

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Sixth Session
April 15, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 7:54 a.m. on Friday, April 15, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Clark County Assembly District No. 37

Minutes ID: 884



STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Orrin Johnson, representing Washoe County Public Defender's Office
Brian O'Callaghan, representing Las Vegas Metropolitan Police Department
Jerod Updike, Private Citizen, Reno, Nevada, through Karla Johnston, Sign Language Interpreter
Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association
Garrett Gordon, representing Southern Highlands Community Association
Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter
Jon Sasser, representing Washoe Legal Services, Inc.
John Sande IV, representing Nevada Collectors Association
Chris Ferrari, representing Kemp & Associates
Rob Buonamici, Chief Game Warden, Department of Wildlife
Ross Miller, Secretary of State
Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
Michael Joe, representing Legal Aid Center of Southern Nevada

Chairman Horne:

[Roll was called.] Good morning, ladies and gentlemen. Today is April 15, and it is deadline day for committee action on Assembly bills. Today is a work session only. The floor session begins at 11:00 a.m. We will try to get through as many bills as we can before the floor session. There will be another work session either this afternoon following the adjournment of the Assembly Committee on Commerce and Labor or maybe a little later in the evening. We will get through all the bills we have in one way or another. Some bills are not going to make it. That is part of the process, but we have processed the vast majority of the bills that came to our Committee.

We will now begin with the first set of work session documents. We will start with Assembly Bill 57.

**Assembly Bill 57: Makes various changes governing certain criminal offenders.
(BDR 14-292)**

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Members and audience, I have a brief comment about handling these documents this morning. The bills will come to you in sets. The first set is up on the Nevada Electronic Legislative Information System (NELIS), and the paper copies are available by the door. The second and third sets will arrive while we are doing the first set.

Assembly Bill 57 is sponsored by this Committee on behalf of the Attorney General.

[Mr. Ziegler read from the work session document ([Exhibit C](#)).]

This bill reenacts a provision enacted in 2007, which was enjoined in the matter of *American Civil Liberties Union v. Masto*, 719 F. Supp. 2d 1258 (2008). It also expands the requirements for a record of registration from the 2007 version. Thank you, Mr. Chairman.

Chairman Horne:

Thank you, Mr. Ziegler. Are there any questions on A.B. 57? Mr. Ohrenschall.

Assemblyman Ohrenschall:

Thank you, Chairman Horne. I think this is a good measure, and I think the amendment adds some good things, too. With your indulgence, I would like to propose a conceptual amendment to it as well.

Chairman Horne:

Mr. Brooks.

Assemblyman Brooks:

It appears that in Mr. Kandt's amendment, the words ". . . obtains temporary shelter or habitually sleeps" have been taken out. I wonder if the penalty for noncompliance was changed from a felony to a misdemeanor. I do not see that there was any change in the type of offense, and I know there was a lot of discussion about that. Do we have any additional information about that?

Chairman Horne:

Mr. Kandt.

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General:

Thank you, Mr. Chairman and members of the Committee. Assemblyman Brooks, the penalty for noncompliance was not changed. However, in my proposed amendment, we removed the change in status requirement from the 48-hour requirement and created instead a new subsection, which would provide that offenders with no fixed residence would be required to notify local law enforcement if there is any change in the locations where they could be found every 30 days.

Assemblyman Brooks:

So, we are now placing a law for a sex offender who is homeless to report every 30 days to law enforcement if he decides to change the place that he sleeps.

Brett Kandt:

Yes. For transient sex offenders, instead of subjecting them to the 48-hour requirement, for which there was some concern expressed that it was somewhat onerous, we proposed a check-in requirement similar to a requirement that is provided under California's sex offender registration laws, which allows them to check in with law enforcement to notify them of their status. It accomplishes the purpose of the bill and the sex offender registration system, which is to allow law enforcement to keep track of these individuals. But, it also recognizes that the locations where they can be found often change.

Assemblyman Brooks:

For clarification, if they do not register every 30 days, and they happen to be moving around, they are subject to a felony offense.

Brett Kandt:

Under what we are proposing, if they originally registered, and in that jurisdiction their location changed, and they failed to check in with law enforcement on a 30-day basis to keep law enforcement updated on where they can be found, then they could be found out of compliance. You are correct.

Assemblyman Brooks:

And they will be subject to a felony?

Brett Kandt:

Yes.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

I am curious to know how the public defenders feel about the proposed amendments. I do not see Ms. Gasca here.

Orrin Johnson, representing Washoe County Public Defender's Office:

From the beginning, Mr. Kandt was working with us. He was reaching out to us, trying to allay our concerns and trying to get some language. I actually think the original language did a better job striking a balance between being able to locate these folks and understanding that there are some issues that we need to deal with, without just tossing everybody into prison on relatively minor things.

I had the same concerns that Mr. Brooks did. I understand that it is not Mr. Kandt's intent to require literally that they check in every 30 days. It is only if the circumstances actually change. I am not sure the language is adequately clear. I think the word "if" needs to appear in section 2 of the amendment. If it does that, and we continue to tweak that through the process, then I am certainly willing to work with Mr. Kandt as the bill goes to the second chamber to get the language right to make sure that the statute does not read contrary to the intent of the drafter. That is our concern.

Chairman Horne:

So, basically they would need to check in if their location has changed. Is that correct, Mr. Kandt?

Brett Kandt:

That is correct. I attempted to clarify it in my email to you. I apologize that the original proposed amendment was not clear. The check-in provision would only apply if the transient offender's status changes. In other words, he would be required to check in if there are any changes in the address of any dwelling of the sex offender, such as a temporary shelter or any other location where the sex offender habitually sleeps. If a transient sex offender does not check in every 30 days but is still found in those locations that he originally identified when he registered, he would be in compliance.

Chairman Horne:

Mr. Hammond.

Assemblyman Hammond:

I have a question about the second amendment.

Chairman Horne:

Let us get the first one out of the way and not muddy the waters. Mr. Anthony, we can fashion it to make sure that is in there.

Nick Anthony, Committee Counsel:

Mr. Chairman, yes, that is correct. I think the intent has been accurately stated for the record, and coupled with Mr. Kandt's additional email dated April 11, 2011. We can draft it accordingly.

Chairman Horne:

Mr. Hammond.

Assemblyman Hammond:

Thank you. I want to make sure I understand this. The Attorney General then chooses a member who is a health professional. How will that choice be made? Will a name be submitted to the Attorney General in the future? Will there be a list, or will they just choose someone they know?

Brett Kandt:

This recommendation came about out of discussions with Chairman Horne and the feeling that the advisory committee would benefit from having the participation of a mental health professional, and the Attorney General or his designee serves as the Chair of this advisory committee. Somebody has to make the appointment, so I proposed that it be the Attorney General, but we would be amenable to the appointment of a mental health professional being made by some other organization or individual. We leave that to your discretion.

Assemblyman Hammond:

Thank you.

Chairman Horne:

Are there any other questions or concerns? Mr. Brooks.

Assemblyman Brooks:

Mr. Kandt, where do they actually go? Can they just notify any law enforcement on the street, or do they have to go to a specific building? My concern is, we are dealing with someone who is homeless and who is probably down and out. I am having a hard time believing that if they move from place to place for whatever reason they will actually go somewhere to change. Can they do this with any law enforcement officer, or do they have to go to a location?

Brett Kandt:

Mr. Chairman, if it is okay, I would like to defer that question to the representative from the Las Vegas Metropolitan Police Department (Metro), since Metro would actually be enforcing the law.

Chairman Horne:

Mr. O'Callaghan.

Brian O'Callaghan, representing Las Vegas Metropolitan Police Department:

They must go to one of the seven or eight substations we have.

Chairman Horne:

Thank you. Mr. Segerblom.

Assemblyman Segerblom:

So, say I am homeless. I show up at the substation. Is there a form I fill out? Who do I talk to? How does it get into the database?

Brian O'Callaghan:

It goes to records. Once they go into the substation, it is forwarded to records and put into the database.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

How extensive is the form? If the same officers who may be familiar with the area patrol or check or verify, are those forms things that officers can take to that area or have in their patrol? I am curious about how extensive the form is for the folks who cannot drive or who have difficulty getting around.

Brian O'Callaghan:

They do not carry that form with them. It is done through the substation. If officers want to check the locations of registered sex offenders, or if they have not responded back to change their address, then the officers will go out and take a form with them, and it is returned to the station.

Assemblyman Frierson:

Is it a one-page form?

Brian O'Callaghan:

Sometimes it is several pages. It is a complete update.

Assemblyman Frierson:

I am curious to know whether the sponsor would be amenable to some type of mechanism, and we can talk about it conceptually. Oftentimes in these cases, it is just a misunderstanding or an oversight, and the individual has not committed another act; he is simply getting updated correctly or was a couple of weeks late. Oftentimes, in those cases, the system will work it out to where the case will be dismissed as long as the information is updated. I wonder if there is a way to include something like that.

Mr. Kandt has been working hard, and I thought of this just now. It is not like I am intentionally springing it on you at the last minute. I am wondering about some type of scheme that essentially allows for an update if there is no new offense, but simply the homeless person is having a difficult time getting there. Could there be a mechanism to where, as long as they update it Because, oftentimes they end up spending a couple of days in jail, and at the arraignment the court will recognize what happened and let them out to immediately update their registration and then dismiss the case. I am assuming that the sponsor is okay with that practice in allowing the system to have the discretion to treat it that way. But, I wonder if putting that into the scheme is doable or if it would create more problems.

Brett Kandt:

As we testified in the original hearing on this bill, our whole goal here is to ensure that the purpose of having a sex offender registry is not undermined through what we perceived as a possible gap or loophole. That is, under the current law, an individual who is transient is in compliance when he first registers and indicates he is transient, could be anywhere in that county. He is technically in compliance, but the purpose of having him register is somewhat undermined by the fact that we do not know exactly where he is in the county. We just wanted to have the law reflect some procedures by which law enforcement could, while recognizing that transient sex offenders are in a unique situation, allow officers the ability to keep track of these individuals so that the purpose of having them registered can be fulfilled. We have tried, through these amendments, to recognize the unique circumstances of these individuals and balance that with the need for law enforcement to be able to keep track of them.

You mentioned discretion. Certainly, in fashioning these proposed amendments, we were taking into account that law enforcement, prosecutors, and judges all have a certain amount of discretion when looking at the facts and circumstances of the particular case to determine whether an individual should be sanctioned for being out of compliance. We think that discretion is important.

If there is some proposed language that would better reflect our intent here and carry out the purposes and achieve the goals that we are trying to achieve, we would certainly be amenable to considering it.

Assemblyman Frierson:

Thank you, Mr. Kandt. Conceptually, I was suggesting something along the lines that the court may dismiss or vacate a case or a charge once the sex offender has updated his address within this section.

Chairman Horne:

Mr. Hansen.

Assemblyman Hansen:

Thank you. I think one thing we are overlooking in this discussion is the fact that we are not dealing with just ordinary homeless people. These are people who are convicted felons and who have been regarded as dangerous, particularly to children and underage potential victims. They have already been walked through the process of how to fill out the forms, what stations to go to, and the requirements under the law. The purpose of this, as I understand it, is simply to make sure there is not a loophole where a sex offender with a high likelihood of repeating sex offenses can slip through the safety net that we have created through the sex offender registration. Is that the purpose of this?

Brett Kandt:

You are correct. The purpose of the sex offender registry is to protect the public and to be able to keep track of these individuals who have been convicted of offenses of a sexual nature that require them to register. We are trying to ensure that the purpose of the registration process is achieved.

Assemblyman Hansen:

And they have been walked through all those processes upon release from prison, I assume.

Brett Kandt:

I would defer to law enforcement to provide specifics on questions about the actual processes, since it handles that.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

Thank you, Mr. Chairman. Tell me if I am missing something here. The homeless people I have talked to have areas that they like, and the patrol

officers that I have talked to and ridden with know the areas. I think there is a "protect and serve" element of this that, yes, they are convicted felons, but they are still homeless, and we still want to do everything that we can for them. Maybe it is a little naive of me, but I kind of envision that I know this is not the primary intent of the law, but this is a way to check in with these homeless people, regardless of the fact that they are felons, and it is one more touch point with something that resembles normal society. The police officers are not out there necessarily to bring them back to jail. They are out there to make social contact, make sure that they are okay. Is that part of the job of the "feet-on-the-street" police officers?

Brett Kandt:

Law enforcement officers may have their own response, but our response is that the purpose of the Nevada Sex Offender Registry is to keep track of these individuals and to know their locations, plain and simple. That is the whole purpose of the system. We believe that currently there is a gap in the system. That is what we are seeking to address through this bill.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

I get uncomfortable when there is a record made that is not entirely grasping what we are talking about here. We are not just talking about a felon's release from prison. We are talking about all sex offenders, and in this particular chapter they happen to be homeless. This would also include the 18-year-old with a 15-year-old girlfriend who was found guilty of a gross misdemeanor and is now a sex offender for life. For example, the client that was maybe 18 had to drop out of high school because now he is a sex offender, and there are issues with sex offenders being around schools and ends up homeless. This would encompass those individuals as well, as far as trying to keep track of where they are. Is that correct?

Brett Kandt:

We are talking about anybody who falls within the current registration requirements with regards to the system, the process, and what we perceive as a shortcoming of the current system.

Chairman Horne:

Mr. Frierson makes a good point. I had a client who was arrested along with his wife for having sex in an underpass. They were charged with open and gross lewdness. Fortunately, the case was dismissed, but they had to go through the whole process. Homeless people are married, too. The case could have easily

been wrapped up in the system, and he could have become a registered sex offender. So, I understand the purpose of this, and I believe that there is a loophole that needs to be closed, because we have a number of individuals who have dropped off the "radar screen" and need to be brought back on.

Mr. Brooks.

Assemblyman Brooks:

Thank you, Mr. Chairman. I know you have already submitted your amendments. I think we talked about the felony. Have we ever discussed the possibility of this being a misdemeanor? I thought we did that last time, and you have not addressed that here. I am concerned when we start taking people in for additional felonies because they failed to make the 30-day requirement. Is there some leeway where we can maybe do a gross misdemeanor or a misdemeanor, as opposed to a felony, for not reporting? Would you be opposed to that?

Brett Kandt:

Throughout this whole process, we have been very careful to consider the fact that we are in compliance with the Sex Offender Registration and Notification Act (SORNA), which is the federal law that applies to this process. We are in compliance with SORNA currently. With the changes that we have proposed, we would remain in compliance. If we get into issues of penalties, we could find ourselves out of compliance with SORNA, so that is a limiting factor for us. We believe that instead of reducing the penalty, we should consider the issue of discretion and the fact that law enforcement, prosecutors, and judges have a certain amount of discretion in evaluating the facts and circumstances of a particular case as to whether an individual is truly out of compliance and whether the appropriate response is to force compliance, rather than prosecute him for a felony.

Chairman Horne:

I believe Mr. Kandt is correct. They do have to be careful about falling out of compliance with SORNA. One of the things Nevada and other jurisdictions has been telling Washington is that we are in compliance.

ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 57.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

Chairman Horne:

Is there discussion on the motion? Mr. Ohrenschall.

Assemblyman Ohrenschall:

Thank you, Mr. Chairman. Last session, we processed Assembly Bill No. 35 of the 75th Session in this Committee. I wonder if you and the Committee would consider an amendment that would take a portion of A.B. No. 35 of the 75th Session and add it to this bill, because even though we passed that bill unanimously, it ended up dying on the desk of the Chief Clerk of the Assembly. It has to do with the years someone on lifetime supervision has to wait before he can petition the State Board of Parole Commissioners for consideration to be taken off. It would be an amendment to *Nevada Revised Statutes* (NRS) 176.0931, subsection 3(b), changing the ten years to seven years, which we unanimously passed in A.B. No. 35 of the 75th Session.

Chairman Horne:

We currently have a motion on the table, Mr. Ohrenschall. Your proposal would open it up to more debate. Mr. Sherwood.

Assemblyman Sherwood:

I like the place that we have come to with the motion and the second, and I am comfortable with that. If we want to do something else after we pass this, maybe we can do an amendment on the floor. I think there has been a pretty good compromise by enough parties that this legislation could be passed if we take it out of this Committee, as moved by Assemblyman Frierson.

Chairman Horne:

Thank you. I am sorry, Mr. Updike, but we do not take testimony during work session, only clarification.

**Jerod Updike, Private Citizen, Reno, Nevada, through Karla Johnston,
Sign Language Interpreter:**

Okay, no problem.

Chairman Horne:

Mr. Hammond, do you have a question?

Assemblyman Hammond:

I want to make sure I know what the motion is.

Chairman Horne:

Mr. Frierson, will you repeat your motion?

Assemblyman Frierson:

My motion was to amend and do pass with the amendments proposed by Mr. Kandt and conceptually some line that indicates that the court may dismiss

the felony charge once the sex offender updates his address. I am certainly willing to discuss it with Mr. Kandt, as far as making clear it is not for offenders who are evading or trying to intentionally mislead, but for homeless people who simply need to update their addresses. It happens in practice oftentimes, anyway. That would be a conceptual amendment to make it clear that this can be done that so that a judge does not say he or she cannot dismiss the case because he or she is not authorized to.

