only one word in *Nevada Revised Statutes*: the word "recommendation" becomes the word "approval." Currently, the law requires that the Director of the Department of Wildlife only consult with the Board of Wildlife Commissioners in preparing the Department's budget.

The Director submits a budget to the Board of Wildlife Commissioners for its review and recommendation before the budget is submitted to the Department of Administration. A.B. 90 would replace the word "recommendation" with the

word "approval" so the Wildlife Commissioners would actually approve the Department of Wildlife's budget, rather than just offering its recommendations.

[Assemblyman Claborn, continued.] Changing this one word makes the Department of Wildlife more accountable to the citizens of Nevada. That is the intent of this bill. It makes the Wildlife Commissioners accountable for their actions on the wildlife budget. In no way is it trying to take away the Governor's authority. When the Governor receives the Wildlife budget, he can cut it; he can add anything to it; he can do anything he desires with the budget.

All I want to do is simply say "approve the budget" so we'll have some accountability. Right now I don't think they have any accountability. I am not trying to take the Governor's elected power away from him. There is only one intent of this bill: to make sure the Wildlife Commissioners approve the budget instead of giving a recommendation.

Assemblyman Denis:

I just need some clarification. Are the Wildlife Commissioners appointed or elected?

Assemblyman Claborn:

They are appointed by the Governor.

Assemblyman Denis:

So they go over the budget and do all the other business, right?

Assemblyman Claborn:

Yes, they do. They have board meetings quite often, and also have advisory board meetings in each one of our counties, and so on. But you're accountable to the Ethics Commission, and there are things that you don't do. They answer to nobody. I think they should answer to the general public.

Assemblyman Denis:

The reason I asked is it seems to be standard practice with most of the other commissions, where they actually approve the budget and then present it to the Governor.

Assemblyman Hogan:

Would the Commission have to acquire some additional staff capabilities, or do they have enough people to help them sort through the proposed budget that is submitted?

Assemblyman Claborn:

They have plenty of people that put the budget together. The people who are here can explain it better than I can.

Assemblyman Denis:

My understanding, based on your explanation and what I've read, is that the Director creates the budget. He presents it to them, and they just make recommendations. Is that correct?

Assemblyman Claborn:

Yes. My understanding is that they meet and they present a budget with all the Wildlife Commissioners. I don't know exactly who's there. There's the head of the Department. He has a staff, they put this budget together, and then they recommend it to the Governor or the Commission, instead of approving it before it goes to the Governor. I'd like to see them approve it rather than recommend it.

Assemblyman Denis:

Then from that approval it would go to the Governor?

Assemblyman Claborn:

Yes, when they recommend it, the Governor gets it as well. The Governor works with them on it, too.

Vice Chairman Atkinson:

I've been going back and forth with the word "recommendation" versus "approval." If the Commission doesn't approve the budget, what happens?

Assemblyman Claborn:

Then you have no budget, and if you have no budget, then you don't have any money, and the employees start getting laid off, and I think somebody would answer for that. I don't think it would be very long before somebody caught some heat.

Gil Yanuck, Vice Chairman, Carson City Advisory Board to Manage Wildlife:

[Read from prepared testimony, [Exhibit G](#).] I'm here today to ask you to vote favorably on A.B. 90. Every organization, business, or company, whether public or private, needs to have a system of checks and balances to ensure its proper and efficient operation. In this respect, the Governor has appointed members to the Nevada Wildlife Commission to oversee the operation of the Nevada Department of Wildlife.

[Gil Yanuck, continued.] If A.B. 90 is not approved, and you do not give the Commission the authority to approve or disapprove the Department's budget, it's like asking them to perform their responsibility with one arm tied behind their back.

If my interpretation of A.B. 90 is correct, it is not meant to usurp any authority from the Legislature or the Governor when it comes to the final of the Department's budget. Rather, it only has to do with the oversight responsibility that the Commission has with respect to the Nevada Department of Wildlife.

Assemblyman Hogan:

Is the Commission equipped to go through a major budget? I see the current law requires you to consult on it and be involved in it, so I'm hoping the answer is yes, that you have staff or the expertise on the Commission itself to go through line by line to make sure the budget is to your liking.

Gil Yanuck:

I think the Department staff analyst and people who work in the Department of Budget who have the day-to-day chore of putting the numbers together are very capable of answering questions.

