# MINUTES OF THE MEETING OF THE ASSEMBLY COMMITTEE ON NATURAL RESOURCES

# Eighty-First Session February 15, 2021

The Committee on Natural Resources was called to order by Chair Howard Watts at 4:03 p.m. on Monday, February 15, 2021, Online. Copies of the minutes, including the Agenda (<u>Exhibit A</u>), the Attendance Roster (<u>Exhibit B</u>), 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/81st2021.

# **COMMITTEE MEMBERS PRESENT:**

Assemblyman Howard Watts, Chair
Assemblywoman Lesley E. Cohen, Vice Chair
Assemblywoman Natha C. Anderson
Assemblywoman Annie Black
Assemblywoman Tracy Brown-May
Assemblywoman Maggie Carlton
Assemblyman John Ellison
Assemblywoman Cecelia González
Assemblywoman Alexis Hansen
Assemblywoman Susie Martinez
Assemblywoman Robin L. Titus
Assemblyman Jim Wheeler

# **COMMITTEE MEMBERS ABSENT:**

None

# **GUEST LEGISLATORS PRESENT:**

None

# **STAFF MEMBERS PRESENT:**

Jann Stinnesbeck, Committee Policy Analyst Allan Amburn, Committee Counsel Devon Kajatt, Committee Manager Nancy Davis, Committee Secretary Trinity Thom, Committee Assistant



# **OTHERS PRESENT:**

Jennifer Ott, Director, State Department of Agriculture Cadence Matijevich, Administrator, Division of Consumer Equitability, State Department of Agriculture

#### **Chair Watts:**

[Roll was called. Rules and protocol for the Committee were reviewed]. I will now go to the first item on our agenda, which is an overview by the State Department of Agriculture.

## Jennifer Ott, Director, State Department of Agriculture:

On page 1 [Exhibit C], the mission of the State Department of Agriculture (NDA) is: "To preserve, protect, and promote Nevada Agriculture." We do that through our five divisions: the Administration Division, the Plant Industry Division, the Animal Industry Division, the Division of Consumer Equitability, and the Food and Nutrition Division.

On page 2, the Department of Agriculture has several responsibilities throughout the food supply chain in Nevada, starting with planting and working with farmers for our food crop; seeds for forage, ensuring they are free of noxious weeds; livestock and production animals; and transporting and ensuring the crops and livestock get to the proper location with high-quality fuel that meets regulatory standards. We work in processing, especially in the dairy industry to go over the food safety guidelines and ensure food safety and quality. We work with weights and measures, which is a consumer protection activity that ensures Nevadans are getting what they pay for—when you are buying a pound, you are actually getting a pound. Much of our distribution activity is in assisting food banks, food pantries, and community organizations. We also have trade assistance and economic workforce development. We work with farmers, ranchers, and manufacturers of food products or fiber products to be introduced to new buyers. For the next couple of years, we are going to be working on our economic and workforce development to ensure that our food industries have the best opportunities possible for them and to ensure that they have an adequate workforce to support the food supply chain.

The economic impact of agriculture in the state for 2020 was \$4.71 billion. What you would think of as the traditional agriculture segment—ranching and farming—had an economic input of \$787.8 million, and the food and beverage manufacturing had \$3.925 billion dollars of economic impact. That was slightly down from 2019 for two reasons. The pandemic had an impact. The agriculture industry specifically received quite a bit of federal assistance so that the impact of the pandemic on the agriculture sector was not as great. There was also a decrease due to state policies that have made it difficult over the last couple of years to form a trade relationship that we have enjoyed in the past. We are hoping over the next several years that those numbers will increase. The agriculture sector employed over 18,000 people in the state for \$113.2 million in wages.

Before I go on, I would like to make a quick plug. Each of you and all the legislators should have received our economic analysis in your inboxes. It is full of data about agriculture and

all the impacts broken down by county, and includes our top trading countries and our biennial report.

The Department has a State Board of Agriculture. The Board was created by *Nevada Revised Statutes* Chapter 561. The Board establishes policy for the Department and adopts regulations as authorized by the Board for the NDA to operate and to carry out laws and provisions by the NDA. The Board is made up of 11 members that are shown on page 3 [Exhibit C].