Chairman Horne:

The bill passes.

THE MOTION PASSED. (ASSEMBLYMEN BROOKS AND KITE
VOTED NO.)

Mr. Frierson will handle that on the floor. Mr. Hammond.

Assemblyman Hammond:

We are talking about a conceptual amendment, so if that conceptual amendment does not seem to meet my approval later on, is it acceptable to change my vote?

Chairman Horne:

Yes. The proper way to do that is to advise the Chairman before it comes up.

Assemblyman Hammond:

I just want to make sure the language is acceptable after it is all said and done.

Chairman Horne:

The next bill is Assembly Bill 282. Mr. Ziegler.

Assembly Bill 282: Revises various provisions concerning firearms.
(BDR 15-962)

Dave Ziegler, Committee Policy Analyst:

[Mr. Ziegler read from the work session document ([Exhibit D](#)).]

Chairman Horne:

Thank you. Are there any questions about the proposed amendments?
Mr. Hansen.

Assemblyman Hansen:

Which amendment dealt with the provision that, if you have a concealed weapons (CCW) permit, you do not have to renew with the Bureau of Alcohol,

Tobacco, Firearms, and Explosives (ATF) every time? I definitely want to make sure that is included in this bill.

I have a paper here, and I am not sure where it came from. It reads, "Proposed Amendment to A.B. 282." It amends section 2 of the bill to include a check of the National Instant Criminal Background Check System as defined at the time of initial application and renewal of the permit. Is this included, or does the bill already exclude that requirement?

Chairman Horne:

Mr. Anthony, can you clarify, please.

Nick Anthony, Committee Counsel:

I believe the provisions that Mr. Hansen is referencing are under the last amendment. It is simply labeled "Proposed Amendment to A.B. 282." That is the amendment that deals with the Brady background checks. It is my understanding that that would require a Brady check on initial application and on renewal. We have been told that is per federal law.

Assemblyman Hansen:

So, regardless of what we do on this bill, that will be a requirement? Of course, the initial one is no problem, but the renewal In other words, once you have that CCW permit you do not have to go through that background check every time you buy a pistol or rifle.

Chairman Horne:

Mr. Adams.

Frank Adams, Executive Director, Nevada Sheriffs' and Chiefs' Association:

The issue in that amendment is that it puts into statute ATF requirements that at the time of initial application and of renewal application that allow us to be considered for the exemption from having to do a Brady check when buying a gun. That exemption was removed from us several years ago because we did not have certain things in statute. This puts those requirements back into statute. We can then go back and reapply to the ATF for that exemption. If we get that exemption back, and if you have a CCW permit, then you can go to a gun store and buy a gun without having to have a Brady check done every time.

Assemblyman Hansen:

Good. That is what we want. So, would we then want this amendment?

Frank Adams:

Yes, sir, but it is not a guarantee. It means that we can reapply to the ATF for the exemption.

Assemblyman Hansen:

Thank you.

Chairman Horne:

Also, we had discussions on the proposed amendment from the Nevada Attorneys for Criminal Justice (NACJ) dealing with the provision on the release of records in response to a subpoena issued in a civil or criminal proceeding. As to the confidentiality issue, they would still be able to get that information. I think it is currently done that way anyway. I do not know if that needs to be in there.

Are there any other questions or discussions?

Assemblyman Hansen:

With the amendment from the NACJ, one of the concerns was that the people who applied for CCW permits and received them did not want that to be part of any kind of public record. Does this expand that or remove that?

Chairman Horne:

That is why I was saying I do not think the NACJ amendment is needed. They are requesting in their amendment to be able to subpoena.

Assemblyman Hansen:

Oh, okay. Thank you.

Chairman Horne:

If there are no other questions, I will entertain a motion.

Assemblyman Brooks:

Let me get this right. I am going to move to amend and do pass with the exception of the NACJ amendment. We will take all of the amendments with the exception of the NACJ Legislative Committee.

Chairman Horne:

I will accept the motion.

ASSEMBLYMAN BROOKS MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 282.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Is there discussion on the motion? This amendment includes the addition of the names that are listed. Mr. Hammond.

Assemblyman Hammond:

This motion, then, would exclude the NACJ amendment.

Chairman Horne:

That is correct.

Assemblyman Brooks:

If I am correct, that language is already in the bill on lines 20 and 21. They just want to add line 26, the subpoena power. Is that correct?

Chairman Horne:

Yes. Mr. Daly.

Assemblyman Daly:

I am questioning the section where they want to delete the words "or discharge" in two locations. Is that a friendly amendment to the Speaker's bill, or is this going to create a higher standard for discharge? So, you can carry it in there, but if you discharge it, you are in violation of the law, even if you are acting in self-defense.

Chairman Horne:

Mr. Anthony?

Nick Anthony:

Yes, I believe this amendment has been agreed to by the parties, and it simply clarifies that state parks currently have designated areas for hunting or firearms discharge, and there are some areas that are designated for no discharge. This would simply allow them to maintain that authority within the state parks.

Chairman Horne:

Do you have a question on your own motion, Mr. Brooks?

Assemblyman Brooks:

No. Based on what Mr. Anthony was saying, that person could not undergo prosecution if the discharge was in self-defense.

Chairman Horne:

That is correct. I will open the vote.

THE MOTION PASSED UNANIMOUSLY.

Speaker Ocegüera will handle his own bill, and it will fall to Mr. Carrillo.

The next bill is Assembly Bill 401.

Assembly Bill 401: Makes various changes concerning constructional defects.
(BDR 3-382)

Dave Ziegler, Committee Policy Analyst:

[Mr. Ziegler read from the work session document ([Exhibit E](#)).]

There is an amendment. It is in the form of a mock-up, and it is attached.
Thank you, Mr. Chairman.

Chairman Horne:

Does everyone have the mock-up with the proposed changes? Mr. Hansen.

Assemblyman Hansen:

This is a good bill. It does not go quite far enough, but it is a step in the right direction.

Chairman Horne:

Thank you, Mr. Hansen. Mr. Brooks.

Assemblyman Brooks:

I remember that they still had not come to a resolution when they brought this. Was this something that was agreeable to both parties? I remember that the testimony was that the two were going to have to hash it out. I do not know if anyone is here to walk through what they decided.

Chairman Horne:

Even if we pass today, they will still be talking, working, and finessing. They are trying to, anyway. We are likely to see this bill again in conference committee. Ms. Diaz.

Assemblywoman Diaz:

Thank you, Mr. Chairman. When this bill was originally presented, it had the seven-year time frame, and now it has changed to six. I want to know the logic behind the change.

Chairman Horne:

I believe that is the statute of repose language, and that was an effort for further negotiations between the parties in trying to come to common ground. This whole process has been give-and-take by both sides. You heard Mr. Hansen say this bill does not go far enough. You heard that Mr. Litt, the attorney for construction defect litigation, is not happy with some provisions in this, so further compromise language is needed in trying to get consensus. Are there any other questions or concerns about the amended A.B. 401? I would entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 401.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN SHERWOOD
VOTED NO.)

Chairman Horne:

The next bill is Assembly Bill 463.

[Assembly Bill 463](#): Provides an expedited process for the forfeiture of certain seized vehicles. (BDR 43-1128)

Dave Ziegler, Committee Policy Analyst:

[Mr. Ziegler read from the work session document ([Exhibit F](#)).]

Chairman Horne:

Thank you, Mr. Ziegler. Mr. O'Callaghan, your proposed amendment deletes ". . . it appears to the court having jurisdiction over the proceedings that the rightful owner of the vehicle cannot after due diligence be found." Why are we taking that out?

Brian O'Callaghan, representing Las Vegas Metropolitan Police Department:

Due diligence is covered in section 3. There are also other avenues within the *Nevada Revised Statutes* (NRS) that they have to follow. I would have to refer to Mr. Anthony on that.

Nick Anthony, Committee Counsel:

Mr. Chairman, I believe the intent of the amendment covers that in the paragraphs there above in new language, and I believe Mr. O'Callaghan is correct. In NRS Chapter 482, there is some language requiring certain diligence to find the owner.

Chairman Horne:

Ms. Dondero Loop.

Assemblywoman Dondero Loop:

Thank you, Mr. Chairman. Section 2, subsection 2(b) reads “. . . the district court for the county where the vehicle is . . . the vehicle does not exceed \$10,000.” Where does that figure of \$10,000 come from? Why was that number chosen?

Brian O’Callaghan:

That is currently already in statute.

Chairman Horne:

Mr. Anthony.

Nick Anthony:

I believe the \$10,000 refers to the jurisdictional amount of the courts, so Mr. O’Callaghan is correct. That is our current threshold, which takes you out of justice court and up to district court.

Assemblywoman Dondero Loop:

Okay, thank you.

Chairman Horne:

Mr. Kite.

Assemblyman Kite:

Does this affect search and seizure in any way?

Brian O’Callaghan:

No, this is just for the purpose of getting it into the courts quicker, and it gives us the authorization to either return or destroy the vehicle.

Assemblyman Kite:

That was my understanding, but I wanted to make sure. Rural counties fund the Drug Abuse Resistance Education (D.A.R.E.) program and the like with seized vehicles. Thank you, sir.

Chairman Horne:

I would entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 463.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Mr. Kite will defend the bill on the floor.

We are looking for the paper copies for the next group of bills. We will go off of the Nevada Electronic Legislative Information System (NELIS) for now.

The next group of bills was heard in the Subcommittee. Mr. Ziegler, please present Assembly Bill 389.

Assembly Bill 389: Revises provisions regarding the Open Meeting Law.
(BDR 19-226)

Dave Ziegler, Committee Policy Analyst:

Members, this second group of bills today involves those that were in the Assembly Committee on Judiciary Subcommittee on Common-Interest Communities (CICs). The first one is A.B. 389, sponsored by Assemblyman Ohrenschall.

[Mr. Ziegler read from the work session document ([Exhibit G](#)).]

Chairman Horne:

Thank you, Mr. Ziegler. Mr. Ohrenschall is the Chairman of the Subcommittee. Is there anything of particular interest that should be brought to the Committee's attention?

Assemblyman Ohrenschall:

Thank you, Mr. Chairman, and thank you for allowing me to chair your Judiciary Committee's Subcommittee on Homeowners Associations. I appreciate that opportunity. I would like to thank Mr. McArthur and Mr. Carrillo, who put in countless hours with me on this Subcommittee. We heard much testimony, and we could not have done it without the help of Mr. Anthony and Mr. Ziegler, who I think are very sleep-deprived because of this. I also want to thank Nichole Bailey, Michael Smith, Danielle Barraza, and all the other Judiciary staff who went the extra mile to help make this Subcommittee work.

As to A.B. 389, which I sponsored, I had been approached by some folks in Las Vegas who felt that the open meeting law needed to be expanded, and that is what we did in the bill. As to section 1, I believe we came to a good compromise with Clark County. We worked with Mr. and Ms. Flint and Constance Brooks to come up with the amended section 1. In section 2, there

was no opposition to the open meeting laws' applicability to nonprofits that have the power of eminent domain. As to the homeowners associations (HOAs), the Subcommittee felt that there are quite a few protections now in *Nevada Revised Statutes* (NRS) Chapter 116, and it would be more appropriate to stay with those protections.

Chairman Horne:

Are there any questions? Mr. Hammond.

Assemblyman Hammond:

Assemblyman Ohrenschall, I received several emails, and I have met with several constituents in Assembly District 13 who are members of HOAs. One of the concerns was what if their board was being presented with information—learning something, taking a class together—and trying to understand their responsibilities as board members. If they got together and listened to somebody who came in, and there were several board members there, under A.B. 389, would the board have to comply with the open meeting laws at this point, even though it is not taking action on anything? The board members are just there to learn. Does that address this?

Assemblyman Ohrenschall:

The consensus of the Subcommittee was to not make NRS Chapter 241 applicable to CICs. That is no longer going to be in the bill if we adopt the amendment. The provisions for notice and transparency in NRS Chapter 116 that are already in statute will still apply.

Chairman Horne:

Are there any other questions? Ms. Diaz.

Assemblywoman Diaz:

Colleague Ohrenschall, can you clarify when this would apply? Can you give me a scenario?

Assemblyman Ohrenschall:

Mr. Flint and his daughter testified about what happened to them and some others here in the northern part of the state. They felt that proponents before the Washoe County Commission had been given ample time to make their case; and then when public comment was left open, the folks who opposed a particular ordinance or zone change received very little time, and they felt it was not adequate. That is what this is trying to remedy. It is trying to make sure that at a public meeting, all sides and opinions will have a chance to be heard.

Assemblywoman Diaz:

Everybody has a voice in the process.

Assemblyman Ohrenschaal:

That is what we are attempting with section 1 of A.B. 389 as amended.

Assemblywoman Diaz:

Thank you.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

Mr. Ohrenschaal, I am thinking of the Clark County Commission. There is public comment at the end of every session that is held. Everyone gets three minutes. You may have somebody who is at the Commission meeting, and wants to get a zone variance, and has to explain exactly what he is doing. He brings his plan, and it may take 15 minutes. Could this bill have the unintended consequence of, after allowing 15 minutes to show the plans, allowing someone opposed to that zone variance 15 minutes to get up there and say the same thing? Could that scenario happen right now?

Assemblyman Ohrenschaal:

The way we drafted this amendment, working with Clark County, was to try not to hamstring any local government. If we had all the time in the world, it would be great if everyone received exactly the same time. However, we did not want to put any specific numbers in statute. That is why the amendment reads, "A public body shall make a reasonable effort to allow competing views to be expressed." There may be times when there might only be three minutes if there are many people who come to speak against a measure. The public body may not be able to give an equal amount of time to everyone. You may have 100 residents who come to speak against a zoning change.

We are trying to make sure with this bill that no one is cut off. This bill does not mandate that if the proponents each gets 15 minutes, the opponents will each get 15 minutes. We are providing for a reasonable effort to allow for competing views.

Assemblyman Sherwood:

That leaves a little discretion for the county commissioners.

Assemblyman Ohrenschall:

It does, and I have faith in our local governmental bodies and that they will try to make sure that everyone is heard.

Assemblyman Sherwood:

Thank you.

Chairman Horne:

Mr. Daly.

Assemblyman Daly:

To the Chairman of the Subcommittee, did you have any discussions with the Office of Attorney General when you were looking at this amendment? I will explain why I ask. The Office of the Attorney General is the one that gets these complaints on open meeting law violations. Any action that is taken by a public body in violation of the open meeting law is void by statute. I have concern with this "reasonable" standard that if somebody did not get exactly equal time, he will file a complaint. He will say he did not get the same amount of time, and it will create another process. I have attended too many of these planning meetings. I have seen equal time, or substantially equal time, given to both sides. With the "reasonable" standard, if I was not on the prevailing side, I would file an open meeting law complaint. That is guaranteed to happen. The Attorney General will then have to go back and do all this stuff. In the meantime, the decision is held in limbo.

I think the amendment is well-intentioned, but the road to hell is paved with good intentions. This would just increase litigation. I think it is not a good idea.

Assemblyman Ohrenschall:

Thank you, Mr. Daly. I did speak with Mr. Munro and Ms. Contine at the Office of the Attorney General about the original bill. Their main concerns were the latter sections of the bill that would have applied NRS Chapter 241 of Nevada's open meeting law to CICs and HOAs. I think they were concerned about how that would affect the Office and the new responsibilities and burdens that it would put on the Office. They did not express any concerns about section 1. The amended bill does not call for equal time; it calls for the public body to make a reasonable effort. If someone who is unhappy with the decision seeks to file a non-meritorious open meeting law complaint, he can do that now. I would imagine that the Attorney General would not pursue it if it is frivolous or lacks merit. I do not think this bill expands any doors for people who want to abuse the process.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:

Thank you, Mr. Chairman. With the open meeting law, a notice of the meeting has to be posted about a month in advance, and there are certain requirements that you have to do when you convene under the open meeting law, is that correct?

Assemblyman Ohrenschall:

That is correct. Nothing would change with the bill, in terms of posting.

Assemblyman Brooks:

In regard to public comment, the Chairman of the meeting could actually have public comment at three or five minutes maximum each. It should not pose a great problem.

Assemblyman Ohrenschall:

You are right. We are not changing that here. We are still giving the public body the discretion to do that. We are not putting any specific number of minutes in statute. We are trying to make sure that no public comment is squelched, and I think the amendment goes a long way towards instructing all public bodies that the intent of the Legislature is that all sides are heard.

Chairman Horne:

Are there other questions on A.B. 389? I see none. I would entertain a motion.

ASSEMBLYWOMAN DIAZ MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 389.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN DALY VOTED NO.)

The next bill is Assembly Bill 448.

Assembly Bill 448: Revises provisions relating to real property. (BDR 10-513)

Dave Ziegler, Committee Policy Analyst:
Thank you, Mr. Chairman.

