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

Seventy-Ninth Session
February 23, 2017

The Committee on Natural Resources, Agriculture, and Mining was called to order by Chair Heidi Swank at 1:35 p.m. on Thursday, February 23, 2017, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada and to Room 102, McMullen Hall, Great Basin College, 1500 College Parkway, Elko, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Heidi Swank, Chair
Assemblywoman Lesley E. Cohen, Vice Chair
Assemblyman Chris Brooks
Assemblywoman Maggie Carlton
Assemblyman John Ellison
Assemblywoman Sandra Jauregui
Assemblywoman Lisa Krasner
Assemblywoman Robin L. Titus
Assemblyman Justin Watkins
Assemblyman Jim Wheeler
Assemblyman Steve Yeager

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Susan E. Scholley, Committee Policy Analyst
Randy Stephenson, Committee Counsel
Nancy Davis, Committee Secretary
Cheryl Williams, Committee Assistant

OTHERS PRESENT:

Charlie Donohue, Administrator, Division of State Lands and State Land Registrar, State Department of Conservation and Natural Resources
Steve K. Walker, representing Eureka County
Jeff Fontaine, Executive Director, Nevada Association of Counties
Jennifer Carr, Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources
Omar Saucedo, representing Southern Nevada Water Authority
Lucas Foletta, representing Southern Nevada Home Builders Association
Danny Rotter, City Engineer, Carson City Public Works
Gerald A. Lent, Private Citizen, Reno, Nevada

Chair Swank:
[Roll was called and standard rules of the Committee were reviewed.] Before we hear the two bills on the agenda today, we will go into a work session on Assembly Bill 101.

Assembly Bill 101: Revises provisions governing the management of wildlife. (BDR 45-187)

Susan E. Scholley, Committee Policy Analyst:
Assembly Bill 101 was heard in this Committee on February 21, 2017. This bill was sponsored by Assemblyman Sprinkle. The bill would add "conservation" as an element of the policies to be established by the Board of Wildlife Commissioners. The bill also addresses the statutory provisions that currently control the use of the proceeds from the $3 fee on game tag applications. The bill would grant authority to use the proceeds for programs for the management and enhancement of big game mammals and matching funds for federal programs. No amendments were proposed at the hearing. There was a fiscal note on the bill but the fiscal note was determined to be zero.

I would also add that after the hearing and after I did my work session document, there were concerns about the clarifying section 3, which is the use of the proceeds of the $3 fee. It is a drafting clarification issue to make it clear that the money could be spent on either the management and enhancement of big game mammal programs or matching funds, it could be one or both. I would like to turn this over to legal counsel to explain what the drafting clarification amendment would do (Exhibit C).

Randy Stephenson, Committee Counsel:
In section 3, subsection 1, where we are discussing programs for the enhancement of big game mammals and obtaining matching money from the federal government, it was suggested that the term "and/or" be used. We typically do not use that term in *Nevada Revised Statutes* or *Nevada Administrative Code*. To make it absolutely clear, in this situation, probably the best thing to do would be to take the "and" out between the two programs and change it to "or." Also add a third paragraph making it clear that it would be enhancement of big game mammals or obtaining matching money, or "a" and "b." That way it should be very clear and covered.

Chair Swank:
I will entertain a motion on A.B. 101.

> ASSEMBLYMAN YEAGER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 101.
>
> ASSEMBLYWOMAN CARLTON SECONDED THE MOTION.

Chair Swank:
Any discussion?

Assemblywoman Titus:
I will be in opposition to this and will vote no on this bill. I am strongly opposed to this bill for many of the reasons I stated on Tuesday, specifically because of wording in this bill that strikes out "control of predatory wildlife" and replaces it with "enhancement of big game mammals." This effectively halts the management and control of predatory wildlife. By broadening the language, you also halt funds being spent on protection of nonpredatory and sensitive wild species, especially the sage grouse and sagebrush habitat. I have huge concerns about this. I urge members of this Committee to vote no on this bill.

