

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

**Seventy-Sixth Session
May 17, 2011**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Maggie Carlton at 1:48 p.m. on Tuesday, May 17, 2011, 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/76th2011/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 Maggie Carlton, Chair
Assemblyman Joseph M. Hogan, Vice Chair
Assemblyman Paul Aizley
Assemblyman Elliot T. Anderson
Assemblyman David P. Bobzien
Assemblywoman Irene Bustamante Adams
Assemblyman John Ellison
Assemblyman Ed A. Goedhart
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Pete Livermore
Assemblywoman Peggy Pierce

COMMITTEE MEMBERS ABSENT:

Assemblyman Harvey J. Munford (excused)

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Capital Senatorial District

STAFF MEMBERS PRESENT:

Amelie Welden, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Judith Coolbaugh, Committee Secretary
Linda Waters, Committee Assistant

OTHERS PRESENT:

Doug Busselman, representing the Nevada Farm Bureau Federation

Chair Carlton:

We have some housekeeping items to do. Today, you have a gift from me in appreciation for your hard work on this Committee. I hope you will all enjoy the memento enclosed in your gift bags. [All the Committee members and support staff opened their gift bags.] We are planning on getting together this evening for our Committee party. I understand some of you are unable to come, but if you want to drop in for a while, that would be nice.

Assemblyman Hogan:

If I may, Madame Chair, the only person not enjoying opening a gift is you. This present is something for you. We all realize we have had a lesson in viewing skillful and caring chairmanship. The work gets done, and the schedule is kept. I think we have all learned a great deal from you. We have future chairs sitting on this Committee, and I think they will all aspire to your standards.

Chair Carlton:

Thank you. Mary Lee, our Committee Manager, has the Committee group photographs available so if you are interested in purchasing one, see her. I am opening a work session on Senate Bill 236 (1st Reprint).

[Senate Bill 236 \(1st Reprint\)](#): Provides for the increased use of recycled materials in certain road and highway projects. (BDR 35-766)

Chair Carlton:

You have a work session document ([Exhibit C](#)) available for the bill. Mr. Stephenson has a statement on the bill.

Randy Stephenson, Committee Counsel:

We have the amendment for the bill, which makes a number of changes to the bill. I am commenting on the transitory section at the end of the bill. The amendment will include an express statement to say the mandatory provisions

within the bill do not apply to projects and contracts which are currently in existence.

Chair Carlton:

We never want to impact an existing contract. Does the Committee wish to walk through the bill? [There was no response.] Are there any questions that need to be addressed? [There were none.] We have a motion.

ASSEMBLYMAN LIVERMORE MOVED TO AMEND AND DO PASS
SENATE BILL 236 (1st REPRINT).

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

Is there any discussion? [There was none.] We will take the vote.

THE MOTION PASSED. (ASSEMBLYMAN MUNFORD WAS
ABSENT FOR THE VOTE.)

I am opening the work session on Senate Bill 12.

Senate Bill 12: Repeals certain reporting requirements for the emission of greenhouse gases. (BDR 40-469)

[Mrs. Carlton read the work session document's summary into the record ([Exhibit D](#)).] This is a duplicative requirement, and the bill eliminates the duplication. Are there any questions? [There were none.] I have a motion.

ASSEMBLYMAN GOEDHART MOVED TO DO PASS
SENATE BILL 12.

ASSEMBLYMAN BOBZIEN SECONDED THE MOTION.

Is there any discussion? [There was none.] We will take the vote.

THE MOTION PASSED. (ASSEMBLYMAN MUNFORD WAS
ABSENT FOR THE VOTE.)

I hoped to work on Senate Bill 223 (1st Reprint) today, but there are still a number of outstanding questions. I know some of the Committee members had concerns so I will continue to work on the bill. Hopefully, we can process that bill on Thursday. For those of you sending us stacks of emails on the bill, we are working on it. If you have questions about the bill, contact the sponsor, Senator Shirley Breeden. [S.B. 223 (R1) was mentioned, not heard.]

I am opening the work session on Senate Joint Resolution 3.

