

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

**Seventy-Third Session  
March 30, 2005**

The Committee on Natural Resources, Agriculture, and Mining was called to order at 1:37 p.m., on Wednesday, March 30, 2005. Chairman Jerry D. Claborn presided in Room 3161 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Mr. Jerry D. Claborn, Chairman  
Mr. Kelvin Atkinson, Vice Chairman  
Mr. John C. Carpenter  
Mr. Mo Denis  
Mr. Pete Goicoechea  
Mr. Tom Grady  
Mr. Joseph M. Hogan  
Mrs. Marilyn Kirkpatrick  
Mr. John Marvel  
Ms. Genie Ohrenschall  
Mrs. Debbie Smith

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Sharron Angle, Assembly District No. 26,  
Washoe County

**STAFF MEMBERS PRESENT:**

Amber Joiner, Committee Policy Analyst  
Mary Garcia, Committee Attaché  
Matthew Mowbray

**OTHERS PRESENT:**

Will Rasavage, Intern for Assemblywoman Angle  
Brian Keraly, President, Nevada Emission Testers Council  
L.C. Merrill, District Manager, Smog Busters, Las Vegas, Nevada  
Peter Krueger, Legislative Advocate, Nevada Emission Testers Council  
Russ Lucas, Owner, Jiffy Smog, Las Vegas, Nevada  
Leo Drozdoff, Administrator, Division of Environmental Protection,  
Nevada Department of Conservation and Natural Resources  
Dennis Ransel, Planning Manager, Air Quality and Environmental  
Management, Clark County, Nevada  
Andrew C. Goodrich, Director, Air Quality Management Division, District  
Health Department, Washoe County, Nevada  
Dan Hyde, Fleet and Transportation Services Manager, City of Las Vegas,  
Nevada  
Joseph Johnson, Nevada Legislative Representative, Toiyabe Chapter,  
Sierra Club  
Troy Dillard, Administrator, Compliance Enforcement Division, Nevada  
Department of Motor Vehicles  
Gerald Lent, President, Nevada Hunters Association  
Bud Sonnentag, Private Citizen, Gabbs, Nevada  
Ron Jones, Private Citizen, Reno, Nevada  
Bruce Arkell, Legislative Advocate, Nevada Sportsman Coalition  
Terry Crawford, Director, Nevada Department of Wildlife  
Fred Church, Chairman, Nevada Bowhunters Association  
Rick Elmore, Private Citizen, Reno, Nevada  
David McNinch, Member, State Board of Wildlife Commissioners, Nevada  
Department of Wildlife  
Ed Wagner, Coalition for Nevada's Wildlife  
Joel Blakeslee, Coalition for Nevada's Wildlife  
Chris MacKenzie, Vice Chairman, State Board of Wildlife Commissioners,  
Nevada Department of Wildlife  
Larry Johnson, President, Coalition for Nevada's Wildlife  
Doug Zimmerman, Chief, Bureau of Waste Management, Division of  
Environmental Protection, Nevada Department of Conservation and  
Natural Resources

**Chairman Claborn:**

[Meeting called to order at 1:37 p.m. Roll called.] First, I would like to open the hearing on A.B. 225.

**Assembly Bill 225: Revises provisions governing emissions testing for certain motor vehicles and provisions regarding certain fleets to authorize use of certain additives for motor vehicle fuel. (BDR 40-211)**

**Assemblywoman Sharron Angle, Assembly District No. 26, Washoe County:**

[Submitted information packet, [Exhibit B](#).] Assembly Bill 225 is a constituent-requested bill. People often ask why they have to have an annual smog check. Assembly Bill 225 is a two-part bill concerning emissions. The first part addresses what we commonly call "smog checks." The second part addresses additives and catalysts that can improve emissions control, as well as mileage and performance of an engine. You'll hear both of these parts.

I want to introduce to you my intern for this session, Will Rasavage. He is from Washington State and is attending the University of Nevada, Reno. He is very interested in political science and has developed a PowerPoint presentation ([Exhibit C](#)) for you.

**Will Rasavage, Intern for Assemblywoman Angle:**

[Roughly followed [Exhibit C](#).] Assembly Bill 225 makes smog checks biennial and exempts newer cars. Current law requires the State Environmental Commission and the Department of Motor Vehicles to regulate and inspect motor vehicles for the control of emissions. It also authorizes the State Environmental Commission to exempt certain vehicles from emissions compliance.

Nevada currently conducts unnecessary and excessive emissions testing. Vehicles eight years old have less than a 1 percent failure rate. It is also inconvenient, as all registration can be done electronically, but drivers still have to go in once a year to pay the \$25 fee and get a certificate saying they did a 30-second test. Furthermore, U.S. Environmental Protection Agency (EPA) standards are inconsistently applied. Not all states, counties, or areas within counties have smog checks.

Assembly Bill 225 would change the frequency of emissions testing from annually to biennially. Compliance evidence would be submitted in even- or odd-numbered years according to the first registration. For example, if a vehicle were registered in an even-numbered year, smog checks for that vehicle would be conducted in subsequent even-numbered years. Exemptions would be made for vehicles three years old or newer, or four years old or older if there are fewer than 36,000 miles on the odometer.

Mrs. Angle would like to amend the bill to include a roll date for vehicles 30 years and older for exemption for classification as classic automobiles. Thirty

years ago would be 1975, so, next year, the new classic would be 1976. This would allow for the Legislature not to go in every year and amend the law for classic autos; the year would just automatically roll.

[Will Rasavage, continued.] Only 10 states have annual smog checks. Seventeen states, including Michigan, the car capital, do not have checks. Twenty-three of the 33 states that do have checks require them biennially. Eleven states exempt vehicles three years old or newer. Two states exempt cars up to five years old.

Cars from 1997 or newer exhaust far less pollutants into the environment, as one can see by this chart (page 7 of [Exhibit C](#)). It doesn't make sense to continue to require them to undergo annual emissions tests if they are going to pass every time. Cars 1996 and newer still make up less than 1 percent of all emissions test failures.

The Lake Tahoe Basin has no smog check requirements on the Nevada side and only biennial checks on the California side. Checks are required only in urban areas of Clark and Washoe Counties. However, the law does not stop vehicles registered in more rural areas, and thus not subject to urban emission standards, from driving in the cities.

Several questions are commonly asked about this bill. First, what about those who will tamper to defeat the emission control devices? Certified mechanics will not disable smog devices, and the systems are so complex that owners won't do it. They don't want to risk voiding the warranty.

The second commonly asked question is, what if some newer cars fail? Warranties on newer vehicles require the owners to maintain the vehicle to keep the warranty valid. Less than 0.5 percent of newer cars fail.

What impacts would there be on the emissions testing industry? Currently, smog check businesses are usually coupled with auto repair. Only 115 businesses in Nevada have emissions testing as their primary business.

What if the smog device fails between checks? People report smoking vehicles. The "check engine" light will warn the vehicle owner. Even now, under the annual check, there are automotive problems in vehicles.

The latter part of [A.B. 225](#) defines fuel additives, including catalysts. It would allow for the use of an additive in the state fleet and permit the Transportation Commission a new classification of fuel additive. [Assembly Bill 225](#) would allow

additives to be used by the Nevada State vehicle fleet to reduce pollution, increase fuel mileage, and increase engine longevity.

[Will Rasavage, continued.] Section 4 of the bill defines a fuel additive as a product added to motor vehicle fuel to reduce the production of contaminants by a motor vehicle and enhance the fuel efficiency of a motor vehicle. Such an additive must meet 40 CFR part 79 [Code of Federal Regulations], so not everyone would be able to come up with a fuel additive and put it in their car. It would actually have to be approved by the U.S. EPA. Presently, additives are allowed to citizens, but there is no legal definition in *Nevada Revised Statutes* (NRS), nor is there a provision for allowing state fleets to use additives in storage tanks.

