

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

**Seventy-Third Session
March 28, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:43 p.m., on Monday, March 28, 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 Peggy Pierce, Assembly District No. 3, Clark County
Senator Dennis Nolan, Clark County Senatorial District No. 9

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Karen Kennard, Executive Director, Nevada State Emergency Response Commission
Larry Johnson, President, Coalition for Nevada's Wildlife
Terry Crawforth, Director, Nevada Department of Wildlife
Chris MacKenzie, Vice Chairman, State Board of Wildlife Commissioners, Nevada Department of Wildlife
Fred Church, Chairman, Nevada Bowhunters Association

Chairman Claborn:

[Meeting called to order. Roll called.] Before we start the hearings, we have to vote on a BDR introduction for Mr. Goicoechea's resolution urging the U.S. Department of Transportation to take action regarding federal cargo securement regulations.

- BDR R-1319—Urges United States Department of Transportation to take action regarding cargo securement regulations. (A.J.R. 12)

ASSEMBLYMAN GOICOECHEA MOVED FOR COMMITTEE INTRODUCTION OF BDR R-1319.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Claborn:

We're going to hear this resolution on April 4. Next, we'll open the hearing on S.B. 73, sponsored by Senator Nolan.

Senate Bill 73: Revises provisions relating to certain fees charged and collected by State Emergency Response Commission. (BDR 40-715)

Senator Dennis Nolan, Clark County Senatorial District No. 9:

I'm bringing S.B. 73 forward on behalf of the State Emergency Response Commission. This bill originally came to the Senate Committee on Transportation and Homeland Security.

We had no opposition to this bill. It is pretty much an administrative cleanup bill, but there were a couple of minor problems with the titling in the act. This is

meant to take care of some inequities currently in statute, as well as to conform statute to current practice regarding collection of fees for the storage of hazardous chemicals.

Karen Kennard, Executive Director, Nevada State Emergency Response Commission:

[Read from prepared testimony ([Exhibit B](#)).] The purpose of S.B. 73 is to provide appropriate language regarding the maximum amount of fees collected for the filing of Toxic Release Inventory (TRI) Reports. These reports are required under federal and State laws, and fees are mandated by NRS 459.744. The fees collected are awarded, by way of grants, to emergency planning committees in each county to support fire, law enforcement, medical, and industry first responders in prevention, response, and mitigation of hazardous materials incidents. Grants are awarded for operations, planning, training, and equipment.

The State Emergency Response Commission (SERC) requested to increase the maximum fee collected, and the 2003 Legislature approved a fee not to exceed \$15,000 per year as it relates to extremely hazardous materials. The final version of the bill applied the maximum fee to storage of extremely hazardous materials and deleted the previous Section 2, which had provided for an overall maximum fee to be paid by a person to the SERC. In my handout, I have included that bill, Senate Bill 201 of the 72nd Legislative Session. It shows the previous Section 2, which we're trying to put back in.

Consequently, there is no maximum amount applied to the reporting of toxic chemical releases. Pursuant to agreement with the manufacturing community, through the Nevada Manufacturers Association, the SERC sought to adopt administrative codes to establish collection of fees with a not-to-exceed-\$7,500 clause relating to storage and toxic chemical release reporting.

The Legislative Counsel Bureau (LCB) Legal Division advised that the maximum fee could not apply to toxic release inventories, since there was no maximum amount set in statute. A regulation establishing the \$7,500 maximum amount for storage fees has been adopted and imposed. The SERC has informally applied the intent of this maximum amount to include the Toxic Release Inventory Reports, also.

[Karen Kennard, continued.] Revenues from the fees are approximately \$400,000, with grant requests capped at \$29,000 for each of the 17 counties, which totals \$493,000 in requests annually. The increase in the fee cap helped to close the gap between revenue and grants by providing an additional \$63,500 revenue in this year. Additionally, please note that this act involves hazardous materials used in manufacturing and does not include hazardous waste, as is noted in the act part of the bill.

The statement in the Legislative Counsel's Digest that this bill increases the amount that may be charged for the reporting fee from \$500 to not more than \$15,000 a year is misleading. Toxic Release Inventory Reports will continue to carry a \$500 fee, with a maximum fee of \$15,000 to be paid by each person. The \$500 fee will be included in NAC [*Nevada Administrative Code*].

The State Emergency Response Commission requests that NRS 459.744 be amended to apply the maximum fee of \$15,000 to the Toxic Release Inventory Reports as well as the storage and manufacturing reports. This bill does not change the amount of reporting fees, but simply applies the maximum fee to be paid by each person for the filing of a Toxic Release Inventory Report.

Due to the lack of limits currently set in NRS, this bill also requests payment of a refund to anyone who paid over \$7,500 for the reporting years 2003 and 2004. That is repaying fees for those reporting years, and not necessarily paid during 2003 and 2004 calendar years.

Assemblyman Goicoechea:

This will raise the limit from \$500 to \$15,000 on the TRI reporting?

Karen Kennard:

We didn't raise it from \$500 to \$15,000. The reporting fee per report is \$500 and has been \$500 since it was established in the early 1990s. Previously, until last session, the maximum amount to be collected was \$5,000. The Senate and the Assembly agreed to increase the maximum fee to \$15,000.

It's per report. They file a report per chemical that they're releasing into the atmosphere or whatever by way of production. These Toxic Release Inventory Reports are filed per chemical, so if somebody is filing that many reports per chemical per facility—.

