

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

**Seventy-Eighth Session  
May 7, 2015**

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Robin L. Titus at 1:40 p.m. on Thursday, May 7, 2015, in Room 3138 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: [www.leg.state.nv.us/App/NELIS/REL/78th2015](http://www.leg.state.nv.us/App/NELIS/REL/78th2015). In addition, copies of the audio or video of the meeting may be purchased, for personal use only, 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:**

Assemblywoman Robin L. Titus, Chair  
Assemblyman Jim Wheeler, Vice Chair  
Assemblyman Nelson Araujo  
Assemblywoman Maggie Carlton  
Assemblyman Richard Carrillo  
Assemblywoman Victoria A. Dooling  
Assemblyman Chris Edwards  
Assemblyman John Ellison  
Assemblyman David M. Gardner  
Assemblyman Ira Hansen  
Assemblyman James Oscarson  
Assemblywoman Heidi Swank

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

None



**STAFF MEMBERS PRESENT:**

Susan E. Scholley, Committee Policy Analyst  
Jim Penrose, Committee Counsel  
Donna J. Ruiz, Committee Secretary  
Cheryl L. Williams, Committee Assistant

**OTHERS PRESENT:**

Jim Barbee, Director, Division of Administration, State Department of Agriculture  
Lynn Hettrick, Deputy Director, Division of Administration, State Department of Agriculture  
Ray Bacon, representing Nevada Manufacturers Association  
K. Neena Laxalt, representing Nevada Cattlemen's Association

**Chair Titus:**

[Roll was taken. Committee policies and procedures were explained.] I will open the hearing on Senate Bill 495 (1st Reprint).

**Senate Bill 495 (1st Reprint):** Revises provisions relating to commercial animal feed. (BDR 51-1165)

**Jim Barbee, Director, Division of Administration, State Department of Agriculture:**

I am referencing the Senate Bill 495 (1st Reprint) section-by-section review ([Exhibit C](#)) that is on the Nevada Electronic Legislative Information System (NELIS). I will go through that and then my deputy director will talk about some of the amendments ([Exhibit D](#)) that were proposed as we came into this hearing.

The rules for the federal Food Safety Modernization Act (FSMA) that are published by the U.S. Food and Drug Administration (FDA) of the U.S. Department of Health and Human Services are to be adopted August 30, 2015. The FDA expects the cooperation of all 50 states in implementing these new rules. The provisions in this bill will allow the State Department of Agriculture to carry out the food safety rules mandated in FSMA in those areas that deal with agriculture. This bill was amended to adopt the Association of American Feed Control Officials (AAFCO) model bill language that is used nationally. The adoption of the model bill law eliminated the opposition expressed in the exhibits attached to this bill. With the amendment, the bill had no opposition and passed 21-0 in the Senate. [Mr. Barbee continued reading the section-by-section explanations contained in ([Exhibit C](#)).]

Again, this is being driven by FSMA, which was voted on federally and enacted in 2012. Since that time, they have been developing actual rules that will come out in August 2015. There are seven different rules encompassing agriculture products and food manufacturing. My deputy director will explain the amendments ([Exhibit D](#)) we brought forward for this Committee hearing.

**Lynn Hettrick, Deputy Director, Division of Administration, State Department of Agriculture:**

I will comment first on the penalty section, which is section 41. We have enacted civil penalties, and we have moved to civil penalties throughout our statutes. Misdemeanors in this state have to be prosecuted by the district attorney's office, and in virtually 100 percent of all cases, a district attorney does not think a misdemeanor rises to a level that justifies their utilization of manpower and expense. Essentially, it is a meaningless penalty. We want to move to something that can be meaningful if we have issues that arise. You have received a letter from the American Feed Industry Association (AFIA) ([Exhibit E](#)). They would prefer that we utilize something other than civil penalties first. However, in the AAFCO model act language, civil penalties are indeed one of the methods of penalty that is provided. We chose to adopt that because we know that misdemeanors simply do not get processed. I wanted to provide you with some justification for why we went there first.

After review of the bill, the model language was adopted by the Senate in their hearing. When it was drafted through the Legislative Counsel Bureau legal staff, there were minor changes made, and we would like to go back to the model language. We are proposing to do that for consistency nationally, since the AAFCO model bill is used nationally. You should have the three amendments we are proposing with this bill ([Exhibit D](#)).

