

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

**Seventy-Third Session
April 4, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:39 p.m., on Monday, April 4, 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

OTHERS PRESENT:

Ron James, Historical Preservation Officer, Office of Historic Preservation, Nevada Department of Cultural Affairs
Alice Baldrice, Deputy Historical Preservation Officer, Office of Historic Preservation, Nevada Department of Cultural Affairs
Alanah Woody, Ph.D., Executive Director, Nevada Rock Art Foundation
Helen Mortenson, Private Citizen, Las Vegas, Nevada
George Phillips, Project Manager, Clark County Cultural Site Stewardship Program, Las Vegas, Nevada
Terri Robertson, Member, Tule Springs Preservation Committee, Friends of Sloan, Friends of Gold Butte, Las Vegas, Nevada
Elaine Holmes, Member, Southern Nevada Rock Art Association, Nevada Rock Art Foundation
Bill James, Vice President, Friends of Sloan Canyon, Las Vegas, Nevada
Elizabeth Warren, President, Nevada Chapter Old Spanish Trail Association
Joe Johnson, Legislative Advocate, representing the Toiyabe Chapter of the Sierra Club
Mark Moyle, Member, Nevada Hay Connection, Eureka, Nevada
Mike Gast, Member, Northwest Nevada Hay Marketing
Jon Hill, Member, Nevada Hay Growers Association, Yerington, Nevada
Melvin Gokey Jr., Private Citizen, Imlay, Nevada
Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada
Don Henderson, Director, Nevada Department of Agriculture
Daryl Capurro, Managing Director, Nevada Motor Transport Association, Sparks, Nevada
Hugo Van Vliet, Private Citizen, Carrolton, California
Alan Carey, Owner, Carey Transport, Fallon, Nevada
Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada
Taylor Stack, Owner, Taylor Stack Hay, Fallon, Nevada
Erik Taylor, Private Citizen, Battle Mountain, Nevada
Chuck Arkell, President, Nevada Sportsman Coalition, Las Vegas, Nevada
Douglas Gault, Private Citizen, Las Vegas, Nevada
Richard Elmore, Attorney, Reno, Nevada
Larry Johnson, Member, Coalition for Nevada's Wildlife
Chris MacKenzie, Chairman, Nevada Board of Wildlife Commissioners, Nevada Department of Wildlife
Patty Wagner, License Office Supervisor, Nevada Department of Wildlife

Chairman Claborn:

[Meeting called to order. Roll called.] We're going to hear a really interesting bill today. It is Assemblyman Mortenson's A.B. 289.

Assembly Bill 289: Requires Administrator of Office of Historic Preservation of Department of Cultural Affairs to establish stewardship program for protection of cultural resources. (BDR 33-554)

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

I took a draft of this bill to the Desert Research Institute (DRI) in Las Vegas, and it was heard by at least 20 stakeholders. There were about 40 people at the meeting, and we sat with that BDR and crafted it for four hours until everybody was happy with every word in it. The people who crafted it were UNLV [University of Las Vegas, Nevada], DRI, Archaeo-Nevada Society, and the Nevada Archaeological Society. The entities outside Las Vegas included BLM [U.S. Bureau of Land Management], U.S. Forest Service, Native Americans, Nevada Department of Wildlife, Archaeology Conservancy, Southern Nevada Rock Art Foundation, the State Historical Preservation Office, Arizona Site Stewardship, Las Vegas Springs Preserve, Bureau of Reclamation, U.S. Park Service, Nevada Mining Association, Nevada State Museum, print media, and everybody else. Everybody wanted this bill, and still does.

There are some existing stewardship programs. They are scattered throughout the state. What we need desperately is one cohesive statewide program. We heard testimony from Arizona in the last session when they indicated that they worked for several decades trying to get a good stewardship program, but it was fragmented. The people in these programs are doing really good work. I don't mean to demean them at all, but they have a tough time. Some of them are working on one-shot money, which is going to dribble out. In the Arizona case, the head of the Arizona stewardship program testified that the program never really got going until it became a statewide program, and then it became a huge success. There have been enormous amounts of preservation improvements that they have noticed.

The bill creates a program under the State Historic Preservation Office (SHPO). SHPO will establish an office in the greatest metropolitan area we have in the state, in the south, where they do not have a presence at this time. All of these stakeholders have been pleading for that office for a long time. There will be a program throughout the state to train volunteers. These will be all volunteers; they will receive no pay. The volunteers will go out to many of the cultural sites where there is rock art, petroglyphs, bones, et cetera, and they will create a

presence there and take notes. They will never accost anybody if they see vandalism going on, but they will take notes and report back. The big improvement in the Arizona program was just the presence. If the people who very regularly go out and rob these cultural facilities are aware that there are observers all around, they're going to be much less likely to vandalize.

[Assemblyman Mortenson, continued.] The program does not pay anyone to do anything. These are going to be retired people who like to be outdoors anyway, and they're going to feel part of the state, and they will do their duty like they're doing now in small, fragmented groups. They had over 600 volunteers about 2 years ago in Arizona.

They will undergo a training program, which will tell them exactly what to do in what situations. For example, if someone is vandalizing something, they will not go over and accost them. They will keep their distance and take notes. They will have regular assignments to cover a lot of the cultural resources in this state that are being vandalized routinely.

Assemblyman Carpenter:

How does the Mining Association stand on this bill?

Assemblyman Mortenson:

It's been passed through every major mining company and given the check of approval. We left many of the things in there that concerned Indians.

This only applies on public land. A gentleman from Virginia City started railing with me because we didn't have the phrase "public lands" in there, and it could have applied on private lands. We immediately amended it so that this applies only to public lands. Nobody is going to go on private lands and say, "This is a relic."

**Ron James, Historical Preservation Officer, Office of Historic Preservation,
Nevada Department of Cultural Affairs:**

This piece of legislation would put this function under my agency. With regret, we had to put a fiscal note on it, and this is not part of the Governor's proposed budget. It does answer two of the issues that were the focus of our attention in our recent statewide planning process. First, this would be a means to open a southern Nevada office, which is really needed and, I suspect, inevitable. The question is whether it's going to be this session or ten sessions from now. Sooner or later, we're going to have to open a southern Nevada office, and we want very much to do that. Secondly, there was real need expressed through our planning process for this kind of site stewardship program. In a big state like this, it's hard for those federal land managing agencies to get around and see

everything that's going on. This kind of site stewardship program would harness the work effort of a large number of volunteers, giving them focus and the ability to help manage this.

[Ron James, continued.] We have a lot of non-renewable resources out there that are in jeopardy, including understanding our heritage and spurring economic development and tourism. If properly managed and used, the rock art sites can be a real bonus for tourism. If they are defaced, vandalized, destroyed, carted off and sold, they will obviously not benefit the public at all. This is a way to harness a large number of volunteers and direct them to the benefit of everyone. It answers one of the things we hear from our constituency, that this is really needed, both in the sense of the southern Nevada office and the protection of our natural resources.

Alice Baldrice, Deputy Historical Preservation Officer, Office of Historic Preservation, Nevada Department of Cultural Affairs:

This was one of the primary concerns recognized within the recent preservation planning process, and it is seen as a great need with people recreating more out in the desert landscape in southern Nevada. This will ensure that many of Nevada's treasures are preserved into the future.