The Vice Chairman asked what happens if they disapprove it. I report to my board of directors and I bring the budget to them. If they don't like it, they'll ask me questions, and they'll want answers. If I don't have the answers, they have the right to tell me to go back and do my homework, then come back able to answer their questions.

As I said earlier, the Governor has appointed the Commission, which has oversight responsibility for the proper and efficient operation of the Department of Wildlife. If we don't give these gentlemen the tools to do their job properly, then why have them? If they can't ask the tough questions, and if they can't point to certain expenditures and say, "Why are we spending money here when our top priority is over there?" These are the kind of answers the Department owes the commissioners.

Assemblywoman Smith:

I see the accountability being with the Legislature and with the committees that ultimately hear and close those budgets. The commissioners, in fact, have the ability to come into that realm to talk about the budget and what's happening with the Department. If this is a problem for the commissioners, why don't the commissioners raise this issue?

Gil Yanuck:

This issue was raised two years ago, and it was determined that they didn't need that approval. The recommendation was sufficient. It's only to get it out from the Department into the realm where it can be viewed by the Legislature and the Governor. It's not usurping any legislator's responsibility or the Governor's authority to do what he wants to do with a particular department's budget.

Assemblywoman Smith:

I understand that, because ultimately we do have that power.

Assemblyman Grady:

Knowing the folks on the Board, I would bet that the minutes approving or recommending this probably read, "I would recommend approval," before it is sent. I would like to ask that we see the minutes, how this is approved, and see what the exact wording is. I don't have a big problem. I would think that if the folks on the Commission did not question it, they are not doing their job, and when it is ready for submittal, I still believe the minutes probably read, "I would recommend approval of the budget as presented." I would like to see the minutes.

Amber Joiner, Committee Policy Analyst:

I'd be happy to get that for the Committee.

Assemblyman Denis:

Has there ever been an instance where the Commission did not recommend the budget that the Director presented to them?

Gil Yanuck:

I can only talk about the last five or six years that I've been on the Advisory Board. Most of the time when the budget is brought forth, there are some natural questions. The Department Director has the ability to respond to the questions, and then the Commission can decide whether to continue with additional questioning or accept the response. I, personally, in the six years I've been there, have never seen an instance where a budget was turned down as submitted.

Assemblyman Denis:

So we don't have an instance where the Director presented something, and the Board or Commission didn't recommend it, and he went ahead and submitted it anyway?

Gil Yanuck:

I can't speak for the commissioners. I observed from the audience.

Assemblyman Denis:

I'm just trying to understand what brought this about and why we're here today talking about needing to do this.

Gil Yanuck:

The Director of the Department of Wildlife brings forth a budget. At the local level, our constituents come to our meetings and ask a lot of questions when we bring the budget into discussion. A number of years back, we didn't have answers.

The last couple of years, the budget presentations by the Department have been extremely thorough and complete. Those of us who have a background in business and accounting look at the numbers and say, "They really did their homework," because they can answer our questions when we ask them. When you bring a complete budget to the commissioners, the numbers are all there and they're ready to answer questions.

There have been times when the commissioners have made recommendations to the Department to reexamine an issue or take another look at one of the allocations or at the priorities of expenditures, and the Department has been very responsive. But if you only have the ability to either recommend or not recommend, it's going to go up to the Governor anyway.

In this case, though, if it doesn't get your approval, you know it's not going to the Governor. If you're not satisfying what the commissioners feel is a prudent way to run your department, it's not going to go beyond them.

Assemblyman Denis:

Have we had a recent incident?

Gil Yanuck:

Not to my knowledge.

Assemblyman Hogan:

It seems to me this is an organizational issue about how the relationship ought to operate. It doesn't really deal with the current individuals by name, et cetera. I'm pleased to hear you say the current relationship and current respect and cooperation from the Department is excellent. What we're concerned about is not the present cast of characters, but perhaps some future cast of characters

who cannot come together on an important issue, but it goes to the Governor anyway. I think that is a proper concern.

[Assemblyman Hogan, continued.] Was the Commission consulted or asked for its recommendations on the bill we heard just before this, A.B. 32, on the availability of the public to access information? Here's a bill draft request initiated by the Department of considerable importance. Was the prior bill on your agenda, since you get consulted?

Gil Yanuck:

No, this was not distributed to the various county advisory boards.