The first amendment is to section 37, line 39. It deletes the word "and," and replaces it with "or the." If we use the word "and," it would mean that bags would have to be specially printed for any feed sold in the state of Nevada listing both the manufacturer and the distributor. That was not the intent of the law. We certainly do not want that to happen because many feed manufacturers would simply quit selling feed in the state of Nevada.

The second amendment we are offering is to section 32, line 27. In the model, bill reports submitted quarterly would be confidential, but the wording in the bill was changed to public record. The manufacturers called us and were very concerned about that. We are a small state; if a manufacturer is forced to have his or her production units actually published quarterly, it could be a huge benefit to their competitors. They feel it is an intrusion upon their business

trade secrets and asked us to change it back to confidential. We believe that is an appropriate change.

Finally, regarding section 41, line 7, in discussion with industry in regard to the civil penalty, they wanted the word changed from "is" subject to a civil penalty to "may be" subject to a civil penalty to make it clear that they do not have to be penalized, and we have the discretion, the authority, and the ability to simply say this is not being done right. Rather than penalize the person who violates the provisions, we can fix it and move forward. We are suggesting very simple, straightforward amendments to the bill to make it conform to the AAFCO model law. I will be happy to take any questions.

**Chair Titus:**

You said this was a federal mandate, but what I am seeing is mostly a tax and fees. Where is the federal mandate?

**Jim Barbee:**

The federal mandate is the Food Safety Modernization Act that was passed in 2012 that gave the federal government the authority to create these new programs. With the new programs they are creating, they are publishing the rules that I believe will come out on August 15, 2015. The seven rules are preventative controls for human foods, preventative controls for animal foods, produce safety rules, foreign supplier verification program, third-party certification, sanitary transportation, and international alteration. The produce safety rule will be significant in Nevada. We have seen some real issues with that in other states because all produce that is produced in the state opens the farms for direct inspection through this program. Beginning August 2015, they will start putting those rules into place, and they will be phased in based upon the size of the business.

In the conversations we had at the National Association of State Departments of Agriculture, the FDA's intent is to implement these rules through fee-based sanctions across the United States. This is not unique to Nevada.

**Assemblyman Wheeler:**

If we do this, are these fees going to be charged to Nevada companies and passed on to Nevada buyers? Have neighboring states implemented this yet, are they planning to implement this, or do I need to go across the border and get my feed there?

**Jim Barbee:**

This is a nationwide implementation. They have done some tests, basically inspections on farms, which have created quite an uproar, specifically in

North Carolina and Oregon, I believe. This will be implemented across all states with an August 15, 2015 rule release date. All large corporations will come under these requirements by August 15, 2016. What you are going to see is states working to develop these programs just as we are suggesting entering into the cooperative agreements with the FDA to ensure Nevada has a presence in how the rule is implemented. Because there is some industry support, we are proposing that Nevada implement these rules versus the FDA. It would be similar to the Nevada Division of Environmental Protection versus the federal Environmental Protection Agency coming into Nevada.

**Lynn Hettrick:**

Other states have already implemented this. In fact, one of the issues that arose for us is the federal government said they want all states to comply with this. They provided the rules and said this is an unfunded mandate because all of the states already charge fees. The fact is, Nevada does not charge fees and does not already do this. All the other states do, in fact, do this. Nevada is the only state that does not charge a fee for doing this. California's fee is \$400 per year. We are proposing a fee of \$75. We are doing this as inexpensively as we possibly can, but this work has to be done because it is a federal mandate. One way or another this has got to happen. The manufacturers have spoken to us and said they would rather the state did this because they do not want to deal with the federal government.

**Chair Titus:**

You mentioned the manufacturers. Are we talking about the large corporations? What about the small feed suppliers and purchasers? Will it raise the cost of feed here in Nevada?

**Lynn Hettrick:**

The total fee proposed is a \$75 per year registration fee for the manufacturer. That is for traceability if they find a product that is contaminated or poisons an animal or a person. Then there is a \$5 quarterly fee when they submit their report. The total fee is \$95 per year. I do not think that will have any impact on the larger manufacturers. The larger manufacturers are paying these fees throughout the United States. Some states average \$200 compared to our \$75. Our \$5 fee is less than the tonnage fee. If you notice in the statute the way we wrote it, we said it is a tonnage fee if we adopt it in regulation. We are not even putting in a tonnage fee. We are charging a flat \$5 fee to cover the cost of dealing with the quarterly reporting. We are doing this as inexpensively as we possibly can to cover the cost of the program.