This isn't a bill meant to go out and arrest everybody in the landscape. It's meant to put volunteers to work reporting on site conditions and things like graffiti or trash at a particular site. That information goes back to the federal land managing agencies—or it could go to the state land managers as well—to let them know that there's something going on that we need to look into, whether we need to educate the public better on the uses of public lands and the importance of preserving archaeological sites.

Cleaning up the graffiti acts as a deterrent. There are a lot of things those site volunteers are able to do. The person who would be the site stewardship coordinator would be a trainer and a facilitator. There is much need for coordination between the agencies because there are so many of them, not just in southern Nevada, but across the state. This is somebody who would be traveling, training, and making sure people know, in a consistent fashion, what they can and cannot do. You don't want overzealous people who will go out there and confront others. What we want is a good record of what's happening on the land and to the archaeological sites.

Definitions have been made a lot clearer since the last time this came before this Body. We inserted the phrase "public lands," as opposed to private. We're not interested in telling private property owners what they can and cannot do

with their land. It also makes certain that the definition of vandalism is very, very clear. I think a good job has been done in the definition process.

Ron James:

We've worked really well with the mining industry on a number of issues. We feel very confident that our relationship with the mining industry has been positive, and I don't see much that would be of concern here.

Assemblyman Grady:

How many volunteers are you anticipating, and how many hours of training are you looking at for them?

Alice Baldrica:

I know there are a couple hundred of them now at work in Clark County. There are 16 other counties and they all have needs, including the areas right around Reno, Douglas County, and Carson City. I know we would have many retirees who love being outdoors and around archaeological sites. Our office is funding a small grant to the Nevada Archaeological Association to do some training this upcoming year because we don't have a program in place right now, so we're funding the training with a statewide nonprofit. The training could be anywhere from 2 to 3 days. It's fairly labor-intensive. People are overloaded very quickly in the existing state and federal systems, and they don't have time to be working with volunteers as much as they would like. They just don't have the time to devote to the training and oversight.

Assemblyman Hogan:

This seems to me an activity a lot of individuals would be very interested in participating in as volunteers. It also occurs to me to be something that both corporate and private entities might be very pleased to support. It doesn't take a big check to give the program a big boost, just t-shirts and identification for volunteers to make them feel like they're part of something significant. I'm wondering if you have some sources in mind with respect to private donors. Is it possible there might be federal sources of support for this kind of preservation?

Alice Baldrica:

Money from the Southern Nevada Lands Management Act is being used now to support a position just for Clark County, so we know that there are some federal funds available there, but it's very much limited to the boundaries of that county. Nye, Esmeralda, and Lincoln Counties, and other parts north, are languishing for that very reason. In Arizona, where they have a site stewardship program, they do have corporate sponsors and people who provide funding for awards for the volunteers with the most hours, t-shirts, hats, and the like, because it takes a lot of energy to support people and keep them interested in

participating in the program. Part of the site stewardship's duties in Arizona is looking for sponsors and working with private enterprise.

Ron James:

Looking to the federal government right now for sources of funding might not be the wisest way to go because things are drying up in that venue. We would look for every means of support, and I think it's a great idea to go to corporate donors. I think it's a great idea for peripheral support, but what's needed for the implementation of this bill is the guarantee of long-term state support.

Assemblyman Mortenson:

Paragraph 7, Section 1, says, "The Administrator may accept gifts, grants, donations, or contributions from any source to assist him in carrying out the stewardship program." We thought of that ahead of time, Mr. Hogan, and that's a good idea. It's something we'll have to work on.

Assemblyman Marvel:

Have you worked out a budget for this program?

Ron James:

We attached a fiscal note to this identifying that we would need in the neighborhood of \$90,000. We said we would need \$69,026 for FY06 and \$77,225 for FY07. At this point, our federal grant is all tapped out, so that would have to be all General Funds.

Assemblyman Marvel:

Do you have a table of operations to organize your volunteers?

Ron James:

It's always a challenge. Volunteers are labor-intensive. They're a great bargain, but you have to put some money on the table or you get nowhere. You invest that labor and you get it back one thousand-fold, but you have to prime the pump.

Assemblyman Marvel:

In other words, this is going to end up in Ways and Means.

Ron James:

We don't want that.

Assemblyman Carpenter:

Say I go out and find an old cabin in an area that has a lot of arrowheads, and then I come and tell you. What is the next step? How do you go about preserving those artifacts?

Ron James:

I'm assuming the old cabin is on federal lands. It's very likely that the federal land manager knows about the old cabin. We do get reports from volunteers and others, and sometimes that information is news to the land managing agencies, and sometimes it's not. What we hope is that you don't stumble upon the cabin and take it apart for firewood, as one fellow did near Austin, Texas. That kind of thing is a matter of public education; we really try to let the public know that this is not a good thing to do. This kind of site stewardship program helps get that word out and helps produce a cadre of people who can watch for this sort of thing. I think it could upgrade the ability of Nevadans to take care of their own resources, rather than just leaving it up to a handful of federal agents.

Assemblyman Carpenter:

I may find a cabin that no one knows about. Do the feds have to come in and look at it, or can you do it? I'm wondering what kind of program there is to protect these resources once somebody finds them.

Ron James:

Those kinds of reports can be used to upgrade the inventory. Elko has a fine BLM district, but they don't have the staff to take a look at all the resources. With this, Nevadans would be able to help them do a little bit better.

Alice Baldrice:

The manager makes a decision at some point as to whether or not a resource is something they need to place on the national register or monitor more closely, so providing them that information allows them to place it on a list and send an archaeologist to record it. Then they make a decision internally as to whether or not to contact the site stewardship program and have it monitored more frequently. If it's noticed that a site is being visited more often and vandalized, the manager might suggest that site stewards have a regular monitoring program for it. They might have leaflets or do a little public education by leaving pamphlets out there for people to understand what it is to preserve the heritage in the desert. They might have site stewards watching it to see if conditions change and, if it needs stabilization, find some funding to stabilize it.

Alanah Woody, Ph.D., Executive Director, Nevada Rock Art Foundation:

I'm here in support of this bill. I've been here before in support of it at least twice, and if it doesn't pass, I'll come back in support of it one more time. I'm

the executive director of a statewide organization made up of volunteers. I have over 400 volunteers dedicated to protecting the heritage of Nevada.

[Alanah Woody, continued.] If we don't take some steps to preserve and protect these sites now, in the future people will be wondering, how did we let this happen? How did we let these things go? Now is the time. More and more people are moving here and getting out into the desert. Most of the time, lack of education is what causes problems. Site stewards can regularly be out in the landscape. A presence is important. Once people know there's somebody out there watching, they're less inclined to do something wrong. Most of the time they do things that are wrong without knowing they are wrong. You can educate people. I think it's an important bill, and I hope you will pass it this time.

Helen Mortenson, Private Citizen, Las Vegas, Nevada:

We have copies of everything that's going to be said, Mr. Chairman ([Exhibit B](#), [Exhibit C](#), [Exhibit D](#), [Exhibit E](#), [Exhibit F](#), [Exhibit G](#), [Exhibit H](#), and [Exhibit I](#)).

George Phillips, Project Manager, Clark County Cultural Site Stewardship Program, Las Vegas, Nevada:

[Mr. Phillips read testimony from [Exhibit B](#), which is incorporated herein.]

