

**MINUTES OF THE
SENATE COMMITTEE ON NATURAL RESOURCES**

**Seventy-fifth Session
April 30, 2009**

The Senate Committee on Natural Resources was called to order by Chair David R. Parks at 3:42 p.m. on Thursday, April 30, 2009, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator David R. Parks, Chair
Senator Allison Copening, Vice Chair
Senator Bernice Mathews
Senator Dean A. Rhoads
Senator Mark E. Amodei

COMMITTEE MEMBERS ABSENT:

Senator Bob Coffin (Excused)
Senator Dennis Nolan (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David P. Bobzien, Assembly District No. 24
Assemblywoman April Mastroluca, Assembly District No. 29

STAFF MEMBERS PRESENT:

Randy Stephenson, Committee Counsel
Michelle Van Geel, Committee Policy Analyst
Shirley Parks, Committee Secretary

OTHERS PRESENT:

Fred Messmann, Deputy Chief Game Warden, Boating Law Administrator,
Bureau of Law Enforcement, Department of Wildlife
Susan Lynn, Coordinator, Great Basin Water Network

Senate Committee on Natural Resources
April 30, 2009
Page 2

Jason King, P.E., Deputy State Engineer, State Engineer's Office, Division of Water Resources
Matt Leck, Assistant Management Analyst, Southern Nevada Water Authority
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation
Jan Gilbert, Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada

CHAIR PARKS:

Senators Coffin and Nolan have indicated schedule conflicts. Mark them present when they arrive. We have three bills for hearing, and we have placed five bills on our work session. We will begin with the hearing on Assembly Bill (A.B.) 73.

ASSEMBLY BILL 73 (1st Reprint): Makes various changes to provisions governing watercraft. (BDR 43-345)

FRED MESSMANN (Deputy Chief Game Warden, Boating Law Administrator, Bureau of Law Enforcement, Department of Wildlife):

I am a Game Warden Captain with the Nevada Department of Wildlife and serve as the Boating Law administrator. This is a Department of Wildlife bill, A.B. 73. We support the bill. I will begin at the end of the bill where it states *Nevada Revised Statutes* (NRS) 488.198, Whistles; Bells. The reason I want to start here is because we are going to repeal this section. In the navigation rules that we have adopted in other parts of the Nevada Boat Act, it addresses whistles and bells; consequently this section of the bill is redundant. This will eliminate a second reference in the Statutes. In Section 1, there are several language changes. On line 5, the word "and" is deleted, and on line 6, the word "shall" is replaced with the word "must." Section 2, subsection 4, the NRS 488.198 is deleted. In Section 3 of the bill, we are asking that the age of the operator be raised to 16 years of age. If the operator is 14 years of age, a passenger in the vessel needs to be is a person who is 18 years of age or older and is in a position to supervise the operator. Are there any questions at this time?

CHAIR PARKS:

Could you explain the difference between Class 1, Class 2 and Class 3 motorboats? It is in the section that is being repealed. This is more of a curiosity question.

MR. MESSMANN:

In 1971, when the Federal Boat Safety Act was enacted, there were three classes of vessels. Class 1 was up to 26 feet in length. Class 2 was a vessel that is 26 feet to 40 feet in length and Class 3 was a vessel that is 40 feet to 65 feet in length. In subsequent years, the classes were designed to allow for the carriage of different equipment. The larger boats would need bells. Smaller boats would not. In the 1980s, another class was established called a Class A vessel. The Class 1 vessel length of 26 feet was divided in half and so as not to renumber every boat classification, the Class A vessel of up to 16 feet was established.

SENATOR RHOADS:

Why are you raising the age to 16 years of age?

MR. MESSMANN:

The American Academy of Pediatrics believes the multi-tasks involved with operating a motorboat, especially when towing another person, requires a proper look-out person who is more mature to assist the person operating the boat. We have had citations involving children operating waterskiing vessels. This is the primary reason for the age change on the bill.

