

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON WAYS AND MEANS**

**Eighty-First Session  
March 29, 2021**

The Committee on Ways and Means was called to order by Chair Maggie Carlton at 9:04 a.m. on Monday, March 29, 2021, Online. 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/81st2021](http://www.leg.state.nv.us/App/NELIS/REL/81st2021).

**COMMITTEE MEMBERS PRESENT:**

Assemblywoman Maggie Carlton, Chair  
Assemblywoman Daniele Monroe-Moreno, Vice Chair  
Assemblywoman Michelle Gorelow  
Assemblyman Gregory T. Hafen II  
Assemblywoman Sandra Jauregui  
Assemblyman Glen Leavitt  
Assemblywoman Brittney Miller  
Assemblywoman Sarah Peters  
Assemblyman Tom Roberts  
Assemblywoman Robin L. Titus  
Assemblyman Howard Watts

**COMMITTEE MEMBERS ABSENT:**

Assemblywoman Teresa Benitez-Thompson (excused)  
Assemblyman Jason Frierson (excused)  
Assemblywoman Jill Tolles (excused)

**GUEST LEGISLATORS PRESENT:**

None

**STAFF MEMBERS PRESENT:**

Sarah Coffman, Assembly Fiscal Analyst  
Brody Leiser, Principal Deputy Fiscal Analyst  
Mary O'Hair, Committee Manager  
Carmen Neveau, Committee Secretary  
Bet Torres, Committee Assistant



**OTHERS PRESENT:**

Terry Taylor, Fire Investigator, Fire Prevention Association of Nevada  
Michael Brown, Fire Chief (Retired), North Lake Tahoe Fire Protection District,  
representing the Nevada Fire Chiefs Association

**Chair Carlton:**

[Roll was taken, and Committee rules and protocol were reviewed.] Today we have one bill before us; we originally had a bill draft request (BDR) to be introduced, but that BDR had to be returned for technical reasons. This will be a brief meeting for our first discussion on a bill. We will do our best not to discuss policy because the policy for this bill has been discussed in another committee. This bill did not have a fiscal note attached, but there were concerns because the fire fund is involved and it is funded with State General Fund dollars, so we wanted to talk about Assembly Bill (A.B.) 86 as the bill moves through the process. Assemblywoman Peters will walk us through A.B. 86 and we will have our discussion. We will not act on this bill today; we will not take action on this bill until later in the session. Holding this hearing allows us to process the bill later, if appropriate.

**Assembly Bill 86: Makes various changes relating to the recovery of certain expenses and costs incurred in extinguishing wildfires. (BDR 42-111)**

**Assemblywoman Peters:**

I have two copresenters today who did not receive the meeting link.

**Chair Carlton:**

We will recess this meeting [at 9:07 a.m.] to ensure everyone can participate.

We will reconvene this meeting now [at 9:12 a.m.]. I apologize for the technical difficulties to those watching this hearing over the internet.

**Assemblywoman Peters:**

Today I would like to present Assembly Bill 86, a policy bill with a potential fiscal issue. I would like to bring the Committee's attention to a conceptual amendment that was submitted through the NELIS system. This is a policy amendment related to the breadth of which we may unintentionally place liability on people who were not held liable in the past. We can discuss this amendment now or later.

**Chair Carlton:**

We should talk about the fiscal side of the bill first, so we understand the bill. If you would like to walk us through the amendment after, that would be fine. I am assuming that you will be presenting this amendment on the floor along with the bill because we do not usually discuss policy amendments this early in the session. The policy committees still have time to work on amendments. We will review amendments at the end of session when we are trying to finish this work. Will you be presenting this amendment on the floor?

**Assemblywoman Peters:**

Yes, that would be correct. To present the financial impacts of A.B. 86, I have with me today Terry Taylor, Fire Investigator, Fire Prevention Association of Nevada; a 28-year veteran, captain, and fire investigator, and Michael Brown, Retired Fire Chief, North Lake Tahoe Fire Protection District; a 25-year employee with that fire district. Mr. Taylor, will you present the bill first and then discuss the potential impact to the fire fund?

