

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-Fourth Session
March 8, 2007**

The Committee on Government Affairs was called to order by Chair Marilyn K. Kirkpatrick at 9:01 a.m., on Thursday, March 8, 2007, in Room 3143 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Marilyn Kirkpatrick, Chair
Assemblywoman Peggy Pierce, Vice Chair
Assemblyman Kelvin Atkinson
Assemblyman Bob Beers
Assemblyman David Bobzien
Assemblyman Jerry D. Claborn
Assemblyman Pete Goicoechea
Assemblyman Ruben Kihuen
Assemblyman Harvey J. Munford
Assemblywoman Bonnie Parnell
Assemblyman James Settelmeyer
Assemblyman Lynn D. Stewart
Assemblywoman RoseMary Womack

COMMITTEE MEMBERS ABSENT:

Assemblyman Chad Christensen

GUEST LEGISLATORS PRESENT:

Assemblywoman Susan Gerhardt, District No. 29



STAFF MEMBERS PRESENT:

Amber Joiner, Committee Policy Analyst
Scott McKenna, Committee Counsel
Rachelle Myrick, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Raymond Flynn, Assistant Sheriff, Law Enforcement Services, Las Vegas
Metropolitan Police Department, Nevada
Robert Roshak, Sergeant, Office of Intergovernmental Services, Las
Vegas Metropolitan Police Department, Nevada
Rusty McAllister, President, Professional Firefighters of Nevada
Ray Bacon, Nevada Manufacturers Association
Russell Fields, President, Nevada Mining Association

[Meeting called to order at 9:01 a.m.]

[Roll called.]

Chair Kirkpatrick:

We are going to start with Assembly Bill 91.

**Assembly Bill 91: Makes various changes to provisions governing explosives.
(BDR 42-691)**

I would like to invite Assemblywoman Gerhardt to speak.

Assemblywoman Gerhardt, District 29, Clark County:

Assembly Bill 91 is introduced to address the threat of terrorist activities that explosive materials pose in Nevada.

At the present time, law enforcement agencies and fire departments are not notified when there is an "unusual" sale or theft of explosives. We must strengthen our storage reporting and notification laws which are simply inadequate at this time.

If you look at the proposed amendment ([Exhibit C](#)), you will see I am proposing to delete the very extensive definition of explosives that is in Section 2. This was originally intended to make sure anything which can be used as an explosive material is covered in the reporting requirements. This might have

required the reporting of ingredients such as fertilizers, possibly affecting farmers, et cetera. Rather than a long and detailed list in statute, I am suggesting to amend section 2 to include any material on the list of explosives published and revised annually by the United States Department of Justice. I believe this will allow us to remain current without unnecessary detail and without the Legislature having to update a statutory list on an ongoing basis.

Assembly Bill 91 requires proper labeling and storage containers as described in Section 3. This is simply a reference to existing laws and regulations.

Sections 4 and 5 are the heart of the bill and go hand-in-hand. In Section 4 anyone who is aware of an "unusual" sale, purchase, loss, or theft of an explosive must report it to local law enforcement within 24 hours. The amendment also requires notification to local fire departments since they are trained to deal with hazardous materials. Local notification is critical in efforts to foil potential terrorist activity because local entities are in the best position to respond.

The amendment also includes a penalty for failing to notify. Violators will be guilty of a gross misdemeanor and could face a year in jail or a fine of \$2,000 or both.

The amendment provides a rebuttable presumption that an activity is "unusual" if it does not regularly occur in the ordinary course of business. We went to legal to get a definition because we wanted to be sure that "unusual" was clarified.

Section 5 requires a written record of anyone who manufactures, imports, purchases, or distributes an explosive. The amendment provides specific record keeping details depending upon whether it involves a governmental entity or an individual person. We missed one particular fine point. When it calls for an individual person to report, it says tax identification. We propose that be amended to say driver's license for identification since obviously not every private person has a tax identification number, and we do not want to cause any problems for our reloading friends.

Additionally, Section 5 requires notification within 24 hours to local law enforcement and fire department when someone stores explosive materials. This will allow local entities to know exactly what substances are within their jurisdictions. A violator would be guilty of a gross misdemeanor.