Assemblyman Goicoechea:

But most of the waste rock dumps in our mining counties also are on the TRI inventory list. [Ms. Kennard agreed.] They're big and there are lots of them. That was my concern a session ago when we set a \$5,000 cap, and now we're going to a \$15,000 cap. There's truly not a toxic release when they move that rock. It's in its natural state, but it's still included in the TRI inventory. I was just trying to determine, if you have a million tons of it out there, that somebody doesn't come along down the road, look at NAC, and say we have 100 million tons of this waste rock out there. Clearly, that's the largest inventory, and that's why Nevada has the largest stockpile in the United States.

I'm concerned about what triggers it. You're saying \$500 a report as per each chemical or compound, so they're all just going to cost \$500?

Karen Kennard:

Per report, that's correct. This is not for storage. The storage side is where you'd be paying by tonnage. This is not talking about storage. You've already applied the cap of \$15,000 to storage. As far as the TRI is concerned, it's \$500 per report, so it's per chemical, per facility. We're requesting a \$15,000 cap to be consistent with the cap on our storage fees that has already been imposed by the Legislature. If S.B. 73 is approved, we will be going through the NAC process to impose the cap of \$7,500. The original thought, as I understand it from legislation last session, was to set the cap at \$15,000 so we would not have to come back each time we wanted to raise the cap a little. You gave us the cap of \$15,000, but we are currently holding it at \$7,500. That would be a combined cap of \$7,500. If storage fees had already met the \$7,500 cap, there would be no \$500 fees on the TRIs.

Assemblyman Goicoechea:

So at the point where you hit 30 chemicals, you're over the cap. Then you report for no fee. [Ms. Kennard agreed.]

Assemblyman Carpenter:

The bill says you want to give some money back. How are you going to do that if you haven't been raising enough money to pay each county the \$49,000?

Karen Kennard:

That was included because of what was seen as an error in the way the bill was drafted last session. That \$15,000 cap should have been applied to the TRIs also, and the SERC has been collecting only the \$7,500. That is the cap for storage, per NAC, but we also applied it to the TRIs, as that had been the intent of SERC and the Manufacturers Association last session. At least one facility has overpaid, on advice of their attorney, since there is no fee cap applied to

TRIs right now. If we told them to pay less than or right at \$7,500, their attorneys told them there was no fee cap, so pay the whole amount. We have held this money aside in an effort to ensure all the facilities are paying the correct amount in accordance with agreements with the Manufacturers Association during the last session to hold it to \$7,500, we have not awarded those overpayments by way of grant.

Assemblyman Carpenter:

Do the Manufacturers Association and the miners agree with this?

Karen Kennard:

I have not heard anything from the Mining Association at all. The Manufacturers Association was in agreement, during the last session, with having the \$15,000 apply to both, with the knowledge that the SERC was going to request NACs for a \$7,500 cap, and then proceed with modifying the NACs to increase fees over the years. At the time of the last session, they were in agreement with the amount being \$7,500.

Chairman Claborn:

Does anyone else wish to speak on S.B. 73? Seeing none, I'll close the hearing on S.B. 73.

Vice Chairman Atkinson:

We're going to open the hearing on A.B. 333.

Assembly Bill 333: Requires application for issuance of tag to hunt big game mammal to be submitted in person at location in Nevada specified by Department of Wildlife. (BDR 45-1309)

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

[Read from prepared statement ([Exhibit C](#)).] On August 20, 2002, the Ninth Circuit Court of Appeals ruled in an Arizona case, *Montoya v. Manning* [301 F.3d 985 (9th Cir. 2002)], that authority over big game hunting is limited by the commerce clause of the *United States Constitution*. The State of Arizona was not able to justify nonresident quotas on big game tags, and it lost its case in U.S. District Court for the District of Arizona on July 13, 2004.

The Ninth Circuit Court of Appeals decision applied to Nevada because Nevada is within the court's jurisdiction. If a policy such as a quota system discriminates on its face, then a test required that 1) the policy must serve a legitimate State interest, and 2) the State has no other means to advance its legitimate interest.

Nevada's current tag policies are very similar to those of Arizona and are not likely to stand up in court.

[Assemblyman Claborn, continued.] Nevada must find the least discriminatory way to limit nonresident tags in order to protect the valid interest of the State in maintaining hunting opportunities for its residents. Although federal legislation has been introduced by Senators Harry Reid and John Ensign, it is still pending.

Assembly Bill 333 is very short and simple. It only addresses one thing, which is discrimination. This whole lawsuit is about discrimination. Assembly Bill 333 offers a clean-cut way to comply with the Ninth Circuit Court decision, which requires that limits on nonresident hunting must be, at the least, as nondiscriminatory as possible. This measure would simply require that anyone who wants to apply for a big game tag would need to apply in person at a location in Nevada designated by the Nevada Department of Wildlife (NDOW) or in a designated location for each county. That would be NDOW's call.

This policy will treat equally everyone who applies for a big game tag, which I believe will satisfy the court's requirements. At the same time, it will limit the number of nonresidents who apply for tags while maintaining an advantage for Nevada residents. In the interest of our hunters, we have to find a bill that will work for the residents of Nevada. We have a bill here that I think will work, but if we find the answer somewhere else, that's fine too.

Assemblyman Hogan:

I understand we're counting on the fact that one must travel to the state of Nevada and present oneself to apply for the tag. Without discrimination, that would reduce the number of out-of-state folks to those willing to go to the trouble to do that. Do we have any sense of the effect that requirement might have on the number of out-of-state applicants?