**Terry Taylor, Fire Investigator, Fire Prevention Association of Nevada:**

This bill was proposed to enable cost recovery by local governments, and to allow those monies to be repaid to the wildfire protection program, after a wildfire has occurred. The primary challenge I found during the last 22 years of my career has been the clauses in *Nevada Revised Statutes* (NRS) 472.540 and NRS 474.550 which require a threat to human life before cost-recovery steps can be initiated. Many times, with wildfires, human lives at the scene of a wildfire are fire fighters and law enforcement officers. Those two groups have not historically been included as a threat to human life because in courts, it is their job to fight fires. I would like to see this threat to human life condition eliminated from the NRS, and I want to see a clear path developed for special districts, counties, and cities to be able to file civil litigation when there is negligence or willfulness in order to recover expenditures from the fund. This bill empowers county commissioners to bring action against a person, firm, association, or an agency that is responsible for willfully or negligently causing a wildfire. Expenses associated with that wildfire can be recovered as well as reasonable attorney's fees by a public or private attorney who might be hired by a fire district, municipality, or a county. The idea is that a local government could initiate a recovery action and after winning the lawsuit, costs by attorneys would be covered and then the state fund would be repaid as well as local government expenses.

In talking to Assemblywoman Peters and other legislators, we discovered that there was concern in rural areas over warming fires and branding, so I made sure these activities were included in the proposed conceptual amendment. There was also concern about liability for those that are doing work approved through a permit, but then something unforeseen causes a fire event. An example of this is a recent legal burning day in Douglas County, but because of temperature differentials, dust devils formed. A dust devil came through a permitted fire and caused the fire to spread down the road. Fire fighters responded and put the fire out quickly. This fire was not critical, but it could have been more critical because of wind. For a situation like this, there would be no liability. That is our goal, but my concern is that unless we recover monies for the fund, we do not know from year to year what our fire exposure is going to be. I think it is important to move forward with A.B. 86, so we can recover monies from appropriate entities who have been negligent. This will keep taxpayer, fire district, and fire department burdens to a minimum. I hope this information provides enough description to answer your questions, Assemblywoman Peters.

**Chair Carlton:**

Mr. Taylor, I know you are watching this meeting on YouTube, so there is a about a 20- to 30-second delay. Committee members should remember this and expect a delay before your questions are answered.

Have you been able to estimate any actual impact on the fire fund?

**Terry Taylor:**

I have researched past payouts for one department, the East Fork Fire Protection District, and I looked at the last seven years that the District participated in the fund. That fire district's costs have consistently risen, and we expect that the costs will continue to rise for fiscal year (FY) 2021 based on a fire in a neighboring fire district. This neighboring fire occurred in June 2020. The impact of the bill is not designed to drain the fund in any way, the costs of investigation and litigation are already occurring and are not paid by the fund. The purpose of this bill is to be able, under appropriate circumstances, to bring money back to the fund, minimizing the state's costs so additional funds will not have to be requested from the State General Fund. This will also help to ensure the fund will be self-supporting, over time. I do not see a drain on the fund, I see the recovery of additional costs to the fund.

**Chair Carlton:**

We always want to have a conversation about both sides of the equation for the record. Are there any other questions from Committee members?

**Assemblywoman Titus:**

I am wondering about the path for monies awarded in a lawsuit. Can someone be sued by a county commissioner, a city, and a fire district? And if penalties are awarded, are those funds deposited to the fire fund and then disbursed to the county, city, and fire district? Are five separate lawsuits required and then funds are divided?

**Terry Taylor:**

Typically, the location of where the fire started establishes jurisdiction for the event. For example, for a fire that started in the East Fork Fire Protection District in Douglas County, the lawsuit for all parties involved would be in the Ninth Judicial District. The other parties that expended money for the event would become third party plaintiffs. This means that there would be one lead entity, and the remaining parties would then join together. To clarify, these are public entities to which I am referring, as well as district attorneys or city attorneys for this type of litigation. In my discussions with the wildfire committee and others, I have presented this information as an investigator both in public sector settings and private sector settings, and I have participated with teams of people. What we find is that there is a lead plaintiff, but in most cases, the lawsuits are settled. At that point, the fund which was used to pay expenses receives a percentage. As an example, if the fund paid 25 percent of firefighting costs for the East Fork Fire Protection District's \$6 million neighboring fire in June 2020 and the East Fork Fire Protection District was able to sue the responsible party — we know what started that fire, but we do not know who started the fire — 25 percent of that recovery would go back to the fund.

