

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

**Seventy-third Session  
May 2, 2005**

The Senate Committee on Natural Resources was called to order by Chair Dean A. Rhoads at 1:30 p.m. on Monday, May 2, 2005, in Room 2144 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Dean A. Rhoads, Chair  
Senator Mike McGinness, Vice Chair  
Senator Mark E. Amodei  
Senator Bob Beers  
Senator Bob Coffin  
Senator Michael A. Schneider  
Senator Maggie Carlton

**GUEST LEGISLATORS PRESENT:**

Assemblyman John C. Carpenter, Assembly District No. 33  
Assemblywoman Peggy Pierce, Assembly District No. 3

**STAFF MEMBERS PRESENT:**

Linda Eissmann, Committee Policy Analyst  
Jonathan Sherwood, Committee Secretary

**OTHERS PRESENT:**

Michael Montero, Nevada Cattlemen's Association  
James Connelley, Administrator, Brand Inspections, State Department of  
Agriculture  
Preston Wright, President, Nevada Cattlemen's Association  
Doug Busselman, Nevada Farm Bureau  
Don Henderson, Director, State Department of Agriculture  
Joseph M. Boteilho, Clark County  
Nancy J. Howard, Nevada League of Cities and Municipalities

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Curtis Calder, City Manager, City of Elko  
Todd V. Ramey, City of Elko  
Mike Franzoia, Mayor, City of Elko  
Ed Allison, Waste Management  
Greg Martinelli, Waste Management  
Robert H. Erickson, City of Fallon  
Joseph Guild, Elko County  
Leo Drozdoff, Administrator, Division of Environmental Protection, State  
Department of Conservation and Natural Resources  
Joe L. Johnson, Toiyabe Chapter Sierra Club  
Kaitlin Backlund, Nevada Conservation League

Chair Rhoads opened the hearing on Assembly Bill (A.B.) 407.

**ASSEMBLY BILL 407 (1st Reprint)**: Makes various changes relating to seizure of certain animals by governmental agencies. (BDR 50-685)

Chair Rhoads gave the Committee a letter that he received from the U.S. Department of the Interior (Exhibit C) which offered an opinion on A.B. 407.

Assemblyman John C. Carpenter, Assembly District No. 33, gave the Committee a proposed amendment to A.B. 407 (Exhibit D). Chair Rhoads asked what A.B. 407 would do. Assemblyman Carpenter said the bill would make clear that in order for a federal governmental agency to obtain a brand inspection from the State Department of Agriculture, they must have judicial confirmation. He said in order to obtain judicial confirmation, the agency must go to either a state or federal district court. He said A.B. 407 did not apply to stray or feral livestock as defined in statute, or to wild horses or burros as defined in federal law. Assemblyman Carpenter emphasized the federal agency would have the option to utilize a federal or state court in order to obtain the judicial confirmation. Chair Rhoads asked if a federal agency would be required to obtain judicial confirmation prior to receiving any brand inspection. Assemblyman Carpenter said yes. Chair Rhoads asked if the agency would have to prove their case in court to obtain the judicial confirmation. Assemblyman Carpenter said they would have to prove their case in court. Chair Rhoads said that could take months or years. Assemblyman Carpenter said it would not require a jury trial and the judge would make a decision based upon the facts presented.

Senator Carlton asked what problem A.B. 407 was trying to solve. Assemblyman Carpenter said the federal government had taken livestock from ranges in the past and taken them to a corral where they were later brand-inspected and sold at auction. He said this all occurred without a court order. He said A.B. 407 would force the federal government to take the case to court before any livestock could be sold at auction or any brand inspection occurred. Senator Carlton asked why Assemblyman Carpenter wanted to amend the bill again. Assemblyman Carpenter said the amendment allowed the federal agency to utilize either the federal or state courts when having their case heard. He said it was not right to involve the federal government in an issue and force them to abide by state law. He said A.B. 407 would protect the integrity of the state brand law.

