

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

**Seventy-Fourth Session  
May 7, 2007**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Jerry D. Claborn at 1:36 p.m., on Monday, May 7, 2007, in Room 3161 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/](http://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](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Jerry D. Claborn, Chair  
Assemblyman Joseph Hogan, Vice Chair  
Assemblyman Kelvin Atkinson  
Assemblyman David Bobzien  
Assemblyman John C. Carpenter  
Assemblyman Pete Goicoechea  
Assemblyman Tom Grady  
Assemblyman Ruben Kihuen  
Assemblyman John W. Marvel  
Assemblyman James Ohrenschall  
Assemblywoman Debbie Smith

**STAFF MEMBERS PRESENT:**

Jennifer Ruedy, Committee Policy Analyst  
Randy Stephenson, Committee Counsel  
Christina van Fosson, Committee Secretary



**OTHERS PRESENT:**

Rick Gimlin, Deputy Director, Department of Agriculture  
Michael Montero, Member, Nevada Cattlemen's Association  
Board of Directors  
Doug Busselman, Executive Vice President, Nevada Farm Bureau  
Federation  
David Holmgren, Chair, Nevada Livestock Association  
Don Alt, representing, Nevada Farm Bureau Federation  
Joe Dahl, Member, Nevada Cattlemen's Association  
David Stix, Co-Owner, Western Nevada Cattle Feeders  
David Schumann, Vice President, Nevada Committee for Full Statehood  
Joe Guild, representing, Nevada Cattlemen's Association  
Graham Galloway, representing, Nevada Trial Lawyers Association  
Kyle Davis, Policy Director, Nevada Conservation League

**Chair Claborn:**

The meeting is called to order.

**Senate Bill 48 (2nd Reprint): Redesignates district brand inspectors as agricultural enforcement officers. (BDR 50-628)**

**Chair Claborn:**

This bill pertains to redesignating district brand inspectors as agricultural enforcement officers.

**Rick Gimlin, Deputy Director, Department of Agriculture:**

Senate Bill 48 (2nd Reprint) replaces obsolete language. In 2001 there was a change in job title from district brand Inspectors to agricultural enforcement officers. Agricultural enforcement officers no longer exist. This bill removes obsolete language and puts in the correct language with regard to agricultural enforcement officers. That is essentially all this bill does.

**Assemblyman Goicoechea:**

A person can be cited for crossing a district boundary. But if we no longer have district brand inspectors, why do we have districts?

**Rick Gimlin:**

That is a good question. But I do not have an answer.

**Assemblyman Hogan:**

Assemblyman Goicoechea has raised a very interesting point. Do the original reasons for having districts and district brand inspections still have meaning?

Or do they have more to do with movement of livestock with regard to their health? Considering the initial reasons, do they no longer pertain?

**Rick Gimlin:**

I am not an expert on why we had districts. When I joined the Department around 1996, in the past there had to be brand inspections throughout the districts. The amount of paperwork we had was horrendous. It was also expensive. It seemed that shortly afterwards we went to a do-it-yourself permit that applied across districts. To go out-of-state they would still need to have a brand inspection.

You would need a brand inspector if there was a change of ownership. If a person was simply transporting their animals across districts, they could purchase permit packets to fill out and send to the Department. That program was intended to trace the animals as they were moved throughout the State. That way we still had some idea of where we could find large numbers of cattle being transported. I do not know if we still need districts or not. I will need to look into that and get the answer to you at a later date.

**Assemblyman Goicoechea:**

Those trip permits allow us to track cattle being transported across district lines. Agriculturalists can travel anywhere they want with their permits. In the last session we raised the charge for the trip permit from \$1 to \$3. Those prices are not excessive. As I look at the language in this bill, it concerns me that we are eliminating brand inspectors and making them agricultural enforcement officers. Does that mean that agricultural enforcement officers become brand inspectors? There appears to clearly be a qualification issue there.

**Rick Gimlin:**

We currently have agricultural enforcement officers that do brand inspections. The majority of our officers have to understand how to perform those inspections. They would have to be trained properly. With regard to your question, yes, an agricultural enforcement officer could do brand inspections.

**Assemblyman Goicoechea:**

You have some excellent brand inspectors. Brand inspection is not a hastily acquired skill. We will not produce a highly qualified brand inspector by changing the job title. I am concerned about the number of individuals who will have the ability to become a brand inspector because of this bill. Some of the individuals who might attempt to obtain this new job may be unqualified to perform brand inspections.

**Rick Gimlin:**

This bill does not affect our deputy brand inspectors who do the majority of our brand inspections. There is a tremendous amount of concern about district brand inspectors—and I reiterate, that is an obsolete title—because the people who had those positions in the past had peace officer capabilities. Now they are going into the broader range of agricultural enforcement officers. There is a concern that we are increasing our law enforcement capabilities. The concern is that we are perhaps taking a greater law enforcement approach, rather than a greater brand inspection approach, to inspecting cattle.

In the amendment that Senator Amodei proposed, one of the things that we pledged to do as a department was to go through the regulatory process and tighten up our regulations with regard to this process. We will go through the public hearing process so that everyone will have the opportunity to discuss this matter. They can tell us what they want from our department in terms of brand inspections and law enforcement. We have to be very careful in our department.

Someone spoke with me once at the Junior Livestock Show. They recounted an instance where they were pulling a horse trailer to move chairs. One of our employees pulled them over, as he is supposed to. Once he noticed that the driver was moving chairs and furniture he let him go. We do not know whether a trailer will contain horses or cows, or be empty.

**Assemblyman Goicoechea:**

You mentioned Senator Amodei's amendment. Please tell me what page that is on.