This bill would allow state fleets to actually put fuel additives in their storage tanks, so when they fueled their vehicles, the additive would already be included. The use of fuel additives in these fleets can reduce the production of contaminants and enhance the fuel efficiency of the vehicle, thus saving the State money. Regarding the use of fuel additives in fleets, Section 9, subsection 2, of the bill states that the Commission shall not discriminate against any product that is composed of organic aromatic esters containing no metallic or toxic air contaminants.

To summarize A.B. 225,

- Biennial smog checks save time.
- Better technology, not smog checks, account for improved environmental conditions.
- Seventeen states don't require smog checks, while 23 states have biennial checks.
- Current law allows for the State Environmental Commission to set regulation standards. This bill would not change that. If the Commission felt that more rigorous testing were needed under the biennial plan, or if they felt a vehicle might fail sooner rather than later, this bill would still allow for them to come up with a more rigorous test.
- This bill does not reduce funding or set limits on fees collected by the businesses that do smog checks.
- The bill permits an option to allow the fuel additive approved by the EPA to be used in State fleet fuel storage tanks. That is only an option; they do not have to use the fuel additive. The State motor pool and some of the other State appropriations that have actually used additives really like that they can save money by doing it. However, as they are not currently allowed by law to do it, they lose money. They would like that to be changed.

**Assemblyman Goicoechea:**

You say only 1 or 2 percent fail. I'm guessing many vehicles that were checked probably technically failed, but were adjusted or repaired right there when their smog check was run. I think that's why most smog checks are done at repair shops.

**Assemblywoman Angle:**

That could happen. These are just statistics that we have from the DMV. We don't know exactly. They don't report in a smog check or repair station if they were borderline or had to be repaired in order to pass.

**Assemblyman Goicoechea:**

I'm assuming, when you say failed, that means you couldn't get it passed. So that means they could, in fact, have come in for their annual smog check and technically have been failing at that point, but were adjusted or fixed and did pass.

**Assemblyman Marvel:**

This requirement is only in two counties, isn't it?

**Assemblywoman Angle:**

Yes, Clark and Washoe, and not all of Washoe County is required. As we showed in our slide, Lake Tahoe, on the Nevada side, is not required, and on the California side, it is required biennially. There are some inconsistencies even within Washoe County.

**Assemblyman Marvel:**

A few years ago, a certain assemblywoman from Clark County wanted it statewide, and the rural people got there really quickly and killed the bill.

**Assemblyman Denis:**

In Las Vegas, we have drivers coming in from Pahrump who do not have to meet the requirement, yet they work in Las Vegas and drive their cars on the road between. However, this does not address that. Under this bill, the areas where testing is required would stay the same, is that correct?

**Assemblywoman Angle:**

Right. We do not want to expand this. In fact, we want to make it less expansive. I wish they had not included Washoe County. Sometimes they include us with the rurals, and I think I would have liked that. My constituents certainly would have liked it. It becomes more of a monetary issue than an environmental issue in a lot of cases.

**Assemblyman Denis:**

I would be interested to know what fiscal impact this has one way or the other. Will it save us money or cost us money?

**Assemblywoman Angle:**

I'm sure you're going to hear that in testimony. I will just say that we have been talking to the different agencies and are most willing to work with them on some kind of amendment that would be good for everyone.

**Brian Keraly, President, Nevada Emission Testers Council:**

I represent smog stations in Clark and Washoe Counties that make up about 35 percent of all emission testers in Nevada. Some of these parties, who are crucially important to the current emissions program, include Terrible Herbst, with 19 stations; Jiffy Smog, with 12 stations; Smog Busters, 23 stations; Sierra Service Stations, with 6 stations; and others.

It is too soon to modify the existing EPA State implementation plan in Clark County, considering the county is not meeting the new EPA eight-hour ozone standards. Clark County has been designated for nonattainment for eight-hour ozone standards effective September 2004. New control measures in the State implementation plan are due by June 2007. Ozone attainment is determined by measuring oxides of nitrogen (NOx), which means a high enhanced emissions testing program would be required. That could mean dynamometer testing because the vehicles must be tested under a load to test for NOx.

We believe that greater attention needs to be directed toward newer vehicles because they are driven much more than normal. Some vehicles are driven so much that, even though they might be newer, their emission control systems tend to break down with greater frequency than those in vehicles driven normal amounts.

The motoring public tends to ignore their "check engine" lights and regular maintenance until they are encouraged to repair the problem when they need an emissions test. Then they are compelled to make the necessary repairs. We can't let motorists continue to drive for two more years without repairing their vehicles. Annual testing is the best way to detect gross polluters, illegally modified engines, and emissions-related hardware such as air injection systems and catalytic converters.

Whatever the failure rate is, it probably represents 90 percent of the gross polluters out there. Even if we are moving toward carbon monoxide (CO) and

hydrocarbon (HC) attainment, this is not the time to change our successful annual program, which will ensure maintaining attainment levels. Clark County is one of the fastest-growing metropolitan areas in the country, with an estimated 6,000 people moving to the county every month. When all the areas that will be approved for residential development are fully built out and occupied, who knows what the impact on the airshed will be?

[Brian Keraly, continued.] According to an EPA fact sheet, improved air quality means people live longer, healthier, more productive lives, and this builds a stronger economy. EPA analysis, based on recent monitoring data, shows that meeting the ozone standard can prevent hundreds of emergency room visits; thousands of hospital admissions for asthma and other lung diseases, about half of which are young children; hundreds of thousands of school absences; and more than a million days when people have to reduce their activity and productivity because they are suffering from reduced lung function and other ozone-related respiratory symptoms. We need to continue annual emissions testing to ensure clean air for our residents now and in the future.

**Assemblyman Denis:**

In the previous presentation, they talked about exempting vehicles three years old and newer. How many vehicles three years old or newer that you test actually need to be repaired?

**Brian Karaley:**

Mr. Merrill has a lot of that information. Although I don't know the exact figure, I think there are more like 115 test-and-repair businesses rather than 115 that only test.

**Assemblyman Marvel:**

What do you charge for an emissions test?

**Brian Keraly:**

The DMV does an annual survey of shop labor rates. They come up with a maximum amount we can charge for labor, and then they add the certificate fee and the MCI charge. Right now, it's \$35.06 for a light-duty vehicle and \$36.00 for a heavy-duty vehicle.

**Assemblyman Marvel:**

Do you modify these vehicles, or do you refer them to someplace where they can be modified?

**Brian Keraly:**

Out of Smog Busters' 23 stations, we have two repair facilities and one adjustment facility.

**Assemblyman Marvel:**

What's the usual charge for those?

**Brian Keraly:**

An adjustment could run about \$60, depending on what it is.

**Assemblyman Marvel:**

What causes most of these malfunctions?

**Brian Keraly:**

It's a lot of different things. With older cars, it's usually the carburetor. With newer cars, it can be oxygen sensors. There are quite a few different things.

**Assemblyman Marvel:**

Are people required to do this, or does somebody actually turn them in to be inspected? Is every vehicle owner in Clark or Washoe County required to have their cars tested annually?

**Brian Keraly:**

Yes, if they are 1968 or newer, except for vehicles two years old or newer in Clark County. I believe it's the same in Washoe County.

**L.C. Merrill, District Manager, Smog Busters, Las Vegas, Nevada:**

Smog Busters has 23 emission stations in the Las Vegas area. Regarding newer vehicle testing, On-Board Diagnosis (OBD) and OBD II systems, that technology is in its early stages and not a lot of data is available right now. However, what is available is quite alarming. The current data available from Department of Motor Vehicles, Management Services and Programming Division, shows that, in the third quarter of 2003, 1996-model-year cars had a failure rate of 14.7 percent, and 14.9 percent for the fourth quarter. An overall 13.7 percent failure rate was shown for the year 2004.

The failure rate for 2000-model-year cars in the third quarter of 2003 was 3.3 percent. Their failure rate in the fourth quarter of 2003 was 4.4 percent. For the year 2004, 2000-model-year vehicles had a 4.3 percent fail rate. There is not much data for the years 2004-2005 because they are just now coming into the testing procedure. For the year 2004, the failure rate was 3.9 percent and 6.5 percent respectively.

