

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

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

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:34 p.m., on Monday, May 2, 2005. Chairman Jerry D. Claborn presided in Room 3161 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

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

**COMMITTEE MEMBERS ABSENT:**

Mr. Mo Denis (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Leo Drozdoff, Administrator, Division of Environmental Protection,  
Nevada Department of Conservation and Natural Resources  
Daryl E. Capurro, Managing Director, Nevada Motor Transport  
Association, Inc., Sparks, Nevada  
Kaitlin Backlund, Political Director, Nevada Conservation League, Reno,  
Nevada  
Blair Poulsen, Chairman, Nevada Board for the Regulation of Liquefied  
Petroleum Gas  
Neena Laxalt, Legislative Advocate, representing the Nevada Propane  
Dealers Association  
Rob Buonamici, Chief Game Warden, Bureau of Law Enforcement,  
Nevada Department of Wildlife  
Steve Albert, Game Warden, Headquarters Staff, Bureau of Law  
Enforcement, Nevada Department of Wildlife

**Chairman Claborn:**

[Meeting called to order. Roll called.] We have two Senate bill hearings today. We will open first on S.B. 16. [Legislative Counsel Bureau staff submitted analysis for the two bills to be heard, [Exhibit B](#).]

**Senate Bill 16 (1st Reprint):** Makes various changes relating to regulation of petroleum products. (BDR 51-662)

**Leo Drozdoff, Administrator, Division of Environmental Protection (NDEP),  
Nevada Department of Conservation and Natural Resources:**

[Mr. Drozdoff read testimony from prepared statement, [Exhibit C](#), which is incorporated herein.]

**Chairman Claborn:**

Are there any questions for Mr. Drozdoff?

**Assemblyman Goicoechea:**

Many of us in the rural areas pay into the Above Ground Storage System, an insurance program, which is about \$200 for about a 1,000-gallon tank, et cetera. Are those funds incorporated into this?

**Leo Drozdoff:**

Yes, they are. The Fund is paid primarily through a portion of the gas tax, but there is a coverage, or deductible, to pay into the Fund. That is what you are talking about. Yes, it is all together.

**Assemblyman Goicoechea:**

Is there considerable participation in this Fund or program across the state? Could you explain how much that covers? What am I getting for my \$200 fee?

**Leo Drozdoff:**

Provided you are timely in your response and there are no recalcitrants, you are getting any cleanup cost paid for, minus that deductible. That can vary, but it can be quite expensive.

**Assemblyman Goicoechea:**

That brings me back to this bill. We see that you can spend up to \$250,000 a year, and it doesn't have to stay focused to petroleum spills. What would happen if you had some hazardous material you have to clean up, and then you had 2 or 3 tanks fall over? This can be very expensive. What would happen if you exceeded that \$250,000?

**Leo Drozdoff:**

What this \$250,000 would do is become a stop-gap measure, which allows us some time to deal with the spill and find a responsible party to reimburse the Fund. I don't envision what you said. We may have trouble from time to time with environmental response companies being timely. We haven't had anyone thumb their nose at us. The plan is to use this money as stop-gap money and then reimburse the Fund once a responsible party comes along. I just don't envision us having difficulties that way.

**Chairman Claborn:**

Would this be considered cleanup, et cetera, on construction sites if they spilled fuel while they were filling up equipment and so on?

**Leo Drozdoff:**

Yes, it could.

**Chairman Claborn:**

Are there any further questions of Mr. Drozdoff?

**Assemblyman Goicoechea:**

Any time you have a spill that is over 25 gallons, it becomes reportable; has that changed?

**Leo Drozdoff:**

Yes, it is reportable. As to this program we are talking about, we are not going to go out on every spill; there will be protocols, et cetera. While 25 gallons may be what has to be reported, we envision, with this program, going out on large or environmentally sensitive areas.

**Assemblyman Goicoechea:**

What do you do with the small spills? Someone has to clean it up. What if a 500-gallon tank tipped over? We have all dealt with these flumes when they hit the ground or even get into the groundwater. It can be very expensive. Who makes that determination as to whether it is extensive and this Fund kicks in?

**Leo Drozdoff:**

The responsibility to report and to remediate does not change. That stays with whomever. The vast majority of the time, the responsible party deals with the reporting and the cleaning. If a report came in that there was a spill and we had difficulty getting a first responder, then NDEP would be making the call as to whether we need to get out there or not.

**Assemblyman Goicoechea:**

Then you would use this \$250,000, or a portion thereof, to respond?

**Leo Drozdoff:**

That is correct. We would either send our own people or have a contractor with a response company deal with the spill, find out who was responsible, and then seek cost recovery to reimburse the Fund.

**Daryl E. Capurro, Managing Director, Nevada Motor Transport Association, Inc., Sparks, Nevada:**

We worked extensively with NDEP on revising this bill from the original given to the Senate. We do agree with the conclusions that have been reached. Under most circumstances, the spill, depending on its size, is going to be dealt with by the responsible party. What this does is give NDEP the ability to go in and do the cleanup, using these funds, then charge back whoever is responsible for it. It gives them a chance to get to spills where you are uncertain who is the responsible party. It is important to get to those spills, with respect to groundwater and other concerns.

We agree with the changes that have been made and ask for your support.

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

We followed this bill on the other side, and we offer our support for it.

**Blair Poulsen, Chairman, Nevada Board for the Regulation of Liquefied Petroleum Gas:**

With NDEP's approval, we did a housecleaning amendment. What it did for us was make it so we could do regulation changes without notifying over 1,000 license holders in the state; there used to be only 70. We would make regulation changes, and the mailings were astronomical. All of this was enacted prior to the advent of email, websites, et cetera.