Assemblyman Wheeler:
I also strongly oppose A.B. 101. I believe this bill rocks back good policy and it changes the relationship between the Board of Wildlife Commissioners and the Department of Wildlife, a long-standing relationship that has been held in statute. As the Wildlife Commissioners stated in an email, A.B. 101 removes policies and procedures already longtime established. Second, I am worried about the mandates to use matching federal funds that put restrictions on how we control our predators. I believe our state is more than capable, and our Department of Wildlife is more than capable, of controlling our predator population without the invisible hand of the federal government from 3,000 miles away dictating how we control predators in this state. For this reason, I will be voting no, and I urge my colleagues to do the same.

Assemblyman Ellison:
I would like to look at the vote on Assembly Bill 78 of the 78th Session. This bill addressed the 80 percent, and passed with 36 yeas, 5 nays, and 1 excused. The sponsor of A.B. 101, Assemblyman Sprinkle, voted yes.

Assemblywoman Carlton:
Point of order. A point of order must be recognized within the Committee and cannot be interrupted. Bringing up a legislator who is not here, and making statements when they are not here to defend themselves, is not appropriate in Committee. It is a matter of protocol and something that we have followed for as long as I have been here.

Chair Swank:
We will now vote. All those in favor.

Assemblyman Ellison:
No, I still have a statement to make.

Chair Swank:
As to your statement, I believe it is a matter of record of what the votes were in the past, and I do not think you need to address that here.

Assemblyman Ellison:
I strongly oppose A.B. 101. I am also sorry that we are not able to get Elko's opinion on this matter. I believe it is important to get feedback from all effective stakeholders. First of all, I would like to say, we changed the management of wildlife in 2015 for a reason. The $3 fee established in 2001 that was being collected from the sportsmen was not being used for the intent, which was for the management and control of predatory wildlife. We saw a problem, and we fixed it. This bill not only brings this problem back, but makes it worse by diverting the money away from predation. We also talked about listening to the will of the people and doing good for them. Assembly Bill 101 ignores the will of the people and the intent of what we did in 2001 and 2015. For this reason, I ask my colleagues to vote no.

Assemblywoman Krasner:
I am in opposition to A.B. 101. When this bill was passed in 2015, the $3 fee was specifically directed to go to predator control. Using this $3 fee for a different purpose ignores what our constituents wanted. This is why people lose faith in their elected officials. For this reason, I am in opposition to A.B. 101.

Chair Swank:
We will take a vote now.

> THE MOTION PASSED. (ASSEMBLYMEN ELLISON, KRASNER, TITUS, WATKINS, AND WHEELER VOTED NO.)

I will assign the floor statement to Assemblyman Yeager. I will now open the hearing on Assembly Bill 34.

Assembly Bill 34: Revises provisions relating to state lands. (BDR 26-179)

Charlie Donohue, Administrator, Division of State Lands, and State Land Registrar, State Department of Conservation and Natural Resources:
Assembly Bill 34 is an agency-requested bill that I support and is focused on cleaning up elements of *Nevada Revised Statutes* (NRS) Chapters 321 and 322. These specific elements have never been used because the situations they aimed to address simply have not materialized. With your indulgence, Madam Chair, I would like to briefly address the proposed changes outlined in the various sections of the bill.

Section 1 removes the requirement for two appraisals when selling or leasing state land. Since the requirement for two independent appraisals was put in place during the 2005 Legislative Session, there has not been a single instance where this provision of statute has been utilized. A reason for this is because parties who have made inquiries often feel the process is expensive and burdensome, with little to no assurance of a successful outcome. I am comfortable recommending a return to one appraisal because I believe it captures standard business practice, and also because I know the appraisers used are licensed and certified by the state. In addition, there is a statutory requirement for leases to go before the Interim Finance Committee for legislative approval.

Section 2 amends the language for the Revolving Account for Land Management to expand eligible expenses from this account. Environmental and cultural planning work, necessary for the transfer or lease of federal lands, is not currently an eligible expense under existing law. Historically, the Bureau of Land Management (BLM) provided many of these services without charge when the state was securing a Recreation and Public Purpose (R&PP) lease. However, the BLM has shifted to cost recovery for these services. Without funds to pay for these activities or the ability to hire a contractor, transfers and leases of federal land can languish. Additional eligible activities or professional services being proposed include land surveys, biological surveys, cultural resource assessments, and mitigation measures. These are often necessary expenses when the state is leasing or acquiring land from the federal government. This Revolving Account would not be limited to the management of lands, but would also be eligible for the acquisition of lands.