[L. C. Merrill, continued.] OBD II testing is still in its new stage. To say it is not working is wrong. The percentage of new cars out there that are gross polluters shows that consumers are still not paying attention to their "check engine" lights. Thinking that going to biennial testing because annual testing is unnecessary, excessive, and inconvenient or that eight-year-old vehicles do not reach a 1 percent fail rate is wrong.

Biennial testing is only going to lead to greater problems down the road. Consumers are increasingly going to ignore their "check engine" lights by thinking their cars are running fine when, in fact, they are not. Those lights are on for a reason. They're going to wait two years before they have to shell out any money to get it fixed. We can't do that; we need to give this program more time. There are gross polluters. We need to keep the program going.

**Assemblyman Hogan:**

We're getting information with a wide variance for the failure rates, particularly for the newer models. According to the presentation we had, vehicles seem to go back six or seven years before the failure rate reaches 1 percent. Your figures indicated much higher failure rates for newer models. Can you account for that? Are you defining failure differently? I assume that, in each case, we're talking about that failure that is reportable to the DMV and would, until it is corrected, prevent approval at the DMV level.

**L.C. Merrill:**

The initial summary reports are a matter of public record and are available through DMV management and public services. The fail rate is an indication that the vehicle failed for one reason or another. That is happening more often on newer vehicles than people realize. People will put a piece of tape on a "check engine" light or they'll unscrew the bulb. That is cause for an automatic failure under this program.

**Assemblyman Hogan:**

Are you familiar with the very low numbers we saw presented? Can you distinguish between what they are derived from and what your numbers are derived from?

**L.C. Merrill:**

To be honest with you, I don't know where those numbers come from. I was faxed a copy from the Department of Motor Vehicles and Public Safety's Management Service Division. That's where I got my figures.

**Peter Krueger, Legislative Advocate, Emission Testers Council:**

I just talked with Assemblywoman Angle. She derived her numbers from the same source that we did. I think someone from the DMV can probably put this confusion to rest.

**Russ Lucas, Owner, Jiffy Smog, Las Vegas, Nevada:**

Jiffy Smog has 12 locations in Clark County. OBD stands for on-board diagnostics. 1996 and newer vehicles are all equipped with on-board computer systems, where the testing regimen involves merely hooking up the analyzer machine from the smog station to the vehicle's on-board computer system. Information from that vehicle's system is downloaded into the computer and analyzed. This is in contrast to the old tailpipe and RPM test that is run on vehicles older than that.

I concur with Mr. Keraly that, from a policy point of view, it is unwise to dismantle or weaken a testing regimen that is an integral part of the State implementation plans that have been accepted by the EPA, especially in light of the fact that Clark County is now out of attainment regarding ozone, and Las Vegas is experiencing unprecedented population growth. It would certainly seem a wiser course to see the effects of these trends on the airshed before adopting any changes to the existing program.

Primarily, though, I would like to comment on the financial impact A.B. 225 would have on the emission testing industry. Some years ago, Nevada made a decision to implement a decentralized emission testing program, which involved creating a partnership between the DMV and private industry. In exchange for our considerable investment in capital equipment, employees, real estate, and other costs, we were given the reasonable prospect of being able to operate in a viable manner through a State-approved fee structure.

Ours is a fixed-cost business model. The testing equipment we are mandated to buy is expensive and requires a high level of maintenance in order to maintain strict calibration standards. We have fixed payments for leases, mortgages, wages, insurance, and taxes on our stations regardless of whether we test 10 vehicles or 100 vehicles. Property tax on business property is likely to go up substantially in the near future.

Needless to say, any legislative action that would suddenly cut our annual customer base by 50 percent cannot help but have serious financial repercussions. We would have all the same bills to pay, but only half the revenue. Assembly Bill 225 makes no effort to address this issue. I don't know of any business sector that can survive that kind of impact, and I can assure

you that you will see many operators go out of business and many stations close if this bill becomes law.

[Russ Lucas, continued.] I believe any study of those states that have decentralized biennial testing will show that the fees for emissions tests are substantially higher than those paid in Nevada today. California has smog check prices well over triple the average prices in Nevada. While I am not in favor of going to biennial testing, if this should be the direction, then the fee structure for the DMV, as well as for the industry, must be addressed.

I'm sure you will hear from State and local air quality agencies about the impact of this bill on the revenue they rely on to fund their air quality programs. You will also hear about the risk of invalidating the State implementation plans approved by the EPA. I believe this bill is bad, or at least very premature, air quality policy. It also completely ignores the economic consequences it will generate on the industry and the agencies if it becomes law.

**Assemblyman Denis:**

If the fees were doubled so you received the same amount of money from biennial testing, would that make a difference?

**Russ Lucas:**

We would like to study that issue and this total issue with the other interested participants. I can't say it's a straight mathematical formula where we can double the fees and be in the same financial position. There are a lot of variables here, and I think they should be studied.

**Leo Drozdoff, Administrator, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources:**

The Division is opposed to A.B. 225 as written. This bill will have a significant fiscal impact on the funding of Nevada's air quality programs at both the State and local levels. By requiring the inspection of motor vehicles to occur no more frequently than every two years, and requiring the State Environmental Commission to exempt vehicles three years old or newer, the revenue generated through fees assessed at the time of testing would be reduced to less than half.

The Division and other air quality entities in Nevada rely on this revenue to partially fund their air programs. This significant reduction in revenue would jeopardize existing air programs in Nevada. Most importantly, it would threaten public health through reductions in air quality permitting, enforcement, and planning. The provisions of this bill may affect Clark County's ability to demonstrate attainment of the eight-hour ozone standard and may affect

agreements the county has reached with EPA in their carbon monoxide (CO) state implementation plan (SIP).

[Leo Drozdoff, continued.] From our perspective, in addition to the fiscal impacts, this is also an important timing and process issue related to two nonattainment pollutants and their associated federal planning requirements. Clark County was recently designated nonattainment of the new eight-hour ozone standard by EPA. They are currently working on the emissions and modeling data that they will need in order to select appropriate control measures for this new eight-hour standard. Until that initial work is done, the county will be unable to determine whether or not the vehicle inspection program, as it currently exists, will be required for attainment of the standard.

Clark County's state implementation plan for carbon monoxide, which was approved by EPA late last year, includes the current vehicle inspection and maintenance program as a control requirement. Certainly, the County will be reanalyzing the data and reviewing all of the control strategy commitments they have made in that improved SIP as they prepare to submit a request to U.S. EPA for redesignation of the Las Vegas Valley to attainment of the CO standard. However, that work is expected to take at least a year to complete. Until the formal changes requested, including the analysis I just mentioned, are approved by EPA, the vehicle inspection program is a federal requirement.

While we agree with the general intent of this legislation to reduce the regulatory burden on Nevada motorists, a reduction in testing cannot be passed without a full evaluation and remediation of the potential planning impacts and decreased revenues. We are certainly committed to working with Washoe and Clark Counties over the next biennium as they reevaluate their current control measures for CO and determine the necessary control measures for ozone to determine whether changes to their vehicle inspection and maintenance programs are warranted and can be approved by EPA.

Finally, the Division has concerns about the inclusion of fuel additives and catalysts in the State's alternate fuels program. These products would be practically impossible to regulate, and this bill, as written, would open the door to hundreds of off-the-shelf products. Unlike an alternative fuel, which is blended at the distribution center to national standards and regulated by the Department of Agriculture through its fuels testing program, the Division would have no way of determining whether the fuel additives or catalysts are being added consistently in correct proportion, or are being added at all to the storage tanks or, in some cases, to each vehicle in a fleet.

[Leo Drozdoff, continued.] The bill requires that fuel additives meet EPA standards, 40 CFR 79, but this simply means that the additives or catalysts must be shown not to increase emissions over a base fuel. The EPA does not certify the emissions reductions benefits of any fuel additives or catalysts. The widespread reliance on these products to satisfy alternate fuel requirements for fleets could seriously undermine the alternate fuel program and our ability to ensure compliance.

