

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

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

The Senate Committee on Natural Resources was called to order by Chair Don Gustavson at 1:33 p.m. on Thursday, March 26, 2015, in Room 2144 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 and to High Tech Center, Room 137, Great Basin College, 1500 College Pkwy, Elko, 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 Mark A. Manendo  
Senator David Parks

**GUEST LEGISLATORS PRESENT:**

Senator Scott Hammond, Senatorial District No. 18

**STAFF MEMBERS PRESENT:**

Alysa Keller, Policy Analyst  
Matthew Nichols, Counsel  
Ellen Walls, Committee Secretary

**OTHERS PRESENT:**

Patrick Cates, Deputy Director, Department of Wildlife  
Tony Wasley, Director, Department of Wildlife  
Warren Hardy, Nevada Pic-A-Part  
Terry Graves, Nevada Cogeneration Associates #1; Nevada Cogeneration Associates #2

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Dick Mills, President, Reno Auto Wrecking, Inc.; President, Airport Auto Wrecking; President, Sparks Auto Wrecking; President, Nevada Auto Wrecking

Marla McDade Williams, Insurance Auto Auctions

David Christensen, President, Nevada Pic-A-Part

Colleen Cripps, Ph.D., Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources

Peter Krueger, Nevada Emission Testers Council

Lou Gardella, Jiffy Smog; Nevada Emission Testers Council

Quinn Winter, Terrible Herbst

Steve Weiss, Smog Hut

Darren Proulx, Green Tree Car Wash

Donnie Perry, Administrator, Division of Compliance Enforcement, Department of Motor Vehicles

Glenn Smith, Supervising Emission Control Officer, Division of Compliance Enforcement, Department of Motor Vehicles

Ivie Hatt, Program Officer, Emission Control Program, Division of Compliance Enforcement, Department of Motor Vehicles

Mike Prince, Terrible Herbst

**Chair Gustavson:**

We will open the work session on Senate Bill (S.B.) 163.

**SENATE BILL 163**: Creates the Advisory Council on Nevada Wildlife Conservation and Education. (BDR 45-616)

**Alysa Keller (Policy Analyst):**

Senate Bill 163 was heard on March 10, 2015. This bill creates the Advisory Council on Nevada Wildlife Conservation and Education to develop and implement a public information program to educate the public on the importance of hunting, fishing and trapping. This bill also creates the Account for Nevada Wildlife Conservation and Education to fund the activities of the Council on Nevada Wildlife Conservation and Education. I will read from the work session document ([Exhibit C](#)). An amendment was submitted after the hearing. The amendment is in the work session document, [Exhibit C](#). I will read from the amendment. There is also a fiscal note included in [Exhibit C](#). This bill has been determined eligible for exemption and requires a two-thirds majority vote for passage by the Legislature.

**Senator Goicoechea:**

Will this bill affect the ability to access certain federal funds?

**Patrick Cates (Deputy Director, Department of Wildlife):**

Yes, there would be a problem with federal law and funding the way this bill is written. Federal regulations require all sportsman-generated revenue such as license and tag fees stay within the wildlife agency. This revenue can only be used for wildlife purposes and for administration of the agency. By creating a separate council apart from the Department of Wildlife (NDOW) and giving that council authority over expenditures in this manner, there could be conflict with federal law. Our Pittman-Robertson and Dingell-Johnson grants could be jeopardized. These federal funds total over \$10 million per year.

**Senator Goicoechea:**

The bill states that the new Advisory Council on Nevada Wildlife Conservation and Education will consult with the director of the NDOW. Is that a proper connection between the new Council and the NDOW?

**Mr. Cates:**

This bill sets up the Advisory Council on Nevada Wildlife Conservation and Education apart from the NDOW. The members of this new Council will be appointed by the Governor. It gives the new Council authority to spend the federal money and contract with vendors outside the oversight of NDOW. This new Council is not under the NDOW control.

**Tony Wasley (Director, Department of Wildlife):**

We are in support of the concept of S.B. 163 but we have concerns about the diversion of federal funds. How separate is this Council from the NDOW? If it is separate, is it adequate for the U.S. Fish and Wildlife Service? That agency provides our department approximately \$10 million annually. We do not want to jeopardize that funding source.

**Senator Settlemeyer:**

Will you contact states with similar council programs such as this one to find out if their federal funds were jeopardized? If these states have similar councils without affecting the federal funding source, what legislative language did they use? Do we need a proposed amendment to protect the federal funding? Clearly, a \$10 million fiscal note will be problematic to this bill. I can motion to

amend and do pass this bill, with the understanding that the sponsors of this bill work with the NDOW to solve these issues.

