

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

**Seventy-Eighth Session
April 30, 2015**

The Senate Committee on Natural Resources was called to order by Chair Don Gustavson at 1:31 p.m. on Thursday, April 30, 2015, 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 Don Gustavson, Chair
Senator Pete Goicoechea, Vice Chair
Senator James A. Settelmeyer
Senator David R. Parks
Senator Mark A. Manendo

GUEST LEGISLATORS PRESENT:

Assemblyman Ira Hansen, Assembly District No. 32
Assemblyman Philip (P.K.) O'Neill, Assembly District No. 40

STAFF MEMBERS PRESENT:

Alysa Keller, Policy Analyst
Matthew Nichols, Counsel
Gayle Farley, Committee Secretary

OTHERS PRESENT:

Glen Whorton, President, Nevada State Prison Preservation Society
E. K. McDaniel, Deputy Director, Operations, Carson City, Department of Corrections
Robert L. Crowell, Mayor, Carson City
James R. Lawrence, Special Advisor to the Director, State Department of Conservation and Natural Resources
Joel Blakeslee, President, Nevada Trappers Association, Inc.
John Sullivan
Mike Reese, President, The Southern Nevada Coalition for Wildlife

Senate Committee on Natural Resources
April 30, 2015
Page 2

Mary Maguire
Larry Johnson, Coalition for Nevada's Wildlife
Jeremy Drew, Chair, Board of Wildlife Commissioners
Tyler Turnipseed, Chief Game Warden, Department of Wildlife
Elaine Carrick
Trish Swain, TrailSafe Nevada
Fred Voltz
Margaret Flint, Nevadans for Responsible Wildlife Management

Chair Gustavson:

We will open the hearing on Assembly Bill (A.B.) 377.

ASSEMBLY BILL 377 (1st Reprint): Establishes provisions for the preservation, development and use of the Nevada State Prison as a historical, cultural, educational and scientific resource. (BDR 26-625)

Assemblyman Philip (P.K.) O'Neill (Assembly District No. 40):

Assembly Bill 377 creates a way to restore and preserve the Nevada State Prison (NSP). The prison was opened in 1862, before Nevada became a state. Following closure of the prison in 2012, the Nevada State Prison Preservation Society was formed to ensure this complex was not destroyed.

The University of Nevada, Reno and several agencies became interested in the site because of fossilized footprints on the prison grounds. In addition, there is a quarry that produces sandstone, which was used in the construction of many historic buildings in Carson City, including our State Capitol.

The late Assemblyman, Pete Livermore, sponsored A.B. No. 356 of the 77th Session to preserve the NSP. He spoke often of how he planned to work toward preserving the prison to make it a useful and educational site for the citizens and visitors to our State after he retired.

Representatives of several agencies including Assemblywoman Swank and the Preservation Society developed a plan for the preservation of the NSP that is established in A.B. 377. This bill represents an extensive amount of work by various interest groups who want to see the NSP protected, preserved and properly utilized. I strongly support preserving the NSP for the people of Nevada and as a lasting legacy to my friend and mentor, the late Assemblyman Pete Livermore.

Glen Whorton (President, Nevada State Prison Preservation Society):

Assembly Bill 377 is crafted in two parts. The first part of this bill requires a collaborative effort to develop a recommendation to the Division of State Lands (NDSL) for the reassignment of responsibility for NSP. Involved would be the Department of Corrections (DOC), the State Department of Conservation and Natural Resources (SDCNR) and the Department of Tourism and Cultural Affairs, which includes the Division of Museums and History and the Nevada State Prison Preservation Society.

The institution would be represented in its two distinct parts. There is the historic part with buildings that date from the 1920s, and more modern elements of the institution which date from the 1980s. This bill would allow the State to contract with the Nevada State Prison Preservation Society and similar organizations in the development and operations of the museum.

Mentioned throughout this bill is the Silver State Industries (SSI), which is the prison industry component of the DOC. The second part of this bill is the establishment of three funding mechanisms.

The modern portion of the institution would be assigned to Silver State Industries because SSI has extensive experience dealing with commercial private enterprises on State property. That division would administer the accounts, operating the business-related components. This could provide space for State offices or light industrial use. The SSI fund would be administered by the SSI component of the prisons.