Senate Joint Resolution 3: Urges Congress to enact legislation to require the Secretary of the Interior to convey ownership of certain land to the State of Nevada to help fund education. (BDR R-90)

Chair Carlton:

You should have a copy of the work session document ([Exhibit E](#)). There is a proposed amendment by Mr. Bobzien that he will discuss.

Assemblyman Bobzien:

I submitted this amendment to tighten up the language on page 2, lines 19 through 22. This new language will make it clear that ownership of federal lands in the rural counties impacts Nevada's school districts because the land is unavailable for placement on property tax rolls. This situation affects the funding available for Nevada's citizens to receive a quality education. The current language is too general.

Chair Carlton:

Any other comments?

Assemblywoman Pierce:

I appreciate Mr. Bobzien's amendment. However, I still am not comfortable with the resolution so I will be voting no.

Chair Carlton:

This is not the last day, and we do not have to work session this resolution right now. If there are other language changes that would make you more comfortable with the resolution, we can postpone this work session on it. [Ms. Pierce shook her head indicating no.] I will entertain a motion.

ASSEMBLYMAN GOEDHART MOVED TO AMEND AND DO PASS
SENATE JOINT RESOLUTION 3 WITH MR. BOBZIEN'S
AMENDMENT.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

Is there any discussion? [There was none.] We will take the vote.

THE MOTION PASSED. (ASSEMBLYWOMAN PIERCE VOTED NO.
ASSEMBLYMAN MUNFORD WAS ABSENT FOR THE VOTE.)

I am opening the work session on Senate Joint Resolution 4.

Senate Joint Resolution 4: Urges Congress to take certain actions concerning federal public lands in Nevada. (BDR R-212)

Chair Carlton:

You have a work session document for it ([Exhibit F](#)). Are there any comments or questions? Is the Committee ready to take action on this resolution?

Assemblyman Goedhart:

This resolution is primarily related to geothermal royalties and rents. Is that correct? Or is it for any and all activities?

Chair Carlton:

The resolution says, ". . . generate electricity from geothermal resources" It appears we are referring to all activities, but geothermal resources are specifically mentioned. I have a motion.

ASSEMBLYMAN GOEDHART MOVED TO DO PASS SENATE JOINT RESOLUTION 4.

ASSEMBLYMAN HANSEN SECONDED THE MOTION.

Is there any discussion? [There was none.] We will take the vote.

THE MOTION PASSED. (ASSEMBLYMAN MUNFORD WAS ABSENT FOR THE VOTE.)

We will have another work session at the beginning of our Thursday hearing to deal with the other bills we have heard. This is our last scheduled meeting, but if anything comes from the Senate or the Assembly Committee on Ways and Means, we may have to schedule another meeting or a meeting behind the bar. It will depend on the nature of the bill.

I am opening the hearing on Senate Bill 309.

Senate Bill 309: Authorizes a person to remove from his or her property an animal for which he or she has, by contract, provided care and shelter under certain circumstances. (BDR 50-703)

Chair Carlton:

Senator Settlemeyer will present the bill.

Senator James A. Settlemeyer, Capital Senatorial District:

The bill was generated by a constituent who contacted me. He had a contract with a person to have that person's horse on his property. The language in the contract said the owner of the horse would come to clean the stall and take care of the horse on a daily basis. After a period of time the horse owner stopped coming daily. Instead, he started coming once every two weeks. The property owner unsuccessfully urged the horse owner to meet the terms of the contract. When the horse owner refused to comply with the terms of the contract, the property owner said the horse needed to be removed from his property. The horse owner quit paying, but he never removed the horse.

The property owner went to the Douglas County Sheriff. He told the sheriff the horse owner was not paying the contracted price, and he was not taking care of the horse on a daily basis. The property owner said he was buying hay to feed the horse, and he wanted the horse off his property.