**Rick Gimlin:**

It is amendment number one.

**Assemblyman Goicoechea:**

We have a second reprint.

**Rick Gimlin:**

The reprint removed all of that. It would have been under Section 8, on the last page. It was items 31 through 50.

**Assemblyman Goicoechea:**

So in the amendment as used in this section, "agricultural enforcement officer" has its meaning described.

**Rick Gimlin:**

Yes, and on lines 45 and 50 on page 4 was the original amendment that was put in by Senator Amodei. Then it was withdrawn or deleted. Then it was amended again. So we are back to how the bill originally looked.

**Assemblyman Goicoechea:**

Was that the amendment that required probable cause?

**Rick Gimlin:**

Yes, that language says that a field agent or inspector has the powers of a peace officer and the authority to stop or detain. Rather than have that statute, if we go back through regulation we can be much more attuned to what is required and requested by our industry. That would give everyone a chance to comment on it. Unfortunately, the Committee is very limited on time and only a few people can come and speak.

**Assemblyman Goicoechea:**

If this bill failed and we did not change the job title to agricultural enforcement officer, we would still have the ability to go through regulations to adjust the process if it was necessary.

**Rick Gimlin:**

If the bill does not move forward, we still have district brand inspectors a title which no longer exists, designated in statute. You are correct that we could still go back through the regulatory process and tighten up our regulations, but there would still be the matter of this obsolete language.

**Chair Claborn:**

What would you like to see accomplished as a result of this bill? Are you attempting to utilize your budget more efficiently? Are you attempting to have a brand inspector become a police or law enforcement officer with greater responsibilities? What does this bill accomplish for you?

**Rick Gimlin:**

I essentially want to replace like with like.

**Chair Claborn:**

Are you using the brand inspectors to fulfill multiple roles?

**Rick Gimlin:**

In this case, yes. District brand inspectors no longer exist. They became known as agricultural enforcement officers. Our brand inspectors would now be called agricultural enforcement officers.

**Chair Claborn:**

How many brand inspectors do you have today?

**Rick Gimlin:**

Deputy brand inspectors simply go out and inspect livestock. They have no peace officer powers. We have about 110 positions, and about 90 are active.

**Chair Claborn:**

Do you have enough brand inspectors at this time?

**Rick Gimlin:**

Yes, but it is challenging to obtain deputy brand inspectors.

**Chair Claborn:**

Do you need more agricultural enforcement officers?

**Rick Gimlin:**

We could use more, but we submitted a budget and then followed the Governor's budget. All the positions that we have are currently filled. Some deputy brand inspectors have police officer powers. We have six of those positions. All of those are part-time. Everything else above the position of deputy brand inspector is called an agricultural enforcement officer.

**Chair Claborn:**

That is because the position has been changed to a law enforcement officer instead of simply a brand inspector. That means he can no longer decline to fulfill duties assigned solely to brand inspectors. The responsibilities for those employees have drastically increased.

**Rick Gimlin:**

That is correct. That changed in the 2001 Session.

**Chair Claborn:**

Thank you for clarifying that. I understand the intentions of this bill.

**Assemblyman Goicoechea:**

How many part-time brand inspectors do you currently have?

**Rick Gimlin:**

We have five.

**Assemblyman Goicoechea:**

How many agricultural enforcement officers do you have?

**Rick Gimlin:**

I have three full-time enforcement officers and I may have one split position in which there are two agricultural enforcement officers sharing one position, each working part-time.

**Assemblyman Goicoechea:**

How many district brand inspectors or agricultural enforcement officers do you have? I am uncertain of what their new titles are. The deputies are fee inspectors. They are not employees, is that correct?

**Rick Gimlin:**

That is right.

**Assemblyman Goicoechea:**

They only work part-time.

**Rick Gimlin:**

Actually, they are employees.

**Assemblyman Goicoechea:**

But they are on-call employees, is that correct?

**Rick Gimlin:**

Yes, that is correct.

**Assemblyman Goicoechea:**

So what is the total number of agricultural enforcement officers?

**Rick Gimlin:**

I have four full-time employees. I do not anticipate an increase in staff resulting from this legislation. We did not request any new positions. This simply removes obsolete language.

**Assemblyman Goicoechea:**

You only have four that are full-time and five that are part-time.

**Rick Gimlin:**

That is correct.

**Assemblyman Goicoechea:**

So the total number of employees who will be affected by this legislation is nine.

**Rick Gimlin:**

That is correct. And I would like to reiterate that we have four agricultural enforcement officers and five part-time deputy brand inspectors. That group consists of certified peace officers.

**Assemblyman Carpenter:**

How many people do you have who are inspecting for pests on plants and things of that nature?

**Rick Gimlin:**

Our agriculturalists go out and do plant and pest inspections. They do not have peace officer status. We have one agriculturalist position in Las Vegas, but she is an exception. She has peace officer status. Within the class series there is an option for peace officer status. The position is in our Las Vegas office. She primarily does plant industry-related activities. Her duties include inspecting trucks that cross our borders, looking for imported fire ants, and looking for prohibited materials. In her position, she does not perform brand inspections.

**Assemblyman Carpenter:**

Besides her, how many others inspect for plants and pests?

**Rick Gimlin:**

I am uncertain, but my estimate is about seven or nine. Those numbers might be high.

**Assemblyman Carpenter:**

If this bill passes, could this one person who has peace officer powers, but now is only doing plant and pest inspection, become a brand inspector?