The second fund in section 6 of the bill establishes a preservation account. This would capture revenue generated from the historic part of the institution to include retail sales, museum admissions, meeting production, movies or television.

The third account would be a dedicated trust fund for individuals or entities who wish to grant money for preservation activities related to the project.

E. K. McDaniel (Deputy Director, Operations, Carson City Department of Corrections):

The Department of Corrections and SSI support this bill.

Senator Goicoechea:

Who determines when the NSP is transferred to the NDSL?

Mr. McDaniel:

There are still two operations functioning right now at the NSP. When they cease to exist, the Nevada State Prison Preservation Society will begin to collaborate with the other agencies and notify the NDSL.

Senator Goicoechea:

Are there lands or buildings that are of no interest to anyone?

Mr. McDaniel:

We have a clear plan for the buildings that have historical value, which would be restored and maintained.

Senator Goicoechea:

Are you comfortable with this plan?

Mr. McDaniel:

Yes.

Robert L. Crowell (Mayor, Carson City):

The Carson City Board of Supervisors unanimously supports the bill and is ready and willing to participate in this project.

James R. Lawrence (Special Advisor to the Director, State Department of Conservation and Natural Resources):

The SDCNR is in support of this bill, particularly as amended with Amendment No. 253. I would like to make recommendations to section 1 and section 2 of the bill relating to the assignment of properties. *Nevada Revised Statutes* (NRS) 321 provides the authority for NDSL to assign properties for management. The SDCNR has no objections to this process; however, we think this would be better as transitory language as opposed to specifically amending NRS 321. In regard to the assignment question of Senator Goicoechea, it is not unusual to have large properties assigned to different entities. We have a good process that works well.

Senator Goicoechea:

Do you anticipate that the SSI would decide which buildings would be functional to be maintained for its purposes and NDSL would maintain the rest and/or distribute it back to corrections or some other entity?

Mr. Lawrence:

Yes. The NDSL has been significantly involved in the framework of this project, and it is a good plan. This bill would formalize the process.

Senator Parks:

I like the bill and the involvement of SSI in the future of this site.

Chair Gustavson:

I will close the hearing on A.B. 377 and open the hearing on A.B. 142.

ASSEMBLY BILL 142 (1st Reprint): Revises provisions governing the administration and enforcement of wildlife laws. (BDR 45-402)

Assemblyman Ira Hansen (Assembly District No. 32):

The history of A.B. 142 goes back to A.B. No. 537 of the 68th Session. Prior to that, any two violations could be brought up to the Department of Wildlife (NDOW) for license revocation. This was changed by the 1995 law and under the direction of then Wildlife Commission Chair Mahlon Brown. The intent of this law was to place the demerit system in statute. In 1996, I served on the committee made up of commissioners and citizens assigned to come up with the numbers for the system, which was then approved by the Wildlife Commission, and which NDOW enforced.

The system worked well for 5 years, but since then it has been subjected to what has become habitual tinkering. In 1996, there were 137 listed violations; today, there are more than 280. The most recent change occurred in response to an egregious trespass case when the chair of the Board of Wildlife Commissioners increased the demerits for trespassing to 12 points, which calls for automatic license revocation for a minimum of 1 year and maximum of 3 years. This change was brought before all 17 of the County Advisory Boards (CAB), and 16 of them disagreed with it; however, the penalty was changed anyway. The reason I am here with this bill is that I was no longer comfortable leaving the demerit system in the hands of the five regulatory people making these decisions. Many trappers are commercial trappers, as I am, and this is a

part of our livelihood. Trespassing can be a very minor and unintentional act, and this punishment is too severe.

Assembly Bill 142 would return the demerit system to the 1996 levels approved under Wildlife Commission Chair Brown.

The NDOW has been inconsistent in the application of this demerit system. In one case, it used the revocation process to punish an individual who was an outspoken critic of NDOW law enforcement. Assembly Bill 142 essentially goes back to the 1999 system.