I will go into a little bit about each of the divisions of NDA. I will highlight some of our programs, which is not to say that one is more important than the other, but I have selected a few that you might be seeing bills about or might have discussions about. Always feel free to contact me if you have any questions about any of our programs.

The Animal Industry Division is responsible for animal disease detection, prevention, food safety, livestock identification, livestock theft prevention, and commercial feed, among many other responsibilities.

On page 4, there are five programs within the Animal Industry Division: The livestock inspection program is responsible for tracking the movement of livestock across Nevada and between states for health purposes. This is what we call our brand inspection program and it ensures that our livestock are healthy as they are moved across the state and across state lines.

The agriculture enforcement program prevents agriculture products that have not met the requirements of plant or animal health through livestock inspections from entering or exiting the state. Our agriculture enforcement also assists law enforcement on matters and are the subject matter experts for any agricultural laws.

The Animal Disease Laboratory monitors diseases that can be transmitted from animal to humans, those are called zoonotic diseases, as well as diseases impacting state transport of livestock.

The Division of Consumer Equitability ensures quality of motor fuel and lubricants and consistency in commercial transactions by regulating devices used to determine weight and volume.

The weights and measures program inspects and certifies weighing and measuring devices. The metrology program maintains stability of Nevada's primary weight and volume standards and ensures they are aligned with national standards. The petroleum technology program, including our petroleum technology laboratory, ensures fuel sold at retail facilities meets the regulatory requirements.

On page 5, the Food and Nutrition Division administers federal funds to provide access to healthy food for Nevada's children, seniors, and food-insecure populations. We have three

main segments of the Food and Nutrition Division: First are the child nutrition programs. We have several federally funded programs that we administer in the state. Our most well-known programs are the national school lunch and national school breakfast programs. The Department works with all the schools across the state to administer those programs. That also includes our summer food service program that we deployed to meet the needs of school children during the pandemic. Even though it is called the summer food service program, it was not deployed during the summer because it is a grab-and-go program, which made it appropriate for the schools that were doing distance learning and being COVID-19 compliant. The fresh fruit and vegetable program increases availability of fresh fruits and vegetables in elementary schools. Our special milk program provides milk to children who do not participate in any other federal program. We provide milk to elementary schools and to childcare centers.

The other segments of the Food and Nutrition Division are the senior nutrition programs including the commodity supplemental food program, what you know as senior food boxes. These boxes supplement food-insecure senior diets with nutritious foods that are procured through U.S. Department of Agriculture (USDA) funds. The senior farmers market nutrition program provides low-income seniors with coupon books to use as cash at Nevada farmers markets, so they are able to purchase their own fresh fruits and vegetables.

The emergency food assistance program was most talked about during the pandemic. That is considered our food bank program, which works with food banks and food pantries to provide food assistance to food-insecure populations. Also, there is the food distribution on Indian reservations program. That provides monthly food boxes to individuals in 11 tribes, colonies, and reservations across the state.

On page 7, the Plant Industry Division protects Nevada agriculture, the public, workers, and the environment through education, inspection, and certification. This is a rather large division and is divided into three segments.

The first segment is crop production. Included in crop production is the export certification program. This program provides mandatory inspection certification for plants and plant products exported out of state and out of the country. We have seen an increase in exported products from fiscal year (FY) 2019 to FY 2020. We are anticipating seeing another increase in FY 2021, much of that being exported out of the country.

The hemp program is also part of the crop production segment. We will be seeing a lot of bills on cannabidiol (CBD) this session. We had quite a boom of hemp until about 2020. Since 2020 we have seen a decline in hemp production. The first reason for that decline is at the federal level there has been some uncertainty in the regulatory area. The final rules on hemp did not come out until January 2021. It made it difficult for those who are wanting to plant or invest in the hemp industry to have some certainty about their crop being able to get to market. The other reason for the decline is that we have seen a decline in CBD prices. It is not nearly as profitable an industry as it was through 2019.

The next segment of the Plant Industry Division is plant health. We have several programs in this area: The noxious weeds program is in charge of preventing, controlling, and managing invasive weeds species on public and private lands. We do that through partnership with federal entities, counties, and private landowners. The entomology program is charged with preventing the entry, spread, and control of exotic pests. They do this through identification, field surveys, and enforcement of state and federal quarantines and regulations.