You will see that the amendment deletes Section 6 and 7 of the original bill. These sections would have required consultation with local law enforcement

when certain facilities seek conditional use for permits and would have allowed the Division of Environmental Protection to inspect facilities where records are kept. I am proposing to delete these sections to keep the focus of A.B. 91 on the storage, reporting, and notification provisions in Sections 3, 4, and 5. These are the sections that will accomplish the goal of tracking explosive materials, thwarting terrorist activities, and maintaining public safety.

Lastly, the amendment deletes Section 8, thereby making the effective date of the bill October 1, 2007. This will allow for the most effective implementation of the bill. The fiscal note has been removed since we did the extensive amending of the bill.

Raymond Flynn, Assistant Sheriff, Law Enforcement Services, Las Vegas Metropolitan Police Department:

I am representing not only the Metro Police Department, but also the Nevada Sheriffs' and Chiefs' Association.

This bill ties hand-in-hand with Public Safety and Homeland Security. We all know we have to get it right 100 percent of the time, and the bad guys have to be right only once. We also know that early warning is one of the key tools in combating terrorism.

We have had incidents in Clark County in which explosives have gone missing or were stolen, and we did not find out about it until months later. There may be other incidents that we do not even know of. Assembly Bill 91 will give us a necessary tool to combat terrorism by early warning so that we could investigate it immediately and take steps.

Robert Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department:

I would like to emphasize this is not just dealing with gunpowder and dynamite. This deals with any combination of chemicals that can be turned into explosives. We became aware of this particular concern when two different chemicals were stolen from the University of Nevada Las Vegas. Each one on its own was not a problem, but when combined, they would make a very high explosive. We were never told about it. We want you to know that we are trying to focus not only on the basics but on everything. That is why it requires police departments, fire departments, schools, and any educational facilities to make us aware of what they have.

Rusty McAllister, President, Professional Firefighters of Nevada:

We felt it was very important for fire departments to be included in this bill as we are the ones who are going out to houses on a daily basis without any

knowledge of what is inside them. These explosive chemical devices are not as volatile unless they are under fire.

The notification process would go through our fire prevention programs and bureaus within our departments. Reports would be loaded into our computer databases so that when fire engines arrive at a call, we go onto our computer screen to check the address. If a notification has been made and put through the computer process, it will automatically come up on our computer screen to let us know to be aware. Now we have the ability to go in, stay out, or evacuate an area before something happens.

The Las Vegas Fire Department is responsible for the bomb unit. We have 13 people that are on the bomb squad that provide 24 hours a day, 7 days a week coverage for explosive devices. They go out and identify, detonate, remove, et cetera. It would be nice if they had an idea about what they were going to before they got there.

Chair Kirkpatrick:

Ms. Gerhardt, I see that there are a few questions. Do you want them directed to you or to the agency we feel is appropriate.

Assemblywoman Gerhardt:

The agency that you feel is appropriate.

Assemblyman Bobzien:

I was encouraged by the amendment. The additional definition of "unusual" is what sparked some interest originally. I have a number of muzzle loader enthusiasts in my district and I want to make sure that we are not impacting those folks. Are they "usual" if they are buying what they need at a sporting goods store?

Raymond Flynn:

We researched this and the applicable federal statute we put in to address all of the explosives. There is an exemption under 18, chapter 40, section 845. It exempts black powder up to 50 pounds, small arms ammunition, explosives used in medicinal research or pharmaceuticals as well as purchases by state and local governments. Our intention would be to follow the federal law as well as the carved out exemptions that are stated.

Assemblyman Settlemeyer:

On page 7 of the proposed amendment it discusses notification of the local fire department. The average citizen may not know which fire department is in their jurisdiction. I request that the enforcement agency immediately notify those

jurisdictions that are within their area. It is common sense that if you have something stolen you call 911. You may not think to call the fire department. I hope that the police department would notify the fire department. They have an immediate need to know. It could be better brought about by the law enforcement agency or by a dual issue in which the person and the law enforcement entity are supposed to notify the fire department.

Rusty McAllister:

In regard to fire departments and their jurisdictions, it is very difficult to know in which district an address is located because the lines zigzag in and out. They all work with the same dispatch center and the same computer program. We have agreements with all of the local departments to respond to each other's districts. Since we work with the same radio system and the same computer dispatch system it would come up automatically.

Henderson has its own set-up with regard to law enforcement and fire. We already work together in what is called All-hazards Regional Multi-agency Operations and Response (ARMOR) it means responding to these types of Homeland Security calls in a joint fashion with law enforcement, the fire department, and the HAZMAT team along with police departments' law enforcement specialists. They coordinate back and forth. With regard to having the local fire department notified, it also notifies our Fire Prevention Bureau, so if there needs to be a follow up inspection, they have the ability to do that.