Since the chapter was open, we decided to do a little housecleaning. NDEP was kind enough to allow us to do that. I am here to explain that and answer any questions regarding that.

**Assemblyman Hogan:**

By what means will you notify the license holders that you propose regulation changes? Surely, they are going to know before you make those changes?

**Blair Poulsen:**

Absolutely, we do. Our board is self-funded and comprised of two firemen, two industry representatives, and two consumer representatives. It is through the industry and consumer representatives that we disperse the information, and it becomes known. We are in the electronic age and have a website. We have good participation every month from our industry and are very well apprised of it. They are in total agreement with this and are here to tell you that.

**Neena Laxalt, Legislative Advocate, representing the Nevada Propane Dealers Association:**

We support S.B. 16 and the board's amendment, which is now Section 2 of this bill. The board still has to follow the Administrative Procedures Act; they are just going above and beyond that.

**Chairman Claborn:**

Do we have any more testimony for this bill? Anyone against the bill? We will close the hearing on S.B. 16 and open the hearing on S.B. 397. Will the proponents of the bill please come forward?

**Senate Bill 397 (1st Reprint): Makes various changes relating to wildlife.  
(BDR 45-324)**

**Rob Buonamici, Chief Game Warden, Bureau of Law Enforcement, Nevada  
Department of Wildlife:**

To my right is Mr. Steve Albert, who drafted this proposed legislation. Basically, this bill clarifies administrative roadblocks and check stations. Administrative roadblocks are law enforcement in nature, to check for compliance of fish and wildlife laws, and check stations are biological in nature, where information is obtained for biological purposes.

The bill clarifies authority, off-highway, for the check station and roadblock. Currently, we have authority on paved roads, et cetera, pursuant to NRS [*Nevada Revised Statutes*]. Highway does not include U.S. Forest Service, BLM [U.S. Bureau of Land Management], and mobile two-track roads out in the hills. This just clarifies that authority for what we are already doing.

Continuing through the bill, FTA is a failure to appear; those are individuals who are cited and fail to show up in court. If they do that, after 30 days, we have the ability to suspend their hunting license, tag, and permit privileges, or to register a boat.

Senate Bill 397 changed the notification requirement. Currently, we have a demerit system in place for license revocation; once you reach 12 demerit points, your hunting and fishing license privileges are subject to suspension. In current statute, at 6 demerit points, we are required to notify individuals. This is time-consuming and costly, since we have over 300 of these annually, and it costs more than \$4 to send it certified. If we boost that to 9 demerit points, it will increase the efficiency. The warning does come a little later, but they are still not suspended until they reach 12 demerit points.

The bill changes the penalty for gross misdemeanor from 3 years of revocation to 5 years; for a felony, it goes up to 10 years. It allows for our biologists and/or game wardens to obtain biological samples and clarifies that provision.

It also clarifies forfeiture of aircraft used to relay information to individuals hunting on the ground. Currently, that provision is not very clear. This clarifies that if you are in an aircraft and, within 48 hours, communicate information to someone on the ground, and they kill an animal with that information, the aircraft is subject to forfeiture. Mostly, we are talking about power parachutes that range in price from \$5,000 to \$15,000. Simply, they are a go-cart with a propeller in the back, like an airboat. They fly along at 22 miles an hour, spot game, and relay the information.

[Rob Buonamici, continued.] We are also looking at clarifying our seized equipment provisions. It clearly states that we can donate seized equipment to charitable organizations. We do that now, but it is not stated clearly that we have that authority.

We also want authority for game wardens to check licenses, tags, and permits. Now, it is specific to licenses only. Over the years, there are more permits in place for commercial collection of reptiles, et cetera. It is implied that we can, but this clarifies here. It also clarifies trespass issues; we call it "hunting without permission." It brings that provision in concert with current trespass laws.

The bill also clarifies who needs a guide's license. It is a provision of the bill that was requested by the guides. We have their support on that issue.

The last part of the bill addresses a compact with Arizona. That portion of the bill is also a standalone bill, S.B. 136. I am uncertain of the reason for it to be in both places.

**Assemblyman Marvel:**

Do you just stop everybody at random at these checkpoints? Do you have to have some evidence that they should be stopped?

**Rob Buonamici:**

The checkpoints are designed to check everybody coming out. For example, you have a dirt road coming off a mountain that is known to hold deer hunters and deer season is going on. That's when we use that.

**Assemblyman Marvel:**

What if you are not a hunter?

**Rob Buonamici:**

If you are not a hunter, it is a minimal amount of intrusion. We do say, "Hi, how are you? Have you been hunting today?" If they say no and there is no evidence that they have been hunting, we just flag them on through.

**Assemblyman Marvel:**

That could be defined as harassment as well. You get the wrong people out there at the checkpoints; they put a badge on and they get pretty officious.

**Rob Buonamici:**

Well, we try not to do that. We are all human, take these jobs seriously, and try to minimize that type of activity. We do have complaint policies in place. If any

member of the public feels they have been unjustly treated, they can use the complaint procedures to address those issues. The purpose is for protection of our state resources.

**Assemblyman Marvel:**

Do you notify the public, in general, when you are going to set the checkpoints up?

**Rob Buonomici:**

No, we do not. In those situations, we do not. They are dependent on whether there is hunting activity, fishing activity, et cetera. If we have a snowstorm move in and it pushes all the hunters out of an area, and we had planned to set up a check station or administrative roadblock, then we would not do that.

