

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

**Seventy-Third Session
May 18, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:39 p.m., on Wednesday, May 18, 2005. Chairman Jerry D. Claborn presided in Room 3161 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Sarah Gibson, Committee Attaché

OTHERS PRESENT:

Michael Montero, Legislative Advocate, representing Nevada Cattlemen's Association
Don Henderson, Director, Nevada Department of Agriculture
Doug Busselman, Executive Vice President, Nevada Farm Bureau
Rob Buonamici, Chief Game Warden, Law Enforcement Bureau, Nevada Department of Wildlife

Chairman Claborn:

[Meeting called to work. Roll called.] We have one bill to hear, then we will go into a work session. We will open the hearing on S.B. 208.

Senate Bill 208 (1st Reprint): Requires State Department of Agriculture to contract with Nevada Beef Council for establishment and administration of program of education, research and information on beef under certain circumstances. (BDR 50-535)

[LCB staff handed out an analysis of S.B. 208, [Exhibit B](#).]

Michael Montero, Legislative Advocate, representing Nevada Cattlemen's Association:

We are in support of S.B. 208. I have passed out an amendment ([Exhibit C](#) and [Exhibit D](#)) to S.B. 208. Before I talk about the amendment, let me give you background about what I call the beef promotion program, which the bill deals with. This is not a new program. This a program established in the late 1970s through federal legislation, which started with a voluntary program. It was a program where beef, cattle, or livestock producers could pay into a fund. Those funds would then be used to promote beef and educate the public about beef. That program was later amended, and it became a mandatory promotion program. All cattle producers would pay \$1 a head at the time of sale or transfer of ownership of cattle. It is also referred to as the beef checkoff program.

Those monies were federal, but they were collected by the State Brand Inspector. It would then go to the State Department of Agriculture, who would contract with what is known as the Nevada Beef Council, and they would use those funds to promote beef in the state of Nevada. Under the federal program and the contract that was entered into by the Nevada Beef Council, a portion of

that money that would go to the national beef checkoff program. The funds were thus split to be used at both the state and national levels.

[Michael Montero, continued.] A couple of years back, the federal law was challenged as being unconstitutional. That litigation is still ongoing. The case has gone to the U.S. Supreme Court, and we are waiting for a decision from this current session of the Court. The beef producers are concerned that the national program will be found to be unconstitutional. Therefore, there would be no continuing beef promotion program. Nevada, like many other states, is attempting to institute a state program in the event the federal law is overturned. There would then be a state program in place to continue this promotional program, which the majority of the beef producers feel is a good program.

I hoped Steve Lucas, chairman of the Nevada Beef Council, would be here. He cannot make it due to other commitments. He could better tell you about what the program does. Last year, they collected about \$280,000; they used the funds to educate and promote beef around the state. They teach at UNLV [University of Nevada, Las Vegas]—in the culinary program—to educate people on the consumption of beef. They have booths at the State Fair and the Clark County Fair. They donate some of the funds to youth organizations to have barbeques or whatever, as long as it is promoting beef.

We started in the Senate with this bill and amended it there to more closely mirror the program we currently have—the \$1 per head contribution to the fund. After it was passed in the Senate, we were informed that the bill would not be signed by the Governor, because it was perceived as being a new assessment. That is why I am here with a new amendment ([Exhibit C](#)), which makes this a voluntary program. That brings us back to where we were in 1976.

There are a couple of points that need to be understood. Since the Department of Agriculture's Brand Inspection Division collects those funds now, we would like to leave that system in place. That is what the livestock producers are familiar with. The Brand Inspector comes out at the time of the sale, and you pay him for the cattle and, at the same time, write him a check for the beef checkoff. It is done all at one time. Those funds then go to the Nevada Beef Council, under the contract they have with the NDOA [Nevada Department of Agriculture]. The Council then pays the cost for the NDOA collecting those funds. There is, by contract, an arrangement where that is paid for as well. We would like to keep that all as it is today, and this amendment will do that.

Assemblyman Marvel:

Can you request a refund if you wanted to, under the old program?