In addition, in section 5 through section 10 of the bill, there is an error that could take away the NDOW ability to revoke a license, implying that a judge would be the only one to do so. Although I have had criticism with this bill, I am willing to work with the chair of the Board of Wildlife Commissioners with an amendment.

Senator Goicoechea:

Please clarify what we are looking at in this bill.

Assemblyman Hansen:

Section 1 has the original number system.

Senator Goicoechea:

Are there any proposed amendments to this bill?

Assemblyman Hansen:

There are no proposed amendments. The original intent of this bill is to take the issue of revocation to a judge. The biggest flaw in the demerit system is that it is applied to everyone irrespective of any extenuating circumstances. If someone gets a citation, whether it was intentional or unintentional, the same demerits are applied

When the trespass offense was going to be changed to 12 demerits, Senator Settlemeyer and I blocked the change at the Legislative Commission level, as we both thought that it was too harsh.

Senator Settlemeyer:

Was this bill passed by the Assembly with an error?

Assemblyman Hansen:

Yes. The idea of the original bill was to have a judge handle this issue. However, everyone who testified was happy with the demerit system. I want to ensure these demerits are applied evenly and fairly. The No. 1 concern with the demerit system is that it is uniform in its application; it cannot be modified under any circumstances. It is an administratively applied penalty in addition to the one that is applied judicially. When a game warden in the field cites someone, the warden has a great deal of flexibility and can normally apply a bail schedule. However, if the warden feels the crime is egregious enough, he or she can arrest the alleged offender. This bill ensures penalties are fair and evenly applied. This is beyond what someone would receive in a court of law. This system can and has been abused and it is very important for this to be set in statute. This would not allow the prosecution side to determine who should be brought up for revocation.

Many people do not know this demerit system exists. When their cases settle in court they think it is over; however, a person soon finds out he or she has 12 demerits and the license has been revoked. People are being excessively and grossly over-penalized, and in some cases denied their livelihoods. I want this system to go back to the original intent of A.B. No. 537 of the 68th Session, as designed.

Senator Settlemeyer:

Trespassing is a strict liability issue. Trespassing on open range property where there are no fences is quite different from someone climbing over a barbed wire fence and shooting next to a landowner's cattle. What are your ideas?

Assemblyman Hansen:

This is why a demerit system, by its nature, cannot adjust for these types of cases. Under the trespass law, it does not matter what the situation is; the demerits have to be applied the same. In statute, we can break out these types of situations, but in a demerit system, they do not have the option as they are following a very specific statute. If a hunter is egregiously violating the trespass statutes by knowingly and willingly crossing through someone's property, it would be up to the justice of the peace and the district attorney to decide the penalty. On the other hand, if a hunter has unknowingly trespassed, that person can go to the justice of the peace. In both cases, the hunter would be cited under the same statute, and the justice of the peace can decide the penalty. With the demerit system, there is no discrepancy.

Senator Settlemeyer:

What about the concept of saying, "up to so many demerits"? This would give the wardens and individuals some flexibility, based upon the situation.

Assemblyman Hansen:

This would be handled judicially. If a warden felt the offense were egregious, the warden could bring it to the attention of the district attorney.

Senator Settlemeyer:

My opinion is that judges and courts do not care much about trespassers.

Chair Gustavson:

Can the NDOW and a justice of the peace cite someone with or without the demerit system?

Assemblyman Hansen:

My understanding is that the justice of the peace is not bound by the demerit system and would have no reason to know how it works. Someone receiving demerits could appeal to the Board of Wildlife Commissioners and may get the penalty reduced; however, the Board of Wildlife Commissioners rarely dismisses a penalty.

Chair Gustavson:

Section 1.9 of the bill states,

If a person who has accumulated 4 or more demerit points presents proof to the Department that he or she has successfully completed a course of instruction in the responsibilities of hunters approved by the Department, the Department shall deduct 4 demerit points from the person's record.

It does not look like there is any limit to the number of courses a person could take to have demerit points removed. Is this correct?

Assemblyman Hansen:

I am not sure. I would be happy to amend the bill so this class can only be taken every 2 years for removing demerits. Typically, there are only about 750 violations of this type per year.

