

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
May 18, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:15 a.m. on Wednesday, May 18, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bryan Fernley-Gonzalez, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

John Sande, IV, Nevada Collectors Association
Chris Ferrari, Clark County Collection Service; Reno Sparks Chamber of
Commerce; National Federation of Independent Businesses; Nevada State
Apartment Association
Susan Fisher, Coalition of Housing Providers
Venicia Considine, Legal Aid Center of Southern Nevada, Inc.

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A. G. Burnett, State Gaming Control Board
Jaime Serrano

Fernando Serrano, Deputy Administrator, Juvenile Justice Services, Division of
Child and Family Services, Department of Health and Human Services

CHAIR WIENER:

We will open the hearing on Assembly Bill (A.B.) 223, first heard on May 16.

ASSEMBLY BILL 223 (1st Reprint): Makes various changes concerning the
execution on property of a judgment debtor or defendant. (BDR 2-989)

JOHN SANDE, IV (Nevada Collectors Association):

We are talking about bank account levies and freezing bank accounts in a
collection process. A long judicial process has occurred prior to this. It has
allowed the debtor and creditor to state their cases. There is no dispute
regarding the amount of indebtedness and whether it is truly owed. It is a valid
debt the creditor has the right to pursue.

There is a distinction between debtors who cannot pay and debtors who choose
not to pay. The issue we have with the wild card is, rather than tailor legislation
to address specific problems, it ignores that not all debtors need that protection.
Our amendment (Exhibit C) recognizes the need to make protections but does
not create additional protections for individuals who choose not to repay for
services or goods or otherwise.

Exhibit C, section 3 on page 2 says a bank will be precluded from freezing an
account with certain funds in it. Those funds are identified in paragraphs (a)
through (o). You hear testimony about individuals being damaged by the
collection process. One of those groups is provided for in paragraph (a)
"Benefits provided pursuant to the Social Security Act" This says if there
are social security funds in an account, a bank cannot freeze those funds up to
\$2,000 or the entire amount of the account, whichever is less.

For example, I do pro bono work for the Senior Law Project in Washoe County.
These individuals ask for will-writing services. In doing that work, they provide
me with their financial portfolio. I see what it is like for these individuals to live
off social security. These people should be protected from this collection
process. This is what our amendment does, Exhibit C. It prevents a creditor
from attaching those accounts. The catchall is contained in section 3,

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subsection 1, paragraph (n). Paragraph (n) says, "Benefits provided pursuant to any other federal law; ... ," [Exhibit C](#), page 3. If individuals receive any federal benefits, a creditor cannot freeze an account with less than \$2,000.

For people living on welfare with direct deposits, we added paragraph (o), [Exhibit C](#), page 3, which says, "Public assistance provided through the Department of Health and Human Services" The main deletion in the bill is at section 3, subsection 2 on page 3, which is the wild card. That applies to any debtor regardless of reasons for not paying, benevolent or not. We want to protect people, but let us focus our attention on whom we are trying to protect and not overextend the protections to include others who probably are not deserving of these protections. This is the policy we are asking you to consider.

We are suggesting we readdress the procedure of claiming those exemptions because that individual who has social security benefits in his or her account might also have other money in his or her account. We are not saying they do not get the \$1,000 wild card exemption. We are saying they continue through the process, which we are trying to shorten and give them the notice and means through which they can claim that exemption almost immediately. That is the intent of our amendment, [Exhibit C](#).

If this bill passes as presented, it will affect small businesses—for example, a plumber with \$20,000 in accounts receivable and a \$15,000 payroll that must be met. If we increase the cost for that person to collect or the time it takes to collect that money, it substantially impairs his ability to do business. He cannot pass that cost on to other consumers in other states like some of the larger creditors. This bill affects small businesses in this State. We should address the considerations of the proponents. If we do, let us address those issues and not create policy that is overextensive.

CHRIS FERRARI (Clark County Collection Service; Reno Sparks Chamber of Commerce; National Federation of Independent Businesses; Nevada State Apartment Association):

I take exception to a statement made by Venicia Considine implying our members and clients rely on the ignorance of certain people, take advantage of them and intentionally go after veterans. We have worked well with this bill's sponsor and Jon Sasser.

Many federal benefits, including Temporary Assistance for Needy Families (TANF), are included in our proposed amendment ([Exhibit D](#)) and have an automated clearing house (ACH) coding. When received by the bank, there is an acknowledgement those federal- or state-issued funds are untouchable. There are errors occasionally. To imply my client or any other would intentionally take away a veteran's benefit is inappropriate.