**Assemblyman Marvel:**

My point is that not everyone out there is going to be a hunter or fisherman.

**Rob Buonomici:**

Yes, we realize that. We routinely run into people who aren't hunting or fishing. We do provide them with information. Curiously, many of them ask about what is hunted in the area. They don't know about hunting or fishing. It gives us an opportunity to explain what hunters and fishermen do, what activities they participate in, and what the Department of Wildlife is.

**Assemblyman Marvel:**

Do you have to go to the county commissions of these areas to get approval for these checkpoints?

**Rob Buonomici:**

No, we do not.

**Assemblyman Marvel:**

Have you ever had any resistance from the local governments for this?

**Rob Buonomici:**

No. It is no different than how we have been conducting business currently. This just provides for a little more notification on the roads, with signs posted—"Checkpoint Ahead"—et cetera. As far as intrusion or complaints from city, county, state, or federal government, we have not had any.

**Assemblyman Marvel:**

Was there any opposition to this bill in the Senate?



**Rob Buonamici:**

Yes. In the Senate, there was opposition in regard to the trespass issue and the taking of biological samples. The Nevada Farm Bureau and the Cattlemen's Association were concerned about property rights issues. It was never our intent to violate, jeopardize, or question the property rights issue. The language was reworded because it wasn't our intent to violate anyone's property rights. The Cattlemen's Association and Farm Bureau were comfortable with it and met their needs and our needs. It was just that the language was unclear.

**Assemblyman Marvel:**

Are all your people POST [Peace Officer Standards and Training] trained?

**Rob Buonamici:**

Yes. They are all Category 1 peace officers—full peace officer status.

**Assemblyman Marvel:**

Your biologists are too?

**Rob Buonamici:**

No, they are not. They have no law enforcement authority; they are not trained in law enforcement any longer. They are busy people who have an important job to do. With legal issues and constitutional laws becoming ever more complex, as well as the liability issues, we did away with that from an efficiency standpoint and expenditure of dollars.

**Assemblyman Marvel:**

So, just the game wardens man these checkpoints?

**Rob Buonamici:**

No. Again, the checkpoints are biological in nature. That would be biologists manning those. The administrative roadblocks are law enforcement in nature and manned by game wardens.

**Assemblyman Marvel:**

The biologists, do they have any authority to arrest?

**Rob Buonamici:**

Biologists have no authority to arrest, except as a private citizen. As private citizens, we all have the legal ability to affect an arrest technically, or call a law enforcement agency and say, "I would like to make a citizen's arrest."

**Assemblyman Marvel:**

How long would it take them to contact law enforcement agencies? Couldn't that person just go?

**Rob Buonamici:**

You mean, through the checkpoint? Yes, there are provisions in here for penalties for running through the checkpoint. None of this is worth a biologist risking his life if someone runs a checkpoint. We can deal with that later. They contact us, the sheriff's office, or Highway Patrol. Common sense enters into this.

**Assemblyman Marvel:**

My problem is that those people with badges get over-officious.

**Rob Buonamici:**

Well, the biologists don't have a badge to become over-officious with.

**Assemblywoman Smith:**

In Section 8, this duplicates the language that pertains to paved roads. As to the promise to appear, what if I'm cited and pay my citation, so I don't have to appear?

**Rob Buonamici:**

That is totally acceptable. The promise to appear is taken care of either by mailing in your bail, appearing and entering a plea of guilty or not guilty, or by making some type of contact with the court.

**Assemblywoman Smith:**

Is this the normal language for that? That concerns me.

**Rob Buonamici:**

That is correct. When any of us sign a citation to appear, it is a promise to take care of it in an acceptable form.

**Assemblywoman Smith:**

On the language about obtaining biological samples, you said there were groups that expressed concern, so you amended the language. When I compare the old language to the new language, I don't see how it was amended in a better way, because it just adds, "...on private property, without the consent of the owner of the property." That means someone can come on your property without a warrant and take samples?

**Rob Buonomici:**

No. That was to address the property rights issue, to do it with the consent of the owner. We cannot do it without their consent.

**Assemblywoman Smith:**

Okay, that was why they added the "on private property"; now I understand.

In Section 14, subsection 1(b), I am confused about the language regarding evidence. Could you explain "not recovered by the owner within 1 year after it is no longer needed for evidentiary purposes"?

**Rob Buonomici:**

For example, we have fishing poles where we have attempted to notify the owner or told them at the time of seizure that they have to recover these—they will be held at our office—and we give them the address to pick them up. We end up with no one recovering them. This clarifies that, after a year, it becomes the property of the State, and within these guidelines, we can dispose of them.

**Assemblywoman Smith:**

Again, on the issue Mr. Marvel raised, in Section 15, about "reasonable belief," is that really as broad as it sounds? Is that just the sole interpretation of the warden?

**Steve Albert, Game Warden, Headquarters Staff, Bureau of Law Enforcement, Nevada Department of Wildlife:**

The statute has always contained the language "reasonable belief" when it applies to searches and related matters. It is not that broad of a term. When you do a legal search on the definition, it is somewhere between "probable cause" and "reasonable suspicion." We have to be able to articulate facts that make us believe that the person is engaged in that activity. It is not carte blanche to just stop arbitrarily or randomly. It is not random. We have to be able to articulate in a court of law if it becomes an issue.

