

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

**Seventy-Third Session  
April 11, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:30 p.m., on Monday, April 11, 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:**

Assemblyman Harry Mortenson, Assembly District No. 42, Clark County

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Ben Klinefelter, Artist and Private Citizen, Silver Springs, Nevada  
Thomas Crockett, Artist and Private Citizen  
Michelle Busk, Artist and Private Citizen  
Suzanne Cassidy, Artist and Private Citizen  
John Manley, Artist, Manley Pottery, Washoe Valley, Nevada  
Miguel Villalobos, Artist and Private Citizen  
Bob Crowell, Legislative Advocate, representing Clark County Library District  
Nicole Lamboley, Legislative Relations Program Manager, Office of the City Manager, City of Reno, Nevada  
Bill Bradley, Chairman, Board of Wildlife Commissioners, Nevada Department of Wildlife  
Fred Church, Sportsman and Private Citizen, Reno, Nevada  
Larry Johnson, Sportsman and Private Citizen, Reno, Nevada  
Terry Crawford, Director, Nevada Department of Wildlife  
Patty Wagner, Supervisor, License Office, Nevada Department of Wildlife  
Steve Robinson, Natural Resource and Rural Advisor, Office of the Governor

**Chairman Claborn:**

[Meeting called to order. Roll called.] We're going to hear two bills today. We won't have a work session on A.B. 407 today. We'll open the hearing on A.B. 351.

**Assembly Bill 351: Requires adoption of certain regulations concerning display and sale of art in state, county and municipal parks. (BDR 35-555)**

**Assemblyman Harry Mortenson, Assembly District No. 42, Clark County:**

The purpose of A.B. 351 is to help emerging artists. I met Mr. Klinefelter at an art fair last session. He decried that artists are discriminated against in this state and how, in many places all over in Europe and in this country, artists enjoy the ability to freely exhibit their art and paint while the public watches.

Artists need that because the emerging artist does not have the means to enter organized events where he has to pay \$200, \$300, or \$400 for a little shade and a roped off area to work in. The emerging artist has a job down at the car wash and would like to get into art full time but cannot because he has no place to display his art. I started to do this bill for the State, but then people started bombarding me with court decisions, such as *Carey v. Brown* [447 US 455 (1980)], where the federal courts had come down on these entities for making

it much too hard for artists to exhibit. This bill directs cities, counties, and the State to adopt regulations consistent with rulings of the United States Supreme Court.

[Assemblyman Mortenson, continued.] Some newspaper articles have said that some governmental entities had rules and policies that were unwritten. We all know what unwritten policies do. How someone makes a decision when policies are not written depends on whether he got up on the wrong side or the right side of the bed.

**Assemblyman Hogan:**

In some places in the bill you describe an artist selling his or her own work, and in other places a person selling art. Are we providing a greater degree of protection or ease of access to those who are selling their own creations than to those people who may be just selling anything that could fit into the general category of art?

**Assemblyman Mortenson:**

This bill protects people who are selling their own creative works. If a gentleman buys 100 prints, frames them, and sets up in the park, he's not subject to these rules. He is a vendor like anyone else.

However, if an artist is displaying his own creative works, he's protected under the First Amendment. There are some qualifications that the work had to be religious, political, philosophical, or convey a message, but those qualifications seem to be evaporating.

The Supreme Court took some of the most abstract things that they could imagine: a poem by Lewis Carroll, the works of Jackson Pollock, and the music of Schönberg—people sometimes wonder if it's really music [*Spence v. Washington*, 418 U.S. 405 (1974)]. The Court said just because you don't understand it doesn't mean they're not trying to convey an important message. The Supreme Court has declared that not just explicit messages but also implicit, abstract messages are protected under the First Amendment.

**Assemblywoman Smith:**

Is there a definition of "recreational facility" somewhere? A lot of the events in Sparks occur, not in a park or these other areas, but in the redevelopment area.

**Assemblyman Mortenson:**

The courts recognize the where, how, and when. A.B. 351 says the authorities will make the decisions of where, how, and when, but they must be reasonable. If there's a recreational facility that could be destroyed or if there's a nice area

of the park where the artists can display, and you don't want them in the recreational facility, certainly the authorities can tell them where to exhibit.

[Assemblyman Mortenson, continued.] There was an instance in the Sparks case when the authorities told this gentleman he could exhibit, but across the railroad tracks behind the port-a-potties. The courts said they can't do that because they had allowed artists there at other times, so they must allow him there, too. The courts said the authorities had attempted to prevent him from exhibiting. The where, when, and how has to be reasonable, but it certainly still exists and will be a big factor.

**Assemblyman Denis:**

I'm wondering, when you say "cultural facility," if you are talking about a theater—maybe an outdoor amphitheater or even an indoor theater or concert hall.

**Assemblyman Mortenson:**

There are many parks that already do that. There are so many examples of theater in the park. In this bill, I said initially that artists would have free access and free ability to sell. I contended that this just enforced the law of the land. I talked at great length with the Legal Division about this, and they said that it has to be free is the one provision on which the courts have never agreed. So I took it out with the amendment I have provided ([Exhibit B](#)). I also had some objections from some of the city and county lobbyists who didn't like "free" being in there. I hope that now, after taking "free" out, there will be no objection to this bill.

**Assemblyman Denis:**

You're anticipating that they will charge a fee?

**Assemblyman Mortenson:**

They can charge a fee. They have all these exhibits. In the south, Boulder City has a huge art festival that lasts about a week. They rent spaces to artists who literally come from all over the country. It has quite a reputation, and I wouldn't want to impede that. I'd love for it to grow, as would every artist here, and there are a lot of them. I took "free" out because there was too much concern that it would hinder those meetings and those exhibits.

**Assemblyman Denis:**

What is the definition of art?

**Assemblyman Mortenson:**

I don't know. I would think anything, whether it's graphic, sculpture, pottery, or putting strings around nails on a board, that is creative.

**Ben Klinefelter, Artist and Private Citizen, Silver Springs, Nevada:**

I would like to help further the art cause. I would also like more of a chance for the youth to help and to be able to hone their skills so they can participate in art shows as well. A lot of times when you start out, you're not sure what the public is going to think of your artwork, and you want to sell it so that you can continue being an artist.

Your question about the definition of art opens a Pandora's box. My friend John Manley makes beautiful, big vases. You can't put water in them and you can't lift them by the handles, so they're sculptures of vases. The Supreme Court talks about the difference between art and crafts. There is a fine line, because a pot might be more about the glaze and what you've done with it than the fact that it's a pot.

**Assemblyman Denis:**

Does it include performance arts?

**Ben Klinefelter:**

Yes, because singing is expressing yourself. So is dancing.

**Assemblyman Grady:**

When we heard this bill in Government Affairs, a couple cities and counties had questions, mainly about fees. Since they are not here, I assume you have worked out all the problems they had?

**Assemblyman Mortenson:**

I think it's a question of wait and see. I hope that taking out "free" will moderate any objection. The way the bill was written is the law of the land, according to decisions of the Supreme Court. Whether this bill is passed or not makes very little difference in how cities or counties could be sued by an artist for what they do. The big difference is that this puts it in regulation, and I think it's a good idea to have regulations instead of ideas that are not even on paper. That's about the only difference this bill makes.

**Assemblywoman Kirkpatrick:**

I have three children in creative art school, so I'm a big fan of the arts. However, I still have concerns. I want to know what type of equipment the artists would be bringing.

[Assemblywoman Kirkpatrick, continued.] What is art? I think it's more than just painting a canvas on an easel that you might set up in a park. A lot of people think glass blowing, ceramics, and music are art. Nowhere in the bill does it state whether they would be able to set up shop in the park, but I don't think that's what we're trying to do.