Comments were also made about people who need to get to work, buy gas and pay rent. The opposite side of that is these are small business people who have signed a contract with someone for a service. That person knowingly took that service from a plumbing or small contractor and is choosing not to pay the bill. When this process occurs, the garnishment of a checking account is typically 12 to 15 months after that service has been rendered. A payment plan has been offered; phone calls have been made; letters have been sent. The person has been taken to court and sued. Invoking the judicial branch, the judge said this person has not paid, and you have the judgment. You now have the right to garnish that person's bank account, which takes another 30 days.

Much of the challenge in this process is with the processes in place—the bank timing, the account freezing, the disability to unfreeze that account if done incorrectly. Those things are not affected by our clients. Our clients are going in to a job on behalf of the businesses to recoup those dollars rightfully owed. If the bank makes an error, that is not within our control. We operate within all parameters of the statute.

It has also been stated that this bill attempts to protect the working poor. With my clients, there is a \$40,000 annual income criteria before they will move forward on behalf of their clients with a collection procedure. They must know the individual will have the ability to pay. There is no incentive to go after the working poor because these individuals will not get to a point where the account can be garnished to make that small business whole again. As an industry standard, it does not make logical business sense to go after the working poor, nor does it make ethical sense.

The crux of this bill is in section 3, subsection 2 regarding the \$1,000 wild card exemption. The statute put that exemption in place. It already exists. You also said someone should have to claim that exemption. We are talking about 12 to 15 months from the date of service. Ample notification is statutory in terms of font size, notification and requirements of what that individual must do to claim

that exemption. This Legislature had the foresight to say, "If you've gone that far, you know you owe the debt. We're going to ask that you take one simple action, and that is to claim that exemption." There are also numerous other exemptions as Mr. Sande outlined—401(k), homesteads, 75 percent of weekly wages.

Veterans were mentioned throughout the proponents' testimony. Our amendment protects veterans, all federal beneficiaries and seniors, [Exhibit D](#). It increases the time for filing any exemption from 8 to 12 days, [Exhibit D](#), page 1. We also added TANF and public assistance recipients on the State level. We reached out to the Department of Health and Human Services and were informed payments to its recipients are ACH-coded. Therefore, those payments would be identified. Barry Gold from Nevada AARP outlined those challenges for his 305,000 members ([Exhibit E](#)). They are all addressed in our amendment.

The public policy decision this body faces is to protect those who knowingly consume a service and do not want to pay or to protect those who cannot pay. Our amendment protects those who cannot pay but enables small businesses to continue to be paid for services rendered. We ask for the protections to be in place for those who cannot help themselves. For those who can, we ask for your support of our amendment.

SUSAN FISHER (Coalition of Housing Providers):

I represent the Coalition of Housing Providers, which is a subset of the Nevada State Apartment Association. Mr. Ferrari had my permission to represent the Apartment Association on the record because I was in another hearing. We support the amendment and would support the bill if you chose to adopt the amendment, [Exhibit D](#). Many of our members are mom-and-pop organizations. We have some large apartment complexes and big businesses; we also have many moms and pops who live from paycheck to paycheck, rent to rent and have a hard time making the mortgage payments on housing provided for low income people. You received a letter from the Nevada State Apartment Association ([Exhibit F](#)).

CHAIR WIENER:

Ms. Fisher, when you refer to the amendment, are you, Mr. Sande and Mr. Ferrari all referring to the same amendment? Amendments have been provided by two different parties. We want to make sure we are clear on that.

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MS. FISHER:
Yes.

CHAIR WIENER:
Lou Toomin testified two days ago regarding the concerns of constables. We have his proposed amendment ([Exhibit G](#)).

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
Venicia Considine would like to make some brief remarks.

VENICIA CONSIDINE (Legal Aid Center of Southern Nevada, Inc.):
An issue brought up at Monday's hearing was the \$1,000 personal property exemption already in statute. If that were to become automatic, it would assist in allowing deadbeat dads or parents to avoid paying child support. We took that very seriously. We sent the Committee our research on that and indicated our willingness to add an amendment to that \$1,000 personal property exemption stating that exemption will not go into effect if it is a judgment pursuant to a child support order ([Exhibit H](#)). In Clark County, child support orders are usually done through the District Attorney's Office, which makes them different from a regular writ of execution. We are willing to add an amendment to ensure in such cases a situation is avoided wherein a deadbeat parent can avoid paying child support.