Helen Mortenson:

I'd like to read a brief letter from one of our people who could not attend, Mark Rosenzweig, Vice President of Tule Springs Preservation Committee:

This letter is to register the complete support of the Tule Springs Preservation Committee for A.B. 289, and I urge you to vote for its passage.

Our intent here is not to argue or justify the need to protect natural, cultural, and historic resources. We deeply believe that natural, cultural, and historic properties are irreplaceable resources that have made invaluable contributions to the formation of our local, state, and national character and identity. Others will and have eloquently demonstrated this for many years. We would like to suggest that there is a unique reason why state-level site steward programs, as proposed in A.B. 289, are absolutely necessary in Nevada and that the large amount of land in public ownership for which the state and federal land managers are responsible stretches all of their resources beyond their limits. This certainly includes the monitoring and protection of natural, cultural, and historic resources. This also means agencies do not have

resources to identify, train, and coordinate volunteers. Assembly Bill 289 will help correct the imbalance that has resulted from a spatially concentrated population, separated by large expanses of public land.

Assembly Bill 289, by mandating the responsibility to coordinate the site steward program through the state, creates a structure in which interested individuals will be able to take part, regardless of where in the state they reside. Passage of A.B. 289 makes the state a true partner with the concerned public.

Terri Robertson, Member, Tule Springs Preservation Committee, Friends of Sloan, Friends of Gold Butte, Las Vegas, Nevada:

Several years ago, I planted the seeds when our national representative started working on a heliport bill for Clark County. There is wording in that bill stating that a \$3 surcharge for every helicopter flight over Sloan National Conservation Area will be used to support wilderness preservation in our state. I've asked our national representatives if \$1 of that \$3 surcharge could not be used to fund the state site steward program under the State Office. The sooner this bill gets passed, the better opportunity we're all going to have to push for that funding. That funding would be years down the road, after the heliport is built and the flights actually start.

[Ms. Robertson read testimony from [Exhibit C](#), which has been incorporated herein.]

Some of the testimony today talked about senior citizens being site stewards, but in our discussion before the meeting, we were all talking about training families to do this kind of thing as a family outing. We see it as an all-ages activity.

Elaine Holmes, Member, Southern Nevada Rock Art Association, Nevada Rock Art Foundation:

[Ms. Holmes read testimony from [Exhibit D](#), which has been incorporated herein.]

Bill James, Vice President, Friends of Sloan, Las Vegas, Nevada:

[Submitted [Exhibit E](#).] I am also a coordinator of volunteer site stewards in Sloan. There are about 30 of us, and we have unqualified support for this bill.

If somebody up in one of the rural counties wanted to do what we're doing at Sloan, I don't know how they could do it without help. I urge you to pass this bill.

Helen Mortenson:

For the record, there are about 14 people in the audience who support this bill, and I don't see opposition on the sign-in sheets.

Elizabeth Warren, President, Nevada Chapter, Old Spanish Trail Association:

The resource that the Old Spanish Trail Association is involved with is linear; it goes across the landscape for miles. The Old Spanish Trail Association consists of about seven chapters, six of which represent the states that the Old Spanish Trail passes through. The seventh consists of descendants of a very early Englishman who came across the trail, and ever since his family has maintained a chapter in England.

The Old Spanish Trail has been a national historic trail since 2002. We joined two others in the state of Nevada: the Pony Express Trail and the Oregon-California Trail. These designations as national historic trails might open up some important avenues of funding, at least for the volunteer activities, and perhaps to aid the agencies that are working to maintain, identify, and monitor the trails. To date, these agencies include the National Park Service, the BLM, the Forest Service, Nevada State Parks, and the Las Vegas Valley Water District. We will probably be able to involve Clark County with its trails coalition, and I'm hopeful we'll be able to do that for other counties as well. We also examine the trail for important segments that are still pristine enough to identify as national historic sites. There are three in Clark County. This has involved using the good offices of SHPO to assist us in identifying them and listing these segments. This provides a kind of protection that site stewards can assist with, but cannot actually offer, which is to defend important sites against construction that uses federal funds.

The national trails system is supported by Congress. Only members of the partnership that supports national historic trails can be identified as congressionally designated. There's a whole different level of interest and activity identifying these as nationally significant. You have three of these in the state of Nevada.

As a representative of the Old Spanish Trail Association, I support, and the Association supports, passage of A.B. 289. We think it offers an outstanding opportunity to educate the public—beginning with kindergarteners—and, most importantly for southern Nevada, to educate parents. They move here, drag their kids with them, and whatever the schools offer the kids, so be it, but who educates those parents? This offers an opportunity to do that through the site stewardship program.

Helen Mortenson:

There are two other people who have deferred their testimony, and we will submit it for the record ([Exhibit F](#), [Exhibit G](#), [Exhibit H](#), and [Exhibit I](#)).

I feel very strongly that this is needed throughout the state, not just Clark County. It is not a Band-Aid solution, like we have now. We need a whole solution to take care of this. Remember this is only on public land. It does not have an impact on private land at all, so I hope the Committee will support A.B. 289.

Joe Johnson, Legislative Advocate, representing the Toiyabe Chapter of the Sierra Club:

We support this bill, and our members are interested in being volunteers. Many of them have been active for a long time in the southern Nevada area and would anticipate working statewide. We encourage the adoption of this bill.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS
ASSEMBLY BILL 289.

ASSEMBLYMAN HOGAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Claborn:

[Closed hearing on A.B. 289.] I will open the hearing on A.B. 181.

Assembly Bill 181: Removes requirement that person obtain license to act as cash buyer or agent of cash buyer of farm products or livestock.
(BDR 50-980)

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, White Pine, Churchill (part), Humboldt (part), Lander (part), Washoe (part):

[Submitted [Exhibit J](#).] About a year ago, Nevada's Agriculture Enforcement Unit (AEU) began strict enforcement of NRS [*Nevada Revised Statutes*] 576, which was amended in the mid-1980s to require that out-of-state buyers of hay be licensed and bonded. At that time, there were a number of truckers and brokers who were taking one load of hay—maybe even leaving the pink slip on the truck as security—and paying for it when they came back for the next load. If

anything went wrong, they never came back, and the producer was on the hook. Some producers found out that there were a number of pink slips for the same truck.

[Assemblyman Goicoechea, continued.] When the AEU started handing out tickets on NRS 576, they couldn't ticket the California dairymen who were buying the hay; they could only ticket the transporter or the trucker who had the hay. The customers in California weren't complying and weren't interested in complying. The biggest issue was that you had to provide extensive background information to the Department of Agriculture, as well as the quantity, quality, how much you paid for the hay, and you would have to meet all of the federal requirements to make sure you're up to date on child support payments. If you had a moving violation of over \$25, that also had to be recorded. I feel that most of the producers in the state had already addressed the issue that occurred through the 1980s, most of them requiring at least 90 percent of the money up front before shipping the load of hay. What we were dealing with was truly a cash deal. They had a deposit in place, and they made sure that deposit covered all the hay they shipped; therefore, there wasn't any liability or exposure. The cost of licensing and bonding is about \$700 a year, and the existing statute required that even if you were a cash buyer, you had to have a cash buyer's license. Assembly Bill 181 just exempts that requirement. I think it would be like saying you have to have a license if you're going to Macy's or Safeway to buy groceries.