Michael Montero:

No, you couldn't. The federal program did not provide for a refund. It was a voluntary program for a couple of years, then it became mandatory. There was no refund provision. That is the basis for part of the constitutional challenge. It was saying that the cattle producers were being forced to fund speech.

The draft of the bill as it now stands, prior to this amendment, would allow for a refund. That is what we were attempting to do with this bill at the state level, to avoid that constitutional issue.

Assemblyman Marvel:

There is a program that Mr. Henderson administers where they can get a refund. Isn't that correct, Don?

Michael Montero:

Yes, that is the Nevada Rangeland Resources Commission (NRRC). That has a refund provision in it; that is what you may be referring to.

Assemblyman Marvel:

What was the split between the Nevada and the National Beef Council? Was it a 50-50 split?

Michael Montero:

My understanding is that it was a 50-50 split.

Assemblyman Marvel:

Then there are administrative fees to the NDOA. [Mr. Montero responded in the affirmative.] Did you talk to Steve Robinson of the Governor's Office? He should be made aware that this is an ongoing program. It is not a new tax or assessment.

Michael Montero:

Yes, we have had a lot of discussions. We tried to make that argument that it is not a new program. It isn't; it is just that it was never established under a state statute. It may have been a state statute last session that was repealed which may have allowed for this.

Chairman Claborn:

Mr. Montero, are you confident that this proposed amendment will do what you want it to do?

Michael Montero:

That is a tough question. At this time, the Nevada Cattlemen's Association is comfortable with proceeding with a voluntary program. There may be some producers that are happy that it is a voluntary program and not mandatory. Under the language that passed by the Senate, the program did allow for a refund. The main concern by the majority of cattlemen and livestock producers in the state is the continued promotion of our product. We are paying for this. We should be able to have a program, a fund, to which we can contribute to promote our product. That is what we want to ensure that we have.

Chairman Claborn:

You did state that you believe that the Governor will probably sign this bill?

Michael Montero:

Yes, I do. We had communications with Steve Robinson today. He has indicated that the Governor's Office is okay with this.

Assemblyman Grady:

If you send your cattle to a feedlot, the brand doesn't change. When you take them out, there is another brand inspection. Do you pay twice for those same cattle?

Michael Montero:

The way it works, you pay at the time of transfer of ownership. If you retain ownership, you don't pay. We are leaving that open to be negotiated between the Beef Council and the NDOA. In the new amendment, we don't have the \$1 a head specifically identified; that's what it is now. If someone is having a good year and wants to contribute more, they can do that. We didn't want to limit the amount.

Assemblyman Goicoechea:

With these amendments, the bill has significantly changed. Technically, the way this is structured, without a set figure for the voluntary contribution, there will be some who will pay nothing and just walk on this. Currently, on the brand inspection form, there is a box to check if you want to pay for beef promotion or not. Do you see the forms changing? How do you address those that don't want to pay?

Don Henderson, Director, Nevada Department of Agriculture:

I am not sure if we have to change that form. We need a place on that brand inspection form that documents if a voluntary contribution is received and what the amount is to track that money and make sure it gets into the right hands.

[Don Henderson, continued.] We are anticipating trying out this amendment legislation for a couple of years, adjusting our contract accordingly, and seeing how it works. We may have to change those forms. The way I see it working, at the time a brand inspection occurs, the inspector asks if they want to make a contribution. If that is the case, they will collect the money and record the amount.

Assemblyman Goicoechea:

There wouldn't be any refund required once you made the contribution. I fear that it is going to impact the program with the voluntary contributions.

Assemblyman Marvel:

These cattle that go out of state to be fed don't change ownership. If they are sold out of state, how do you collect on a transaction out of state?

Don Henderson:

You are saying that they are Nevada cattle that go out of state to feed and, at that time, are sold out of state. I am not sure. I am assuming that the adjoining state would be collecting the checkoff dollar. That is how it was under the federal program.

Assemblyman Marvel:

Do they have the beef programs too?

Michael Montero:

The federal program is still in place. If you read the bill, this doesn't go into effect unless the federal program is deemed unconstitutional or repealed by Congress. It is in Section 7.

