

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE, LABOR AND ENERGY**

**Seventy-Eighth Session  
May 26, 2015**

The Senate Committee on Commerce, Labor and Energy was called to order by Chair James A. Settelmeyer at 9:15 a.m. on Tuesday, May 26, 2015, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, 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 James A. Settelmeyer, Chair  
Senator Patricia Farley, Vice Chair  
Senator Joe P. Hardy  
Senator Becky Harris  
Senator Mark A. Manendo  
Senator Kelvin Atkinson  
Senator Pat Spearman

**GUEST LEGISLATORS PRESENT:**

Senator Moises (Mo) Denis, Senatorial District No. 2

**STAFF MEMBERS PRESENT:**

Marji Paslov Thomas, Policy Analyst  
Dan Yu, Counsel  
Renee Fletcher, Committee Secretary

**OTHERS PRESENT:**

Marcus Conklin, Lunas Construction Clean Up, Inc.; A Track-Out Solution LLC  
Chris Darling, Lunas Construction Clean Up, Inc.; A Track-Out Solution LLC  
Norberto Madrigal, Lunas Construction Clean Up, Inc.  
Kyle Davis, Nevada Conservation League  
Sean Higgins, Republic Services, Inc.  
Bob Ostrovsky, Waste Management, Inc.

Senate Committee on Commerce, Labor and Energy  
May 26, 2015  
Page 2

Bob Coyle, Republic Services, Inc.  
Warren Hardy, SA Recycling LLC  
Gustavo Nuñez, P.E., Administrator, State Public Works Division, Department of  
Administration

**Chair Settlemeyer:**

I will open the hearing on Senate Bill (S.B.) 122.

**SENATE BILL 122**: Revises provisions relating to recycling. (BDR 54-893)

**Senator Moises (Mo) Denis (Senatorial District No. 2):**

I am here to present S.B. 122. I will read from my testimony ([Exhibit C](#)), and present Proposed Amendment 6959 ([Exhibit D](#)). I have an interest in increasing recycling. There was an interim study conducted two interims ago where I participated in many meetings regarding recycling, as well as attending several national conventions. I learned that recycled materials can be converted into other products and create industries. This is not done in Nevada because we do not generate enough recycling material.

Over the last two sessions, I have been researching ways for Nevada to increase recycling, specifically with construction materials, since the majority of construction materials are recyclable. Recycling helps create a vibrant economy by creating jobs. Current conditions suppress recycling. There has been a long-standing goal to reach 24 percent in recyclables. If Nevada were able to increase recycling in the construction materials industry, we would be able to surpass the 24 percent goal.

**Marcus Conklin (Lunas Construction Clean Up, Inc.; A Track-Out Solution):**

We support S.B. 122 along with Proposed Amendment 6959, [Exhibit D](#). I would like to provide information on market power and monopolies. The landfill business lends itself to certain monopoly characteristics, due to a variety of reasons, ranging from scarcity of land, barriers to market entry and environmental concerns. More often than not, consumers of landfill services find options limited for legal waste dumping. In many cases, landfill services are protected by franchise agreements that provide full-market capture of services in exchange for balanced, stable and low pricing for all consumers.

While S.B. 122 does not debate such franchise agreements, it is important to understand the market conditions in Nevada. Because of the narrow base of

suppliers of landfill services, industries that rely on such services can be exposed to unfair trade practices. Unfair trade practices exist due to the limited number of suppliers, which allows for enhanced market power, or to set pricing irrespective of demand. This practice manifests itself in situations where landfill suppliers, with market power, expand or diversify into suppliers of ancillary services, such as construction and demolition (C&D) waste hauling. Without statutory protections, the C&D waste hauling market can be cornered, provided the supplier of landfill services has enough market power; that is to say that through the price-setting practices of landfill services, it can affect the market choices of consumers in the C&D arena.

Among other reasons, this could happen as a diversified firm, with market power, uses that leverage by increasing rates to its competitors in the C&D arena for its landfill services, reducing rates to its C&D customers for landfill services, or both. The eventual outcome of unfair trade practices is a market that is inefficient, devoid of competition and not in the best interest of consumers. This practice can have a detrimental effect on other policy areas that benefit the economy and the environment. Proposed Amendment 6959, [Exhibit D](#), was drafted to prevent unfair trade practices.