Gerald Lent, President, Nevada Hunters Association:

I speak for the bill. In response to Assemblyman Denis's remark, several years ago, the budget was not presented to the commissioners for their approval because they didn't have to do it. Since this bill was passed last session for "review and recommend," the commissioners are reviewing it now to a depth I've never seen in 40 years. Even the commissioners will say they're getting some good information on the budget. If they're getting that much information, it's just another jump to approve it.

One of the reasons they need to approve it is that the commissioners have to set fees. When you do a budget, you have the input and the output. The commissioners are required to recommend fee increases to sportsmen.

If they have a high budget with a lot of expenditures, the commissioners can raise the fees, but if they don't have the final approval on how much the agency spends, it's a lopsided way to do a budget. You have to control the input and the output to really present an honest budget to the sportsmen. They should have control of both ends of the budget.

Some of the testimony from the commissioners will be that they are getting excellent data from the agency. I have not attended the budget hearings this year, but I have in many other years with other commissioners. These new commissioners are taking an active interest in it, but you don't know who they will be in the future. If they're getting that much information right now, it's just another step to approve the budget and give it to the Governor.

Then the Governor can do whatever he wants. He's the ultimate authority on their budget. The Governor responds to the people, so I'm sure he'd do the right thing. This bill is needed, though, so the commissioners can control the outflow of funds also.

Assemblyman Marvel:

What about the approval? Would that be unanimous approval or a simple majority?

Gerald Lent:

It would be a majority. That's the way with most of it. I don't know what the bill stipulates.

Assemblyman Marvel:

There's still room for dissension if you don't get unanimous approval. By the time it comes to us, it should be complete.

Gerald Lent:

It's the same here. With the budget, I think the majority of the commissioners would approve it before they sent it on.

Tina Nappe, Private Citizen:

Like many others who will appear before you today, I have a long interest in and involvement on behalf of wildlife of Nevada. Before I go into my formal testimony, I would first like to express my commendation to Dr. Gerry Lent. For all the years I was on the Wildlife Commission, he has harassed the Commission and the Department for many years. He is finally succeeding. He erodes the opposition.

Last week he told you how much time he spends on the budget, and I give all of that credit to Dr. Lent. For years, or for at least several sessions, some of you may remember, he tried to replace the conservationist member on the Commission with an accountant. Now he is successfully turning the entire commission into a board of accountancy. I really give him credit for that.

[Read from prepared statement, [Exhibit H](#).] During my tenure as a Wildlife Commissioner, I gained a great appreciation for the complexity of wildlife management and an appreciation for the contributions made by sportsmen. My concern for Nevada's wildlife both preceded my time on the Commission and has continued since then. Wildlife of this state must depend, and in fact does depend, on all of us. We, including you, are the decision makers who affect the future of wildlife as we express ourselves at the ballot box, invest in land plans, zoning, and our charitable contributions. Decisions are made at every level of government, city, county, state, and at the federal level that impact the future of wildlife.

[Tina Nappe, continued.] You have received pie charts documenting the sportsmen's investment in the operations of the Department of Wildlife [Exhibit D of the Committee meeting on February 21, 2005, from Terry Crawforth, Director, Nevada Department of Wildlife.]. If you were to similarly receive a pie chart documenting wildlife habitat and who manages or invests in that habitat, the pie chart would look very different. The sportsmen's contribution as a distinct category would be much smaller. The sportsmen's contribution would be melded in with the broad public, which manages federal lands, State lands, and county and city properties.

That public today, which we rely upon to support wildlife, is increasingly diverse. For instance, during the last park bond, we discovered 1) that Hispanics are very supportive of parks, and 2) where we can support a variety of wildlife uses, such as bird watching and fishing, or provide access to public lands. As part of the future of our wildlife, the involvement of all groups to support the policies and funds for wildlife is essential. The Department of Wildlife and the sportsmen's groups cannot be expected to continue as the primary underwriters of the agency. My question when I saw this bill was, "What is the purpose?" because the net effect will be to further isolate an agency that is supposed to represent the public but doesn't.

If it were not for this broad, growing public concern for the future of wildlife and open space, the wildlife of the state would be in poor shape. The issues facing wildlife today, in terms of population growth, use of public lands for recreation, infrastructure, mining, and energy development place a huge pressure on our wildlife resources. Weeds and fire are having a major impact on wildlife numbers and, therefore, the income the Department of Wildlife requires to protect its investment and its primary source of income.