Chair Gustavson:

This bill reads that a habitual offender could keep taking these classes and never be punished.

Assembly Hansen:

Habitual offenders are usually known by the game wardens and arrested. The offender is brought before the justice of the peace, and bail could be denied; however, these cases are extremely rare.

Joel Blakeslee (President, Nevada Trappers Association):

This process worked for years; however, due to the problems that have been discussed, the system is not working today. As stated earlier, the CAB voted against the trespassing demerit revision, but it was adopted anyway. I would like to see the CAB get more consideration with these decisions. The Nevada Trappers Association is in support of this bill.

Senator Goicoechea:

The way the demerit points are established on this list is troubling. If someone is acting as a sub-guide without a license, furnishes false information on the application, or if someone fails to show his or her weapon, firearm or tag, the penalty is 12 demerits; however, hunting without a license carries a penalty of 6 demerits. Someone would be better off caught hunting without a license.

Senator Manendo:

How many times have you been cited, Mr. Blakeslee?

Joel Blakeslee:

I was cited one time last year.

Senator Manendo:

Are there other years that you have been cited?

Joel Blakeslee:

No.

John Sullivan:

I served on the Clark County Advisory Board to Manage Wildlife for the past 6 years. The demerit system was established many years ago because of egregious offenses like poaching big game animals. The former Board of Wildlife

Commissioners deconstructed a good system by doubling and tripling demerits for smaller offenses. Every sportsman and sportswoman who spoke at our CAB meeting in Clark County thought the Board of Wildlife Commissioners had gone too far when increasing the demerits for trespassing. I attended the Board of Wildlife Commissioners meeting on this subject, and all 17 CAB voted to oppose these changes. Our NDOW is based on public input and these CAB report to the Board of Wildlife Commissioners. This is troubling when this type of discrepancy occurs between counties and one State board. The Board of Wildlife Commissioners should have agreement from at least one-half of the county boards in order to make new regulations or change existing ones.

My recommendation is to return the demerit system to the way that it has been for many years. This should be executed by the Legislature only, or the Board of Wildlife Commissioners as directed by the Legislature. I would like to add that these drastic changes were made by the former Board of Wildlife Commissioners, not the present Commission, which has new members and a new chair.

Mike Reese (President, Southern Nevada Coalition for Wildlife):

I agree with much of what has been said today. If you look at section 1.9, subsection 3, it says, "A person may attend a course of instruction in the responsibilities of hunters only once in 60 months for the purpose of reducing his or her demerit points." If a person gets a driving citation from the Department of Motor Vehicles (DMV), he or she can take a class after 3 years to remove demerit points. I would like to see this reduced to match what the DMV does with driving citations.

I am vice chair of the Clark County CAB, and I was disturbed when this issue came before us. There was no data or reason to change the demerits for trespassing. We did not understand any of this. When we got to the Board of Wildlife Commissioners meeting, it was an eight to one vote for the change. I applaud Assemblyman Hansen for coming forth with this bill, as I would also like to see the demerit system go back to how it was in 1999. There have been some improvements, but Assemblyman Hansen is correct in saying that the Board of Wildlife Commissioners has progressed through time; however, they choose issues that do not matter and ignore ones that do. If we are going to take the time, money and effort to have these meetings, we need to address the issues that have the most violations, such as fishing, which has the largest amount of offenders right now. I support A.B. 142.

Mary Maguire:

I am in support of A.B. 142.

Larry Johnson (Coalition for Nevada's Wildlife):

There are two sides to this issue, and the members of the Coalition for Nevada's Wildlife are a bit torn whether to support or not support this bill. Demerits for wildlife area violations and license revocations are best handled by the NDOW with the recommendations of the CAB. Signing against this bill was done in respect to proposed rollbacks of certain demerits that have been added since the 1999 era. Egregious offenses such as the illegal taking of big game animals via aircraft are the types of acts that necessitate higher demerit points established by the Board of Wildlife Commissioners and are appropriate for the crimes. I do agree with some of what has been said earlier about a past Board of Wildlife Commissioners decision that was established in contradiction to the votes of the CAB across the State. Unfortunately, some of the former officials had personal agendas that carried forward into their duties. However, we are blessed with our present Board of Wildlife Commissioners and Chair Drew. They are extremely responsive to the advice of sportsmen and sportswomen and the CAB.