**Assemblyman Mortenson:**

Whatever they could do with this bill they could do without the bill. They could try to set something up in the park that would be inappropriate or present a danger to the public. It's up to the authorities to decide the where, when, and how, and to tell them if something is dangerous for the public. If the artists were to take it to court, they'd probably lose if it was dangerous to the public.

**Assemblyman Carpenter:**

Where I come from, we have various art-in-the-park functions all the time. Sometimes there are just one or two artists down there on their own. Is this really a big problem? I thought most counties and cities already had ordinances to deal with these situations.

**Assemblyman Mortenson:**

Let me mention the case of *White v. City of Sparks*. Sparks had wonderful rules. They said an artist's work is protected by the First Amendment. He doesn't have to pay a nickel and he doesn't have to get a single permit.

The problem was they put all kinds of obstacles in the way. They said an artist had to go before a jury and then buy this license and that license, a sales license, a peddler's license, and so on. When the case came before the Ninth Circuit Court, the judge said the City of Sparks could not impose all those requirements. They had to consider not only explicit and very definite art as constitutionally protected, but also those things which are very implicit and very abstract.

That's what the City of Sparks did not do. Mr. White sued them because they wouldn't allow him to do his art, painting landscapes, which the Court said was protected under the First Amendment. The Court also said the City was too strict in its determination of what was constitutionally protected and what was not. In spite of the U.S. Supreme Court having cited Schönberg, Lewis Carroll, and Jackson Pollock, whose work was very abstract, the City of Sparks chose not to be very generous in their determination of what was constitutional.

To answer your question, yes, many agendas are very good. Many cities are probably right on cue and do exactly the right things. However, some do not, and that's what this bill is aimed at.

[Assemblyman Mortenson, continued.] Mr. White, who brought these cases against Reno and Sparks, also did the same thing in Apache Junction, Arizona. They fought him at the time, but a few years later he got a letter saying, "We're pleased to announce you've been nominated for the 2005 Governor's Arts Award." He transformed the town and everybody is happy. It's an artists' mecca. The letter further says, "Your nomination is an indication of the regard you have earned among your colleagues and community. We are pleased to recognize your contribution to the arts in Arizona." It's signed by the Arizona Commission on the Arts and Cultural Development. He made a big difference, and everybody is happy with the transformation.

**Assemblyman Carpenter:**

But the bill actually makes it mandatory that they adopt "reasonable" regulations. We're in an area that is very liberal about letting people set up their displays. If you make them adopt these regulations, maybe they're going to make them more stringent than people want.

**Assemblyman Mortenson:**

There's a possibility new regulations could be more stringent, but if these artists take it to court, another thing this bill could do is save hundreds of millions of dollars in aggregate [lawsuits] for all the communities that might try to prohibit what is constitutionally protected. The bill says to adopt regulations. If they do their homework about what circuit courts in this area and the U.S. Supreme Court have said, they're going to write their regulations correctly. There should be no lawsuits. I don't want to cram anything down anybody's throat; I just want to help emerging, struggling artists get a foothold.

**Ben Klinefelter:**

Think about how much emphasis has gone into sports in parks and how much money goes into that every year. We're just asking for a little bit of cooperation and support so we can show some of our artwork. We also want the youth to easily be able to see the joy of the creative process.

The permits and regulations are a way to stop people bringing in buy-and-sell items. When you place all these restrictions before the elderly and the youth, it gets so complicated that they just don't want to do it. It's just too frustrating. If you're worried about being overrun by artists in places like downtown Reno, take into consideration the logistics of the artist being easily able to set up and unload.

Artists just want a place where they can park their vans and unload without such a big hassle, to be able to park and paint. When you paint in a park, you've got inconveniences like flies landing on your painting, and that's not

conducive to a good atmosphere. I would rather work in my own studio at home. A lot of times when I sculpt in front of people, I can't use the clay again. I just do it to show them how it happens, the creative process involved, and to be able to see someone's joy when I sculpt in front of them.

[Ben Klinefelter, continued.] I would like to see some artists come out and mentor some of the youth. You're not going to be swamped with a bunch of artists going out to make a lot of money. Many professional artists aren't going to want to do this because of the logistics. They will continue to want to do the special event shows because they're the ones advertised. Those shows bring out large numbers of people, which is necessary to make a profit. There shouldn't be a fear of losing revenue in that way.

This should be used as a way to bring up a new batch of artists. I've done the art show circuit for some 30 years now, and one of the things I noticed was the lack of youth. When I started, I was young. All of a sudden I realized we're all gray-haired. We're all getting old together.

Older people mentored me when I was young, telling me what I should do. I used to be very enthusiastic about getting people to be artists and to quit their own jobs and go for it. In the last few years, I would really have had a hard time saying that, because it has gotten very tough. I get about half of what I used to sell my art for. These are just tougher times.

The arts really are important. So is self-esteem. Even when I would go to a show and do poorly, I would come away feeling pretty good because everybody would have said, "That's wonderful stuff." I would think, "They thought that was good! I'll try to make it even better next time."

We should have someplace where artists are accepted and not run off. A little encouragement for them to come down shouldn't cost much money at all, because they're bringing their own artwork. If the government does want to pitch in a little bit, it could maybe be some sort of wall with hooks in it where artists could hang their paintings, or maybe some concrete pedestals here and there where they can set their sculptures. One concern is the liability of setting up a big booth and a tent and everything. Having done these shows all these years, I know the winds can come and blow those tents away.

**Assemblywoman Kirkpatrick:**

My biggest problem with this bill is the part about selling art in parks. In Reno and southern Nevada they have art districts. In southern Nevada on Fridays you can go display your art. There are about two city blocks at the malls where they



allow you to display your art for free, but nowhere do they allow you to just set up shop.

[Assemblywoman Kirkpatrick, continued.] Being a vendor myself, I have to pay business fees; I have insurance requirements. I have no problem with someone going to the park and creating art. To sell your art, though, is something else. If you were sitting there painting and somebody wanted to know more about your business, I would be more comfortable with you giving them your business card and saying, "You can visit my studio." If I have to pay a license fee and all kinds of other things, why should you be able to sell your art there just because you're creating something you love to do to begin with?

I know the intent is right. I'm a big fan of art. However, couldn't you take that entire part out of your bill about selling it?

**Ben Klinefelter:** No. Part of the point is that your art is your words. The Supreme Court said, "It is well settled that a speaker's rights are not lost merely because compensation is received. A speaker is no less a speaker because he or she is paid to speak." That's the Supreme Court in the case of *Lakewood v. Plain Dealer Publishing* [486 US 750 (1988)].

**Assemblyman Mortenson:**

I had considered putting something in the bill about not selling art in the park. When I read the Supreme Court decision, I thought that would be unconstitutional, so I didn't put it in the bill.

**Assemblyman Denis:**

The way I read it is that the city can charge a fee to the artist. It's not like they're just going and doing this for free and making money. The amendment ([Exhibit B](#)) is allowing them to charge a fee.

**Assemblywoman Kirkpatrick:**

It says you can charge fees, but we're talking about charging fees to use the park. We're not talking about fees to be a vendor in the park. When we heard this in a different committee, we talked about fees when you go to an art show. We're talking about everyday business here. You're really setting up a business without any overhead because you're in the park. I'm trying to get to the bottom line. Is there a fee for business? Do they have to register as vendors? Do they have to have a business license?