**Assemblywoman Smith:**

On the language you referred to about the license or permits, it mentions licenses, permits, and tags elsewhere. At the top of page 9, Section 15, subsection 3, it only refers to licenses or permits, not tags. Is that deliberate? Is there a difference there?

**Steve Albert:**

We have another statute that clearly states that a tag is a license. It would have been best to have the term "tag" in there, but it is covered by statute as license. It says, "Additional licenses to be known as tags..." so it is covered.

**Assemblywoman Smith:**

A tag is covered by license, but a permit is what you described earlier.

**Rob Buonamici:**

That is correct. We have various forms, and we call them special licenses and permits.

**Assemblywoman Smith:**

Why was snowmobile taken out of Section 16?

**Rob Buonamici:**

Snowmobile was taken out in discussion with several groups that felt that a snowmobile should remain in there because of the type of activity on the snow, and you can't ride it on the road all the time.

**Steve Albert:**

We had two ways to go on this. We could delete the term "snowmobile," because that section talks about motor-driven vehicle, including a snowmobile. That pointed to a specific type of vehicle, when there are several types of motor vehicles now. There are four-wheelers, three-wheelers, et cetera. We either could include all of those specifically or delete them and just rely on "motor-driven" vehicles. All those that we were concerned about were motor-driven vehicles.

**Assemblywoman Kirkpatrick:**

Currently, what is your process on these? Do you donate or sell them? How often do you do this? How much do you collect from that?

**Rob Buonamici:**

It is sporadic as far as how often. We haven't had a sale in a long time. As far as major items being sold, I recall that in 2000, we sold a 1980 Ford Bronco for about \$2,500. Things like fishing poles, et cetera, are usually donated. We have had auctions back in the 1980s and haven't done that in quite some time. A lot of the firearms we seize, we disable the firing mechanism and use them in hunter safety courses as training aids.

Periodically, we seize items like bobcat pelts, et cetera. Recently, we seized about \$12,000 worth of those pelts. The court made arrangements with the district attorney to sell those and hold the money in a special account until the case was adjudicated; otherwise, the pelts would have gone bad. The trapper, if he were awarded the pelts back, would have gotten that money. That's the reason for those types of activities.

**Assemblywoman Kirkpatrick:**

In Section 15, why do you have to have "or about to engage"? I would believe that "a person is engaged" clarifies it pretty much. I can think of many things that my kids might want to do; I can't read their minds to see if they were actually going to do it. It is in Section 15, line 25. I was wondering, why that language? That can be very broad.

**Rob Buonamici:**

The reason for that is convenience for the sportsman himself. For example, you have a sportsman who is going to a duck blind; we see him in the parking lot, loading his boat and decoys. He isn't engaged in hunting at the time, but he is about to. To require us to wait until he gets out to the duck blind and interrupt his duck hunt, we would have an unhappy hunter. We try to minimize those types of activities. We go out to duck blinds and check. Whenever we can, we try to minimize that type of intrusion.

**Assemblywoman Kirkpatrick:**

On page 12, line 18, it says that if you work as a master guide license person, you are not held accountable to these same standards. Why is that necessary?

**Steve Albert:**

We wanted to clarify a situation where, under existing statute, a master guide would have to get a sub-guide license to work for another master guide. He has already gone beyond that. We wanted to put in an exclusion that he does not have to get a sub-guide license in order to work with another master guide. It has been a bone of contention with master guides for years. We just wanted a level of proof that he is actually working for this other master guide lawfully.

**Assemblywoman Kirkpatrick:**

How would you know that there is a notarized statement when you are talking to this person out on a dirt road? It doesn't say he is required to carry it with him. It just says that he is required to submit it to the Department.

**Steve Albert:**

Typically, we have over 100 master guides in the state. We have only one point of control in the state, which is at the Department. The master guides know to deal with our administrative assistant. They can fax a copy to them. We disseminate the information to the officers in that area who need to have that information. If there was a question in the field, the officer would contact headquarters to determine status.

**Assemblyman Marvel:**

Is the raven considered a game bird?

**Steve Albert:**

No, it is not.

**Assemblyman Marvel:**

It's been years, but I thought we could shoot them from aircraft.

**Steve Albert:**

We do have a statute. They are not a game bird; they are classified as a protected species. The Department issues aerial depredation permits to Wildlife Services and they can, as long as they have a permit. We do have that other statute that protects them.

**Assemblyman Marvel:**

Years ago, I thought we passed a bill that specifically said we could, particularly in the tortoise area. Ravens are predators for tortoises.

**Steve Albert:**

Wildlife Services can, if we give them a permit.

**Assemblyman Marvel:**

How do you harass game with those sailboats?

**Steve Albert:**

We do have that with waterfowl hunters. Occasionally, they chase the ducks with their boats.

**Chairman Claborn:**

Mr. Albert, we have a treaty between the United States and Mexico regarding the ravens. That is why we can't treat them the way we would like to.

**Steve Albert:**

That is correct. It is the Migratory Bird Treaty Act [of 1918, as amended].

**Assemblyman Goicoechea:**

I am concerned about the 48 hours for aircraft seizure; that is a long time. If you flew over an area, saw a deer, landed, and then 2 days later you went hunting and shot that deer, your aircraft could be confiscated. I have a problem with saying "48 hours after the aircraft or helicopter has landed." I don't disagree that, if you are out there chasing a deer with it or flying over to make sure the ducks stay on the pond, it would be grounds for confiscation. If you

were flying in and happened to see a deer, landed, and then went up the next day and shot the animal, that would be a violation the way this is written; is that correct?