**Chair Titus:**

I know that it is an issue. Everyone has heard about the dog food from China and those types of things. This affects local folks, local producers, people who are selling feed here who are American producers. Will this affect animal feed?

**Lynn Hettrick:**

Yes, it will. I went to a seminar regarding this in Sacramento several months ago. There was a man who said they have already been complying with the rules because they have seen the preliminary rules. He said they buy a product from Europe called calcium carbonate, which is essentially ground up rock. He flew to Europe to go through the mining company's entire process of how they dug it out of the ground, how they processed it, and what other contaminants might be in it. He also wanted to find out how they packaged it and how they transported it into the United States. Then when they mix it into the feed, the process starts all over again—how it could be contaminated, how it is packaged, how it is transported—and it has to be traced all the way to the end retailer. If people ever complain about a product they purchased that poisoned their dog, it can be traced back to that mining operation in Europe. This is not just American producers or manufacturers. This is going to go clear through the whole feed chain.

**Chair Titus:**

Is there anyone in the audience who would like to testify in favor of S.B. 496 (R1)?

**Ray Bacon, representing Nevada Manufacturers Association:**

We have members who understand that this will affect them. We got into this issue initially in the 2011 Session when there was a food manufacturer in southern Nevada that processed flavorings that go into foods. In the process of that, they had contamination in their plant and there were about 150 product recalls around the country because of their nature. The solution that came forward in the 2011 Session was to create our own FDA in the state of Nevada. That did not seem like a logical conclusion. The ultimate solution was what we did in a bill in the 2011 Session. We simplified the process substantially because this mostly involved the health departments, which actually do the inspections on most of the manufacturing plants making direct consumer foods. We authorized the health departments and the Department of Health and Human Services to enforce the Food Safety Modernization Act as it became implemented. At that point, the bill had not finished its final hurdle. It had been passed through both houses but it had not finished the conference committee. There were strict requirements in that bill that the FDA had to get their preliminary rules done within one year and fully implemented within two years. They have blown every schedule completely. However, with all that aside, this

will do what we have to do from a compliance standpoint. It does it at the state level, which is substantially more favorable.

The one question that we had, and the one issue that we have had, quite frankly, is more on the Department of Health and Human Services than on the State Department of Agriculture. Food manufacturing operations are substantially different from what Assemblywoman Carlton is used to in the restaurant food inspections. When a food manufacturing operation is inspected, they are looking at the process and the records much more completely than they are the actual handling practices in most cases. We have an exercise that has already started and is still ongoing in the health departments to get inspectors up to speed to the point that they know what they are looking at. We are in favor of this bill. Do we like it? No, but that is beside the point. It has to happen.

**Chair Titus:**

Is there anyone else in the audience who would like to testify in favor of S.B. 495 (R1)? [There was no one.] Is there anyone wishing to testify in opposition to S.B. 495 (R1)? [There was no one.] Is there anyone with neutral testimony on S.B. 495 (R1)?

**K. Neena Laxalt, representing Nevada Cattlemen's Association:**

We have worked with the Department of Agriculture on this bill. We have also worked on the amendments. There were a lot of concerns up front as introduced. We have now taken a neutral position. It has been said that we have to do this. Nobody likes it, but we would prefer that the state run this program rather than the federal government. I would be happy to answer any questions.

**Assemblyman Ellison:**

If this is a federal law being forced upon us, why do we have to enact it as a state law?

**Jim Barbee:**

I think the sentiment is that the Nevada businesses would rather work with a Nevada-based group that understands the issues in Nevada and is going to be more reasonable because they can be held accountable in Nevada versus someone out of Washington, D.C., coming in and doing inspections in Nevada. There were significant issues when the federal government started doing some of the preliminary produce inspections in North Carolina and Oregon that I referenced earlier. That is the main reason. It is better to work with Nevada folks to do the regulation on this.

**Assemblyman Ellison:**

That is why we need Senate Joint Resolution 1.

**Chair Titus:**

Are there any other comments or questions? [There were none.] Is there any other testimony?

**Ray Bacon:**

I would like to give you a little bit of the genesis on the situation we went through in 2011. We wound up with product contamination, which the Clark County Health District had gone in and confirmed. The Health District, at that point, did not have the authority to issue a cease and desist order. We could block the product from shipment and stop the production, but we could not order a cease and desist order or recall products. Part of enhancing that authority gave us the authority to do that. Why that became important was when the Clark County Health Department called the FDA to report there was a problem, it took them six weeks to get from California to Las Vegas to take the appropriate action and order a recall. To say that the FDA is less than responsive is probably being as kind as I can be.