**Assemblyman Mortenson:**

Since we are retaining the where, when, and how, what permits the artists are required to get are totally up to the relevant entity. They have the right to put

whatever fees they want and whatever permits they want. Not because of the bill so much, but because of the decisions that were made in the Sparks case, they have to be moderate or they're going to be taken to court. However, they still can charge fees for the artists exhibiting in the park. They may have a vendor's license. I don't know what they might do, but it must be moderate.

If you think about the freedom of speech, you might think like Sparks, who did charge nothing for a work that was protected under the First Amendment. It is traditional for Americans to go to the park to deliver political speeches, and it seems a little un-American to charge a fee for that. This too is self-expression.

**Assemblyman Marvel:**

Do you have to have a business license to sell your art?

**Ben Klinefelter:**

I had gotten one before I realized my rights as an artist, yes.

**Assemblyman Marvel:**

Have you collected sales tax?

**Ben Klinefelter:**

Yes, and I still have collected sales tax. But that was before I realized my constitutional rights on this.

**Thomas Crockett, Artist and Private Citizen:**

Over 35 years ago, when I started out in the business as an artist in the Bay Area, I was allowed to set up in the streets. I learned my craft and my trade from other people I met there.

However, there just aren't that many new artists. Mr. White, who was mentioned earlier, has set up community art shows and places where people teach one another. That would be an outstanding benefit to citizens of Nevada, and I'd like to see that happen.

**Michelle Busk, Artist and Private Citizen:**

I'm an emerging artist, and I've had problems getting into large art shows. The people who go every year get in first.

I would love to be able to show my work and see the community's response to it. I'd also love to be able to sell it so I could afford to buy more clay. I would love to see artists in the parks in Carson City. I'd love to see artwork in Carson City. I think there can be regulations to prevent people bringing their gigantic kilns or setting up a sound stage.

[Michelle Busk, continued.] I'm always excited when I come to a little town where there are artists showing their work without having to go to a major event. I don't want to go to those major events myself unless I'm selling there, but when I see community down in a park, and some artists, I just love to go see what they're doing. It's exciting.

**Suzanne Cassidy, Artist and Private Citizen:**

I'm here in support of this bill. The arts are important to show the community where our heart is. I've lived in this area since 1955, and I really feel like we're starting to lose that part in this particular area, and to see arts in the park would be a benefit to society. Having raised three children here, I know that many of our children are no longer getting art in their schools; art has been pulled from the curriculum. Many communities do have subsequent programs to fill that in, but they've also lost funding. I think A.B. 351 should be considered, and I look for your support of it.

**John Manley, Artist, Manley Pottery, Washoe Valley, Nevada:**

I've been doing art in Washoe Valley for nine years. Being an artist is an extremely difficult and challenging way to make a living. I think the passion for doing it and for conveying one's expression is the sole reason to do it. No one is making a lot of money out there except the people who are promoting the art fairs.

I do about 12 to 15 art fairs a year. I also market my work through galleries and interior decorators. The Genoa Candy Dance charges a \$380 entry fee plus a \$25 what they call a jury fee. There are about 320 available booths and over 1,200 applicants. How many emerging artists have \$380 plus a \$25 fee they can write off, whether they're in or out, to be able to express their artwork? That's just one example.

I went to college and learned my trade. It was extremely difficult to do that. You accumulate all this work if you're a visual artist, whether it be painting or ceramic sculpture, and what do you do with it? You're not even allowed to sell it. You can maybe get it into a gallery if they're willing to take non-professional works, or you accumulate a number of pieces. Maybe the school will have a Christmas sale or something like that where you have an opportunity to sell it, but generally, when you're up and coming, you give it away as gifts.

It would be nice to be able to learn more about the business end of art while you're in school. I'd be willing to bet that a lot of the reasons they don't teach that is because that's business. That's not art. You don't learn how to do business in art school. I'd also be willing to bet that a lot of the art teachers are teachers because they couldn't make it professionally as artists.

[John Manley, continued.] Anyone who has a business and makes artwork has a resale number. They pay sales tax, they have a business license, and that is revenue for the county and State that possibly goes to the parks. I think it's illegal to sell something and not collect and pay sales tax.

I don't think any professional artist is going to look at this bill when some facet of this bill is amended, because we are in America. We have the right of creative expression. Whether it's this initial bill that goes through or we have to continue to fight for something to finally go through, it will go through. I just would like to see something happen sooner than later because the City of Sparks has contested twice.

**Miguel Villalobos, Artist and Private Citizen:**

I'm disabled; I have breakthrough seizures. As an emerging artist, the wall I'm hitting right now is Social Security, living off of \$500. Coming up with \$300 plus the \$25 to exhibit at the Candy Dance is something I'd never be able to do. To be able to get my name out there is almost impossible for me. I think I, personally, would really benefit from this.

I really believe that if I could become an artist, I'd also become independent and get off of Social Security. I wouldn't have to worry about going to work, cracking my head, and having a grand mal seizure, which has happened many times. I could have a seizure in my studio and I'm free. I don't have to worry about the boss afraid of me suing.

I want to be independent and make a living. This is basically my only option out. I love art, and I always have. I watch the people in the art shows and grow as an artist. For me, this would be awesome. My goal, as I said, is to get off Supplemental Security Income (SSI), which would build pride by being on my own rather than relying on SSI, which I know people pay taxes for.

I'm starting to lose inspiration because I see all the drawbacks. I can't come up with the money to go to shows. I have to talk to people who would say I can go over here where they have a big art show, but I have to pay a price. If I had the money, okay, here's the price. However, for me, money is a major problem. I'm a carver. That's what I'm trying to do, and I'm doing well, yet I can't show it.

**Bob Crowell, Attorney, representing the Clark County Library District:**

With the amendment offered today, we have no opposition to the bill. We support the arts, and we support the First Amendment.

**Assemblyman Carpenter:**

Do you have any rules or regulations?

**Bob Crowell:**

We do have some. If the bill passes, we'll have to look at them to make sure those rules are in compliance with the Supreme Court decisions.

**Assemblyman Carpenter:**

So pretty much anybody can be on display?

**Bill Crowell:**

I could not answer that without looking at the rules again. I would be happy to do that and get back to you.

**Nicole Lamboley, Legislative Relations Program Manager, Office of the City Manager, City of Reno, Nevada:**

Those of you who sit on the Committee on Government Affairs will recall we testified about concerns on A.B. 351 related to the fee structure. We appreciate the bill's sponsor removing that provision. Our city council will be addressing this issue on Wednesday. We are adopting an ordinance related to the First Amendment artisan.

I want to read you a few of the definitions that we're using. A First Amendment artisan is a person who engages in free-speech-protected activities by displaying, eliciting, or accepting contributions for selling or offering for sale, exposing for sale, or soliciting offers to purchase handcrafted arts and crafts on public sidewalks. A sidewalk speaker, in contrast, is a person who engages in free-speech-protected activities on public sidewalks, including public oratory and distribution of literature.

We understand the need for complying with the Supreme Court cases. Maybe this bill could be improved by giving some reasonable definition, such as what art is and how you define art. Perhaps we could say, "reasonable regulations concerning artisans protected by the First Amendment." That might help clear it up a little bit.

The text of the bill actually says you must adopt reasonable regulations concerning the display and sale of art in any of the recreational, cultural, or park facilities within its jurisdiction. "Any" would include private facilities that we would be responsible for adopting regulations on, but we obviously don't have the authority to tell the Lear Theater or Pioneer Theater or Nightingale Hall at the University of Nevada what their regulations should be. They're privately funded nonprofit organizations. We would be committed to working with the bill's sponsor to further define legislation that would take care of the Supreme Court's decisions and existing case law. Also, "parks, recreation facilities, and cultural facilities" is very broad. That would probably require a

local government to specify for each of those facilities or parks the time, place, and manner, because not all parks and all facilities are equal.