Section 3 removes the exception for a residential lease with a term of less than one year because residential leases are addressed separately under the exceptions called out in NRS 322.063 and NRS 322.065 and various agency housing policies.

Section 4 removes certain requirements that the agency provide environmental and demographic information to cities and counties for land use planning purposes. This information is now generated by other entities such as the state demographer, cooperative extension, and federal partners. Much of this information is also now readily available on the Internet and efforts to provide and maintain this information is duplicative as well as exhaustive for the agency. Since the downturn in the economy, the agency has focused its planning efforts on state public lands and coordinating both state and county comments on federal land use issues through the state clearinghouse, a role the agency took on due to consolidation resulting from the downturn and also to satisfy the National Environmental Policy Act (NEPA) consultation process.

Section 5 removes specific parameters to qualify, through a tie to economic development, for a reduced lease of state land for less than fair market value. The agency has not had any inquiries regarding this specific section of statute since its enactment in 2013; however, having the general provisions and the ability to offer a reduced lease in certain situations may be beneficial in the future. The provisions to work with the Office of Economic Development, Office of the Governor remain, and the fact is that any lease must be approved by the Interim Finance Committee, so any reductions would be vetted and substantiated.

Section 6 repeals NRS 321.540 through NRS 321.590, the Lincoln County Pilot Land Development and Disposal Law added to statute in 1959. My research and knowledge have led me to believe this portion of statute has never been used. [Also provided written testimony (Exhibit D).]

Thank you, Madam Chair. I would be happy to answer any questions you or other Committee members might have.

Assemblywoman Cohen:
I have a question for counsel. I understand it is black letter law, but on page 3, lines 37 and 38, and in other places in the bill, there is reference to the first degree of consanguinity or affinity. I have concerns because first degree of consanguinity or affinity seem so close. I would like legal counsel to review that with us.

Randy Stephenson, Committee Counsel:
The language that Assemblywoman Cohen is referring to is on page 3, which is section 1, subsection 4, which refers to the impermissible conflict of interest that an appraiser can have. The limiting language is that the appraiser himself cannot have an interest in the land or adjoining property, or be a relative who is related in the first degree of consanguinity or affinity. It is a difficult term, but consanguinity usually means blood relatives and affinity means married relatives. It refers to the idea of who is dependent on you financially and how far you get outside of that circle of the same pool of money, or financial dependence. In this case, the first degree of consanguinity or affinity would be the appraiser's parents, adopted parents, stepparents, children, adopted children, and stepchildren. On the affinity side, it would be the appraiser's spouse.

Assemblyman Yeager:
Under the current statute, local governments, counties, and municipalities would still have the two-appraiser requirement. Are there any situations where the state co-owns any land with municipalities? In that kind of situation, what rule would apply if there were other municipalities that have ownership interest but different rules than the state?

Charlie Donohue:
I do not believe there are any state lands that are co-owned by local jurisdictions or municipalities. There are a few instances where state land has been, or is currently, tied up in long-term leases. An example is Washoe County where the county administrative building is constructed on state property.

Assemblyman Yeager:
In sections 2 through 6, you are looking to basically set the floor for the Revolving Account from $5,000 to $20,000. In recent memory, have there been situations where the Revolving Account dipped either below $5,000 or the $20,000 that is now being requested?

Charlie Donohue:
During my public service, I cannot recall when it has dropped below $5,000. I am suggesting $20,000 because you cannot get much done with $5,000.

Chair Swank:
Can you tell me when the $5,000 was set? It is a big jump from $5,000 to $20,000, but it may be that the $5,000 was set quite a long time ago.

Charlie Donohue:
I will get that information for you. I believe it was in either 1993 or 1997.