**Rick Gimlin:**

Theoretically, that position could. It would have all of the powers granted to the agricultural enforcement series. That would be correct. There would be nothing to stop us from doing that now. But what we are doing is putting that resource where it is most needed. We need to have that position for the inspection of plant materials that come through southern Nevada. We have not used that position specifically for livestock inspection because we have such a demand on inspecting plant materials in southern Nevada.

**Assemblyman Carpenter:**

How many people who are just doing brand inspection are now able to inspect plants?



**Rick Gimlin:**

It would be the four agricultural enforcement officers and, theoretically, we could have our deputy inspector also do plant inspections. But as Assemblyman Goicoechea said, people cannot be trained overnight to do plant inspections. They are rather complex. It is comparable to how difficult it would be to have me do a brand inspection. It would take quite some time for a person to learn these skills.

**Assemblyman Carpenter:**

What is journeying? Where does that job description fit into this bill?

**Rick Gimlin:**

That position is located in the Elko office. He can perform brand inspections, livestock work, and theft investigation among other duties. Theoretically, he can also perform inspections for plant materials. In that area, the majority of work is centered on livestock because there is a tremendous amount of livestock in Elko County.

**Assemblyman Grady:**

My biggest concern with this is that next week we will have a new department head. What happens if she wants to rearrange all of this?

**Rick Gimlin:**

I do not know. She could rearrange things. But with regard to this bill, I am uncertain of what our options would be. If we decide not to proceed with this bill, our statute will still contain outdated, obsolete language. We still have the opportunity as an agency to go back to our regulatory process and engage our industry. We can ask what they want out of us and what we need to put into regulation to make this system work better for the industry and the public. It appears that we have our agricultural enforcement officers.

They have a wide range of duties. Then we have our deputy brand inspectors who typically have a much narrower range of duties. Perhaps that needs to be further clarified in regulations. Perhaps we should specify who needs to do what, where they are going to do it, and why. Regardless, if S.B. 48 (R2) does not pass out of Committee, we still have to deal with the issue of statutory language that is obsolete.

**Chair Claborn:**

Mr. Gimlin, let us hear from Mr. Montero now. Perhaps he can help everyone to understand this bill better.

**Michael Montero, Member, Nevada Cattlemen's Association Board of Directors:**

This is an issue that I have heard a great deal of concern about. There is great concern about the agricultural enforcement officers and the role they play in matters out in the field. Unfortunately, the Nevada Cattlemen's Association is taking a neutral position on this bill for the time being due to our current policy. I am glad to answer any questions that you may have. I think there are some people in the audience who might be able to discuss some individualized circumstances that have occurred to them. I will leave it at that.

**Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:**

We are taking a neutral position on this bill. We did not testify on the Senate side when the bill was being addressed. The reason is primarily because we did not see where this bill was making any changes in duties and responsibilities. It was only changing the title. We did not necessarily have anything to say about the bill at that time.

One of the topics here needs a lot of attention. It is the continual reference to outdated statute. Conceptually, a lot of people view the legislative process as the appropriate venue through which to bequeath titles and responsibilities. Many people believe that the legislative process is where authority originates. Following that line of reasoning, people think that the administrative process is where law is followed. So the Legislature sets the law and the administrative policy follows its lead. This situation is in opposition to that line of reasoning. We have administrative procedures calling employees something other than what the statute calls them. Now we are trying to compensate for it. Basically, this situation is backwards.

We would like to address the issue of there being some kind of process wherein the Department of Agriculture would go to their constituency, and through that process, interact in identifying what kind of brand inspection program and what kind of duties and responsibilities we would like to see. Of all the areas we are currently receiving the most complaints from, brand inspection is making my phone ring the most.

There is definitely a need for the Department to go to the industry and to have an interactive conversation about what kind of program we need to have. We are very supportive of that type of dialogue taking place.

**Chair Claborn:**

Will this bill cause that to happen?

**Doug Busselman:**

This bill does not do anything but change a job title. That is how we have perceived this bill since it was drafted. That is why we have not necessarily had anything to say about it until this time. A great deal of frustration resulting from the manner in which this program is operating has been focused on this bill. That is because it seems to provide an opportunity to express that frustration.

**Chair Claborn:**

Perhaps we can get to the bottom of this before the end of today. I do not have anyone else listed on the sign-in sheet as testifying on this bill. Is there anyone else? Mr. Montero is the only person who signed in as neutral. Is there anyone opposed to this bill?

**David Holmgren, Chair, Nevada Livestock Association:**

We have drafted up some thoughts on this bill with regard to changing the term district brand inspector and the designation of such to an agricultural enforcement officer ([Exhibit C](#)). The drafts are being handed out.

It seems that the proponents of this bill are leading us to believe that it does not make any significant changes. But S.B. 48 (R2) does bring about changes, primarily with *Nevada Revised Statutes* (NRS) 561.218 and secondarily with NRS 569.040 to NRS 569.130 with regard to the gathering of stray and feral livestock through inclusive impoundment. Any animal that cannot be claimed or cannot be identified to an owner is considered a stray. The gathering of strays can be a very delicate situation. We need for the people who handle these types of situations to be on site, in the area and in the district. We also need those individuals to understand the livestock within their district. The other problems that the Nevada Livestock Association sees with the bill are outlined in our handout. [Read from prepared testimony ([Exhibit C](#)).]

**Chair Claborn:**

Do you have a type of camaraderie with some of these brand inspectors? Are you concerned about losing contact with them and having a stranger who you are unacquainted with replace them?

**David Holmgren:**

That is a severe concern. Local brand inspectors are going to become more of a watchdog in the area. As Assemblyman Goicoechea mentioned, they have great expertise in their field. It takes them many years to interpret brands. These individuals have to be familiar with the brands and the cattle that are raised in their area by different ranchers. The years of expertise and familiarity that a brand inspector has should not be lost on an individual who comes from

500 miles away. The newer individual does not have the familiarity and cannot get up to speed quickly.