[Nicole Lamboley, continued.] Those are some of the concerns of the City of Reno, which does have an art district, and which is very committed to the arts. We certainly do not want to limit those who are protected by the First Amendment but, rather, come to some workable solution.

**Assemblyman Hogan:**

This bill, A.B. 351, represents an opportunity for us to support the concept of the individual artists by making sure that publicly owned local facilities are available under reasonable circumstances. It ought to be made clear that these are parks that are under the ownership or control of the county. The bill may be a bit loose as written.

Art is a higher realm of human activity, and one that's threatening to get lost in the hustle and bustle of today's society and the cost of school systems. This is something we ought to try very hard to get done. We shouldn't pass a bill with loopholes, but we ought to solve any little problems we might have and get on with it. I hate to see a very commendable effort put off until another session without it being due to any serious problem. I'd like to see us make a real effort to tighten up what few things may bother us and not necessarily hold artists to the same standards of fees and costs and licenses that we might hold sports activities or something.

**Assemblyman Carpenter:**

I worry whenever we tell local governments they have to come up with some kind of rules and regulations. You don't know where it's going to end. Their lawyers will be looking at all the opinions from the different courts.

There's probably a lot of concern about how entities like museums and convention centers and other public buildings are going to handle it. If you have specific examples where communities are not letting people display their art, you need to take them on an individual basis. I really worry about trying to make every community and county in this state come up with some rules and regulations, because it will be a hodgepodge and may do more damage to the people you're trying to help than anything.

**Assemblyman Mortenson:**

The last person testifying from Reno was worried about getting into private organizations or private entities. The Supreme Court decision says "public," and the bill says "public." We're only talking about public locations; we're not

talking private. Nobody is going to try to force anything on private organizations or entities to make them let artists exhibit.

**Assemblyman Atkinson:**

I don't know if a bill format is absolutely the way you want to go. Have we looked at maybe doing a resolution? I think that's where this belongs. Ms. Joiner, do you know if we have enough time to do that?

**Amber Joiner, Committee Policy Analyst:**

I'm not familiar with that procedure, but we have one more meeting before the deadline, and I can look into it before then.

**Assemblyman Atkinson:**

Mr. Mortenson, it's up to you and the Chair how you want to go about it, but it sounded like the Committee felt more comfortable with it that way.

**Assemblyman Mortenson:**

Mr. Chair, maybe there should be a vote, go or fail.

**Assemblyman Goicoechea:**

I'm concerned that this bill is going to exacerbate or create a bigger problem with lawsuits. It's going to be local government versus the artists. I recognize where the Supreme Court has gone, but now, by statute, we'd be mandating that local government do this. I'm concerned it's going to fill our courts. There are people out there who would love to try this in a court of law, and unfortunately, especially in some of the rural communities, there might be some people willing to oblige them. I would hate to see that happen.

**Assemblyman Mortenson:**

Both Reno and Sparks have been shot down once, and on two appeals they were shot down. That's a lot of money to waste.

**Assemblyman Goicoechea:**

I agree, and I'm concerned that if we put this in statute it might just create a larger problem. There will be more people willing to take a shot at it then. Local governments are saying the same thing. It's still going to have to be regulated. That's where it gets to be an issue.

**Assemblywoman Kirkpatrick:**

I support the arts, and that's why I think it should be a resolution. Rather than putting the fate of the bill on the record today when some people are so uneasy, maybe we could give it until Wednesday, by which time it could maybe be amended to more closely mirror the Supreme Court decisions. We could maybe

hash out the few uncertainties that we have by then. Mr. Mortenson, can you give it another 24 hours and see what we can work out?

**Chairman Claborn:**

Mr. Mortenson, if you're willing to wait and take a chance, we can try to do that for you. However, if it doesn't pan out, we're getting close to the deadline.

**Assemblyman Mortenson:**

It all boils down to the pleasure of the Committee.

**Assemblyman Carpenter:**

A few years ago when a certain Senator wanted to introduce a bill that mandated a bunch of things, I was able to talk him into doing a resolution, and that was much more effective in getting what he wanted to get done than if he had put it in a bill with a lot of mandatory regulations.

[After consultation with the Legislative Counsel Bureau's Legal Division, the decision was made to keep the legislation in bill form, but change the mandates to recommendations.]

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 351.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

**Assemblyman Mortenson:**

I can see Mr. Carpenter's wisdom and his seniority. I think he knows what he's talking about.

**Assemblywoman Smith:**

I appreciate the effort to keep this going. I think we have to strike what balance we can to try to make this happen. We talk a lot about the bigger local governments, but we also have a lot of smaller governments. We had several artists here today from Silver City. I think we can work with this so that large and small governmental entities can survive and cope with whatever we come up with. I thank the sponsor for being willing to work on this and the Committee for moving it forward.

THE MOTION CARRIED UNANIMOUSLY.



**Vice Chairman Atkinson:**

Next we'll open the hearing on A.B. 226. The sponsor is Assemblyman Claborn. Mr. Claborn, we have heard this bill, and I know you've been working on it, so we'll take your comments.

**Assembly Bill 226: Limits period during which person may serve as member of Board of Wildlife Commissioners. (BDR 45-621)**

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

We have already had a hearing on the first part of A.B. 226 regarding term limits of the Board of Wildlife Commissioners. During that hearing, I said I would propose an amendment (Exhibit C) regarding predator control. Currently, the application processing fee for a game tag is \$3, and the fee is used for the control of predators. When this law was passed in 2001, I had expected that this money would be spent on the predators of mule deer. Unfortunately, money has been spent on the natural predators of the mule deer, such as coyotes and mountain lions, and there are still significant problems.

The amendment proposal is a \$5 increase in the application processing fee. It also requires that the revenue from the \$8 application fees be used only on a program that manages the control of natural predators of the mule deer because the mule deer population is extremely low. In fact, only 37 percent of our hunters who draw a mule tag deer are actually successful in harvesting a deer.

Our constituents who hunt deer want more predator control. According to the survey (Exhibit D), two-thirds of the hunters agree there is need for more predator control. I have discussed these fee increases with sportsmen, and they agree it would be worth the increase in the application fee if the money was spent to control predators of mule deer and help the mule deer population.

We haven't spent enough money on predator control. We haven't generated enough money to get the job done. This bill is going to give the Nevada Department of Wildlife (NDOW) quite a bit of money. They will hire a firm to come in and take care of the predators and predator control. Eventually, if we don't do something, we won't have any deer.

**Vice Chairman Atkinson:**

There were two parts of this bill. One part dealt with term limits, and the other part dealt with predator management. However, you've had a change of heart as far as the term limits go. So are we just dealing with the predator portion?

**Assemblyman Claborn:**

Yes, I had a change of heart with regard to term limits.

**Assemblywoman Smith:**

I have strong feelings about term limits. I felt it was important that that be amended out of the bill, and the Chairman was certainly willing to do that. Would it really be your intent for all the predator money to go just to mule deer or only the new portion?

**Assemblyman Claborn:**

In the bill are two parts. Sixty percent would go to predator control and the other 40 percent of the fees would go to the preservation of mule deer, which would mean money for habitat, or, if it snowed too heavily, they could buy hay. NDOW can do whatever they want with the money. My concern is getting the money for them. Just 60 percent of that money would go for predator control. The other 40 percent would be used for preservation of mule deer, which is putting transmitters on deer for surveys, buying seed for bush seed, and so on, whatever they need to do. I think it's really important that we split that.

