MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
May 13, 2005

The Committee on Judiciary was called to order at 8:17 a.m., on Friday, May 13, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Warren B. Hardy II, Clark County Senatorial District No. 12

STAFF MEMBERS PRESENT:

René Yeckley, Committee Counsel

Allison Combs, Committee Policy Analyst
Judy Maddock, Committee Manager

OTHERS PRESENT:

Cheryl Blomstrom, Legislative Advocate, representing the Nevada Consumer Finance Association
Jim Kierman, President and Owner, Northern Nevada Title Company, Reno, Nevada
Bill Bible, President, Nevada Resort Association, Las Vegas, Nevada
Bob Faiss, Legislative Advocate, representing the Palms Casino Resort, Las Vegas, Nevada
Jim Hughes, Vice President and General Manager, Palms Casino Resort, Las Vegas, Nevada
Dennis Neilander, Chairman, Nevada Gaming Control Board
Mark Clayton, Board Member, Nevada Gaming Control Board
Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas, Nevada
Richard Peel, Legislative Advocate, representing the Sheet Metal Air Conditioning Contractors Association, the National Electrical Contractors Association, and the Mechanical Contractors Association
Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association
Karen Dennison, Legislative Advocate, representing Sempra Generation, San Diego, California
Vicki Mayes, City Manager, City of Boulder City, Nevada
Jack Jeffrey, Legislative Advocate, representing the Southern Nevada Building and Construction Trades Council
Michael Newman, Legislative Advocate, representing the National Association of Industrial and Office Properties and Trammell Crow Company, Las Vegas, Nevada
Robert A. Snow, Jr., President, Thomas and Mack Development Group, Las Vegas, Nevada

Chairman Anderson:
[Meeting called to order. Roll called.]

Senate Bill 172 (1st Reprint): Revises provisions relating to sale of real property under deed of trust. (BDR 9-1029)

Cheryl Blomstrom, Legislative Advocate, representing the Nevada Consumer Finance Association:
I received an amendment this morning as proposed by Fidelity Title (Exhibit B). I don't have a problem with the amendment, nor does the sponsor. Senate Bill 172 makes some changes, which were brought forward by many of the title companies and trustees, to the foreclosure process in Nevada. Section 2 provides a penalty for a person who removes or defaces a notice of sale before the sale or satisfaction of the default. We've heard testimony that in order to purchase a property, people will remove the notice of sale so that they may be the only bidder.

Section 3 provides for foreclosure sales in any public place in the county where the property is located. Clark County, for reasons of security and numbers of people, does not allow the foreclosure sales on the courthouse steps that are currently provided for in statute. Current statute also allows a sale at a trustee's principal office, which could be a principal's Las Vegas office with a property in Elko. This makes it inconvenient for people from the location where a property is situated to actually bid on it. It seems to us that it makes more sense to have the sale in the county where the property is located.

Section 4 allows a sale to be postponed no more than three times before a new notice of sale must be prepared and distributed. Currently, there is no limit on the number of postponements. A sale can be postponed over and over, and typically, a trustee charges a fee for each of these postponements, so this just adds fees on top of debt, on top of the other problems that a trustor is going through as they are losing their property. We think it makes sense to put a finite number on that. Occasionally, a sale is postponed for no other reason than to discourage potential bidders. Fewer than 5 percent of sales postponed for 90 days actually ever end up going to sale.

Section 5 allows for resale if the purchaser at the first sale doesn't conclude the sale. It also provides for another noticing process. Section 6 puts the proposed changes into the various covenants that are required to be included in the Nevada deed of trust. There are three pages of that. Section 7 provides for recordation of the notice of sale and for service on a judgment debtor—or "trustor," as it is called in the deed of trust—by service by registered mail or certified mail at his last known address, or also by personal service. It also provides for posting a similar notice in three public places in the township or city where the property will be sold. It also provides that notices be published for three consecutive weeks, one time each week, in a newspaper in the county in which the property will be sold.