**Rob Buonomici:**

Yes, that would be correct. The question of what is reasonable comes into play. Some states call that airborne hunting. In Alaska, it is within 24 hours. We tried to pick a duration that seemed reasonable. We would not object to 24 hours, as opposed to 48 hours.

**Assemblyman Goicoechea:**

That's my point. I think 48 hours is too extensive to say that was a violation.

**Steve Albert:**

Currently, we have regulations that were adopted by the Board of Wildlife Commissioners 3 or 4 years ago, and the standard is 48 hours. This issue started about 6 years ago. We are not talking about people are on their way from Reno to Elko to land their plane. We are talking about individuals that are specifically flying at low altitude out in the hills, looking for these animals. This is intentional and not a casual noticing at 10,000 feet. They fly at 150 to 200 feet and are specifically looking for these animals. Those are the people we are targeting.

**Assemblyman Goicoechea:**

I don't disagree with that. All I am saying is that 48 hours is a long time, even if that is what you are doing out there. The other problem I have is with Section 15. It is the "or about to engage." I have a real issue with that; you have to have probable cause when you pull someone over. John Marvel going down the road with a gun in his gun rack, is that probable cause to pull him over?

**Steve Albert:**

There is a body of case law on this. We are targeting a specific activity, which is hunting and fishing—a small segment of the population. The presumption is that wildlife is an important interest to the state. It is a highly regulated activity. People who are engaged in that activity, if we stop them in the field—and that is where we are talking about, in the field—he is getting ready to go wherever to hunt. He is out in the open.

When the courts examine this, they balance the importance of protecting the wildlife with the level of intrusion against that individual when we contact him and say, "State Game Warden; how are you today?" It is obvious he is carrying a gun and in a deer area. When we ask if he is hunting today, he will say either

yes or no. If he says no and I can't prove anything different, then I will tell him to have a nice day. I would then have to sit on the hill and watch him a while longer. The courts have determined that type of activity conducted by a game warden is a minimal intrusion. He is out in the field. He is not in his house, and his expectation to privacy is diminished.

**Assemblyman Goicoechea:**

That is what is bringing some of the opposition to this bill. There are many of us that live "in the field" and make our livings there. As you read this, a warden can, in fact, stop and detain a person on an unpaved road to inspect, just for him being there.

**Steve Albert:**

This is always going to be challengeable in court. I have to live within the constitutional guidelines—U.S. or State—and have to be able to explain to the court and justify why I made the stop. If I can't, they are going to throw the case out. It is my burden to say that I had a reasonable belief that he was engaged in hunting, fishing, or trapping. You are narrowing the scope by saying I have to have a reasonable belief, that I can't make arbitrary stops out there. If I see you driving a tractor down a dirt road and it is deer season, if I don't see any guns or deer hanging off that tractor, I can't stop you.

**Assemblyman Goicoechea:**

He's right. I won't go there. Again, that is exactly what I am talking about. This is where the opposition is coming from. Just being out there on that dirt road, you have the ability to stop them, even if a person is engaged in some other activity. He could be a rancher out to check his water. This gives you the right to stop him. The probable cause becomes your belief that he is about to engage in an activity. Am I interpreting this right? A gun in the gun rack is probable cause enough to pull someone over.

**Rob Buonamici:**

Yes. When you read it, I can see where you and your constituents are coming from. In the real world, the key words that the courts are going to look at are "reasonable belief" and "about to engage." Now, is it reasonable for me, as a game warden, to go by your house if I heard you are going hunting the next day and say you were "about to engage"? Any judge would say no, that it is not reasonable. It comes down to the parking lot scenario I gave with the duck hunter. Is that reasonable? Most would say that it is. That is the ultimate test for this.



**Assemblyman Marvel:**

How do you police these cowboys with a long rope? One of the best pieces of venison that I ever had was caught by a rancher friend who was a roper.

**Rob Buonamici:**

Well, all of our cowboys have short ropes.

**Chairman Claborn:**

This looks like seven bills in one. There are too many issues: roadblocks, aircraft confiscation, penalties for hunting out of season, master guides, and donating equipment. This seems like too much. You might be better off if you split these off into six or seven bills and present it to the Committees.

**Rob Buonamici:**

Initially, when the Department submitted this legislation, it was in the form of multiple bills, 3 or 4 at least. It got consolidated. We did, as a Department, introduce it as separate bills.

**Chairman Claborn:**

I have a problem with that. We could be concentrating on one item, and others could escape our attention.

**Assemblyman Goicoechea:**

In Section 19, subsection 7, the change in the master guide license might be a way for guides to circumvent the need for a special use permit. Technically, what this does is allow someone who does not have a master guide for an area to go under another master guide's auspices by doing a signed statement to act as a sub-guide. Am I interpreting that correctly?

**Steve Albert:**

That could happen, and it could be happening now; that is why we asked for the signed agreement indicating that he is employed by the other master guide, which puts him into the sub-guide category. The sub-guide is covered by the special use permit. If we did get information that someone was trying to pull a fast one, we would investigate it and go from there.

**Assemblyman Goicoechea:**

By putting this in place—and I'm not saying it is the intent of the master guides to do that; it is legal to do this under that signed statement—you have opened this up to misuse. This is a concern because there is then the ability to open up a special permit use area by having these guides get together. They could exclude or incorporate whomever they wanted by signing this agreement.

**Rob Buonamici:**

Currently, a master guide can become a sub-guide for another master guide. What we are trying to do with this is say that it is silly to get a sub-guide license if you already have a master guide license. The master guide license is above and beyond a sub-guide license. That addresses the permit issue and doesn't allow or preclude a master guide from just saying that the other master guide said that it was okay. We need documentation to that effect.