Last Friday, along with representatives from the Department of Agriculture, Clark County, and Washoe County, NDEP met with Assemblywoman Angle. We are certainly committed to working with her over the next biennium to review these issues and ensure that statewide air quality programs are preserved and enhanced and, most importantly, that public health is maintained and protected.

**Assemblyman Hogan:**

Suppose the Governor were to urgently call you and say, "I have been presented with two sets of data indicating the failure rates of vehicles of different vintage; which of them should I believe?" Which do you believe more accurately represents the actual failure rate? You may have seen the ones that vary from less than one percent for many years. Others presented verbally showed the rates are actually large multiples of that. This is really quite important to our decision.

**Leo Drozdoff:**

We have the same numbers everybody else has. It is my understanding that representatives from DMV are here and are, in fact, the proper people to give you your answer.

**Assemblyman Hogan:**

You said that to pass this legislation might put us in serious conflict with the federal requirements. Would going to a two-year cycle actually put us in conflict and possible noncompliance with existing federal regulations?

**Leo Drozdoff:**

The short answer is yes. Those counties we mentioned are in nonattainment. As a result, they have to put forward their implementation plans for getting back into attainment. The annual testing we just mentioned is one of those components. If you change the plan while you are still trying to come into compliance, you're changing a plan that has been approved by the federal EPA.

**Assemblyman Hogan:**

That would indicate what we're in conflict with is the plan. If we weren't in a situation where we had a plan that promised to stay on an annual basis, you wouldn't automatically violate the federal standards. [Mr. Drozdoff assented.]

**Assemblyman Marvel:**

Do we have a deadline for Clark County or Washoe County to be in attainment?

**Dennis Ransel, Planning Manager, Air Quality and Environmental Management,  
Clark County, Nevada:**

We are in nonattainment for three pollutants. Two of them, CO and ozone, are directly impacted by the smog test program. We have worked for years to achieve attainment of the standard for carbon monoxide, and a primary control measure has been the smog test program. We received approval of our plan in October 2004, and part of that approval was this inspection and maintenance (I/M) program. If we were to change this program now, technically we would be in violation of federal law and subject to lawsuit.

We have the opportunity, over time, to develop a maintenance plan that will show how we will continue to maintain that standard for the next ten years and to submit that plan. At that point in time, we have the opportunity to look at revising our control measures, and we intend to do that. We anticipate completing a maintenance plan for CO in the first half of 2006.

The other issue is the ozone nonattainment, a new eight-hour standard EPA promulgated last year. They designated us as nonattainment for ozone as of September 2004. We have begun the work to find out how to address ozone; it's a very complicated and complex issue. We have until the end of 2007 to submit to EPA a plan for how we are going to attain the standard and include in that the control measures we intend to use to do that. We have until 2009 to actually achieve the standard based on three years of good data from 2007, 2008, and 2009.

We have to figure out what we need to do prior to submitting the plan in 2007. We're targeting 2006.

**Assemblyman Marvel:**

What are the sanctions if we don't? Is it highway money?

**Dennis Ransel:**

Highway money is right off the top. That's downstream. If we can't demonstrate attainment of that standard and reach the attainment date that is

identified for us, we are subject to losing federal highway funds for the Las Vegas Valley, which we wouldn't like to see happen.

**Assemblyman Marvel:**

That would be serious.

**Dennis Ransel:**

That's correct. On the conservative side, we like to make sure, particularly with the vehicle mile traveled per day (VMT) growth. The VMT is exceeding our projections every year. We could overwhelm our roadways and our emissions reductions measures just by the sheer growth. It would not be wise for us, at this point in time, to start reducing our control measures. We're not sure we can do that and still meet standards.

**Assemblyman Hogan:**

I guess we don't have access to the exact terms and commitments included in the county's plan. I hope we don't need to study that. There may be some ways that we could contribute to the convenience of our constituents without seriously changing the rules until such time as more research might be available and you could incorporate that.

I wonder if we could do something that might be less troublesome, such as permitting more of the recent models to be exempted. If the figures we were given for less than 1 percent are more accurate, maybe we could give people more of a break by not having to have their very late-model cars checked rather than jump right into a biennial program. Maybe we could implement some variation of the bill and perhaps still remain in compliance or be able to negotiate a minor change without too much difficulty. Is there a middle course where we could do part of what we're trying to do and that would be less troublesome and less offensive to the federal agencies?

**Dennis Ransel:**

If I have to give an absolute answer, that answer is no. The plan, as it stands, has an annual inspection requirement that is monitored through the registration process. We feel strongly that we need the opportunity to assess what we can do in terms of ozone. We could look at adjustments in terms of the carbon monoxide through our maintenance plan.

Ozone is the issue to which we still don't know the answer. I don't think it would be wise for us, at this point in time, to let a program become less stringent than the program that was already in place when we were designated nonattainment. That doesn't make sense. I think we need to understand exactly what it would take for us to reach attainment, whether it be more stringent.

[Dennis Ransel, continued.] We could use a California-style program where you do a dynamometer test. It is very expensive and requires extensive capital. We hope not to do that kind of thing. We would like the opportunity to assess what we do need. That is for air quality and the health of our people, not for the money or for the benefit of an industry. That's what we're after.

**Assemblyman Carpenter:**

It looks like you've been in nonattainment for years. If your growth continues, you're probably never going to get there.

**Dennis Ransel:**

We've battled the CO issue for a number of years. We have now reached the point where our plan has been approved, and we have not exceeded that standard since 1998. The EPA, through our monitor data, has declared that we have achieved that standard. We are now at the next step, which is to develop and submit the maintenance plan and request redesignation. Part of that process is to reevaluate our control measures and see what ones we really need to continue in order to maintain the standard for ten years.

Ozone is a brand new standard. We had been in attainment until the new standard was promulgated last year. However, we have been designated nonattainment as of September 2004. We have a success story with CO and a new challenge with ozone.

**Assemblyman Marvel:**

Do we have the capability of combating the ozone problem?

**Dennis Ransel:**

Yes, we do. The problem with ozone is identifying where it's coming from, what the sources are, how the chemistry reacts, and being able to determine which sources we need to go after, whether they're VOCs or NOx, which is primarily from cars. Volatile organic compounds are emitted by gas stations, dry cleaners, paint shops, et cetera, as vapors. We'll need to find out what it is we need to go after. We also need to find out how much of it is from California.

**Assemblyman Marvel:**

Do you have the equipment in place to test for this?

**Dennis Ransel:**

Yes, we have a number of major studies underway now. We are partners with the Desert Research Institute in conducting a major study this summer, during the ozone season, to try to get as much scientific information as we can before

we start determining control measures. That's about a million-dollar study. Fortunately, with the help of Senator Harry Reid we received some federal funding from the EPA. With most of this money right now we're buying equipment.

**Assemblyman Marvel:**

Are these smog tests going to be able to check for this on vehicles? You have a whole plethora of things besides automobiles you have to watch, then?

**Dennis Ransel:**

Yes. We have permitting processes for point sources, and we have the diagnostic or testing system for mobile sources. There are a number of things we can do. It's a matter of determining how stringent we have to be and how many we have to go after.

**Assemblyman Marvel:**

How many people is it going to take?

**Dennis Ransel:**

I think we're about adequately staffed at this time. When we try to determine the exact control measures, we may require some more reinforcement staff, such as for ozone. We have a very large enforcement staff, for example, for PM10 [particulate matter less than ten microns in diameter] or dust. We may need to expand that to focus on things like gas stations and other point sources.

**Assemblyman Denis:**

Does our plan for emissions include vehicles coming from outside the county?

**Dennis Ransel:**

The planning we do, particularly for ozone, definitely does. The nonattainment area for CO is strictly the Las Vegas Valley, and our transportation plans do consider through traffic. Ozone has a larger boundary that incorporates most of Clark County and parts of the counties to the north and south, so we'll be looking at all traffic.