**Senator Denis:**

As originally written, S.B.122 was a pilot project for Clark County. With Proposed Amendment 6959, [Exhibit D](#), the program will apply statewide.

**Mr. Conklin:**

It was an argument by legal drafters that due to public policy and fairness in the marketplace, this project should apply to all consumers across the State, not just in a limited fashion. This change strengthens the bill and consumer protection.

**Chris Darling (Lunas Construction Clean Up, Inc.; A Track-Out Solution LLC):**

I am the owner of a material recovery center in Clark County. I support S.B. 122 and will read my testimony ([Exhibit E](#)). I will refer to the graph ([Exhibit F](#)) which depicts landfill prices versus dumpster prices.

**Norberto Madrigal (Lunas Construction Clean Up, Inc.):**

I am the owner of Lunas Construction Clean Up, Inc. (LCC), which started in 1988. We haul waste from construction sites directly to landfills. In 1993, our landfill rate went from \$20 per truckload to \$120 per truckload. That is a

600 percent increase. The consequence was 50 percent of the construction cleanup industry disappeared. The remaining 50 percent survived by diverting recyclables from the landfills. Since then, LCC has been able to capture more of the recycle business.

In 1996, LCC began placing dumpsters on construction and demolition sites and charged \$375 per container pickup. Nineteen years later, in 2015, we are still charging \$375 because of competition pricing. We are able to make up the shortfall by recycling. Since LCC is one of the larger construction cleanup companies in Las Vegas, and because LCC hauls a vast amount of waste, LCC receives a volume discount at the local landfill. Although LCC receives this discount, we do not use our own dumpsters, since it would actually be more expensive than using competitors' dumpsters.

**Kyle Davis (Nevada Conservation League):**

The Nevada Conservation League supports S.B. 122 in its amended form. We have been working toward this solution for several sessions. We are in favor of increasing Nevada's recycling rate and are encouraged by what has happened with companies like LCC that have been able to create an economic model built around recycling construction debris. Nevada needs to pay attention to recycling rates as the construction industry continues to grow again. The State needs to make wise decisions about the use of these natural resources and recycle as much as possible.

**Sean Higgins (Republic Services, Inc.):**

Republic Services, Inc. opposes S.B. 122 and I will read my testimony ([Exhibit G](#)).

**Bob Ostrovsky (Waste Management, Inc.):**

In the earlier versions of S.B. 122, Washoe County would have been excluded, as they do not produce enough construction waste materials to support a large operation of this type. As Proposed Amendment 6959, [Exhibit D](#), will now affect all of Nevada, Washoe County has been swept up into this debate. Washoe County and surrounding areas are supported by a landfill run by Waste Management, Inc., which is engaging in a \$100 million expansion.

There are municipally operated landfills in Carson City, Russell Pass landfill in Fallon and a disposal operation in Douglas County. I am unsure how S.B. 122 will affect those smaller landfills. The proponents are asking to overturn a

long-standing state policy. *Nevada Revised Statute* (NRS) 268.081 mentions the displacement or limitation on competition of services, stating:

The governing body of an incorporated city may, to provide adequate, economical and efficient services to the inhabitants of the city and to promote the general welfare of those inhabitants, displace or limit competition in any of the following areas.

One of the listed areas is landfills. Clearly, the Legislature has addressed the issue of landfills in the hope of discouraging illegal dumping. The Legislature also understands the environmental sensitivity of creating and building a landfill, which is very expensive. In Proposed Amendment 6959, [Exhibit D](#), section 1.5, subsection 3, lays out a formula for establishing reasonable cost without specifying a regulatory agency to be responsible for monitoring and regulating compliance.

Section 160 of NRS 598A specifies civil actions for damages and other relief by the Attorney General. There is a potential for large penalties, including 5 percent of the gross income of companies and forfeiture of their franchise rights. The penalty for something that does not have much structure to tell an operator, such as Waste Management, Inc., what it should be charging, will be very difficult for the operators of landfills.