**Senator Goicoechea:**

The NDOW can provide our Legal Division a citation with respect to federal law and this bill. We need to word the proposed amendment properly and ensure without any doubt that federal funds are not compromised.

**Matthew Nichols (Counsel):**

With clear direction from the Committee, we will meet with the NDOW representatives to craft the new amendment.

**Senator Settelmeyer:**

I will make a motion for this bill, but also move to incorporate the conceptual amendment from the Legal Division and the NDOW to ensure this legislation does not jeopardize federal funding for our State.

SENATOR SETTELMAYER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 163.

SENATOR GOICOECHEA SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR MANENDO AND SENATOR PARKS VOTED NO.)

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**Chair Gustavson:**

We will open the work session on Senate Joint Resolution (S.J.R.) 11.

**SENATE JOINT RESOLUTION 11**: Proposes to amend the Nevada Constitution to preserve the right to hunt, trap and fish in this State. (BDR C-1001)

**Ms. Keller:**

This legislation proposes to amend the Nevada Constitution by adding a new section to Article 1 to preserve the right to hunt, trap and fish in our State. I will read from the work session document ([Exhibit D](#)). This resolution does not: create a right to trespass on private property; affect any right to divert, appropriate or use water or establish any minimum amount of water in any body

of water; diminish any other property right; or prohibit the enactment or enforcement of any statute or regulation requiring the revocation or suspension of a person's hunting, trapping or fishing license. Two amendments were proposed. I will read further from [Exhibit D](#) concerning the proposed changes.

**Senator Goicoechea:**

How can one trespass on public property?

**Senator Scott Hammond (Senatorial District No. 18):**

After reading this legislation, individuals may believe they have a right to hunt gophers in a public park, for example. The proposed amendment clarifies that licenses for hunting, trapping and fishing are separate from public land use.

**Senator Goicoechea:**

When the word "public" is used in this legislation, it could be construed as "public lands." This could be a problem.

**Matthew Nichols (Counsel):**

The local government of Clark County was concerned that the right created by this resolution would prohibit a local government from regulating the use of local government property. That is not the intent of S.J.R. 11. The language does not allow this prohibition. Language could be added to the resolution to clarify that the resolution does not prohibit local governments from enforcing regulations regarding the use of property owned or operated by these local governments.

**Senator Goicoechea:**

There is public property held by municipalities, and there may be confusion regarding "public or private" versus "public and private." Would a revision of language to define property and private property and public lands in this legislation be necessary?

**Senator Hammond:**

From a legal standpoint, I have no objection if it fits into this legislation.

**Senator Manendo:**

If S.J.R. 11 were to pass, and the Nevada Constitution amended by popular vote, would there be oversight or limitations on wildlife activities by the NDOW to conserve specific species? What exactly does this legislation accomplish?

**Senator Hammond:**

This legislation will not limit any jurisdiction from regulating or promoting regulation of hunting, trapping or fishing activities. If an agency wanted to limit the number of hunting days for deer, for example, that agency could do so.

**Senator Manendo:**

There are many governing organizations concerning wildlife in our State. There are local and State agencies that affect wildlife policy, including the NDOW along with many wildlife commissions and boards. What is not working that this proposed legislation, by amending our State Constitution, fixes? We do not take amending the Nevada Constitution lightly. This legislation gives special protection to those few people who hunt, trap and fish.

**Senator Hammond:**

This legislation will provide the right to hunt, trap and fish in Nevada. These activities will never be diminished if this legislation passes.

**Senator Settelmeyer:**

Do you accept both of the proposed amendments? Do they conflict in any way?

**Senator Hammond:**

Yes, I accept both proposed amendments.

SENATOR GOICOECHEA MOVED TO AMEND AND DO PASS AS AMENDED S.J.R. 11 WITH PROPOSED AMENDMENT 9858 AND MR. DAVIS' AMENDMENT.

SENATOR SETTELMAYER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR MANENDO AND SENATOR PARKS VOTED NO.)

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**Chair Gustavson:**

We will open the hearing on S.B. 281.

**SENATE BILL 281**: Revises provisions governing dismantling of certain vehicles.  
(BDR 40-590)

**Warren Hardy (Nevada Pic-A-Part):**

With S.B. 281, we are attempting to correct an unintended consequence of part of the laws that exist in statute. Nevada Pic-A-Part is one of several motor vehicle parts yards that exist throughout our State. Vehicles that go into our yard are in “end-of-life” conditions as legally registered vehicles. They have no vehicle identification numbers. Sales of these vehicles’ parts provide a useful service to consumers. Individuals enter the salvage yard and purchase a used vehicle part. This is valuable to certain economic sectors in the community. An automobile alternator may be \$50 at the parts yard versus \$400 at an auto parts store.