**Andrew C. Goodrich, Director, Air Quality Management Division, District Health Department, Washoe County, Nevada:**

[Submitted prepared statement ([Exhibit D](#)).] The same issues apply to Washoe County. Washoe County is classified as nonattainment for three pollutants: ozone, carbon monoxide, and PM10. Unlike Clark County, we have submitted plans to the EPA that included an annual testing program. They have not yet been approved. It is a bureaucratic process. Las Vegas is a little bit

bigger on the radar screen than Washoe County, but we're hoping to get that approval by this summer. Those plans have been submitted. We are counting on that program to give us the credit to get that plan approved.

**Assemblyman Goicoechea:**

I assume you are also in opposition to the fuel additive program? [Mr. Goodrich replied in the affirmative.]

**Dan Hyde, Fleet and Transportation Services Manager, City of Las Vegas, Nevada:**

I'm here in opposition to A.B. 225 for reasons regarding additives. I've been in the automotive business for 30 years, both in business and in government, and I have seen my share of additives that have been reputed to work miracles. I think it's safe to say that I've seen probably in the neighborhood of 2,000 of these products, and I have not seen one that meets its objectives.

That doesn't mean we are in opposition in the sense that, at some point, an additive may prove to be beneficial; however, the way the bill is currently worded does not address what I think is satisfactory for that proof. If you put a provision in the statute saying that the efficacy of an additive that purports to do certain miraculous things and whose manufacturer is willing to pay for testing, must be proven and demonstrated by a reputable agency such as the California Air Resource Board, then we would be willing to test its benefits for our fleet.

**Joseph Johnson, Legislative Representative, Toiyabe Chapter, Sierra Club:**

I oppose this bill. In much of the discussion you've heard, much of the language used had to do with complying with regulations and meeting plans. I would like to emphasize that this would lead to a diminishment of the capacity to reduce and control pollutants that have proven to be harmful to your voters.

**Troy Dillard, Administrator, Compliance Enforcement Division, Nevada Department of Motor Vehicles:**

We are the ones who handle the account for the smog check program in the state of Nevada. We have the statistics for Mr. Hogan. We're testifying from a neutral position on this bill, since it is not up to us to make policy on this. That is obviously your decision. We just want to supply you with some statistics data on the impact the bill would have on the account as it currently exists, and a couple of the potential issues that were brought forward today.

Regarding failure rates of vehicles in Nevada, we are the agency that holds the actual statistics that come directly from the analyzers who test the vehicles. The rates you saw in the presentation were lower than what the actual numbers

are. I think they arrived at those numbers through a simple misinterpretation of the statistics they got from us.

[Troy Dillard, continued.] There were four pages of statistics, part of them dealing with heavy-duty vehicles and part dealing with light-duty vehicles. For the heavy-duty vehicles, which are gas-burning vehicles over 8,500 pounds, the statistics are under 1 percent for the first several years. That may be where that statistic came from. However, on the common passenger cars, the statistics are a bit higher. They vary by year, with some model years being higher than others.

We would be happy to supply you with the actual statistics. As I said, these are the actual figures as of calendar year 2004. To give you an idea, 2-year-old vehicles are at a 3.6 percent failure rate, and the percentage goes up by age.

Additionally, we've submitted a fiscal note on this bill, which totals roughly \$8 million over the biennium, as to the impact on the account as it exists today.

Getting to the bill itself, lines 20–22 on page 2 require the current program to go from annual to biennial. There is presently a certificate fee of \$6. If the program changed to biennial and that certificate fee stayed the same, it would effectively cut the revenue source for the pollution account in half. We spoke with the sponsor of the bill, and she indicated that that was a negotiable item. Other State and county agencies that receive funds from the pollution account to run their air pollution programs would also be affected.

The businesses, which would clearly be impacted, have probably presented their argument against the bill. Even if the fee were doubled to \$12, which would almost sustain the account if the testing were to go to a biennial basis, the impact on businesses would still be a 50 percent cut.

In lines 22–31 on page 4 of the bill, there is an implementation issue involving which year the vehicles would be tested. We feel that, without some clarification, everyone who has been tested last year would be exempt next year, and then the whole state would be due for testing again the following year. We also spoke to the sponsor about this and made a recommendation to consider using the model year of the vehicle for the year in which it would be tested, whether it is an even or an odd year.

Further down on that page, lines 38–43 refer to miles on the odometer. From a program perspective, that does cause a problem for us to implement, as we don't know how many miles are on a vehicle. The emissions program already uses somewhat of a good faith clause when it comes to registering vehicles in

areas that are not required to smog check. For example, if you live in Carson City and work in Reno, you are not required to have a smog check because your residency is in Carson City. There are individuals who will attest that they reside outside of a smog check area when they do not; we have numerous cases and are trying to track those individuals down to bring them into compliance. This opens the door for continued abuse of that nature. We also discussed this with Assemblywoman Angle, and she indicated that would be a negotiable item as well.

[Troy Dillard, continued.] There was an amendment proposed to roll to a thirty-year and older cutoff. As of right now, it's 1968 and forward. This would cut it off at thirty years. We ran a few numbers to see what type of impact we would have. Obviously, the older vehicles get, the more they fail the smog tests. With cutting that off at thirty years today, you would have approximately a 30-percent failure rate. About 4,000 vehicles a year would be on the road that would not meet air quality standards.

**Chairman Claborn:**

Is there anyone else who would like to speak on this bill? Seeing none, we will close the hearing on A.B. 225.

**Vice Chairman Atkinson:**

Next, we would like to open the hearing on A.B. 226. Mr. Claborn is the sponsor of this bill.

**Assembly Bill 226: Limits period during which person may serve as member of Board of Wildlife Commissioners. (BDR 45-621)**

**Assemblyman Jerry D. Claborn, Assembly District No. 19, Clark County:**

The provision in A.B. 226 was not drafted quite the way I wanted it to be. Therefore, I would like to offer an amendment (Exhibit E) for the Committee to consider. In the mock-up bill (Exhibit E), I would like you to delete the part of the bill that requires license and tags revenue to be spent on predator control. I am still working on a way to address our need for more funding for predator control in Nevada. However, the way this bill is worded is not the way to go. I may offer an amendment in the future regarding predator control.

Today, I would like you to consider only the part of this bill that limits the terms of members of the Board of Wildlife Commissioners. This provision is very simple. Currently, there is a limit on how many terms a Wildlife Commissioner can serve as chairman, but there is no limit on how long they can be members of the Board. I'm suggesting there should be a limit of six years on how long a

member may serve on the Board of Wildlife Commissioners, which equates to two three-year terms.

[Assemblyman Claborn, continued.] The main reason for this proposal is that there are many knowledgeable people in this state who care about wildlife but, because there are so few openings on the Board, do not have the opportunity to serve. Passing A.B. 226 would give more people the opportunity to contribute their ideas and serve Nevada as members of the Board.

**Assemblyman Grady:**

Line 35 on page 2 limits the terms members may serve as chairman, but doesn't actually limit the terms they may serve on the Board. They can continue on the Board, just not as chairman.

**Assemblyman Claborn:**

That's correct; only the chairmanship is limited. There is a limit of two three-year terms as chairman. There are no limits for anyone else on the Board.

**Vice Chairman Atkinson:**

So after the two three-year terms, which would be six years, they would have to come off the Board altogether? [Assemblyman Claborn replied in the affirmative.]

**Assemblyman Goicoechea:**

Of the nine Commission members now, do you know how long they have served? Do you have any of those numbers?

**Assemblyman Claborn:**

No, I don't. I know a few of them have served quite a long time.

**Vice Chairman Atkinson:**

We'll have to get the answer for the Committee.

**Assemblyman Denis:**

What's the current term now? Is it three years for Commissioners? [Assemblyman Claborn responded in the negative.] So right now they just get appointed and stay on there for however long?

**Assemblyman Claborn:**

Forever. Only the chairman has two three-year terms.

**Assemblyman Denis:**

Is that where you got the three years?