The issue of C&D waste and recycling has not been a problem in northern Nevada. I do not believe the original intent of S.B. 122 was to apply to rural counties of northern Nevada, however; the bill as amended will include all of Nevada. It is inappropriate for the northern area.

**Senator Farley:**

As the owner of a construction company that uses dumpsters for construction cleanup, I have not witnessed any price advantage for any one cleanup company. Will S.B. 122 create an unfair competitive advantage?

**Mr. Higgins:**

I agree there is no unfair competitive advantage taking place. It is a public policy in Nevada to provide franchise agreements for landfills, which prevents unfair practices. A 10-ton dumpster delivered to a construction site costs \$368. The average weight that is returned is seven tons. Whether a 10-ton dumpster is returned with one ton or ten tons, the price is the same. Anyone who brings a

dumpster to the Republic Services waste and recycle center will be charged \$36 per ton. A construction site is paying more unless the 10-ton dumpster is filled to capacity. There is no unfair pricing happening in this market.

**Chair Settlemeyer:**

How many companies collecting C&D waste also own the final disposal site?

**Mr. Higgins:**

Republic Services collects waste and owns the final disposal site in southern Nevada. I do not know about the services in northern Nevada.

**Chair Settlemeyer:**

Is the final destination of the collected material owned by Republic Services?

**Mr. Higgins:**

The language of the bill states the final destination can be an affiliate of the collection services company. As long as both companies are under the same corporate umbrella, that corporation cannot set unfair pricing.

**Mr. Ostrovsky:**

I will check with Waste Management for confirmation; however, I do believe they provide hauling services. Construction and commercial waste removal has other competitors, as opposed to residential waste removal.

**Senator Manendo:**

In 1991, a goal was established for a 25 percent recycle rate. I believe Nevada met that goal one time. What barriers keep Nevada from reaching the 25 percent goal? Are any materials going to a landfill recycled?

**Mr. Higgins:**

Republic Services has completed construction on a \$35 million recycling facility for single-stream recycling, which is residential service, from which most recycling is derived. Senate Bill 122 only pertains to C&D waste and debris. Nevada does a large amount of recycling. Once the Republic Services recycle center is open, there will be a greater recycle capacity. We are not against recycling.

**Senator Manendo:**

The 25 percent goal was established for all recyclables. How is Nevada going to obtain that goal? Are any materials in a landfill recycled?

**Mr. Higgins:**

A dumpster picked up from a construction site is taken to a landfill, not a recycling center. Materials taken to a landfill are not recycled.

**Senator Manendo:**

Where is the second landfill located?

**Mr. Higgins:**

The second landfill is located on the border of Clark County and Lincoln County, near the power plants.

**Senator Hardy:**

How can Republic Service takes their dumpsters to a landfill, yet be the largest recycler in Clark County?

**Mr. Higgins:**

The largest, single source of recycling comes from residential homes. Construction and development waste goes to a landfill.

**Senator Hardy:**

Is S.B. 122 about recycling C&D waste?

**Mr. Higgins:**

Senate Bill 122 has nothing to do with recycling C&D waste. The bill refers to setting prices.

**Mr. Ostrovsky:**

Waste Management recycles residential materials, almost exclusively. Waste Management is building a materials recovery facility in Reno for single-stream recycling. Once materials are sorted from Washoe County, they go to Oakland, California, then to China. Nevada does not produce enough recyclable material to create a further-use facility.

**Senator Spearman:**

We have not reached our 25 percent recyclable goal, yet are sending materials to Oakland, California and China. How is S.B. 122 useful to Nevada? Does this bill provide a means for increased recycling? Section 1, subsection 2 speaks of facilities that provide for the extraction of recyclable materials from solid waste. Does any company sort for recyclable material within C&D waste?

**Bob Ostrovsky:**

There have been meetings in prior Legislative Sessions regarding recycling goals. The Senate Committee on Natural Resources seemed to think this could be achieved by single-stream recycling. The materials recovery facility has mechanical equipment to sort glass, plastic, aluminum, etc. Construction waste is handled differently and has different end uses. The State collects data from every recycling center, by area, for how much and what types of materials are recycled. The environment and businesses would benefit from recycling centers as opposed to dumping material in landfills.