**Assemblyman Goicoechea:**

That would be the signed statement? [Mr. Buonamici responded in the affirmative.] Technically, you would be the one who would issue the sub-guide license, not the other master guide? [Mr. Buonamici responded in the affirmative.] In this case, all it would take would be a signed document by both master guides to open this up. All they need is a piece of paper with both signatures.

**Steve Albert:**

Theoretically, what you are proposing, they can do now. We have suspected that they may have done this. We don't know how to close that loophole. He can get the sub-guide license as a subterfuge to cover up the activity. Unless we get information indicating this is occurring, it probably has occurred and can still occur.

**Chairman Claborn:**

Are there any more questions of these witnesses? We heard a lot of this testimony last session in different wording.

**Assemblyman Goicoechea:**

You have the ability to do this on a paved highway. What this does is take it off the highway onto the secondary roads and the gravel. As I read the statute, even in existing statute, I am concerned about your ability to do a search on any vehicle or vessel without a warrant and without consent. I don't believe that even the Highway Patrol, if they pull you over, has the ability to search a vehicle without a warrant or consent. Under Section 11.2(a), you have the ability to do that.

**Rob Buonamici:**

We, like the Highway Patrol or any peace officer in the state, have to abide by constitutional law. Nothing exempts game wardens from violating constitutional law. Conditions under which searches are conducted must be in compliance with constitutional law. The two main provisions are searching with a warrant and searching by consent.

[Rob Buonamici, continued.] There is another provision for exigent circumstances. For example, if the Highway Patrol is out in the middle of nowhere, has reason to believe drugs are going to be moved, and can articulate that, the exigent circumstances come into play. We are all bound by the same legal system that binds all peace officers. There are no exemptions for us. This just clarifies that and cleans it up. That's pretty much what the entire bill is about, clarifying language to bring it current and in compliance with current constitutional law.

**Assemblyman Goicoechea:**

In the same section, when you talk about "a building may only be searched pursuant to a warrant," why do we put in the language that says "consent or as otherwise provided by law"? It would go a long ways in alleviating some of the issues that are here.

**Steve Albert:**

When we initiated drafting, that's what I put. It is either by search warrant or consent. An attorney we consulted said we needed to be careful about limiting ourselves to consent. Currently, we do it by consent or exigent circumstances. Our main issue is consent. The Supreme Court could come out next year with some other exemption, and we might be limited if our statutory language is limited, as it currently is. The U.S. Supreme Court already allows for searches of homes under valid consent, as well as exigent circumstances.

The suggestion was to be careful about limiting ourselves. When we say "as otherwise provided by law," all they can do is recognize those two exceptions. In a courtroom, we have to be able to articulate every reason in the justification of why and how we got into that house without a warrant. When it was first drafted, it did say "by consent." The advice was not to limit ourselves to that.

**Assemblyman Goicoechea:**

I am trying to make this as palatable as possible for my constituents out in the brush. As it pertains to aircraft, I would oppose that with the 48 hours in place. That is too lengthy.

**Assemblyman Carpenter:**

I didn't hear the whole presentation, but I do have concerns about this. There are going to be a lot of people that you are going to be stopping, asking, and holding them. The ill will that you create from this will do more harm than the one poacher you might catch. The people out in the brush are not going to be very happy with this bill.

[Assemblyman Carpenter, continued.] On page 6, lines 5 through 8, it says "(a) A gross misdemeanor may not be suspended or revoked for more than 5 years; or (b) A felony may not be suspended or revoked for more than 10 years." I presumed that after you paid your fine or did your time, it was over. How do you keep those things for longer than your jail time or paying your fine? I don't understand where that comes from.

**Rob Buonamici:**

Where that comes from is the revocation provisions. Wanton waste is an example. You can lose your privileges for up to 5 years if you shoot a deer and leave it to go to waste. That is nothing out of the ordinary. There are driver's license suspensions; you serve your time, pay your fine, but the license is still suspended. It is accepted law. We heard from the public many times, "That's all he got for that; you mean he can be out there hunting again in 5 years?" It is not the hunter that we revoked the privileges for; it is the poacher.

When you are at that level of crime, that's a poacher, not a hunter. Most hunters don't want poachers out in the field with them. So, that is an acceptable way to deal with poachings and providing a deterrent to poaching.

**Assemblyman Carpenter:**

What you are talking about might be right. I would like Legal to look at it and see if there is another way to handle this. It is my understanding that after you pay your fine or serve your time, it is over with, unless there is something in the sentencing that says you can't hunt anymore. I might be wrong, but Legal needs to look at that language.

**Steve Albert:**

The two lines that you are looking at are new language. On the previous page is the existing statute, which has been in place for some time. This is an administrative sanction against an individual that goes beyond the criminal sanctions. The license suspensions or revocations have been in place for over 50 years in this state. It is a common practice throughout the United States. Yes, the gentleman has paid his fine. He was convicted of a felony poaching; he gets a worse penalty than somebody who simply accumulated 12 demerit points over a period of 3 years. We are talking about the serious poacher who has been convicted of felony. In addition to any criminal penalties, he is going to be revoked for a longer period. It is strictly for people who do serious wildlife crimes.

**Assemblyman Carpenter:**

Under the rules and regulations that you have, you may be able to suspend their privileges for a certain length of time. I don't think you can hold that crime over

their head after he's paid his dues, as they say. That language needs to be checked. Otherwise, they would have a felony hanging over their head for all that time.