While the staff of the Department of Wildlife does the best it can, we, as citizens, operating through various organizations, including sportsmen's groups, conservation organizations, recreation organizations, land trusts, county governments, conservation districts, weed coalitions, and state and federal agencies, must all work together if we are to preserve wildlife habitat.

How does this bill further that opportunity and necessity? Do I, as a member of the public, want to provide more funding to an agency which is supposed to represent the State, wildlife, and the

public, but which operates as an exclusive operation and spends the money it collects from the hunting public to manage itself? The management of sportsmen needs to be separated from the management of wildlife.

[Tina Nappe, continued.] The State of Nevada should be contributing far more to Nevada's natural resources, such as parks, wildlife, water management, water quality, and air quality than it does. I draw your attention to last page (page 3 of [Exhibit H](#)), which I took off the Department's website. This is an organization that solicits sportsmen's input to the Commission. The county advisory boards are basically sportsmen and ranchers who make the primary comment to the Commission. The Commission primarily represents sportsmen, so if they approve the budget, where does the public come into this process? I do not see it, and I'm really concerned about that.

My feeling is that this organization needs to be opened up and more efforts made to provide diverse funding, but who wants to provide diverse funding for an agency that does not represent the public? The public's only appeal at this point is the Governor and you, the legislators. Let's not further isolate our wildlife and the agency, which is supposedly charged to manage it on behalf of the public and the State. I urge you to carefully consider this bill before approving it. If you decide to approve it, let's include an appeals process from the Commission to an impartial board for the public to participate.

I also urge the proposal that Director Crawforth asked for last week, that this Body request a legislative study of wildlife and park funding. As Director Crawforth has indicated, the sportsmen are tapped out. The numbers of huntable wildlife may fluctuate, but they are unlikely to be sufficient to pay the costs of wildlife management, and these costs are growing. Your leadership on this matter would be most welcome, but please do not hamper the Wildlife Commission and ask it to do more administrative work than it already is.

Steve Robinson, Natural Resource and Rural Advisor, Office of the Governor:

I'm here to express concerns about the bill based, as Mr. Hogan said, on organization and accountability, not on motivation of the sponsor of the bill. We know the motivation here is for the betterment of wildlife and future wildlife.

However, changing the word to “approve” is a single word, but it is a big word, organizationally.

[Steve Robinson, continued.] The Governor decided to change the former Division of Wildlife to a stand-alone agency, that the Division would become a Department that because of the constituency involved, they deserved that. He was, however, vociferous in his opposition to appointment of the Director being any other place than his purview, and his insistence that the budget lie with him, because he is the chief officer of the budget, and he formulates the budget before it is sent to you all. That remains his position today.

The Executive Budget process is in excess of one year long. It’s literally thousands of hours of give and take between the agencies and the Budget Office, ending up around October or November. At that time, the agency directors meet with the Governor in his Office. That’s where it really all comes together.

To interfere with that process would destroy the system by which the Governor presents you a balanced budget. This is only one agency, but I would say any constituency could make a case for having a separate budget agenda apart from the Governor. We would caution you that that could lead to chaos. I’m not saying this action alone would do that, but it certainly would set a precedent that we would not want to see.

As far as the Wildlife Commission, there is a continuous give and take between the Governor and the Commission. They are not timid about presenting their views to him. They do it constantly, and he gives them feedback constantly.

I think the bill creates a situation where an administrator, the Director of the Department of Wildlife, appointed by the Governor, submits a budget for the approval to a board also appointed by the Governor without approval of the Governor. Imagine yourself in the place of that administrator trying to decide who he pleases and who he takes his direction from. I think this provision would make it untenable for an administrator in any agency.

The provision could provide a division between the Governor and his cabinet, which could lead to some dysfunction within government. There should be a dichotomy between the formulation of the budget, which we do, we propose, and what you do over here when you dispose. As one of your members said, you have the right, and you often do, to make changes at your will once it gets over here.

Vice Chairman Atkinson:

You did a pretty good job of explaining the Commission and where the budget goes. If this language changes "recommendation" to "approval," what happens if they do not approve it?

Steve Robinson:

I'm not sure what would happen, and that's part of the problem. It could create a paralysis in government about what we do. With the budget cycle the way it is, and as demanding as it is from a time-sensitive standpoint, it could be detrimental, but I don't know the answer.