Senator Coffin asked if cattle were sometimes seized for health concerns. Assemblyman Carpenter said sometimes health concerns did prompt seizure of sick cattle but A.B. 407 pertained only to seizure of healthy cattle.

Michael Montero, Nevada Cattlemen's Association, spoke in support of A.B. 407 and the proposed amendment from Assemblyman Carpenter.

James Connelley, Administrator, Brand Inspections, State Department of Agriculture, said he was neutral in regard to A.B. 407 but commended Assemblyman Carpenter for attempting to resolve the issues within the bill. He said a favorable resolution of the bill would allow the federal government to protect the range laws and the private-property rights of ranchers would also be protected. He also hoped for clear direction on future action as the State's brand inspector.

Preston Wright, President, Nevada Cattlemen's Association, said the policy of the Cattlemen's Association was to seek a court order in the matter of livestock confiscation. He said the proposed amendment to A.B. 407 by Assemblyman Carpenter was a suitable idea. Mr. Montero said the problem was the State Department of Agriculture was caught in the middle. Mr. Montero explained the issue was between the Bureau of Land Management (BLM) and the permit-holder, but when the BLM seizes cattle, the brand inspector is called into the dispute. He said the brand inspector currently does not have clear guidance on the matter and A.B. 407 would provide the necessary guidelines.

Senator Carlton asked if the BLM would be able to obtain a court order at any stage in the impounding and transportation of the seized cattle. Mr. Connelley explained that he understood A.B. 407 would prevent the impounding of cattle until a court order was issued. She asked if the cattle would still be on the range before a court order was issued. Mr. Connelley said he wanted that to be the case. Senator Carlton asked if the proposed amendment had been presented in the Assembly. Mr. Montero said he did not know. Assemblyman Carpenter said the reason for the proposed amendment was because the Legislative Counsel Bureau had learned the federal government was not subject to the *Nevada Revised Statute (NRS) Chapter 43* as defined in the amended language in A.B. 407. He said the amendment was not offered in the Assembly because of the deadline.

Doug Busselman, Nevada Farm Bureau, spoke in support of A.B. 407. He said the current problem between the BLM and those ranchers whose herds of cattle are seized puts the brand inspector's office at risk. He said if livestock are presented for a brand inspection, the legal owners of the herd should be the ones doing it or a court should order another party to do so. He said A.B. 407 would provide a process to address this issue. Chair Rhoads asked how long it would take to get a case through the courts from the point of notification by the BLM for trespassing to the decision by the judge. Mr. Busselman said he understood NRS 43 to require a minimum of five weeks but some recent cases took as long as five to six years. Chair Rhoads said the length of time might allow someone to move their cattle before the court decision could be reached. Mr. Busselman said his primary concern was the brand-inspection process not being compromised and private-property rights being protected.

Don Henderson, Director, State Department of Agriculture, said the exemptions present in section 1, subsection 4 of the proposed amendment to A.B. 407 were important to the State Department of Agriculture. He said if the exemptions were not present, the Department would be opposed to the bill. Chair Rhoads asked if Exhibit C had been seen by the Assembly Committee on Natural Resources, Agriculture and Mining. Assemblyman Carpenter said he had not seen it. Chair Rhoads asked Assemblyman Carpenter why section 1, subsection 4 was being added in the proposed amendment. Assemblyman Carpenter said he wanted to ensure the exemptions were listed clearly in the bill. Chair Rhoads asked if the State Department of Agriculture was prepared to go to court if necessary. Mr. Henderson said the Department was prepared.

Chair Rhoads asked if any research had been done for similar legislation in other states. Mr. Connelly said other states have different situations than Nevada. He said because Nevada has such a large percentage of its land federally owned, the issue becomes difficult to compare with other states. Senator Carlton expressed concern about whether the federal government would have to go into long litigation if taken to court. She wanted to know if the federal government would lose its immunity in state court. Chair Rhoads said the Committee might need to get an opinion from the legal counsel.