The terms on a cash buyer are strictly cash or certified check. I feel that if you have the money in your bank account, that's the equivalent of cash. It really doesn't impact the livestock industry, because typically, no one is running around with \$100,000 worth of cash in a suitcase when they come to get a load of livestock. Also, in the livestock industry a brand inspection is required for any transfer of ownership; therefore, you have the license and bond of the livestock buyer in place.

I wish I could say NRS 576 worked well, but it didn't for a number of reasons. The problem with NRS 576 is that there is no mechanism to get the out-of-state buyer, or ultimate user of the hay, to comply.

All the bill does is take the requirement for a cash buyer out of statute and say that a cash buyer or agent of a cash buyer is not required to obtain a license pursuant to this chapter before acting as a cash buyer or agent. The biggest issue that the Department of Agriculture has with the bill is that it does take away their probable cause to pull over any hay truck.

Mark Moyle, Member, Nevada Hay Connection, Eureka, Nevada:

As Assemblyman Goicoechea mentioned, last year the Department of Agriculture decided to enforce this old law. In the last 15 years, those of us in the marketing process have taken care of that challenge of people taking hay and not paying for it because we do have deposits, and hay is usually paid for ahead of time. What created a problem for us was that all of a sudden, the Department of Agriculture's Enforcement Unit was pulling over loaded and unloaded trucks and looking for hay buyers to find out if they were licensed. A lot of this hay was going through brokers or dealers already, and if a dairyman showed up on the list, they would want to stop the truck and hold him up until the dairyman got a license. It created a marketing nightmare for us, to say the least. It would be really good if the Department of Agriculture could focus their resources on some 4-H people and, perhaps, some entomologists.

Assemblyman Grady:

Wasn't that one of the reasons we put together the co-ops in all of the areas, so that you can protect the farmers with the hay growers' associations?

Mark Moyle:

The associations have done a great job of doing that.

Mike Gast, Member, Northwest Nevada Hay Marketing:

The Department of Agriculture came to Winnemucca on their fact-finding mission to find out what we thought about this licensing. I asked how many complaints the state has had. He said there were three. I asked him if it was three just in Winnemucca, and he said there were three statewide last year. So, I think the associations and the people we deal with are doing an excellent job of keeping this stuff down. I deal with a tremendous amount of cash in the form of deposits. I put my deposits on the other end; in other words, if it's a \$100,000 contract and I put \$20,000 down, we'll put it to the back half of that contract so we're always ahead.

Jon Hill, Member, Nevada Hay Growers Association, Yerington, Nevada:

We represent farmers in Smith Valley, Mason Valley, Schurz, and Fallon. We have pretty well figured out how to police our own; we work together. It's just not necessary to have these licenses, and it just makes it more difficult for the trucker driving down the road.

Assemblyman Hogan:

I just want to be clear on the definition of cash buyer. Does that mean the transaction has to be all cash in order to be exempt under this new proposal?

Jon Hill:

A lot of people come in and pay for a load of hay. There are also people who have credit with us, but they're all driving down the road. It may be a big company with several trucks, and a guy is just driving his truck and somebody pulls him over and wants to know if he's licensed. He answers, "I don't know; I drive for Mark Moyle." It's taken an hour out of his day when he has to stop. It's an unnecessary licensing.

Assemblyman Goicoechea:

This doesn't take away the requirement to have a license and bond. The industry needs to take responsibility, and they have. If Mr. Hill and Mr. Gast feel comfortable with the deposit the man has made, whether it is totally cash or whether they're working against a deposit, they should be able to complete the transaction. I know producers in Nevada who will have \$250,000 of up-front money so that they don't have to get an operating loan.

The real issue here is that the industry is taking control and taking some responsibility. You still have the ability to ask a buyer for a license and bond if you don't feel comfortable with him, but if you have a deposit in place and want to conduct a cash transaction or the equivalent, I don't think it gets any better.

Assemblyman Hogan:

It seems to me a good idea to avoid unnecessary interference with the flow of commerce, but I'm thinking about the protection of the seller whose hay has just gone down the road, and he may or may not get his money. I assume that was a big part of the origination of some of these requirements. What you're saying is that over the course of time, at least for those experienced in the business, that protection is no longer necessary. If you're uncomfortable, you get everything up front. If it's someone you've been dealing with for a long time, you know you'll be all right. I don't see any loss of protection for the public by eliminating this. That's what I was concerned about. Even the smaller, less experienced producer is not put in greater jeopardy by getting rid of this protection.

Assemblyman Goicoechea:

That's correct. Again, that small producer who doesn't know who he's dealing with can ask for the license and bond unless that guy is going to pay him in cash before he leaves. The bill does take away the probable cause for the AEU to pull a hay truck over and ask for the bond and license, which he may not have because it was a cash transaction. NRS 576, over the 20 years that it was in existence, didn't prove very practical. It's a good program, and the ability is still there if you want to license and bond.

Melvin Gokey Jr., Private Citizen, Imlay, Nevada:

Nevada probably has one of the strictest bad check laws in the country, and when you take a check for \$100,000 and it doesn't clear, I'm sure the cash buyers don't have near the power that the district attorney does in going after them. I'm in support of Mr. Goicoechea's bill, and I urge each one of you to vote for it.

Bjorn Selinder, Legislative Advocate, representing Churchill County and Eureka County, Nevada:

As two agriculture producing counties, Churchill and Eureka would certainly support A.B. 181, and I can say that anything that would enhance and simplify sale of Nevada agricultural products is indeed welcome. Assembly Bill 181 is good for Nevada's agricultural producers and the state as a whole.

Don Henderson, Director, Nevada Department of Agriculture:

We are neutral on this bill. This statute has been on the books for some time. I can only conclude it was put in place to address a recognized problem. Most of the members of this Committee understand what this statute is about. It's basically an agricultural producer protection program. If an agricultural producer is stiffed during a transaction by resellers located in the state or outside buyers, this program requires that the buyer be licensed with the Department—it's a \$40 annual fee—then bonded at the appropriate level. I believe the bond level is established by regulation. In this mechanism, if somebody is stiffed during a transaction, the farmer or rancher has an alternative to recover at least a portion of their loss. As previously discussed, A.B. 181 would provide an exemption to this licensing and bonding requirement for sales involving a cash transaction. What's important for this Committee to understand is that the amendment would make this a voluntary program, and the program could not be enforced by the Department of Agriculture. It would be a program in which a private producer or co-op could require that a buyer be bonded and licensed before they made the transaction. The Department would not have probable cause to pull over hay trucks to see if the remaining buyers, who use credit, are in fact bonded and licensed.

This Body, in 2001, authorized the organization of the Agriculture Enforcement Unit. Over the past year, as noted, we've started checking with hay haulers to see if they were abiding by this particular statute. We pulled over numerous truckers and there were citations given out, but they were all warning citations. Quite often we found that some drivers were contracted with the buyer and had nothing to do with the transaction other than transporting the hay. So, we had difficulty getting to the actual buyer. Most were located outside the state. We sent the warning notice and tried to educate them as to the specifics of the program. When we heard that there was some discontent in the industry about

the enforcement of this regulation, the Department held five informal meetings where we invited the producers to get together and talk about it. The response we got from producers was mixed. Some people thought the program should be modified or possibly eliminated relative to hay buyers. There were some who felt that the program does have some value and should be maintained in its current form.