In 2013, we were notified by the Southern Nevada Health District (SNHD) that it was going to establish regulations in order to regulate our business as a solid waste facility. The regulations for solid waste facilities are intensive. We advised the SNHD that we felt our business was not in the same category as solid waste facilities and that proposed regulations were overkill. We had lengthy discussions with the SNHD as to how to regulate our parts business appropriately. The intent of this legislation is not to limit the regulation that is occurring between our business and the SNHD; it is simply to clarify that our business does not need to be regulated as a solid waste facility. That is what this bill accomplishes. The solid waste management facility regulations include a closure plan, which is designed for landfills. We keep auto parts for short periods of time. After all of the usable auto parts have been taken by consumers, the vehicle goes to a recycling business. Auto recycling businesses are solid waste facilities. Other than normal trash items, nothing handled by our business goes to the landfill. Everything else is either sold to consumers or recycled.

Our business is appropriately regulated. The fire department determines how our tires, pallets and fluids are stored. We are regulated as to how we dismantle vehicles. We are required to have a “clean air” permit, and the U.S. Environmental Protection Agency (EPA) also regulates us with respect to storm water. Any water leaving our facility and entering the sewerage system must go through an oil separator. We are not proposing to change these requirements. The SNHD regulates how we deal with fluids, batteries and any other items that might be considered hazardous. We keep records and inventories of parts that are taken and their disposition.

This bill simply clarifies that the vehicle parts in our facility are commodities to sell to the public, and they are not considered solid waste items. We do not need to be regulated by statutes that govern solid waste facilities.

**Terry Graves (Nevada Cogeneration Associates #1; Nevada Cogeneration Associates #2):**

We support S.B. 281.

**Dick Mills (President, Reno Auto Wrecking, Inc.; President, Airport Auto Wrecking; President, Sparks Auto Wrecking; President, Nevada Auto Wrecking):**

We support this bill.

**Marla McDade Williams (Insurance Auto Auctions):**

We have a proposed amendment ([Exhibit E](#)) for S.B. 281. This amendment would add salvage pools licensed pursuant to chapter 487 of *Nevada Revised Statutes* (NRS) to ensure that they are not considered solid waste facilities and are exempted.

**David Christensen (President, Nevada Pic-A-Part):**

I support S.B. 281.

**Colleen Cripps, Ph.D. (Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources):**

We are neutral concerning this bill. We are looking for clarification. The Division does not regulate vehicles destined for dismantling or the salvage of parts from those vehicles. Those activities are considered recycling activities. We would like to note for the record that exemption of these salvage business operations would not include waste streams, including waste, tires, fluids and auto shredder fluff from the regulation of solid waste.

**Senator Manendo:**

What is auto shredder fluff?

**Ms. Cripps:**

Auto shredder fluff is material from the upholstery in a vehicle.



**Mr. Hardy:**

The parts yards are not involved with auto shredder fluff. The recycle yards remove this material and take it to the landfill. It is regulated as such.

**Chair Gustavson:**

The hearing on S.B. 281 is closed.

SENATOR GOICOECHEA MOVED TO AMEND AND DO PASS AS AMENDED S.B. 281.

SENATOR MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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**Chair Gustavson:**

We will open the hearing on S.B. 386.

**SENATE BILL 386**: Revises provisions relating to motor vehicles. (BDR 40-675)

**Senator Mark A. Manendo (Senatorial District No. 21):**

This bill came about when constituents called me and told me they went to have their motor vehicle tested for emissions and smog regulations. Their vehicle failed the emissions test. Afterwards, when they asked the emissions inspector why the vehicle failed, they were told it was because the malfunction illumination light (MIL) was on. The MIL is also referred to as the "check engine" light. The constituent was advised to take the vehicle to a mechanic. The mechanic told the constituent that nothing was wrong with the vehicle; the previous mechanic had simply neglected to turn off the MIL. It was suggested to drive the car and eventually a reset would occur and the light would go off. The constituent was not happy. The constituent paid for the emissions test and received a failed result due to a malfunction indicator light being on. A car will fail the smog test when the MIL is on while the test is performed. More than one constituent has reported this same issue.