The sheriff did some research and contacted me. The sheriff told me there was no remedy for this situation under the law. I was shocked. If a person decides to quit paying his storage facility contract, the property owner, under the law, has the right to seize the property in storage and sell it to pay the bill. Also, the storage owner can remove the contents and transport the goods to his own property. If you have a gym locker, and you do not pay your dues, the gym owner has the right to clear out the gym locker and mail you the contents. However, there is no remedy under the law for situations involving animals.

There was a situation in Washoe County where a person had 350 cows on someone else's property, and he left them there. There was no remedy in the law for their removal. After two or three months, the cattle owner returned to remove the cows. During the months the cattle were there, the cattle owner had free feed.

This bill will provide some remedies for this problem. Within the language of the bill, we also gave the animal owner in question some rights as opposed to a tenant/landlord arrangement. If a tenant decides to not pay his weekly house rent, the landlord can have the tenant removed within a week. In this bill, the animal owner is given 30-days notice to remove the animal before he will be evicted. It does give the power of eviction to the property owner if the terms of the contract are not being met.

Chair Carlton:

Basically, this bill is addressing a contractual problem.

Senator Settlemeyer:

Correct. It is meant for situations where there is an actual contract. Some contracts are written; some are oral. There is no problem with having an oral contract although most contracts are written.

Chair Carlton:

It is curious there is no other legal remedy for this type of contract. This bill provides for civil action. Does violating this type of contract have a civil remedy?

Senator Settlemeyer:

A civil remedy for the contract is acceptable. However, it will take three or four months to get the case through the court system. In the meantime, what do you do with the animal? The issue, which I was referring to, came about because there was no immediate remedy available under the law. Also, the cost for an attorney can be expensive. Having the animal on his property would probably cost the property owner \$200 to \$300 a month to maintain.

In the current economy, people sometimes are looking for a free meal for their animals. They decide it is easy to stiff the property owner who is continuing to care for the animals so their other bills can be paid. The person left with the animal could start a full civil action, go through the legal process, and try to recoup his losses. That process is the traditional contractual remedy.

As I indicated earlier, there is a remedy in the law for a breached gym locker or a storage facility contract. The *Nevada Revised Statutes* contains the remedy.

Chair Carlton:

I understand that, but a gym locker or a storage facility does not eat, breathe, sleep, or have a heartbeat. Currently, the animal cannot be donated because you are not the owner of the animal. Is that correct?

Senator Settlemeyer:

You are not allowed to transport the animal, and you are not allowed to move the animal. It is not your animal so donation is not a remedy. Some people who just permit someone to have a horse in their yard may not have a vehicle suitable to transport the animal. I contacted the state brand inspectors in Elko, in the Reno office, and in my local office to see if they knew of a legal remedy for this situation. They said there was none.

Chair Carlton:

You have to go to court. That is the remedy.

Senator Settlemeyer:

You go to court.

Chair Carlton:

Are there any questions?

Assemblyman Livermore:

If the property owner failed to water or feed the animal, would he be subject to criminal and civil penalties?

Senator Settlemeyer:

There is an animal cruelty bill going through the Legislature right now. If you decide not to feed or water someone else's animal on your property when it would be reasonable for you to do so, you could get in trouble.

Assemblyman Livermore:

It is an important element to understand why this bill is necessary.

Chair Carlton:

The Senator is talking about an animal cruelty bill that has not finished passing through this Legislature. We need to talk about what is in the current law.

Senator Settlemeyer:

Under current Nevada law, if you did have someone else's animals on your property, and you could reasonably insure that no harm would come to the animal, you are required to care for the animal. The current law does not deal with the issue to the severity which is proposed in the pending bill, but current Nevada law requires the animal to be taken care of.

The case in point, which I mentioned earlier, occurred in Washoe Valley where 350 cows were left on someone else's property. The property owner said he was not going to feed the cattle. A Washoe County animal society contacted the property owner and told him he had to feed the animals. He fed them for a month and went broke. He told the animal society to put him in jail because he was broke and had no other legal remedy. The animal society came and fed the cattle for another two months. You are talking about 3.5 to 4 tons of hay daily, which costs about \$300 to \$400 per day. Under current Nevada law, you have to take care of the animals.