Assemblyman Brooks:
What has been the difficulty with multiple appraisals? What problem is this solving?

Charlie Donohue:
The difficulty is that anyone who expresses an interest in property becomes apprehensive when I tell him the process: he will be responsible for two appraisals. An appraisal can be $5,000 to $10,000, times two. Also, there is no assurance, because after the appraisal process, statute requires me to go to a public auction. Granted, after paying for the appraisals, if he is not the winning individual at the public auction, he would not be held responsible for those costs. I would, however, hold him responsible for those costs up-front. When I explain the process, I very rarely get a return call.

Assemblyman Watkins:
Is that the only part of the process that seems to be an inhibitor to them bidding on the property, or are there other issues that could be potential hang-ups?

Charlie Donohue:
That is a difficult question to answer. Once I explain the process to interested parties, many do not come back. They do not necessarily give me feedback as to why they have walked away.

Assemblyman Watkins:
Then what makes you believe it is because of the two-appraisal requirement and not something else in the process?

Charlie Donohue:
Typically, they make comments about the two-appraisal process, that it is not standard business practice.

Assemblywoman Carlton:
On page 3, starting on line 10, the lined-out language states, "If the Interim Finance Committee grants its approval . . . ." That is confusing because we are taking that out, yet it still does go to the Interim Finance Committee (IFC) for the final approval. I think folks are confused that we are taking that portion out. I am pretty sure it will still go to IFC.

Charlie Donohue:
Nevada Revised Statutes 322.007 requires that any lease of state land beyond one year must be approved by the State Board of Examiners and the IFC. The reason that was struck is because I found it to be duplicative.

Assemblywoman Carlton:
I just want to make sure we have that on the record. It is the Board of Examiners and the IFC, correct? We do not do leases for less than a year very often, so that is not a workaround, correct?

Charlie Donohue:
That is correct.

Chair Swank:
If we look nationwide at the sale of state lands, we often hear they are sold at a lower value than they should be. My concern is with having just one appraisal. I know if I am going to purchase something large, I am not going to have just one appraisal before I purchase it.

Charlie Donohue:
I understand your concern. I also feel that I have the authority; if I do not like the appraisal, I would not have to move forward with it. If I feel that the state land is undervalued, I would

not move forward with the sale. If I had any concern that the IFC might worry about the value, then I would also have that discussion prior to bringing it to the IFC.

Assemblywoman Titus:
I think it needs to be clear that this bill does not limit you to only one appraisal. If you saw a clear reason to get another appraisal, it would be at your purview.

Charlie Donohue:
I would agree with that statement.

Assemblyman Ellison:
I know that it is rare to find a commercial appraiser. Was that the impetus for this bill?

Charlie Donohue:
I truly believe that our statutes should be dynamic. It is my desire to be working in a statute that is relevant, and addresses the issues of today. I see elements of my statute from 1959 that have never been used. I have conversations with people who are concerned that it may limit the public from having an interest or interacting in a business capacity with the state. I feel it is my responsibility to address that. That is really what brought about this bill and why it is classified as a clean-up.

Chair Swank:
Thank you. We will move to support of A.B. 34. Seeing no one, is there anyone in opposition to A.B. 34? [There was no one.] Is anyone in neutral?

Steve K. Walker, representing Eureka County:
I received comments from Eureka County this morning too late to submit to the Committee. They have some issues with section 4. I would like to submit them for the record (Exhibit E).

Jeff Fontaine, Executive Director, Nevada Association of Counties:
We are neutral. I would like to comment on section 1, though. I think we would support, and we certainly recognize the need for, the Division of State Lands being able to sell or lease land as quickly and efficiently as they possibly can, particularly in rural areas where economic opportunities are sometimes few and far between. We think it would be very beneficial for the Division of State Lands to sell or lease small parcels, or parcels for economic development without having to go through a two-appraisal process.

With regard to section 4, our concerns have to do with what appears to be a core duty of the Division of State Lands, at least it has been historically, being eliminated from their duties. We certainly understand that much of the data and information they are required to provide under section 4 is readily available on the Internet and through other resources. I think we are concerned about them eliminating, preparing, and continuing to revise inventories of state lands and probably more importantly, the projections that are used. I think these are pretty critical to counties in terms of developing their land use plans. I am not sure that those kinds

of services are readily available from other sources. We would like to get a better understanding of where they think those resources might be available.