[Cheryl Blomstrom, continued.] In Section 7, subsection 5, the proposed amendment (Exhibit B) adds that the sale of property under this section does not create a status of a bona fide purchaser for value in any purchaser and said sale may be considered void or voidable if the requirements of NRS [*Nevada Revised Statutes*] 107.080 have not been substantially met. This provision says if there is an error in the notification, or a substantial error in the notification process or the sale process, then the purchaser at the sale may have that sale overturned. What this does is protect the trustor, who is typically not able to afford counsel. When there is a notice, the trustor says they didn't receive any notification at all, and they are able to show that, this would create a voidable provision for that person, as I understand it.

Jim Kierman, President and Owner, Northern Nevada Title Company, Reno, Nevada:
I, along with many others, have asked that these amendments be made to alleviate many problems we're seeing in foreclosures right now. We are finding that with the increase in property values, foreclosures seem to be the hot item right now for fraud. It seems to be growing, and not necessarily amongst the trustees, but amongst the bidders. It is not unusual to see four, five, or six bidders collaborate to chill the bidding process, denying the borrower/owner of their equity. Over the course of the next four or five years, I think you are going to see many more changes proposed simply to fix problems that are arising from out-of-state bidders.

Chairman Anderson:
The title companies, then, are behind the request for this cleanup in the statute, predominantly because many of these sales did not have proper notice and the person who was the original holder of the title didn't get their due because of somebody postponing the sale or by where it is located. We haven't provided enough safeguards. Is that what you are trying to tell me?

Jim Kierman:
Yes, sir.

Assemblyman Horne:
From what I have learned about how these postponements happen, they can happen the day of. Why not put in a provision that you have to give 24 or 48 hours' notice of the postponement?

Jim Kierman:
The postponement typically happens at the time of the sale, either through perceived irregularities at the sale or questions concerning whether or not the

trustor will be there with the money. They may be ready, and you may have already commenced the sale.

Assemblyman Horne:
We're trying to remedy instances or bad actors. We had postponement upon postponement, to where they're postponing merely because there are too many bidders. If the trustor shows up with the money, that is not a postponement. That is a cancellation. There is not going to be a sale.

Jim Kierman:
Not necessarily. They may show up with the money in the middle of bidding that has gone beyond the amount that they owed. They typically wouldn't be allowed then to bid over and above what was already bid.

Assemblyman Horne:
In addition to having only three postponements, we could also have a condition where you have to give notice of a postponement 24 hours before the date of the scheduled auction.

Jim Kierman:
Would that prevent you from postponing at the time of the auction? That would defeat the postponement provisions, assuming that you had four or five bidders and they were obviously colluding to restrain the bidding. As a trustee, I would postpone that sale. As a trustee, your job at the time of the sale is to gather as much money as you can—not only for the lender, but also for the owner. If it is obvious that the bidders are chilling the bidding, you would want to postpone it and perhaps attempt another sale. You would only know that at the time the sale was taking place. I don't think it is reasonable to try and give a 24- or 48-hour notice of a postponement. I don't know how you would do that.

Chairman Anderson:
These are auctions, are they not?

Jim Kierman:
That is correct.

Chairman Anderson:
We are trying to figure out what the downside of giving adequate notice of postponement would be.

Cheryl Blomstrom:
Perhaps we could take this question back to the various title companies and trustees and come back to you with that answer.

Assemblyman Horne:
Section 3 has a prohibition that the agent holding the sale must not become a purchaser or be interested in any purchases at such a sale. If that were to occur, does the sale become void? If you found out two days later that it had actually occurred and the agent purchased the property through a straw man, what is the remedy?

Jim Kierman:
At the current time, many of the notes and deeds of trust that are foreclosed allow the foreclosing agent or trustee to bid at the sale. It is not unusual. Perhaps it is a problem that needs to be remedied. I agree with you. Right now in Nevada, the only way you can set aside a sale is to show that there was actual fraud; price alone won't set the sale aside. You must have some real disparity in the sale process to have a court set aside a sale. Having the agent bid, if the note or the deed of trust allows for that, may remedy that problem. I don't necessarily perceive it as a problem because I don't see that many agents bidding, but it may remedy one of the other problems.

Chairman Anderson:
With the oral delays after 3 p.m., they are no longer able to do it on the third because it has to have 24 hours. I think you could do it once, but after that there should be a time restraint.

Cheryl Blomstrom:
I will be glad to throw that into the mix.

Assemblyman Carpenter:
Who were you talking about as the agent? Was that the trustee?