CHAIR WIENER:
Please provide that specific language to us before work session.

MS. CONSIDINE:
I will provide that to you. I would like to point out the other side of that issue. If there is a worry about a parent not paying child support or child support arrearages, he or she should not be allowed to avoid that. We support that. On the other hand, families are living paycheck to paycheck, and children are living off that support. This \$1,000 exemption will help them as well. It would allow someone with \$1,000 or less in his or her account and not subject to any other direct deposited coded U.S. Treasury funds keep that \$1,000. Some of that would be child support.

I understand from the Collectors Association that collector services look at people who have an income of \$40,000 or more before they begin collection procedures against them. The \$1,000 is only \$1,000. If these people have

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additional funds in their accounts, anything above that \$1,000 is still frozen. It is only that \$1,000 or below, giving people the opportunity to pay their rent or mortgage and keep food on the table.

CHAIR WIENER:

I will close the hearing on A.B. 223 and open the work session. We will reschedule A.B. 294 for Friday, May 20. We will address A.B. 213.

[ASSEMBLY BILL 294 \(1st Reprint\)](#): Revises various provisions governing mobile gaming. (BDR 41-1042)

[ASSEMBLY BILL 213 \(1st Reprint\)](#): Makes various changes relating to gaming. (BDR 41-163)

LINDA J. EISSMANN (Policy Analyst):

I will read from the work session document ([Exhibit I](#)). This bill was brought by students at the William S. Boyd School of Law, University of Nevada, Las Vegas. There was no opposition. Bradley A. Wilkinson, Counsel, offered a technical amendment. After further discussion, that amendment may not be necessary.

CHAIR WIENER:

Mr. Wilkinson is not with us, and Bryan Fernley-Gonzalez will be with us the remainder of Session.

BRYAN FERNLEY-GONZALEZ (Counsel):

Section 2, subsection 2, of the bill says if, after an investigation, the State Gaming Control Board is satisfied their preliminary findings of permitting or licensing should be limited, conditioned, suspended or revoked, the Board should hold a hearing. The technical amendment to subsection 4 would authorize the taking of action on that preliminary finding of suitability. Under the bill, the Nevada Gaming Commission is authorized to have a hearing on a preliminary finding of suitability but is not authorized to take any action with respect to the preliminary finding. The technical amendment would make it consistent so that after the hearing, the Commission could either revoke, suspend or impose a fine on the preliminary findings of suitability. The amendment proposed by Mr. Wilkinson would be needed to make the bill work.

CHAIR WIENER:

Different stages of the licensing process involve different procedures and considerations. This bill deals with determining preliminary eligibility. How would this measure affect other aspects of the application process as it goes forward?

A. G. BURNETT (State Gaming Control Board):

You are referring to section 2 of the bill, which is after an investigation and someone is licensed or found suitable, the Board and Commission can take disciplinary action. You are simply clarifying the Board's and Commission's ability to take action on someone who has received a preliminary finding of suitability. The Board and Commission would not object to that and would agree with the ability to do that.

CHAIR WIENER:

Do you agree with the technical amendment?

MR. BURNETT:

Yes.

JAIME SERRANO:

I am from the William S. Boyd School of Law. After the hearing last Friday, Mark A. Lipparelli, Chair, State Gaming Control Board, thought the amendment would be fine but was concerned about slowing down the process. He thought the bill was good. His observation was that practically anyone found preliminarily suitable would still have to come through the Board for licensure. If this was left out, there would be no practical effect because whoever needed to obtain a license would still have to come back through the full process. The Board and Commission would have full knowledge of any violation.

CHAIR WIENER:

Is your concern about amending it for clarification because you are concerned the bill may get lost in the process, or are you concerned we do not need it for the process of licensure, however early in that process we find this person engaged?

MR. SERRANO:

Yes. Based on my conversation with Mr. Lipparelli, he made both observations.

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SENATOR ROBERSON MOVED TO DO PASS A.B. 213.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:
We will address A.B. 13.

ASSEMBLY BILL 13 (1st Reprint): Revises provisions relating to certain offenses committed by juveniles. (BDR 5-470)

Ms. EISSMANN:
I will read from the work session document (Exhibit J). After the hearing on May 11, we received a letter from Michael J. Willden, Director, Department of Health and Human Services (Exhibit K). He expressed concern about Proposed Amendment 6806, Exhibit J, pages 2 through 4.