Assemblyman Claborn:

I don't have a survey. All I know, from 24 years experience handling discrimination charges as a business representative, is that if you treat everybody equally, do not deviate, and do not discriminate, you have no problem.

I'm not trying to discriminate against anybody. Quite the contrary, I really believe someone in Montana or St. Louis, Missouri, who flew here for a deer or elk tag would be discouraged when he passed nine million deer on the way out here. We don't have that many deer left to begin with.

[Assemblyman Claborn, continued.] My only concern is that we only have so many deer. They're on the decline. We need them for our residents to hunt. Before, we had a quota of 10 percent or even less for nonresidents, and we were still short of deer. We're not short of people who want to hunt them, though.

This bill might not work. Another bill might, but if it doesn't, we can always come back to this one. However, once we implement something, we're going to have a hard time finding a way out of it if the courts come back later and say we can't do that.

We're already facing a lawsuit. We can't disregard the law. I'm trying to find a process that would be legal.

Assemblyman Denis:

Are you saying that anybody, resident or nonresident, would have to physically come in, as opposed to now, where they are allowed to do it on the Internet?

Assemblyman Claborn:

That's correct.

Assemblyman Carpenter:

Did you run this by the Legislative Counsel Bureau to see if they thought this would be a way around that court decision?

Assemblyman Claborn:

Yes, I did. I ran it by our Legal Division and some other attorneys, and they said it was perfectly legal. That was why I continued with this. If we knew this bill was illegal, I would not have presented it.

Assemblywoman Smith:

I love that Internet application process. With this bill, could a person legally get a power of attorney to allow a local agent to submit his application for him?

Assemblyman Claborn:

I don't know. There is a bill like that coming, and it might work. It might be the one that fixes this if it's determined to be legal and doesn't get tied up in court. I only know we need something to mitigate this lawsuit.

I know some people who would rather not even see the season open than to have to admit out-of-staters on the Internet. The Internet application process is one of the things being declared discriminatory. If you eliminate the Internet process, you will have eliminated one of the discriminatory tools.

With A.B. 333, everybody would come in person. NDOW would designate maybe a place in each county, so if you live around Wendover, Utah, you'd go down to Wells or wherever. If you were farther south, you'd go to Ely or Pioche. If you live in South Carolina, you'd still have to come here.

Assemblywoman Smith:

I understand that, and I appreciate the goal of the bill, but I'm wondering if this could start a cottage industry of agents who would be the in-person representatives of nonresident hunters.

Assemblyman Claborn:

If you give someone the power of attorney to go sign up for you, I'd say absolutely not: you have to appear in person just like you do for your driver's license. If you want to file an application for a big game tag, and you live in Reno, you can go to whatever location or locations NDOW has designated.

I don't want to take anything away from NDOW. I just think this bill is legal, short, and sweet, and I'm sure it will pass muster. If nothing else works, this will still be on the back burner.

Nobody knows if the other bills are completely legal. I don't know that this one is completely legal, either, but I've dealt with these issues for 24 years, and as long as you treat everybody the same, I don't think you have any problem whatsoever.

Assemblywoman Kirkpatrick:

I thought we had said, on another bill, that the number of out-of-state tags we could actually give out was limited. I wonder what the impact would be of the revenue we would lose from out of state. Rodeo people have to come here to sign up for the rodeo, and they're not coming. That means a loss of \$30 million, and that affects everything.

Assemblyman Claborn:

My concern is with the hunters, not the revenue. The revenue will have to take care of itself. I'm up here for my constituents, to make sure we can try to get some deer hunting in.

To answer your question, I have no idea what the impact would be to revenue. I don't think anybody else does. I think we take about 90 percent of residents and 10 percent of nonresidents.

Vice Chairman Atkinson:

Ms. Joiner, is there a way to get the information Mrs. Kirkpatrick is asking for?

Amber Joiner, Committee Policy Analyst:

There are several people in the audience who would probably be able to answer that. If not, I'd be happy to look into it.

Assemblywoman Kirkpatrick:

I'm not here to debate it with you, but I think one hand washes the other. We need the revenue to build the duck guzzlers and all those other things. Some of the hunting revenue goes to things that actually promote more hunting. I think we've taken some strides toward making it so more constituents can hunt.

When a family comes in from Montana to go hunting, usually Dad goes for a week, the whole family stays here, and they do things throughout. When my husband goes away for a week, he spends a ton of money, whether it's buying all the groceries he needs or all the guys want to go here or there. Revenue is generated. I know he wouldn't drive from Montana to get a hunting license, drive back, and then come back again.

Terry Crawford, Director, Nevada Department of Wildlife:

We appreciate Chairman Claborn's efforts to get us out of a tight spot and some litigation, but I have a few comments on our current situation.

[Read from prepared testimony, ([Exhibit D](#)).] This legislation would require that an application for issuance of a tag for a game mammal be submitted by the applicant, in person, at a location in this state specified by the Department. Currently, hunters applying for the random-draw hunts are required to submit applications through a mail service or over the Internet, and the applications must be received by a deadline date established by the Board of Wildlife Commissioners.

We have tried many different methods of accepting applications. Hand delivered was somewhat of a nightmare for us with hunter congestion in the parking lot, long lines overwhelming the lobby, and hunters scuffling and jostling just to get their applications turned in. We had people shoving applications under the doors of our offices. We then tried postmark applications, but ended up resorting to magnifying glasses and internal committees to decipher postmarks.