Jim Kierman:
Not always. Today we are seeing what we call foreclosure mills from California or the East Coast. They substitute themselves as a trustee, or the lender does. Through a computerized process, they do all of the paperwork, and then they hire agents to post the property and the notices, do the mailings and the publications, and then a third company may actually cry the sale at the courthouse.

Assemblyman Carpenter:
In the amendment, you are saying that it can be the office of the trustee, which most likely would be a title company, right?

Jim Kierman:
Not necessarily. I conduct sales and we handle foreclosures, but on a very small basis compared to the foreclosure companies that are doing them today. Lenders have found that they can go to a foreclosure company that uses electronic means, or through Freddie Mac [Federal Home Loan Mortgage Corporation], Fannie Mae [Federal National Mortgage Association], and other entities. Title companies rarely do foreclosures.

Assemblyman Carpenter:
That really concerns me. If the sale can be held at the office, there could be collusion.

Cheryl Blomstrom:
The notice would require identifying the site of the sale and providing directions if need be. We think that is probably enough. What we are trying to do, particularly in Clark County, is take it off the courthouse steps because they don't want us there right now.

Assemblyman Carpenter:
It still concerns me. It looks like it could be held somewhere else. In Elko, the courthouse steps work well, and that is where it should be. Maybe we could make it based on population.

Chairman Anderson:
I understand the issue. I think that traditionally, they have been courthouse step sales. Clark County seems to be terribly concerned about security, but if the sales are not going to be on the courthouse steps, then they should be in a specific place within the particular county. It is a responsibility that a county has to the citizens who hold property there. That is where the deed is recorded, and it is a county responsibility. That is what title companies do—record those documents with the county recorder.

Jim Kierman:
That is correct. I don't see a problem with having it at a public venue outside the trustee's office, perhaps at the library. You are correct; it has always been held at the county courthouse. The problem today is that Reno has become almost like Clark County. If you have ever been to the courthouse and watched them hold sales at 9:00 in the morning, you need someone to push the people out of the way to get into the courthouse anymore. That is the problem we are facing in Clark County.

Chairman Anderson:
If not the courthouse, then it should be a public building. Mr. Carpenter, do you have any observation on the bill?

Assemblyman Carpenter:
I do think there are some questions, and I think that the sales need to be in a public place. I would feel uncomfortable if somebody were taking my property and he was going to hold a sale somewhere I didn't know about. I think that it needs to be in a public place; otherwise, you defeat the purpose of it.

Cheryl Blomstrom:
I was very comfortable removing a sale from the county property, but I am not comfortable moving it to another piece of county property without at least being able to speak with the various counties. I hope that you will allow us the opportunity to do that.

Assemblywoman Gerhardt:
Anyone can ask for a postponement just by saying that they want a postponement? Who decides whether there is sufficient reason to grant a postponement?

Jim Kierman:
Typically, a postponement occurs when the trustor files for bankruptcy. It happens when you have already noticed the sale. Many times, the day before the sale, the trustor files bankruptcy. Because of the automatic stay, you are not allowed then to conduct a sale. Typically what would happen is that the trustee would be contacted by the attorney and get a copy of the bankruptcy filing. You would call the lender, and the lender or the beneficiary would tell you to postpone the sale for 30 days so that they can go and get relief from the automatic stay and the bankruptcy. It is like a restraining order. They instruct you as the beneficiary to continue to postpone. You may postpone continually for 30-day periods, or 10-day periods, or whatever period of time you are instructed to postpone to.

Assemblywoman Gerhardt:
So, the bidders do not have that option? Are you saying that it is the lender that ultimately decides whether a postponement is appropriate or not?

Jim Kierman:
The trustee can always postpone at his pleasure. It is because of confusion on the part of the trustee as to how to act. They want to get instructions. They can certainly postpone.

Assemblywoman Gerhardt:
However, the bidders cannot ask for postponement?

Jim Kierman:
They can certainly ask, and that may happen. At that point, the trustee may contact the beneficiary, and it will be left up to the beneficiary.

Assemblywoman Gerhardt:
So, the beneficiary is the final authority on whether a postponement is granted or not?

Jim Kierman:
Not always, no.

Assemblywoman Gerhardt:
Who is the final authority?