**Assemblywoman Smith:**

I appreciate that, but the way I read this the predator control money would be all directed toward mule deer. If we could just get a clarification from staff about that, I would feel more comfortable. It says in Section 3, subsection 1(a), "programs for the management and control of the natural predators of mule deer." I read it that all money would go to natural predators of mule deer, and I didn't think that was your intention.

**Assemblyman Claborn:**

The intention was that 60 percent of the money would go for predator control only. The other 40 percent would go into the second part, where they can use the money for anything for habitat or whatever they wanted to do with the money regarding the mule deer. Any time you take care of mule deer, you're taking care of most other game as well.

**Amber Joiner:**

I'll take the blame for drafting this. Chairman Claborn indicated he did want the money to be for mule deer. The way it's currently drafted, 60 percent would be for the predators of mule deer, and 40 percent would be for other things related to mule deer such as habitat. The way it's currently drafted, it applies only to mule deer.

**Assemblyman Grady:**

I have the same concern as my colleague. This amendment is out except for Section 3, and Section 3 needs to be redrafted so it doesn't address just mule deer.

**Assemblyman Claborn:**

I don't want to take out that it's only for mule deer. I only want to take out the term limits.

**Assemblyman Grady:**

So all the new money would go toward mule deer?

**Assemblyman Claborn:**

Absolutely. There's a \$3 fee now for predator control and damage control. If I'm correct, last time we had 112,000 applications, and we received \$3 per application for big game. It amounted to \$336,000, and that just was not enough money.

**Assemblyman Denis:**

But that \$300,000 was for all game tags.

**Assemblyman Claborn:**

Yes, the records in front of us show it was 112,000 tags. The Predator Control Program gets \$3 for each one of those big game tags, yes.

**Assemblyman Denis:**

If we're getting the money from all the game tags, why are we not putting some of the money back into predator control for some of the other game?

**Assemblyman Claborn:**

There's a lot of money. I don't want to say the money is spent on ravens or snakes, but where I want to see the money spent is bringing back the mule deer. This is my fourth term. When I came up here, the deer population was dwindling. It's worse now. If we don't do something, we're not going to have any left. They use a lot of money, like that from Assembly Bill 291 of the 71st Legislative Session, for other programs. Other programs, like the mountain sheep, need money too. But when you talk about deer hunting, there are a lot more deer hunters that file big game tags than sheep hunters, et cetera, because there are more people that hunt deer. There's all this money in the Heritage Fund, which generates almost half a million dollars, and they can use that for anything they want to use it for. I'm saying let's use this predator control money.

**Assemblywoman Kirkpatrick:**

I thought you said you understood it was supposed to be 60/40. However, is that or is that not all supposed to be for mule deer in the 60/40 split?

**Amber Joiner:**

The way it's currently written, it would be only for mule deer. Sixty percent would go towards the control of natural predators of mule deer. Forty percent would go towards things such as habitat for mule deer.

**Assemblywoman Kirkpatrick:**

So would it not have a fiscal note because we're taking the \$3 away from what they currently use the \$3 for, or does that not matter because we're now adding \$5 to the pot? It was \$3, but we're taking the \$3 out for something else.

**Bill Bradley, Chairman, Board of Wildlife Commissioners, Nevada Department of Wildlife:**

Mr. Claborn and the sportsmen worked very closely in 2003 to get a \$3-per-application fee for every application for a tag. The majority of those tags are mule deer, bighorn sheep, elk, antelope, a few mountain goats, swans, and turkey. We have a tag process for those two birds as well.

When we passed that \$3 fee, it was dedicated to predator management of all game and nongame species, and included such things as raven projects to protect sage grouse. We've had a very successful raven project, because ravens have a significant impact on the water fowl populations. Some very dramatic studies showed that by using some selective raven control, we were able to dramatically improve water fowl numbers in some of our wildlife management areas.

The concern is that this bill, as currently written, would take the predator fee from \$3 to \$8. Forty percent of that entire \$8 would go to habitat improvement for mule deer, and 60 percent would go to predator control for mule deer. We currently have projects on the ground in predator management where we are protecting species other than mule deer. We just completed an antelope fawning project in northern Washoe County, where we were selectively reducing the coyote population, and we saw a significant survival rate of antelope fawns.

The Chairman is trying to get this agency money, and that's appreciated. I believe, from the sportsmen's perception, though, the idea of limiting either predator management or habitat fees exclusively to mule deer would be of great concern. However, that's what the bill says.

**Assemblyman Claborn:**

That's correct.

**Fred Church, Sportsman and Private Citizen, Reno, Nevada:**

I'm going to speak for myself as a sportsman, not for the groups I represent. We thought we were coming today to address all the amendments. However, I'm going to address Section 3 only.

All sportsmen, going through county advisory boards, through the Commission, and through the Department all agreed with that \$3 fee. Taking that \$3 now and including it in the \$8 would take away from other predator control that we do, and that is very important. I'm sure you're all aware of all the studies on sage grouse. We need to have that. We also do transplants. When I was on the Washoe County Advisory Board, I added to the transplant information the concept that we should do predator management—taking out mountain lions or whatever might cause problems—at the same time we do transplants in order to get the best releases possible. That's an important part of that \$3.

So, in Section 3.1(a), where it says, "natural predators of mule deer," we'd like to have included, "and other wildlife." I think mule deer, which we're all concerned about, will get their due money out of this. It doesn't have to be specifically just mule deer. The other 40 percent of that \$8 is taken up in Section 3.1(b), 3.1(c), and 3.1(d) of that particular bill, and we do not have a problem with that going for mule deer.

**Larry Johnson, Sportsman and Private Citizen, Reno, Nevada:**

Since this is the first time we've seen the amendment, I'm not going to claim to represent the Board of the Coalition for Nevada's Wildlife here today. This is just personal comment. First of all, the mule deer is in decline across the West. At the same time, we have inadequate funds, period. We were in front of the Legislature last session asking for a Consumer Price Index (CPI) increase with our tag fee increase bill. That was not granted. We said we'd return next session.

We knew we were going to be short, and we certainly are. The concepts of this bill—additional monies for predator management and habitat improvement—are admirable. The difficulty I have with the specific wording is under Section 3, subsection 1(a), which limits the fee increase to predator control of mule deer predators only. I think Mr. Church described that very succinctly. We would need to have that expanded to mule deer and other wildlife before I could support the amendment.

**Vice Chairman Atkinson:**

You're saying if the money is being collected for all of wildlife, then you'd like to see it all included as opposed to just mule deer, is that correct?

**Fred Church:**

Yes, that is correct. If you can add on after mule deer "and other wildlife," we would be happy with it.

**Vice Chairman Atkinson:**

And you, Mr. Johnson?

**Larry Johnson:**

Yes.

**Terry Crawford, Director, Nevada Department of Wildlife:**

I'm opposed to A.B. 226. Predation is a natural part of all ecosystems. Over time, predators have helped to shape species' attributes.

However, there are times when natural predator/prey relationships can become imbalanced. This can occur in a highly altered ecosystem where habitat quality for prey species has declined. All prey species have evolved ways to avoid predation, such as camouflage coloration, behavioral adaptations, and specialized reproductive strategies. In degraded habitats, these predator avoidance strategies may become less effective, and prey species may be subject to higher predation rates than would normally occur in a healthy, unaltered ecosystem.

Habitat alterations can give the predator an unnatural advantage by providing alternate food sources, additional perching areas, or reduced cover that allows for greater hunting success. This may be the case in some areas of Nevada where ecosystems are known to have declined in extent and quality from pre-European settlement conditions. It is important to first assess whether predation is actually the problem, or if there is some other limiting factor on prey numbers.