[Mr. Ziegler read from the work session document ([Exhibit H](#)).]

The Subcommittee met the other night and reached consensus on virtually all of the amendments that I will soon cover. There was one amendment in section 34, where there was not a consensus. Nevertheless, it is a recommendation of the Subcommittee, but not a consensus, and that is in section 34, subsection 5. The balance of these recommendations represents a consensus of the group.

Mr. Chairman, I believe the easiest way for me to do this would be for me to walk you through the abstract, which follows the summary I just read.

The abstract starts with section 2.

[Mr. Ziegler read from the abstract of the work session document ([Exhibit H](#)).]

The consensus of the Subcommittee was to modify that first point of section 2 so that the HOA is prohibited from restricting the lawful rights of access of a unit's owner or other residents of the unit. The group upheld the idea of prohibiting an HOA from restricting the installation of certain antennas. These antennas are basically satellite dishes under 1 meter in diameter, and they are largely protected by federal law.

The Subcommittee concurred on the second point, that the HOA may not charge a fee to an owner for obtaining permission to change the exterior appearance of landscaping.

Moving on to the subject of management of CICs, section 3 would have authorized an HOA subject to the provisions of the declaration to impose collection costs for late payment of assessments. The amendment deletes that provision. Section 3 requires the HOA to provide 48 hours notice before removing a parked vehicle that is blocking a handicapped parking space. That provision is deleted. Section 3 also requires the HOA to provide 48 hours notice and that those notice requirements apply to all vehicles, regardless of who owns them. That is maintained.

Section 4 has to do with emergency elections to fill certain vacancies. That provision is deleted. Section 4 requires an HOA to make available to members of the board, at no charge, certain books, records, and papers. That provision is maintained. Section 4 requires the board to notify the unit owners if the board has been found in violation of existing laws governing CICs or governing documents. That provision is deleted.

Section 5 is maintained.

Section 6 provides that an HOA may prohibit only the use of a common element to which a violation relates, unless the violation is failure to pay an assessment. That is deleted. Section 6 also provides a lifetime cap of \$2,500 on the amount of fines that may be imposed on a unit owner and his or her spouse. That provision is deleted. Section 6 prohibits an HOA from imposing a fine if another HOA has imposed a fine for the same conduct, authorizes the postponement of a hearing for medical reasons, and requires a hearing before the imposition of a fine for a continuing violation. Those provisions are maintained. Members, the idea of the prohibition of imposing a fine if another association has imposed a fine for the same conduct deals with master associations and subassociations, where a home could be in two associations at one time.

The provision for section 7 is maintained; the provision for section 8 is deleted.

The first listed provision for section 9 is deleted. The provision which requires a member of the HOA board to successfully complete two hours of continuing education annually concerning his duties is maintained, but I believe the word "successfully" is dropped because there is no implication that there is a test or a certification.

Moving on to the section regarding meetings and voting, section 11 authorizes a unit owner to request agenda items. That section is deleted. Section 11 also authorizes a guest of a unit owner to attend unit owners meetings. That section is maintained with a change, requiring the name of the guest to be submitted in advance. The provision authorizing a unit owner to videotape a unit owners meeting has been deleted.

In section 12, the provision that requires meetings of an HOA board to be held at a time other than standard business hours and to start not earlier than 6:00 p.m. is deleted. The provision is maintained that requires the agenda of an HOA board meeting to be available not later than five days before the meeting. Section 12 also requires a copy of certain financial information required to be reviewed at an HOA board meeting to be made available at no charge to each person present at the meeting and in electronic format. That provision is deleted. The provision that a page limit on materials, remarks, or other information to be included in the minutes of an HOA board meeting must not be less than two double-sided pages has been maintained.

In section 13, the "3 minutes" for speaking has been changed to "a reasonable time limit." The rest of the provisions in section 13, I believe, are maintained.

The provisions listed for sections 14 and 15 are maintained.

Sections 16 and 17 are deleted.

Section 18 is maintained, but with a change, saying that the board may charge, basically, its cost.

Section 19 and 20 are deleted, except for the provision that requires the collections policy of an HOA to establish a certain period, after which a delinquent fee, fine, or assessment may be referred for collection.

Section 21 is maintained; sections 22 and 23 are deleted.

Section 24 is maintained, but it is revised and substantially reduced. It is made briefer.

Section 25 is maintained, and section 26 is deleted by amendment.

Section 27 remains. It replaces the authority of an HOA board to approve the renting or leasing of a unit under certain circumstances.

Section 28 remains, with the exception of the provision that the governing board is prohibited from interfering with the parking of vehicles.

Sections 29 and 33 relate to arbitration and mediation. The provision for section 29 remains; the provision in section 33 is deleted.

Section 34 is modified to provide that if a party commences civil action based upon a claim which was the subject of mediation, the findings of the mediator may be admissible; and it revises the amount of the fees from \$750 to \$1,000, unless more is authorized for good cause shown.

Section 1 has to do with violations and disciplinary actions. It is deleted.

Sections 31 and 32 remain.

This is a lengthy bill and has many provisions. Thank you, sir.

Chairman Horne:

Thank you, Mr. Ziegler. We appreciate your hard work on that. I will give everybody some time to digest the abstract.

Mr. Ohrenschall, section 9 was deleted, which prohibited married persons or certain related persons from serving as officers or members of an HOA board. Can you elaborate on why that was deleted?

Assemblyman Ohrenschall:

When we took testimony on that section, Mr. Friedrich brought up a point. There was an HOA that had a married couple, I believe, on the board and it was felt that they were kind of taking over the whole board; and it did seem like a problem. However, there was also testimony about HOAs that are very small in terms of the number of homeowners and did not have a lot of interest from people who wanted to serve on the board. If this passes, we will be precluding people from serving because of relationship by blood or marriage. The Committee felt that that would do more harm than good.

Chairman Horne:

I had heard from others in the past about problems with boards that had multiple familial relationships on them as being problematic. Mr. Hammond.

Assemblyman Hammond:

Mr. Ziegler, I want to be sure about something. When you got to sections 19 and 20, you said that they were both deleted except for . . . , and I did not hear what you said. Is it the last provision on that page which requires a collection policy of an HOA? Is that the part that remains?

Dave Ziegler:

The part that remains reads as follows: "The executive board shall . . . make available to each unit's owner the policy . . . concerning the collection of [any] fees, fines, assessments or costs imposed against a unit's owner . . ." under *Nevada Revised Statutes* (NRS) Chapter 116. The policy must include, without limitation, "A provision that a fee, fine, assessment or cost may not be referred for collection unless the unit's owner has not paid the fee, fine, assessment or cost within 60 days following the month in which notice of the fee, fine, assessment or cost is sent or otherwise communicated . . ." The language speaks for itself.

Chairman Horne:

Thank you, Mr. Ziegler. Mr. Sherwood.

Assemblyman Sherwood:

On page 23, lines 10 through 12 read, "A guest of a unit's owner must be allowed to attend any meeting of the units' owners. Prior notification, including the name and identity of the guest, must be provided to the executive board." Just knowing how these HOA members and committees take what we say, there is enough ambiguity there where I could see how that could be a problem. I know there is a five-day notice for the agenda to be posted. What do we mean by prior notification? What if I text somebody on the way to the meeting

and the board does not let me in? It looks like it was added back. If you really wanted to have the owners there, that would be a way to. If we really wanted to make sure that the owners' guests were there, the second part of that, saying prior notification, could make it so that we really did not have guests there. I am not suggesting one way or the other; I just think that we should clear that up.

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:

Mr. Sherwood, you bring up a good point. When this was brought up in the Subcommittee, the argument for this provision was that a homeowner may want to bring an interested witness to a meeting, especially if there is a dispute going on. Originally, we did not have the requirement for prior notification. We added that because we felt that the board should know and should not be surprised. We interpreted it as reasonable notification. I do not think texting someone five minutes before a meeting would be considered reasonable, but we did not see the need to specify that in statute. I suppose problems could arise. We could amend it to require 24- or 48-hour notice, whatever the pleasure of the Committee.

Assemblyman Sherwood:

Just so there is a "playbook" and rules, while I am not suggesting anything specific, we should make it black and white. Are we talking about notifying the entire board or a single member of the executive board? I am assuming, if you wanted to bring an attorney to the meeting, this is basically what it addresses, right? We can bring an attorney because we have a dispute. I painted my house pink, and I was not supposed to, and I want to bring in an attorney.

Assemblyman Ohrenschall:

During testimony, it was mentioned that someone might want to bring an attorney. It was also mentioned that someone might want to bring a disinterested witness or a member of the press.

Assemblyman Sherwood:

Could we put in a 24-hour prior notification requirement, and then maybe give the executive board discretion in addition?

Assemblyman Ohrenschall:

Discretion to do what?

Assemblyman Sherwood:

If a person misses the deadline, and the board does not want to be to the letter-of-the-law, the board can do that. I can see that is why you would not want to put that in there, because hopefully, it is not an adversarial relationship, but if you have to have it cut off, we should probably put that in there. If you knew 5 days ago, and you have 24 hours to let the board know that there is a guest, and then if you violate that, maybe everyone on the executive board will be okay with the lack of notification. Or, in ignorance, if you did not know, the board will still let the person attend. Let us put a number down.

Assemblyman Ohrenschall:

So, you are saying that if we establish a number such as 24 hours, the executive board could still consent to allowing the homeowner to bring the guest, even if the homeowner did not meet the notice requirement if the board chooses to.

Assemblyman Sherwood:

It is at their discretion, yes.

Assemblyman Ohrenschall:

That sounds reasonable to me, if it would be the pleasure of the Committee.

Chairman Horne:

Mr. Brooks.

Assemblyman Brooks:

Mr. Ziegler, can you tell me if we approved or deleted section 29? I missed that in your presentation.

Dave Ziegler:

Section 29 remains.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

This is not just a lengthy bill, but a pretty complicated area. I really appreciate the work that the Subcommittee did on this. I wonder if the issue of collections for fines came up during the Subcommittee discussion. I thought I read at some point that you could not send fines to collections, only the monthly assessments. I ask this because the subjective nature of the fines where neighbors might have an issue with another neighbor and constantly call the HOA, saying that Mr. Horne does not pull his weeds, and if Mr. Horne happens

to be in Carson City and unable to respond, he might get more fines as a result of something subjective. I think Florida does not allow for fines to be sent to the collection agencies, just the monthly fees that are known and scheduled. Did that come up at all in the Subcommittee?

Chairman Horne:

Mr. Carrillo, you were on the Subcommittee. Do you recall anything along those lines? And just for the record, I am not pulling weeds.

Assemblyman Carrillo:

Thank you, Mr. Chairman. Assemblyman Frierson, from what I recall, there was no mention of fines being added to or being subjected to collections. I know we had deleted that entire section, but to the best of my knowledge, we did not even bring up that matter.

Chairman Horne:

We have another bill.

Assemblyman Frierson:

I believe there is, but I am referring to page 34, starting on line 29. When that was read, it just jumped out at me as something that I remembered kind of looking up before when I was dealing with a fee, fine, assessment, or cost. I saw that word "fine" in there, and I did not think that we were able to do that. I thought it was a provision somewhere else in the law that prevented fines from being sent to collections.

Assemblyman Ohrenschall:

Mr. Frierson, I am not sure if you are looking at page 34 of the mock-up, lines 29 through 36.

Assemblyman Frierson:

I am.

Assemblyman Ohrenschall:

Okay. We were concerned about the very scenario you mentioned, where someone is away on an extended absence and does not realize that a small fine has now grown into thousands of dollars. We were attempting to address that in that section.

Chairman Horne:

I believe Mr. Frierson asked whether or not there is currently a statute of prohibition from sending fines to collections.

Assemblyman Frierson:

That is correct, Mr. Chairman. I see in existing language just above, that the provision that a fine, fee, assessment, or cost, which leads me to believe that it is allowed. I do not want to complicate this issue that was already in existing law, apparently.

Chairman Horne:

Mr. Anthony.

Nick Anthony, Committee Counsel:

Mr. Frierson, I believe you may be referencing existing law NRS 116.310313, which is in section 8 on page 14 of the mock-up. Existing law does authorize an association to charge fees for collecting any past due obligation. The definition of "past due obligation" includes any fee, charge, or cost, including, without limitation, collection fees, filing fees That is existing law.

Chairman Horne:

Mr. Segerblom.

Assemblyman Segerblom:

I must oppose the idea of having notice before you bring a lawyer to a meeting. It seems to me that the board ought to be on notice that anyone could bring a lawyer or friend. That should be something the board should expect. You can get into all kinds of fights about whether you gave them 24 hours notice or 48 hours notice or 8 minutes notice. I do not see why you have to give them notice at all. You ought to have the right to bring an attorney or a friend with you, and that should be something that is anticipated.

Chairman Horne:

It is either an open meeting, or it is not an open meeting, right?

Assemblyman Segerblom:

Exactly.

Chairman Horne:

Mr. Hammond.

Assemblyman Hammond:

For clarification, it does say that you are allowed to bring somebody with you, but does that guest have right to speak at the meeting? I do not read that in there at all. I am wondering if a guest has the right to speak or just to be there.

Chairman Horne:

I did not read anything that grants them the right to speak or participate in matters concerning the HOA. They are just guests.

Assemblyman Hammond:

That is also how I read it, and I want to make sure that is correct.

Assemblyman Ohrenschall:

During our testimony, there was no actual testimony requesting that this guest be allowed to speak. It was more of an observer role, where the guest would be a disinterested witness, friend, attorney, or a member of the media.

Assemblyman Hammond:

Okay. Thank you.

Chairman Horne:

Mr. McArthur.

Assemblyman McArthur:

I would like to clear up a point. The board cannot say no to people showing up, it is just that you are going to let the board know that there will be different people in the room. You are just advising them ahead of time that somebody will be there, but they cannot say no. You can still bring your guest.

Chairman Horne:

If they cannot say no, why have it in there?

Assemblyman McArthur:

At some of these meetings there are many people showing up. You pretty much recognize the regulars, and you see a lot of unfamiliar people, and you want to know what they are doing there. This is just advising the board that different people will be at the meeting. The board cannot say no to them showing up.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

My point in the notification is, and I do not care if we drop the thing or what, but the way it reads now is very ambiguous, and it is contradictory. Just drop that whole line or exactly spell out what it means. And if the intent, as Assemblyman McArthur mentioned, is a courtesy, then we should put "as a courtesy." When you put "must" there when you are granting a right,

you are going to have a train wreck. Let us clear it up so that there are no complaints, and we will not have to do it again.

Chairman Horne:

Mr. Brooks.

Assemblyman Brooks:

My colleague just basically stated everything I was going to state.

Chairman Horne:

Are there any other questions or concerns? If the board already cannot tell them that no guests are allowed to attend, why put it into statute?

Before I forget, section 12, subsection 6(f) was deleted. It was the part that required copies of certain financial information required to be reviewed at board meetings to be made available at no charge to each person present at the meeting, and to be provided in electronic format at no charge to a unit owner who requests it. Why was that deleted, Mr. Ohrenschall?

Assemblyman Ohrenschall:

There were quite a few worries about the cost to some of the larger associations and also about the uncertainty, because the boards would not be sure as to how many people might attend.

Chairman Horne:

I think it is safe to say that, particularly in those instances where it is a large HOA, it is probably not overly burdensome to have them provide it, at least in electronic format, without charging the members for it.

Assemblyman Ohrenschall:

I think we discussed the potential that the board could email the information. I think there were concerns about whether people would show up to a meeting, and the board would have to burn discs, or have to provide it on some other type of media. Those were the concerns that steered the Subcommittee against that. Mr. Carrillo, do have any recollection of that?

Assemblyman Carrillo:

What we had discussed is the fact that I do concur with Mr. Ohrenschall as to why having 50 copies made and not knowing if there are people to accept 50 copies. There might be three people who show up for a meeting, and if it is based on a request, I am not sure that is something a homeowner can do later. A lot of times, if you do not get your information right there and then, it gets

lost, and you never receive it. It just seemed like there was too much grey area in that. That is why we deleted it.

Chairman Horne:

Is the board currently charging for electronic format?

Assemblyman Ohrenschall:

Mr. Chairman, I believe it varies by association.

Chairman Horne:

Is there anyone here representing HOAs? Mr. Gordon, can you give me comfort on why an HOA would need to charge to provide its members an electronic financial document? I get the whole part about at the meeting printing out however many copies, but are you going to charge for electronic transfer?

Garrett Gordon, representing Southern Highlands Community Association:

The discussion that transpired was that the hard copies could be very voluminous. With respect to the electronic format, shooting an email out per the request of a homeowner would not be a problem, but there are 7,000 unit owners in Southern Highlands. If each unit owner requested every quarter all of this information on, say, a compact disc, there would be a cost to be able to respond to those requests, considering the cost of the discs and the time spent.