Jim Kierman:
The beneficiary and the trustee have the power to postpone.

Chairman Anderson:
So, the financial institution that has equity in the property and the property owner would be notified of the fact that the auctioneer is about to ask for a postponement?

Jim Kierman:
No. The only way the owner, trustor, or anyone would know there was a postponement at the present time is if they are at the sale and hear the trustee announce the postponement.

Assemblyman Mabey:
If S.B. 172 does not pass, it appears to me that you can postpone it more than three times. Is that correct?

Jim Kierman:
Yes, sir. As many as you want.

Assemblyman Mabey:
Under Section 5, what happens to the purchaser who refuses to pay? How will this bill change that?

Jim Kierman:
Currently, you would strike off a sale under "sales under execution," and the same thing would happen as if the sheriff had sold it and then the man refused to give him the money. You don't transfer the property; you don't give them the deed to the property. As a trustee, certainly I don't until I have the money, and it must be certified funds. I have not had a sale where I did not have the money.

Assemblywoman Allen:
Is it correct to say that without the amendment, you auction off land outside the specific counties, so Elko County land or property may be auctioned off in Clark County? Is that the case?

Jim Kierman:
It doesn't happen very often, but it does happen. You have property that has a large value and a very low amount of money that is owed on it, and we find that the sale is conducted in Las Vegas. Typically, this happens in Clark County. The properties in Elko or in Reno are typically auctioned in Washoe County. I can't speak for Elko County, but I see that frequently. It is done and it precludes people from bidding, because even though they're supposed to notice it in the county that the sale is held in, you have no way of knowing that they did.

Assemblywoman Allen:
I have problems with that part.

Chairman Anderson:
In Section 7, subsection 4(c), on the last page of the amendment (Exhibit B), I see that you are proposing we drop publishing a copy of the notice in a newspaper in the "township or city" and only stick to "county." What is the purpose of that?

Cheryl Blomstrom:
Because the property is recorded at the county level, advertising for the county would make the most sense.

Chairman Anderson:
Even if the population is not in the county, but rather in the city? I could run a notice in a paper that would only reach county residents and not city residents, for whatever purpose, and meet the qualifications of due notice?

Cheryl Blomstrom:
I think they are talking about a newspaper of general circulation. In the counties that I am aware of, those also reach the townships and cities within the county.

Assemblywoman Buckley:
On this postponement issue, if it is limited to three times, that is going to help people with regard to having their property sold out from under them and having to endure these continual postponement situations. I sometimes help people who are losing their homes, and they may file for bankruptcy to try to reorganize and save their homes. I've seen situations where sometimes there will be an attempt to lift the stay, but it is not filed right away because they are trying to reorganize and restructure their debt. They're trying to save their home, and they keep noticing the sale and having to get it postponed. They are scared to death and trying to get someone to help. It seems like this area gets abused somewhat. Is that what you are trying to correct here?

Jim Kierman:
That is precisely what we are trying to correct. We are trying to alleviate the problem where the postponement is made almost to a point that it is forgotten. You go more than three times and you don't republish and renotice. That sale is forgotten. People have forgotten. People and potential bidders quit calling.

Assemblywoman Buckley:
It is a fatigue factor.

Jim Kierman:
It is. People move on to other things. They don't want to make notes and have to call back. By the time the second or third postponement rolls around, you quit getting calls.

Assemblywoman Buckley:
It hurts the bidders as well as the person whose property it is. They have to come first; it is their property if they are able to redeem or reorganize.

Jim Kierman:
Absolutely.

Chairman Anderson:
After the third notice, if there will be a subsequent notice it has to be at least a 24-hour notice, so this doesn't continue on and on. In your amendment there are provisions that they must renotice in order to follow those procedures of the proper noticing. If there is going to be an event after a third notice, I think at the very minimum it should be 24 hours ahead of time, so it is not a last-second deal.

Assemblywoman Gerhardt:
I am going to ask Legal for some clarification about who has the right to postpone and who has the final authority.

Chairman Anderson:
Let's close the hearing on S.B. 172 and open the hearing on S.B. 444.