Assemblyman Settlemeyer:

I want to make sure that it is not only the person's responsibility to notify the fire department but also that of law enforcement. I have a problem with that. It is sometimes hard for an average citizen to determine that answer.

It is a wise decision to go to the federal concept of exempting out muzzle loaders and people with certain amounts of black powder. I would assume that also applies to individuals who might be buying explosives in the form of fertilizer at a home improvement store. Is there then an exemption for an agriculturalist with a ton of fertilizer to spread on the field? If someone had true explosives, then he would have to follow and abide by that rule.

Raymond Flynn:

If there was to be a theft that Metro handled through the Joint Anti-terrorism Taskforce, as well as ARMOR, we would get that information out to the local fire departments as fast as possible.

The way the bill is written, it will not apply to individual purchases. The intention of this is if a person purchased a ton of fertilizer, and it was stolen, we would need to be aware of that.

Assemblywoman Gerhardt:

As a retired Metro officer I am very proud of my fellow officers and the things that we have done as far as sharing information. I appreciate your concerns but we are doing a much better job of sharing information. I think that one particular point is already being addressed.

Assemblyman Settlemeyer:

I brought it forward because I felt if you were including it in the law, you must have been including it for a reason; therefore, there was no communication. If it is already being done, why do you say "must inform the local fire department in the jurisdiction." You indicate that was already being done. Generally when I see someone add a law, it is for a reason; something is ignored, or not taken care of. I am trying to clarify why.

Assemblyman Goicoechea:

Can you have five pounds of smokeless powder? I am a little bit concerned that everyone with a can of smokeless powder will have to file all these reports. Almost every house in rural Nevada would then be on this list and you would have to use extreme caution as you went into every house.

Raymond Flynn:

The intention of the exemptions under federal law was not to impede sporting and gun enthusiasts.

Assemblyman Goicoechea:

Can the sponsor of the bill get us that? I would think that a number of these re-loaders might have 10 to 15 pounds. They use different powders for shot gun shells or rifle shells. I understand that it is a real threat, but given the number of re-loaders in some of these areas, you would have everyone's house on the list.

Chair Kirkpatrick:

I can have research do that for us.

Assemblyman Claborn:

This bill will not tie the hands of our legitimate contract drillers and construction people that do blasting as well as mining blasting? They use the same things; they use prill which is mixed with diesel. These contractors are the ones that are going to really scrutinize this. They have to account for all of their blasting

caps, every stick of dynamite they have, and every pound of fertilizer they have on stock and how much they use. My question is for clarification only. This will not affect any construction contractor that is in business as of today? We are talking about only terrorist bomb type stuff?

Assemblywoman Gerhardt:

That is why we wanted to get the definition of "unusual." What we want to capture is stolen explosives from businesses. If some individual goes to a merchant for no apparent reason and purchases a huge amount of explosives, we want our first responders to have an opportunity to see if there is a problem.

Assemblyman Claborn:

If what it does is handle what you were just explaining then that was my whole confirmation.

Chair Kirkpatrick:

I think the federal regulations will clarify a lot of the concerns. Mining has signed in today to be neutral on the bill. We can clarify with him because he would be one of the biggest users.

Rusty McAllister:

We talked to representatives from the mining industry, and they expressed to us that they did not have concerns. They are already under extreme, strict federal guidelines for reporting inventory, et cetera. The federal guidelines require that mines inventory their materials once per week. They inventory on a daily basis. Our concern was to make sure that if during the course of their inventories they found they were missing things, they would be compelled to at least let us know.

Chair Kirkpatrick:

I know that Legal is now in the process of emailing everyone the federal regulations. You will have that before the end of the meeting.

Are there any more questions? [There were none.]

I have some people that would like to speak in favor of this bill.

Ray Bacon, Nevada Manufacturers Association:

You should see some written input ([Exhibit D](#)) that we prepared this morning. I have learned some things in the last week or so that I think are valuable to put on the record.

Number one, on April 7, 2007, Homeland Security will have a new list of chemicals that will be on the ATF list. This list will apply to all chemical plants. There are also additional regulations which will apply to all chemical plants. This list will include quantities. Some of the chemicals that were on the original list, like hydrochloric acid and sulfuric acid, are not on the ATF list because they are not listed as explosives. They are oxidizers. The Homeland Security list will include those. There will be notification requirements for theft and loss, as well as inventorying the plants.