Assemblyman Marvel:

You are saying that with these Nevada cattle that are out of state to be fed, then are sold, there is no way we could collect?

Don Henderson:

In those cases, relative to the beef checkoff, it would not come to Nevada's program. It would go to the state program where the cattle were sold. From a brand inspection perspective, we collect a fee if they are going outside the district or the state. The brand inspection fee is collected at that time, but not the checkoff dollar.

Assemblyman Marvel:

The checkoff fee is paid at the time of the change of ownership; it is the same ownership, just not in the state of Nevada. [Mr. Henderson responded in the affirmative.] What about the dairy people? Are they comfortable with this?

Michael Montero:

All the affiliated agencies are supporting this. I have not received any calls or letters opposing this.

Assemblyman Marvel:

We have a lot of dairy cattle in Clark County. We have more there than anywhere in the state.

Michael Montero:

Under this program, including the version passed out of the Senate, everyone is comfortable with it. If a producer did not want to participate, they don't have to under this plan or would be entitled to a refund under the Senate version.

Assemblyman Marvel:

That is too bad. What is the percentage of refunds on the Rangeland Fund?

Don Henderson:

It is about an 18 or 19 percent requested refund rate. From an administration perspective, the refund provision of the existing bill was not all that attractive to the Department, because it doubles the work. It is easy to get money into the State, but very difficult to get it out of the State. It would have been an added expense if there were a refund provision due to the paperwork. This is much cleaner; it is voluntary, and you handle the money only once.

Assemblyman Hogan:

This is an observation. I am an optimist. There may be a change that, before long, we can get back to a straight \$1 assessment at the state level. I noticed there were no votes against the bill in the Senate. In the long term, it should be okay.

Michael Montero:

I appreciate your optimism; I am, too. Beef producers now in the state of Nevada have seen the returns on this investment, which have been good. I am optimist as well that we will continue to have a beef promotion program.

Doug Busselman, Executive Vice President, Nevada Farm Bureau:

We are here in support of the amended version of this bill. We have worked with Mr. Montero and Mr. Henderson since before there was a first draft. We

believe strongly in the idea of commodity promotion. Things get sold when you promote what you have for sale. That is what this is all about. It is essential to maintain the markets that we have.

[Doug Busselman, continued.] We, too, are optimistic. We were involved in filing a friend of the court brief before the U.S. Supreme Court. We hope that their decision will come out and the current program will continue just as it is.

Assemblyman Marvel:

The National Farm Bureau filed the amicus brief; isn't that correct?

Doug Busselman:

Yes, the American Farm Bureau, in our policy throughout our organization, is in support of commodity promotion programs and was involved in the filing of the friend of the court brief.

Assemblyman Marvel:

How large is the Farm Bureau nationwide? How many members?

Doug Busselman:

We have almost 6 million member-families nationwide.

Assemblyman Marvel:

You represent other people too, like the dairymen?

Doug Busselman:

Yes. The Nevada Farm Bureau is a general farm organization; we represent a number of dairy producers. The Nevada Farm Bureau is the commodity promotion entity for the dairy promotion program. The commercials you see in northern Nevada on "Got Milk?"—we are the ones that operate that program.

Chairman Claborn:

Are there any more questions? Don, did you have any more testimony you wanted to add?

Don Henderson:

I just wanted to add that the Department supports the amended S.B. 208, and we back up Mr. Montero's comments earlier. I too had a conversation with Steve Robinson of the Governor's Office; they stated that they supported the amended version.

Chairman Claborn:

Are there further questions of these three gentlemen? Is there any opposition?

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS SENATE BILL 208.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Claborn:

We will go into our work session. Amber Joiner will tell us about S.B. 397.

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

Amber Joiner, Committee Policy Analyst:

Senate Bill 397 is the only bill in your Work Session Document ([Exhibit E](#)). It makes various changes relating to wildlife. It was sponsored by the Senate Committee on Natural Resources on behalf of Nevada's Department of Wildlife and was heard in this Committee on May 2, 2005.

Senate Bill 397 pertains to various law enforcement activities by the Nevada Department of Wildlife (NDOW). The bill does several things; they are listed there (page 2 of [Exhibit E](#)) for your review.