**Chair Claborn:**

In your written testimony it appears that the biggest thing that you stand to lose is the camaraderie which you have developed with your district brand inspector.

**David Holmgren:**

The main point that I would like to convey today is jurisdiction. When an enforcement officer is referred to, how far is the Department of Agriculture going to be permitted to go into criminal jurisdiction? They are crossing the boundaries of civil penalties into criminal ones. Designating these individuals as Agricultural Enforcement Officers gives them enforcement powers. That kind of power should remain solely with the local sheriff.

Brand inspection does not require criminal law enforcement. Do we need to start chasing bugs with law enforcement officers? Do they need the power to fine people \$100,000 because they sprayed the wrong spray or hurt the environment in some inconsequential way?

Brands are a mark of property. Brands are recorded with the State so the State can perform brand inspections to trace mortgages and liens. They help track cattle that leave the district. There is an important boundary around districts. Assemblyman Goicoechea addressed that.

We need district boundaries, otherwise the system is defunct. It becomes a State boundary instead. If a person transporting cattle crosses a district boundary they are required to have a permit or some kind of paperwork. Otherwise they must have permission from their district brand inspector. That way he can make the brand inspection immediately if cattle are out of their district.

**Chair Claborn:**

So what you are saying is that the Department of Agriculture should have a program established before approaching us. Is that what you are saying?

**David Holmgren:**

This needs to be closely addressed before we change the title of a District Brand Inspector to an Agricultural Enforcement Officer.

**Chair Claborn:**

Are there any questions?

**Don Alt, representing, Nevada Farm Bureau Federation:**

I am here to testify in opposition to this legislation. There are many aspects that the new agricultural enforcement officers do not understand. One of the lead men in the brand department issued me a ticket for lacking a license plate on a stock trailer on the Smokey Valley Road. I was almost up to Highway 50. I had a horse inside that I had just bought. I had no paperwork or receipt for it. The man did not even ask me about the horse. He just issued me a ticket.

**Chair Claborn:**

Please keep your testimony relevant to the bill.

**Don Alt:**

The enforcement officers have not been through P.O.S.T. training. They have not had their Emergency Management Training (EMT) like law enforcement officers are supposed to have. They simply do not qualify. It is soon going to become a police state. Everybody is going to be carrying a gun and everyone will be subject to arrest. Everybody will want law enforcement authority.

**Chair Claborn:**

Are you saying that if these brand inspectors are going to be law enforcement officers, they should be properly trained?

**Don Alt:**

That is correct.

**Joe Dahl, Member, Nevada Cattlemen's Association:**

This bill seems to do what everyone says it will. When I initially encountered this bill in February I wondered what the outdated portion of the bill was. I called Chief Brand Inspector Jim Connolly and several other people and spoke with everyone about it. I wanted to know the exact language that was going to be changed.

Listening to some of the testimony today, I wonder if the Department of Agriculture has been violating the law for the past six years. I wonder if we have to go back and change the statute based on that possibility. This situation has raised a red flag for me and several other people with regard to how things have gone in the past six years.

Mr. Gimlin's testimony is an example of the confusion with the brand inspection program and the different layers of officers. Depending on whom you speak with, brand inspectors acquired police authority in or prior to 2001. When they got police authority, my first question was, "Why?"

Dave Stix is seated next to me. He was a brand inspector in the 1960s. I was also a brand inspector for a short time in the 1970s. I remember Dave Stix was on the Agricultural Board with Louie Gazini and several other people at that time.

We were struggling with what we really wanted out of the brand inspection system. We still seem to be struggling with that topic. This bill exemplifies that the brand inspection system has gone in a direction that the industry had not been aware of. Now we are becoming aware of the situation. I would say more if it pleases the Committee, but it might be more helpful if we hear from Dave Stix.

**Dave Stix, Co-Owner, Western Nevada Cattle Feeders:**

Today I represent the Western Nevada Cattle Feeders and not the Nevada Cattlemen's Association, which I have been a member of since I got out of school. I have also served on the Brand Committee since I got out of school about 40 years ago. I have also been involved in many issues with the Brand Department. We have worked with them. This is another difficult issue. This is the worst problem that I have ever seen since I have been in the cattle business. I have been in the cattle business since I was 12 years old.

I am against the bill and I would like it to be tabled or not acted on until we can get the Brand Department straightened out. The industry needs to get together and let you know what we really want. That is why we are not representing the cattlemen's associations. This has come on so quickly that none of us are well informed enough to be fully aware of what is going on. No one has been able to give us sufficient direction. That is the reason why I am speaking alone.

I am uncertain of whether the job title needs to be changed or not. It should not be changed because we might not even have agricultural enforcement agents in a few more years. That is the extent of the Division's disarray. You have all been hearing about these problems from your constituents.

About two weeks ago, I had two enforcement officers in my office. They were new employees who carried firearms and badges. They asked my secretary a few questions and looked around to inspect things. We sat down and had an extensive discussion. I asked one of the men if he had been getting any violators. He said that he stopped several trucks, which I was already aware of since they had been stopping our trucks daily. He said he mostly wrote speeding tickets. That was his precise response. His badge and gun frightened my secretary. If you have any questions, please ask them.

**Joe Dahl:**

It seems that we have gotten far away from what the industry wants out of the brand inspection system. We have to present what we expect from our brand inspection system to the Legislature and the Department of Agriculture. If the Legislature passes this bill it will appear to be an endorsement of something that will not serve the people's best interest. Please do not move forward with this bill. Please wait until the industry can unite and speak to this brand inspection system.