If predation is determined to be the main factor affecting a population, then the next objective is determining what predator or predators are the problem and at what stage of the prey lifecycle the predator is being most effective. Careful evaluation of the field situation will result in a much more effective project to benefit the prey.

During the 19th and early 20th centuries, predator control often meant eradicating areas of all predators through widespread use of poisons and

unlimited trapping. In some areas, the widespread elimination of predators resulted in large increases of prey populations. In other cases, predators from adjacent areas that had no controls simply moved in to fill the void left by the predators that had been removed.

[Terry Crawford, continued.] Some predator species have become more prevalent in recent years due to habitat changes and the habits of humans. For example, the number of common ravens has increased significantly throughout the western United States. We urge you to continue science-based predator management.

I've provided you several handouts. The first one ([Exhibit E](#)) with the mountain lion on the front is this year's Board of Wildlife Commissioners' predator management plan. Supportive of that is the Board of Wildlife Commissioners' predator management policy, but I didn't bring a copy of that. There's a one-page sheet that delineates the activities of our predator management plan: funds received and expended and predators taken ([Exhibit F](#)). There is also some information on mountain lions in Nevada ([Exhibit G](#)).

Thanks to Chairman Claborn, who approached us a couple of sessions ago with a vision, Nevada has a very good science-based predator management program. The Department worked with Mr. Claborn for some time to establish the program fund and the program we have today. The public has substantial involvement in selecting the projects, which are brought to the table by scientists. We consider predators in virtually every management activity. When we trap and transplant prey species, we consider the potential impacts of predators. When we do species management plans, we consider predators. Whatever we're involved with, predation is something we consider.

We have a very good program, and I am concerned that this legislation actually jeopardizes that program. You can see from the current predator management plan ([Exhibit E](#)) that, with the language that's proposed for amendments, we could no longer do many of our predator projects. A number of projects brought before the Board of Wildlife Commissioners every year are turned down not because of lack of funding, but for lack of scientific merit.

We collect the \$3 predator fee for every game tag application. About 55,000 of the applications we receive each year are from deer hunters. The rest are from people wanting to hunt bighorn sheep, swan, turkey, antelope—many people that make multiple applications—and they all pay the \$3 fee.

We also have concerns about the effective date on the bill and the amendment because it would be right in the middle of our process, which would make it

very difficult to implement. We find in wildlife management that impatient humans are always looking for the silver bullet answer to issues with wildlife populations. The relationships in wildlife populations are very complex, and we additionally have very complex systems for managing wildlife. That's why a Board of Wildlife Commissioners system was set up in this country many decades ago: to keep us from the politics of wildlife management and try to keep us in the science. I hope you will allow us to continue to do our job with our current program for predator management.

**Assemblyman Goicoechea:**

People don't have to apply for the mountain lion tag, right? That's not a drawn tag.

**Terry Crawford:**

No. In fact, the Board of Wildlife Commissioners relaxed the regulations a number of years ago. You can actually get two mountain lion tags in Nevada.

**Assemblyman Goicoechea:**

How much does a mountain lion tag cost?

**Patty Wagner:**

They're \$26 for a resident, \$101 for a nonresident.

**Assemblyman Goicoechea:**

Is there any cap on those? At what point would we not issue any more?

**Terry Crawford:**

We employ a harvest strategy to determine the estimated number of mountain lions we think can be safely harvested. The harvest is the limiting factor, not the number of tags.

**Assemblyman Goicoechea:**

You show your hunters' successes way down. Most of these guys, especially trappers, might get a lion tag just in case they happen to unintentionally catch a lion. Then they would have the mechanism to tag him and be legal. Is there any cap at any point? Do you say we'll only issue 2,000 lion tags?

**Terry Crawford:**

The number of lion tags issued is unlimited, but by unit of harvest.

**Assemblyman Goicoechea:**

You can move to another unit and try that. On raven tags, what do you think is causing this astronomical increase in ravens?



**Terry Crawford:**

There's some debate about whether ravens are native to Nevada. They definitely were native to the Pacific Northwest, but that was based on their available food and hunting strategies. Pre-European settlement, the Great Basin and the Mojave Desert were not very nice places to live. It was not the land of milk and honey. As Europeans have settled, we've created power lines and garbage dumps. We run over things on the highway; we pitch our half-eaten Big Mac out the window, and that makes it pretty good for ravens. Something as strong and cunning as a raven can take advantage of such behavioral effects where other species might not be able to.

**Assemblyman Goicoechea:**

In Nevada we've seen a tremendous increase over the last 50 years, and it doesn't seem to be going away. I've bought eggs for animal damage so we could thin them. Everybody has a problem with ravens. They don't eat just half-eaten Big Macs; they eat the tongues and eyes of calves lying on the feed ground.

**Terry Crawford:**

The ravens can perch on the power lines, causing a major issue with the desert tortoise in southern Nevada. A raven can't do anything with an adult tortoise, but in the spring, when young tortoises are out, they're easy pickings. Ravens are very intelligent and large enough to be an efficient predator. We've made a better place for them to live.

**Assemblyman Claborn:**

When I go hunting or fishing with a bunch of guys, we never talk about turkeys and their habitats. We talk about mule deer. Maybe I've got mule deer on the brain, but I've seen them dwindling down to nothing. I don't see why we can't all get together and do something for the mule deer. I'm trying to get some money for you, and you want to put it on everything else but the mule deer.

We've seen the money generated by Assembly Bill 291 of the 71st Legislative Session. Mule deer hardly got anything out of those programs, and that's why I want to give you some more money and see you put some money on the mule deer.

**Terry Crawford:**

I agree with your concern and impatience about the status of mule deer. It is a significant concern. There are programs paid for with the 291 money that benefit mule deer. In most years there have been, though not every year. We have a substantial number of projects to benefit mule deer.

[Terry Crawford, continued.] We have put a member of our staff on a review of mule deer in the state of Nevada. The Board of Wildlife Commissioners established a special Mule Deer Committee chaired by Commissioner MacKenzie. We've put on presentations for people about the status of mule deer around the state.

It's now time for us to get to work to do things for mule deer. I agree with you concerning the mule deer. It's a concern throughout the west. Nevada has initiated a number of activities around the west to get people sharing information about what is occurring with mule deer. In some cases, predation is certainly not helping. We want to give everybody the best shot for their dollar and to do things for mule deer or any species in a science-based fashion.

**Assemblyman Claborn:**

This is my fourth term, and I've been fighting to help you bring the mule deer back. We see them dwindling, and it's snowballing. There are fewer and fewer deer every year. Here's a chance for you to get some money to work with the mule deer. I know you have concerns about all the other animals, and rightfully so, but when I go back see my constituents about it, what should I say? "They don't want your money. They don't care about the mule deer, or they would have taken this money and done something with it"?

**Bill Bradley:**

I've been on the Board of Wildlife Commissioners for ten years, and I felt strongly when Mr. Claborn approached me two years ago about doing a predator project. I went out and fought really hard with the sportsmen about this project.

I have worked with Chairman Claborn since the beginning of the session trying to point out things I've learned in wildlife management and the importance of the advisory board process. Last Thursday, when I sat with Chairman Claborn, I indicated I couldn't negotiate on this bill because I don't have the authority. The sportsmen are going to speak for themselves. I spoke last Thursday about how strongly I felt about improving all wildlife, not just mule deer.

I sit on the [Board's] Predator Committee, and I have been advocating for mule deer projects. We have a mule deer project going on right now in Area 23, a unit in Lincoln County near and dear to many of our hearts. We're trying to establish a science-based project for mule deer, but at the same time we have bighorn sheep projects going on in other parts of the state. We have raven projects. I am a duck hunter, and I have seen the improvements that have resulted from our raven projects.