**Bob Coyle (Republic Services, Inc.):**

Responding to Senators Spearman and Manendo's questions, Republic Services provides residential services to approximately 530,000 homes in Clark County. Approximately 175,000 of those homes have implemented single-stream recycling. Since the implementation of this program, the recyclable level has increased from 3 pounds every other week, to 12-14 pounds weekly. Once final construction is completed and equipment is installed in the new recycling processing facility, Republic Services will begin implementing approximately 120,000 homes, over the next 3 years, to complete the single-stream service for residents.

In 2008, we geared up our commercial recycling program with approximately 325 commercial recycling customers; today we have more than 3,600 commercial recycling accounts, which all go to the recycle processing facility, not a landfill. The recycling program in Clark County is fast approaching the ability to meet the 25 percent recycle goal, and will most likely surpass that goal. We continue to search for additional commercial customers to introduce to the recycle program. The key ingredient is S.B. 122 for pricing to be set. If competitors are complaining about high prices, it would make sense to recycle C&D waste instead of taking the material to a landfill. Construction companies, developers, homeowners remodeling their homes and others, will benefit from the lower rates.



**Warren Hardy (SA Recycling LLC):**

SA Recycling LLC has been concerned with these issues for several sessions and has been working with legislative committees during that time. We believe Proposed Amendment 6959, [Exhibit D](#), addresses our concerns.

**Gustavo Nuñez, P.E. (Administrator, State Public Works Division, Department of Administration):**

Based on Proposed Amendment 6959, [Exhibit D](#), the State Public Works Division can withdraw its fiscal note.

**Senator Denis:**

Landfill prices from 2006-2014 have increased and dumpster prices have decreased, per the graph provided earlier, [Exhibit F](#). I am excited about the recycling facility being built in southern Nevada, one of the largest in the Country. This facility will help Nevada in its recycling efforts. Approximately 40 percent of residential waste can be recycled, yet roughly 70 percent of construction material can be recycled. It has been stated that all C&D waste is taken directly to a landfill, when there should be an effort to have the material recycled. Last year, Republic Services modified its landfill to accommodate material capacity from 200 years to 471 years. Additionally, Republic Services has a facility with the capacity for C&D waste recycling, yet it is still shuttered.

Senate Bill 122 is about recycling C&D materials and market fairness. Landfills have an advantage since all C&D materials must go there. With no C&D material recyclers in Nevada, landfill prices will continue to increase due to no competitive market. If we were able to increase residential recycling and add C&D recycling, Nevada would attract additional recycling companies.

**Senator Spearman:**

Based on a 2014 study of construction recycling, titled: *Analysis of the Construction Cost Management Based on the Perspective of the Construction Waste Recycling*, it seems that Nevada needs to determine how both areas of recycling can coexist.

Senate Committee on Commerce, Labor and Energy  
May 26, 2015  
Page 10

**Chair Settlemeyer:**

I will close the hearing on S.B. 122. As there is no further business to discuss, the meeting is adjourned at 10:13 a.m.

RESPECTFULLY SUBMITTED:

---

Renee Fletcher,  
Committee Secretary

APPROVED BY:

---

Senator James A. Settlemeyer, Chair

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

<b>EXHIBIT SUMMARY</b>				
<b>Bill</b>	<b>Exhibit / # of pages</b>		<b>Witness / Entity</b>	<b>Description</b>
	A	1		Agenda
	B	3		Attendance Roster
S.B. 122	C	3	Senator Moises (Mo) Denis	Written Testimony
S.B. 122	D	4	Senator Moises (Mo) Denis	Proposed Amendment 6959
S.B. 122	E	1	Chris Darling/Lunas Construction Clean Up, Inc.; A Track-Out Solution LLC	Written Testimony
S.B. 122	F	1	Chris Darling/Lunas Construction Clean Up, Inc.; A Track-Out Solution LLC	Graph
S.B. 122	G	4	Sean Higgins/Republic Services, Inc.	Written Testimony