**Chair Claborn:**

This Session ends June 4th.

**Dave Stix:**

The primary benefit of brand inspection is to handle the registration of brands in Nevada so that we can market our cattle in other states. That is the purpose of brand inspection. They also administer law enforcement. The system's purpose has changed into one of complete law enforcement. We need regular brand inspections.

There seems to be a great deal of confusion over district brand inspectors and these enforcement people. My understanding is that there are currently ten of them. That is what Jim Connolly informed me. I sat on the committee that started to implement this. When we decided we wanted these enforcement inspectors, they were intended to inspect hay, crops, and bugs in nursery products.

But these people are not qualified to do the job they were intended to perform. None of them are qualified to inspect brands. If they are not qualified, why do we have them? The gentlemen I spoke with are completely unfamiliar with cattle.

**Chair Claborn:**

We have a couple of other bills to hear. It appears that this has been occurring for some time. Perhaps you gentlemen should have communicated with each other prior to this meeting. We are nearing the end of this Session and will be unable to assist you. Please learn from this experience. It is too late to present any amendments. There is a great deal of material to cover and we probably will not have time left to accommodate your agendas. Perhaps this will motivate you to have communication between each other.

**Assemblyman Grady:**

I have a problem that this is the second meeting in which you have had to defend this. You are the acting director, but where is Mr. Connolly? Why is he not here?

**Rick Gimlin:**

The reason why he is not here today is his wife is undergoing hip-replacement surgery.

**Assemblyman Grady:**

Thank you for clarifying that.

**Chair Claborn:**

Is there anyone else who would like to testify? Hearing no further comments, I am going to close the hearing on S.B. 48 (R2).

**Senate Bill 486: Makes various changes concerning the ownership of brands for livestock. (BDR 50-622)**

**Rick Gimlin, Deputy Director, Department of Agriculture:**

Senate Bill 486 makes various changes to the ownership of livestock brands. Specifically, it was requested to address audit recommendation number two or Legislative Counsel Bureau (LCB) audit number LA06-12. This audit recommended that the Division of Livestock Identification charge brand transfer fees according to statute. Senate Bill 486 will align agency policy and statute and allow the Division to amend the brand without charging a transfer fee for certain situations.

One situation is where we have submission of legal proof of name changes like adoption. This also applies to the removal of the name of a parent or guardian upon the owner of the brand reaching the age of 18. It also applies to a woman who is the sole owner if she changes her last name because of marriage. It also applies to the death of a brand-holder. Lastly, this applies to the inclusion of a brand in a living will or trust.

We are changing the statute to include a practice which we have been following for several years. We do not anticipate a fiscal impact from this bill.

**Assemblyman Marvel:**

Do you have the industry's support?

**Rick Gimlin:**

At this point we have not heard any opposition.



**Assemblyman Marvel:**

If they do not oppose this bill, it is probably a safe bill to consider passing.

**Rick Gimlin:**

The industry has asked us to do these types of things. We have been conducting ourselves accordingly for several years.

**Chair Claborn:**

Are there any questions? Are there any other people who would like to testify on this bill? Hearing no further comments, the hearing on S.B. 486 is closed.

**Senate Joint Resolution 12: Expresses disapproval of recent civil actions filed against local ranchers and the Bureau of Land Management in the management of public rangelands and the issuance of grazing permits for those public rangelands. (BDR R-396)**

**Chair Claborn:**

Senator Rhoads is not here today, so Assemblyman Carpenter will speak on his behalf.

**Assemblyman John C. Carpenter, Elko County Assembly District No. 33:**

Senator Rhoads was unable to attend this meeting so he asked me to present Senate Joint Resolution 12. Numerous organizations have been filing lawsuits against the Bureau of Land Management (BLM) and the ranchers. These organizations are concerned that the BLM has not been following regulations which part of the National Environmental Policy Act. Each time the BLM releases an allotment management plan or they attempt to change the allotted livestock number, these organizations file a lawsuit. This causes a halt to all the BLM's efforts.

Oftentimes, the BLM and ranchers agree to certain numbers of livestock and the seasons in which they can graze in an allotment management plan. These organizations do not participate in open discussions of their problems. They wait until decisions have already been made. Then they file a lawsuit to try to stop everything that the BLM and ranchers have done.

The main goal of many of these organizations is to remove livestock from the range. That is unquestionably their motive. They do not try to make the best of range management decisions. They simply want to remove livestock from the range. These organizations have never succeeded at putting a stop to cattle grazing either.

Sometimes the BLM is occupied with these lawsuits for up to three years. After a suit gets filed, it may take over three years before all of the paperwork and the appeals processes have been dealt with. During that time the BLM cannot get anything else done. Their attempts to improve land and water management are forced to halt. This problem makes it very difficult for ranchers and for the BLM to get anything done on the range. This situation affects livestock and wildlife.

Most ranchers want to be good stewards of the range. They seek to improve the wildlife on the range. If they do not, their business suffers. This resolution would express the Legislature's disapproval of the lawsuits being filed against the BLM, the Forest Service, and the wildlife and ranching industries. This bill takes into consideration the entire situation regarding range management.

**Chair Claborn:**

I have accompanied you a few times to Washington, D.C. I can understand that the types of people you are dealing with are difficult to handle. That is based on our experience in Washington, D.C. The situation you just described has been an issue for a long time. This is my fifth term on this Committee. I have heard of this problem and it should have been dealt with long ago. Ranchers and the people of Nevada have not fared very well in their dealings with the BLM and other entities.