Chair Swank:
Is there anyone else to testify in neutral? [There was no one.] I will close the hearing on Assembly Bill 34 and open the hearing on Assembly Bill 50.

Assembly Bill 50: Revises provisions relating to the imposition of certain fees, civil penalties and administrative fines by the State Environmental Commission. (BDR 40-181)

Jennifer Carr, Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources:

I appreciate the opportunity to introduce and support Assembly Bill 50 that amends *Nevada Revised Statutes* (NRS) Chapter 445A provisions related to the public water systems law and NRS Chapter 278 provisions related to subdivision of land [read from prepared statement (Exhibit F)].

This bill is two-fold. First, it seeks to amend existing authority vested in the State Environmental Commission to allow for them to approve certain fee adjustments for the Division of Environmental Protection's water programs. Second, it addresses fines and penalties for public water systems that violate our laws and put public health at risk. Both areas proposed for amendment are considered "clean-up".

Regarding the State Environmental Commission (SEC) authority to address certain fees of the water programs: The current Nevada public water systems law has been in place since 1977. For almost 30 years, the program operated under the State Board of Health, Department of Health and Human Services. During the 2005 Legislature, Senate Bill 395 of the 73rd Session transferred the program and regulations, under the authority of the SEC, to be administered by the Division of Environmental Protection (NDEP) State Department of Conservation and Natural Resources.

In 2015, the SEC heard regulations pertaining to the subdivision of land as those amendments affected drinking water and wastewater engineering design review. In addition to technical amendments, the petition originally sought to split an existing fee into two phases without increasing the overall burden on the developer. When reviewed by the Legislative Counsel Bureau, it was discovered that the SEC did not have proper statutory authority to approve fee amendments in either *Nevada Administrative Code* (NAC) Chapter 278 or NAC Chapter 445A for the Safe Drinking Water Program.

It turns out that in 2005, S.B. 395 of the 73rd Session was not processed with the requirement for a two-thirds majority vote, as does A.B. 50, and language addressing promulgation of fees by the SEC was not explicitly included. The amendments in A.B. 50 pertaining to fees

will address the requirements of Article 4, Section 18 of the *Nevada Constitution* for an affirmative vote of two-thirds of the members of each house on this issue.

While the budget proposal for the NDEP Safe Drinking Water Program is balanced and no fee amendments are proposed at this time, the existing fees have not been updated since 2004, and establishing clear authority for the SEC to take future action is prudent.

The second aspect of this bill in section 4: The civil penalty for violation of the public water systems law has been unchanged at $5,000 for each day of violation since inception in 1977. The provision for additional administrative fines at $2,500 for each day of violation was added in 1991.

Traditionally, the program has focused on compliance assistance and in most cases, we are successfully working with water system owners and operators. Formal enforcement is not the norm and 99.5 percent of people served by public water systems in Nevada are currently receiving water that meets all health-based standards.

Over the past few years, NDEP has increased enforcement activity related to chronic noncompliance with primary drinking water standards and for construction of drinking water infrastructure without engineering design approval.

The fines and penalties have not changed in decades, and they are also not consistent with the federal Safe Drinking Water Act at $25,000 for each day of violation. These amendments will close the gap. Public health protection is paramount and, as we have seen with national events in 2016, it is important for our program to have appropriate tools to compel compliance.

Finally, A.B. 50 has one phrase that we believe should be struck from the language, and a proposed green-line amendment has been provided (Exhibit G). In section 1, the requirement that the SEC be the entity to administer our fiscal accounts is not accurate with respect to the financial management of NDEP budget accounts and funds.

Thank you for your time. I would be happy to answer any questions.

Assemblyman Yeager:
You mentioned that the federal government has the ability to fine $25,000 per day. If there were a violator here in Nevada, would the federal government have the ability to fine him in addition to what we fine him?