**Chair Titus:**

By enacting this, it still does not eliminate the federal government from having its onerous regulations and inspections, correct?

**Jim Barbee:**

This would be similar to the Nevada Division of Environmental Protection versus the U.S. Environmental Protection Agency.

**Chair Titus:**

I will note that there is some additional testimony in support on NELIS ([Exhibit F](#)) and ([Exhibit G](#)). There is at least one letter in opposition ([Exhibit H](#)). I will close the hearing on S.B. 495 (R1). I will now open the work session on Senate Bill 261 (1st Reprint).

**Senate Bill 261 (1st Reprint): Makes various changes relating to certain research facilities. (BDR 50-56)**

**Susan E. Scholley, Committee Policy Analyst:**

Senate Bill 261 (1st Reprint) makes changes relating to research facilities. It is sponsored by Senator Manendo and a number of others, as well as joint sponsorship by various Assembly members. It was heard in this Committee on May 5, 2015. Essentially, the bill in its current form authorizes a research facility that intends to euthanize a dog or cat to instead offer the animal for



adoption. This can be done through a program of the facility or through an agreement with an animal shelter or animal rescue organization if the dog or cat is appropriate for adoption. The bill also provides that the research facility and any officer, director, employee, or agent of the facility are immune from civil liability for any act or omission relating to the adoption of the dog or cat. As you may recall, Senator Manendo, the Nevada Humane Society, and others proposed an amendment at the hearing to change "may" to "shall" in section 1 of the bill. I have included that brief excerpt of section 1 in your work session document ([Exhibit I](#)) showing "may" replaced with "shall." As noted, the Senate vote on the 1st Reprint was 20 ayes with one member excused.

ASSEMBLYMAN WHEELER MOVED TO AMEND AND DO PASS  
SENATE BILL 261 (1ST REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

**Chair Titus:**

Is there any discussion?

**Assemblyman Oscarson:**

I think it is important to note that the industry testified that this was acceptable to them.

**Assemblyman Edwards:**

I happen to love dogs and I think they are great. I wish I could have one right now but my schedule does not allow me to have one because it would not be fair to the animal. We are about to vote on this bill and I had hoped that we would not. When both sides were in this Committee the other day, they both indicated that they would work this out between themselves. I think that is a far better approach. Private parties working this out is the American way. Bringing this to the Legislature to have to make a law is not the right approach. Given the hundreds of dogs that are also very needy in the pounds and shelters around the state, I think the folks should be putting their efforts into getting them good homes rather than pursuing the possibility of a handful of dogs that may be adoptable sometime in the future. Laws like this simply put the state in opposition to a single company. I think it begins to trample on the rights of not only companies but individuals. In my view, we are putting ourselves on a slippery slope. I think it disregards the property rights of individuals and businesses and that is simply bad policy. In my opinion, this bill was overkill from the start. Now that we are going to include an amendment that puts "shall" into the bill, it is complete overkill and simply should not happen. I think this is the wrong execution of the right idea. I will be voting against this.

**Assemblyman Gardner:**

I definitely have to say that I had my misgivings about this bill. Not so much about the bill but possibly a slippery slope. I have decided that I will be voting in favor of this bill.

**Assemblywoman Carlton:**

I respect Assemblyman Edwards' opinion on this, but these dogs are not just regular dogs. These dogs have performed a service. I look at these dogs like I would look at an army canine, a police canine, or a Transportation Security Administration canine that have done their jobs. Unfortunately, some of these dogs are not going to survive. They will never see the outside of that laboratory because of the service they have provided. If they do survive, I do not think there is anything wrong with having our feelings on the record about how these animals should be treated. It is not just a regular pet that you find; it is a dog that has actually done a public service for all of us.

**Assemblyman Hansen:**

Dr. Mandeville from the University of Nevada, Reno testified against the bill. I had to leave after that. Was there any clarification about the University's opposition?

**Chair Titus:**

According to the University, they have not done animal studies for many years. As a matter of fact, I was probably in medical school the last time they had an animal study. Their concern was that in the future they may have an animal study, and they were worried that there might be some limitations. When we went back to the industry afterwards, the industry had agreed to "shall" because the wording had been amended that it had to be a suitable animal and the animal was no longer going to be used for testing.