Number two, it turns out that the ATF list of everyone who has an explosives license is a public record. There are 127 companies in the State of Nevada that have explosives licenses. More than half of the list is located in rural Nevada, with that apportion being split between Las Vegas and Washoe County.

Pyrotechnics require an explosives license. Alcohol, Tobacco and Fire Arms has different requirements for pyrotechnics magazines or bunkers used for storage versus explosives.

We suggest for the long term the State delete Section 5, subsection 7 and use the ATF list as it is a public record. In my discussions with Ms. Gerhardt yesterday, she indicated she is very concerned that the bill not have a fiscal note. Since the ATF list is a public record, it should not have a fiscal note. I have not had a chance to confirm that with whomever in the State would be assessing it.

Pennsylvania has a very comprehensive program already in place whereby they not only get it directly to the state police, but to their central bomb disposal, which is part of their state police operation. That also goes to the major police departments within the state. It automatically goes once per month to Pittsburgh, Philadelphia, someplace up in northeast Pennsylvania, as well as the state police operation in Harrisburg. Other states have set it up to get the information on a regular basis. I think it is possible that we can do that. As to what it would cost, I cannot tell you.

The Department of Public Safety needs to be involved in this because it is a statewide issue.

If an agricultural operation changed hands so that it had a new owner, under this bill, that new owner would then become an "unusual" sale and would be reported to the local police and fire departments. It would become an "unusual" sale because the owner is different, not necessarily that the facility is different. Once the police investigated it and came to the conclusion that the new owner is carrying on with the existing operation, it would be approved. Things like

that would be caught but would be fairly clean in the way that they are handled.

The general rule for black powder is 50 pounds on site, and that applies to gun powder as well. I think the re-loading issue is outside the purview and should not be an issue to begin with.

We support the bill as it is modified with the correction that Ms. Gerhardt made this morning. We also believe that section 7 does not need to be there if we use the ATF list. Do you want to do that now or find out the cost first?

Chair Kirkpatrick:

I would like you to work with the bill sponsor if you are proposing an amendment. I believe that is what you are saying. We will see how the rest of the Committee wants to proceed. I will ask Legal to verify whether or not a business owner would have to get some type of business license no matter what.

Assemblyman Goicoechea:

You say that the ATF list is public record.

Ray Bacon:

That is correct sir.

Assemblyman Goicoechea:

Is it accessible by anyone?

Ray Bacon:

Any police agency can get it. Anyone using the Freedom of Information Act can get it. Do terrorists have this or can they access it? If they can look like they are legitimate, the answer is yes.

Assemblyman Goicoechea:

That is my concern, especially when you say that 50 percent of those sites are in rural Nevada.

Chair Kirkpatrick:

Anyone else have any questions? [There were none from the Committee.]

What do you think the time frame would be for all of our local agencies to be able to access that information? I want to be able to get it to first responders in the quickest amount of time.

How long has Pennsylvania's law been in place, and what are its pros and cons?

Ray Bacon:

It sounds like their program is comprehensive and has been in place for quite some time. I do not believe they changed their law. I think it is a working relationship between ATF and the Pennsylvania State Police that started it. The gentleman that has the bomb entity for the Pennsylvania State Police started requesting a copy of the list for the state through the Freedom of Information Act once per quarter. Then they started sending it to him every month.

The time frame on theft, the 24-hour rule, I agree that first responders need to know. My understanding is the requirements for creating a site for an ATF magazine are such that it does not take place quickly. Once a magazine is located, it is going to be in the ATF database. The indication I had from the Institute for the Makers of Explosives was that the process of getting a new site location is a 60 to 90 day process. If we were getting a list once per month we would have those sites.

We are not going to have a list of the small amounts of explosives and gun powder that are in homes because that is not in the list. They are not controlled at this stage. Firefighters are still going to be at risk in those situations.

We are not going to have something which might be in a business which is under the small quantity numbers. We would clearly have the gun shops and things like that where their quantities exceed the 50-pound onsite numbers. If we had something that was exceedingly flammable like gasoline, it is not going to be on the list. The risk for firefighters is still going to be there.

Chair Kirkpatrick:

What does all of that have to do with the timeframe? Why would we not want our first responders to have this information within a 24-hour time frame? If we go the other way it could belabor it.