Assemblyman Aizley:

How do you evict a horse?

Senator Settlemeyer:

That is exactly what this bill is about. It will give the property owner the ability to remove the animal from his property. Each animal will have to be considered on an individual basis. If you have a truck and a trailer capable of hauling the horse, you could take it back to the horse owner's address.

Assemblywoman Pierce:

Small claims court is designed to handle these types of disputes. Why is it not a remedy in this case?

Senator Settlemeyer:

I talked to the Justice of the Peace in Douglas County and the judges about the bill and its concept. They were very supportive. Even if you go through the courts and get a contractual remedy, you would be awarded damages, and you would still have the horse. The court could order equitable relief, but if the animal owner does not follow through, what legal remedy is left? There is nothing in the law that permits the judge to rule the property owner has the right to return the horse to its owner. There is nothing in the law prescribing how the property owner can get rid of the animal.

You could go through small claims court as long as the bill was not too high. The Justice of the Peace indicated small claims court may not necessarily work because it does not provide a remedy for having the animal removed from the property. The judge could try to order a specific remedy by telling the horse owner to vacate the premises. One of the reasons for this bill was to provide property owners a better remedy than going to court.

Assemblyman Hansen:

Trespassing. Is there a way you could have them charged with trespassing?

Senator Settlemeyer:

According to the county constable I talked to, it is not trespass because you have a contract. Perhaps, your legal team can follow up on that point. I felt as you did with the contract no longer valid and the animal owner outside the contractual terms, he was committing trespass. However, I was told since you already had a month-to-month contract, the contract continues on. The animal owner is just liable for the damages.

Assemblyman Hansen:

We need to have Mr. Stephenson address the issue.

Assemblyman Goedhart:

On page 2, line 5, the bill says, ". . . at least 30 days' notice . . . ," and then on line 16, it says, "(b) Fourteen days have elapsed since the notice was mailed" It means the property owner is required to give the animal owner a 30-day notice before he can terminate the contract. However, within 14 days you can have the animal removed. How do those two statements tie together?

Senator Settlemeyer:

To terminate the contract, you have to give the animal owner a 30-day written notice. After those 30 days have elapsed, the 14-day waiting period begins, which means it could be 45 days before the situation is resolved.

Assemblyman Goedhart:

The animal owner would have the first 30 days plus another 14 days after the 30-day period expired. Is that correct?

Senator Settlemeyer:

Yes, that is what I understood.

Chair Carlton:

Can these time periods run concurrently? Could someone go through this process and the court process at the same time? Or is this an either/or situation?

Senator Settlemeyer:

Both remedies could occur at the same time. In the situations I have referred to, the property owner just wanted the animal gone.

Assemblyman Ellison:

I have had this problem. People have brought stock to my ranch to leave for a month or two, and I end up feeding and taking care of the animals. Next thing I know it is winter, and I still cannot get rid of the animals. It is a good bill. It still protects the animal; and it gives the animal owner notice to remove the animal from your property.

Senator Settlemeyer:

I ended up acquiring a horse because my dad was a really nice guy. The animal owner asked if he could put the horse on our property for a short time until he could find a new place for the horse. Ten years later, my dad said to the animal owner, we have to come to terms with the fact you have not paid anything

toward the horse's maintenance. The animal owner said, "If you give me \$1,000, I will sign the horse over to you." My dad chose to do that. The situation does occur.

Chair Carlton:

I notice our discussion has been around horses and cattle, but the bill says, "an animal" so this bill could apply to llamas, sheep, or any animal, which grazes and chews.

Senator Settlemeyer:

The bill covers any animal you have a contract on.

Assemblywoman Pierce:

What happens if a person leaves a cat or a dog at a veterinarian's office or a kennel? How long is it before they can decide it is an abandoned animal?

Chair Carlton:

We might need to hear from Mr. Stephenson. There has to be some remedy for the owner of a business who ends up with an abandoned animal.