Senate Bill 444 (1st Reprint): Requires Nevada Gaming Commission to adopt regulations authorizing gaming licensee to charge fee for admission to area in which gaming is conducted under certain circumstances. (BDR 41-1295)

Bill Bible, President, Nevada Resort Association, Las Vegas, Nevada:
Senate Bill 444 is a measure supported by the Nevada Resort Association. It would create an exception to the public policy in reference to gaming as it relates to whether an area needs to have access to the public. The general policy provision is contained in NRS [*Nevada Revised Statutes*] 463.0129, which is under the title *Public Policy of the State Concerning Gaming.* Section 1(e) of that particular statutory provision provides that, in part, all gaming establishments in this state must remain open to the general public and the access of the general public to gaming activities must not be restricted in any manner except as provided by the Legislature.

In my recollection, there have been several instances where this Legislature has processed exceptions to that particular rule. I appeared before this Committee in 1991, in the role of Chairman of the State Gaming Control Board, and requested that an amendment be provided—and it was provided—that would allow gaming activities to occur beyond the security gate within a public transportation facility. It was during the first Iraq war and the federal government started to restrict access into the back parts of airline terminals unless you had a ticket. We felt that we needed statutory authority to allow gaming activities to be continued in those particular areas.

Two sessions ago, we sought legislation that was processed by this Legislature that created a restriction for financial criteria as it related to salon gaming, which established a regulatory scheme that allowed private gaming for individuals that met certain financial criteria. This particular provision in S.B. 444 would allow licensees, under certain circumstances, to charge admission into areas in which gaming is conducted.

Bob Faiss, Legislative Advocate, representing the Palms Casino Resort, Las Vegas, Nevada:

I represent the Palms Casino Resort and other gaming licensees that support S.B. 444. Adoption of this bill will permit the Gaming Control Board Chairman to approve applications for a casino to operate slot machines or tables in conjunction with activities, attractions, or facilities for which there is an admission charge.

This bill was developed in close cooperation with the Gaming Control Board. It was amended in the Senate at the request of the Control Board to enhance the Board's ability to regulate this process. Chairman Dennis Neilander told us at the beginning that the Control Board will take no position on the bill, but wants to ensure it provides the guidance and tools necessary for its enforcement.

One provision requires the Gaming Control Board Chairman to consider whether an admission fee process would result in a private gaming salon. Today we offer an amendment, dated May 12, 2005 (Exhibit C), that further emphasizes the bill's intent not to be used for the creation of a private gaming area.

The amendment provides that a licensee who charges an admission fee shall not be allowed to utilize that fee to create a private gaming area that is not operated in association or conjunction with a nongaming activity, attraction, or facility, in conformity with the policy set forth in NRS 463.0129(1)(e). This means that a patron will never be paying a fee just for admission to gaming.

There is another amendment dated May 5 (Exhibit D). It adds language to clarify that the admission fee process and taxation apply only to nonrestricted licensees; conforms the prohibition against improper exclusion of patrons to that of NRS 651.070, the public accommodations statute; and adds a clarifying provision dealing with restricted licensees.

This is the way the process is supposed to work. A licensee must obtain the administrative approval of the Control Board Chairman, after providing all information the Chairman deems necessary for his decision. The Board Chairman must consider all relevant factors, including the size of the fee area, the amount of gaming to be offered, the business purpose, the costs of creating the area, the benefit of having gaming conducted in the area, and whether the fee to be charged is reasonable. The licensee must make a deposit into a revolving fund for Gaming Control Board agents to use to pay the admission fee if they choose to enter without showing their credentials. The licensee will be required to maintain a separate gaming area that contains at least the same number of gaming devices and tables available to patrons without paying an admission fee. Unless the area already is subject to the live entertainment tax, the admission

charges will be subject to the live entertainment tax. A gross revenue license fee and annual and quarterly game and slot machine license fees must be paid in connection with the gaming.

[Bob Faiss, continued.] Senate Bill 444 allows licensees to use their business judgment with respect to admission charges. The bill provides benefits to the industry and tax revenue to the state. The comprehensive criteria that will govern the process will guard against problems. We recommend it to you.

Chairman Anderson:
This is not going to be restricted in any way to a particular casino. Regardless of their status, clearly it will be nonrestricted gaming places. This is not something that only one piece of property will be able to utilize.

Bob Faiss:
I think the answer to that is clear, in the vast and deep support that has been evidenced to the Committee by a number of licensees.