[Terry Crawford, continued.] The sportsmen asked for, and we implemented, the current system that allows mailed applications or Internet applications, which must be received by the deadline date. Our hunters are happy with this system, resident and nonresident alike, and we expressly prohibit hand-delivered applications because it does not afford everyone an equal opportunity. As a State agency, we feel we have a responsibility and an obligation to provide fair and equitable regulations that apply to all applicants and that do not create a burden against individuals simply because they do not live in close proximity to the location selected by the Department.

If this legislation is approved, it will require all individuals to appear in person to submit their applications. In order to verify that individuals are who they say they are, we would be required to have each individual provide some form of proof of identification.

One note about big game animals in Nevada: big game animals include pronghorn antelope, black bear, mule deer, mountain goat, mountain lion, rocky mountain elk, and three subspecies of bighorn sheep. By the early 1990s, there were allegations of mismanagement and distrust of the agency and the Department of Information Technology, who had developed the old tag-draw program and conducted the drawings. The sportsmen demanded and got a law passed that required the Department to privatize the development and administration of a new big game tag-drawing program.

This privatization contract has been highly successful, and hunters have regained trust in the system and the drawing program. I might, as an aside, mention that, at about that time, there was significant interest in the Legislature for privatization of government services, but, to date, this is the only one that has made it off the drawing board and is up and running. There are many side benefits to the new drawing system, such as ease of processing applications; better revenue tracking and fiscal responsibility; and hunter demographics for better understanding our clients. The drawing contractor administers the application hunt program and computerized draws for certain big game species.

I think I have some of the numbers you were looking for. In our 2004 main draw, the contractor received 111,490 big game applications from 49,577 clients. If you submit an application for a

sheep, an antelope, and a deer, that's three applications but one client. Of these applications, 81 percent were submitted over the Internet. Less than 20 percent were paper applications submitted through a mail service. In addition, we have a number of other drawings, such as the nonresident deer drawing, swan tags, turkey tags, et cetera, that all come through the game drawing process and generate about 114,000 applications.

[Terry Crawforth, continued.] The requirement to submit applications in person would eliminate the ability to accept Internet applications. There are distinct advantages to the Internet applications, which were implemented in 2001, as the hunters are assured that their applications are entered and received correctly. Internet applications have significantly reduced the numbers of errors on paper applications. For example, in 1999, prior to Internet applications, hunters made 5,819 errors on paper applications, most of which caused the applications to be rejected in the drawing. In 2004, with Internet applications, the number of errors totaled 826. Internet applications reduced the data entry and reduced costs of keying.

In addition to the drawing contractor, the Department of Wildlife issues a number of big game tags that are non-draw, such as elk incentive, deer and antelope landowner compensation, emergency depredation hunts, and the Wildlife Heritage auction tags. The number of non-draw tags issued varies, but averages about 250 each year. These applications are received at the office that processes the tags instead of the contractor's office. There are also about 180 license agents across the state who issue certain big game tags, particularly mountain lion tags.

If this legislation passed, we fear that hunters would have to go to one place and apply for a big game tag. We believe the number of applications would be significantly reduced, as the bill would create a burden and hardship on many hunters to apply, both resident and nonresident. With the decrease in applications, we will see a decrease in revenue from application fees, elk depredation fees, predator fees, and hunting licenses. There's a small number of hunters who do not submit applications for big game, but who go ahead and purchase a hunting license anyway.

The Department is obligated to pay the current contractor for a minimum of 113,000 applications regardless of how many the

contractor receives. This has not been a problem to date, but could be under this legislation. Furthermore, the act would become effective on July 1, 2005. That particular date is somewhat in the middle of our application processing system and would cause us some problems regarding labor and notification of the public.

[Terry Crawford, continued.] We have some concerns about the impacts this legislation would have on the hunters who have asked for the best tag or licensing system in this country. A number of states have adopted the system we pioneered. We spent millions of dollars developing and implementing it, and I think it would be a real shame to see it go by the wayside.

I think this bill is well-intentioned, and I appreciate that. I hope we can find another way to address our litigation concerns.

Assemblyman Claborn:

We have a lawsuit against us, correct? [Mr. Crawford responded in the affirmative.] And we're planning on implementing this program with this lawsuit hanging over our head? Is that correct? We're just going to go ahead and take all the applications from all over the United States or the world? Is that our intention now?

Terry Crawford:

Yes, we will continue that, but the Board of Wildlife Commissioners has spent a considerable amount of time over the last few months working with sportsmen to justify or provide the information based on the strict scrutiny standard that was applied by the Ninth Circuit Court of Appeals. We believe the new policy, which will generate a new system, including a formula for the distribution of tags to all hunter groups, will, in fact, be in compliance with the Ninth Circuit. We are prepared to move on that way.

Assemblyman Claborn:

The quota was 90 percent residents and 10 percent, or even 5 percent, nonresidents. What do you think the outlook is for these tags? In your opinion, will it be 50/50? Do you or the Board of Wildlife Commissioners have any idea how many applications will be received?

Terry Crawford:

Current policy provides that nonresidents be provided with 10 percent of the tags in some hunts, 5 percent in the other hunts, and there were a number of hunts that used to have no nonresident eligibility. There are very few of those left.