**Assemblyman Claborn:**

It's the law right now. It's in our bill.

**Assemblyman Denis:**

So you're just using whatever the chairman was using, the three years.

**Assemblyman Claborn:**

The original bill states, "The chairman can only serve two three-year terms." The rest of them can serve forever if the Governor doesn't appoint [someone to replace] them.

**Assemblyman Denis:**

And you're just making it exactly the same.

**Assemblyman Claborn:**

Since we're limited, and most people are limited, if somebody has been on the Wildlife Commission for six years, I think he's been on there long enough. It's time to give somebody else a chance. We members are all elected, so we have to take our chances with our constituents.

The Wildlife Commissioners take their chances with whatever Governor appoints them. We don't have any recourse to kick them out of office the way I can kick you out by voting you out. If you don't do the job I think you should do, you will not receive my vote. I'd like to have our Wildlife Commissioners have the same opportunity. We can't throw them out, but after six years they'll have to come out anyway.

**Assemblyman Hogan:**

I was not aware that there was no term whatsoever. It's merely an appointment, and the person presumably serves as long as they want to stay on or until the Governor chooses to replace them. He can appoint new people, but if there's no vacancy, it sounds like an awkward situation. A person might be not quite as productive, and it might be a good time to go, but he might really like working with such nice folks. Better for the public interest if that person moves on, but no one wants to embarrass the person. I wonder how many other commissions we have that have no term whatsoever.

**Assemblyman Claborn:**

Most other commissions or boards are limited to three-year terms.

**Assemblyman Hogan:**

It occurs to me that it may be in the general public interest to amend it in a slightly different way to establish that the Governor makes this appointment for a term of a reasonable number of years. You could add onto that a limit to the number of terms. It may be that, even if we feel it's a commission where it really takes time to learn the whole thing, you might want to set a longer term than three years. There could be a lot of flexibility, but it seems like an odd thing to have a lifetime appointment to anything.

**Assemblywoman Kirkpatrick:**

Amber, can you clarify page 4, Section 4, of this bill where it talks about term limits? When I requested information from the Department of Wildlife, I did see something that said there was some type of term limit.

**Amber Joiner, Committee Policy Analyst:**

Actually, I was just reading that section myself, and I'm afraid I'll have to get back to you on that. It does imply that there are terms.

**Gerald Lent, President, Nevada Hunters Association:**

It's a privilege for me to testify for this Body again in favor of this bill. The term limits part of the bill is good. The Governor appoints the Commissioners to three-year terms, and he staggers them, but he can reappoint them indefinitely.

I've been going to Commission meetings since the 1950s, and I can count on one hand how many chairmen we've had. We've had chairmen who've made a monopoly of the Commission for 15 years. Because of that, the Wildlife Commissioners would be afraid to make decisions contrary to the chairman.

When the bill was passed that said someone could serve only two terms as chairman, we thought, since there is a representative of nonhunters on the Commission, as well as a rancher, that it would be nice to have the rancher as chairman instead of just one interest. It just makes for better government.

If you're qualified, and you know wildlife, you can walk in and be familiar with the issues in a short time. There are some complex issues, but, if you know wildlife, it doesn't take you that many years to get up to speed.

This Governor has said if you haven't gotten the job done in two terms, then you're part of the problem. He has restricted his appointees to two terms. However, governors in the past let these people ride on the boards forever. There have been members who have been there for well over ten years.

[Gerald Lent, continued.] I just served two terms on the Washoe County Board to Manage Wildlife, and that was six years. The policy of the commissioners in Washoe County is to give somebody two terms, and then give somebody else a chance and get new ideas. The same argument can be made for Wildlife Commissioners. We support the two-term limit.

**Bud Sonnentag, Private Citizen, Gabbs, Nevada:**

I am in favor of the term limit. I see its bad points, though, because sometimes somebody who is really dedicated on a committee can amass a lot of information, and their experience is valuable. What I don't like about what I see going on with the Wildlife Commission is that it's too closely attached to NDOW, and we have a "big boy" club. That's not good, either. I believe that term limits can make a dramatic change there and give us different opinions and different ideas.

I've never felt really comfortable with appointed people in government of any kind. I'm not in favor of that; it's just not a good position because they are not accountable to anybody but the person who appointed them. They become almost like despots. I feel the bill has its good side for that reason. However, I can see the other side of this issue, as I do know that experience is valuable.

**Assemblyman Hogan:**

If we were to proceed with term limits, and if it's correct that there is not technically a term length defined in current statute and that it has simply become common practice for a term to be three years, we'll have to put that in the law. Do you think, if there's not an actual three-year term, we could say there will be a three-year term, with a limit of two terms, which would be a six-year opportunity to gain that experience and knowledge and apply it? Or do you think it might take longer, and the term ought to be two four-year terms or three three-year terms? Do you have a sense of how to get the maximum benefit from a good, contributing person and not be stuck with a less productive person for too long?

**Bud Sonnentag:**

What are the term limits of the President of the United States? We have experience after that eight-year period, but it doesn't make any difference. You've set this at two three-year terms, which is six years. That should be enough. Again, I don't know if it's a good idea to allow that person to be reappointed once they're off. That's something else that has to be considered. The term limit could go by, and then they could be reappointed back again. It's a tough decision, and one you have to make for yourselves.

**Ron Jones, Private Citizen, Reno, Nevada:**

I've lived in Nevada all my life. I've been hunting since 1957. I am in favor of limiting the terms of the Commissioners just to bring in new blood and give more citizens the opportunity to serve if that's where their interests lie.

**Bruce Arkell, Legislative Advocate, Nevada Sportsman Coalition:**

The term limit provision is a good one. I worked in the O'Callaghan administration and put forward a board and commission bill that basically proposed term limits for all state boards and commissions. My bill set the limit at two three-year terms, for a total of six years and put the general public on boards, both of which were good things. During testimony on that bill, several boards were exempted. The Board of Wildlife Commissioners was one of them.

The policy behind that bill was that it was good legislation. Arizona has, I think, a limit of two five-year terms. Utah has one five-year term. Most states focus on six years. When we did this in the 1970s or '80s, six years seemed to be a reasonable time. It's a good period, and this Governor has made the comment that if you can't learn it [in that time], you're not going to. It's adequate time for people. It allows the introduction of new blood into the process, which is extremely important in the wildlife area today.

**Assemblyman Hogan:**

You've obviously given this matter a lot of thought, and maybe we can get the benefit of your study of it. Do you feel it should be a lifetime term or be limited to two consecutive terms where you could sit out a term, and if your prior work was satisfactory to the Governor, and he wants to reappoint you, would that be possible, or would it be better just to say six years and that's it?

**Bruce Arkell:**

I think the six years is an adequate time. The Governor is limited to eight years, so he's probably not going to get an opportunity to reappoint someone after a three-year gap. I didn't do the math, but I can tell you it would be really hard for him to do that. I think it's good policy. Most of your boards are that way now.

**Terry Crawforth, Director, Nevada Department of Wildlife:**

Regarding the appointments, I would ask for a little time before you take any action on this bill, possibly for your staff to investigate this matter. When the current commission structure was created, three people began with one-year terms, another three with two-year terms, and another three with three-year terms. That's how the Commission became staggered.

I was surprised to find that the term length of three years was not specifically mentioned in the wildlife statutes, but I think you'll find them in other statutes

that cover all boards. The three years applies. The last two governors, since this was implemented, have appointed Wildlife Commissioners for three-year terms in conformance with this and other statutes. The Governor has his own two-term limit.

[Terry Crawford, continued.] From an operational standpoint, we'd hate to see a two-term limit imposed on the Wildlife Commissioners. Being a Wildlife Commissioner is very complex business. By the time you get up to speed and can accomplish some of the things you want to accomplish, you're pretty well worn out and don't care to come back for too many more terms.

There was a discussion earlier about the Chairman. Lines 33, 34, and 35 on page 2 of the bill say that the Commission shall annually elect a Chairman, and that the Chairman shall not serve more than two terms as chair, those terms being only one year. He can't serve six. That is how we have functioned.