Chairman Horne:

Is this not information of which, for instance, if you are going to have an HOA meeting, and this particular information is the topic of discussion, you would want to provide your members with the very thing that they are interested in? You would say, "We have a meeting dealing with the financial situation of an HOA, but if you want to see that, it is going to cost you money." That is how I read that. Alternatively, you could say, "On April 15 we will have a meeting. Attached to this email are the documents that will be discussed." You could send out a request to your 7,000 members asking them to provide their email addresses so that you could provide financial documents at no cost to them.

Garrett Gordon:

I agree with you regarding sending out all these documents in email format. The concern was in this specific section, which occurs every quarter, that the contents of section 12, subsection 6, paragraphs (a) through (f) are very voluminous. You have the schedule of revenues and expenses, the budget, and operating expenses. With the requirements of this particular section, the amount of information that would be required to be provided to the unit owners would be overly burdensome and come with a very high cost. In current law, information, including the agenda and any supporting documents, would have to

be provided at the meeting and can be reviewed. But, providing all the financial information to all unit owners is expensive.

Current law in another section, which says for "any" board meeting held once a month, there is a cost of, I believe, 10 cents a page to get all that information. Mr. Chairman, if it would give you and the Committee more comfort that electronic format would be an email or another electronic delivery, I concur with you. It should be at no charge. This could be put maybe into a Portable Document Format (PDF) and sent out for that request. Clicking an email may be a reasonable compromise.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

The intention of your line of questioning obviously would be beforehand. So, do we put into statute that it is a five-day notice of the meeting, and the documents would be available before you get there? If it is a PDF delivered by the board after the meeting, and the board does not necessarily bring printed copies to the meeting, this does not meet the intent of the homeowner being able to print and bring it to the meeting, right?

Garrett Gordon:

I agree that there should be information provided prior to the meeting or at the meeting, not following the meeting.

Assemblyman Sherwood:

If we could just make that in black and white writing, so we do not have to come back and do this again. It sounds like it might be somewhere else, but if everyone is comfortable with that, we could just mandate that it is provided at least electronically and before the meeting.

Garrett Gordon:

That sounds reasonable. If I may suggest, maybe prior to this bill reaching the floor of the Assembly, I could work with the Legislative Counsel Bureau to make sure the changes we make here do not negatively impact another section and it reads consistently. I am happy to work with Mr. Anthony to make sure your comments and the Chairman's comments are incorporated in a consistent fashion.

Chairman Horne:

Thank you. Are there any other questions? Can anyone fashion me a motion?

ASSEMBLYMAN SHERWOOD MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 448.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Chairman Horne:

Is there discussion? Mr. Ohrenschall.

Assemblyman Ohrenschall:

I just want to clarify Mr. Sherwood's motion. The notice of information by electronic mail would be at no charge.

Chairman Horne:

Ms. Diaz.

Assemblywoman Diaz:

I think something has alluded to that effect on page 24 in section 12, subsection 4(a), where it reads, ". . . the minutes of the meeting provided to the unit's owner upon request, in electronic format at no charge to the unit's owner" It also sheds light that when a homeowner requests paper format, it costs ". . . 25 cents per page for the first 10 pages and 10 cents per page thereafter."

Assemblyman Ohrenschall:

You are correct. However, I think Mr. Sherwood's motion, on page 25, relates to subsection 6 of section 12. We are just basically trying to establish the same thing that is already in statute under subsection 4 for the quarterly meetings to discuss the items set forth in section 12, subsection 6, paragraphs (a) through (f).

Assemblyman Sherwood:

And that would have to do with the agenda on the front end as well.

Chairman Horne:

Are there any other questions? I will open the vote.

THE MOTION PASSED UNANIMOUSLY.

Ladies and gentlemen, it is 10:00 a.m. We will take a ten-minute break. We will come back and finish working for floor session.

[The meeting was recessed at 9:58 a.m. and reconvened at 10:16 a.m.]

Chairman Horne:

I want to start with Assembly Bill 552.

Assembly Bill 552: Revises provisions related to the collection of biological specimens for genetic marker analysis. (BDR 14-539)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. We are bringing these documents through in waves. This is the third set today. There are two pages to that cover sheet.

[Mr. Ziegler read from the work session document ([Exhibit I](#)).]

Chairman Horne:

Thank you. Mr. Anthony, can you go through the amendment?

Nick Anthony, Committee Counsel:

This is a consensus amendment. Much of it was actually in the same amendment that was presented during testimony on the bill. I believe the new provisions that are added are referenced on pages 3 and 4. Those provisions stem from a New Mexico law that is similar and were meant to simply address some concerns if somebody posts bail or bond and then flees, that his information would also be subject to the Combined DNA Index System (CODIS). With that, I would be pleased to answer any specifics on any particular provisions of the amendment as we go through it.

Chairman Horne:

Thank you, Mr. Anthony. Are there any questions? Mr. Kite.

ASSEMBLYMAN KITE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 552.

ASSEMBLYWOMAN DONDERO LOOP SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DALY, OHRENSCHALL,
AND SEGERBLOM VOTED NO.)

Chairman Horne:

This will be referred to the Assembly Committee on Ways and Means on the floor.

We will now go to Assembly Bill 93.

Assembly Bill 93: Provides for the establishment of intermediate sanction facilities within the Department of Corrections to provide treatment for alcohol or drug abuse to certain probation violators and offenders. (BDR S-509)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Assembly Bill 93 is the first bill in this set.

[Mr. Ziegler read from the work session document ([Exhibit J](#)).]

Mr. Chairman, I would be happy to go over the amendment if you like.

Chairman Horne:

Yes, Mr. Ziegler.

Dave Ziegler:

Thank you, Mr. Chairman. This would be a good time to say that the staff is impartial and not advocating for or against passage of this measure or any other measure.

The concern expressed at the hearing on this bill was that the program was much larger than the appropriation or that the appropriation was inadequate to maintain the scope of the program that was envisioned in the bill as introduced. I also think there was some confusion in the bill about the roles of all the different players—the Department of Corrections (DOC), the Division of Parole and Probation (P&P) of the Department of Public Safety (DPS), the Department of Health and Human Services (DHHS), and so on. The amendment was worked out with those parties, the Division of Mental Health and Developmental Services (MHDS), and the Nevada District Attorneys Association. Similar to the bill as it was introduced, the amendment is session law. It is transitory language. It would not be codified in the *Nevada Revised Statutes* (NRS). It sets up a small pilot program that would be limited to not more than 50 persons at one time. The district court may remand a person to the program for structured supervision in essentially a minimum security DOC facility. These would be felony probation violators only, and instead of revoking the probation and sending the violator to prison, the judge would have the discretion, if the facilities and counseling were available under this program, to remand a probation violator to this pilot program. They would be housed within the DOC. The probation violator would receive treatment and counseling through DHHS as appropriate.

Some of the other provisions in the bill as introduced remain, such as the idea that those who are committed to the program would be responsible to pay for

the cost of their treatment and supervision to the extent of their resources. They could be placed in community service if they needed to help contribute to those costs that way.

Upon the successful completion of the structured probation within the pilot program, the court would return them to regular probation, and they would stay under P&P for the extent of their probation periods.

Basically, the parties urged that it be a pilot program, that it be kept small, and that it be given a chance to succeed. It is modeled after a rather well-known program known as Hawaii's Opportunity Probation with Enforcement (HOPE). A similar very small program is being implemented in Nevada called Opportunity for Probation with Enforcement in Nevada (OPEN). Thank you, Mr. Chairman.

Chairman Horne:

That HOPE program is a very good program. Are there any questions on A.B. 93?

ASSEMBLYMAN BROOKS MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 93.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

Is there discussion on the motion? Mr. Brooks.

Assemblyman Brooks:

I just want to commend my colleague, Mr. Segerblom, for a bill that is long overdue, and I believe that this is really going to help some people and some families that would like to see their loved ones get the help that they need.

Chairman Horne:

I will open the vote.

THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, HANSEN,
KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

Assembly Bill 93 passes. Mr. Segerblom will handle it on the floor.

Next up is Assembly Bill 128.

Assembly Bill 128: Prohibits smoking on the property of the Nevada System of Higher Education. (BDR 15-911)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman.

[Mr. Ziegler read from the work session document ([Exhibit K](#)).]

The conceptual amendment would go in the bill on page 2. It would be inserted into lines 11 through 26.

Chairman Horne:

Thank you, Mr. Ziegler. Mr. Daly.

Assemblyman Daly:

I want to clarify the amendment. "Designated by the Nevada System of Higher Education (NSHE)" means that the whole campus could be designated. Was NSHE able to do that prior to this bill, or does the bill allow it to make that designation?

Dave Ziegler:

I do not know the answer to the question about what its authority is today. As far as what the conceptual amendment would say, it does not say that the entire campus or property could be designated. It refers to areas that are separate from areas that are subject to normal pedestrian use or ingress and egress from structures.

Chairman Horne:

Mr. Hansen.

Assemblyman Hansen:

I am a non-smoker. I have never smoked in my life, but sometimes I think we are getting almost ridiculous in prohibiting smoking everywhere for people that need to smoke. I think this is one of those things that should be left up to each campus to set up its own no-smoking zone. There is kind of an irony in this in that my good friend, Mr. Aizley, is promoting the legalization of marijuana in certain circumstances.

I will have to vote no on this. I am definitely against smoking, but we are kind of getting to a point where it is, you know Leave this up to each campus, each county, and each city. The state should not be telling the colleges where they can and cannot have smoking areas.

Chairman Horne:

If marijuana becomes legal, they would have to stay in the smoking areas. I think the point of this bill is that there was no structure. It was just outside,

and the non-smokers were subjected to smoke. If you remember the testimony, he wanted to just ban it from the campus, period. But, I think this is a good compromise. It says the campuses can identify places on campus away from entries to buildings where persons can have a smoke. Mr. Sherwood.

Assemblyman Sherwood:

Thank you. I remember the testimony, and I think I was swayed by your questions about existing remedies and whether one would have to go over to the Starbucks to smoke. I appreciate the zeal of Assemblyman Aizley, but I cannot support a bill where we have existing remedies that, with a little bit of gumption, you could put a "No Smoking" sign up in front of the door, and then when that is abused one could complain.

Just by extending this, there is a \$100 civil penalty for violating the Nevada Clean Indoor Air Act. If we are going to do this, and if it is as big a problem as we have been led to believe, then we should expect that we would be enforcing \$100 civil penalty fines on anyone who violates it. I think this is a bridge too far, and I will not be able to support it.

Chairman Horne:

Mr. Hammond.

Assemblyman Hammond:

I am still not exactly sure how I am going to vote on this, but I want to point out that I remember the testimony, and there was compelling material. Right now, there is no direction as to where these designated areas are. So, what you have on campus, just like you have at a hospital, for example, is a lot of smoking right outside the door, where the doctors are smoking, and you are going right through their smoke to get into the hospital. It is the same thing on the college campuses. You are trying to get into one of the classroom buildings, and you have to go through a cloud of smoke many times. I understand my colleagues when they say it might be too far. Perhaps each campus should have its own policies on the smoking areas, but I kind of see where this bill is letting them know what direction to take. I want to remind everybody of some of the remarks made at the Committee hearing.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

I think that Mr. Hansen makes some very good points about allowing the universities to do this. However, not ever having been a smoker but being around smokers a great deal and having had squamous cell carcinoma removed,

I think that it is not unreasonable to be concerned about having to walk through a plume of smoke. If there is a designated area that you can avoid, then I think that it would allow those folks who want to avoid it to do just that. I think that this language is a reasonable compromise that encourages the campuses that are not taking the initiative to at least create these zones so that everybody is informed about where they can smoke or where they can avoid smoke. I am supporting the measure with the amendment.

Chairman Horne:
Mr. Segerblom.

Assemblyman Segerblom:

I think the problem is right now the campuses cannot make this decision. All we are doing is allowing them to designate the areas, and we are just saying do not put them right next to the doorways. It is illegal to do it in the classrooms and inside the buildings, but under current law, you can smoke as soon as you get outside those buildings. We are trying to say each campus has to find a place where people are allowed to smoke.

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:

I concur with Mr. Frierson and Mr. Segerblom. In recent years, there has been so much new evidence about the effects of secondhand smoke. I think this is a very progressive measure. I think Mr. Aizley has worked hard to bring both sides together, and I will be supporting it.

Chairman Horne:
Are there any other questions or comments on A.B. 128? I see none. I will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 128.

ASSEMBLYMAN DALY SECONDED THE MOTION.

Is there discussion on the motion? Mr. Hansen.

Assemblyman Hansen:
Thank you. Do we have designated non-smoking areas in this building?

Chairman Horne:

In this building? No, you cannot smoke in the building.

Assemblyman Hansen:

Do we have designated smoking areas right now, here, affecting us when we walk into these buildings? Are we going to pass this and push it onto the colleges when we do not even apply it here? When I see some of our colleagues smoking outside, I walk through there, and I really think the health risk when you are already outside has to be absolutely minimal. I can see where it can be an annoyance, but the idea that people are all going to be getting sick from secondhand smoke I grew up in a non-smoking household, but there used to be ashtrays everywhere. Go to the movie theaters, restaurants, taxicabs, doctors' offices We are dealing with a non-issue in my opinion. It is a feel-good measure. It is fine and dandy, but there is a personal freedom factor; I think we are starting to kind of get to a point where we are infringing upon people who really are not infringing upon us.

Chairman Horne:

That was all due before the discussion on the motion. We are discussing the motion. I will open it for a vote now.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, AND SHERWOOD VOTED NO.)

We will now move to Assembly Bill 412.

Assembly Bill 412: Revises various provisions governing mechanics' and materialmen's liens. (BDR 9-833)

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 412 has to do with mechanics' and materialmen's liens.

[Mr. Ziegler read from the work session document ([Exhibit L](#)).]

Chairman Horne:

Are there any questions on A.B. 412? Mr. Hansen.

Assemblyman Hansen:

Thank you, Mr. Chairman. It is not a question, really. The amount that it starts at is \$1 million, right? I do not see why smaller contractors should not have that same provision. I would like to see that reduced to at least \$500,000. This is a great idea. I do not know why the starting point is \$1 million. It should be a lot lower. All of us involved with construction have run into the

situation where retention is held, or in some cases the general contractor goes bankrupt, owing us money. While this is nice for the "big boys," it would be kind of nice to drop that for the smaller businessman as well.

Chairman Horne:

Mr. Holloway, the little guys are not protected.

Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter:

Mr. Chairman, we set it at \$1 million because this bill also applies to single-family residences and smaller projects. It is an arbitrary number. We would not be averse to lowering it to \$500,000, but there is some cost in maintaining these escrow accounts. If you get down into the smaller single-family residences, you may be putting a cost on an individual homeowner, and that is why we set this particular limit.

Chairman Horne:

But, typically, we are talking about a single-family residence. What if the whole project were tract homes, which would be a much larger project, and could be 100 homes, and those homes are selling at \$200,000 each, as opposed to, say, Mr. Holloway having a house built?

Steve Holloway:

We are not averse to having the limit lowered to \$500,000. It was somewhat an arbitrary limit.

Chairman Horne:

I wonder how Mr. Conklin would feel about that, since it is his bill. He is not here. Mr. Daly.

Assemblyman Daly:

Mr. Holloway, is this still intended to apply to the general contractors and not the subcontractors? You were explaining that the other day, and I understand, but it is the owner who has to open the escrow account, and that will probably be a function of the construction law, I am assuming. While \$500,000 is going to protect more people, it is also going to put more of a burden on the contractors. I do not know where that balance is. This is a first-time test, so we do not really know where it will self-balance.

Steve Holloway:

Yes, it is a test as to the \$1 million. Again, we set it somewhat arbitrarily. When you are talking about a million-dollar project, you really are only talking about putting \$100,000 into the escrow account. That is the 10 percent that

would be withheld as retention as the money is earned by the contractor and the subcontractors. We thought that it might be worth setting up an escrow account for \$100,000, but when you start getting into sums less than that, it is probably not worth it to go to that expense.

Chairman Horne:

Is that due to the cost of keeping an escrow account for sums below \$100,000?

Steve Holloway:

Yes, sir.

Chairman Horne:

Mr. Brooks.

Assemblyman Brooks:

When the general contractor works with the subcontractor, does he also withhold 10 percent?

Steve Holloway:

Generally not. If the owner is withholding retention, the general contractor does not. This bill, then, provides that once the retained money is paid to the general contractor, and it stipulates when that will be, he generally has ten days in which to pay the subcontractors their share of that retention.

Assemblyman Brooks:

Does he withhold 10 percent from the contractors?

Steve Holloway:

No, not normally.

Assemblyman Brooks:

I am in support of this legislation. I think it is well overdue. I think anything that we can do to help the construction industry, especially in this economy, is well past due. There is no reason in the world that the owner should not put that 10 percent into escrow. I think this will be a safeguard for you to get your money when your money is due for the work you provide. Thank you for working with Mr. Conklin in bringing this legislation.

Chairman Horne:

I also understand that Mr. Conklin has also been working with the Nevada Resort Association (NRA) on this, and NRA will continue working with it as it processes through. There are some other details to be worked out.