The plant pathology program is the sister program; it does everything that the entomology program does but with plant diseases instead of plant pests.

The final segment of the Plant Industry Division is environmental protection. The environmental services program is charged with protecting the environment and human health from the effects of pesticide misuse. This program's employees monitor the waterways of Nevada to ensure that there is no pesticide runoff. The pest control program licenses and monitors pest control companies and individuals for compliance with state and federal laws. The drought initiative works with several partners to provide proactive long-term strategies in making Nevada's agricultural and ranch resources resilient to the impacts of prolonged droughts.

On page 9, the Administration Division is the support hub of all the divisions within NDA. I spoke a little about our trade program and would like to highlight it here as well. The global trade program assists farmers, ranchers, and food manufacturers to enter and grow into international markets. This program provides educational seminars and assists in trade missions and making market assessments so that participants can make the right decisions when entering and looking for buyers.

#### **Chair Watts:**

Thank you. Your Department handles quite a few areas. We appreciate your giving us a quick overview.

# **Assemblywoman Carlton:**

You discussed the food supply. Earlier last year, when the shutdown happened, there were some definite issues in the food supply chain. Not only for families, but as a food pantry person, it was very difficult to get certain items. Has the NDA done an analysis on what actually happened? How did southern Nevada end up in a position where we could not get the food supplies that we needed? I actually had a group bring in food from California. I would like to know if we are looking at what happened so that it does not happen again.

#### Jennifer Ott:

It was a perfect storm of food supply issues. There were a lot of issues on the processing end with companies shutting down because of COVID-19 outbreaks, which affected the food supply. The closure of restaurants across the United States caused food manufacturers to have to pivot. They cannot pivot that quickly when we have entities that are packaging for restaurants and we are seeing shortages in the grocery stores. It took a while for those

companies to pivot. There were problems with transportation and there were logistical problems with warehouses having COVID-19 outbreaks. I always liken the food system in the United States to a cruise ship. If we shut off an engine or two, or even shut off all the engines, it takes a long time for the ship to come to a stop. While it is coming to a stop, manufacturers and logistic groups are all pivoting to fill the need. That is what was happening over the two months of shortages, especially in grocery stores.

As far as what NDA is doing, it is difficult. We do not have regulatory authority over the supply chain. There are not many things we can do there, but one of the things that we are doing is showing up and looking at how we can stop impacts to Nevada's food in the future. Nevada does not have a great processing industry, many of those companies are in Las Vegas. We do have fairly large livestock production in the state, but we send most of our livestock out of state to be processed. We have great farming production, but much of that is sent out of the state for processing and packaging. We have some gaps in our supply chain that we need to work on and shore up. We recognize that, and we are working on that not only from a regulatory standpoint, but also from an economic development standpoint—attracting businesses that might want to come to this state to shore up some of those gaps.

# **Assemblywoman Carlton:**

I hope that maybe you can compare notes with folks in your position in other states to see if they had some of the same issues. Is this a systemic problem, or was it just, as you said, the perfect storm? Luckily, when casinos and small restaurants closed, the food pantries and food banks will be forever grateful that they thought of us when emptying their refrigerators and pantries of anything that was going to expire. Food was literally coming in one door and out the other. That food did not sit on the shelf for very long. The community in southern Nevada really did step up and do an excellent job to ensure that no food went to waste. I just could not figure out what happened, being so close to California, the highway system, and transportation. Thank you for the explanation.

## **Assemblywoman Anderson:**

When it comes to the senior nutrition program, and in looking at the biennial report, I know there is an outreach for many of our seniors. However, when I see how many seniors are being served, it seems very low—5,450 seniors are getting help. What does the outreach look like for our seniors now, especially since the pandemic? What is the outreach and how is it utilized? I also want to make note that you only have 31 full-time employees and a very large state to serve.

#### Jennifer Ott:

Our senior programs are something that over the next couple of years we are going to be focusing on. We see that we are not meeting the need there. There are two reasons for that. The first is that frankly, the name of the program is pretty darn terrible. We are looking at rebranding so that a senior who is interested in supplemental food knows to come to the senior wellness program and not the commodity supplemental food program. We are working with our federal partners to rebrand that and give it a higher profile and be more recognizable. The second reason is that we are administering all the dollars that we receive.