Once the smog inspection begins, the emissions inspector cannot stop the inspection to say, "By the way, your MIL is on so your car will fail the emissions test." Once the inspection starts, it must be completed. This legislation is

crafted to protect our consumers and give those who perform emissions inspections and tests protection as well. Emission station technicians are simply performing their jobs. This bill would require notifying the person who brought a vehicle for smog emissions inspection, prior to testing, that if a MIL is illuminated, the vehicle will not pass the test. At times, consumers delay investigating the illuminated MIL. They know they must have a smog test inspection for vehicle registration, and that activity takes priority over checking out why the MIL is on. It makes sense to notify consumers if a MIL is on, the vehicles will not pass the emissions test. Knowing that, the consumer will not go forward with the emissions test until the MIL issue is checked. This bill is fair and provides good consumer protection.

**Peter Krueger (Nevada Emission Testers Council):**

The Nevada Emission Testers Council represents the men and women who perform the emissions or smog tests. We support this bill. A year ago, Senator Manendo called me about his constituents' problems. I referred him to State statute. It is my understanding the State statute is based on federal statute: Title 40, CFR, Part 51. In the 20 years of the emissions testing program, I am aware of NRS exceptions to the federal statute. For example, the State already allows emission stations operating under NRS 445B.785 to change oil and to replace various filters on motor vehicles. This is not permitted in federal law. With this proposed bill, for those counties who perform emissions testing—which are Washoe and Clark Counties—the first thing the inspector will need to do is to look at the MIL to see if it is on. This is fair consumer policy. There are many irate customers whose vehicles fail the tests because the MIL is on. The light will reset itself during certain drive cycles. This bill goes a long way to perform proper testing with respect to air quality; all we are saying is the test will not begin if the MIL is on. With regard to the DMV fiscal note for this bill, the DMV is profiting on the \$6 emission test fee portion from that failed test. The emission station also profits from a failed emissions test. Emission stations can waive their portions of the fees. They want the customers to come back. I do not have specifics, but am told that there are times when a customer's vehicle fails the emissions test, the station waives the entire fee including the State's \$6 fee.

There is a situation concerning how emissions stations deal with upgrades, repairs and maintenance of the emissions analyzers with the current vendor who performs those functions. The number of stations with emissions analyzers in Nevada is small. There is only one vendor who provides and services these

analyzers. There is no contract between the State and this vendor. Some emission stations do have a warranty agreement with the vendor. Because the analyzers are getting older, many emissions stations have let this warranty agreement lapse. Competition for emission analyzer service and repair is needed; therefore, we are suggesting a proposed amendment ([Exhibit F](#)). I will read from [Exhibit F](#). This proposed amendment will allow authorized emissions stations access to the emission analyzers for parts replacement, service and maintenance. Emission stations need to be able to source their own parts for the analyzer. Microsoft no longer supports Windows XP, the operating system that the analyzer uses. All of the existing emissions stations that have the analyzer with Microsoft XP are being required to upgrade to a new software version. The DMV is upgrading to Windows 7, and I have heard Windows 10 is coming out soon.

**Lou Gardella (Jiffy Smog; Nevada Emission Testers Council):**

I support [S.B. 386](#), but many of the members of the Emission Testers Council are not aware of the proposed amendment by Mr. Krueger. Customers' vehicles fail the test when the MIL is on. They become angry and upset. Some of these people have physically threatened inspectors. Revenue for the State would drop with this bill and so would revenue for the emission stations, but good customer service would result.

To offset lost revenue for the emission stations, we are asking for consideration of the second portion of the proposed amendment, [Exhibit F](#). The State established a single-source vendor for servicing emissions analyzers. Problems occur for emissions stations because of this single-source vendor situation. Pricing for service and parts for emissions analyzers has skyrocketed. We have no other avenue to secure service and parts. We asked the State to allow another vendor to service the analyzers for competition. The State allowed this, but it was too late. The vendor that exists has the market in the State, and another vendor will not come in to compete. Prices have risen to ludicrous amounts. We are told because no contract between the State and the vendor exists, there is nothing the State can do. I have gone to the U.S. Department of Justice and the Bureau of Consumer Protection. I am here to ask the Legislature for assistance with this matter. The vendor charges the emissions station \$1,800 to replace a motherboard in the analyzer; \$100 for a \$5 computer fan; and \$220 for a \$20 memory stick. Every time the operating system changes and support from Microsoft ends, our emissions stations have to upgrade their software. Parts can be obtained for \$200, but it takes the vendor 2 hours to

install these parts. Total costs for parts and labor should be \$500. This vendor charges \$3,000. We have no other alternative. We want to be able to perform simple basic service and maintenance to our analyzers ourselves. If we install a printer to the analyzer, we must call the vendor to do that. If a hose comes off the analyzer, we have to pay for a service call with the vendor. There are approximately 400 emission analyzer machines in our State, and 70 of them need the software upgrade. This is a \$210,000 cost to our industry. It should cost \$30,000. We are being overcharged and the vendor could easily double or triple the amounts it charges. It is in the State's best interest to have a viable network of emissions stations. To let this vendor charge this way is not right. The problem lies with the State awarding a single-source vendor.