Ray Bacon:

The magazine sites that will be covered by this bill are going to be located. They are going to be known far ahead of time. Today the fire department can have this list and have every site and location for all those major facilities. If the explosive is being used onsite, it does not qualify under this bill. They are not going to have that information. If it is below the quantities located as a residence, which is the risk for fire, we would not have that information either. I am not sure that this gets us to the point at which we eliminate it completely.

Chair Kirkpatrick:

Are there any questions for Mr. Bacon? [There were none.]

Russell Fields, President, Nevada Mining Association:

As we are such large users of explosives, mining is heavily regulated in this area. All aspects are regulated, including storage usage and transportation. We are governed by federal law as administered by the Mine Safety and Health Administration as well as the ATF. We are also subject to State requirements of the State Mine Inspector in the Department of Business and Industry, and the Fire Marshal. We support the aspects of the bill that require reporting of "unusual" sales or losses. We have extremely good records as to what we have on the property, who checks it out, and how it is used.

If you could address what your intention was for mining, and if it is very clearly just a reporting requirement of the "unusual" activity, I think we will be fine with that.

Chair Kirkpatrick:

Are there any questions for Mr. Fields? [There were none.]

I want to point out in the mock-up Section 8 was inadvertently crossed out. Do you know what you want your effective date on this to be?

Assemblywoman Gerhardt:

Yes, we did delete Section 8, thereby making the effective date of the bill October 1, 2007.

I need to mention a couple of things to reiterate our intent. We are not trying to cause any concerns for the mining industry. Our intent is to capture instances of theft at their location. They have explosives for a legitimate purpose. We are looking at the "unusual" occurrences only. That is why we put the definition for "unusual" there.

I need to put in the record that we worked extensively with Mr. Bacon on several occasions. We sat down with Legal to address some of his concerns. One of the things that he mentioned was that selling a business would not be considered an "unusual" occurrence. If we are looking at page 7 of the mock-up, section 5, line 40, it says "except in the due course of trade." Selling a business in the due course of trade is not an "unusual" occurrence.

Our first responders have responses to some of his questions.

Rusty McAllister:

Dealing with the time frames that you talked about, under Mr. Bacon's proposal using the ATF report, it is updated once per month. In the mock-up notification is within 24 hours. We believe that the time frame, depending on the time of the month that it happens, is very important. There could be a 30-day difference between the time we know something and the time it actually comes up on an ATF website.

The way it was brought up to us, the State would be brought into it along with the Department of Public Safety, which adds another layer of bureaucracy. Things seem to get lost in the mix when that happens. Mr. Bacon has indicated that there may or may not be a cost. We do not know. Anything with a fiscal note typically finds its way down the river. We think it is too important an issue to have a cost factor added to it that would make it go away.

With regard to Mr. Bacon wanting to remove Section 5, subsection 7 when it talks about the 24 hours, he is referring back to magazines. When you apply to put a magazine somewhere, there is a registration process, a plans check process, et cetera that you have to go through. This Section 7 does not talk about someone who is putting something in a magazine. It is talking about someone who is buying chemicals and putting them in his garage. His garage is not registered as a magazine. He is not going to call the Fire Prevention Bureau and say I am going to store this in my garage and I would like to get a license for a magazine. We do not want to have that provision removed if it is going to make that kind of a change.

Assemblyman Goicoechea:

I think we need to create the list, but some security needs to be applied to it. I do not want an open invitation to come to rural Nevada. We can actually find the address of every magazine in rural Nevada. Some of them are old and might not be very secure.

Chair Kirkpatrick:

Would anyone else like to speak on A.B. 91? For, against, or neutral? [There were none.]

I will close the hearing on A.B. 91.

We do not have anything else on our agenda for today. At this time I will take any public comment. [There was none.]

Are there any questions from the Committee? [There were none.]

[Meeting adjourned at 9:52 a.m.]

RESPECTFULLY SUBMITTED:

Rachelle Myrick
Committee Secretary

APPROVED BY:

Assemblywoman Marilyn K. Kirkpatrick, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Government Affairs

Date: March 8, 2007

Time of Meeting: 9:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Sign In Sheet
A.B. 91	C	Assemblywoman Susan Gerhardt	Proposed amendment for A.B. 91
A.B. 91	D	Ray Bacon, Nevada Manufacturers Association	Proposed amendments for A.B. 91