Assemblyman Hansen:

Thank you, Mr. Chairman. I guess it varies from general contractor to general contractor, but in every contract in which I have been involved, the subcontractors did have a 10 percent retention held. At least in the north, it is pretty standard.

Chairman Horne:

Are there any other questions? Mr. Hansen.

Assemblyman Hansen:

I would like to make a motion to amend it to \$500,000 and do pass.

Chairman Horne:

I am not comfortable with the \$500,000, Mr. Hansen, and having escrow accounts for the smaller sums.

Assemblyman Hansen:

If you are talking residential, \$500,000 represents one mighty big, custom home. Whoever can afford that can certainly afford to put aside a little money to help protect the contractors.

Chairman Horne:

We are going to hold that and give our Majority Leader an opportunity to be here for A.B. 412. Mr. Holloway.

Steve Holloway:

An issue about the general contractor withholding 10 percent as well as the owner has been raised by the Assemblyman. May I respond to that? The answer is very simple. If the owner withholds the 10 percent in his contract, then the general contractor has to withhold 10 percent in his contract, but it is really the same 10 percent.

Assemblyman Hansen:

I understand. I am in agreement with your bill. I just think the threshold can be a little lower. It will help everybody, I think.

Chairman Horne:

Let us pull it back for now. Let us do Assembly Bill 223 until he gets here, and then we will go back to A.B. 412.

Mr. Conklin, we were debating A.B. 412. We have acknowledged that you are continually working with the NRA on this. Mr. Holloway has been answering the questions from the Committee. There is some debate. Mr. Hansen has

asked that the floor limit on the escrow accounts be dropped to \$500,000 from \$1 million. I have some concerns about the cost of escrow accounts below \$100,000. Mr. Hansen believes that will bring in more of the smaller people if you do the \$500,000.

Assemblyman Marcus Conklin, Clark County Assembly District No. 37:

Mr. Chairman, I think Mr. Hansen has a good point, particularly for subcontractors. The problem is, there are a lot of moving parts in a bill this complicated, and sometimes finding a good compromise can be very tenuous at best. I do not want to say no, because probably, philosophically, I do not have a problem with \$500,000. I would be concerned with what happens to those people who have been working on this for probably close to a year, when they have a disagreement about whether or not it should have been \$2,000,000 instead of \$1,000,000. It concerns me, but I will leave it in your capable hands. We would just like to see the bill go forward. If I may, on the NRA front, just so it is out there, we had a lengthy conversation with Mr. Ferraro, who is representing the NRA on this particular issue. We agreed that we would continue to have discussions. There are not any major points at the moment, but we recognize that it is complex, and there are many people whose legal counsel is looking through it to make sure it is just right. Certainly, it was not worth stalling the bill for.

Chairman Horne:

I do not want to put anything in there that would complicate your continuing negotiations on the bill. While it is an arbitrary number of \$1 million, you have gotten there, and you continue to work on a balance. So, at this time, I will not accept a motion with the \$500,000 figure. Maybe it will get worked in there; but today, I will move it at the current figure of \$1,000,000.

Assemblyman Conklin:

I am happy to work with Mr. Hansen if he has suggestions. This is kind of a work in progress. I am not opposed to the idea; I just know how these things get complicated.

Chairman Horne:

Can I get a new motion? Ms. Dondero Loop.

ASSEMBLYWOMAN DONDERO LOOP MOVED TO AMEND AND DO PASS ASSEMBLY BILL 412.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Thank you, Mr. Conklin.

The last bill before we go to the floor is Assembly Bill 223.

Assembly Bill 223: Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-989)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman.

[Mr. Ziegler read from the work session document ([Exhibit M](#)).]

At the bottom of the summary page, the amendments referred to as "attached" were attached yesterday. They are not attached today. They are still on the Nevada Electronic Legislative Information System under yesterday. There is a new amendment attached that was submitted yesterday by Mr. Sasser.

Chairman Horne:

Thank you, Mr. Ziegler. Are Mr. Sasser and Mr. Sande here?

Jon Sasser, representing Washoe Legal Services, Inc.:

To quickly refresh the Committee's memory, Ms. Venicia Considine had proposed an amendment yesterday with two small changes that were not controversial. Mr. Sande had proposed an amendment that would have eliminated the \$1,000 automatic deduction and changed the days in which a person has to claim exemptions from the current 8 days up to 20 days. We spent a great deal of time, since we were with you last night. The amendment that Mr. Ziegler referred to is one that I offered to my friend, Mr. Sande, which I understand he rejected. That would have lowered the \$1,000 to \$500, so everybody would have at least \$500 in their account, and would have accepted lowering the 20 days to 10 days. Without that agreement, I certainly prefer the bill with the \$1,000 and the 20 days. If it needs to go to that lower amount to pass this Committee, then that is something that is acceptable. Thank you.

Chairman Horne:

Mr. Sande.

John Sande IV, representing Nevada Collectors Association:

If I may, it is definitely a more palatable solution. However, the concept of changing the current structure as to how you claim the exemptions was just not something that my client was able to live with. Mr. Sasser and I have agreed to disagree in that regard.

Chairman Horne:

It happens from time to time in this building. Mr. Ferrari.

Chris Ferrari, representing Kemp & Associates:

As Mr. Sande said, we tried to work with Mr. Sasser. We have had some productive dialog, and we made some significant offers in this. I do not want that to go without notice. We provided an additional notification provision that would be statutory. We increased to 15 days the timeline in which the debtor would be able to claim that exemption. We also put in, at the Committee's request, the exemption of all those federal benefits—veteran's, Social Security, et cetera—which I believe will not take place on the federal level until 2013. So, it would protect the very folks that your Committee had expressed concern with. Thank you, Mr. Chairman, for the opportunity.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

My disappointment in this is that the critical part for me, at least, was protecting the vulnerable folks who relied exclusively on Social Security or other benefits. If we are just going to defer until the federal regulation takes place, then, for me, it becomes redundant if we are giving safe harbor to somebody who does not want to pay his bills under established law. The "wildcat money," as we are calling it, seemed like the red herring in this whole bill. The thing that I was worried about is the thing that apparently the sponsor is not concerned with because federal regulations will pick that up at some point. I want to make sure that I understand that is what is going on here.

Jon Sasser:

May I respond to that?

Chairman Horne:

Briefly.

Jon Sasser:

We, of course, care a great deal about that, and none of us disagree that that part of the bill should pass. The disagreement is over a different part of the bill. The federal regulation goes into effect in May 2011. It does not pick up every benefit for two years, as the gentleman has mentioned. In the current bill, we would pick it up now in the part that is not controversial.

Assemblyman Sherwood:

For the record, I am going to defer to the federal government to take care of what I was concerned with, and I will not worry about this bill.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

I want to point out that several of us received an email of an example. The frustration is that the parties involved talk about extremes and people trying to game the system and people who apparently are sophisticated enough to divide their little \$1,000 up into multiple accounts, et cetera, when the goal was to protect the people who, really, it was their last \$1,000 and trying to find some balance. I think we got an email about an example of somebody who had \$1,400 frozen, and by the time that it all washed out, he ended up missing his next month's mortgage payment. It took a long time to unfreeze it. I appreciate the work that went into trying to come up with some type of solution. I am afraid if I am going to err, I will err on the side of protecting the people who are the most vulnerable.

Chairman Horne:

Mr. Hansen.

Assemblyman Hansen:

Thank you, Mr. Chairman. I think the one thing we are overlooking is the \$1,000 that will most strongly impact the smallest businesses. Typically, larger businesses recognize that to collect an amount as small as \$1,000, you actually lose more than that by the time you hire an attorney and go through the process. This is really going to impact the little businesses in Nevada that have one minor collection mechanism through a small claims hearing.

I think we are also overlooking this: If you have ever gone through this process, both parties go to court first. After a judgment is rendered, the judge will work out a payment plan with the individual. It is not as if these people just arbitrarily out of the blue get garnishments on their checking accounts. Everybody has a very thorough due process hearing, and if there is in fact financial difficulties on the part of the defendant, the judge will work out arrangements. I have had it many times. "Can you pay \$25 a month to pay off your bill?" We act like this is arbitrary, and suddenly there are these garnishments that nobody had a clue were coming.

This bill will impact the smaller community much more than anybody else. Even with the amendments, the current system should be left alone, or we should eliminate that \$1,000 cap. Thank you.

Chairman Horne:

Ms. Diaz.

Assemblywoman Diaz:

Thank you, Mr. Chairman. I was in on the dialog where no compromise could be met, and I was looking forward to both parties coming to a middle ground and being able to feel comfortable making both parties satisfied. However, since there is no consensus on what the best amendment is, I will support what the sponsor would prefer. I also want to point out that I think this bill is meant to address the people who are intimidated by the process and are afraid to take the steps necessary to go to court. I know that there are probably many of those people that I represent in my Assembly District.

Also, the banking system is not perfect, and sometimes accounts are frozen, hurting those who should not be hurt. Right now, if somebody deposits his Social Security via check, there is no way that the bank can discriminate. Those monies are exempted.

I will support what the sponsor would prefer.

Chairman Horne:

Mr. Segerblom.

Assemblyman Segerblom:

Just to clarify, the \$1,000 is already in the law, so the debtor had a right to protect the \$1,000. The problem is the person comes in and grabs that \$1,000, and before the person knows or has the ability to realize that money has been taken improperly, he just gives up, and the collector takes the money. But, the \$1,000 is existing law, and the debtor has an absolute right to protect that. That is what this bill does. It just keeps them from freezing the account for that \$1,000.

Chairman Horne:

So, Mr. Segerblom, do you want to keep the \$1,000, or do you want to go with . . . ?

Assemblyman Segerblom:

Yes, I would go with my original bill and the \$1,000.

Chairman Horne:
Mr. Ohrenschall.

Assemblyman Ohrenschall:

Thank you very much, Mr. Chairman. I think creditors can still attach monies above that \$1,000. I think protecting someone's last \$1,000 in his checking account for many families in my district could mean the difference between paying the rent that month or not paying the rent. I would support keeping the \$1,000.

Chairman Horne:
I will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS ASSEMBLY BILL 223.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, HANSEN,
KITE, MCARTHUR, AND SHERWOOD VOTED NO.)

We will recess now. We are likely to be called in after the completion of the Assembly Committee on Commerce and Labor tonight. That should happen around 5 p.m. Democrats, we have a caucus right now.

[The meeting was recessed at 11:15 a.m. and reconvened at 4:47 p.m. Assemblymen Dondero Loop and Hammond were absent and excused.]

Chairman Horne:
We will now start on our final work session packet. We will start with Assembly Bill 13. Mr. Ziegler.

Assembly Bill 13: Revises provisions relating to certain offenses committed by juveniles involving hunting activities or target practice. (BDR 5-470)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Members, there is a new document posted on the Nevada Electronic Legislative Information System (NELIS) called "Work Session Document #4." Pieces of that document are also posted on NELIS. Also, it is possible we may backtrack to some of the documents we saw earlier today. For the audience, there are paper copies of the new one that should be available to you and limited copies of the ones from earlier today.

[Mr. Ziegler read from the work session document ([Exhibit N](#)).]

A little explanation of the attached amendment would be in order. Again, I am not advocating for or against passage. The concern on the day of the hearing was that if a peace officer has the discretion to take a juvenile into custody in the case of a hunting offense, but is still required to take a juvenile into custody for other types of offenses, that it creates a bit of an unlevel playing field. I think that is a fair description of some of the concerns of the members that day. There is a couple of ways that the Committee could go that we have discussed with the Department of Wildlife.

One is in section 21, subsection 1 of *Nevada Revised Statutes 62C.060*, which is the first part of this bill. The word "shall" could be changed to "may," so that in every case where a peace officer or probation officer has probable cause, the officer would have the discretion on whether or not to take the child into custody.

Another way to go with that is to say the child shall be taken into custody only if it is an unlawful act that involves a crime against persons or property. You would essentially window out hunting.

I am sorry we do not have something more definite for you, but that was the issue, and those are a couple of possible ways out of the woods. Thank you, Mr. Chairman.

Chairman Horne:

Thank you. I kind of like the idea of crimes not committed against persons or property. Mr. Hansen.

Assemblyman Hansen:

Thank you, Mr. Chairman. I did some homework on this back when it first came up. The law, as it exists now, has been on the books since 1997, so the discretion factor is already there. I do not have any problem with the first part of it. We can either use "against another person" or change it to "may." The real hang-up I have is the idea that we make the penalty mandatory for the judges in juvenile offenses. That should be something left to the judges. When you are dealing with kids anywhere from 12 to 17 years of age, I do not think we should tie the hands of the judges by making it mandatory what the penalty should be. That is why we have judges and courts, and that is why I do not think this should be a "shall." But, definitely in the first section to help clarify that, I think that the "may" or "against another person" will help clarify. The one thing we discussed that could be a problem is treating urban kids differently than rural kids when it comes to guns. After reviewing the whole

thing, the number of cases rural kids are involved with this is about zero. It has been on the books since 1997 without any problems, so where is the issue?

Chairman Horne:

Are there other comments or questions from the Committee? Mr. Segerblom.

Assemblyman Segerblom:

It seems like maybe there is solution without a problem. We do not have to do anything.

Chairman Horne:

That is what I said, but law enforcement officers do not like the idea of not obeying the law. They are using their common sense, but technically, they are supposed to be taking them into custody.

ASSEMBLYMAN HANSEN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 13.

You heard the motion by Mr. Hansen. That motion is to change the "shall" to a "may" in section 2, pertaining to NRS 62C.060, and delete sections 1 and 2 of NRS Chapter 62E. But, if you do that, you are not providing them with any direction, right?

Assemblyman Hansen:

The direction is already in the law. That is the thing. The courts have been adjudicating juvenile offenses for 40 or 50 years.

Chairman Horne:

Mr. Anthony, what is the effect of deleting that section?

Nick Anthony, Committee Counsel:

Are you asking about the effect of changing "shall" to "may" in section 1 [NRS 62C.060], or the effect of deleting section 2 [NRS Chapter 62E] from the bill?

Chairman Horne:

Here is the effect of deleting NRS Chapter 62E, section 2 from the bill: If we do that, are we just saying that the court may, and then leave the penalties up to the judges, or is there something already in statute?

Nick Anthony:

Mr. Chairman, my read of the bill is that [NRS Chapter 62E] section 2 provides new language specifically dealing with the unlawful act, including the killing of

certain game animals. That is new law to be added to the juvenile chapter, which would provide specific penalties for the killing of certain game animals by juveniles. If you were to delete that provision, I am assuming the juvenile courts would be left with other crimes or other offenses to charge a juvenile with.

Chairman Horne:

But none specifically towards those acts.

Nick Anthony:

Correct.

Assemblyman Hansen:

Right now, if a 15-year-old shoots a deer out of season, there has to be a penalty in the law, is there not?

Nick Anthony:

I believe if a juvenile were to shoot a deer out of season, he would be subject to whatever penalty there is for the adult, but then it would be handled in juvenile court, just without specific penalties that are put in this particular provision. It would be based under existing law. You are correct.

Assemblyman Hansen:

So, obviously, it has been done, if these sorts of circumstances come up, for a long time. Is that correct? This really is not a new law. Is it simply trying to refine it so that it only deals with juveniles?

Chairman Horne:

Please state and spell your name for the record.

Rob Buonamici, Chief Game Warden, Department of Wildlife:

For the record, I am Chief Game Warden Rob Buonamici.

Chairman Horne:

Mr. Hansen's motion is to delete section 2, pertaining to NRS Chapter 62E of the bill in its entirety, and leaving it to the judge's discretion, under the belief that we already have penalties in law to deal with such conduct as shooting a deer out of season. But, if we do that, the penalties today would be the same as those for an adult poacher.

Rob Buonamici:

That is correct. This request came from two judges to provide some guidance as to what the penalty should be when it comes to juveniles. Currently,

shooting a deer in closed season is a class E felony. This is guidelines for juvenile cases for which we feel the class E felony should not apply. This provides some lesser guidelines, but appropriately deals with the crime and provides guidance to judges that do not always deal in the wildlife arena. This came from two judges in the eastern part of the state that deal with a lot of wildlife criminal prosecutions. Rather than charging them with a felony and assessing a felony conviction, there is this option for the juveniles.

Chairman Horne:

Mr. Hansen, I understand with this language in here, we are actually reducing the exposure of a juvenile to be charged as a felon.

Assemblyman Hansen:

I contacted those two judges in White Pine County, too, and their concern really was not the penalties for juveniles. It was their concern of that "shall" versus "may." They did not even bring up the issue about penalties. If we are going to do the penalties, at least make it so that it is not mandatory. Instead of "shall," let us insert "may" and give the judges some flexibility when they are dealing with kids. In other words, for NRS 62C.060, in section 2, subsection 1, where it says the juvenile court "shall," change that to "may." That way, it provides guidance, but it is not locked in statute.

Chairman Horne:

The "may" is already there in the bill. Where would we change the "shall," in section 1? Mr. Ziegler?