**Vice Chairman Atkinson:**

Thank you, Mr. Crawford, but, in the scenario you were just explaining, they could take a break and come back. I don't think the statute precludes that.

**Terry Crawford:**

I can't answer that. I'd have to look at those other statutes and see if they can come back.

**Fred Church, Chairman, Nevada Bowhunters Association:**

Our organization is opposed to these term limits. Section 1 of the mockup ([Exhibit E](#)), subsection 2, says that the advisory boards will submit names to the Governor. If the advisory boards and the sportsmen were unhappy with a Commissioner, they could go to their county advisory boards and ask that somebody else's name be submitted to the Governor.

Also, these commissioners do seek to have letters asking their reappointment sent in on their behalf by the advisory boards and sportsmen's groups and organizations to be reappointed. If somebody is not doing a good job, we would certainly be able to get rid of them through that process; we have done so in the past. There really is no reason to have a limit of only two terms.

Mr. Crawford was correct; the Commissioners are appointed for two terms of three years each, but we do not feel that you have to limit them to that. An example would be Mr. Bradley. Most sportsmen in this state think he has done a great job as a sportsmen's representative, and we would certainly hate to lose a person of his caliber just because there is a term limit.

**Assemblyman Goicoechea:**

There's nothing that says you have to be nominated by a wildlife advisory board.

**Fred Church:**

That is correct. It doesn't say that he has to. Language was put in years ago, but the bill did not pass because the Governor wasn't going to sign it. However, the last two governors have been very responsive, we feel, to the majority of the sportsmen. We have a fairly good working relationship with the Governor, and we try to keep one with you folks, the Commission, and the advisory boards.

**Joseph Johnson, Nevada Legislative Representative, Toiyabe Chapter, Sierra Club:**

I signed in in opposition based on the issue of predator control, which has been removed from the bill. On the issue of term limits, there are arguments for and against. I don't think it's necessarily harmful, considering that you all are soon to be subject to those term limits. It's not necessarily bad; it's also not necessarily good because you lose institutional memory. We'd like to be recorded as neutral on this bill with the proposed amendment.

**Rick Elmore, Private Citizen, Reno, Nevada:**

The section I think you're looking for in the *Nevada Revised Statutes* that deals with the term length and specifically sets it at three years is NRS 232A.020. That's the section that applies to the Governor's appointments to these kinds of boards.

I am opposed to this bill. An old adage that says, "If it's not broke, don't fix it," seems to apply. I worked with the current Governor and the Governor before him on the subject of appointments to the Commission. I think those appointments have always been made, certainly with those two Governors, with the greatest consideration for sportsmen's input.

Not everybody is qualified to be a Commissioner, even though they may have an extensive interest in wildlife. The appointments by these Governors were made after careful consideration of sportsmen's interests. They're not always perfect, but in the instances here, I think these appointments have been very good ones.

I would like to point out a circumstance where this limitation would have precipitated an unfortunate result. Mr. Bradley, I think, has exceeded the six-year limitation, but it's not an extensive amount of time. Last year, the Department of Wildlife and the Board of Wildlife Commissioners came under the

greatest attack yet in the state of Nevada with the litigation that was brought by certain nonresident hunters seeking equal access to tag drawings in Nevada. The individual members of the Board of Wildlife Commissioners are named in their individual capacities in that litigation. Mr. Bradley is one of those people, but Mr. Bradley is a very fine lawyer, and he has certainly become one of the best Commissioners we have on legal issues pertaining to the Commission.

[Rick Elmore, continued.] I can't speak for Governor Guinn as to why he kept Mr. Bradley on the Commission, but you can certainly look at the circumstances here and see that this Commission has enjoyed a significant contribution from Mr. Bradley's presence in his capacity, not only as a Commissioner, but as a lawyer. It would have been too bad, in my estimation, if he had been taken off the Commission because a term limitation had been imposed.

I just don't think there's anything wrong with the current system. I think it works well, and I urge you to leave it the way it is.

**Assemblyman Claborn:**

If everybody is doing their job like you say they are, why is our mule deer population declining every year? We have fewer deer to hunt, fewer tags available, and everything. This is snowballing, and it has to stop.

**Rick Elmore:**

I share your concern about the declining numbers of mule deer. All sportsmen do. There isn't anybody in this room who wouldn't love to see the number of mule deer respond and increase. However, I don't think it has anything to do with the individual performances of the members of the Board of Wildlife Commissioners.

The one thing I am confident in saying to you, sir, is that I know the current Commission works as hard as any human beings ever have in Nevada to resolve this problem and others of equal magnitude. There isn't anything about the appointment process that you're endeavoring to address here today that's going to result tomorrow or next month or next year in fixing this problem. We need the help of Mother Nature to do that.

**Assemblyman Claborn:**

I think we could use a little help with some predator control, and we will see some of that before this session is over.

**David McNinch, Member, State Board of Wildlife Commissioners, Nevada  
Department of Wildlife:**

I initially had come today to voice opposition to the original bill. Considering the amendments, I will defer taking a position on the current status of the bill. I would be glad to share my experience with you as a member of the State Wildlife Commission. I have been a member for five years, and my second three-year term will be up in June 2006.

I graduated from the University of Nevada, Reno, with a degree in wildlife management, so at least I had some book smarts and came into this with some understanding about wildlife. I did need to get up to speed on several issues, one being understanding how this agency really operates and the laws that surround it.

It's not a 24-hour-a-day job, even though I'd like to say we do spend a lot of time on these issues. We do meet eight or nine times a year as a Commission. We don't live this life every minute of the day, even though we do put in our time. Learning how the agency works takes a lot of time. Getting to understand our fellow Commissioners and their viewpoints and stances takes an equal amount of time.

I'm certainly not an anti-hunter, but I do represent, for lack of a better term, conservation interests, although I recognize that sportsmen and all those who have an interest in wildlife are conservationists.

You have to understand the people you're working with, to gain a rapport and a trust, and I think that takes a lot of time. For me, personally, that took a long time, not because any of them are bad people; it's just the nature of the beast. It takes time to gain trust so you can start doing things and understand the rules and issues out there.

**Ed Wagner, Coalition for Nevada's Wildlife:**

We signed in in opposition to A.B. 226 based on the material in Section 2, not Section 1. The Coalition has no position on Section 1, so I have no testimony.

**Assemblyman Grady:**

[Read from *Nevada Revised Statutes*.]

NRS 232A.020: Terms of members, vacancies, qualifications of member appointed as representative of the general public:

1) After the Governor's initial appointment of members to the boards, commissions, or similar bodies, all such members shall hold office for terms of three years, or until a successor has been appointed and has qualified.

Do we need to keep going on this if it's already covered under statute?

**Amber Joiner, Committee Policy Analyst:**

I believe that Chapter 232A does define a term as three years in length. However, if you notice, the word "terms" is plural, which means it leaves it up to other parts of the NRS to define a limit. So I think we're using these words maybe interchangeably. There is a three-year term, but whether the number of those terms is limited is, I believe, what we're discussing under this bill.

**Vice Chairman Atkinson:**

Thank you, Amber; to answer your question, Mr. Grady, yes, we're going on.

**Joel Blakeslee, Coalition for Nevada's Wildlife:**

I've been in front of the Wildlife Commissions for over 30 years now. I've seen some whom I wish had term limits, and I've seen others whom I've wished didn't have term limits. There is something to be said for the continuity and the institutional memory on these boards. I have some ambivalence about this, but, based on the current Commission, I wouldn't feel the need to see any of them on a term limit.

**Chris MacKenzie, Vice Chairman, State Board of Wildlife Commissioners,  
Nevada Department of Wildlife:**

We signed in in opposition to the bill based on the fee dedication for the predators in the second portion of the bill. We are staying neutral on term limits.

I think some members have hit the ground running, and others have to get up to speed to serve. I'm here in case you had any questions for members.

**Assemblyman Goicoechea:**

How long are the terms currently?