We need to get more dollars into our state; we are working with the USDA on that. There is a formula that is followed to assess the need in the state. I am not sure how successful we will be on revising the formula, but we can certainly work with our federal partners to tap into other funds, or better administer, or some other solution. We are looking into more funding, more efficient options, and more investments in technology so that funding does not have to go into old systems, but to actual distribution. I agree it is not enough, and it is an area that we are working on.

# **Assemblywoman Anderson:**

As Assemblywoman Carlton has stated several times, our seniors are incredibly caring, and they think that someone else needs it more. What is the outreach for our minority communities, especially our second language communities? Is there an individual on staff who is dealing with language barriers that get in the way of providing these essential services and nutritional help to people?

#### Jennifer Ott:

I am not aware of someone on our staff, but, again, we administer the funds and work with our partners that are doing the distribution work. I can look to our partners, food banks, food pantries, and senior centers to check for language barriers.

#### **Chair Watts:**

When it comes to livestock and plant industry, have you seen impacts from climate change? What are some of the impacts you have seen, and what are the Department's plans to adapt and mitigate for those changes?

#### **Jennifer Ott:**

The first change is, of course, drought. In drought years it is incredibly difficult for our producers, both on the plant side and on the livestock side, to operate. There are a lot of accommodations that have to be made which makes drought reporting and drought predictive monitoring really important. If a farmer knows that his water supply is going to be cut off on July 4, he needs to make decisions based on that. If a livestock producer knows that his water will run dry, whether on the land or what he has as water rights available to him, he has to make decisions based on that. Water is incredibly important. We have a drought condition because of the effect of the pandemic on funds from the State General Fund. We have very few at NDA supported by the General Fund. Most of our positions are federally funded. We did have to cut back on some of our drought positions. It was just the reality of the situation.

The second area is wildfire. Everyone talks about it. I want to talk about it in regard to the livestock. When we have major, disastrous wildfires sweeping through an area, it is incredibly damaging to those that are grazing on our public lands. Sometimes that livestock will get caught up in those fires. The land is not able to be grazed after a wildfire, which creates other problems. That is detrimental on an environmental impact. I would say one of the things that we are really looking forward to and working on with our partners in the state is a meaningful measurement when it comes to environmental conditions. Meaningful

measurements of air quality and having a standardized way to measure, whether it is carbon capture or air quality, it is very important for the agricultural industry. With so many different studies out there, it is very important that we are all using the same language and same measurements.

#### **Assemblyman Ellison:**

You mentioned the hemp program. I believe that a lot of the hemp was destroyed by an early frost.

#### Jennifer Ott:

There was frost in some areas that did have an effect on the hemp crops. I would say that the biggest impact on the hemp industry is the CBD prices. It was not an industry that made it profitable for growers to be in. I think even since the end of 2019, folks have been holding on to their crop, hoping for bigger prices.

# **Assemblyman Ellison:**

We have seen a shortage in crops like onions, carrots, and lettuce. Based on COVID-19, did we see any effect that might create a problem in the future?

#### Jennifer Ott:

Not too much. The producers in this state have been incredibly responsive and have done a great job in responding to any COVID-19 outbreaks on staff. There has not been too much of an impact on the larger growers. The Department was able, with the state allocation of Coronavirus Aid, Relief, and Economic Security Act funds to provide personal protective equipment and other preventive measures to our farmers and ranchers. The farmers and ranchers have been incredibly responsible and responsive to social distancing, mask wearing, and other food safety precautions. These folks, especially our larger growers, are very aware of food safety measures and food safety precautions, so they did not have to step up much.

## **Chair Watts:**

Thank you for the presentation. I will move on to the next item on the agenda, which is our first bill hearing. I will open the hearing for <u>Assembly Bill 75</u>. [Rules and protocols reviewed for conducting bill hearings].

Assembly Bill 75: Revises provisions relating to weights and measures. (BDR 51-273)

# Cadence Matijevich, Administrator, Division of Consumer Equitability, State Department of Agriculture:

One of the State Department of Agriculture's strategic plan goals is to modernize our statutory and regulatory framework. <u>Assembly Bill 75</u> is a part of that effort and is the result of a comprehensive review of *Nevada Revised Statutes* (NRS) Chapter 581 which governs weights and measures.