Vice Chairman Atkinson:

From my understanding of it, the budget bill, approved or not, has to go to the money committees. It's the Governor's budget. Where the confusion lies is that the budget definitely could be tied up.

Steve Robinson:

Yes, sir.

Assemblyman Denis:

That could always be resolved, though, with an amendment saying they have to approve the budget within 30 days, otherwise it's whatever the Director presents, or something like that.

I understand how the budgets go to the Governor or the Director, but how does that really change? I didn't quite understand that when you were trying to describe to us when it goes from being a recommended budget versus an approved one. If they recommend the budget or they approve it, what's the difference to the Governor's Office?

Steve Robinson:

The difference would be the Governor's cabinet. The chief officer of each of the agencies makes a recommendation to him, and they make a final decision in his Office about what the budget for that agency is going to be. That could certainly be in contravention of what a commission recommended. Because budget is so important, the department director wouldn't know who he was working for.

Assemblyman Denis:

Even though their budgets are presented to the Governor, they could change it at the last second when they get together with the Governor?

Steve Robinson:

That very often happens, yes, sir.

Assemblyman Grady:

Do you have other budgets that are approved that are sent to the Governor, or are they recommended for approval? I think the whole bill is just a play on words, really. I think any budget is recommended for approval, because if the Governor decides he's not going to approve it, he's going to change it.

Steve Robinson:

I'm not sure. I know independent commissions come to the Governor and get his approval. There's not a final authority of any commission to go over or around the Governor with their budget.

Assemblyman Hogan:

Would it be correct to say that the arrangement proposed by this bill would be a complete anomaly?

Steve Robinson:

I'm not absolutely sure of that, but it certainly would be very different. With some of the independent commissions I'm thinking of now, it's not the case. The Colorado River Commission, for instance, submits its budgets to the Governor just as any other agency would.

Vice Chairman Atkinson:

How many appointed boards are in the position of approving their own budgets?

Steve Robinson:

I don't know the number, but it would be very few. However, they do make recommendations. Sometimes they are very strong recommendations, and they make those recommendations very clear to the Governor.

Vice Chairman Atkinson:

I know some members don't think there's a huge difference between "recommend" and "approve." Approval is much stronger to me. I want to know how many boards have that kind of flexibility. If you don't have that information now, that's fine, but if you could get it to us, I would certainly appreciate it.

Steve Robinson:

If that would be helpful, we'll furnish that to you.

Bill Bradley, Chairman, Nevada Board of Wildlife Commissioners:

I want to commend Mr. Claborn for bringing these issues so this Committee fully understands the role of the Board of Wildlife Commissioners and the role of the agency.

Chris MacKenzie and I are two of nine members of the Board of Wildlife Commission. Mr. Yanuck is a member of the Carson Advisory Board and very involved in our process. Each county has an advisory board of people like Mr. Yanuck who are very interested.

Two years ago, we thought it was a good idea to bring a request that we approve the budget. We were very interested in the budget. We always got good budget presentations, but they have been, in the last three years, very detailed presentations.

When our bill first came down to Carson City, we received a call from Governor Guinn and Senator Raggio. They went through our bill with us and said, "We think we can support this, but you're not going to get budget approval. That's distinctly the responsibility of the Governor's Office and the Legislative Branch." That was a pretty good message that we weren't going to get approval language.

The next call we got was from Ways and Means Vice Chairwoman Giunchigliani and Chairman Arberry, and they also said, "We like a lot of the ideas in this bill, but you're not going to get approval. That's our function." So we took that as a pretty strong sign. We worked on the other items in our bill very strongly and got our Department as a standalone agency, got our fee increase that was desperately needed, and got this recommended language. That was worked out with then-Chairman of the Assembly Natural Resources, Tom Collins.

Since that time, we do have comprehensive review of the budget. I want to echo what Assemblyman Grady said. As we looked at the budget last November, we did recommend for approval, and it was not a unanimous vote.

The language I think has been missed in the bill—if you look on the back page, line 20, paragraph 6—the actual wording is "prepare in consultation with the Commission the biennial budget." I think it's important for the Committee members to understand that the budget process is not like a corporation where a budget is put together. It is a working document that takes months and months and months of preparation. Our experience on the Commission has been that as that budget is being developed, the Director is bringing that budget to us in our monthly meetings, saying, "Here is where I'm going; do you have any questions?"