Moving to Section 3, subsection 2 of the bill, we are basically addressing the observer's role. The observer needs to have visual contact with the water skier at all times. The water ski motorboat operator needs to be focused on the front of the boat and its direction. This is why a more mature person is needed as the observer.

CHAIR PARKS:

We will close the hearing on A.B. 73 and open the hearing on A.B. 377.

ASSEMBLY BILL 377 (1st Reprint): Revises the policy of this State concerning water. (BDR 48-887)

ASSEMBLYMAN DAVID P. BOBZIEN (Assembly District No. 24):

This is a simple bill. It is philosophical in nature. This bill arises out of concern for the future policy of the State. This is to encourage the State Engineer to consider the best available science in rendering decisions concerning the available surface and underground sources of water in Nevada. We will hear from some others today about the details of their concerns and how we do

water policy. We want to consider how we do water policy in the future and consider how we can get out ahead of the water issues. We can do this by putting this policy into statute.

SENATOR RHOADS:

Is there a definition for "best available science"?

ASSEMBLYMAN BOBZIEN:

No. If I had to define "best available science," I would think of deferring to the literature, the technology and other types of consensus available that is the appropriate method for the study of water at a given time. "Best available science" also contemplates future projects and how science may improve, evolve or adapt over time.

SENATOR RHOADS:

A developer wanting to build 2,000 homes brings the plan to the State Engineer. He looks at the plan. He takes water from rural Nevada.

ASSEMBLYMAN BOBZIEN:

I certainly did not want to go into specific situations. Water resource is doing a good job right now with their decisions. They have many tough decisions to make. Currently, I believe they use the "best available science." We want to make sure this is always the case. There is a proposed friendly amendment being offered today as well.

SUSAN LYNN (Coordinator, Great Basin Water Network):

Great Basin Water Network encompasses individuals and organizations in five different states in the West that are concerned about water. We feel the State Engineer does an outstanding job. We do not necessarily agree with all of his rulings but we think he has a very fair process, and he does use the best available science. That includes the United States Geological Survey (USGS), Desert Research Institute, private studies and other available materials he might need. We support the bill. It is a good bill. We think it is clean and simple. We think it states the policy of the State. We urge the adoption of A.B. 377.

JASON KING, P.E., (Deputy State Engineer, State Engineer's Office, Division of Water Resources):

I am acting State Engineer for the State Division of Water Resources. I have an amendment to offer. Our office is in full support of the bill. To address

Senator Rhoads's question, I am not sure there is any one answer to the question. Some people say to use the most recent study, but it may not be the best for a particular area. I would echo Assemblyman Bobzien's comments on the "best available science." We will look at what is available at the time a decision is needed.

We have a proposed amendment to offer that is a handout ([Exhibit C](#)). I will give you a brief background on this amendment. Under NRS 534.040, our office can collect a special assessment in certain basins to be used for work only in those particular basins. An example of this would be to take water level measurements or to conduct pumping inventories. We might partner up with USGS to conduct a hydrological study, but we would use those special assessments for work to be performed in that specific basin. Since 1943, this assessment was interpreted by all of the counties collecting it to be just that, an assessment, not a tax. In fact, in 1995 the word tax in this section was replaced with the word assessment to avoid misinterpretation. This is very clearly why this was done. Recently one of the counties has taken a position that the special assessment is to be considered an ad valorem tax and as such is subject to the tax abatement as provided under NRS chapter 361. As a result of that, our office is unable to collect all the assessments we are requesting. The proposed amendment is language suggested by our Deputy Attorney General. It should clear up once and for all the ambiguity in the interpretation of that assessment. This is the amendment in a nutshell. There was never an issue with this until just the last couple of years.

SENATOR AMODEI:
Which county?

MR. KING:
It is Clark County.

CHAIR PARKS:
Is there anything special about Clark County that would encourage the request for this amendment?

MR. KING:
Not that I am aware of, but I will tell you our Deputy Attorney General has been working with Clark County to try to work out the issue. It looks like it could be

litigated. This is part of the reason the amendment is coming so late, as this may take care of the situation without the need to go down that path.