[Don Henderson, continued.] Since this is a producer protection program, the Department is neutral relative to this bill and the modification of the existing program. We would support whichever way the industry wants to go with this, as long as there's a clear consensus within the industry on how this bill should be modified and what kind of protections they're looking for.

Assemblyman Goicoechea:

I think the room is pretty well filled with producers and hay haulers today who support this change in the statute. I attended at least three of those meetings, and the rank-and-file was in favor of changing NRS 576; otherwise, I would not have brought the bill forward.

Don Henderson:

I don't doubt the Assemblyman's conclusion. In any public hearing at the Legislature, those who are dissatisfied are going to show up, and those who are generally happy don't. These are all busy people who take time out of their day to be here. We don't have any organizations testifying today that represent industry. All I can tell you is that when we held informal meetings, there was some interest in retaining the law as it was at that point. The law on the books was difficult for us to enforce and maintain, so it's not a perfect law by any means.

Assemblyman Hogan:

If this is enacted, I want to be clear that the Department will continue to issue licenses—hopefully at the same price—and to facilitate the bonding process so that it will still be available through the Department.

Don Henderson:

That is correct. We will continue to operate this program for those who want to participate. If we get to a point where people are defaulting and we get a lot of inquiries that begin to exceed the minute administrative fees associated with this, then we will have to revisit the fee issue, but at this point we can maintain the program as modified by A.B. 181.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS
ASSEMBLY BILL 181.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Claborn:

I will open the hearing on A.J.R. 12.

Assembly Joint Resolution 12: Urges United States Department of Transportation to take action regarding federal cargo securement regulations. (BDR R-1319)

Amber Joiner, Committee Policy Analyst:

Chairman Claborn asked me to explain why this is in the form of a resolution instead of a bill. The Federal Motor Carrier Safety Administration created a regulation that this resolution would like to have changed; however, all that the state can do is urge or recommend changes in that regulation. It's not within the jurisdiction of this Body to change a federal regulation or law. The language on page 2 is to urge the U.S. Department of Transportation (USDOT) to issue an interpretation that would allow the tiedown techniques that Assemblyman Goicoechea will talk about in just a moment, or to request the USDOT to remove bales of hay from the general cargo category and create a separate category that would then enable regulations to have unique requirements for bales of hay, which are quite different from other types of cargo.

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, White Pine, Churchill (part), Humboldt (part), Lander (part), Washoe (part):

On January 1, 2004, Nevada adopted the new federal securement regulations. These new regulations lump hay and straw bales into the general cargo category. There are commodity-specific regulations for pipe equipment, logs, et cetera, but hay products were not given a commodity-specific regulation.

California has not adopted the new Code of Federal Regulations. They are presently functioning under Title 13 of the California Code of Regulations. The majority of the 4-H produced in Nevada goes to California. With this difference in containment regulations, we're getting truckers pulling into the state line, and if they have a loose strap-on in California, they're automatically ticketed. They

don't need the straps in California, so they pull the straps when they hit the state line going to California. But coming back this way, they have to stop at the state line and throw some more on. I think it's a real inequity, and it's not just a Nevada problem; it's all across the western states.

[Assemblyman Goicoechea, continued.] You will hear from the industry that the new regulations also require v-boards around the top of the load of hay; they call them edge protectors. These v-boards will vary from 8 to 10 feet in length. They're two pieces of either pipe or board with a flexible material in the middle. They're a bigger threat than a loose bale of hay, because if you drop a v-board through somebody's windshield on Interstate 15, you've hurt somebody. The other side of it is that the lone driver has a very difficult time putting a v-board in place. I think you'll hear from the California representatives that OSHA [Occupational Safety and Health Administration] doesn't allow them to be on top of a load of hay if they're on loan, so how are they going to put these v-boards in place and tie them down?

The state of Oregon has already asked for a real interpretation that would address the securement regulations as defined in the Federal Code. This resolution only asks the Department of Transportation to consider the same rule interpretation that the state of Oregon has asked for. This is not just a Nevada problem, but it would be nice to see Nevada take the lead for once. There will be a public hearing held April 21 in Albuquerque, New Mexico, addressing the same issue.

I think this resolution goes a long way toward bringing the state of Nevada to the front of it. These securement regulations you're being asked to consider are time-tested. They do work, and there are a number of representatives in the audience who will testify to that. In the back of your packet ([Exhibit K](#)) you will see what is being proposed by the industry.

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

Assemblyman Goicoechea has done an excellent job outlining the four corners of the problem we're looking at with respect to this issue. It's a classic case. We were doing fine before the feds stepped in. The one-size-fits-all resolution adopted in 2002 by the feds has created problems not just for Nevada, but for every other state through which hay and straw is moved. It's one of those situations where you wonder why a so-called expert in Washington, D.C., who has never seen a bale of hay, is writing regulations that would impact us.

We believe that the current rule is unsafe with respect to how we secure baled hay or straw. The key to this bill is to advise the congressional delegation and

the Department of Transportation—primarily the Federal Motor Carrier Safety Administration—that we have a problem with the way the rule is applied. As Mr. Goicoechea said, there were specific industry rules for some areas, such as poles and logs. Baled hay was lumped into the category of general cargo. That was because there was very little in the way of accident information or other problematic conditions for them to study. It was felt by the so-called experts that it could fit under the general rules.

[Daryl Capurro, continued.] Taken to the extreme, the way the rule was originally adopted, you would have had to have had a strap on virtually every bale. You certainly would have had to strap each layer of the hay as it was stacked on the truck. If you don't have a headboard on the trailer, you have to have a penalty strap over the sides, within the first 6 feet, and then a side strap every 10 feet for the entire length of the load. The federal rule says there is no need; it is optional to use longitudinal straps, which have been used by this industry for over 40 years to secure loads. If a driver is traveling down the road with only side straps and he has to brake in a panic, he's going to have that whole load sitting inside his cab, or going off the rear end of the truck. The longitudinal straps help to compress the load, and that is what actually holds the load on to the trailer.

Because of the quality and protein content of the hay grown in Nevada, it ends up going to California or to other states. So, it's not by choice that we use the rules laid out by the federal government, because it's an interstate commerce issue. We have hay moving within the state, and many people would like to see the old rules reimplemented. From an interstate standpoint, that's just not possible. The problem we have is that California is continuing to operate under the old rules, which were a joint effort between Nevada, California, and others to implement what is considered to be, and is, a safe way of transporting baled hay and straw for 50 years.

There were several meetings between the industry, California Highway Patrol, and Nevada Highway Patrol. Letters ([Exhibit K](#)) were sent to the Department of Transportation—specifically, to Annette Sandberg of the Federal Motor Carrier Safety Administration—and the definitive response we received was that the issue is basically closed. We believe that it needs to be reopened to specifically address the issue of baled hay and straw. We believe this resolution will allow our congressional delegation to help us with that issue, as well as to further outline the problem to the Federal Motor Carrier Safety Administration.

Assemblyman Carpenter:

How can California get away with doing it the old way?