[Terry Crawford, continued.] Working with the formula, the number of nonresident tags would undoubtedly increase. About 28 percent of the applications we receive for big game tags come from nonresidents, and that's been increasing. Certainly, their share of the pie will be a little larger, but we feel that the new or modified approach will provide a fair and equitable distribution based on a factual formula. I would guess that up to 15 percent instead of 5 or 10 percent of the tags would go to nonresidents.

Assemblyman Claborn:

I hope something works. If that is the vehicle, then that's fine. There are four or five other bills floating around here. The ultimate goal here is to try to do something, and if that is the one we should do, fine. However, if it's not, and one of the other ones is, we need to all work together instead of just saying that because it didn't come from the Wildlife Commissioners it's not right. That's all I'm asking. Let's all try to work together here for the betterment of this state and our hunters.

Terry Crawford:

As I said at the outset, we do appreciate your efforts. I think they're very well intentioned. We agree we all need to work together to make something work, because this is a very tough situation, both personally and professionally, for me and for the Wildlife Commission.

Assemblyman Goicoechea:

We're about three weeks away from the deadline to submit applications, and I understand. Are you waiting for the numbers to come in, and then you're going to go ahead and tweak and apply the formula, or do you have the formula in place?

Terry Crawford:

We just finalized the formula. Some of the numbers are based on previous data and some are going to be based on current data. We have asked resident applicants who apply online to tell us whether they applied in another state last year to hunt big game, and if, indeed, they hunted big game in another state, it's a factor we want to know because the whole issue is about the quantity of opportunity across all hunters. That's an example of one of the numbers we don't have yet. Applications by resident and nonresident, by species, by area, do you hunt in state, out of state—all those things are being brought into the formula.

Assemblyman Goicoechea:

Then you are anticipating out-of-state applicants will be somewhere in the 15 percent range or maybe a little higher?

Terry Crawford:

Using the numbers we have now, it looks like around 15 percent. Depending on the strata of applications from the various user groups and how they all perform, that's going to adjust up or down. In fact, if the population of a particular species of wildlife goes up or down, that will adjust the formula also by the number of applications.

Assemblyman Goicoechea:

I'm assuming, though, that if 50 percent of your residents are unsuccessful in drawing a tag, then you would require that 50 percent of your nonresidents also not draw a tag. Is that how you'd go about it?

Terry Crawford:

We've tried to get to equal opportunity, but I think there's some confusion that equal opportunity means 50/50. It does not, because of the percentage of applications.

Assemblyman Grady:

You mentioned that you have put a considerable amount of money into this program. Do other states' organizations use your program, and are you getting royalties from that? If you are, can you tell us about how much that is?

Terry Crawford:

There are six states that are using our program or similar versions or pieces of it. The only state that uses our program entirely is Utah. We asked them for \$125,000 for it, but we got \$75,000. We own the program, and we get to use any modifications they make to the program free of charge. A number of states use similar systems based on what we did, but that's really the only royalty we've received. However, we do have the ability to use any modifications they make.

**Chris MacKenzie, Vice Chairman, State Board of Wildlife Commissioners,
Nevada Department of Wildlife:**

The issue this bill is aimed at is one that has kept us up many nights, days, even months. It's a very serious issue that we've been dealing with, not only because of the impact it would have on us individually in applying for tags, but because Terry Crawford, the other eight members of the Board of Wildlife Commissioners, and I are all named individually as defendants in the lawsuit and are potentially personally liable for any damages that are paid. We are not taking this lightly. I want you to know we've spent quite a bit of time, and the proposal we've come up with recognizes that Nevada is basically the only state where you can't go buy some type of tag across the counter. It takes into

consideration residents of other states and the opportunities they have in their home states.

[Chris MacKenzie, continued.] The formula tries to give Nevadans a reasonable opportunity based on what other citizens of the United States have. Each year, it will adapt based on the percentage of applicants we get from out of state and our residents' own opportunities. If other tags go up, our success rate goes up, and we have a higher rate of applications from out of state, that percentage could go up, but if there are fewer opportunities for our residents and/or we had fewer nonresident applications, that percentage is going to go down. Right now, based on the projections, it's probably 15 percent at most; depending on some of the responses we get, it could be around 12 or 13 percent.

The formula determines what we think constitutes reasonable resident opportunity. That's what we're all after, and that's what the court said is a legitimate basis. We've put a lot of time into this, and I'd like to at least give it a shot. We'll probably know whether or not it's going to have a shot soon because, once we have the draw, or maybe sooner, we're probably going to be hauled into court by the plaintiffs challenging the validity of it. It's something that hasn't been done before, and it's something that wouldn't apply in any other state because of our limited resources and our limited abilities to hunt big game. We think it has a legitimate basis, and our attorneys feel good about it.

We're not out to exclude nonresidents. There is a problem of hunting having become commercialized. We have big outfitters submitting multiple applications for a lot of people. It has become a money game. That's not where we want to see hunting go, but, unfortunately, that is what it has turned into.

We're looking to provide reasonable resident opportunity. We have a wonderful program in place in terms of an online application process, which eliminates a lot of those allegations we all heard for years about corruption in the system. With an independent contractor and the computerized draw, we don't hear those comments anymore.

The Internet application process is something the hunters of our own state enjoy and enjoy the benefit of, and we don't want to take that away from them. There are a lot of people whom I don't think would necessarily take the time to go to a specific location, particularly with congestion and other time limits we all have in our lives. We don't want to take opportunities away from our own residents by getting rid of that system.

Assemblyman Claborn:

Could you give a power of attorney to somebody to come and fill out a game tag application for you? To my knowledge, I have never heard of that unless the person was handicapped.