SENATOR MATHEWS:

If there is litigation in progress, this amendment will not stop it.

CHAIR PARKS:

It obviously would not stop whatever is under current litigation, but it may head off any subsequent litigation brought forward.

MR. KING:

It is not being litigated. We have been working with the attorneys to avoid litigation. We think we can do that with this amendment.

MATT LECK (Assistant Management Analyst, Southern Nevada Water Authority):
We want to go on record in support of A.B. 377. We have looked at the amendment only briefly, but if there are questions about it, we will get back to you. As the bill is written now, we are in complete support.

CHAIR PARKS:

It would be good if you would review the proposed amendment before next week. This bill will be on a work session at some point during the week. We will close the hearing on A.B. 377, and we will open the hearing on A.B. 480.

[ASSEMBLY BILL 480 \(2nd Reprint\)](#): Makes various changes relating to fees collected by the State Engineer. (BDR 48-1161)

ASSEMBLYWOMAN APRIL MASTROLUCA (Assembly District No. 29):

I am here today to present a bill that was requested as a committee bill for the Assembly Committee on Government Affairs. I prepared a handout for your information ([Exhibit D](#)). This bill raises most of the fees charged by the State Engineer for various applications or issuing permits. This bill does not raise the fee for filing a protest. It will remain at \$25. It is important to know these fees, with a few exceptions, have not been raised since 1989. The proposed fees represent an estimate of the actual cost of processing this specific type of application or permit. The reason for the bill is simple. The State Engineer's Office should not be receiving General Fund money; it should be supported by the people who use the services of the State Engineer. The current executive budget proposal is showing that they are appropriating over \$5 million in State

General Fund money for the State Engineer's Office and cutting 11 positions. I was not here in 2005, but I am told the legislature approved nearly \$2 million to add those 11 positions to reduce the backlog of applications and to create a Website for public access to water rights documentation among other things. It makes no sense to decrease service levels by letting 11 positions go that were funded only 4 years ago. This could again create the backlog which frustrates the public. There is no reason the fees charged by the State Engineer's Office should not cover the cost and make them a self-supporting Division which does not need State General Fund money and provides good service. The State Engineer did not request this bill and cannot support it.

SENATOR RHOADS:
How much money will this raise?

ASSEMBLYWOMAN MASTROLUCA:
It will raise approximately \$1 million per year.

SENATOR AMODEI:
I agree with the fees. It is long overdue and should bear some relationship to what it costs to process these various permits and applications. There are many other services that are generated by the State Engineer's Office that do not lend themselves to fee support. It would be good if someone has an idea how to help these other services pay for themselves and make them self-sufficient as well.

ASSEMBLYWOMAN MASTROLUCA:
I agree. I do not think the State Engineer's Office will ever be, or should ever be, totally self-sufficient. This is a good step and eases the burden on the State General Fund.

MR. KING:
The State Engineer cannot support A.B. 480. You are all aware the Governor has a firm policy regarding no new taxes or fee increases and as such our office opposes this bill. Having said that, I would like to thank the Assembly Committee on Government Affairs for their work on this bill. I appreciate the recognition given to our office for the work we do.

SENATOR RHOADS:

With the cuts you have had to take, like all the other agencies, can you get the job done in the future? You have many projects that could be possible with the stimulus money. Perhaps our economy will turn around in a couple of years.

MR. KING:

We will be able to get the job done. Since 2005, we have made great strides in reducing the number of backlogged applications and reports of conveyance of ownership changes. I do not see that continuing, and obviously it will slow down and there will be a backlog increase. We will be able to function.

CHAIR PARKS:

Did your office participate in the preparation of the handout on fee charges, [Exhibit D](#)?