Daryl Capurro:

California has a provision within their law. It's a window that basically says they don't have to adopt the federal regulations for three years following the adoption by the feds. I would bet they're going to take the full three years to do that. It's a difference in how they handle it. Theoretically, Nevada wouldn't have to adopt the federal regulations for intrastate movements, but the problem is that it represents less than half of the hay traveling on the highways. It also provides law enforcement a real problem in identifying whether it's an interstate or intrastate load. California has that quirk in their law which we don't have, and they're going to take their time to adopt this rule.

Assemblyman Carpenter:

Can we get a quirk, too?

Daryl Capurro:

The Nevada Highway Patrol, which is the agency responsible for adopting these kinds of regulations, has already adopted the regulations.

Assemblyman Hogan:

From our Committee's point of view, we favor some freedom to not have to fully comply with the federal regulations, but the real issue is safety on the highways. I'm wondering if we have witnesses who are willing to speak to some experience that the techniques that have been in use are successful. You've already indicated that the new method seems to introduce hazards that we didn't have before. You also mentioned that at the time these rules were adopted, there was not a lot of historic experience with our traditional methods to generate statistics. I think it would help us if there is some information. I'm looking for some assurance that we are not going to provide help appropriately to the industry at the expense of highway safety.

Daryl Capurro:

It is dangerous for the operator who is putting these v-boards on the sides. You're 14 feet off the ground. Overall, the practice in the past has been tremendously successful in making sure that we don't spread a load of hay all over the road because of the tiedown errors.

Chairman Claborn:

Assemblywoman Koivisto was driving up from Las Vegas this session. It was dark; she saw something in the road up ahead that looked like half of a house. She swerved and missed it. It was a big hay bale. Some of these bales are half as big as this room. If they lose hay, some drivers don't even know about it. That scares me every time I think about it.

Hugo Van Vliet, Private Citizen, Carrolton, California:

When they were talking about preserving Nevada history, I was thinking that if you pass this bill, you're going to help preserve the hay hauler in the Western United States, because these regulations that the feds are trying to force down our throats definitely present a safety issue.

I have been hauling hay for 50 years, and the regulations we've been using for tying down loads have been in effect ever since I can remember. In California, we operate under Title 13, which is similar to the information you have ([Exhibit K](#)) with respect to how we tie the loads down. When the loads are tied down that way, there are very few problems. If there is a problem, it's generally because of driver error or loose bales. If everyone goes by the regulations we've been using, with the longitudinal binders and no cross straps, we won't have any problems. In California we've tried to get some new regulations, but we know that by the first of the year, they're going to adopt these federal regulations and we're going to be in the same boat.

We haul much more hay than the people in Nevada, and the three-string bales are definitely going to be a problem with no longitudinal binders. We in the industry know what's going to happen. We are going to have serious accidents without these longitudinal binders. With the problem we have getting drivers and problems with workers' compensation, we're getting more truckers on the road who don't know much about hay hauling. If a driver doesn't know anything about hay hauling, goes by the federal regulations, and puts on a load of hay with cross- straps, he's going to dump that load of hay on the road if he has to stop in a panic; it will happen. According to letters we received back from the federal Department of Transportation ([Exhibit J](#)), they're not going to address anything, so we have to start somewhere.

We feel that this resolution is very important not only to Nevada, but to California. The v-boards are going to be labor-intensive and safety hazards. On the three-string bales, the loads aren't always perfectly square. They're going to be crooked. They could fall off on the road without the driver being aware of it. Someone has to crawl out to the edge of that load, put the v-board on the right, and risk falling off of that load. Most loads are going to require 16 v-boards. There is no reason for the v-boards and the straps.

Assemblyman Grady:

Can you give us more information on the old, small, conventional bales with respect to the weight, as opposed to the large bales that you're hauling now? You're not seeing small bales, as you just said; 75 percent of the time you're seeing big bales.

Hugo Van Vliet:

When we started hauling hay out of Nevada in the 1960s, the majority of what we were hauling was two-string bales, which are 46 inches long. They're not as easy to haul as the three-string bales, which we've had in use for the last 40 years. They weigh between 100 and 130 pounds, and they are manageable by hand. Being that it's hard to get labor, everyone is gravitating toward the big bales, which weigh from 800 pounds to over one ton. If these bales are correctly loaded on the truck, you can probably haul them from here to Reno and not have to tie them at all. They're much safer to haul than the smaller bales because they're heavier, wider, and they stay in place better. We've been hauling these small bales for 40 years with just these longitudinal binders not having any problem, and with these new regulations, we have to put the v-boards and cross straps on the big bales. It's a little bit ridiculous.

Alan Carey, Owner, Carey Transport, Fallon, Nevada:

Like Hugo, we have a trucking company which does both baled hay and general freight. The old rules do work and have worked for the past 30 to 40 years. The new rules are an unsafe practice. Hay cannot be treated as general freight. We haul both of them, and we know what is safe and what isn't.

Doug Busselman, Executive Vice President, Nevada Farm Bureau, Sparks, Nevada:

Nevada Farm Bureau has been in contact with Congressman Gibbons and Senator Ensign seeking their support in going to the federal agency to seek a specific regulation set for the transportation of hay. This type of resolution would be very helpful in our efforts to bring about those kinds of changes at the national level. In essence, this resolution is your Body's letter back to Congress instructing them on what you'd like to see established as policy. From that perspective, we are already engaged in that type of process, and we'd very much like your support in working along the same lines as we are.

Melvin Gokey Jr.:

I have been a grower and hay hauler for 30 years. We've never lost a load. We went by Section 13 of the California Code every time we loaded, and we've never lost a load. [Submitted [Exhibit L](#)].

Taylor Stack, Owner, Taylor Stack Hay, Fallon, Nevada:

We are very experienced at this, and we are very concerned how dangerous these new regulations could be. We'd appreciate your help.

Erik Taylor, Private Citizen, Battle Mountain, Nevada:

I wanted to address a couple issues on the bale size and the regulations for tying down different kinds of bales. I don't know if there needs to be some

differentiation in the regulations between the small and large bales. My concern was putting a man up on the truck to strap the longitudinal straps. The guys who operate the long trailers would like to be able to throw two side straps, without the v-boards, over the front and back bales, and one strap for the middle bales. They want that option rather than the longitudinal straps.

Assemblyman Goicoechea:

When we get a rule interpretation and/or commodity-specific regulation on it, at that point we would address it.

ASSEMBLYMAN GRADY MOVED TO DO ADOPT
ASSEMBLY JOINT RESOLUTION 12.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Claborn:

I will open the hearing on A.B. 379.

Assembly Bill 379: Provides for regulation of persons who submit certain applications to Department of Wildlife on behalf of another for consideration. (BDR 45-1006)

Chuck Arkell, President, Nevada Sportsman Coalition, Las Vegas, Nevada:

[Mr. Arkell read testimony from [Exhibit M](#), which has been incorporated herein.]

Assemblywoman Smith:

In Section 1, it says, "A professional licensing service shall not request or accept delivery of any license, tag..." That's gone from the amendment ([Exhibit N](#)). It doesn't show it as deleted, but it's also not stricken. That seemed like an important point to me. Is it moot?

Chuck Arkell:

That was stricken. In my discussion with NDOW, Patty Wagner assured me that they are not sending the tags to the license agents, but to the applicants. In the interest of coming to some consensus on this bill, we struck that.