**Chair Carlton:**

I would like to clarify that when you refer to "agency", you could be referring to a state agency. Is that correct? Could a county sue a state agency?

**Terry Taylor:**

Yes, it could be a state agency. It could also be a local agency. We have had circumstances in the past where agencies used prescribed fires, and a prescribed fire escaped control because of both anticipated and unanticipated weather actions. I am sure we are all familiar with an event a few years ago. In that case, the state agency did not use the wildfire protection money, the state agency settled the case using funds from the State General Fund. I am not sure how this would be handled with a local government entity using a prescribed fire. The Crystal Bay/Incline area and the North Lake Tahoe Fire Protection District has conducted extensive prescribed fires over the past 30 years, and Chief Michael Brown has been involved with those prescribed fires.

**Michael Brown, Fire Chief (Retired), North Lake Tahoe Fire Protection District, representing the Nevada Fire Chiefs Association:**

For a building we were once looking at, there was a state agency that did show negligence, but I believe we would be working together to ensure that we were doing everything to protect that state agency because we are partners. We are involved in several partnership programs, so if the state agency was working in the jurisdiction of a local fire district, for example, there would be agreements in place to cover how an escaped fire was funded and how the fire was to be suppressed. Many prior discussions about prescribed fires take place between agencies, whether it be federal, state, or local jurisdiction. We hope to alleviate those types of situations and not have to get to the point where we are looking at a lawsuit against a state agency.

**Assemblywoman Gorelow:**

I will try not to get into the policy for A.B. 86. My husband is a meteorologist and he predicts fire weather, so he goes out to some fires and helps support firefighters. He is paid by the federal government. I am curious how the federal government's budget can be used to assist state budgets and when this happens. Can you provide more detail on this?

**Michael Brown:**

Participating on team assignments and being paid by the federal government is done through agreements executed with our federal partners by the agency that employs your husband. Normally, the area with the most jurisdiction, whether it is the Bureau of Land Management, the Nevada Division of Forestry, or local government is responsible for paying for those fires. Following that event, if any type of investigation work finds negligence, that agency would pursue the party that could be held negligent. This is how the federal government works and it is similar to local jurisdiction. Fire agencies have annual operating plans with our federal partners, and the plans allow personnel to participate on team assignments in different capacities, including for instance, your husband working as a weather person, or an incident commander of operations, and other fields. Those positions are paid by the federal government and divided between the agencies that have jurisdiction for the largest land base providing the service.

**Chair Carlton:**

Are there any other questions from Committee members?

**Assemblyman Roberts:**

This bill authorizes cities and counties in the state to initiate civil action. If, for example, a county commission pursues civil action and the state does not, and the county commission recuperates funds for expenses, would the county commission still have to reimburse the fund from which the expenditures were made?

**Terry Taylor:**

That is my intent. There may need to be specific language added for that. Typically, as Mr. Brown said, these actions happen through interlocal agreements where relationships have been established, including financial relationships as well as response capabilities. I can provide information for the private sector, where I worked for seven years in the insurance industry. From the Caughlin Ranch fire that happened nine years ago, we recovered tens of millions of dollars, and it was apportioned out on a percentage basis because we were not able to recover 100 percent of all losses to homeowners and property owners. The amount recovered was apportioned based on the loss itself. There might have been a house with \$100,000 worth of damage, and next door a house was destroyed with \$1.0 million in damages. There was a pool of money that NV Energy contributed, and which was divided based on the percentage of loss. I think it is fair to say that with the number of fires, and of course we are also talking about accidental fires including lightning strikes when it cannot be determined who to sue, that this type of litigation is not constant, especially for larger fires. Part of this bill was intended to allow towns and local governments to be flexible for smaller fires when wildfire protection money or FMAG [Fire Management Assistance Grant] money is not available. Giving local governments more flexibility to recover local costs is an important element of this bill. This bill will clarify that authority in statute.