Chris MacKenzie:

I was working from something in the bill itself that said you had to appear in person. You do have to submit your application. We do have one drawing, for the nonresident guided mule deer hunt, where guides and brokers can help you with applications, and there is a power of attorney process in that particular hunt. It can be done.

That's not the hunt we're being sued over, but United States Outfitters (USO) and other guides use that particular system. It can be done, but we assumed it would not be in this particular one, because you have strong feelings, and I certainly wouldn't disagree with you, that if we're going to make people personally appear, then we don't want to give them a way to not personally appear.

Assemblyman Marvel:

How soon do you think testimony will be given in Congress?

Terry Crawford:

Currently, there is legislation in the Senate concerning the commerce clause and the silence to do with hunting and fishing opportunity from Senators Reid and Ensign and a growing cast, and there is companion legislation in the House from Congressman Tom Udall and Congressman C. L. Otter. However, I don't think we're going to get relief from that legislation in time to do Nevada any good. We're on the front burner on this issue right now. There is litigation pending on this same issue in five other states, but we're the ones on the front burner right now. I don't think this will get done in time to relieve our situation.

Assemblyman Marvel:

What are the sanctions in this?

Terry Crawford:

The courts are looking for the states to develop systems for their own situations which fit with the Ninth Circuit Court's guidance, so we're sort of groping around for what fits. I think we feel very comfortable with our earnest efforts to be as fair as we can possibly be to all kinds of applicants for big game tags.

Assemblyman Marvel:

Is it just by implied law that states own their wildlife resources, or is there anything definitive that says the states own their wildlife?

Terry Crawford:

There have always been some of those assumptions based on previous case law, but, with specific exception where there is federal legislation, management of wildlife is a state responsibility and authority. We are simply trying to maintain that. Congress, addressing a silence on this issue in the commerce clause, is trying exactly what you're asking.

Assemblyman Marvel:

I think the most disturbing factor of all is the fact that it's a case of states' rights.

Larry Johnson, President, Coalition for Nevada's Wildlife:

First of all, I'd like to thank Assemblyman Claborn for sharing a common goal with all of us. We're in trouble in this, and we all need to put our heads together and come up with the most viable solutions. When this lawsuit first hit last July, we spent a day with Senator Reid's staff, and that was the origin of the bill he introduced last fall and again this year on our behalf. I am extremely appreciative of the Senator.

At the Commission and county game board level, there were questionnaires circulated, and the Department circulated them to all the sportsmen's groups around the state, asking for ideas and input on potential nondiscriminatory allocation of big game tags. Pages of suggestions were collected. When we conferred with legal counsel, it was obvious that most of them didn't pass muster in that the whole issue behind the lawsuit was discrimination against nonresidents. Anything that would be obviously discriminatory against nonresidents would not stand up in court and would welcome court intervention.

One of the items put forth very early was this exact proposal in A.B. 333. Upon analysis, our legal counsel felt it would not pass a test for legality. That is why we have not pursued this or any other similar proposal. I commend the effort, but don't believe this is the exact answer. Also, residents greatly enjoy the Internet application. We would put a major inconvenience or even deterrent on the residents if we disallowed that.

Fred Church, Chairman, Nevada Bowhunters Association:

I, too, would thank Mr. Claborn for the ideas he has brought up here, although our Association does think it a little premature at this particular time. As you

have heard from the other testimony, we, the sportsmen and the Nevada Wildlife Commission, are taking action we think is important.

[Fred Church, continued.] *Montoya v. Manning* was the Arizona suit. There have also been other suits, such as *Terk v. Gordon* [436 U.S. 850 (1978)]. Both of those suits had residents or nonresidents going after the Fish and Game Departments or Commissions. Their point was that it is unfair for nonresidents to apply. In *Terk v. Gordon*, Terk actually won. The same thing applied as in *Montoya v. Manning*, that there could be no discrimination against nonresidents. There had to be an equal draw. The situation with Terk specifically involved bighorn sheep and ibex, and nothing else.

Then, when New Mexico increased their fees, Terk took them to court. The case went all the way to the U.S. Supreme Court, who ruled that a state could increase fees. Arizona has bills in and has taken testimony to increase their fees for elk and other species. Our Commission has not done that.

If you enact A.B. 333 and have nonresidents apply in person, other states will do the same thing to us. Our residents who go out of state and like to apply elsewhere are going to be required to do the same thing. On that one point, I don't think that, at this time, this bill is good for the residents of the State of Nevada.

Speaking for my associate members throughout the state, if they lived in Las Vegas, Reno, Elko, or possibly even Ely, we do have Division of Fish and Game offices there. When you speak about "a location," whether that is one or four, we only have so many Division offices where applications could be brought. That would be very harmful to my people. We need to be able to use the mail to make our application, and, of course, we use the Internet. As you've heard, that is a great opportunity for all of us.

Going back to Mr. MacKenzie's and Mr. Crawforth's testimony, we heard this new mathematical formula that was approved unanimously by the Commission and all the county advisory boards who attended. All the sportsmen also thought it was a good idea. In these suits, no state has ever been able to state why they discriminate or have a reduction in nonresident tags. Nevada will be the first state to do that because we're the only state that does not sell over-the-counter tags.

We think we have a very strong position to defeat this court action. I ask you not to approve this particular bill today. I do think that if we don't win these suits, we'll be back asking for Mr. Claborn's support in doing something like this next session.