Chairman Anderson:
Will it have to conform to the normal tax structure of the state in terms of gaming revenue?

Bob Faiss:
That is correct. It has all the standard provisions of taxation.

Chairman Anderson:
It will not lessen the reputation of Nevada gaming in any way?

Bob Faiss:
No, sir. It certainly will not.

Assemblyman Mortensen:
Could you give an example of what you will apply this to? Is this some special club within the casino?

Jim Hughes, Vice President and General Manager, Palms Casino Resort, Las Vegas, Nevada:
The purpose of the legislation would be to permit a licensee to charge a cover charge to offer gaming in an area that would otherwise have a cover charge. It could be in a lounge, in an entertainment venue, a concert venue, or a pool area. It could be someplace where the licensees are providing entertainment in the form of a concert DJ [disc jockey] or some sort of entertainment act that

would command a ticket price or a cover charge. This would allow the licensee to provide gaming in that venue as well.

Assemblyman Mortensen:
It sounds good.

Assemblyman Carpenter:
Did I hear Mr. Faiss say that you had to have the same number of games in this venue as you would any other area that you would not be charging admission to?

Bob Faiss:
That is correct, and the amendment (Exhibit D) will accomplish this. If you will take a look page 2 of S.B. 444 and go down to lines 35 to 38, you will see a provision that indicates that licensees must maintain at least a like number of games and gaming devices in an area that is not subject to an admission fee. The proposed amendment would indicate that the restricted licensee—the restricted establishment—must post a sign of suitable size in a conspicuous place near the entrance that provides notice to patrons that they need not pay an admission fee or cover charge in order to engage in gaming. In a restricted area, it is difficult to cut out access. If you have 15 gaming devices and they are bar tops, to divide them in half would be difficult because of the physical configuration of the building. This particular amendment would treat restricted licensees differently than nonrestricted licensees.

Assemblyman Carpenter:
Will that be very practical to do?

Bob Faiss:
That is the current practice in terms of restricted licenses.

Assemblyman Carpenter:
I mean, where you have the same amount of games or tables in the area that you would charge admission to as in the area you were not charging admission to.

Bob Faiss:
The provision is that you must have available for play a like number of machines in an area that is not subject to the admission charge as you do in the area that is subject to the admission charge. In the instance Mr. Hughes gave, if you had something going on in a pool area, you would still have your main casino available.

Assemblyman Carpenter:
Do you have to have the same number of games at the pool area as you do at the main casino?

Bob Faiss:
No, you do not. They can be a lesser amount.

Chairman Anderson:
You just have to say that there is a similar type of gaming going on inside the regular casino area as there is in these specialized areas. Would that be correct?

Jim Hughes:
That is correct.

Assemblyman Holcomb:
Would this have the additional advantage of keeping underage gamblers out of that restricted area?

Jim Hughes:
Yes. Anytime we charge a cover charge wherever we offer entertainment, we are 21 and over anyway. Anybody who looks under 30 years old would have to show identification at the door.

Chairman Anderson:
A casino actively participates in trying to keep underage people out of the gaming areas as a whole. The only additional restriction is that you have to pay a cover charge to enter.

Jim Hughes:
That is correct. Currently, a minor can enter a casino from any of a number of doors. We have movie theaters, and they can come in that entrance. However, to get into this venue they are going to come through a restricted area where everybody passes through one door. That would facilitate identifying anybody who is underage.

Assemblyman Manendo:
How will S.B. 444 affect an area where you charge a fee, currently have gaming, and a band is playing? It seems like this is already happening. Would you bring machines into areas where there is absolutely no gaming at all, such as pool areas?

Bill Bible:
You cannot charge a fee or restrict access in an area where you have gaming devices in a nonrestricted casino, other than public transportation facilities. This will allow a licensee, if they do have entertainment or a nightclub venue, to charge a cover charge to gain access to that particular area.

Assemblyman Manendo:
That would include a bar area where there are video poker machines?

Bill Bible:
It could.

Assemblyman Manendo:
What happens in an area that has entertainment as well as gaming, and where they already charge cover charges? I was under the impression that was currently happening. I am just wondering how this bill would affect that.