[Bill Bradley, continued.] Until I saw the amendment for the first time today, I didn't realize how strongly this bill limits that money to mule deer. I have tried to make it clear to the Chairman that I would like to see this go to all wildlife. We all feel very strongly about predator management. It should benefit all wildlife, and it can. This bill, unfortunately, limits it to mule deer, and that wasn't ever our intent when we passed the original bill.

I appreciate Chairman Claborn's efforts to get us more money. I suggest that when he goes out to the sportsmen he lets them know we all want to see an appropriate program for wildlife. These people have said how important this is for wildlife, and the sportsmen ought to work together. That's what we're trying to accomplish.

I'm sorry we're in disagreement with Chairman Claborn on this, but we'd like to see the simple amendment Assemblywoman Smith was talking about. It creates more of a project. We have had discussions along these lines, and I want to make sure that everybody understands I wasn't there to negotiate. I was there to provide information.

**Vice Chairman Atkinson:**

Right now, what do we spend the \$3 we collect on?

**Bill Bradley:**

On the Predator Committee, there are sportsmen and nonsportsmen. We meet every three months, and we're told how much is in the Predator Fund. Then biologists, sportsmen, or anybody who thinks they have an idea for a predator project submits that idea to the Predator Committee. We sit down with the biologists and try to come up with a science-based, goal-oriented project. When more than 50 percent of our committee says it's a good idea, we approve that project.

We make a contract with the people who are going to do the work. We get scientific information back. We generally set up one unit where we're doing predator control and another unit where we're not, and then we compare the results of fawns, chicks, or whatever. So far, from what we've seen, our selective, science-based, goal-oriented predator management has been very productive. That's the program we set up, and that's the program we'd like to see continue.

**Terry Crawford:**

About the financial aspect, we receive money in conjunction with the applications in spring and summer, and we deposit that money in the Wildlife Account. There's also a provision where people, if they're unsuccessful

in receiving a tag, can check off a portion of their tag. We get a few thousand dollars a year from that. The monies we receive in 2005 will be made available for the process Commissioner Bradley was talking about for projects starting next spring. Spring is usually the most effective time for predator projects. I get a number of phone calls every year from people who put in for a tag and did not draw one. Unless they get a tag, they don't think they ought to have to pay the \$3 fee.

**Assemblyman Atkinson:**

How much money is generated a year?

**Terry Crawford:**

About \$340,000 from the \$3 fee and about another \$15,000 to \$35,000 in check-offs.

**Assemblyman Claborn:**

The problem is that, out of that \$360,000, there's probably not 20 percent spent on mule deer. You send me information every month or whenever you have programs. There's only so much money, and you have so many other different programs. I know they're good programs, but there's just not enough money.

You can have four or five different programs for sheep, and those take A.B. 291 funds from the deer. You have programs for the raven, and those take away from the deer. My concern is deer. When I see that, I say, "They took all that money and put it on different programs." You have great programs with A.B. 15 and the Heritage Fund, but there's not enough money there either. There's only \$62,000 in there. We need money.

**Bill Bradley:**

We agree with that. I was in Senate Finance today arguing how important it is to fund this agency with more General Fund dollars. What's going on with this agency is deplorable. The State is not financing this agency the way it should be. However, that's a different committee. Chairman Claborn's right, but when we do a sheep project and take out mountain lions, that benefits mule deer. When we do a coyote project targeted toward antelope, that benefits mule deer. We're doing everything we can to benefit mule deer, but in a science-based, goal-oriented fashion. Chairman Claborn is right that there's not enough money, but we need this money to go across the board. We're both mule deer hunters, and all these fellows behind me are mule deer hunters. It's a good program, and I wish we could get more money, but the really fundamental issue is habitat.

**Assemblyman Marvel:**

Is the \$8 fee still in here in the bill?

**Vice Chairman Atkinson:**

Yes.

**Assemblyman Marvel:**

Is that going to be veto-proof?

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

I want to speak about the issue of the fee itself. There is no question that the decline of mule deer needs to be addressed. The Governor's position has been, though, to oppose any general fee increase, and this is indeed one, whether it's \$8 or \$5. When the across-the-board fee increases were proposed last session, there was a lot of public discussion, county game boards were involved, and there were a lot of meetings over here prior to those fee increases being approved.

We're assured that was a good decision to make at the time, but the Governor's Office still gets a lot of complaints about those license fee increases. It was the right thing to do, but it is not uniformly accepted by all sportsmen. It is very difficult to gauge just what the "sportsman community" is. There are a lot of them out there, and there are a lot of groups. Without the formal process of getting input from the sportsman community through the county game boards and others, we would certainly have great troubles with any increase in fees.

**Assemblywoman Kirkpatrick:**

Doing a little quick math, if you were to put "and other wildlife" in Section 3, line 10, that 40 percent would still net \$350,000, which is currently what they're getting now. But subsection 4 says the other 60 percent would go to deer. That would allow the deer to have \$500,000 plus about \$35,000. We need to keep the deer out of the current \$300,000. Even if we added those three little words, and the deer got only 10 percent of the \$350,000, they'd still be getting 150 percent more than they are getting now. I'm trying to find a compromise.

**Vice Chairman Atkinson:**

You're suggesting we use the \$3 the way we're using it now and put the entire \$5 towards mule deer?

**Assemblyman Carpenter:**

I need to thank Mr. Claborn for bringing mule deer and predator control to the front. He stepped out there where people dared not tread, and he needs to be given credit. It's heartening to me just to see the Commission and the Department talking about predator control. If you talked about predator control 10 or 12 years ago, everybody was negative.

We've come a long way, but I've been in mule deer country for many, many years, and I can tell you that if you don't do more predator control for mule deer, you may as well just kiss them goodbye. Their numbers have been going down year after year after year. Talk to the guides and hunters out there, and they'll tell you the number of deer that are being killed by predators.

When I was out on the range myself, I saw it. We need to take a chance that we can get this increase through the Governor. We need to find a compromise.

You need to get more money out there on the ground. I think it's been studied enough. I think we have to put some more money into the actual control, not just more studies. If you don't, mule deer are a thing of the past here. In another 20 years, there are hardly going to be any mule deer left.

The suggestion from Mrs. Kirkpatrick might work, but it's up to Chairman Claborn. He's the one who has had to put his neck on the line for the last four sessions here. As one cowboy who loves mule deer, I'm certainly appreciative of it.

**Vice Chairman Atkinson:**

Mr. Claborn, it's totally up to you. I thought Mrs. Kirkpatrick's idea was a great one. Mr. Robinson, we understand that the Governor is going to do what he has to do. However, we have a duty and a responsibility as a Committee to continue our business.

**Assemblyman Marvel:**

Have you contacted any of the sports groups about whether they would stand for this \$5 increase? This is a fairly new amendment, isn't it?

**Terry Crawford:**

I've not been aware of any discussion.

**Assemblyman Marvel:**

Have the sportsmen been aware of the \$5 increase?

**Larry Johnson:**

This amendment is new to us here today, so we haven't had a chance to get polls statewide. I do have an email from the Nevada Sportsman Coalition that stated they would be in favor of the fee increase. I personally believe a fee increase wouldn't be opposed by very many sportsmen; I think it would be supported.

**Vice Chairman Atkinson:**

Mrs. Kirkpatrick, he wants to hear your proposal for amending the bill.