**Chair Gustavson:**

Are the parts needed available from someone other than the vendor? You wish to order them somewhere else and install them yourself, is that correct?

**Mr. Gardella:**

Yes, I could purchase a \$60 motherboard elsewhere, but the vendor states I must pay \$1,800 and purchase the vendor's motherboard. The vendor does not treat us fairly with respect to price.

**Chair Gustavson:**

Are these two motherboards identical and approved for use by the EPA?

**Mr. Gardella:**

Yes, the analyzer is a computer. We wish to have access to the analyzer's cabinets to perform simple maintenance and service. Complicated service would be left to the vendor. This would alleviate problems we are having with this vendor.

**Mr. Krueger:**

These are off-the-shelf, commercial parts. The parts are not proprietary to the vendor. One could purchase them at any computer store. The cooling fan is not proprietary. We are not asking to purchase proprietary parts.

**Senator Goicoechea:**

How often does the analyzer have to be certified?

**Mr. Krueger:**

We have talked at length with personnel at the DMV and asked for a list of approved parts for the analyzer emission station owners could purchase on their own. Additionally, we would like the DMV to certify a different vendor. The State responded they could not help with our requests. We would be glad to work with DMV on this matter.

**Quinn Winter (Terrible Herbst):**

We are slated to perform a Windows 7 upgrade at \$3,300 per analyzer. We have 23 analyzers. This will cost about \$75,000. We could pay \$16,000 for the same off-the-shelf parts. Our IT department says we could get these parts at a computer store. The current vendor has two inspectors servicing the southern Nevada area. They perform service calls poorly. They do not spot other problems in the analyzer hardware at the time of the service call. They are called again to fix the machine. Our company loses money, and our customers are inconvenienced. The vendor often does not have the part needed. The vendor has 48 hours to come to the emissions station for a service call, but when the technician does not have the needed part on the truck, it could be 3 to 5 days before the analyzer can be fixed. We should be allowed to service the small parts on the analyzers ourselves.

With regard to the portion of the bill that discusses the MIL being on, the waiver law needs to be changed. When a vehicle fails the emissions test, the emissions station sends the vehicle to a "2G" emissions station for repair. If a failure is recorded there, the person bringing in the vehicle can apply for a waiver with the DMV. The waiver process will need to be rewritten.

**Senator Parks:**

Does the DMV certify the emissions analyzer equipment on a routine basis?

**Mr. Krueger:**

The machines are initially certified. There is no agreement between the DMV and the current vendor with respect to being the only vendor. We need another vendor to come to our State and provide competition. The analyzers are aging. In the future, vehicles may be tested remotely by satellite. The industry does not want to spend money on new parts and supplies for aging technology.

**Steve Weiss (Smog Hut):**

There are some problems with this bill. I have been in the emissions testing business for 25 years. Quite a few vehicles that have the check engine light or MIL in the "on" state will pass emissions testing, especially vehicles dated prior to 1995. In fact, the majority of these vehicles will pass. For vehicles dated 1996 and newer, some will pass and some will not. If the emissions station advises the person who brings in the vehicle for emissions testing that the person must fix the MIL first, the person is prevented from registering the vehicle. The vehicle may have passed the emissions test. Another reason I am against this bill concerns the DMV. The DMV could not handle enforcement of this bill. Currently, when people have vehicles which fail the emissions test, the DMV can track the results of the failed or passed tests. In the proposed scenario in which the person does not get the vehicle tested, there is no test result and therefore, no ability for the DMV to track a failure. I had a program in my business called "Don't pass; Don't pay." I had to stop the program because I was not allowed to pretest the vehicle.

**Chair Gustavson:**

Do you support any part of this bill?

**Mr. Weiss:**

I do support the proposed amendment, which would allow another vendor to come to our State to service the emissions analyzers. The DMV performs a monthly audit on analyzers at every emissions station.

**Senator Goicoechea:**

We were under the impression it was illegal for an emissions testing station to perform the test on a vehicle that has the check engine or MIL in the "on" state, and that the vehicle would fail the test. Is this not correct?