Randy Stephenson, Committee Counsel:

I would say that situation would also be governed by the contract you entered into with the veterinarian. I assume there must be one because the veterinarian is caring for your pet. The first remedy would be the contract, and I am sure it is what the veterinarian would rely on.

Chair Carlton:

We may need to look a little deeper because the bill does say any animal. If this bill will end up impacting veterinarians, we need to consider their situation.

Senator Settlemeyer:

When this issue originally came to my attention, I found it problematical that there was no legal remedy available, other than suing on the contract. I contacted three horse boarding facilities—two in Douglas County and one in Washoe County—to ask about the remedies they use. Their response was, "good luck."

Chair Carlton:

We need to make sure the use of the word "animal" covers all situations statewide. We want to make sure we have not gone the wrong way on the veterinarian issue. Are there any other questions? Mr. Busselman, would you come to the witness table? You indicated on the sign-in sheet support for the bill.

Doug Busselman, representing the Nevada Farm Bureau Federation:

We are in support of this bill. We view these situations as property right issues. There needs to be a clear-cut process in place to deal with these types of situations. This bill will solve a problem people should not be burdened with. We supported the bill on that basis, and we continue to do so.

Chair Carlton:

So the civil court remedies are not adequate? You believe this bill would be helpful.

Doug Busselman:

That is correct. The process in the bill does not exclude using other civil remedies, but this bill does establish a solid procedure to give the property owner recourse. The property owner would have the ability to use this system as a mechanism to move forward. The procedure to resolve the problem will be understood, and people are capable of following the law.

Chair Carlton:

If we are talking about selling the animal or giving the animal away, and you still go to court to seek damages, it is a double-ding. I have a concern about that. You may have recouped your losses by selling the animal, but you would still have a second bite of the apple by going to court. It seems like a double penalty, or two-track action. I realize going to court is one of the options the property owner has in the bill. Under contractual law and this legal remedy, it appears you are going after the animal owner twice for the same offense.

Senator Settlemeyer:

If that bothers you, I would accept the property owner having only one of these remedies available. We are trying to provide the property owner an option.

Chair Carlton:

Ms. Pierce just pointed out the word "or" is between section 1, subsection 3, paragraphs (d) and (e). However, outside of this legislation, the property owner would still have the opportunity to go to court. We do not want a person to be caught in double jeopardy. It only seems fair to take a person to court once on the same issue.

Doug Busselman:

If a property owner sold the animal and was not able to recover the amount owed, the property owner would have the ability to go back to court to collect the difference. If you took a case to court and showed you had already made a profit by selling the animal, the judge would not be sympathetic about allowing you to take a second bite of the apple. The only logical reason a judge

would grant the property owner additional remuneration would be if the amount recovered did not cover the amount that was owed.

Senator Settlemeyer:

My purpose in using the word "or" was to give the property owner options. He could sell the animal, give it away, or return the animal to its owner. You have to leave the civil remedy open just in case the costs are not recovered.

Assemblyman Kite:

I would like to point out it is common to sell a horse and not recover your costs. In today's economy, you would be lucky to get \$200 or \$300 for a 14-year old mare or gelding, especially if it has been kept in a pasture or a corral. The horse would not have been shod or ridden. The chances of selling the animal to recover your losses would be slim to none.

Chair Carlton:

Are there any other questions? [There were none.] Is there anyone neutral on the bill? [There was no one.] Is there anyone in opposition? [There was no one.] On Thursday, all the remaining actions by this Committee will need to be completed.

This meeting is adjourned [at 2:28 p.m.].

RESPECTFULLY SUBMITTED:

Judith Coolbaugh
Committee Secretary

APPROVED BY:

Assemblywoman Maggie Carlton, Chair

DATE: _____

EXHIBITS

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

Date: May 17, 2011

Time of Meeting: 1:49 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 236 (R1)	C	Assemblywoman Maggie Carlton	Work Session Document
S.B. 12	D	Assemblywoman Maggie Carlton	Work Session Document
S.J.R. 3	E	Assemblywoman Maggie Carlton	Work Session Document
S.J.R. 4	F	Assemblywoman Maggie Carlton	Work Session Document