There were some issues raised. There was concern about the number of hours required to reveal information obtained by aircraft. There was concern about the provision with "a reason to believe" that an illegal activity was about to happen. Some of those concerns are reviewed here (page 2 of [Exhibit E](#)).

Those concerns and their resolutions were drafted into the mock amendment given to you on Friday, and nothing has changed since. It is attached in the Work Session Document (pages 4 through 17 of [Exhibit E](#)). Essentially, the first three pages of the amendment are deleted; these were provisions relating to administrative roadblocks and check stations. Then, it adds the requirement that NDOW notify a person by certified mail if his or her license or permit is subject to suspension.

The next main change is on page 7 (page 10 of [Exhibit E](#)). It removes the provision that a game warden may stop or temporarily detain a person to inspect his or her license, permit, tag, weapon, ammunition, or wildlife, if the

warden has reasonable belief that the person is engaged in or about to engage in any activity regulated by this title.

[Amber Joiner, continued.] Finally, it changes the number of hours within which information that is obtained by the use of aircraft may be communicated and used to spot or locate game animals. Such information may not be communicated within 24 hours of the aircraft landing. That is on page 8 (page 11 of [Exhibit E](#)) of the mockup. It originally said 48 hours.

The fiscal note is the last page (page 17 of [Exhibit E](#)) in your packet. The effect on local government is that it increases or newly provides for term of imprisonment. The same applies to the state government.

Assemblyman Goicoechea:

There was something I missed, and I wanted a clarification. Under Section 11 of the old bill, it said, "with or without a warrant to conduct a reasonable search of any camp"; then, it goes to structure. I was under the impression that you did need a warrant to search private property. Does that need a clarification, or does that mean you can go to somebody's barn or shop and search it without a warrant?

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

That statute has been in effect for several years. What it does, with or without a warrant—under constitutional law and Supreme Court decisions—is allow the search of buildings, vehicles, structures, et cetera, if they meet certain criteria. One is with a search warrant signed by a judge; the other is with consent of the individual, and that is what is meant by "without a warrant."

Assemblyman Goicoechea:

I just wanted to get that clarification on the record.

Assemblyman Hogan:

With the green double-strikethrough, we have eliminated Sections 2 through 6. Where does that leave us with respect to your right to establish administrative roadblocks, et cetera?

Rob Buonamici:

It leaves us as we currently stand. Under current statute, we have authority to establish administrative roadblocks on highways and county roadways, under definition of current state law. What this means is business as usual on the two track roads on BLM [U.S. Bureau of Land Management] or non-county gravel

roads on BLM Forest Service land. We will be able to make stops with probable cause or consent.

Assemblyman Marvel:

How many bears in the air do you have?

Rob Buonamici:

We have no flying bears for law enforcement use. They are used primarily for our game bureau surveys.

Chairman Claborn:

Are there any more questions? Is there any opposition to this bill? Thank you, Mr. Buonamici. You are satisfied with this and all your colleagues as well?

Rob Buonamici:

Yes, sir. We are satisfied with it and appreciate the opportunity to work with you on it.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS SENATE BILL 397 WITH THE NEW AMENDMENT.

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Claborn:

Thank you all very much. That was our last bill in this Committee. I will not adjourn this meeting today. We will recess it, in case we need to revisit any of these bills. We will leave this meeting open [at 2:17 p.m.].

[Chairman Claborn reconvened on May 20, 2005, at 9:57 a.m., to formally adjourn the meeting of May 18, 2005.]

RESPECTFULLY SUBMITTED:

Mary G. Garcia
Recording Attaché

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblyman Jerry D. Claborn, Chairman

DATE: _____

EXHIBITS

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

Date: May 18, 2005

Time of Meeting: 1:39 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
SB 208	B	Amber Joiner / LCB	Staff analysis of bill
SB 208	C	Michael Montero / Nevada Cattlemen's Association	Proposed amendment
SB 208	D	Michael Montero / Nevada Cattlemen's Association	Explanation of amendment
SB 397	E	Amber Joiner / LCB	Work Session Document