Dave Ziegler:

The idea here is, in section 1, which amends NRS 62C.060, the proposed new language would not be used. In line 7 on page 2, the "shall" would be changed to "may."

Section 2 of the bill, on page 3, line 24, reads as introduced, ". . . the juvenile court may do any or all of the following . . ." If there is a pleasure of the Committee to grant the peace officers more discretion whether or not to take a child into custody, all it would take would be to amend section 2 as I just described, delete the new language, return to the old language, and change "shall" to "may" on line 7.

Assemblyman Hansen:

Mr. Chairman, I may be clouding it up because I was reading off the amendments. The original language that says "may" is what I want. The "shall" in section 1 shall be changed to "may" so that the cops do not have the mandatory obligation to take them in.

Chairman Horne:

So, is your motion, as articulated, to change "shall" to "may" in NRS 62C.060 section 1 and leave the rest alone?

Assemblyman Hansen:

That is correct.

Chairman Horne:

ASSEMBLYMAN KITE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE.)

The next bill is Assembly Bill 78.

[Assembly Bill 78](#): Makes various changes relating to business. (BDR 7-403)

Dave Ziegler, Committee Policy Analyst:

[Mr. Ziegler read from the work session document ([Exhibit O](#)).]

Chairman Horne:

Thank you, Mr. Ziegler. Does everyone have the amendment? Mr. Segerblom.

Assemblyman Segerblom:

Thank you, Mr. Chairman. I think this bill is really necessary. Most of these are corporations that are out of state. They are just taking advantage of our corporate law, but they are not paying the fees. Corporations should pay taxes just like everybody else in the state. One of our problems is nobody wants to pay any taxes. This is like a \$200 or \$300 fee that these corporations can pay if they want to take advantage of our laws. They try to sell it off as a "mom and pop" thing, where they are at home working hard, but the fact is, if they are here and working hard, they should be paying taxes to Nevada. If they are not here, then they can pay a little bit more to take advantage of our super corporate tax laws. This is a loophole that was accidentally created, and we need to close it up.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

I wonder if there is any kind of middle ground between the opponents and the sponsors. I do not want to reopen the hearing, but you want to give the benefit

of the doubt to the Secretary of State, obviously; and you want to give the benefit of the doubt to the folks who represent business. Is there anything that can be done to save this, or is it at a total impasse?

Chairman Horne:

If the businesses and the Secretary of State are diametrically opposed on that issue, you cannot give them both the benefit of the doubt.

Assemblyman Sherwood:

I want us just to "group hug" here, and it looks like that may not happen on this one. To Assemblyman Segerblom, we had testimony from the Office of the Secretary of State about the folks who are "exempted businesses." I think it is important to note that you still have to file a list. There is no free business license. It is \$125 just to play. So, we are talking about \$8.5 million every year. If we do this, those quote/unquote exempted businesses will go away. Remember, in the timeline, we were not making that \$8.5 million 50 years ago. We turned ourselves into a business-friendly state, and this basically says we do not want to be in that arena anymore. We are right behind Delaware. If we do something like this, it is a signal to business that we are not business-friendly. I would say it may look good on a spreadsheet; the practical application is that this will chase business away, and we will lose money. In the absence of some kind of compromise that everyone is comfortable with, I would have to vote against this.

Chairman Horne:

It sounds like you would not support it even with the amendment, because it would send the signal that we are not business-friendly.

Assemblyman Sherwood:

Yes, it is an unsalvageable bill.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

To some extent, I actually agree with Mr. Sherwood that middle ground needs to be found, and I think that the amendment does exactly that by changing it from "neglect" to "willfully." I do not know that we are interested in protecting the folks that are willfully avoiding filing the proper documents. It seems to me that focusing on the folks that are willfully not doing what they are supposed to do, as opposed to neglecting to, for example, forgetting to, missing a deadline, I think is actually trying to address the problem that was expressed at the hearing. I was glad to see that language changed throughout, and I think that it

addresses the concern of punishing the good actors in the name of trying to catch the folks that are willfully trying to avoid filing the proper documents. I like the amendments a lot, and I am supporting it.

Chairman Horne:

Mr. Hansen:

Assemblyman Hansen:

Will this bill generate new revenue for the state, and if so, how much? Does anyone know?

Chairman Horne:

Mr. Secretary.

Ross Miller, Secretary of State:

We do not anticipate that the bill would generate new revenue. However, we do believe that there is a significant amount of uncaptured revenue that has resulted from the fact that since we took over the business license, we inadvertently allowed for Title 7 in these LLCs and corporations and the like to start claiming an exemption from the business license. If we took those out, as is proposed under this bill, it would account for about \$11 million in revenue under the current \$200 business license fee. If that sunsets, it would be about \$5.4 million.

Assemblyman Hansen:

What is the current penalty right now, and how do you enforce that?

Ross Miller:

To be frank, it largely is not enforced. If you do not obtain a business license that is tied to your annual list filing, you would go into default. You would have a year to pay that, and then you would be subject to revocation and eventually permanent revocation, and you would not be allowed to do business in the state. We have provisions that allow us to revoke someone's charter, and in certain instances where somebody has willfully failed to file and is still nevertheless conducting business in the state, go after civil penalties. However, since I have been in office and since those provisions have been enacted, we have not had a single instance of actually going after somebody in district court, attempting to collect those fines.

Chairman Horne:

Ms. Diaz.

Assemblywoman Diaz:

Thank you, Mr. Chairman. I am confused about the two amendments that we have. Are there two possibilities, or is there a preference by the Secretary as to which one we employ. I am seeing one that contains the language "willfully," and the other one strikes it out.

Ross Miller:

The most recent amendment is the one that we prefer. It was revised on April 6, 2011. That strikes additional provisions of the proposed bill. We hope it would go even further to try to reach some consensus. You need to move this bill forward. We had originally stricken the word "negligently" to make clear that we would only go after those civil penalties in the event that they were willful violations. In discussions with some stakeholders, we thought it best to perhaps remove all of those provisions. Hopefully, that will be of some comfort to some stakeholders.

Chairman Horne:

Okay, are there any other questions? Ms. Diaz.

Assemblywoman Diaz:

Could Committee Counsel go through what the new proposed amendment would do to the bill for further clarification for the Committee?

Chairman Horne:

Mr. Anthony.

Nick Anthony, Committee Counsel:

Working off the document labeled "Amendment to A.B. 78, (revised 4.6.11)," in section 2 of the bill on page 3, they are asking to remove subsections 2, 3, and 4 of the bill. On page 4, section 3, they would like to remove subsections 4, 5, and 6. In section 3, page 5, line 7, change the word "instruct" to "request," and then in the remainder of the bill in sections 4, 6, 8, 9, 11, 12, and so on, the Secretary of State's Office has asked to bring the word "willfully" back in to replace the word "or neglects" in the bill. Lastly, section 27 deals with a new fee. They have asked that that entire section be removed.

Chairman Horne:

Mr. Brooks.

Assemblyman Brooks:

Some of the bigger business establishments like Starbucks have multiple franchises. Do they pay a fee like this only once, or do they have to pay that for each individual franchise? Are we in essence imposing a fee on some of our

smaller businesses and exempting some of our big businesses from having to pay this multiple times, or will this capture them as well?

Ross Miller:

It depends upon how those entities are structured. In all likelihood, Starbucks only registers with our office one time. Starbucks Corporation is in all likelihood a foreign corporation that is incorporated in some other state, and it will pay the state business license. It may be subject to county and local requirements that would also subject them to business licenses.

In essence, this bill restricts the ability to claim an exemption, claiming that you are a home-based business and, therefore, entitled to a certain exemption to only natural persons. So, it would not apply to corporations or LLCs. It would specifically specify that if you are an Avon lady or a direct seller of that type, and you are making less than about \$27,000 a year, you can still claim an exemption, but we are not going to afford an exemption to corporations, LLCs, and the like. That has been a particular area of abuse. When the Department of Taxation oversaw the administration of the state business license, it did not allow corporations or LLCs to claim the exemption. It was clear that it in fact codified that through regulation, specifically *Nevada Administrative Code* (NAC) 360.760, which defined at the time that the exemption only applied to natural people.

When we assumed responsibility for the collection of the state business license, we inadvertently created a loophole and allowed corporations and LLCs to begin claiming this exemption. As a result of that, we saw a significant rise in the amount of money that we were losing and the number of exemptions that were being claimed. Many of those are improperly claiming those exemptions.

We conducted an investigation into a limited number of them. Some of them are trophy and gift stores, construction companies, dentistry companies, bus companies, bowling alleys, et cetera. Clearly, those are not home-based businesses. This clarifies under the law that, in order to claim that exemption, you simply have to be a natural person. All it does is revert back to the interpretation that Taxation always had; and that, I believe, is the original interpretation of the law and the legislative intent when they enacted the law in 2003. It does not change anything in that regard. We simply made a mistake, but that fact should not force us to continue to make another mistake. There is about \$11 million in revenue that the state is losing out on as a result.

Assemblyman Brooks:

May I have a follow-up, Mr. Chairman?

Chairman Horne:

Okay, but do not ask questions that elicit testimony.

Assemblyman Brooks:

Okay. Is it possible to capture those franchisees that might be getting away with paying one time and having multiple franchises? Will this help us capture those people?

Ross Miller:

I am not entirely sure I understand the question. Can you rephrase it?

Assemblyman Brooks:

Starbucks comes in, and it has several different establishments. It only pays this fee one time. Does Starbucks pay it for each one of those establishments?

Ross Miller:

I believe the Legislature discussed that and made a policy determination that we would not collect that.

Assemblyman Brooks:

So, we would only get it one time.

Ross Miller:

One time, that is correct.

Assemblyman Brooks:

Thank you.

Chairman Horne:

I see no other questions.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 78.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN BROOKS, CARRILLO, HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE. ASSEMBLYMAN OHRENSCHALL RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

Following procedure, we will move to Assembly Bill 112.

Assembly Bill 112: Revises provisions governing certain crimes. (BDR 15-200)

Dave Ziegler, Committee Policy Analyst:

[Mr. Ziegler read from the work session document ([Exhibit P](#)).]

There are no amendments to the bill. Thank you, Mr. Chairman.

Chairman Horne:

Are there any questions on A.B. 112? I still have issues with the penalties. Mr. Hammond asked me if we could go with just the fines. I do not know if that is doable.

Does anyone else have comments besides me on this?

Assemblyman Ohrenschall:

Mr. Chairman, I would support that if you feel that way.

Chairman Horne:

Mr. Sherwood has a question.

Assemblyman Sherwood:

Is there already a penalty? I am trying to find it, and I am not seeing it.

Chairman Horne:

For trafficking, pandering, and child prostitution? Mr. Ziegler, what are the current statutes? I think it is a category D felony currently.

Dave Ziegler:

There are two crimes in here. Keep in mind that the conspiracy crime is a category B felony, and this bill would add certain things to the conspiracy crime, such as trafficking, pandering a child, and soliciting a child for prostitution. The bill also has the crime of knowingly receiving money from the proceeds of a prostitute. Today, those are all D felonies. This would change some of them to C and others to B. Thank you.

Assemblyman Sherwood:

So, Mr. Chairman, you are okay with finding more money, but you do not want to take the criminal element any higher than it is. Is that the issue?

Chairman Horne:

Remember, it costs money when you send people to prison as well. I know some of my colleagues are not going to vote to spend more money.

Assemblyman Sherwood:

I would just say whatever your reservations were, if you wanted to make any conceptual amendments so that this gets out of Committee I did not hear any amendment.

Chairman Horne:

There was an increase in penalties. We can increase the fees. In talking with others, including Mr. Hambrick, the best way to get to these guys is to get in their pockets, particularly in taking money from prostitutes and pimps. In this trafficking, they are making a butt-load of money. I think we can increase those penalties, while increasing the cost to the Department of Corrections.

Assemblyman Sherwood:

If that is an amendment, I would second an amendment.

Chairman Horne:

The Chairman usually does not propose the motion. I can accept that motion.

Assemblyman Sherwood:

The amendment I would propose is the increased penalties as per the bill sponsor relative to monetary penalties be enacted and holding the current criminal penalties as is. I move that we make that a conceptual amendment.

Chairman Horne:

Do we need to articulate this, Mr. Anthony?

Nick Anthony, Committee Counsel:

Thank you, Mr. Chairman. My understanding is we would only be dealing with section 2 of the bill. Section 1 is bringing it into conspiracy. I understand in section 2, you would be looking at maintaining it as a category D felony, but increasing the fine, if physical force was used, to a fine of \$20,000. If there was no physical force, the fine would increase to \$10,000. So, it would just be the fines and no additional criminal penalties.

Assemblyman Sherwood:

That is correct. And, in section 1, I did not see a monetary penalty attached to that. Although, if you look at the way that is worded We want to put in "trafficking in persons," right? What would be the problem with including that in section 1?

Chairman Horne:

After a discussion with Committee Counsel, we are muddying it in regards to the conspiracy crimes. The best way to do this would be to delete section 1 and just go with section 2 of the bill.

Assemblyman Sherwood:

Per your suggestion, I would move that we amend section 2 as noted and leave section 1 as is.

Chairman Horne:

That is in regards to the fines. Is that correct?

ASSEMBLYMAN SHERWOOD MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 112.

Assemblyman Sherwood:

Yes, section 2 pertains to the monetary fines. Leave the criminal penalties as is, and leave every other section 2 amendment intact, as per the sponsor of the bill.

Chairman Horne:

Mr. Kite.

Assemblyman Kite:

Thank you, Mr. Chairman. I will go along with this because we are increasing at least the financial portion of this, but I strongly feel that with anyone who is trafficking in humans, as far as I am concerned, lock them up and forget where the key is. I will support this with the amendment, but one of these days, we are going to have to quit dropping penalties from felonies to misdemeanors for the sole purpose of saving money.

What would we have to do to restore our lives after some child has been sent into prostitution? If it were my daughter, I do not think there is a penalty strong enough.

Chairman Horne:

Thank you, Mr. Kite, but we are not dropping penalties from anything. We are simply not raising them. Mr. McArthur.

Assemblyman McArthur:

Thank you, Mr. Chairman. For clarification, are we deleting the trafficking portion in section 1?

Chairman Horne:

Yes.

Assemblyman McArthur:

So, that pretty much guts the trafficking. Thank you.

Chairman Horne:

Are there any other questions? I have the motion from Mr. Sherwood. Is there a second?

ASSEMBLYMAN KITE SECONDED THE MOTION.

Chairman Horne:

Is there discussion on the motion? Mr. Frierson.

Assemblyman Frierson:

Thank you, Mr. Chairman. So, the motion is to increase the penalties in section 1, but not increase the penalties in section 2. Or was the motion to delete section 1 altogether?

Chairman Horne:

Yes, and then go with section 2.

THE MOTION PASSED. (ASSEMBLYMAN MCARTHUR VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE.)

Next is Assembly Bill 126.

[Assembly Bill 126](#): Makes various changes concerning vulnerable persons.
(BDR 18-153)

Dave Ziegler, Committee Policy Analyst:

[Mr. Ziegler read from the work session document ([Exhibit Q](#)).]

Chairman Horne:

Is anyone here from the Office of the Attorney General? Does anyone have any questions on the proposed amendment from the Office of the Attorney General? Mr. Ziegler, what were the hang-ups in the first hearing?

Dave Ziegler:

I think that the reservations about the bill as introduced were that it required the Office of the Attorney General to sponsor the multidisciplinary team. It required

each organization represented on such a team to assist in carrying out the duties of the team. The amendment allows the Attorney General to create these teams, but it does not require it; and it authorizes a county to organize these multidisciplinary teams, but does not require it. I believe that is what it does.

Chairman Horne:

Thank you. I see Mr. Graham. Do you have clarification, sir?

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:

From a historical standpoint, there has been concern over the years that prosecution of crimes against elderly people and vulnerable people were not being as vigorously pursued as we had hoped, and I think this is an effort to continue the possibility of putting together cases involving elders. I think that was the effort here, to organize a specialized team and give the Attorney General the authority to set it up.

Chairman Horne:

I will entertain a motion.

[No motion was made.]

Moving on to the next bill, we have Assembly Bill 339.

[Assembly Bill 339](#): Requires certain substances known as synthetic marijuana to be included on the list of Schedule I controlled substances.
(BDR 40-546)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman.

[Mr. Ziegler read from work session document ([Exhibit R](#)).]

Chairman Horne:

Are there any questions on A.B. 339? Mr. Frierson.

Assemblyman Frierson:

Thank you. I remember this discussion occurring also in the Assembly Committee on Health and Human Services regarding bath salts, but the bill did not deal with bath salts. The presentation was about bath salts, but the bill dealt with allowing the State Board of Pharmacy to add to the Schedule I list. I wonder if these are parallel bills or if anybody knows.

Chairman Horne:

They were different bills. Are there any other questions?

ASSEMBLYMAN SHERWOOD MOVED TO DO PASS
ASSEMBLY BILL 339.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARRILLO AND DIAZ
VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND
WERE ABSENT FOR THE VOTE.)