These updates are intended to align Nevada's weights and measures laws with the uniform laws and regulations established by the National Conference on Weights and Measures and

published by the U.S. Department of Commerce National Institute of Standards and Technology's Office of Weights and Measures, also known as NIST OWM.

Sections 2 through 4 of the bill add definitions for certain physical standards used in the installation, adjustment, repair, or calibration of weighing and measuring devices, and establishes applicable uses of those standards.

Section 5 of the bill provides that the presence of a field reference standard in the possession of any person who is paid to install, make adjustment to, repair or calibrate commercial weighing and measuring equipment creates a rebuttable presumption that the standard is being used for such purpose. The addition of this presumption will assist the agency in enforcing the requirements that any standard used in the installation, adjustment, repair or calibration of commercial weighing and measuring equipment must be certified by a laboratory that has been qualified by NIST OWM.

Sections 6, 7, and 8 make conforming changes to NRS 581.001, 581.065, and 581.067 to include the words and terms newly established in sections 2 and 3 of this bill.

Additionally, section 8 eliminates the duty of the State Sealer of Consumer Equitability to establish requirements for the information relating to open dating of packaged food. Open dating information includes such terms as "sell by," "use by," "best before," and the like.

In July 2019, the National Conference on Weights and Measures voted to remove open dating of packaged food from within the scope of responsibility for weights and measures officials and deleted it from the "National Institute of Standards and Technology Handbook 130: Uniform Laws and Regulations," effective January 1, 2022. This amendment to the handbook came about because it was believed that this subject matter area is more appropriately regulated by health and food safety officials rather than weights and measures regulators.

Section 9 is intended to clarify that the rebuttable presumption that a weight or measure, or weighing or measuring device present in or about a place from which buying or selling is commonly carried on is regularly used for the commercial business purposes of that place. The addition of the term "commercial" will assist the agency in enforcing the requirement that any weighing or measuring device being used for a commercial purpose must be licensed by the State Sealer of Consumer Equitability as commercial weighing and measuring equipment.

Section 10 makes conforming changes to NRS 561.412 to include all fees and other money collected pursuant to sections 2 through 5 of this bill within those funds which must be deposited in the State Treasury and credited to a separate account in the State General Fund for use by the Department of Agriculture.

Section 11 sets forth the effective date of the bill. That concludes my presentation.

# **Assemblywoman Titus:**

I do support this bill but have a question on section 4. Section 4 refers to the "National Institute of Standards and Technology Handbook 44: Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," 2020 edition. Whenever I see a specific date written into a law, I am worried that it becomes antiquated when the next edition comes out. I am wondering why the date is referred to instead of using the "latest edition." That is typically where we have gone in the past: We do not use the date, so we do not have to come back every couple of sessions whenever new books come out.

# **Cadence Matijevich:**

We adopt these handbooks by reference in the *Nevada Administrative Code* (NAC) Chapter 581. In those adoptions, there is reference that as the newer versions of the handbook are published, they become adopted automatically by reference unless the State Board of Agriculture takes action within 60 days of the publication date. That language does exist within our regulations to allow for future publications to be updated. Perhaps your legal counsel may be better able to explain how this specific citation would continue as it relates to how we adopt handbooks.

#### Allan Amburn, Committee Counsel:

This specific situation, a situation that defaults to where it would be updated to the most recent example, would not occur. Statute supersedes regulation. In this specific situation the statute is specifically referencing a 2020 edition. If we wanted to update the handbook for this specific situation, you would need to write an amendment to that statute. If we remove that reference, or used "the latest version," then the regulatory practice would take effect in this situation.

#### **Assemblywoman Cohen:**

In section 8, subsection 5, paragraph (d), the removed language that states, "Information relating to open dating of packaged food." You mentioned that this is generally done by the Department of Health and Human Services. Before we remove that, is that the case now?