**Assemblyman Hogan:**

Can you provide us with a rough estimate of the number of lawsuits you are referring to?

**Assemblyman Carpenter:**

I am unaware of the exact number. I can determine the answer to your question at a later time. It is probably at least one dozen per year. Each time that the BLM reaches a decision, these organizations file a lawsuit.

There is no way to improve the range without doing certain things. They have to make water development plans. They have to make allotment management plans. If everything stops because their attention is drawn to several lawsuits which have been filed against them, there is no way for the BLM to implement their plans for improvement.

Another aspect of this problem is that often ranchers have to intervene in the process. It becomes a costly undertaking for private ranchers. It costs everyone involved a lot of money to resolve. If the organizations that file these charges would be open to discussions, then perhaps we could realize agreeable terms.

These organizations are not interested in doing that because their only motive is to remove livestock from the ranges. There used to be bumper stickers that stated that BLM land would be "cattle-free in '93." That has not happened and it will not happen.

With the cooperation of the Public Lands Resource Council, the Cattlemen's Association hired an expert to investigate these suits. They are all very similar. The expert is supposed to assist in solving all the problems that these groups have. Perhaps this will alleviate the situation and they will not be as inclined to file so many suits.

These organizations have access to seemingly unlimited resources. They have access to an abundance of money and attorneys. But we are not intimidated by them. History proves that ranchers have been good stewards of the land. They want their livestock to graze on land in good condition for them and for the wildlife, as well.

**David Schumann, Vice President, Nevada Committee for Full Statehood:**

We are in favor of this bill. It should be strengthened and perhaps amended. The amendment could instruct the Attorney General of the State of Nevada to take legal action. The Sierra Club and Friends of the Earth, among other eco-outfits, are using junk science in an attempt to remove cattle from the range. Part of the problem is that the State is not asserting itself. It is allowing itself to remain a second-class state.

Over 160 years ago, when the federal government tried to give away some of Alabama's land, they went to court and won the case. This was in 1845. I will email the case to you, Chair Claborn. That ended the situation. The federal government could no longer claim that this was federal property.

The eco-organizations are using federal land rules against us. We are outraged. This is the people's land. This is not an abuse of our land. The State needs to assert itself. This is State land and these people need to get their priorities right. They have caused a horrible, disastrous interruption because they determined that cattle are bad. Scientists have determined that cattle are beneficial to the range. We should have the Attorney General prosecute these organizations.

**Michael Montero, Member, Nevada Cattlemen's Association Board of Directors:**

We support S.J.R. 12. We supported it in the Senate and we appreciate Assemblyman Carpenter for presenting it today. Decisions by the BLM have been delayed because of the threats of litigation. I could provide you several personal examples of instances on my family's ranch.

I have firsthand knowledge of how this has affected the operations of a Nevada cattle rancher. The constant threat of litigation has hampered the BLM from getting their work done. Again, we are very much in support of this resolution. I would be glad to answer your questions.

**Assemblyman Hogan:**

From a rancher's perspective, it must be extremely frustrating to see this happening repeatedly. Are there some legal avenues to pursue which would provide a reasonable outcome prior to filing suit? Could judges require mandatory settlement meetings early in the process and prior to commencing a case? In many other kinds of legal disputes there are certain ways of putting people under enough pressure to come together and work things out amongst themselves. That should be pursued if possible.

**Michael Montero:**

There are several of those measures being utilized in the litigation that evolves out of these types of decisions. There are already mediations, alternative dispute resolutions, and arbitrations. Unfortunately, it still detracts from the rancher's ability to manage a cattle ranch. We will be considering other legislation that may also be helpful in this matter.

**Chair Claborn:**

Is there anyone else who would like to testify? Hearing no further comments I will close the hearing on Senate Joint Resolution 12.

**Senate Bill 272 (1st Reprint): Revises provisions governing awarding of costs and attorney's fees in certain actions involving rights to graze or water livestock. (BDR 50-370)**

**Joe Guild, representing the Nevada Cattlemen's Association:**

This is a very simple bill. It came about after I had a discussion with the prime sponsor last summer. Both of us were expressing a great deal of frustration with the things that were just discussed in Assemblyman Carpenter's presentation of Senate Joint Resolution 12. Organizations come into Nevada with no other purpose than to force cattle ranchers off the livestock ranges of Nevada.

They attempt to do that through harassment. Lawsuits which have no basis in fact or science are an example of that harassment. There are instances which I could present to you which occur time after time in the simple renewal of a Bureau of Land Management (BLM) grazing permit, which has generated activity costing the rancher thousands of dollars to defend.

It costs the agency months of time to defend their actions just to keep the ranchers in business on the land. Some organizations decided that the ranchers should not be out there. Usually, as someone already stated, it is based on false scientific data and a complete and utter misunderstanding of what ranchers do on public lands and the benefit that livestock brings to their grazing activities on the public lands and other lands.

Next, I will provide you with some of the history surrounding this bill. The bill was designed to put up some sort of a barrier. In this case, it would be an attorney's fee provision, in the original version, directed to the prevailing party. The version you have in front of you was amended in the Senate. This will give these organizations some pause before they bring about their suits against a rancher or agency. That is the reason for this.

It appears that there may be something here that might be an attempt to prevent what we just discussed from occurring on the public ranges. It is the exact opposite. The bill has a very narrow and limited scope. It only applies to state courts. The Legislature cannot tell the federal courts what to do.

It only deals with situations in which someone is seeking to impede the rights of a rancher to graze or water livestock on the public lands. It is usually the agency that would be a defendant in this type of situation. Often the ranchers are brought in.