FERNANDO SERRANO (Deputy Administrator, Juvenile Services, Division of Child and Family Services, Department of Health and Human Services):
We oppose the amendment that would require youth parole counselors to carry firearms when performing their duties. This is contrary to the mission of the Youth Parole Bureau in working with families and youths using a strength-based perspective in helping them address and meet their educational and social needs. They are youth parole counselors, not youth parole officers, for this reason. This philosophy is shared by the juvenile justice community around the State. On February 10, we addressed this Committee. We talked about the work with youths and their various needs. It should be noted that the juvenile probation officers in Washoe and Clark Counties do not carry weapons for similar reasons, although they have the power of a peace officer.

Previous testimony indicated that statute does allow for carrying firearms. This is not allowed by policy by our Department for the reasons discussed. There would also be a fiscal note. There was testimony this language was originally included in Senate Bill (S.B.) 476. Senate Bill 476 made various changes to the juvenile justice system to implement the recommendations in the Governor's budget. This language was not part of S.B. 476.

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[SENATE BILL 476](#): Makes various changes concerning the juvenile justice system. (BDR 5-1216)

SENATOR BREEDEN MOVED TO DO PASS [A.B. 13](#).

SENATOR McGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:
We will address [A.B. 78](#).

[ASSEMBLY BILL 78 \(1st Reprint\)](#): Makes various changes relating to business. (BDR 7-403)

Ms. EISSMANN:
I will read from the work session document ([Exhibit L](#)).

SENATOR COPENING MOVED TO DO PASS [A.B. 78](#).

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, McGINNESS AND ROBERSON VOTED NO.)

CHAIR WIENER:
We will address [A.B. 246](#).

[ASSEMBLY BILL 246 \(1st Reprint\)](#): Authorizes candidates for membership on the executive board of an association of a common-interest community to obtain a list of the addresses of units' owners under certain circumstances. (BDR 10-1067)

Ms. EISSMANN:
I will read from the work session document ([Exhibit M](#)).

CHAIR WIENER:

The bill contains a provision that a candidate for the executive board of an association of a common-interest community must sign a statement saying the request for mailing addresses for each unit would only be used for purposes of the election. The candidate could not use or distribute that list, which does not include unit owners' names, for any other purpose. I had asked Assemblyman Lynn D. Stewart how that would be enforced if someone who had signed that statement violated the agreement. In working with counsel, the available remedies were complex. It would involve substantial regulatory process and enforcement. This might be something for a bill in another Legislative Session. This needs more discussion than the opportunity here. I will not encumber the bill with anything in addition to what was presented at the hearing.

SENATOR BREEDEN:

Did Assemblyman Stewart not agree with the amendments presented?

CHAIR WIENER:

That is what he stated in testimony.

SENATOR COPENING:

I want to disclose that I work for a community association. Randolph Watkins is the manager of the community association where I work. I see there is a proposed amendment from Mr. Watkins and the Community Associations Institute. They look to be similar, saying that owners need to provide written consent to the association to have their addresses included on the list. One was an opt out, and the other was written consent. Both deal with allowing a homeowner to opt into having these mailers sent to them. I do not recall that we heard testimony on this. Neither explained their reasoning. I would like to have understood the issue. I do not know if it is a privacy issue.

SENATOR MCGINNESS MOVED TO DO PASS A.B. 246.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:
We will address A.B. 291.

[ASSEMBLY BILL 291 \(1st Reprint\)](#): 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)

Ms. EISSMANN:
I will read from the work session document ([Exhibit N](#)). There was opposition to this bill with the amendment offered by Chris Ferrari.

SENATOR ROBERSON:
I am fine with the amendment reducing the time frame from six months to 30 days.

SENATOR COPENING:
I do not agree with that because the sponsor is not in agreement. We received additional information from Clark County Public Administrator John J. Cahill. I have not had an opportunity to read it.

SENATOR ROBERSON:
Are you okay with 60 days?

SENATOR COPENING:
I suggest we move this bill so I can speak with the sponsor. I would like to know if he would be open to 60 days. If he is not, I would support the sponsor.

CHAIR WIENER:
I will hold this bill to allow more time to speak with the sponsor. We will address A.B. 292.

[ASSEMBLY BILL 292 \(1st Reprint\)](#): Revises provisions governing judicial proceedings for eminent domain. (BDR 3-803)

Ms. EISSMANN:
I will read from the work session document ([Exhibit O](#)).

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SENATOR ROBERSON MOVED TO DO PASS A.B. 292.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:
We will address A.B. 317.