#### **Cadence Matijevich:**

Yes. In 2019, the National Conference on Weights and Measures, which Nevada is a member of, was contemplating removing this from the handbook. I did reach out to health and food safety regulators based at the Nevada Department of Health and Human Services and also at county health districts to inquire if they had concerns about this particular authority being removed from the statute. Essentially, I asked if they were relying on this authority that exists for the Department of Agriculture to help with their regulations. The feedback that we received was no. None of those agencies are relying on that. They felt that, within their own statutes that give them their authority and their duties, they had what they needed to be able to enforce regulations for open dating of packaged foods. Much of that guidance was set by the Food and Drug Administration, and many of them follow that. As we were developing this bill, when the bill draft request was published, I reached out to them once again just to be sure that nothing had changed since 2019. I did not hear any concerns.

# **Assemblyman Ellison:**

Will you be changing the standards on how you regulate gas stations and the measurements on the pumps?

# **Cadence Matijevich:**

There is nothing within this bill that would change our current practices and procedures with respect to inspecting and certifying any of our weighing and measuring devices being used in the state of Nevada, including retail motor fuel dispensers. The standards for those devices are all included within the "National Institute of Standards and Technology Handbook 44," which we adopt by reference in NAC. That handbook is updated from time to time. Nevada takes part in the update to that handbook. We vote on proposals to amend that handbook. If the revisions are contrary to what we think are best commercial practices for our state, then we have the opportunity to bring that forward to the Board of Agriculture and adopt something different. There is nothing in this bill that would affect our practices and procedures with respect to inspecting, validating accuracy, and sealing accurate weighing and measuring devices in the state.

#### **Chair Watts:**

I understand that many of these terms for the standards are being updated; I was just wondering if you can elaborate briefly on the changes in section 7. Section 8, subsection 1 adds "field reference standards and transfer standards" in addition to the primary and secondary standards. Section 7, subsection 3 removes the word "physical" and replaces it with "field reference standards and transfer" standards. What standards would not be included in that, and what is the justification behind it?

#### **Cadence Matijevich:**

As I said at the beginning of my presentation, the addition of the terms "field reference standards" and "transfer standards" are terms that have been newly developed and included in the terminology being used in the metrology industry. Metrology is the science of measurements. Previously, "primary standards" and "secondary standards" were the predominant terms used. There became a concern with the term "secondary standard," which really is something that is typically used in a laboratory. The state of Nevada's primary standards were issued to us by the U.S. Department of Commerce in 1972. We use them to calibrate the secondary standards used in our laboratory to compare the physical artifacts that are then used out in the field. Within the metrology industry leader's science, additional terms were developed to more robustly flesh out the full inventory of types of standards that are used and what they are used for.

This bill is us—Nevada—updating our definitions and terminology to include those newly defined terms that are used in the handbooks and used in the industry. We are not leaving anything out with the addition of these terms. We are not meaning to take anything away from what is currently being used. This is really expanding the dictionary of terms that is used so that as we are working with agents who are out in the field doing installation, repair, and adjustments, and when we are talking about the standards they use, we are using the

appropriate terms—field reference standards and transfer standards—rather than calling them secondary standards, a term generally only used in the laboratory.

#### **Chair Watts:**

Not being an expert in metrology, the clarification is welcome as the members of this Committee weigh this bill. Are there any other questions? Hearing none, I will hear testimony in support of <u>A.B. 75</u>. Hearing none, I will hear opposition. Hearing none, is there anyone wishing to testify in neutral? Hearing no one, are there any closing remarks?

# **Cadence Matijevich:**

Thank you for the opportunity to present A.B. 75.

#### **Chair Watts:**

With that, I will close the hearing on <u>A.B. 75</u>. [Also provided but not mentioned is <u>Exhibit D</u>]. I will move on to the last item on our agenda, which is public comment. Hearing none, that concludes our meeting for today. We will meet again on Wednesday, February 17, 2001, at 4:00 p.m. This meeting is adjourned [at 4:59 p.m.].

	RESPECTFULLY SUBMITTED:
	Nancy Davis
	Committee Secretary
APPROVED BY:	
Assemblyman Howard Watts, Chair	
DATE:	

# **EXHIBITS**

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

<u>Exhibit C</u> is a copy of a PowerPoint presentation titled "Department Overview," presented by Jennifer Ott, Director, State Department of Agriculture.

<u>Exhibit D</u> is a copy of an email dated February 16, 2021, submitted by Peter D. Krueger, representing Nevada Petroleum Marketers and Convenience Store Association, in support of Assembly Bill 75.