**Assemblyman Roberts:**

Do your agreements between jurisdictions cover cost sharing?

**Terry Taylor:**

Typically, our agreements are based on either acreage or on what I call "effort". A larger department such as the Truckee Meadows Fire Protection District or the Reno Fire Department may send more resources than a smaller department, so the effort expended is recognized. The larger departments may have more costs, but a small department where the fire started may be the lead plaintiff in a subrogation action, and then larger fire departments would provide the amount of expenditures and recovery of costs would occur. Typically, the recovery is not 100 percent of expenditures, so reimbursement of expenditures to those entities is apportioned based on a portion of costs.

**Assemblyman Leavitt:**

Is there any law, fine, or other legal action already in place for negligence in these situations? If there is, will this bill be above and beyond those fines? Will existing fines be eliminated with this opportunity for civil action?

**Terry Taylor:**

The criminal aspect is usually a misdemeanor which by statute is defined as a \$1,000 fine. That small fine was discussed following the Caughlin Ranch fire nine years ago. If we cite a corporation, the most we can do is to put that corporation on probation for one year, along with a \$1,000 fine. I have talked with district attorneys in the state, and their belief is that criminal law is not appropriate in these situations, and civil remedy makes more sense to make the community whole again after the fire.

**Assemblyman Leavitt:**

I know that a \$1,000 fine is not a lot of money, but would those fines no longer be assessed if a civil case was brought forward and costs were remediated in that manner, or would the \$1,000 fine still be assessed?

**Terry Taylor:**

Both penalties could be pursued. You could move forward with a misdemeanor criminal case if it could be proven beyond a reasonable doubt, and it often can. You could also show negligence and willfulness. Negligence is the standard, and if both negligence and willfulness can be proven, you would be able to pursue action in criminal court which can help the case in civil court. If the defendant who is also a civil defendant has already been found guilty of a criminal offense, they must overcome that guilt in a civil case. You could, in fact, have both cases occur after a wildfire and investigation, if the defendant is identified and proven to be willful and negligent in the activity that caused a fire.

**Chair Carlton:**

I appreciate the question, but I think we are starting to delve into the policy behind A.B. 86. I know that the policy and the fiscal impact blend together, and this is an example of how we will have to approach many bills that come before the Committee. There will have to be questions on policy, so we understand the fiscal impact, but we do not want to delve into the policy. We want to respect the work that the policy committees have done.

Are there any other questions from Committee members? [There were none.]

**Chair Carlton:**

We will not be addressing the amendment because it is a policy amendment. I assume you will be working with the chair of the committee and committee members, as well as other members. Assemblywoman Peters, do you have any closing comments?

**Assemblywoman Peters:**

I wanted to thank Mr. Taylor and Mr. Brown for attending the meeting this morning, for discussing the issues, and for their advocacy to recover costs to state and local governments.

**Chair Carlton:**

I am having technical difficulty so I will recess this meeting [ at 9:40 a.m.].

I will call the meeting back to order [at 9:41 a.m.].

Since this is a bill hearing, we will go ahead and hear from those who support, oppose, or are neutral on A.B. 86. I understand that there is no one in the queue who is in support, opposition, or neutral on this bill. Is that correct? [There was no one.]

I will close the hearing on A.B. 86.

We did have a bill to introduce, but the bill was returned for technical adjustments. I will open the meeting for public comment. [There was none.]

The meeting is adjourned [at 9:43 a.m.].

RESPECTFULLY SUBMITTED:

---

Carmen M. Neveau  
Committee Secretary

APPROVED BY:

---

Assemblywoman Maggie Carlton, Chair

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



## **EXHIBITS**

[Exhibit A](#) is the Agenda.

[Exhibit B](#) is the Attendance Roster.