Joseph M. Boteilho, Clark County, spoke against A.B. 407, saying it would be too difficult and expensive for government agencies to have to go to court every time they needed to make a seizure.

Chair Rhoads closed the hearing on A.B. 407 and opened the hearing on A.B. 444.

**ASSEMBLY BILL 444 (1st Reprint)**: Revises provisions governing solid waste disposal sites. (BDR 40-307)

Assemblywoman Peggy Pierce, Assembly District No. 3, spoke from a written statement (Exhibit E) in support of A.B. 444. She distributed a graph to the Committee illustrating the tons of solid waste per day in different landfills in the State (Exhibit F). Chair Rhoads asked if Assemblywoman Pierce knew anything about Senate Bill (S.B.) 396.

**SENATE BILL 396 (1st Reprint)**: Revises various provisions regarding waste disposal and regulation. (BDR 40-401)

Assemblywoman Pierce said she did not know enough about S.B. 396 to talk about it.

Nancy J. Howard, Nevada League of Cities and Municipalities, said she had expressed some concern about A.B. 444 when it was in the Assembly. She said the bill had been passed when the deadline was looming. Many municipalities had some concerns about the bill.

Curtis Calder, City Manager, City of Elko, said the City of Elko had learned of A.B. 444 late and thus was unable to testify before the Assembly. He said Elko was running a Class I landfill and had been in the process, for approximately

seven years, of acquiring an adjacent piece of land. He said the city had received a permit for lateral expansion of the waste facility. He said the current facility takes in more than 200 tons of waste per day. Mr. Calder said the landfill also received waste from other parts of Elko County. Chair Rhoads asked if the City of Elko would be affected by A.B. 444. Mr. Calder said yes. He explained that tipping fees had been raised in the previous year from \$23 a ton to \$30 a ton for the purpose of a landfill expansion. He said the lifespan for the current landfill was 19 years and lateral expansion was important for the growth of Elko. Mr. Calder said the cost of lining the landfill would be \$150,000 per acre above existing costs. He said there was already a natural clay barrier under the landfill, making the lining unnecessary. He said lining the landfill, in Elko's case, would be "like building a garage inside of a garage." He said if the geologic conditions warranted a liner, then the City of Elko would not be opposed to the bill.

Todd V. Ramey, City of Elko, said existing regulations had standards for liner systems within it. He said the *Nevada Administrative Code* (NAC) 444.681 already contained design standards and said:

A new municipal solid waste landfill unit or lateral expansion must be constructed: (a) In accordance with a design approved by the solid waste management authority that is sufficient to protect the waters of the State from degradation by pollutants or contaminants; or (b) With a composite liner and a system for the collection of leachate which is designed and constructed to maintain less than a 30-centimeter depth of leachate over the liner...

Mr. Ramey said this meant the authority of the solid-waste management was to look at each site uniquely and determine whether a liner system was required or not. He said the proposed legislation would remove the ability of the solid-waste management authority to determine if a site would contain the leachate. He explained that current expansion plans, at the projected \$150,000-per-acre cost, would result in an over-\$10 million cost to the taxpayer to line the landfill. Senator Carlton said A.B. 444 only applied to landfills taking in more than 200 tons of solid waste per day and because the Elko landfill, according to [Exhibit F](#), only took in 145 tons per day, the bill would not apply to the City of Elko. Mr. Ramey said the bill might not apply to the landfill currently, but it might in the future. Senator Carlton asked if the City of Elko would import