[Bill Bradley, continued.] There have been very heated questions in our Commission about why we are spending this money here, and we have always gotten good answers. We may not always agree with it. Like I said, in the last vote there was not unanimous approval of the budget. We then take our thoughts and our opinions to the Governor's Office. Mr. Robinson and I and other members of the Commission had some strong conversations about some of the things we had hoped to get.

In response to an earlier question, has there ever been a change in the budget based on commissioners' requests, to the best of my recollection, there has been. I remember several years ago when we were becoming very much more proactive in predator management. We wanted to see more funds directed out of one account and into predator management. As I recall, the Director did heed our strong recommendation and transferred funds. I also recall a comment our current Director Crawforth made on the record in one of the meetings that "if this budget doesn't meet with the approval of the Commission as we go through the process, I'm not going to submit it."

In State government, though, there comes a deadline when that budget has to go forward. Whether it's approved or not, it's got to go. If a budget comes forward that we don't like, you bet we'll be here. We'll be in front of Ways and Means; we'll be in front of Senate Finance.

We're comfortable with the current status, and I think we do serve a purpose. I feel very accountable, and when there are questions about certain accounts, as we pointed out to this Committee last week, hopefully we asked the questions you wanted to ask before we got there.

Finally, I want to talk briefly about fees. The Legislature sets the uppermost amount a fee can be charged for a tag. Then it's up to the Commission to set the tag fee within the amount established by the Legislature. It's you folks who give us the range of where you think the fees should be set, and we're given some authority. We don't set fees; you do.

Chris MacKenzie, Vice Chairman, Nevada Board of Wildlife Commissioners:

After going through the process last legislative session, when we basically were told that approval language was not getting in there, there has been some discussion just in the last couple days. My understanding is that they're possibly looking for an approval by the Commission before the Department even goes to the Governor. I guess the distinction would be to have it "approved" so it could not go to the Governor before it was approved by the Commission. That's the only distinction I can see. I don't know if that steps on the toes of the Governor's Office. That's why I'm staying neutral here. Being appointed by him,

I don't think it would be a good idea for me to take a stance one way or another.

[Chris MacKenzie, continued.] It's left up to us individually as commissioners to do the review. Any staff assistants we have are members of the Department, so if you want independent assistants who aren't necessarily accountants, you have to go through this process.

I felt like we received a wonderful amount of information, and excellent presentation, a good working relationship between the Department and the Commission going through this process, so I felt comfortable going ahead this time. However, I have my reservations about whether or not we would always be provided that information and whether or not we would have the independent staff to go through the information.

That being said, do we need additional staff for the Commission on its own? What would that cost? Who's going to pay for that? Is that going to come out of the sportsmen's pockets? I'm going back and forth on this whole issue. I think it would be a good thing to have the approval process, but I don't want to spend more of the sportsmen's dollars for staff assistance on that.

The way it worked this year was wonderful. The ability to review and recommend felt like the Department was very up front and provided us the ability to make a recommendation.

Assemblyman Hogan:

The thing I'm trying to sort out in my mind is how the word "approval" fits into this context. I was surprised to hear you got strong objections from some of the key people in the Legislature. My understanding is that the process we're talking about in this context is that the budget is prepared by the Department to the satisfaction of the Department's Director. It is then furnished to the Commission.

The Commission reviews it. You may have some changes you'd like to see; you work it out. Under this change, you would have the authority, the final word. Then the approval at that level simply goes to the Governor.

We on the Ways and Means Committee look at the Governor's budget after the department directors put it together the way he wants it, after you have perhaps fiddled with it a little bit, changed it more to your liking. You have the approval, so that's the way it goes to the Governor. But I don't see why we on Ways and Means would be concerned. That's something that all happened before we got involved. We're looking at the Governor's budget, and if he didn't

favor the changes the Commission made, they've come out. Then we'll see your face to tell us about that and urge us to put it back the way you want it. That sounds like an okay process. I don't see why the Legislature, from a budget point of view, would much care about that.

Bill Bradley:

I think we misunderstood a little bit about the budget when we asked for the approval process two years ago, because what that meant to the legislators here was that we were trying to usurp their authority. That was never the intent.