ASSEMBLY BILL 317 (1st Reprint): Revises provisions governing arbitration of certain claims relating to residential property. (BDR 3-540)

Ms. EISSMANN:
I will read from the work session document (Exhibit P).

SENATOR ROBERSON:
I support this bill. I would like to discuss Jonathan Friedrich's amendment, which has some merit. Does anyone oppose it?

SENATOR COPENING:
This item is in my bill, S.B. 254, that deals with arbitration fees. I have suggested a cap as well. The administrator for the Real Estate Division, Department of Business and Industry, has held public hearings regarding capping arbitration fees.

SENATE BILL 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

SENATOR ROBERSON:
This is not a controversial bill. I am concerned S.B. 254 may be more controversial. Is this a bill you could support? Perhaps we should start with this bill and move it through with the amendment. I am open to hearing your opinion. I am not confident S.B. 254 will be passed and signed by the Governor. This bill has a good chance of being enacted.

SENATOR COPENING:

I am not in favor of putting the amendment in this bill because it has not been vetted. There might be an arbitration case requiring more time because more information has been presented and the arbitrator is capped at \$150 per hour. If the arbitration reaches that cap and more hours are required to resolve an issue, you would not find an arbitrator who will do that work. It is being vetted by the Assembly subcommittee. I am concerned about unintended consequences if we randomly put something into a bill.

SENATOR ROBERSON:

The language provides if there is good cause to exceed that cap, more than \$1,000 could be spent.

SENATOR BREEDEN:

Because the amendment was not vetted, I assume the sponsor has not spoken to Mr. Friedrich.

SENATOR BREEDEN MOVED TO DO PASS A.B. 317.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address A.B. 373.

[ASSEMBLY BILL 373 \(1st Reprint\)](#): Prohibits the destruction of real property that is subject to foreclosure with the intent to defraud. (BDR 15-98)

Ms. EISSMANN:

I will read from the work session document ([Exhibit Q](#)).

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SENATOR MCGINNESS MOVED TO DO PASS A.B. 373.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:
We will address A.B. 379.

ASSEMBLY BILL 379 (1st Reprint): Establishes the crime of stolen valor.
(BDR 15-1005)

Ms. EISSMANN:
I will read from the work session document (Exhibit R). Our amendment to Senator Elizabeth Halseth's bill added monetary value. I have since received an e-mail from Assemblyman Scott Hammond's attaché. He may desire to return his bill to the originally introduced version in the Assembly. Either way of amending it is on the table.

CHAIR WIENER:
I spoke with the sponsor of the measure before Committee this morning. He desires to amend the bill we heard adding monetary value.

SENATOR MCGINNESS MOVED TO AMEND AND DO PASS AS AMENDED A.B. 379 WITH THE ORIGINAL A.B. 379, INCLUDING THE WORD "MONETARY."

SENATOR ROBERSON SECONDED THE MOTION.

SENATOR COPENING:
I want to make sure I understand. Assemblyman Hammond does not want to return to his original A.B. 379, he wants to go to S.B. 356, which was Senator Halseth's bill.

SENATE BILL 356 (1st Reprint): Establishes the crime of stolen valor. (BDR 15-999)

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CHAIR WIENER:

For clarity, he wants to return to the bill he introduced and add the word "monetary." The first reprint to S.B. 356 does that.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

The hearing is open for public comment. There being nothing further to come before the Committee, we are adjourned at 9:17 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 223	C	John Sande, IV	Proposed Amendment
A.B. 223	D	Chris Ferrari	Proposed Amendment
A.B. 223	E	Chris Ferrari	Letter from Barry Gold of AARP
A.B. 223	F	Susan Fisher	Letter from Nevada State Apartment Association
A.B. 223	G	Senator Valerie Wiener	Proposed Amendment from Lou Toomin
A.B. 223	H	Venicia Considine	Prepared Testimony
A.B. 213	I	Linda J. Eissmann	Work Session Document
A.B. 13	J	Linda J. Eissmann	Work Session Document
A.B. 13	K	Linda J. Eissmann	Letter from Mike Willden
A.B. 78	L	Linda J. Eissmann	Work Session Document
A.B. 246	M	Linda J. Eissmann	Work Session Document
A.B. 291	N	Linda J. Eissmann	Work Session Document
A.B. 292	O	Linda J. Eissmann	Work Session Document
A.B. 317	P	Linda J. Eissmann	Work Session Document
A.B. 373	Q	Linda J. Eissmann	Work Session Document
A.B. 379	R	Linda J. Eissmann	Work Session Document