Jeremy Drew (Chair, Board of Wildlife Commissioners):

The Board of Wildlife Commissioners is opposed to A.B. 142. My three primary concerns are that placing the demerit schedule in statute eliminates the Board of Wildlife Commissioners ability to be responsive and adaptive. It also removes the input of the 17 CAB in requesting or discussing changes, which is the very thing being criticized today. Sportsmen and sportswomen have always held themselves to a higher standard in policing and adhering to wildlife laws. In my nearly 4 years on the Board of Wildlife Commissioners, I have not seen sportsmen and sportswomen, the CAB or the public advocating for this massive change. If anything, there has been reluctance to change, which suggests to me that many are comfortable with this system.

I would like to address the 12-demerit trespass issue that has been discussed today. What was passed by the Board of Wildlife Commissioners was 9 demerits for trespassing, not an immediate revocation of the license. The major point for backing off the 12 demerits was there was so much opposition by the CAB. As provided by our legal counsel, we had the same question Senator Settelmeyer had in terms of the level of egregiousness with this issue. To be convicted of trespass, the private property must be properly posted per

NRS. There have been some significant omissions communicated to this body today in terms of how that vote was intended.

Tyler Turnipseed (Chief Game Warden, Department of Wildlife):

During the CAB meetings, the NDOW proposed to change the demerits from 6 to 9 points for hunting or trapping on private property without permission and 3 to 9 points for fishing on private property without permission. There was a great deal of testimony, especially from the CAB, that this could harm a person who inadvertently finds himself or herself walking across private property that is not posted.

We are talking about two separate statutes. One is a trespass statute, NRS 207.200, and one is a wildlife statute, NRS 501, which becomes *Nevada Administrative Code* (NAC) 501. If a warden charges someone with an offense that is an NRS statute, there are no demerits associated with it. It clearly states that the case must be made that the persons trespassing were aware they were trespassing, that the property was posted properly according to NRS 207.200, or they had been warned before. The NDOW bears the burden of proof.

Our current system is very similar to the DMV demerit system for drivers, and it depends completely on a person being convicted in a court of law. The demerit system establishes a minimum and gives consistency from one court to the next. Assembly Bill 142, as it is written, proposes to place the license revocation demerit scale into statute rather than keep it in the NAC, and in doing so, the sponsor proposes to reduce greatly the number of demerits assigned to certain violations.

We sell 197,000 licenses annually and revoke approximately 14 licenses per year. This demonstrates that the current system is working. Page 3 of my written testimony ([Exhibit C](#)) shows the demerits as they are currently established and how they would be if this bill were to pass and demerits were reduced. Many of these classifications of violations did not exist when the demerit system was put in place. For example, one of the new classifications is "unlawfully using an aircraft, balloon or satellite to locate or observe big game for the purpose of hunting," which is a 12-demerit point violation. The new demerit system in this bill would reduce demerits from 12 points to 6 points for this offense. Another example is if someone caught an eagle in a leg-hold trap

that was placed next to a dead animal being used as bait; the bill would reduce the demerits from 6 points to 3 points. There are many examples like this.

In conclusion, it is the objective of the Board of Wildlife Commissioners and my job to protect wildlife. In my opinion, this bill would hinder my ability to do that. This bill is bad for wildlife and good for poachers.

Senator Goicoechea:

What is alternative livestock and how is it hunted?

Mr. Turnipseed:

Alternative livestock is a term that describes some of the exotic-type types of wildlife further regulated under the State Department of Agriculture.

Senator Settlemeyer:

On page 5 of [Exhibit C](#), the existing NRS says "possessing a species that may not legally be possessed without a license or permit" is 6 demerits, and then it says in another violation, "possessing twice the legal limit or more of game fish" is 9 demerits. Would a sportsman or sportswoman be better off not having a license or are these demerits stacked? In other words, if possessing more than the legal limit of fish is 9 demerits, would that person also get 6 demerits for not having a license? Would it be better not to have a license?