We are discussing the issuance and renewal of grazing permits. We are also dealing with amendments concerning allotment management plans. These change the allotted number of livestock, the seasons in which grazing may take place, and the manner of grazing that is permitted. That is the limited scope of the bill. Usually the defendant is the party that is being disadvantaged by the bogus lawsuits brought to court. That is the reason and rationale supporting this bill.

**Assemblyman Marvel:**

I hope this puts a stop to frivolous lawsuits. There is an individual in Idaho with the same last name as mine. That person has been causing a great deal of trouble for local ranchers.

**Joe Guild:**

I cannot predict what the outcome of this legislation will be. Our intent is to make these individuals think twice before filing their lawsuits.

**Assemblyman Marvel:**

I did not know that we had these devastating situations. The BLM prepares a management plan and then they are faced with an order that ceases all activity.

**Assemblyman Bobzien:**

I have worked in Idaho and have been involved with the state land issues there. I am aware of the situations. I am not entirely unsympathetic. I wonder about taking this action. Would we potentially hinder a judge from having the leeway necessary in making the best decisions based on the merits of the case? Is there any other arena in Nevada law where we say a defendant who is prevailing gets attorney's fees? Do we say that in statute in any other arena? Will this be the first of its kind?

**Joe Guild:**

The statute in Nevada is a prevailing party statute awarding fees at the discretion of the judge, unless there is a contract which provides for attorney's fees, in which case the judge will defer to the contract provisions. I cannot say definitively that this is the only exception to that. I would happily research your concern and get back to the Committee with an answer.

**Assemblyman Bobzien:**

Perhaps you could also inform us of the history on the Senate side. This originally began being unspecific to defendants; it was applied to the prevailing party. Was there any discussion on the Senate side that we should know about that led us to changing it to specifically defendants?

**Joe Guild:**

There was discussion in the Senate Committee about this. Based upon the testimony that was given in support of this bill, which was similar to what I just provided to this committee, it was decided by the Senate that we should narrow it even further to the defendant. In most cases, the defendant we are discussing is the agency, the rancher, or both. That is why it was narrowed to produce the more recent version. It is ironic that I am here advocating for this. Most of my involvement through the years has been fighting agencies on behalf of rancher's efforts to make a living on public lands. Now I am in favor of the agency getting some assistance. Hopefully, my explanation of the rationale behind this satisfies you and overcomes the irony.

**Chair Claborn:**

Are there any more questions? Is there anyone else who would like to provide testimony on S.B. 272 (R1)?

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

When this bill was heard in the Senate, the Nevada Farm Bureau expressed some concerns that address the question Assemblyman Bobzien asked. Our concerns are that while an individual can control who they sue, they have no control over who sues them.

When the prevailing party was to be awarded the attorney's fees, we were concerned that it would establish a scenario in which people would come in and file a suit. After a person has defended himself, if the decision went the other way, the fees would have to be paid for being sued.

As a follow-up to that concern, the change was made in the Senate. That alleviated some of our concerns. This bill has a very narrow window in terms of only dealing with state courts. Most of the action that takes place is in the federal arena. In most of the cases that are filed, it is the agency that is taking the risk in some of the scenarios that have been discussed.

An administrative court primarily deals with these cases. This would have a very narrow application. Our biggest concern is that there should be some protection for the livestock producer in case they are sued by the same organizations.

**Assemblyman Hogan:**

I am concerned anytime I see legislation that makes an absolute requirement on a judge. It eliminates any discretion that a judge might want to apply when considering the testimony they have just heard. I notice there is no discretion provided for the judge. It seems it is required that the apportionment of legal costs be made in accordance with this bill. Is there any comparable legislation in other states in which grazing is important? If so, is there any judicial discretion retained for the judge's decision?

**Doug Busselman:**

I do not know. Since I am not an attorney I do not keep up with case law and other activities related to it. I am unaware of what other states might do in this regard.

**Michael Montero, Member, Nevada Cattlemen's Association Board of Directors:**

I am here to testify that we are in support of Senate Bill 272 (R1). We also support its amendment. Joe Guild and Doug Busselman have done an outstanding job in presenting the history and position of this bill. I would like to address one of the questions that was raised earlier. This bill is unique in that it is narrowly tailored. This bill only applies to cases which involve grazing or watering of livestock on public lands. It is very narrow in that sense.

There have been questions about other statutes where there is a mandatory award of attorney's fees. As an attorney I am uncertain of the answer to that question. There is a similar provision in current statute as to the award of costs to the prevailing parties in litigations. In a sense, there is legislation that makes it mandatory to have the prevailing party be awarded costs. It is not entirely unheard of.

**Assemblyman Ohrenschall:**

I have a question about some of these suits which have been brought and whether the ranchers or the agency have been successful in fighting them. If they have prevailed, have attorney's fees not been awarded under the current law by district judges? If the lawsuits were frivolous, have the sanctions not been granted?

**Michael Montero:**

I do not know the answer to that. I have heard anecdotal stories about other litigation where ranchers were awarded costs and fees as the result of prevailing in litigation. Most of them were in the federal court system. I am unaware of any at the state court level. It very well could have happened. I am not familiar with it happening. There are currently provisions in the law, which prevent incidences of frivolous lawsuits. I do not know if in this context that has been tested yet.

**Assemblyman Ohrenschall:**

Earlier you mentioned that on your family's ranch a threatening suit created difficulties. Would you please elaborate?

**Michael Montero:**

We have been fortunate not to have been faced with actual litigation. I commented earlier regarding S.J.R. 12 that there were instances where the agency was reluctant to issue decisions because of the fear of litigation. People within the agency have told me that. The most recent example was a fire that occurred last summer.