The next is Assembly Bill 373.

Assembly Bill 373: Prohibits the willful destruction of real property that is
subject to foreclosure or repossession. (BDR 15-98)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman.

[Mr. Ziegler read from work session document ([Exhibit S](#)).]

Chairman Horne:

I know that further efforts were being made to make A.B. 373 a little more palatable. I do not know if they reached success with Mr. Goicoechea. Mr. Frierson.

Assemblyman Frierson:

Thank you. I spoke with Mr. Goicoechea about coming up with some language, and I did come up with some language that I tried to send to the Chairman just now. I can read the language, and the Committee can consider it.

Chairman Horne:

Please do.

Assemblyman Frierson:

The language mirrors some other language dealing with personal property to some extent, but it essentially says, "Every person gaining possession thereof who shall remove, conceal, or destroy any real property of which the person has a security interest, upon which an additional security interest exists, with the intent to defraud the secured party, immediately upon the conclusion of a foreclosure proceeding, shall be guilty of a misdemeanor."

Chairman Horne:

So, it is making it misdemeanor treatment. Mr. Sherwood.

Assemblyman Sherwood:

I think that is, in a sense, almost decriminalizing it. There is a mitigating circumstance when you have just been foreclosed on, and so I am okay with taking it from a felony to a misdemeanor. It still is a crime, obviously, when somebody has an interest in it. I like the conceptual amendment by Assemblyman Frierson, and if that was a motion, I would second it.

Chairman Horne:

I have a motion.

ASSEMBLYMAN FRIERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 373.

ASSEMBLYMAN SHERWOOD SECONDED THE MOTION.

Is there discussion on the motion? Mr. Segerblom.

Assemblyman Segerblom:

Does this apply to those who destroy property after a foreclosure?

Assemblyman Frierson:

Yes. The language that I came up with included "upon the conclusion of a foreclosure proceeding."

Chairman Horne:

Could you read it one more time?

Assemblyman Frierson:

"Every person being in possession thereof who shall remove, conceal, or destroy any real property of which the person has a security interest, upon which an additional security interest exists, with the intent to defraud the secured party, immediately upon the conclusion of a foreclosure proceeding, shall be guilty of a misdemeanor."

Chairman Horne:

Is there further discussion on the motion?

Assemblyman Segerblom:

Once the foreclosure sale goes through, you do not have any right to the title. If you do anything destructive to the property, that should be a crime, but I do not know how fraud comes into play after the foreclosure.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

After speaking with Mr. Goicoechea, I believe that his intent first and foremost was to send a message about destroying property in the midst of a foreclosure proceeding. Presumably this would occur between the time that there is an order and the time that the keys are handed over or somebody leaves, if law enforcement could prove that person damaged the property. I think the fraud refers to the intent to damage the value of it after a foreclosure. That is what I had in mind when I put the language together. This is, of course, with the intent to help my colleague make the point that he was trying to make in a way that did not cast too wide a web.

Chairman Horne:

Mr. Carrillo.

Assemblyman Carrillo:

My concern is this: Let us say somebody is foreclosed on. He leaves the property, and the bank takes it over. The bank boards up the windows. Let us say someone decides to take the opportunity to clean the house out. Is there some kind of sign-off to say that the individual who was in the foreclosure assures that everything is intact? There is nothing that says that.

My concern is that somebody could ransack the house after the fact, and then the people who were foreclosed upon and who did the right thing, would be liable.

Chairman Horne:

I do not think so. Law enforcement would have to prove there was intent and that the former homeowner committed the act. Mr. Hansen.

Assemblyman Hansen:

On that last point made by Assemblyman Carrillo, one must recognize that if somebody boarded up the house, and then somebody comes in after the fact and breaks in, the burden of proof is still on the person making the accusation, and the police who show up have to do an investigation. While the original occupant may be considered a potential suspect, that does not automatically

mean he will be charged. I think we must recognize that when those situations occur, the police will do an investigation, and if there is reasonable cause to go after somebody, they will. But, in the absence of that, it is like any other crime. If the proof exists, the arrest can be made; but if there is no proof, you are out of luck.

Chairman Horne:
Mr. Segerblom.

Assemblyman Segerblom:

I hate to keep talking about it, but if you are talking about damage to the house after the foreclosure and before a sale takes place, I have no problem with making that a misdemeanor. If the sale takes place and they destroy the property, then that should be a misdemeanor. It is a question of time between when the foreclosure notice is given and the foreclosure sale, because the person still has the right to the title of the house. That is where I have difficulty.

Assemblyman Sherwood:

If the foreclosure sale has gone through, how would there still be someone in the house?

Chairman Horne:

A house could be foreclosed today, but the constables are not at the door right away to throw out the occupants.

Assemblyman Sherwood:

Assemblyman Segerblom said the sale has to go through. The way I heard it from Assemblyman Frierson was that with the foreclosure notice, the person in possession had to be aware that it was in the foreclosure process.

Chairman Horne:

Mr. Frierson, will you clarify?

Assemblyman Frierson:

Thank you. That was not the language in what I recited. At least part of the language in the original bill was something dealing with after they find out that there is a pending foreclosure, I believe. I can rescind the motion if you want to make a different motion.

Assemblyman Sherwood:

Where on the timeline do we need to be so that enough people feel comfortable with this? After the foreclosure sale, they are not in possession of the house. Somebody else buys the house, right?

Assemblyman Segerblom:

A lot of times, the sale goes forward, and they are still in the house. They do not get kicked out immediately. If you want to say that after the foreclosure sale goes through, and you have no right to be there, but you are still there, and you destroy the house, then that ought to be a crime.

Assemblyman Frierson:

In the interest of making sure that it is clear, the language that I recited does not say when a person is notified of a pending foreclosure. It says, "upon the conclusion of a foreclosure proceeding," which is different from becoming aware of a pending foreclosure, which I think was the original language. Committee members should know that that is what they are voting on.

Chairman Horne:

Mr. Hansen.

Assemblyman Hansen:

With Mr. Frierson's amendment, it works out perfectly. One of the arguments we had all along was that if a person actually has title to the property, he has the right to destroy his own property. With this amendment, it is clearly after a foreclosure sale has occurred. Therefore, it is no longer his property to destroy. It seems like it clears up a lot of the concerns we had earlier in these discussions.

Chairman Horne:

We still have a motion and a second on the table. Mr. McArthur.

Assemblyman McArthur:

I am comfortable with Mr. Frierson's amendment.

Chairman Horne:

I will open the vote.

THE MOTION PASSED. (ASSEMBLYMEN BROOKS, DIAZ, AND KITE VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE.)

The next bill is Assembly Bill 379.

Assembly Bill 379: Establishes the crime of stolen valor. (BDR 15-1005)

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 379 was sponsored by Assemblyman Hammond.

[Mr. Ziegler read from the work session document ([Exhibit T](#)).]

Chairman Horne:

Thank you, Mr. Ziegler. I know that Mr. Hammond was in discussions with Ms. Gasca from the ACLU. He did not forward any recommendations. My problem is, as repugnant as it is for someone to pose as a veteran, that the bulk of the testimony seemed to be that this should be a crime because we are offended that someone should pose as a veteran. We do not pass laws and make people criminals because we are offended. If somebody poses as a veteran and takes advantage of people by bilking them of their life savings, then yes, I agree. I have no problem with making that an enhanced penalty. So, if we can amend this to narrow the field to those types of fraud, I will support it. Other than that, I think we are criminalizing speech we do not like. I am opposed to that. Does anyone else have comments? Mr. Hansen.

Assemblyman Hansen:

What do you suggest? Mr. Hammond is not here. Do you have some conceptual ideas on how to do that? I would hate to let this bill slip by. Some of this is symbolic, that is true, but there are fraudulent cases where people have actually gotten jobs that should have gone to a veteran. People posing as veterans were hired before them. We certainly want to address situations like that. Can we defer this to the Legal Department for a conceptual draft?

Chairman Horne:

A bill similar to this passed out of the Senate. I do not know what changes, if any, they made over there. Mr. Kite.

Assemblyman Kite:

Thank you, Mr. Chairman. I would like to amend this to where if a fake veteran gets cash value or a job value equal to what triggers a misdemeanor, we could tie it to that. I would be happy to propose a motion to do that. I am totally incensed when they burn my flag. A lot of things about that really upset me, but the U.S. Supreme Court says you can burn my flag. However, if you gain employment or advancement because you lied about your decorations or your service, then I think there should be a cash value that we could attach to that, making it a misdemeanor, and it should go forward.

Chairman Horne:

Well, we have a conceptual amendment, and we have thresholds in statute. Mr. Anthony, could a conceptual amendment be drafted so that a fraudulent misrepresentation as a veteran with the intent to defraud and to obtain a thing of value over \$2,500 is a gross misdemeanor or category E felony?

[Mr. Anthony nodded in agreement.]

Mr. Anthony says that is possible. I do not want to get into the issue of wearing military honors and service ribbons.

Nick Anthony, Committee Counsel:

Thank you, Mr. Chairman. Certainly, there are theft crimes under the pretense of false pretense and misrepresentation. I believe there are varying levels. Mr. Ohrenschall's bill dealing with felony theft thresholds was at \$250. There is also another level, I believe, at \$2,500 currently in the *Nevada Revised Statutes*. If this Committee wants to set it at another number, we could tie it to a specific dollar amount.

Chairman Horne:

What are the gross misdemeanor and felony thresholds?

Nick Anthony:

Currently, it is at \$250, but I believe it was going to be raised in Mr. Ohrenschall's bill to \$650.

Chairman Horne:

Is that for a misdemeanor?

Assemblyman Ohrenschall:

That is for a misdemeanor and a felony. Currently, it is \$250. Mr. Kite.

Assemblyman Kite:

That works for me.

Chairman Horne:

Mr. Carrillo.

Assemblyman Carrillo:

Thank you, Mr. Chairman. Considering how much our veterans do for us and fight for our freedoms, I think it is important to create legislation to put this forward to protect their dignity and to honor their commitment. When Vietnam veterans were coming home, that was really a hard time for them, and I am sure

that they think about how badly they were treated. We should think from our hearts and not from our brains on this one. Thank you.

Chairman Horne:

Thank you, Mr. Carrillo. I agree, but I have some concerns about creating penalties for impersonation. I would entertain a motion that says posing as a veteran to gain anything of value in excess of \$2,500 is a category E felony, and anything below \$2,500 is a gross misdemeanor.

ASSEMBLYMAN KITE MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 379.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

Chairman Horne:

Is there discussion on the motion? Mr. Daly.

Assemblyman Daly:

I think it has to be tied to some underlying crime in order to have that. Otherwise, you are infringing on free speech. You want to think with your heart sometimes, but we are a nation of laws, and we must follow the laws. We cannot let our emotions overtake our laws. So, with the underlying crime attached to that, I can be in support of it. The act of presenting yourself as something you are not, I consider free speech. Thank you.

Chairman Horne:

I will open the vote.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND
HAMMOND WERE ABSENT FOR THE VOTE.)

Mr. Hammond can handle that on the floor. Our next bill is Assembly Bill 408.

Assembly Bill 408: Restricts the use of restraints on pregnant females who are
in confinement. (BDR 16-117)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Assembly Bill 408 is sponsored by
Assemblyman Segerblom.

[Mr. Ziegler read from the work session document ([Exhibit U](#)).]

There is an amendment, which was submitted by Assemblyman Segerblom on the date of the hearing.

Chairman Horne:

Mr. Segerblom.

Assemblyman Segerblom:

If it will expedite the process, and just to see where people are at, I would be happy to limit this just to women in labor and take out the section dealing with attorneys' fees.

Chairman Horne:

You heard Mr. Segerblom's proposed amendment.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 408.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Mr. Segerblom, will you repeat your comments, please.

Assemblyman Segerblom:

To clarify, it is not just if you are pregnant, but it is when you are pregnant and in labor. We would delete the section that provides a specific cause of action. We would leave the current law in place, as far as being able to sue. If you want to make it broader, that is fine with me.

Assemblywoman Diaz:

We heard from the correctional officers about their concerns with including the first two trimesters, because pregnant women are still very mobile in that stage of pregnancy. So, are we going to state "during labor," or are you going for the whole pregnancy?

Assemblyman Segerblom:

We could take out the whole pregnancy part and just focus on labor and delivery.

Assemblywoman Diaz:

Okay, thank you.

Chairman Horne:

Mr. McArthur.

Assemblyman McArthur:

Thank you, Mr. Chairman. I am still unclear. During the first two trimesters . . .

Chairman Horne:

If the woman is in labor, then they will not shackle her up and strap her down. If she is pregnant but not in labor, they can put the restraints on her. I will open the vote.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE.)

The bill passes. Assembly Bill 291 was in the group three work session.

Assembly Bill 291: Makes certain agreements between heir finders and apparent heirs relating to the recovery of property in an estate void and unenforceable under certain circumstances. (BDR 12-306)

Dave Ziegler, Committee Policy Analyst:

Members, we are going back to one of the documents that we looked at this morning. It was the third group. The document is still on the Nevada Electronic Legislative Information System (NELIS).

[Mr. Ziegler read from the work session document ([Exhibit V](#)).]

We also have a conceptual amendment submitted today by the Clark County Public Administrator, Mr. Cahill.

The amendment submitted by Mr. Ferrari would limit the effect of this bill to situations where the public administrator is the petitioning party and would change the time period from 12 months to 60 days. The proposal from the Clark County Public Administrator would also limit this to situations where the public administrator is the petitioning party, but would change the time period to six months.

Chairman Horne:

Mr. Cahill, the sponsor of the bill, says that Mr. Ferrari's amendment is not a friendly amendment in that it seeks to cut the time and limit it to when the public administrator is assigned, which does not do anything for the problem he is trying to address. He proposed to cut it to six months and apply it to when the public administrator is appointed. So, we have part of Mr. Ferrari's amendment in which the public administrator is the petitioning party. Also, we have the part, instead of doing the 60 days, and I agree with

Public Administrator Cahill in that you cannot do anything in 60 days, would take it to six months. I am inclined to support that. Mr. Hansen.

Assemblyman Hansen:

Thank you, Mr. Chairman. It is my understanding that in all other states, they have a maximum of 30 days. Is that accurate? Six months seems like a long time in the computer era to do a genealogical search to find an heir. If, in fact, at six months we are on average with other states, that is fine and dandy; but if the other states are doing it in a 30-day window before they turn it over to the heir finders, then I think 60 days is more than adequate. So, I would like to find out a little more on that if we could.

Chairman Horne:

Mr. McArthur.

Assemblyman McArthur:

That is pretty much what I wanted to say. I think six months is too long. If we do not make it closer to 60 days, I will be voting no on this.

Chairman Horne:

Mr. Sherwood.

Assemblyman Sherwood:

The part about in only in cases where the public administrator is assigned, and so, if you are not assigned, then . . . So, if the assignment is not made, then that whole universe of people that are not assigned to an administrator . . . you lost me there. It should happen upon death, right?

Chairman Horne:

It is not just death. You have a period of time to petition. It is not an instant thing. So, there is that period of time up until the petition, and six months after that is when the administrator is assigned.

Assemblyman Sherwood:

So, conceivably, if there is a six-month backlog, he is assigned six months after the death, and then there is a six-month window on top of that? And so now you are looking at a year?

Chairman Horne:

Are there any other questions?

Assemblyman Sherwood:

I do not want to reopen the hearing, but as far as the timeline, as it exists now, upon death, it is open season for anyone. Is that right?

Chairman Horne:

Well, that is the problem. I understand Public Administrator Cahill was not given an opportunity to do his job of finding the heirs. This is to give him a window to do that.

Assemblyman Sherwood:

Are there some people who die and are never assigned to the public administrator? If that is the case, then there is a whole category of people whose heirs will never be found, right? Not having gone through this, thankfully, I do not know the process. Assigning it to the public administrator should not start the clock, should it? And, if that assignment is never made, then the heirs are never found.

Chairman Horne:

Public Administrator Cahill was here to clarify exactly how that process works, but he is not here now.

Chris Ferrari, representing Kemp & Associates:

To clarify the timeline question, my understanding, based on my client's information, is that there is only one state in the country with any type of timeline, and that is Tennessee. That state has a 60-day timeline.

Chairman Horne:

Can you explain process and the timeline of when a person dies, it goes to the administrator, and it gets assigned. How does that occur?

Chris Ferrari:

I cannot speak to the entire process. I can tell you that there are several instances where cases are closed within a period of less than six months; and oftentimes my client, who has an office in Salt Lake City near the largest genealogical library in the world,

Chairman Horne:

You are testifying.

Chris Ferrari:

I apologize. There are additional heirs that have been identified after those cases have been closed during that time frame. I understand your desire to find an applicable time frame.

Chairman Horne:

My desire is to find some middle ground in this bill between the two of you. Mr. Kite.