waste from out of state. Mike Franzoia, Mayor, City of Elko, said the option had been discussed but no plans had been made. Senator Carlton said the bill only applied to those landfills taking in more than 200 tons a day and she did not expect Elko to grow enough to meet that number. Mr. Franzoia said the Elko landfill was already taking in more than 200 tons of waste per day. Mr. Calder said the statistics he had from the Elko landfill showed an intake of more than 200 tons per day and he did not know the age of the numbers on [Exhibit F](#). Senator Carlton asked if the 200-ton-per-day limit in the bill were raised, would the City of Elko still oppose the bill. Mr. Franzoia said the City of Elko would still oppose the bill. He said the cost of any liner would be passed on to the citizens of Elko and they would not accept fee increases like this. Senator Carlton asked why Mr. Franzoia would still be opposed to [A.B. 444](#) if it did not apply to the City of Elko. Mr. Franzoia said the City of Elko was growing due to people relocating from populated areas and the city would soon meet the higher limit in the bill. He said the problem was that Elko could not rebound from such a large cost issue because, while the population increases were high, the economic increases were slow. Senator Carlton expressed concern at the opposition of [A.B. 444](#) even if the limit were increased. Mr. Franzoia said there should be an exemption in the bill for landfills that have natural clay barriers such as the one in Elko.

Ed Allison, Waste Management, spoke in opposition of [A.B. 444](#). He said current regulation and state law were ample protection against groundwater contamination. He said he shared Senator Carlton's concern over the quality of groundwater. He said the Lockwood landfill had a far superior barrier to that proposed in the bill and asked that an exemption be provided for barriers superior to any lining.

Greg Martinelli, Waste Management, spoke in opposition to [A.B. 444](#). He said the lining proposed in the bill would be substandard to what was already in place. He said the geologic standards in place make a liner unnecessary. Chair Rhoads asked if there were liners for the Reno landfill. Mr. Martinelli said there were not synthetic liners, but there was a clay barrier ranging from 100 feet to 500 feet thick.

Robert H. Erickson, City of Fallon, spoke in opposition of [A.B. 444](#). He said the current landfill for Fallon was permitted by the Division of Environmental Protection (DEP), State Department of Conservation and Natural Resources, to take 1000 tons of waste per day and [A.B. 444](#) would change the operating

capacity of the landfill. He said the proposed bill would remove the discretion of the DEP to use current science in establishing protection of the groundwater through the landfill. He said the situation in Fallon is such that a liner would be costly with very little benefit because the groundwater is at such a low depth. Senator Carlton asked if Mr. Erickson had testified about A.B. 444 when it was in the Assembly. He said he was testifying in another committee at the same time A.B. 444 was being heard. Senator Carlton asked if Mr. Erickson had expressed his concerns with Assemblywoman Pierce or any of the other sponsors of the bill. Mr. Erickson said he had conversations about the issue with Assemblywoman Pierce.

Joseph Guild, Elko County, spoke in opposition to A.B. 444. He said Elko County did not have any landfill sites and contracted with the City of Elko for waste disposal.

Chair Rhoads asked Leo Drozdoff, Administrator, Division of Environmental Protection, State Department of Conservation and Natural Resources, the purpose of S.B. 396. Mr. Drozdoff said S.B. 396 required liners at only hazardous and low-level radiological waste sites. He said A.B. 444 pertained to solid-waste landfills. Chair Rhoads asked if the DEP testified when A.B. 444 was in the Assembly. Mr. Drozdoff said yes. Chair Rhoads asked what the DEP position was on A.B. 444. Mr. Drozdoff said the DEP was neutral to the bill. Mr. Drozdoff said the DEP provided [Exhibit F](#) to Assemblywoman Pierce and the data in the graph was for 2003.

Joe L. Johnson, Toiyabe Chapter Sierra Club, spoke in support of A.B. 444. He said if communities enacted a major recycling program, they would remain under the 200-tons-per-day limit.

Kaitlin Backlund, Nevada Conservation League, spoke in support of A.B. 444. She said if importing waste from other states is being considered, looking toward the future by enacting more stringent laws concerning landfills would be appropriate.

Chair Rhoads closed the hearing on A.B. 444.



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Chair Rhoads adjourned the meeting of the Senate Committee on Natural Resources at 3:03 p.m.

RESPECTFULLY SUBMITTED:

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Jonathan Sherwood,  
Committee Secretary

APPROVED BY:

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Senator Dean A. Rhoads, Chair

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