Jennifer Carr:
Nevada holds what is known as primary enforcement responsibility that has been delegated from the United States Environmental Protection Agency (EPA) to the state of Nevada. As long as we are taking actions that are necessary to bring water systems that may be in violation into compliance, then the EPA will let us take care of business and resolve those

violations. They do have the authority, in the event that we are not taking care of business, to file in federal court on behalf of the public and be able to assess those fines and penalties.

Assemblyman Yeager:
I would like to get a sense of how often, in recent years, fines have been levied by the state. Is this more because you want to have the ability to assess a larger fine if something catastrophic were to happen?

Jennifer Carr:
Since the 2013 Session, where our enforcement statutes were clarified, we have begun to conduct some formal enforcement. For example, there are areas where technical assistance has not solved the problem, or there is a chronic case of noncompliance over a period of time. Also, if infrastructure is being built without engineering design review, we consider the first line of defense against waterborne disease to be constructing the infrastructure right in the first place. We have taken enforcement action in about a dozen cases in the past four years; nine of them have resulted in fines and penalties. I would like to note that we carefully consider every action we take. We do not always jump to formal enforcement. Technical assistance is our primary mode, and we gain a lot of compliance by doing that.

When finding an alleged violation, an order is issued. The violator has due process rights; he can appeal the order and take it to the SEC, which provides some checks and balances in the process. To give some perspective on the potential for use of the full range of fines and penalties, it is important to note that we have a very well-established process among the drinking water and wastewater programs wherein we do not arbitrarily select an amount to fine or assess penalties to a violating system. We have a very well-established process that is known as a penalty panel, which is an independent panel of bureau chiefs that we use to hear the case and explain both sides—the NDEP and the water system side. We allow the panel to consider the fines and penalties that might be sought. During that process, the panel reviews the facts in the case, such as the magnitude, public health impact, or other fortuitous factors such as unpredictable equipment failure—those sorts of things—as well as the history of compliance. All those factors affect the panel's recommendation as to what they believe the NDEP should pursue in a potential settlement of the case. That amount is taken to our Administrator for consideration. All of the cases that we have taken so far over the past four years have been based on the administration fine, which is the lesser of those two values. That has been sufficient, so far, to handle what we needed to handle. There has been one case that we took to district court, which was quite egregious. That is where we have reserved the use of the larger civil penalty in order to address more egregious violations.

Assemblyman Watkins:
Regarding the penalties that are included in this bill that are in NRS 445A.800 through NRS 445A.955, I am curious; when you are assessing penalties, I would imagine most of the time you are dealing with business entities and not individuals. Am I correct?

Jennifer Carr:
Yes, that is the case. They are generally privately-owned public water systems that run as businesses, or they are municipalities.

Assemblyman Watkins:
If it were an individual, we allow a penalty all the way to a criminal penalty of a misdemeanor. I did not see what I would consider an equivalent penalty against a business entity, such as the taking of property if they are in consistent violation and ignoring the previous civil penalties. Did I miss that or is it not part of your powers?

Jennifer Carr:
The full range of statutory enforcement authority that we have covers both civil and criminal authority. The civil fine and penalties process is the one that we are talking about today. There is, however, an opportunity, if we believed that someone were to have intentionally tampered with a system or put a contaminant in the drinking water that would harm human health, we could pursue that criminally through district court. It would be a misdemeanor, but that would be on an individual.

Assemblyman Ellison:
In section 4, subsection 1(e), where the penalty is changed from $5,000 to $25,000, can you give me an idea what would trigger that? How big of a damage would it take to issue a $25,000-a-day fine against someone?

Jennifer Carr:
I will use the example of the one case that we have taken to district court. This case is a small water system in a rural Nevada county, where an individual had failed to address the drinking water standard for arsenic for many, many years. He also failed to provide public notice to the residents of the mobile home park, and he was generally recalcitrant on many fronts, to the point where we needed the other tool of a civil action at the district court level to compel compliance. In that case, when we sought the civil penalties from the court, we used the higher value of the $5,000 per day.

Assemblyman Ellison:
How long did it take this individual to comply?