Assemblyman Claborn:

I can attest to that. This is just a backup because I knew I was going to get opposition, and rightfully so. The Wildlife Commissioners and the advisory boards had their meeting. If they think this is the one vehicle that's going to do the trick, I'm all for it. Thank you for the kind words.

Vice Chairman Atkinson:

I will close the hearing on A.B. 333.

Chairman Claborn:

We're going to go into work session 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)

Amber Joiner, Committee Policy Analyst:

[Read from Work Session Document ([Exhibit E](#)).] Assembly Bill 65's primary sponsor was Assemblywoman Peggy Pierce. Assembly Bill 65 requires the State Environmental Commission to adopt regulations that prohibit the disposal of electronic waste at solid waste landfills and other disposal sites. This measure also requires the Commission to establish a recycling program for the collection and disposal of electronic waste. A violation of these regulations is a misdemeanor.

A brief summary of the issues raised: Supporters of A.B. 65 outlined the many hazardous components in electronics such as microwaves, televisions, cellular phones, and computers. Those components include cadmium, mercury, copper, lead, and cathode ray tubes, to name a few. Proponents emphasized the urgent need to enact these provisions, since the number of electronics, such as computers and televisions, being disposed of is constantly increasing.

There was no testimony in direct opposition to A.B. 65. However, some were concerned that banning certain products from landfills without first fully studying recycling collection schemes, financing, and infrastructure may be premature. It was suggested that an interim study should be conducted before such provisions are enacted.

No amendments were submitted in writing during or after testimony. However, three amendments were discussed during testimony. The first was to change the date by which the Commission must adopt the regulations required by A.B. 65. Currently, the bill states that the Commission must adopt the

regulations by December 31, 2005. The second amendment under discussion was to require an interim study before prohibiting the disposal of electronic waste and establishing the recycling program. The third was to add a sunset on the provisions of A.B. 65 so that if the federal government passes similar regulations, these state requirements would be voided.

[Amber Joiner, continued. As far as fiscal impact, there is an effect on local government. It increases or newly provides for a term of imprisonment in county or city jail or a detention facility. There is no effect on the State government.

Assemblyman Marvel:

We have a provision that the Department of Taxation would be responsible for collection of the fees. Would this require additional personnel for the collection? Would there be enough money to pay for that additional person or persons?

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

I brought the amendment I've been working on ([Exhibit F](#)). I'm not sure whether this will require another person in the Department of Taxation. It will require someone at the Nevada Department of Environmental Protection (NDEP).

Assemblyman Marvel:

It might not be a bad idea if you checked with the Department of Taxation to see if they have enough personnel now to put the tax into effect. They might require additional personnel. It probably should be self-sustaining.

Assemblyman Goicoechea:

As you create this program, do you anticipate putting it in NAC or in statute? It would seem to me that it might be a little better to have it in Administrative Code so there would be a little more flexibility.

Assemblywoman Pierce:

I anticipate what's on this paper being in statute, and the rest of it being in code. I would just give the outline of the program in statute and then have them fill in the details.

Assemblyman Goicoechea:

For the collection system in the rural areas, which would stockpile the electronic waste onsite, would the owners of the landfill or the people who would pick this up be able to access this fund if it wasn't cost-effective to drive to Elko or Wells or someplace to pick it up? Would they have the ability to access this fee structure to fund or at least defray their costs?

Assemblywoman Pierce:

Yes, I would anticipate the fee program paying for everything, including whatever it takes to make this happen in the rurals.

Chairman Claborn:

Has the Committee had a chance to go over the amendment?

Assemblyman Carpenter:

It seems to me the amendment that needs to be made is to extend the date by when the State Environmental Commission has to adopt the regulation. There's one suggestion here ([Exhibit F](#)) that they establish regulation by September 30, 2006. The State needs to get going on this issue, because it's just going to get bigger.

My suggestion is that we extend it to at least September 30, 2006. This will give the Commission enough time. Then, if there's any legislation that has to be enacted, they'll bring it back to us in the 2007 Legislative Session. The bill says December 31, 2005, but I don't think that's good timing.

These other provisions ([Exhibit F](#)) are ideas the Environmental Commission will have to consider while they are talking about the issue. I don't think you can put these ideas into the legislation because they are something that has to be discussed with public hearings.

Assemblyman Atkinson:

I would personally like to see if we can fix this so it doesn't have to go to a subcommittee. I think we can all agree that the date in 2005 doesn't give them enough time, so Assemblywoman Pierce has changed that. I think we all can agree to that.

Mr. Carpenter, are you proposing to take Section 2, paragraphs a, b, c, and d out of the amendment and just allowing the Commission to work on it?

Assemblyman Carpenter:

Yes, my idea is to let the Environmental Commission work on this. Everybody will be bringing ideas to them. The only thing I think we need to do is change the date when they are required to adopt the regulations.

Assemblyman Atkinson:

I agree with Mr. Carpenter that these issues will come up during the hearings. We can certainly get these regulations to the Commission in a different form. I see that being workable.

Assemblywoman Pierce:

I actually wanted a little more detail in the actual bill, but if that's what the Committee wants, I'm okay with that. As long as the date is in there, I'm good with letting the Environmental Commission come up with the regulations.

Assemblyman Grady:

I agree with changing the date. The thing I'm concerned with is whether they can set up an account and work with the Department of Taxation, or if that has to be spelled out in the bill.

Assemblyman Carpenter:

Section 1 of the amendment ([Exhibit F](#)) says, "Leave date of ban for disposal into landfills same as bill." I don't know what that means. I don't see anything in the bill that says there's a ban on disposal in landfills.