Assemblyman Kite:

Thank you, Mr. Chairman. If I remember correctly, one of Mr. Cahill's biggest objections was that the heir finders were making too much money for two hours work. Mr. Cavallo from Washoe County testified that they need a little more time, but that was way too much. I think 60 days was suggested from one or two of my colleagues, and I could definitely support that time frame. I think that is reasonable, based on what the two public administrators told us.

Chairman Horne:

Mr. Segerblom.

Assemblyman Segerblom:

Nothing happens in 60 days. The reality is that if the public administrator finds the heirs, the heirs get the money—lock, stock, and barrel. If the public administrator has to go out to one of the firms, then the heirs get 50 percent of their money. To me, it is better to let the public administrator do his job trying to find the people. These are people who die without a will and who have no known heirs. Six months is not an outrageous amount of time to do their job. That is what we pay them for; that is why they are elected. If they cannot find the heirs after six months, then the private companies can come in.

Chairman Horne:

Will you make that motion, please?

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 291.

Chairman Horne:

So, we have the six-month time frame in which the public administrator is the petitioning party. Is that correct?

Assemblyman Segerblom:

Yes.

Chairman Horne:

Is there discussion on the motion?

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

Assemblyman Sherwood:

So, this is six months from the time of death.

Chairman Horne:

No, it is six months after the petitioning of the public administrator. He petitions, and the six-month clock starts.

Assemblyman Sherwood:

Does everyone who dies get petitioned?

Assemblyman Segerblom:

No, they are only those who die without a will or a known heir. It is a small number of people.

Assemblyman Sherwood:

If there is a huge backlog, then eventually he will get to it six months from the time he starts working, right?

Assemblyman Segerblom:

When you die, they look around to see if there is a will. If they do not find one, then the public guardian petitions to take over. At that point, they have six months to find the heirs. It usually takes about 30 days to do that.

Chairman Horne:

Mr. Hansen.

Assemblyman Hansen:

What is the current law?

Chairman Horne:

That question does not seek to clarify the motion.

Assemblyman Hansen:

I withdraw my question.

Chairman Horne:

I will open the vote.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, AND MCARTHUR VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE.)

On the Secretary of State's bill, Assembly Bill 78, I need a motion from the prevailing party to reconsider.

Assembly Bill 78: Makes various changes relating to business. (BDR 7-403)

ASSEMBLYMAN BROOKS MOVED TO RECONSIDER THE ACTION ON ASSEMBLY BILL 78.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE.)

Chairman Horne:

I will entertain a motion on Assembly Bill 78.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 78.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND WERE ABSENT FOR THE VOTE. ASSEMBLYMEN BROOKS AND OHRENSCHALL RESERVED THE RIGHT TO CHANGE THEIR VOTES ON THE FLOOR.)

We will return to group one and Assembly Bill 321.

Assembly Bill 321: Revises provisions relating to the use of force. (BDR 15-963)

Dave Ziegler, Committee Policy Analyst:

Members, we are going back to the first set of bills we saw this morning. The fourth bill on the list is Assembly Bill 321.

[Mr. Ziegler read from the work session document ([Exhibit W](#)).]

Chairman Horne:

Thank you. In the proposed amendment by the Nevada Attorneys for Criminal Justice (NACJ), it is clarifying that the subject is not actively engaged in conduct in furtherance of criminal activity.

Nick Anthony, Committee Counsel:

That is correct, Mr. Chairman. If one is not actively engaged in conduct in furtherance of criminal activity, then he could still legally use deadly force.

Chairman Horne:

So, if someone is attacking you, and you defend yourself with appropriate deadly force, then that is still appropriate, even if you have a kilo of cocaine in your pocket, because you are not in furtherance of criminal activity.

Nick Anthony:

That is correct.

Chairman Horne:

This is a friendly amendment. I would entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 321.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND
HAMMOND WERE ABSENT FOR THE VOTE.)

Chairman Horne:

Mr. Ocegüera can handle that on the floor. If he does not, I will give that to Assemblyman Kite.

The next bill is from group three. It is Assembly Bill 388.

Assembly Bill 388: Revises provisions relating to real property. (BDR 10-568)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Members, we are now in the middle of the third set of bills from this morning. This is also up on the Nevada Electronic Legislative Information System (NELIS).

[Mr. Ziegler read from the work session document ([Exhibit X](#)).]

The attached amendment has to do with the duties of lenders and so on in *Nevada Revised Statutes* Chapter 107. Thank you, Mr. Chairman.

Chairman Horne:

Thank you, Mr. Ziegler. Mr. Ohrenschall.

Assemblyman Ohrenschall:

I worked on the proposed amendment with former Assemblywoman Chowning, who you will recall testified at the hearing. It was supported by Mr. Michael Joe, who is an attorney at the Legal Aid Center of Southern Nevada. It was based on a bill that was introduced in the California Legislature.

The goal of the bill is to try to get banks to make sure that before they institute foreclosure proceedings, they have found out whether someone qualifies for a loan modification. If someone gets that opportunity before the "horse is out of the stable," the notice of default is recorded.

Chairman Horne:

Is there any discussion on A.B. 388? Mr. McArthur.

Assemblyman McArthur:

Thank you. I do not see that amendment.

Chairman Horne:

Mr. Frierson.

Assemblyman Frierson:

Thank you, Mr. Chairman. I was originally concerned about how A.B. 388 would impact current systems that deal with foreclosure and mediation. I still am, to some extent. I believe that it can work in synchronization with the program, but I am hopeful that the parties involved with the program will join with Mr. Ohrenschall as this develops to make sure that they do not interfere with each other and that there is a way they can compliment each other. With that premise, I can support the measure with the hope that we can make sure that existing programs work in conjunction with each other and not duplicate or contradict each other.

Assemblyman Ohrenschall:

Mr. Chairman, that is my intent. I do not want this program in any way to harm the foreclosure mediation program. I do want them to complement each other; and I am committed to work with representatives from the Supreme Court,

representatives from the Legal Aid Center of Southern Nevada, and anyone else interested in working with me on this measure.

Chairman Horne:

Are there any other questions? I will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 388.

ASSEMBLYWOMAN DIAZ SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HANSEN, KITE, AND
MCARTHUR VOTED NO. ASSEMBLYMEN DONDERO LOOP AND
HAMMOND WERE ABSENT FOR THE VOTE.)

Mr. Ohrenschall will handle that bill on the floor. There are two more bills in this group. The next is Assembly Bill 394.

Assembly Bill 394: Revises provisions relating to common-interest communities. (BDR 10-346)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Members, A.B. 394 immediately follows the bill we just looked at.

[Mr. Ziegler read from the work session document ([Exhibit Y](#)).]

There is an amendment attached in the paper copies and in the Nevada Electronic Legislative Information System (NELIS). At the top, it reads, "Amendment to A.B. 394." That amendment is from Mr. Gordon, representing Southern Highlands.

There is another amendment that follows this document in NELIS. At the top, it reads, "Submitted by John Sasser on behalf of Michael Joe, with the Legal Aid Center." The sponsor also requests to have that amendment considered. For those in the audience with paper copies, the second amendment—the one from John Sasser on behalf of Michael Joe—is a loose piece of paper. It was distributed earlier tonight. Thank you, Mr. Chairman.

Chairman Horne:

Thank you, Mr. Ziegler. So, do we have competing amendments?

Assemblyman Ohrenschall:

Mr. Chairman, I appreciate Mr. Gordon's efforts to work with me on this bill. I had hoped that everyone would get together, and we would be able to compromise. But, after talking to Mr. Joe at the Legal Aid Center of Southern Nevada and the other proponents of the bill, they do not feel that the amendment is helpful to homeowners. There needs to be a rational basis for the amount of collection fees charged.

Personally, I have seen in my district a homeowner who was going through a foreclosure from the bank. She availed herself to our foreclosure mediation program and was able to work out a new monthly mortgage payment, only to find that she was then being foreclosed upon for a second time, not by the bank, but by a collection agency because she had fallen behind in her association dues. It had mushroomed from hundreds of dollars to a debt of thousands of dollars.

We have the "super-priority" lien in statute, which is nine months and is meant to keep associations whole, but I believe that many of these collectors have abused the process. That is why I think we need a firm cap. This bill provides that. I would encourage the Committee to pass this bill with the amendments provided by Mr. Joe at the Legal Aid Center, who I believe is in Las Vegas via videoconference. He has been waiting patiently just in case anyone has any questions for him. He works with people going through this every day.

The amendments proposed by Mr. Ferrari actually raise the cap. I believe they raise it to the amount that is in one of the Senate bills from what this bill originally had.

Chairman Horne:

Thank you, Mr. Ohrenschall.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 394.

ASSEMBLYMAN SHERWOOD SECONDED THE MOTION.

Chairman Horne:

Is there discussion? Mr. Frierson.

Assemblyman Frierson:

Thank you, Mr. Chairman. I want to support my colleague, Mr. Ohrenschall, and I believe that this is certainly a worthy effort to address a serious problem. I have concerns about our ability to really move with this, and I trust, from my

discussions with Mr. Ohrenschall, that we can continue to work. I will support my colleague with the hope that we can certainly come out with some effective and productive legislation.

Chairman Horne:

Thank you, Mr. Frierson. Anybody who has any thoughts that we are done working with foreclosure bills and the like is sadly mistaken. There will be more work done with this bill and other bills coming from the Senate, so this is not the last word. The fun has only just begun.

Assemblyman Ohrenschall:

Mr. Chairman, I am pledged to work with all the parties, and I appreciate Assemblyman Frierson's help. I had hoped that by the hearing tonight we would have an agreement, but unfortunately we do not.

Chairman Horne:

Mr. Carrillo.

Assemblyman Carrillo:

I have been a member of a homeowners association (HOA) for over 14 years, and I understand the whole precedent of actually having to pay assessments to be a member of an HOA. I kind of feel it is one of those situations where it is almost like we have no problem eating every day—breakfast, lunch, and dinner. In paying assessments to an HOA, especially when you are quite aware of the fact that you have conditions, covenants, and restrictions (CC&Rs) that follow this, to fall behind is a problem, especially now with our economy. The biggest problem I have is with people who do not want to work with the system. They stick their heads in the sand, avoid the situation, and not really address the problem as it is. To me, it is not right to give them more rights to just say, "Well, hey, we are just going to put it off to the side." I have really strong feelings about this because, even though, especially when it comes to being a member of an association, whatever the other members of that association will pick up, that means I have to pick up. It is like pulling your own weight.

Chairman Horne:

Mr. Brooks.

Assemblyman Brooks:

Does this have anything to do with when the home is foreclosed on, and when the HOA has to put its name on the home? Does the HOA still have the priority to get paid? Does this bill address that at all?

Assemblyman Ohrenschall:

Mr. Brooks, I will address it to the best of my ability. With the Chairman's indulgence, may I also ask Michael Joe to come up to the table? I think he can probably answer your question better than I can.

Chairman Horne:

Mr. Joe.

Michael Joe, representing Legal Aid Center of Southern Nevada:

Yes. I believe that in foreclosure, the super-priority liens still apply. What I see is, after a property is sold, the association does get paid off, and it does collect on that super-priority lien.

Assemblyman Brooks:

Thank you.

Chairman Horne:

Mr. Ohrenschall.

Assemblyman Ohrenschall:

To briefly reply to my colleague from the Henderson-Whitney area, Mr. Carrillo, when people fall on these economic hard times, and they are in danger of foreclosure, a lot of them do bury their head in the sand. They cannot pay bills, so they stop looking at the bills. They stop looking at the certified letters. We all know that is not a smart course of action, but a lot of us do it.

When you talk about the system being fair, right now with what is going on with the collectors and collection agencies, I think the system is stacked against homeowners. Surely the association should be paid what it is owed, but when a \$500 debt becomes a \$5,000 debt, which has happened, I do not think it is a level playing field. I think this bill might try to level it so that people can have an actual chance in getting caught up on what they owe.

Chairman Horne:

Thank you, I will open the vote.

THE MOTION PASSED. (ASSEMBLYMEN DALY AND MCARTHUR
VOTED NO. ASSEMBLYMEN DONDERO LOOP AND HAMMOND
WERE ABSENT FOR THE VOTE.)

We have three more bills. The next is Assembly Bill 564.

Assembly Bill 564: Makes various changes to allow for the use of the most recent technology by various business associations, corporations and other entities in carrying out their powers and duties. (BDR 7-891)

Dave Ziegler, Committee Policy Analyst:

Members, A.B. 564 is the last bill in the third set that was handed out this morning.

[Mr. Ziegler read from the work session document ([Exhibit Z](#)).]
There are no amendments to this bill.

Chairman Horne:

Thank you. Are there any questions on A.B. 564? Seeing none, I would entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS
ASSEMBLY BILL 564.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND
HAMMOND WERE ABSENT FOR THE VOTE.)

The next bill is Assembly Bill 246 from group two.

Assembly Bill 246: Requires the association of a common-interest community to make available to candidates for membership on the executive board its list of units' owners under certain circumstances. (BDR 10-1067)

Dave Ziegler, Committee Policy Analyst:

Assembly Bill 246 is one of the bills that went to the Subcommittee of this Committee. It relates to common-interest communities (CICs).

[Mr. Ziegler read from the work session document ([Exhibit AA](#)).]

Chairman Horne:

Thank you. Mr. Ohrenschall.

Assemblyman Ohrenschall:

Again, I got to work with Mr. Gordon on this, and we actually came to a better agreement on this one than the prior bill. We reached a compromise to which the sponsor agreed. Ms. Dennison agreed, too. I think that all parties are happy, and we have provided more protection for persons who are running for

office in their homeowners associations and want access to the lists of residents.

Chairman Horne:

So, both amendments are friendly?

Assemblyman Ohrenschall:

Yes, sir, they are.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 246.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND
HAMMOND WERE ABSENT FOR THE VOTE.)

Mr. Stewart can handle this bill. The last bill of the night is Assembly Bill 6 from group one.

Assembly Bill 6: Authorizes courts to allow certain victims of sex trafficking or involuntary servitude who have been convicted of engaging in or soliciting prostitution to seek new trials and have their judgments of conviction vacated. (BDR 14-366)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. Members, this is the first bill of the first group.

[Mr. Ziegler read from the work session document ([Exhibit BB](#)).]

Chairman Horne:

Thank you, Mr. Ziegler. I believe that the first one is reasonable. With the second one, we are talking about prostitutes who were put out by traffickers, et cetera. You cannot fault them and deny them the benefit just because they have human immunodeficiency virus (HIV). So, I would not agree with the second conceptual amendment, but the first one sounds reasonable. Is there any discussion? Mr. Segerblom.

Assemblyman Segerblom:

I agree with the first amendment. I think it would be a lot simpler for a defendant to come to the court and ask for a motion, as opposed to asking for a new trial. I also agree that HIV should not be a disqualifier from this process.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:

I do not want to pile on here, but I do not think you should be victimized three times just because you ended up with HIV. I like the amendment that was just proposed.

Chairman Horne:
I will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 6.

ASSEMBLYMAN CARRILLO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN DONDERO LOOP AND
HAMMOND WERE ABSENT FOR THE VOTE.)

Just to be sure, Mr. Ziegler, have I missed anything?

Dave Ziegler:

Mr. Chairman, to the best of my knowledge, you have not missed anything that you did not intend to miss.

Chairman Horne:

If there is no other business to come before the Committee, we are adjourned [at 7:09 p.m.].

RESPECTFULLY SUBMITTED:

Jeffrey Eck
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 15, 2011

Time of Meeting: 7:54 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 57	C	Dave Ziegler	Work Session Document
A.B. 282	D	Dave Ziegler	Work Session Document
A.B. 401	E	Dave Ziegler	Work Session Document
A.B. 463	F	Dave Ziegler	Work Session Document
A.B. 389	G	Dave Ziegler	Work Session Document
A.B. 448	H	Dave Ziegler	Work Session Document
A.B. 552	I	Dave Ziegler	Work Session Document
A.B. 93	J	Dave Ziegler	Work Session Document
A.B. 128	K	Dave Ziegler	Work Session Document
A.B. 412	L	Dave Ziegler	Work Session Document
A.B. 223	M	Dave Ziegler	Work Session Document
A.B. 13	N	Dave Ziegler	Work Session Document
A.B. 78	O	Dave Ziegler	Work Session Document
A.B. 112	P	Dave Ziegler	Work Session Document
A.B. 126	Q	Dave Ziegler	Work Session Document
A.B. 339	R	Dave Ziegler	Work Session Document
A.B. 373	S	Dave Ziegler	Work Session Document
A.B. 379	T	Dave Ziegler	Work Session Document
A.B. 408	U	Dave Ziegler	Work Session Document
A.B. 291	V	Dave Ziegler	Work Session Document
A.B. 321	W	Dave Ziegler	Work Session Document
A.B. 388	X	Dave Ziegler	Work Session Document
A.B. 394	Y	Dave Ziegler	Work Session Document
A.B. 564	Z	Dave Ziegler	Work Session Document
A.B. 246	AA	Dave Ziegler	Work Session Document
A.B. 6	BB	Dave Ziegler	Work Session Document