**Mr. Weiss:**

No, that is not correct. When a person brings in a vehicle to our station, we test the vehicle in the condition in which it arrives. Regardless of the MIL being on or off, we plug the vehicle into the emissions analyzer and check the vehicle. This is the process for vehicles dated 1996 or newer. The majority of the time, if the MIL is on, the vehicle will fail the emissions test, but some do pass. For vehicles dated 1995 or older, the MIL could be on and there is a good possibility the car will pass the emissions test. A gas-based, high-powered truck or box truck is

tested with heavy duty standards and the MIL could be on, but these vehicles will pass the test.

**Senator Goicoechea:**

Can a vehicle pass with the MIL on?

**Mr. Weiss:**

Yes, you can pass the vehicle with no violation when the light is on.

**Darren Proulx (Green Tree Car Wash):**

I am opposed to S.B. 386; however, I support the proposed amendment. I own two test only emissions testing stations in northern Nevada. An emissions testing station is given a G rating by the DMV if it will be testing the exhaust emissions of gasoline-powered motor vehicles. Emissions testing stations that perform only emissions tests are known as 1G stations. Those that perform repairs are known in the industry as 2G stations. I recently attended the emissions technician school given by the DMV. Because of that, I now understand the emissions testing process. The DMV has implemented an award-winning emissions testing program. I see the wisdom in the current emissions testing process and procedure. In 1996, automobiles were equipped with on-board diagnostic systems that trigger the check engine light. This on-board system is designed to catch emissions problems before they are a major concern. The system alerts the driver when there is a waste of fuel, short engine life or pollution issues. The EPA mandated this process. I believe this bill could violate EPA regulations. The EPA tracks the results of tests performed within our State; these include first-time emissions test failures and any retesting results.

It is mandated that we do not let the person know that their vehicle will not pass the test due to the light being on. We test the vehicle "as is." We do not adjust the vehicle engine or clean the filters prior to the test. This failed test is valuable to the customer. When the vehicle fails, the DMV issues a temporary permit. Many times the customer brings in the vehicle for testing the day before registration is due. When they fail due to the MIL being on, the temporary permit allows the person to get their vehicle repaired. The DMV will not issue a temporary permit without a failed emissions test. This also starts the waiver process. The DMV has a process whereby vehicle owners can apply for and obtain a waiver because the vehicle cannot pass the emissions test. Obtaining the emissions test failure starts this process. The customer is given a list of

authorized repair stations that are licensed to perform emissions-related repairs. Any money spent by the customer at these repair shops helps the customer meet the waiver requirements. In northern Nevada, the waiver amount is \$200. Once the customer spends \$200, the customer can return to the DMV if the vehicle has a failed test. Under S.B. 386, if the customer is notified the MIL is on and is sent away without a test being performed, the vehicle does not have a failed test. I can envision a hypothetical conversation by the emissions inspector and the customer:

Inspector: I am sorry; you are going to fail the smog test.

Customer: Why?

Inspector: Because your check engine light is on.

Customer: Why is it on?

Inspector: I do not know; we did not test the vehicle.

When we test the vehicle, we get the result and know the reason why the light is on. Knowledge of this information is good for the consumer. Again, if the customer is simply sent away, there is no failed test. They will not be given a list of authorized repair stations.

A friend of mine failed an emissions test due to a gas cap problem. I called an emissions station for him and told them I had a truck with a MIL on and was told to bring it in. I was also told the fee to perform a diagnostic test would be \$110. I told my friend what was wrong with the vehicle and he went to an automotive supply store and bought a new \$10 gas cap.

There is a process within this system that includes failed emissions tests. Simply eliminating the requirement for not testing when the light is on is not solving the problem. The DMV process for emissions testing is well thought out.

As emissions inspectors, we not only check if the MIL is on, we check to see if it is working. Under this new proposed system, will we need to check to see if the light is operable at no charge? My business has not charged for service in the past. I do not want to be regulated to not charge for my services.

Under this proposed bill, it states the inspection cannot proceed while the malfunction indicator light is on. This is not true. The test can proceed. This would be like going to a doctor and the doctor telling you he cannot perform a test because you have symptoms.



This bill is poorly conceived. It is obvious no one consulted the DMV. The DMV is knowledgeable and helpful with respect to this subject. Their process may not be understood by the average person, but it is well thought out and efficient. Please vote no on S.B. 386. The way the bill is written is contrary to the way the system works in accordance to the EPA.