Dennis Neilander, Chairman, Nevada Gaming Control Board:
The Board has taken a neutral position on the bill. We have worked with the proponents of the bill in order to make sure that the language is fashioned in such a way that, should you choose to make the policy decision to create an additional exception within NRS 463.0129, we have the ability to regulate a property on a going-forward basis.

I would note for the record that we do support the amendments that have been provided to you. We have had a chance to look at them, and from our perspective, they do actually help. Creation of private gaming salons was one of our concerns that we raised early on in the discussions. The way we addressed it in the first reprint was to make clear that creating a private gaming salon was one of the factors we would consider in determining whether or not to grant such an application. It is our preference that it actually contains the language in the amendment, which goes even further in terms of making sure that doesn't occur. We certainly don't want a situation where someone may create a separate area that only has gaming in it and have, for example, a $500 cover charge, but comp the cover charge only for certain players and thereby create a private facility. I don't think that is what this Committee wants, and that is certainly not what we would like to see. For those reasons, we think the amendment is appropriate.

Just for the record, we want to make sure there is a clear understanding of how the taxation provision works, in the first reprint of S.B. 444, which is found on page 3, line 3, which is subsection (d).

Mark Clayton, Board Member, Nevada Gaming Control Board:
We would like to clarify on page 3, at line 3, subsection (d), that as far as taxation goes, if the location is otherwise subject to the live entertainment tax (LET), then it would continue to be taxed pursuant to the provisions of the live entertainment tax. If the location would not be subject to the live entertainment tax and does charge an admission charge, the admission charge would be taxed at 10 percent, but there would be no tax on the food, beverage, or merchandise sold within the area.

Chairman Anderson:
It is my understanding that a large percentage of gaming revenue now comes from the sale of other products within a gaming establishment. In fact, gaming revenue in some of the gaming establishments has become almost a 50/50 split with revenue from the sale of other kinds of products. We're not going to be taxing tee shirts, cups, shot glasses, and other kinds of paraphernalia sold there any differently than we are currently.

Mark Clayton:
That is correct. They would still be subject to sales tax and other gaming taxes. It is just the live entertainment tax portions.

Chairman Anderson:
The rest of the tax will be as it is currently taxed?

Mark Clayton:
That is correct, sir.

Chairman Anderson:
Any gaming instruments there will continue to be taxed based upon the established gaming fees?

Mark Clayton:
That is correct, sir. As far as the live-entertainment-tax-only component, if the venue would otherwise be subject to live entertainment tax, then the provisions of the live entertainment tax would continue to apply. If the venue was not subject to the live entertainment tax, the admission charged would be taxed at 10 percent. There would be no additional tax for food, merchandise, or beverages sold into the facility, yet those components would still be taxed pursuant to the sales tax provisions. There would be an additional tax on the admission charge.

Assemblywoman Buckley:
For example, you have a pool party and you have machines out there. Under current law there is no live entertainment, because nobody is performing and it is just a pool party. You charge an admission fee now and you will pay a tax on the admission fee, but because the LET wasn't applicable, that is not implicated. But, if you were having Bruce Springsteen at the pool, then you have your admission fee and all food and drink are subject to the LET?

Mark Clayton:
That is correct.

Dennis Neilander:
Mr. Manendo asked a question that I think is relevant to the current discussion and is related to Ms. Buckley's question. In the scenario of having gaming in the pool area with an admission charge, that currently is not allowed, so there wouldn't be any applicable tax. In a nonrestricted environment, because of the provisions of NRS 463.0129, we have not allowed admission charges to be in place for gaming areas. There is a distinction, however, with the restricted licensees. Historically, there has been a debate at the Commission level that has gone on for a number of years as to whether or not a cover charge is a restriction on public access. For example, you might go to a national park that is open to the public, but you still have to pay an admission charge to get in. Some people would argue that the payment of an admission charge is not really a restriction. In order to deal with that situation, the practice in restricted environments—say, a bar or tavern that has 15 slot machines—has been that the Commission placed conditions on those licenses that they can have an admission charge in those smaller locations, but they have to post a sign.