Chairman Claborn:

Will this bill counteract the USO [United States Outfitters] lawsuit?

Chuck Arkell:

When we originally drafted this legislation, we were looking at addressing professional licensing services—for instance, USO and Cabela's TAGS [Trophy Applications and Guide Service]. In our discussion with NDOW, their main concern was that this legislation could possibly be construed as being retaliatory. That wasn't our intent. This legislation, with a broad stroke, does have industry implications as well as implications for anybody using the power of attorney. As far as getting a handle on solving the problem, it will require these agents who have been using a durable power of attorney—which is a power of attorney that does not expire—to go purge their records and have a limited power of attorney signed every year. It would basically reduce the opportunity for fraud, if it exists, and make sure the tags that are coming in are intended to actually be in the state of Nevada and no other state.

We asked all sportsmen to come up with ideas on how to deal with this lawsuit back in October. The original legislation was drafted as a way to limit some of the abusive practices by tag agents. When we started the investigation, we found a major loophole in the system. Regardless of the USO lawsuit, I think this absolutely needs to be addressed, because there is no clear regulation that talks about how to deal with power of attorney as it relates to the general draw.

This needs to be cleaned up, and I think it will. If you look in your packet ([Exhibit M](#)), you will see that USO isn't the only tag agent we need to be concerned about. There are powers of attorney that are being used that only require an email address. If those applications were to actually be sent, they probably wouldn't pass muster. Whether or not this is the solution to the USO lawsuit, I'm not sure, but it definitely addresses a problem that we believe needs to be fixed.

Chairman Claborn:

I have to agree with you 100 percent. I think this will straighten the problem with regard to people doing the tags and forging signatures. You're right; it has to be cleaned up. All of us have been trying to find a way to counteract USO.

Douglas Gault, Private Citizen, Las Vegas, Nevada:

This matter was first brought up to me with the USO lawsuit. I saw a business model that would be duplicated only because it was very successful for one individual. What concerned me was how it would be duplicated. USO happened to have one of the foremost wildlife attorneys at the time to help drum up their

business, and it worked extremely well. However, these other businesses that have spawned do not have the luxury of such legal advice.

[Douglas Gault, continued.] My original intent was the investigation of what seemed to be a practical business model and how this could be adopted into a personal business venture. I was soon taken aback by the unethical business practices of these unauthorized tag agents who present themselves as professional licensing agents. It's been since early 2004 that the Commission to Manage Wildlife has sought public input concerning the nonresident big game tag draw. However, my proposal has always been seen as retaliatory and punitive to the original conservation lawsuit. I have not been able to advance anything to the local Board to Manage Wildlife for that very reason, when, in fact, USO has been exemplary compared to the businesses it has spawned.

My proposal has always dealt with limited powers of attorney that these businesses use, mostly the durable clause and proof of identity. I have always been a strong advocate that these powers of attorney need to be verified as to the proper identity, as required to satisfy NRS and NAC [*Nevada Administrative Code*]. When one is applying for a tag at a local NDOW office, where many steps are taken to affirm one's identity and citizenship, a majority of these PLSs [professional licensing services] have taken no steps to properly ascertain their clients' true and proper identity; thus, they could never satisfy any inquiry as to their clients' identity if questioned. The contracts and powers of attorney that they employ have never received the proper notary approval that would legitimize such documents. Our current contractor systems consultant out of Fallon, Nevada, is not equipped to facilitate the handling of nonresident powers of attorney. The Department of Wildlife does not know if these applicants satisfy the citizenship requirement as the system now exists.

Chuck Arkell:

The original language of this bill was to address the unethical business practices from PLSs, and in our investigations we were able to find a glaring loophole that needs to be closed. We met with Wildlife Commissioners and had lengthy discussions with NDOW. We're very concerned that the original legislation would be viewed as retaliatory, so what you see before you is a product of negotiation with those two entities. The Wildlife Commission, with regard to the original legislation, had a neutral position. I do not know where they are now, since this has been amended.

I think this is a simple thing to institute. It's about five sentences, and I think it definitely belongs in NRS. It would give us and the Commission the ability and direction to form future regulations that could correct some of the situations in the NAC.

[Chuck Arkell, continued.] We're all concerned about the USO lawsuit and the possible implications. If the decision comes down and puts us all in one pool, removing the distinction between residents and nonresidents, I think having something in statute that addresses the legitimacy of the documents and sets a limited power of attorney will benefit our resident sportsmen who are competing against these out-of-state commercial. I urge you to pass A.B. 379.

Richard Elmore, Attorney, Reno, Nevada:

We are certainly supportive of the concept of providing some regulation or control over the issue of powers of attorney that are used by individuals in making applications out of state. We discussed the issue with Mr. Arkell, and we're in general agreement with the bill. I would suggest a couple of amendments, however.

I think there needs to be a provision added to the bill where, in the circumstance of any tag that is issued where there hasn't been compliance with the regulations contemplated here for powers of attorney, the tag would be void. I think that puts some teeth into the legislation and avoids the circumstance of someone claiming they weren't aware that the power of attorney wasn't in the proper form. It will put the responsibility for compliance back on the applicant.

There are some other provisions in the NRS you might use in structuring the form of the power of attorney. An example is found in the provisions of Chapter 111 of NRS, which discusses the form of powers of attorney and the context of conveyances for real property.

The last change I will recommend is in Section 2, which contains the provision on the expiration of the power. Instead of saying that the power of attorney would expire at the end of the season specified for the application, we should simply put in a provision that says all of these powers of attorney would expire on December 31 of the year in which the application is made. That way, there is no question as to whether the power is good in the next year's application process. The power would have to be re-executed, and it wouldn't leave open the issue of someone trying to determine when the season date was for which the power would be good. With those three changes, we are generally in concurrence.

Chairman Claborn:

I think you're right. That seals it up, and that's certainly what we have to do.

Assemblyman Hogan:

In some of the surviving language, the reference to "an applicant for a license, tag or permit..." ([Exhibit N](#)) I noticed that is in the singular. Would you

anticipate that you'd have to have separate applications if the client of a service wanted to get a tag for several different things? Does that singular language imply that it has to be a totally different process?

Richard Elmore:

What the proposed legislation contemplates is that somebody is going to have to execute a proper power of attorney for all of the tags the applicant would be seeking, but I would expect that could be done in the body of one power of attorney so a separate one wouldn't be required.

Your question gives rise to another point. You need to understand that there is nothing in the application system now that requires the production of these powers of attorney. They don't come back to anyone at the Department of Wildlife, the Board of Wildlife Commissioners, or the agency that does the tag process, and I think there should be a mechanism for doing that. Of course, that gives rise to administrative issues. Who's going to collect and inspect them to make sure they comply? The statute is going to call for a power of attorney, but the question is, who's going to be there to make sure we've done that?

Assemblyman Hogan:

Is there any possibility we could say that power of attorney must be furnished together with the application? Or does that get us into fiscal notes and other problems?

Chuck Arkell:

In the original legislation, we talked about establishing a certificate of registration for these professional licensing services. This was more of a fiscal concern for the Department of Wildlife. There was a real concern about how to determine how much to charge. Mr. Elmore's statement about assigning a notary is the one provision that would have to be added. It can definitely give clear direction for us to take this to the Wildlife Commission at a later date to establish more stringent regulations. I would add the notary provision and reference NRS 111, which talks about what an acceptable notary is. As far as the fiscal concerns, I think that's a question for the Department of Wildlife.