MR. KING:

Yes, at the request of the Assembly Committee on Government Affairs we provided the information. I would like to have it on record that the State Engineer's Office has always resisted having money that is collected go directly to the State Engineer's Office because we have never wanted to be put in the position that if we approved a certain permit, we could raise a certain amount of money. It is our understanding, if this bill were approved, the fees would go to the General Fund.

SENATOR MATHEWS:

Does this bill need to go to the Senate Committee on Finance?

CHAIR PARKS:

I do not know the history of A.B. 480. It may have gone to the Assembly Committee on Ways and Means. I have just been informed it has not been heard in the Assembly Committee on Ways and Means.

SENATOR MATHEWS:

Good. I needed one more bill for the Finance Committee. It does have fiscal issues.

CHAIR PARKS:

Looking at the bill makes me think there is an effort to make the State Engineer's Office operate like an enterprise fund and you are saying in your last statement that this is not your intent.

MR. KING:

Yes, that is correct; it is not an enterprise fund.

DOUG BUSSELMAN (Executive Vice President, Nevada Farm Bureau Federation):

We are in support of the A.B. 480. We were involved in the discussions as the Assembly Committee on Government Affairs took action to work on increasing these fees. It was our contention as an industry that relies heavily on the services that are provided by the State Water Engineer's Office that these fee increases while not enterprises, certainly reflect the value of how important these particular areas are. We hope as Finance and others dealing with the budget associated with the State Engineer's Office recognize that these amounts are being raised in order that the at-risk positions might be considered as such. We want to make sure their progress continues and are concerned that the loss of these positions could cause a slide backwards and create another backlog of applications and permits. We support these fee increases.

MS. LYNN:

We support the fee increases because we think the State Engineer's Office has made significant strides in providing invaluable services to the people of Nevada regarding water. They have many complex issues to deal with and have many applications, change applications and adjudications to evaluate. They do a marvelous job. They are an extremely helpful organization, and the staff is available to answer questions. They are particularly helpful to those of us who are novices about water issues. They explain the application of rules, the process and procedure. These fees seem actually quite small when you consider the results of their impact. We are grateful that you are at least looking at a potential increase. From the rural counties, there is positive feedback to support this action in the State Engineer's Office. As in the past, we could find delays and backlog if we do not move forward with these fees. The staff takes pride in trying to make up for lost time, and they do the best they can with what they have. I urge you to support A.B. 480.

JAN GILBERT (Northern Nevada Coordinator, Progressive Leadership Alliance of Nevada):

This session we are out front with taxes and talking about revenues. We addressed this issue when talking to the Secretary of State about how we can increase all fees in the State of Nevada. The fact that these fees have not been raised in 20 years is amazing. People have received a good deal from our State. The State Engineer's Office has provided some fine work. As a billboard some years ago stated, "It's time!"

MR. LECK:

We want to go on record as supporting this bill. Southern Nevada Water Authority has been one of the organizations that has benefitted from the increased staff. We also feel that it is time to reflect the true costs of the work that is accomplished in the State Engineer's Office. We urge support of the bill.

CHAIR PARKS:

We received two handouts from Kyle Davis, Policy Director, Nevada Conservation League. The organization is in support of A.B. 377 ([Exhibit E](#)). Mr. Davis requested the letter be put in the record as he was unable to attend this meeting. His second letter is in strong support of A.B. 480 ([Exhibit F](#)). He has requested this letter be entered into the record as well. This concludes the hearing on A.B. 480. We will begin with the work session bills ([Exhibit G](#)). I have received a message from Senator Nolan. He has a conflict in his schedule, requiring him to attend another meeting. Mark him as excused absent in the minutes. We will start the work session with A.B. 362. Michelle Van Geel will give the Committee a summary of the bill.

ASSEMBLY BILL 362 (1st Reprint): Revises provisions governing the development of certain programs and other activities conducted by the Department of Wildlife. (BDR 45-709)

MICHELLE VAN GEEL (Committee Policy Analyst):

This bill was heard in Committee on April 23, 2009. The bill clarifies existing law regarding the role of the Board of Wildlife Commissioners. It provides certain developed programs or wildlife management activities or research conducted by Nevada's Department of Wildlife must be conducted under the guidance of the Board of Wildlife Commissioners. There was no opposition to the bill at this hearing.