**Chairman Claborn:**

We have very stringent poaching laws. Why would you need this? We already have very tough laws as it is on the books.

**Rob Buonamici:**

Besides the deterrent effect in the State of Nevada, there is the Interstate Wildlife Violator Compact, similar to the Driver's License Compact. If you committed a crime in Montana, then Nevada will know about it. There are 19 states involved, including all the western states. Nevada represents 1 percent of the violators in that compact. That is because Nevada has the most lenient poaching laws in that compact.

**Chairman Claborn:**

That's because you don't catch them, right?

**Rob Buonamici:**

One reason is not catching them, and the other reason is that many of those states have lifetime revocations, longer-term revocations, et cetera. In Nevada, they roll over a little quicker. It is a combination of all those factors. Except for Alaska, we have the largest patrol areas in the country. We only have 31 field game wardens out there.

**Assemblyman Hogan:**

These extended periods for revocation are maximums. Do you do this often enough that there is some sense as to the average length of these suspensions? Do they tend to be longer or shorter? What is our experience with these?

**Rob Buonamici:**

Currently, we have a demerit system. If you accumulate 12 demerit points, you are revoked for 3 years. That is the maximum currently. When we look at court cases, we had an individual who was convicted in court and is on lifetime revocation. If we remained within the demerit system, three years would have been it for the maximum. That is the reason for those lengths of time.

Prior to the demerit system, the Department would bring these cases before the Board of Wildlife Commissioners, and penalties ranged up to 5 years with a provision that, up to 10 years, you could not apply. That law is still on the books that you cannot apply again for up to 10 years for a big game tag. I don't

really know what the average has been; I don't have that information and simply don't know.

**Assemblyman Hogan:**

This was in reference to the period of time after conviction: 3 years for a misdemeanor, 5 years for a gross misdemeanor, and 10 years for a felony. Are there numbers that would correspond to post-conviction revocations?

**Rob Buonamici:**

By post-conviction revocations, do you mean after they are convicted and not revoked by the court; what is the average? [Assemblyman Hogan responded in the affirmative.] That would have to be 3 years; that's what our current demerit system allows.

**Assemblyman Hogan:**

In Section 10, subsection 5, it recites the 3, 5, and 10 years. It wasn't clear whether there was a distinction between the revocation following a misdemeanor, gross misdemeanor, or felony. Is there something like that in current law, or is this something new?

**Rob Buonamici:**

In current law, there are no provisions for that. The only provisions on the books are for wanton waste, for up to 5 years, and applying for a big game tag, for up to 10 years. That is the only distinction.

**Chairman Claborn:**

Could you give us a scenario regarding killing game out of season or poaching? What could they do to me? What is the penalty?

**Rob Buonamici:**

Currently, if it is a closed season case, that is a felony. Under those provisions, if we catch you in the act, it will be an arrest situation. You are booked into jail and have to post bail. Most cases we encounter require an in-depth investigation. They are after-the-fact, sometimes up to a month or a year later.

**Chairman Claborn:**

Currently, you could confiscate their weapon and vehicle, put them in jail, and take away their license for up to 10 years.

**Rob Buonamici:**

We can't, but the district attorney can.

**Chairman Claborn:**

This is already on the books.

**Rob Buonomici:**

That part is on the books. The revocation portion isn't. We work cases where individuals have an elk tag for Colorado. They go to Ely rather than drive to Colorado, poach the elk there, and put their Colorado tag on it. The reason for the revocation of privileges and the Interstate Wildlife Violator Compact is to preclude these people from obtaining a tag to cover up their intended crimes.

**Chairman Claborn:**

That isn't what the bill says. It just says it's a penalty. What you are addressing is not in the bill.

**Steve Albert:**

Over 20 years ago, we only had misdemeanor crimes for wildlife in the state of Nevada; they were simple misdemeanor crimes. In the mid-1980s, we adopted the language that classified certain crimes as gross misdemeanors under unique circumstances. In the last session, they adopted the felony provision. All this section does is recognize the difference in the level of crime you are convicted in. The higher the level, the higher the administrative penalty can be.

**Chairman Claborn:**

Will this supercede the laws already on the books?

**Steve Albert:**

All this addresses is periods of revocation. It enhances the period of revocation for the most serious criminal. If convicted of a felony, you face imprisonment. If convicted of a misdemeanor, you could face going to jail. There are differences in the level of penalty. [Chairman Claborn concurred.]

**Assemblyman Goicoechea:**

This is extensive legislation. You have the ability currently to do administrative roadblocks and check stations on paved roads. Is that correct?

**Steve Albert:**

That is correct. There is nothing that says we can't do it. This gives explicit authority, rather than implied authority. We can clearly do it on the highways of the state, operating under Chapter 483 or 484. We are looking for the explicit authority.

**Assemblyman Goicoechea:**

On a paved road, you have explicit authority to set up an administrative roadblock or check station?

**Steve Albert:**

We have explicit authority for the administrative roadblocks, not the check stations. That is why we broke it into two parts; they are reading differently.

**Assemblyman Goicoechea:**

That's where I'm headed. This is pretty extensive for a simple thing. You have a right to do it on a highway and want to be able to do this on dirt roads. Technically, you are saying that the check station is new language, completely, in either arena? [Mr. Albert responded in the affirmative.]

**Chairman Claborn:**

Are there any more questions?

**Assemblyman Goicoechea:**

You mentioned the felony violation of a person from California with a Colorado tag, who fills it in Nevada and goes back to California. Will Colorado suspend his privileges because of the felony that occurred in Nevada? If we are going to do this, let's make go across the board.