Mr. Turnipseed:

If someone were fishing without a license and had in excess of the legal limit of fish, we could cite for one and warn for the other, or we could cite for both violations. If we cited for both, it would still be considered one event. Only the higher number would be assessed, not the total number of demerits for the two offenses.

Senator Settlemeyer:

The way these demerits are numbered is flawed.

Tyler Turnipseed:

Hunting without a license would be a lesser violation than killing without a license.

Senator Settlemeyer:

The formula for this demerit system is illogical.

Elaine Carrick:

I oppose A.B. 142. I have been attending the Board of Wildlife Commissioners hearings for approximately 4 years. I have never heard anyone complain about the demerit system nor have I seen the issue on an agenda. If the wardens of the NDOW have the authority to cite someone for wrongdoing, they should have the ability to suspend or revoke a license. The courts are already overloaded with cases. Unless judges or justices of the peace are sportsmen or sportswomen, they are probably unfamiliar with the laws to protect wildlife, and therefore, could not make a just decision. This demerit system seems to be working and I see no need to change it and burden the courts. This system should stay with NDOW.

Trish Swain (TrailSafe Nevada):

This bill has no cosponsors and was heard on March 17 in the Assembly. No one spoke to support it. When I asked the NDOW personnel if they received other complaints about the demerit system, I was told "just this one." This bill is about one man. This process should remain within the NAC and under the jurisdiction of the NDOW. TrailSafe Nevada has absolute trust and confidence in the NDOW and opposes A.B. 142.

Fred Voltz:

There have been allegations that someone's livelihood could be taken away because of a license revocation. People in these occupations need to act in a prudent manner. If they cannot follow the rules, it is not unreasonable to revoke their privileges. With fewer than 750 cited violations and less than 15 revocations each year, A.B. 142 is a solution looking for a problem. I oppose this bill.

Margaret Flint (Nevadans for Responsible Wildlife Management):

The Nevadans for Responsible Wildlife Management oppose this bill.

Assemblyman Hansen:

The courts are already involved in every one of these situations. Mr. Johnson is the president of the Coalition for Nevada's Wildlife. The Coalition for Nevada's Wildlife is neutral on this bill; however, Mr. Johnson personally testified in opposition. Mr. Reese from the Southern Nevada Coalition for Wildlife testified in favor of the bill. It is important the record reflect this. The idea that if we put this system into statute, it is going to disenfranchise the people of this State is not the case. I am willing to work with anyone on this issue.

Senator Goicoechea:

I am fine with a judge revoking a license. If there are fewer than 15 revocations per year, this is not going to burden the courts. I see certain merit in the bill, but I am not comfortable putting the demerit system in statute. We would have to change it every 2 years. I see several flaws in this bill.

Assemblyman Hansen:

All of our laws are unadjusted for 2 years. While we have the oversight of the Legislative Commission, we need an enhanced amount of legislative oversight because these administrative bodies, in some cases, are overrunning the State with rules and regulations.

Senator Goicoechea:

The Legislative Commission reviews NAC, and I feel very comfortable with this. I trust Senator Settelmeyer and you as members of the Board of Wildlife Commissioners, but I am very apprehensive about the idea of placing this system in statute.

Assemblyman Hansen:

All members of the Board of Wildlife Commissioners are temporary occupants. I am concerned about protecting the rural representation, and putting this system into statute would accomplish this.

Senator Manendo:

You mentioned this issue applies to a small percentage of the public. Do you think we need more public representation?

Assemblyman Hansen:

Every county in the State has a CAB, but most people do not care about these issues. Only about 10 percent of the State's population participates in hunting, fishing and trapping activities.

Senate Committee on Natural Resources
April 30, 2015
Page 16

Chair Gustavson:

There being no further testimony or public comment, the Senate Committee on Natural Resources is adjourned at 3:02 p.m.

RESPECTFULLY SUBMITTED:

Gayle Farley,
Committee Secretary

APPROVED BY:

Senator Don Gustavson, Chair

DATE: _____

DATE: EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster
A.B. 142	C	11	Tyler Turnipseed/ Department of Wildlife	Written Testimony