Assemblyman Hogan:

I don't want to open up any new problems. If the law, as it's proposed to us now, is adequate, and especially if the Wildlife Commission would have the authority in implementing regulations to get specific about it, these could be handled in that part of the process as long as they have the authority to do it.

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

We support the bill, particularly with the proposed amendments by Mr. Elmore.

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

I assume you're referring to the specific pool that's set aside for nonresident deer tags. [Chairman Claborn answered in the affirmative.] A separate pool was created for a certain number of deer tags based on the quota allocation. The guides have a certain amount allocated for nonresident guided hunts. Last year, there were about 400 set aside. We haven't set the quotas for this year yet, and that will be based on last year's numbers. We will do that in May. There is a power of attorney process that that applies to.

Larry Johnson:

There are a certain number of tags set aside for a special guides drawing. That comes out of the nonresident pool. It is a mechanism by which we try to support the Nevada guide industry.

Chairman Claborn:

This would also address that issue as well?

Chuck Arkell:

As far as the only provisions in statute that address power of attorney, it just requires that the guide have a power of attorney. It doesn't talk about the durable provision, which means it can last forever. The only reference in statute is that they're required to have a power of attorney if they're putting in for somebody. This legislation would affect them in that it would limit the power of attorney to every year.

Chairman Claborn:

I think Mr. Elmore's amendment would do that with the date of October 31, or at the end of the year. I think that's a good idea.

Chuck Arkell:

I agree.

Chris MacKenzie:

We discussed this at our last Commission legislative subcommittee meeting with the language as it was written. With this new language, I can't testify one way or the other on behalf of the Commission. We liked the overall idea of it, but we had some concern about payment of any enforcement costs for the Department. It needs to be addressed, but I can't take a position one way or the other.

Patty Wagner, License Office Supervisor, Nevada Department of Wildlife:

I'm not so much against the bill as I need some clarification. I very much appreciate the revisions that remove the requirement for a new and unfunded program.

[Referred to [Exhibit O](#).] As revised, A.B. 379 would require a person acting on behalf of an applicant applying for a license, tag, or permit, to have the limited power of attorney with an expiration date not later than the end of the season specified in the power of attorney. I understand the discussion on the proposed amendments, but I do have some questions and I need interpretation on when a power of attorney would be required and just how limited it would have to be.

The Department of Wildlife accepts and recognizes the power of attorney as a legal instrument that allows a person to designate another person or entity to conduct business for that person. We accept powers of attorney that are limited with an expiration date for specific transactions, such as someone authorizing another person to title and register a boat or apply for a license, tag, or permit. We also accept general or broad powers of attorney, such as those often provided by an active serviceman or servicewoman who confers responsibility to the spouse or parent to conduct business while the person is out of the state or out of the country.

When the Department accepts a power of attorney, it must be relevant to the transaction. We would not allow a medical power of attorney to be used to purchase a license, tag, or permit. We would, however, allow the use of a general or broad power of attorney. The Department agrees that a power of attorney must provide the necessary authority to conduct the transaction for another individual; however, we do not know if we could refuse a general or broad power of attorney if the power of attorney is a legal instrument. In addition to spouses and parents who apply for another using the power of attorney, we have licensed master guides who apply for clients for the restricted, nonresident deer hunt and for other hunts. The regulations require the master guide to have a power of attorney that allows the guide to sign the application for the applicant. This is NAC 502.4231. We have brokers, such as Cabela's and USO Outfitters, who provide a service by submitting applications for clients. Cabela's also requires a power of attorney. If the power of attorney is a legal instrument between two individuals, then the Department feels we could not easily regulate what transpires between those two individuals.

If the literal interpretation is applied and A.B. 379 is approved, the law would require a group of family and friends who get together to apply online to have powers of attorney if any one of the clients is applying for the party. The Department of Wildlife would have a very difficult time enforcing this law, as

we do not know who is sitting in front of the computer and whether the limited and dated power of attorney is in place that meets the letter of the law.

[Patty Wagner, continued.] We have powers of attorney outside of licensing services, and the way this is written, it would apply to everyone; that includes family, friends, and servicemen who have given their consent for a spouse or parents to conduct business. It's not that we're against the bill, but we would like you to at least consider these other issues.

Chuck Arkell:

These are a lot of the same questions and concerns that were raised during our discussion last week, which is one of the reasons we went back and amended this bill.

This would apply to individuals, not just professional licensing services. Our concern is the fact that there is no proof. When we did our research on powers of attorney, there are some powers of attorney that are acting with just an email address. You mentioned Cabela's and USO. Each one of those requires a witness, not a notary. USO and Cabela's are probably the largest commercial operations that would be putting in for tags on behalf of others. Our concern with this legislation was that if you're going to deny a paper application because it's not notarized, I don't see how we can take an application, whether it be online or paper, based on this power of attorney that is not notarized.

In the amended bill ([Exhibit N](#)), "a person may only act on behalf of an applicant applying for a license, tag, or permit, pursuant to a power of attorney that..." and then it goes into the limited provisions. Yes, it would apply to a serviceman serving overseas, and we're very sensitive to that. When people go overseas as part of their military duty, they hand over their general power of attorney. However, when you look at how long that power of attorney is in place, if a person cannot sign a new power of attorney within a year, the chance of that person actually being able to participate in the hunt is pretty small. We do understand that this would apply across the board.

Chairman Claborn:

I will close the hearing on A.B. 379. We are adjourned [at 4:19 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Recording Attaché

Angela Flores
Transcribing Attaché

APPROVED BY:

Assemblyman Jerry D. Claborn, Chairman

DATE: _____

EXHIBITS

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

Date: April 4, 2005

Time of Meeting: 1:39 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
AB 289	B	George Phillips / Clark County Cultural Site Stewardship Program	Prepared testimony (3 pages)
AB 289	C	Terri Robertson / Tule Springs Preservation Committee, Friends of Sloan, Friends of Gold Butte	Letter to the Committee (1 page)
AB 289	D	Jack & Elaine Holmes / Nevada Rock Art Foundation	Letter to the Committee (1 page)
AB 289	E	Bill James / Friends of Sloan Canyon	Prepared testimony (2 pages)
AB 289	F	Helen Mortenson / Private Citizen	Prepared testimony from Nancy Gentis (1 page)
AB 289	G	Helen Mortenson / Private Citizen	Letter to the Committee from Charles Molina (1 page)
AB 289	H	Helen Mortenson / Private Citizen	Letter to the Committee from Donald White (1 page)
AB 289	I	Helen Mortenson / Private Citizen	Letter to the Committee from Anne McConnell (1 page)
AB 181	J	Assemblyman Goicoechea	Prepared testimony (3 pages)
AB 181	K	Assemblyman Goicoechea	Information packet (25 pages)
AB 181	L	Melvin Gokey Jr. / Private Citizen	Prepared testimony (6 pages)

AB 379	M	Chuck Arkell / Nevada Sportsman Coalition	Information packet (10 pages)
AB 379	N	Chuck Arkell / Nevada Sportsman Coalition	Proposed amendments (3 pages)
AB 379	O	Patty Wagner / NDOW	Prepared testimony (2 pages)