I do support the proposed amendment. Last week, I needed a part for an emissions analyzer. I could get this part online for \$49. The vendor wanted \$200 for the same part. The vendor should have advised me that the part was \$49 and the rest of the \$200 fee was for software programming. We can obtain our own analyzer parts, but unless we have someone to perform required software programming, we may be creating big problems for our industry. The vendor does not provide us a list of prices for services. They have poor customer service and do not carry parts on their service vehicles. My analyzer was down for 2 days last week because of this poor service. I could have bought the part for a fraction of the price they charge.

**Senator Manendo:**

My constituent who had this problem stated she did not receive any information as to why her car failed the emissions test other than the vehicle check engine light was on. Perhaps some businesses do give the customer the reason and some do not. Do you give the customer an exact reason as to why the vehicle failed?

**Mr. Proulx:**

There are two types of emissions testing stations. My station is a test-only station. When there is a failed test due to the check engine light or MIL being on, the computerized analyzer does list the reason. Sometimes there are a number of reasons for the failure, and sometimes there is only one reason. We hand the computer-generated form to the customer. There could be a better system to communicate the reason for the failure. This process does not have to be mandated by legislation. A customer's vehicle failed the emissions test last week because he did not have an air pump. I took the time to explain why an air pump was important. He understood the process and left happy, even though his vehicle failed the test.

**Senator Manendo:**

Are you saying every time a vehicle fails there is a detailed printout of what went wrong, so the consumer knows the reason? Does the printout state the reason for failure is that the MIL or check engine light is on?

**Mr. Proulx:**

The onboard diagnostic system monitors sensors. The emissions analyzer will tell us what tripped the sensor. The customer may have to go to a 2G station for repair. Any money spent at a 2G station goes toward the waiver in the case the problem cannot be fixed. Money spent at a non-authorized emissions testing station does not. A statement on the computer-generated report from the analyzer states the failure was caused by the illuminated MIL.

**Senator Manendo:**

If you told the customer about the light ahead of the testing, they could know that the light being on would possibly cause a failed emissions test. This would protect consumers.

**Mr. Proulx:**

No, what protects consumers is being able to tell them why they failed the emissions test. The printout also gives trouble codes. For example, on the printout I have with me today, it shows code P0456, which means an evaporative emissions leak is detected. This is the information the consumer requires. The consumer does not need to be told only: "You are going to fail the test, see you later." For a \$20 fee, we can provide the customer the exact reason for the failure from the printout.

**Mr. Weiss:**

I own a 2G emissions station. The current analyzer repair vendor provides warranties for the analyzers. I pay \$3,200 per analyzer machine. This will cover the entire analyzer for any failure. I do not pay any amount over \$3,200 per machine. Years ago, when the State sent out requests for vendor bids, several vendors submitted bids for the service. The current vendor bid half the price of the other vendors' warranty prices. I am happy with this vendor.

When testing the vehicle for emissions, an illuminated MIL does not guarantee a failed test.

**Senator Manendo:**

My constituent failed the test only because the check engine light was on. Nothing else was wrong with the vehicle and everyone involved knew this. She had to pay for testing twice. This bill is for consumer protection.

**Donnie Perry (Administrator, Division of Compliance Enforcement, Department of Motor Vehicles):**

The DMV is neutral concerning S.B. 386; however, we cannot support the friendly amendment.

Several years ago, the emissions industry wanted to make their own business decisions regarding analyzer service vendors. Regulations were changed moving the emission program from a sole-source analyzer vendor contracted with the State to an open-source market. The change allowed any vendor to certify their analyzers with the State. This gave businesses the option to choose their own respective vendor or provider of service. Unfortunately, there have been no new vendors added to our State's market.

There is no competition in this service industry within our State. Although Nevada is an open-source state, only one vendor has submitted equipment for certification and approval by the DMV.

**Senator Goicoechea:**

If the check engine light is on, does the vehicle automatically fail the emissions test?

**Glenn Smith (Supervising Emission Control Officer, Division of Compliance Enforcement, Department of Motor Vehicles):**

Generally with a 1996 or newer light-duty vehicle, when the MIL is illuminated the vehicle will fail the emissions test. This does not occur 100 percent of the time. There are times the light may be shorted by trouble with the electrical system. The light will illuminate when there is no real trouble code. In an unusual circumstance, the MIL could be on to indicate trouble with a particular system. If the system is repaired and the repair technician does not reset the MIL, the vehicle will have to be driven a certain amount of its drive cycle to reset its systems. The vehicle's computer will turn off the MIL when it determines the once-malfunctioning system has run its drive cycle and tripped the light. Normally, the 2G emission repair station technician will make the repair and reset the light. The customer may be told to drive the vehicle a

certain amount of miles to get the monitors in the vehicle to reset so the vehicle will become testable for emissions.