Jennifer Carr:
We got our judgement in 2016, and the case still remains noncompliant on both the water and wastewater aspect. We are working with the courts to get this particular gentleman to rectify the problems that he has. It is, unfortunately, still unresolved. The NDEP is doing the public notice and enforcing for the provision of bottled water for the residents in order for them to have access to safe drinking water.

Assemblywoman Titus:
You went through a pretty detailed process of how the NDEP takes care of issues, concerns, and potential risks to the citizens. It seems like you were able to process all of this, and you

had the tools you needed. I am not really seeing the connection to why this particular bill is necessary. It sounds like you have the tools—the civil tools and all that ability—yet the case you just mentioned is still not in compliance, no matter how high the fine is going to be. I am not convinced that an open-ended bill like this, where you can increase the total amount of fines with an almost 500 percent increase, is going to fix that.

Jennifer Carr:
Some of the things we considered when preparing this bill were both the amount of fines and penalties that are in the Safe Drinking Water Act, which Nevada adopted, as well as comparing it with the fines and penalties that are applied on the water pollution control program on the wastewater side. As the drinking water program started to do more formal enforcement, we began using the independent panels of bureau chiefs within the NDEP. Many of these bureau chiefs have sat on penalty panels on the water pollution control side. Water pollution control is at $25,000 per day per violation. One of the questions we got early on in processing these fines and penalties were, "Why is drinking water not valued the same way as a potential release of treated wastewater to the desert?" This is in part to help bring some parity among our enforcement statutes throughout the agency, and also to bring the importance of public health protection in line with what we have for the Clean Water Act side.

Chair Swank:
I find it interesting that the $5,000 was set in 1977. Is that when the $2,500 fine was also set?

Jennifer Carr:
The $2,500 was added in 1991.

Chair Swank:
I used my inflation calculator, and if we were at $5,000 in 1977, that would get us to $20,000 today, so just a little bit under what you are proposing. There is a bill that we will be hearing later in the session about indexing.

Assemblywoman Cohen:
You have given a few examples of situations where there has been some enforcement. In general, are these issues with infrastructure or management?

Jennifer Carr:
There is a wide variety of potential pitfalls in our regulations. They can start with constructing infrastructure without engineering design review and approval, which is one of our enforcement priorities. For established systems that are operating under our rules and regulations, we have a number of primary drinking water standards. These systems can fall out of those standards, either from the water quality that nature is producing or, if they are treating the water for safe drinking, they have to ensure they are maintaining all of the treatment equipment to operate properly. Generally, the violations we see, particularly the chronic violations, have been related to primary drinking water standards, primarily arsenic.

We also have one case that we are dealing with regarding uranium. It is stretching out in time because the water operator is not able to maintain the devices appropriately to treat for uranium and protect public health.

There are times when it is a managerial or financial issue as well. We can handle truly hundreds of small violations before they get out of control and provide technical assistance, tools, and mechanisms to possibly increase the water fees to cover the expenses the water operators need to operate their systems. We do all of that long before we get to any sort of formal enforcement.

Assemblyman Brooks:
How many water providers are you looking at in Nevada? How many individual entities are covered by this regulation?

Jennifer Carr:
We have 610 public water systems.

Assemblyman Watkins:
I just want to confirm that I did not miss it; you do not have the ability, as part of your penalties or fines, to lien or seize property?

Jennifer Carr:
When we received the judgement in district court on that case I was referring to, we are in the process of filing judgement on the title. I would defer that question to our legal counsel.

Chair Swank:
I will now move to support for A.B. 50.

Omar Saucedo, representing Southern Nevada Water Authority:
First, I want to thank NDEP for reaching out to us and communicating with us regarding the genesis of this bill. After some discussion with the Division of Environmental Protection, it became apparent why they were bringing this bill forward and why it was needed.

The Southern Nevada Water Authority supports this bill. We believe it is important to protect the state's primacy as it relates to the Safe Drinking Water Act. As one of the largest water providers in the state, we believe it is paramount to support such policies and initiatives.

For these reasons and some of the other reasons stated during the presentation of the bill, we are in support of A.B. 50.