Of the many fires across the State, one affected our ranch. Our grazing allotment was affected. We had experienced other fires on our allotment land. For the first time in my four years being involved in ranching, the BLM asked that our Annual Unit Months (AUM) be reduced as a result of a fire. From questioning them, I gathered that they were afraid of future litigation.



They stated that if they did not take that action, they would be faced with litigation. We worked out a compromise before the decision was issued so that we could avoid litigation. As an attorney, I usually do everything I can to avoid litigation. I know how damaging it can be. We were able to make a compromise in our situation.

I am a pricing attorney and a trial lawyer. I am concerned about limiting a client's ability to recover costs and fees. This is a good bill for remedying this issue. I can answer any other questions you may have.

**Assemblyman Ohrenschall:**

Let us consider the current statutes without S.B. 272 (R1). Let us also consider that a person was attempting to file a lawsuit against your ranch to try to shut you down. If that suit was ruled frivolous and you won, you could be granted the cost of attorney's fees under current Nevada law.

**Michael Montero:**

It would be discretionary with the court. That would also depend on other factors. During the course of litigation, it could depend on how it was set up for the final resolution of the case. There are mechanisms in the law and offers of judgment that can leverage a person's ability to possibly recover attorney's fees. Aside from that, there is no way to recover attorney's fees from litigation. If it were a frivolous lawsuit there might be the ability to recover something in the way of sanctions against instigating the party, but that is an entirely different scenario.

**Chair Claborn:**

Is there anyone else who would like to speak in support of S.B. 272 (R1)?  
Is there anyone who would like to state their opposition to S.B. 272 (R1)?

**Graham Galloway, representing, Nevada Trial Lawyers Association:**

We are mildly opposed to this bill on the basis of the mandatory attorney's fees language. We could support this bill if the mandatory language was changed to discretionary. When we review pending or proposed legislation, our organization observes it from the plaintiff's perspective. That is who we represent.

When we encountered this proposed bill it immediately caused us some concern. We did not understand why only defendants were specified as being awarded attorney's fees. Since we have had the genesis in the background of this bill explained to us by Mr. Guild, our opposition has been somewhat softened.

Our position is that if you start establishing mandatory attorney's fees for either side of a suit, it could ultimately be harmful for everybody. It sets a precedent that concerns me. It would be best left to the discretion of a judge. If there is a truly frivolous lawsuit, the law currently provides for sanctions. Part of those sanctions is the attorney's fees and costs.

Local judges can adequately cover the concept of an award of attorney's fees and costs. Our position is that this would be great legislation if it were changed from stating "shall" to "may." That would change the bill so that it would be left to the discretion of a judge.

**Don Alt, Representative, Nevada Farm Bureau Federation:**

There is currently a case in Wyoming in which Justice Roberts asked an attorney why he did not take his case to state court. That is where it should have been. There is probably going to be a legal action taken against some BLM employees in this State by the end of this year. This would have a very chilling effect on us. When you go against the giant, the chances of winning are very slim.

**Chair Claborn:**

If one person thinks the other's side is frivolous, perhaps that side will accuse the original person of being frivolous.

**David Holmgren, Chair, Nevada Livestock Association:**

The bill has good merits, but I noticed some topics of concern were addressed. I would like those to be taken into consideration prior to this bill being voted on. This bill could backfire. If the bill worked out in favor of its proponents, then it could be beneficial. I have been in litigation for over nine years and I see where this bill could be problematic. I do not want to see this legislation pass, only to backfire on defendants.

**Chair Claborn:**

Are you saying that you have encountered situations of a similar nature?

**David Holmgren:**

It could turn on the defendant.

**Chair Claborn:**

Are there any questions? Is there anyone else who would like to express their opposition to this bill?

**Kyle Davis, Policy Director, Nevada Conservation League:**

Our organization does not support any lawsuit that just intends to get in someone's way. We do not support frivolous lawsuits. That underscores why the current system is adequate to deal with the issue of frivolous law suits. The judge currently has the discretion to adequately handle a lawsuit he determines is frivolous.

I am concerned that this bill makes it mandatory for a plaintiff to always pay if the defendant is the prevailing party. Several public interest groups have limited access to money. They raise money from their membership. If we put that into statute and an organization believes that they need to take action to protect the public interest, they will have a limited capacity in which to do that.

We support the bill if we can change it to say "may." Otherwise we are supportive of current law. There should not be a law that hinders a public interest group from pursuing what is in the public's best interest. I can answer any questions that you may have.

**Assemblyman Goicoechea:**

Clearly the "may" or "shall" words need to be addressed. This bill would stop frivolous lawsuits. Today it is fairly easy for someone to file a lawsuit that can have a major impact.

**Kyle Davis:**

I understand that there are situations where this is occurring. It is a tough situation for us to be in. I do not know the details of these lawsuits. I do not want to defend them. I understand the problems that have been created by these lawsuits. I certainly do not support those. But this bill opens the door to a roadblock being placed in front of a valid suit. I understand your concern.

**Chair Claborn:**

Thank you for your convincing testimony. Is there any other testimony? Is there any business that needs to be addressed by the Committee? Are there any public comments? [There was none.] We will meet again on Wednesday at the same time. Thank you to everyone who has testified and to the Committee members for their excellent work. This meeting is adjourned [3:19 p.m.].

RESPECTFULLY SUBMITTED:

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Christina van Fosson  
Committee Secretary

APPROVED BY:

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Assemblyman Jerry D. Claborn, Chair

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

**EXHIBITS**

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

**Date:** May 7, 2007

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

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 48 (R2)	C	David Holmgren, Nevada Livestock Association	Prepared Testimony