I want to make it clear that when it says "in consultation," the budget is a working document. I don't know how long before November the agency gets started on their budget. They bring it to us as it's being worked up, because it's too massive to be brought up in one meeting. That would take as long as it takes Senate Finance and Assembly Ways and Means. We're brought the budget as it's being worked up under this new bill that was passed last session. We take a look at various expense classes, money coming in and money going out. We ask a lot of questions, and we get the answers to our questions.

A question that always comes up is the vehicle expenditure. People wonder why we're spending so much money on vehicles. Commissioners wondered why we were spending so much money on vehicles. The Director responded, "This is why; this is what this category entails," and gave us a good explanation. There were still some questions about that.

Let's say we approve it. Now the sportsmen feel a little more comfortable that we've approved it. First of all, we have to approve it before November. I don't know what would happen if we didn't approve it, either, because it still has to go. We approved a budget this time that asked for more money from the General Fund. Steve Robinson said we're not timid about asking, and we want more money from the General Fund. We get less than 3 percent, and it's ridiculous. We asked for more money from the General Fund and guess what? It went to the Governor's Office and we didn't get it. It's not in that budget.

If we don't approve it, is it going to come back to us? After the Governor said, "No, I'm not going to approve it," now does it need another approval? I don't know. I think it's a bit of semantics, as Mr. Grady suggested. I can't imagine what would happen if we rejected the budget. A lot of people would be wondering if they were going to get paid.

Assemblyman Carpenter:

During all this consultation and negotiation, if the Commission didn't agree with what the Director was submitting, were there any changes made? Are there any examples besides the vehicle situation we've all heard about?

Bill Bradley:

I'm recalling, in past budgets, Mr. Crawforth redistributing predator money at our request, for example. In this last budget cycle, I don't recall any changes being made. We were fully supportive. There was not a unanimous vote for approval of the budget. In fact, I might have voted against the budget, and I'm trying to remember why. It was an 8-to-1 vote. However, in that particular vote, the budget Mr. Crawforth recommended was approved by the Commission and disapproved by the Governor.

Assemblyman Carpenter:

So even though there was a lot of discussion, there really was no change in what the Director had recommended?

Bill Bradley:

That's my recollection.

Chris MacKenzie:

There was a lot of additional information requested to substantiate it, but no substantive, major change in what he had recommended. In fact, I came away impressed with how much they were getting done with how little they have.

Assemblyman Goicoechea:

What we have in place is a "recommendation," but your own words were, "We approved the budget. It was an 8-to-1 vote, and we sent it to the Governor." It's word play. What you're asking for in this bill is what you already have.

Vice Chairman Atkinson:

I don't believe we have any desire to move A.B. 90 today, but I'm assuming Chairman Claborn will bring this back at some point. That concludes the hearing on A.B. 90. We have three bills for next Monday: A.B. 25, A.B. 65, and A.B. 86. Is there any old business to come before the Committee? Any new business? What about public comment? Hearing none, we are adjourned [at 3:39 p.m.].

[Elsie Dupree, representing the Nevada Wildlife Federation, Incorporated, submitted a prepared statement ([Exhibit I](#)).]

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Attaché

APPROVED BY:

Assemblyman Jerry D. Claborn, Chairman

DATE: _____

EXHIBITS

Committee Name: Natural Resources, Agriculture, and Mining

Date: March 2, 2005 **Time of Meeting:** 1:36 p.m.

Bill No.	Exhibit ID	Witness	Dept.	Description
	A			Agenda
AB 32	B	David Thain	NDOA	PowerPoint presentation: Confidentiality of Information collected by NDOA
AB 32	C	Doug Busselman	Nevada Farm Bureau	Proposed Amendments
AB 32	D	Doug Busselman	Nevada Farm Bureau	Prepared Testimony
AB 32	E	Olivia Fiamengo	Comstock Wild Horse & Mining Museum	Letter from Bonnie Matton, President, Wild Horse Preservation League
AB 32	F	Olivia Fiamengo	Comstock Wild Horse & Mining Museum	Letter from Willis Lamm, President, Least Resistance Training Concepts
AB 90	G	Gil Yanuck	Carson City Advisory Board to Manage Wildlife	Prepared Testimony
AB 90	H	Tina Nappe	Private Citizen	Prepared Testimony; page from Nevada Department of Wildlife's website
AB 90	I	Elsie Dupree	Lobbyist for Nevada Wildlife Federation, Inc.	Prepared Statement