**Assemblyman Hansen:**

It passed out of the Senate with "may." They had removed the original wording with "shall," they changed it to "may," and now we are changing it back to "shall."

**Assemblyman Edwards:**

I know my logic on this is probably going to get me in trouble over the emotional aspect, but we are supposed to be legislating. As emotional as this question may be for many, the reality is we are supposed to be looking at the policy and the rationale for the policy. Although the dogs have done a service, the harsh reality is that most of them, and I mean more than 90 percent, will not be eligible to be adopted simply because of what has happened to them.

I think this is simply the wrong arena in which to have this discussion. It should have been handled by the private parties involved.

**Assemblywoman Carlton:**

This piece of legislation was negotiated so that everybody at the table finally gave a little bit and they all ended up in the middle. When you have the proponents on one side and the laboratory that does testing on animals on another side come together and say they can both live with this, then I am willing to step back, get out of the way, give them my vote, and call it a day. We have other things that we need to work on.

**Assemblyman Araujo:**

I think my colleague, Assemblywoman Carlton, hit it on the head. I just want to remind folks that I personally looked at the policy and that is why I am voting with a strong yes today. I also took into account the fact that we should be priding ourselves on listening to Nevadans' concerns. The fact that so many Nevadans feel so passionate about this issue and about protecting our animals who have given so much service to us that they have written, called, and emailed. I take that into strong consideration. I stand with them in support of this legislation.

**Assemblyman Carrillo:**

When I come into this committee room or any committee room, I leave the emotion outside; this is about the policy. I want to give kudos to the Senator for bringing this bill forward. This is a tough bill and it is about policy and about what is right. Yes, we could have continued to have this argument back and forth, but we put that aside and we came together and decided to do what is right.

**Assemblyman Hansen:**

I would just point out that when it was said that this was negotiated and that Charles River Laboratories came and met with them and that this was some mutual agreement, that is nonsense. The lab had a gun to its head by the bill itself and was forced to negotiate on this. In reality, this never would have happened. Charles River Laboratories would never have approached the Humane Society to go to the Nevada Legislature and get this law passed forcing them to turn over these dogs. While I do not mind the policy discussion, the idea that this was some sort of mutual agreement between the different parties is nonsense. It is like a mutual agreement when one side has a gun to the head of the other. I think we need to recognize that is the reality. They realized it was a done deal and they were just trying to minimize damage.

**Assemblyman Wheeler:**

In response to my colleague, I do not think it was the job of Charles River Laboratories to start a negotiation on something like this. However, it is the American Society for the Prevention of Cruelty to Animals, or the Humane Society's job; that is what they do. When we see that happening, I am reminded of Uber and the taxicabs. There was some negotiating going on and it is not because the taxicabs want Uber in Nevada. As far as creating law for business, I was, as you know by the questions I asked in the Committee hearing, a little worried about inserting our influence into a private business and a private property. The fact of the matter is, that is what we do here. I will be voting yes on this bill.

**Assemblyman Hansen:**

If these same principles were applied to the livestock industry on branding and castrating, having participated in those activities, they make some of this seem really mild. The fact is, if these same organizations started pressing that side of the private sector, I suspect the attitudes would be different by some members of the Committee.

**Chair Titus:**

I will call for the vote.

THE MOTION PASSED. (ASSEMBLYMEN EDWARDS AND  
HANSEN VOTED NO.)

**Chair Titus:**

I will assign the floor statement to Assemblyman Carrillo. I will close the session on S.B. 261 (R1). Is there anyone here for public comment? [There was no one.] The meeting is adjourned [at 2:18 p.m.].

RESPECTFULLY SUBMITTED:

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Donna J. Ruiz  
Committee Secretary

APPROVED BY:

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Assemblywoman Robin L. Titus, Chair

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

**EXHIBITS**

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

**Date:** May 7, 2015

**Time of Meeting:** 1:40 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 495	C	Jim Barbee, Director, State Department of Agriculture	Bill Explanation
S.B. 495	D	Jim Barbee, Director, State Department of Agriculture	Proposed Amendment
S.B. 495	E	Leah Wilkinson, American Feed Industry	Testimony in support
S.B. 495	F	Chris Zanobini, California Grain & Feed Association	Testimony in support
S.B. 495	G	Kurt Gallagher, Pet Food Institute	Requested revisions
S.B. 495	H	Holley Family, Holley Family Farms	Testimony in opposition
S.B. 261	I	Susan E. Scholley, Committee Policy Analyst	Work session document