Assemblyman Goicoechea:

I disagree. As I look at this, I think the State Environmental Commission can, under A.B. 65, create regulations that would prohibit this material going in a landfill. If we strike the rest of the amendment and take out NRS 459, which is where the funding is going to come from, my concern is that the Commission will make it technically illegal, but we won't address any of these other issues about how, where, or what does a landfill or anyone else do with this material? It will be illegal to dispose of it in a landfill, but where will we put it without the rest of the amendment? I'm sure that, as long as we can establish the legislative intent, it will be incumbent on the State Environmental Commission to adopt, through the NAC, regulations that address it this way. However, I'm a bit apprehensive about giving them a mandate that none of these electronics go to a landfill when we don't create any of the mechanism that would support it or fund it.

Assemblyman Carpenter:

I don't think we can set a date when they can't take it to the landfill until they come up with regulations that say how the electronic waste is going to be disposed of. My idea is on line 33 of A.B. 65 we say, ". . . on or before September 30, 2006." That would be my amendment.

Assemblyman Hogan:

I'm interested in the sponsor's feeling with regard to just changing the date of the regulations and not including in the bill the specifics of some of the principles that ought to be in the regulations. If, for example, the Environmental Commission decided not to create a fee program similar to California's program, therefore not creating the fund, then we wouldn't have much left except the ban. We might have to decide if we're really ready to pass this with nothing but

the ban in it, or if we should try to incorporate some guidance for the Environmental Commission that would require them to specifically consider these measures for implementing it. At most, we could require that those items be included in the final regulations. I'm not sure we want to set detailed requirements, because the Commission's process brings in a lot of wisdom and experience.

[Assemblyman Hogan, continued.] However, we might want to say that they must, as a minimum, consider each of these principles to ensure it all gets a careful look and a fair shake. To me, that's the choice. We either go for the bare bones and just get the ban for sure and then hope that each of these important elements is fully and fairly considered, or try to go one step further and include a requirement in the statute that those things, among others, be considered.

Assemblywoman Pierce:

This language in the amendment ([Exhibit F](#)), Section 2(a), 1, 2, and 3, was given to me by NDEP to create the mechanism for collecting the fees. I had the impression the Committee wanted a little more detail on what the program would look like.

I actually wanted to leave the date of the ban where it was, December of this year, just because the vast majority of the e-waste is now being warehoused. It's sitting in people's garages and that sort of thing. My feeling was that nine more months of that would not be a problem.

Also, NDEP had already told me that, during the ensuing year from the end of our session until the regulations took effect, they would hold two collection days in each of the urban counties. At least in the urban counties there will be a way to dispose of this immediately besides just sending it to the landfill. They'll work to set up a collection day so it's disposed of in a responsible way.

The idea of a fee program similar to California's was one suggestion from a member of the Committee. That seems to me to be the path of least resistance just because most consumer electronic goods are bought in big box stores. Most of these stores are exactly the same stores as in California, so if we adopt a fee program, it will be just like what has just been adopted in California and will be easy for the big box stores to implement.

If I need to go to a subcommittee and come back with the amendment actually written into the bill so it's easier for the Committee to see, I'm perfectly okay with doing that.

Assemblyman Marvel:

How is California disposing of this waste now?

Assemblywoman Pierce:

California's program, which went into effect in January, created a fee you pay when you buy a computer. They're starting a certification program for recyclers whom this waste can be taken to. I'm not sure whether California is doing collection days or if the electronic waste is being picked up at curbside. It goes to a certified recycler where it is dismantled. What is pulled out of it is recycled. California certainly has a more advanced curbside recycling program than we do in Nevada.

Assemblyman Marvel:

What do we do with this waste that we have here in Nevada during the interim?

Assemblywoman Pierce:

As I was saying, the vast majority of this waste is currently being warehoused. It is mostly in people's garages.

NDEP has told me that, during the interim, they will hold a couple of recycling times. I would hope that, in the rurals, it gets picked up and held onto from the end of session until September 2006, when we get these regulations. As I said, most people are just holding this waste in their garages. Businesses, by EPA standards, already have to recycle this as hazardous waste, so this is really addressing residential use.

Assemblyman Goicoechea:

My concern is for rural landfills, and there are a number of them across Northern Nevada. If we put the ban in place, what will really happen is that the operators of the landfills will refuse to accept the electronic waste, and, unfortunately, on his way back home, the citizen will roll it into a wash.

Chairman Claborn:

I'm going to assign A.B. 65 to a subcommittee. Mr. Hogan will chair the subcommittee, which will include Mr. Denis and Mr. Carpenter. I would like to see the recommendation from the subcommittee as quickly as possible. I'm sure you can work this out. I will close the work session on A.B. 65.

We are adjourned [at 3:28 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Attaché

APPROVED BY:

Assemblyman Jerry D. Claborn, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Natural Resources, Agriculture,
and Mining

Date: March 28, 2005

Time of Meeting: 1:43 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 73	B	Karen Kennard / SERC	Prepared testimony, SB 201 of the 2003 Legislative Session, and SB 73
AB 333	C	Assemblyman Jerry Claborn	Background for AB 333
AB 333	D	Terry Crawforth / NDOW	Prepared testimony
AB 65	E	Amber Joiner / LCB	Work Session Document
AB 65	F	Assemblywoman Peggy Pierce	Conceptual amendment