Chair Swank:
Anyone else in support? [There was no one.] I will move to opposition. [There was no one.] Is there anyone neutral for A.B. 50?

Lucas Foletta, representing Southern Nevada Home Builders Association:
We would like to bring to the Committee's attention that we have been working with Jennifer Carr and NDEP to get clarification on two points related to the bill. One is related to the fee authority in sections 3 and 5. We want to get a better sense of under what circumstances and to what extent new or elevated fees could be imposed. Also, in section 5, we want to seek clarification on whether it is possible that NDEP could impose fees for the review of subdivision plans that are already being reviewed by other local governments.

Danny Rotter, City Engineer, Carson City Public Works:
I would like to thank Jennifer Carr for having continued discussions on this topic. We are definitely not out of compliance, nor do we ever plan to be. That is our number one priority: safe drinking water. Our concerns are related to the severity of the fine. While we agree that some of the bad apples might need bigger fines, our concerns relate to the noncodification of their current policies and practices. Quickly looking at some other states—Utah, California, Oregon, Arizona, and Idaho—almost all of them codify those policies and procedures as far as first-time offenses versus three years with an arsenic level of 50. In reviewing the policy and procedure and talking with Jennifer Carr, we are comfortable, but we would like to see it codified.

Chair Swank:
I will close the hearing on A.B. 50. [Presented but not heard in support of A.B. 50 is Exhibit H.] Is there anyone here who wishes to make public comment?

Gerald A. Lent, Private Citizen, Reno, Nevada:
I would like to ask the Committee for a reconsideration of Assembly Bill 101. It is doing a disservice to the sportsmen in the state who pay this money. There was a bipartisan bill, Assembly Bill 291 of the 71st Session, which passed in 2001. I was one of the sponsors of it. It was unanimous in the Senate and the Assembly: it was 41 in favor, 1 excused in the Assembly with no dissention and, in the Senate, it was 21 in favor and no dissent when it passed. The intent of the legislation was clear. It is evident by a comment that Director Kenneth Mayer of the Department of Wildlife wrote to Assemblyman Jerry Claborn in 2008, regarding the summary of the developments and progress on this bill. He said, "To ensure that the Commission's Predator Committee acknowledges the desire of the Legislature to see the recovery of Nevada mule deer to be a principle focus of Predation Management Projects." He went on to say that other species also require protection, such as the sage grouse. One of the chief sponsors of the bill, Assemblyman Claborn, wrote a letter to the Director of the Department of Wildlife. I want to read a sentence from that letter: "The intent of this bill was to do on-the-ground projects for removal of predators in order to enhance deer numbers." I think all of this intent is very clear. All the testimony shows the intent of the sportsmen. Now the sportsmen are being misled with A.B. 101. This is not good legislation, they are paying the $3 fee thinking they are getting something, and this bill is completely against what they are paying for. Again, this is not good legislation; I think the Committee should reconsider their vote.

Chair Swank:
Is there anyone else with public comment? Seeing none, this meeting is adjourned [at 2:34 p.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblywoman Heidi Swank, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is the Work Session Document for Assembly Bill 101, dated February 23, 2017, presented by Susan E. Scholley, Committee Policy Analyst, Research Division. Legislative Counsel Bureau.

Exhibit D is written testimony presented by Charlie Donohue, Administrator, Division of State Lands, and State Land Registrar, State Department of Conservation and Natural Resources, dated February 23, 2017, regarding Assembly Bill 34.

Exhibit E is written testimony presented by Steve K. Walker, representing Eureka County, regarding Assembly Bill 34.

Exhibit F is written testimony in support of Assembly Bill 50, dated February 23, 2017, presented by Jennifer Carr, Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

Exhibit G is a proposed amendment to Assembly Bill 50 presented by Jennifer Carr, Deputy Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources.

Exhibit H is a letter in support of Assembly Bill 50, dated February 21, 2017, submitted by Kevin Dick, District Health Officer, Office of the District Health Officer, Washoe County Health District, to Chair Swank and members of the Assembly Committee on Natural Resources, Agriculture, and Mining.