SENATOR MATHEWS MOVED TO DO PASS A.B. 362.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR PARKS:

The next work session bill is A.B. 516 [Exhibit G](#). A summary of the bill will follow.

[ASSEMBLY BILL 516 \(1st Reprint\)](#): Revises provisions governing the use of money in the Wildlife Account. (BDR 45-708)

Ms. VAN GEEL:

Assembly Bill 516 was heard in Committee on April 23, 2009. It clarifies existing law regarding the role of the Board of Wildlife Commissioners concerning the use of certain fees. It also provides that all matching money Nevada's Department of Wildlife receives from any source must be accounted for separately and only used for the management of wildlife. There was no opposition to this bill.

SENATOR COPENING MOVED TO DO PASS A.B. 516.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR PARKS:

The next work session bill is A.B. 29 [Exhibit G](#). Michelle Van Geel will summarize the bill.

[ASSEMBLY BILL 29](#): Revises provisions governing the use of money in the Account for License Plates for the Promotion of Agriculture Within This State. (BDR 50-354)

Senate Committee on Natural Resources
April 30, 2009
Page 12

MS. VAN GEEL:

Assembly Bill 29 was heard in Committee on April 14, 2009. The bill authorizes the Director of the State Department of Agriculture to provide grants to nonprofit organizations from the Account for License Plates for the Promotion of Agriculture Within this State. There was no opposition to this bill.

SENATOR COPENING MOVED TO DO PASS A.B. 29.

SENATOR MATHEWS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR PARKS:

The next bill in this work session is A.B. 194. The summary follows.

[ASSEMBLY BILL 194 \(1st Reprint\)](#): Makes various changes to provisions governing master guides and subguides. (BDR 45-258)

MS. VAN GEEL:

This bill, A.B. 194 was heard in Committee on April 23, 2009, [Exhibit G](#). It revises the penalty for a person convicted of purposefully or knowingly acting as a master guide or as a subguide without a license issued by Nevada's Department of Wildlife to be punishable as a gross misdemeanor for a first offense and a category E felony for a second or subsequent offense. In addition, the Board of Wildlife Commissioners must revoke any hunting, fishing, or trapping license, permit, or privilege to that person for 5 years. The bill requires that a person may not compensate another person to provide guide service unless the person providing the guide service provides proof that he holds a master guide license or a subguide license issued by the Department. There was no opposition to this bill.

SENATOR COPENING MOVED TO DO PASS A.B. 194.

SENATOR AMODEI SECONDED THE MOTION.

Senate Committee on Natural Resources
April 30, 2009
Page 13

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR PARKS:

There is one more bill on today's work session, A.B. 242 [Exhibit G](#). Michelle Van Geel will summarize the bill.

[ASSEMBLY BILL 242](#): Revises provisions governing the confidentiality of a report of trichomonosis in cattle. (BDR 50-1005)

MS. VAN GEEL:

The bill was heard in Committee on April 14, 2009, [Exhibit G](#). It adds trichomonosis in cattle to the diseases excluded from certain confidentiality requirements. There was no opposition to this bill.

SENATOR RHOADS MOVED TO DO PASS A.B. 242.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR PARKS:

This concludes the bills on the work session.

SENATOR RHOADS:

I would like to acknowledge and thank our Committee Policy Analyst, Michelle Van Geel, and Committee Counsel, Randy Stephenson and staff, for their excellent work compiling the work session packets. It is a real help for our Committee.

Senate Committee on Natural Resources
April 30, 2009
Page 14

CHAIR PARKS:

This concludes the business of the Senate Committee on Natural Resources today. We are adjourned at 4:36 p.m.

RESPECTFULLY SUBMITTED:

Shirley Parks,
Committee Secretary

APPROVED BY:

Senator David R. Parks, Chair

DATE: _____