**Rob Buonamici:**

Yes, he will be. The way that works, the states involved in that Compact honor the revocations in the other states. Currently, an individual who poaches and is convicted in Nevada will be revoked for 3 years. The maximum he would be revoked in the other states of the Compact would be 3 years. If this passes and they poached and were convicted, we'd revoke him for 10 years. All the other states in the Compact would honor that 10-year revocation.

**Assemblyman Goicoechea:**

That Compact is in 19 other states? [Mr. Buonamici responded in the affirmative.]

**Chairman Claborn:**

Thank you for coming in with your testimony. It was very enlightening. Is there anyone else that would like to speak on S.B. 397? Seeing none, we will close the hearing on S.B. 397. We will go into our work session.

**Senate Bill 192: Prohibits importation into Nevada of certain live animals to protect State from effects of chronic wasting disease. (BDR 50-648)**



**Amber Joiner, Committee Policy Analyst:**

Senate Bill 192 is on the first page of your Work Session Document ([Exhibit D](#)). This bill prohibits the importation into Nevada of Rocky Mountain elk, mule deer, white-tailed deer, and other animals susceptible to chronic wasting disease. The measure further deletes Rocky Mountain elk from the list of "alternative livestock" currently defined in statute.

Proponents of S.B. 192 testified that this measure is necessary in order to prevent chronic wasting disease from entering into Nevada and infecting the wildlife. Representatives from the Nevada Department of Wildlife, Division of Animal Industry, the Nevada Conservation League, the Nevada Farm Bureau, and the Toiyabe Chapter of the Sierra Club testified in favor of the measure. There was no testimony in opposition, and no conceptual amendments were offered.

There is a fiscal impact on the local government; it increases or newly provides for a term of imprisonment in county or city jail or detention facility. As to the fiscal effect on the State, even though the bill says yes, the fiscal note attached (page 3 of [Exhibit D](#)) from the State Department of Agriculture says that there will be no fiscal impact concerning licenses or fees. There were no items of revenue or expenses submitted by them.

**Chairman Claborn:**

Are there any questions? Any discussion on the bill?

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS  
SENATE BILL 192.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Denis was not present for the vote.)

**Senate Joint Resolution 1 (1st Reprint): Urges Congress to take certain actions concerning wilderness areas and wilderness study areas. (BDR R-703)**

**Amber Joiner, Committee Policy Analyst:**

Senate Joint Resolution 1 (page 4 of [Exhibit D](#)) urges Congress to work with all interested Nevadans, land managers, affected parties, local governments,

special interest groups, and members of the public in addressing issues concerning the designation of wilderness areas in Nevada. Specifically, the resolution requests that Congress continue the policy of releasing or disposing of federal lands that are no longer suitable for wilderness designation in a timely manner, as well as considering military operations in determining whether to designate land as a wilderness area.

[Amber Joiner, continued.] Supporters testified that this resolution praises the federal government for its efforts in making available for sale lands that were previously wilderness study areas and encourages the continuation of this policy. Representatives from the Nevada Conservation League and the Toiyabe Chapter of the Sierra Club testified in favor of this resolution. There was no testimony in opposition. There were no conceptual amendments offered and no fiscal impact to either state or local government.

**Chairman Claborn:**

Are there any questions?

**Assemblyman Goicoechea:**

Technically, for wilderness to have that designation removed from it doesn't mean it has to be disposed of or sold; it just reverts to public land without the WSA [wilderness study area] designation. I didn't remember seeing that in the resolution. Does it say in the resolution "to be disposed of"?

**Amber Joiner:**

The resolution urges the continuation of the disposing of those lands.

**Assemblyman Marvel:**

One of the things we have been trying to do, and it's hard to get Congress to take any action, is to release these wilderness study areas. As long as they are in the study area, they are treated as wilderness. That is what we are trying to do: get rid of those study areas that don't lend themselves to wilderness. Does it say anything about releasing the study areas and have them revert back to public lands?

**Amber Joiner:**

On page 3 of the resolution, it says, "As part of the legislative process for determining which federal lands should be designated as wilderness areas and in accordance with stakeholder agreements"—earlier, it said we encourage—"to continue the policy of releasing federal lands that are part of a wilderness study area for multiple use and to continue the appropriate disposal of suitable federal lands for conversion to state or private lands." The answer to both Mr. Marvel and Mr. Goicoechea is yes.

**Chairman Claborn:**

Are there any more questions?

ASSEMBLYMAN GOICOECHEA MOVED TO DO ADOPT  
SENATE JOINT RESOLUTION 1.

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Denis was not present for the vote.)

**Chairman Claborn:**

We will meet again on Wednesday at the same time. Is there any other business to come before the Committee? We are adjourned [at 3:07 p.m.].

RESPECTFULLY SUBMITTED:

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Mary Garcia  
Recording Attaché

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James S. Cassimus  
Transcribing Attaché

APPROVED BY:

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Assemblyman Jerry D. Claborn, Chairman

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

**EXHIBITS**

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

**Date:** May 2, 2005

**Time of Meeting:** 1:34 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
SB 16 SB 397	B	Amber Joiner / Legislative Counsel Bureau	Bill analysis
SB 16	C	Leo Drozdoff / Division of Environment Protection, Nevada Department of Conservation and Natural Resources	Written testimony
SB 192 SJR 1	D	Amber Joiner / Legislative Counsel Bureau	Work Session Document