**Assemblywoman Kirkpatrick:**

Currently, a \$3 fee brings about \$336,000 to the entire predator program. So that's currently what they're getting. However, if we increase the fee to \$8, they would get close to about \$860,000. Forty percent of \$860,000 is roughly \$330,000, which is currently about what they're getting for all programs. So if we took the \$5, that would net about \$500,000—just rough estimates, but pretty close—which would mean about \$536,000 would be used just for mule deer. You would see a large increase just for mule deer, and they would be able to keep the current programs already in place.

**Vice Chairman Atkinson:**

That makes sense to me, but I do have one question. That would mean the mule deer would no longer get a part of the \$3, right? I just want to make sure they don't get to double dip. The existing programs cover mule deer, too.

**Assemblyman Goicoechea:**

They are in the existing \$3.

**Vice Chairman Atkinson:**

So they'll still get some of that. They should be taken out of that \$3 if that's what you're proposing to do.

**Assemblywoman Smith:**

I think the problem is that in Section 3, subsection 1(a), of A.B. 226, you're talking about the management and control of predators, while 1(b), (c), and (d) cover research, techniques for managing and controlling, programs, and public education. Those are different activities. I think the management and control of the predator falls into 1(a). If you include the mule deer in 1(a), then 1(b), (c), and (d) would be just for mule deer. They would get more coverage, which should please the Chairman.

**Assemblyman Claborn:**

Mrs. Smith, I think you were the one who said all you have to do is change the bottom part there on the 40 percent. Earlier, when I was giving testimony about 60 percent going to predator control and the other 40 percent going to mule deer restoration, you said we would just have to change that to all wildlife habitat. Somebody mentioned that. I thought it was you.

**Assemblywoman Smith:**

That's right. The mule deer get more money, but you still include the other species in part of the funds.

**Vice Chairman Atkinson:**

How about if, in Section 3, subsection 1(a), you put back in the part that is stricken, "injurious predatory wildlife," and then left 1(b) and 1(c)?

**Fred Church:**

I think you can clarify this and make it easier if, in Section 3, subsection 1(a), where you continue on from mule deer, you just add "and other wildlife." The 40 percent of the \$8 is going to go to mule deer and other. That will take care of our concerns, whether it might be sheep or antelope or sage grouse we're doing. The other 60 percent would be going to 1(b), (c), and (d), and would be restricted to mule deer.

**Vice Chairman Atkinson:**

Sorry, Mr. Chairman, but I feel that part would be unfair, especially if mule deer is still included in that other 40 percent.

**Fred Church:**

I don't think we would have a problem with that either way.

**Assemblyman Grady:**

I think we're trying to make something very difficult that probably isn't very difficult. If you change it to \$8, change Section 3, subsection 1, paragraph (a) to mule deer and other species, you'll get \$3. They get \$3 of the \$8. Then give paragraphs (b), (c), and (d) \$5 of the eight. I think that would accomplish what the Chairman wants and keep the \$3 basically the way it is now. They can continue their programs with the \$3 fee, and the Chairman's bill will get them \$5 of new money to do 1(b), (c), and (d).

**Vice Chairman Atkinson:**

Subsection 1(a) is actually 60 percent in the bill. We'll need to change that, especially if we're talking about mule deer being included in both. I think the



fairest way to do it is to make 1(a) 40 percent and 1(b), (c), and (d) the other 60 percent.

**Assemblyman Grady:**

That's what I was doing with the \$3 and the \$5.

**Vice Chairman Atkinson:**

We're talking about the same thing; I'm just using percentages.

**Assemblywoman Smith:**

The real predator control takes place in that first section, so that's where you need the bulk of the money. The other \$3 is more about research techniques and education. If you want the mule deer to have the bulk of the money for actual predator control, that needs to be in the first part with the 60 percent. Mule deer still get the bulk of the money either way. I think it needs to stay 60/40.

**Vice Chairman Atkinson:**

I think the top portion needs to be 60 percent and the bottom portion 40 percent, although I certainly can be overruled by the Chairman.

**Assemblyman Claborn:**

I want 60 percent going to mule deer predator control. You say the other 40 percent would be for habitat or other wildlife programs.

**Assemblywoman Smith:**

If you look at the top section getting 60 percent and the bottom getting 40 percent, with the other three all going to mule deer, the mule deer will naturally get the bulk of the money.

**Assemblyman Claborn:**

Can you guarantee me that?

**Assemblywoman Smith:**

I will. If you can live with that, I'm willing to make a motion.

**Assemblyman Claborn:**

Mr. Chairman, I can live with that. I hate to do this, but the mule deer need it. I'd like to play games here for the next six years, but then we wouldn't have any deer left. I know that. I can see it coming. If you would like to put that into proper language, Debbie, I'll go along with it and hope the Committee will, too.

**Assemblywoman Smith:**

I assure you, Mr. Chairman, we all want to protect the mule deer. I will move to amend and do pass A.B. 226 as we discussed earlier, deleting the term limits in the front section of the bill, and then in Section 3, subsection 1(a), adding "other wildlife," and that will do it.

**Vice Chairman Atkinson:**

Amending section 4, yes.

**Assemblywoman Smith:**

I will add to my motion, in Section 3, subsection 4, taking out "at least" at the beginning and starting at 60 percent. About the effective date: if it starts when we're already in the tag process, does that mean it goes into effect for the next year's draw? Are we okay with that effective date, or do we need to change it?

**Assemblyman Claborn:**

There's no way we could do it this year.

**Amber Joiner:**

If the Committee would like to clarify, it may be better to change the date. I don't see how it could be implemented in the middle of a season.

**Assemblyman Goicoechea:**

Sportsmen have the ability to buy a hunting license and a tag even after July 1. They're not in the draw, but there would be tags available—swan, turkey, landowner compensation, all kinds of tags.

**Assemblywoman Smith:**

I'll further clarify my motion to change the effective date to January 1, 2006.

ASSEMBLYWOMAN SMITH MOVED TO AMEND AND DO PASS  
ASSEMBLY BILL 226.

**Vice Chairman Atkinson:**

We're going to take out any references to term limits. So if that's found elsewhere in the bill, we'll make sure it's taken out.

We all heard the amendment. Is there a second?

ASSEMBLYWOMAN KIRKPATRICK SECONDED THE MOTION.

THE MOTION CARRIED WITH ASSEMBLYMAN MARVEL VOTING  
NO. (Ms. Ohrenschall was not present for the vote.)

**Assemblyman Marvel:**

I'm opposed, but I may change on the Floor.

**Vice Chairman Atkinson:**

The next meeting will be Wednesday at the same time. We will need time for a work session on Wednesday, as that will be the last meeting for bills to get out of our Committee before the April 15th deadline. Is there any old business? Any new business? We are adjourned [at 4:30 p.m.].

[Larry Johnson submitted a report of the Nevada Animal Damage Control Program ([Exhibit H](#)) for information purposes.]

RESPECTFULLY SUBMITTED:

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Mary Garcia  
Committee Attaché

APPROVED BY:

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Assemblyman Jerry D. Claborn, Chairman

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

**EXHIBITS**

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

**Date:** April 11, 2005

**Time of Meeting:** 1:30 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
AB351	B	Assemblyman Harry Mortenson	Proposed amendment
AB226	C	Assemblyman Jerry Claborn	Proposed amendment
AB226	D	Assemblyman Jerry Claborn	Excerpt from Nevada Board of Wildlife Commissioners Mule Deer Survey
AB226	E	Terry Crawford/NDOW	Nevada Predator Management Plan FY2005
AB226	F	Terry Crawford/NDOW	Table from Nevada Predator Management Program
AB226	G	Terry Crawford/NDOW	Tables concerning mountain lions
AB226	H	Larry Johnson/Self	Nevada ADC Program Report