**Senator Parks:**

Does the DMV inspect the emissions test stations to ensure they are operating properly? Is there a solution for the sole-source vendor problem?

**Ivie Hatt (Program Officer, Emission Control Program, Division of Compliance Enforcement, Department of Motor Vehicles):**

Nevada is not a sole-source-vendor state. Any vendor can come in and conduct this type of business, but we only have one vendor that has come to do business here. Many of the older emissions testing stations have lapsed service contracts with the vendor. Now they are paying the vendor the full amount for parts and service. We understand their frustration, but we have no authority over the relationship between their businesses and the vendor. We advise any vendor wishing to provide analyzer services how to connect with our Department from a computer and software standpoint. The vendor must change its computer programming to do that. The vendor enters into an agreement with the State for that purpose. Once the equipment they sell is certified by the DMV, the vendor is able to sell the equipment to any emissions testing station. We cannot force businesses to come to our State.

**Chair Gustavson:**

Is the fiscal note associated with S.B. 386 made up of those \$6 fees now collected for failed tests which will not be collected should the bill go into effect?

**Ms. Hatt:**

The fiscal note is for fees associated with initial failures for the MIL. If we were to move forward with the proposed amendment and contract with a vendor to go into a sole-source situation, there would be another fiscal note for this bill.

**Mr. Graves:**

I am speaking now as a private citizen. I have owned several older vehicles. They have passed inspection with the check engine light on for many years. The problem is not with the fee, but with having to take the vehicle to various emissions testing stations. Perhaps it would be a good idea to make it optional to tell the customer that the vehicle will fail with the MIL on and ask if they want to go forward with the emissions test or go see a mechanic about it. I

would choose to have the emissions test. Chasing around the city for service mechanics and then going back to the emissions testing station causes unwanted and annoying problems for consumers.

**Senator Manendo:**

I was told if a MIL was on, the vehicle would fail the emissions test for a specific reason. As in my constituent's case, all she needed to do was to drive her car a certain distance and the light would reset. There was nothing else wrong with her vehicle; it failed the emissions test. The only reason it failed was the MIL was on. I like the suggestion that the emissions inspectors inform their customers about the light and failure, and ask whether the customer wishes to go on with the emissions test. Then the consumer can decide how they want to proceed.

**Mike Prince (Terrible Herbst):**

I am neutral concerning S.B. 386. I agree with the language to allow authorized emissions testing stations access to the service and maintenance for the emissions analyzer. These analyzers are getting old. They need to be repaired frequently. I have a service warranty contract with the current vendor for my analyzers. It is frustrating to be out of business for several days while we wait for the vendor to procure the needed part. We could perform the needed maintenance or service without downtime if we had access. No company is offering to come into Nevada to repair these machines to compete with the current vendor. Parts sold by this vendor are overpriced. We will be required to upgrade our Windows 7 version shortly. The cost will be ten times the amount of money compared to what we could do for ourselves. There should be no reason emission stations cannot perform these services.

With regard to informing the customer about the MIL prior to testing, I do not want to lose revenue. I do not believe the emissions test stations are taking financial advantage of consumers. The State and federal governments have mandated this testing, and we are doing what we have been instructed to do. We test the vehicle in the manner it arrives. It is an injustice to the public to test a vehicle knowing it will not pass due to the MIL. There is a way around the waiver process. An initial failed test is needed, then the repairs must be completed, and then a second failed test must be done to be eligible for the waiver. Perhaps an emissions test station could test to see if the MIL is on and then have a way to record that. Any repairs done afterwards at an approved repair station could still apply towards the waiver. An inspector cannot tell a

customer what is wrong with their vehicle and supply a cost to repair it based on initial analyzer test results. The vehicle will be sent to a repair station and the inspector at the repair station will use the repair station's own equipment to determine the problem.

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**Chair Gustavson:**

There being no further business before the Committee, the meeting is adjourned at 3:18 p.m.

RESPECTFULLY SUBMITTED:

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Ellen Walls,  
Committee Secretary

APPROVED BY:

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Senator Don Gustavson, Chair

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

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	9		Attendance Roster
S.B. 163	C	15	Alysa Keller	Work Session Document
S.J.R.11	D	5	Alysa Keller	Work Session Document
S.B. 281	E	1	Marla McDade Williams	Proposed Amendment
S.B. 386	F	2	Peter Krueger	Proposed Amendment