**Chris MacKenzie:**

I am nine months into my second three-year term. Commissioner McNinch stated he has over a year left on his second three-year term. Commissioner Reardon, who represents ranching, is at the same point I am. Commissioner Olsen is coming to the end of his second three-year term. Commissioner Bradley has been on, I think, in excess of three terms, but he's leaving in June. I think Mr. Olsen has indicated he may be headed out, too. Commissioner Jeffress was just appointed last year, along with Commissioner Lurie, so they're both new on the Board. I think Chairman Ford is finishing up the second year of his second three-year term. Commissioner Bradley would be the only one in excess of two three-year terms.

**Assemblyman Claborn:**

I would like to speak on behalf of my bill. What I'm trying to do here is limit the Commissioners to two three-year terms. I know you have term lengths, but it's not limited. Please keep in mind that I'm trying to limit the Wildlife Commissioners to two three-year terms.

**Larry Johnson, President, Coalition for Nevada's Wildlife:**

We are fairly neutral on the issue, with the exception that we have to point out, as Chris did, that Commissioners are normally limited to two terms by Governor's policy. However, there is no guarantee that will continue in the future. Two terms is normally sufficient for people to get up to speed and serve and get things done.

The term limit would limit the Governor's ability to handle extraordinary cases. That is exactly why Mr. Bradley has served more than two terms. At the end of his second term, there were a number of openings, at which point the Governor made the decision to continue Mr. Bradley into a third term because of institutional continuity and to provide some history to the new Board members.

Then, the lawsuit hit last year, and Mr. Bradley's term was extended for one year. He will be leaving shortly. My only fear is that if we put it in statute and extraordinary circumstances arise, we do limit the Governor's ability to address those.

**Vice Chairman Atkinson:**

You recognize that there's already a two-term limit, but Mr. Bradley was extended because they didn't have enough institutional knowledge and they needed someone?

**Larry Johnson:**

There were a number of Commission openings at one time, and the Governor wanted, in my understanding, to provide institutional continuity so there was someone with history there who could get the new Board members up to speed. That was why Mr. Bradley's term was initially extended, and then it was extended a further year with the advent of the lawsuit.

**Vice Chairman Atkinson:**

So you believe the other members have not served more than two terms at this time? Everyone keeps asking that question, so I thought you might have the answer to that.

**Larry Johnson:**

No, they have not.

**Assemblyman Claborn:**

Mr. Johnson, do you mean the Governor could not rely on the other eight appointees on the committee?

**Larry Johnson:**

What I'm saying is that there were a number of Board vacancies. People resigned all at one time, and that left a number of Board openings at once.

**Assemblyman Claborn:**

Don't they have a provision to appoint people to do that?

**Larry Johnson:**

They were appointed, but, at the same time, they were all new appointees all at one time.

**Assemblyman Claborn:**

When so many got off the Board, they put some new people on the Board who were not qualified?

**Larry Johnson:**

Not at all, sir.

**Vice Chairman Atkinson:**

I think he's just saying they were new members, which made the Board new, and they wanted to keep someone who had some institutional knowledge.

**Larry Johnson:**

That's correct.

**Assemblyman Claborn:**

If I read the bill right, it says they have to be knowledgeable. I'll just retract my statement.

**Vice Chairman Atkinson:**

Do we have anyone else who wants to speak on this bill? Seeing none, we will close the hearing on A.B. 226.

**Chairman Claborn:**

Thank you. You did a great job, as usual. We're going into a work session now. Mrs. Gansert withdrew her bill, A.B. 86, about ten minutes before this meeting, so we will not be hearing that bill today. With that, we will go into S.B. 73.

**Assembly Bill 86: Requires addition of bittering agent to certain antifreeze to render it unpalatable. (BDR 51-999)**

[Not heard.]

**Senate Bill 73: Revises provisions relating to certain fees charged and collected by State Emergency Response Commission. (BDR 40-715)**

**Amber Joiner, Committee Policy Analyst:**

[Read from Work Session Document, Exhibit F.] Senate Bill 73 was sponsored by Senator Nolan. It was heard on March 28, 2005. Senate Bill 73 provides that the State Emergency Response Commission limit the amount of fees collected from each person who stores an extremely hazardous material and reports the release of toxic chemicals to \$15,000 a calendar year.

A brief summary of some of the issues raised: Supporters of S.B. 73 point out that it is a cleanup bill to accomplish what was intended in Senate Bill 201 of the 72nd Legislative Session, the final language of which applied a maximum fee on the storage of extremely hazardous materials but did not apply a maximum amount to the reporting of toxic chemical releases. The purpose of S.B. 73 is to provide appropriate language that would establish a cap on storage on reporting fees, so that the aggregate amount of those fees imposed on a person during any calendar year could not exceed \$15,000.

There was no testimony in opposition to S.B. 73. The question was raised during the hearing whether the Nevada Manufacturers Association had a position on the bill. After the hearing, Ray Bacon, from the Nevada Manufacturers Association, submitted a written response for the record that stated, "S.B. 73 is essentially an act to correct in law what we agreed to last legislative session."

There are no proposed conceptual amendments, and there is no fiscal impact.

**Assemblyman Goicoechea:**

The \$15,000 was put in last session for the storage. Then we put an additional \$15,000 cap on for the reporting requirements. Is that what the bill says, or am I missing something? I'm still trying to figure out what the second \$15,000 is for.

**Amber Joiner:**

Actually, my understanding of the bill is that combined storage and reporting fees could not exceed \$15,000. When the original bill passed, it was only the storage fees that would up with the limitation on them.

**Assemblyman Goicoechea:**

So the reporting, then, was continuing on at \$500 a report or site?

**Amber Joiner:**

I believe that's what we heard in the original testimony.

**Assemblyman Goicoechea:**

Maybe the Nevada Division of Environmental Protection could help here.

**Leo Drozdoff, Administrator, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources:**

I must confess that if S.B. 73 actually affects the fees that NDEP collects, then I don't know about it. I believe it is a State Fire Marshal issue. Doug Zimmerman can perhaps provide you with a layman's understanding.

**Assemblyman Goicoechea:**

I'm still trying to find out what was broken and what had to be fixed with this bill.

**Doug Zimmerman, Chief, Bureau of Waste Management, Division of Environmental Protection, Nevada Department of Conservation and Natural Resources:**

My understanding is that, through the State Fire Marshal's Office, all people who are in business and have hazardous materials are required to register with the State Fire Marshal's Office the particular type of chemical they have and the amount of chemical they store at any one time, and there is a fee program that goes along with that. That's my understanding of their program.

**Assemblyman Goicoechea:**

All this basically did was put a \$15,000 cap on both reporting and storage of any hazardous material?

**Doug Zimmerman:**

For the fees the Fire Marshal collects, yes. I have not seen the bill myself.

**Chairman Claborn:**

According to the bill, it does say "capped." I understand that Mr. Bacon from the Nevada Manufacturers Association submitted a written response for the record, and it was something they initially agreed on last session. He might know more about it than I do. Is there any more discussion?

ASSEMBLYMAN GOICOECHEA MOVED TO DO PASS  
SENATE BILL 73.

ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Smith was not present for the vote.)

**Chairman Claborn:**

Is there any new business? Any old business? We are adjourned [at 3:54 p.m.].

RESPECTFULLY SUBMITTED:

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Mary Garcia  
Committee Attaché

APPROVED BY:

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Assemblyman Jerry D. Claborn, Chairman

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

**EXHIBITS**

**Committee Name: Committee on Natural Resources, Agriculture, and Mining**

**Date: March 30, 2005**

**Time of Meeting: 1:37 p.m.**

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
AB 225	B	Assemblywoman Angle	Information packet
AB 225	C	Will Rasavage / Intern / LCB	PowerPoint presentation
AB 225	D	Andrew Goodrich / Washoe District Health	Prepared testimony
AB 226	E	Assemblyman Claborn	Proposed Amendment
	F	Amber Joiner / LCB	Work Session Document