The amendment in front of you actually codifies the policy that you have to post a sign that allows individuals to enter that establishment for the purposes of gaming, and they can enter without paying the cover charge. However, if they are there for the entertainment, they do pay the cover charge. That is the distinction. In respect to the nonrestricted locations, we have not allowed any cover charges in those locations. Under S.B. 444, you would allow a cover charge if there is gaming in that space, but only under those circumstances.

Chairman Anderson:
While holding to the question of public accommodation under the grounds of race, color, religion, national origin, and disability, we are not going to restrict that in any way because of the reference back to NRS 651.070?

Mark Clayton:
That is correct, and there is a further provision that addresses that point. If someone has a concern about that, there is a dispute mechanism built in.

Chairman Anderson:
So, there is a clear dispute mechanism that winds back to you?

Mark Clayton:
Yes, it does.

Assemblyman Manendo:
In a gaming establishment that has an unrestricted license, if there is a one-man-band show in the bar area and there are slot machines and video poker at the bar, are they allowed to charge a cover fee?

Mark Clayton:
Presently, they are not.

Assemblyman Manendo:
If they are charging a cover fee, does the person who is collecting the money at the door have to ask the question, "Are you here for the music entertainment, or are you here for the gaming entertainment?" If the patron says, "I am here for the gaming entertainment," do they let that person by without the cover charge, and if the patron is there for the music entertainment, do they then collect the fee?

Mark Clayton:
They can collect the fee in a restricted location.

Chairman Anderson:
Mr. Neilander, do you think we have set sufficient guidelines for the Gaming Control Board to move forward with this, if need be?

Dennis Neilander:
Yes, I do. We requested all the criteria that are defined on page 2, lines 9 through 22. They will be the guiding principles in making these decisions. The Nevada Gaming Commission will also adopt regulations that will further refine this particular process. I think that the statute does set forth sufficient guidance for us to then go ahead and go through our rulemaking process to further refine the way this would work in practice. I think it sets up a system that will be fair. If someone is not in agreement with my decision as to how I might apply these, there is an appellate process that goes to the Commission for review.

Chairman Anderson:
We have a certain level of confidence in past Nevada State Gaming Control chairmen and in you to do the right thing relative to S.B. 444. I don't want the Legislature to lose its prerogative in holding onto some of these difficult issues. We are hopeful our newest member recognizes that we are terribly concerned about this vital industry and keeping it alive and viable. We hope this doesn't hurt the integrity of the gaming industry. It has taken a long time to build our reputation of good, clean gaming.

I will close the hearing on S.B. 444 and open the hearing on S.B. 343.

Senate Bill 343 (1st Reprint): Makes various changes to provisions related to mechanics' and materialmen's liens. (BDR 9-787)

Senator Warren B. Hardy II, Clark County Senatorial District No. 12:
This legislation was intended to respond to the fact that the bond market throughout the state seems to be drying up at worst, and having difficulty at best. Until a few moments ago, it was my understanding that there was general agreement on the bill. I was just informed that there are some people in Las Vegas who might have concerns, but I have not been briefed on them. In addition to that, there is a friendly amendment that I would classify as a consensus amendment, intended to help deal with an issue in my district in Boulder City (Exhibit E).

Steve Holloway, Executive Vice President, Associated General Contractors of Southern Nevada, Las Vegas, Nevada:
Senate Bill 343 represents a series of compromises reached over the past year with various elements of our industry—owners, developers, general contractors, subcontractors, and suppliers. As Senator Hardy said, the impetus for the bill has been the difficulty for people in our industry to obtain sureties, both performance and payment bonds. The particular impetus here was the difficulty that lessees doing tenant improvements were having obtaining payment bonds, which are required by statute. The statutes we will be addressing are NRS 108.221 through 108.2457.

We met with the surety associations and all other aspects of the industry and tried to devise a scheme that would alleviate this problem. Senate Bill 343 provides that tenants can do a payment bond, but if they can't get a payment bond, they can set up a construction control account and fund the project through it.

[Steve Holloway, continued.] After meeting with the surety associations, we limited the bonds for liens to the face amounts of those bonds. We also provided that you must file against the bond within nine months of when it is recorded. Currently, the surety associations in the industry are having a problem, because the courts have allowed people to come in as late as six years after a bond has been recorded and file against it. This is strange, since in Chapter 108 of NRS, you only have six months after a project is completed to file your liens, and then the bond is used to bond around those liens, so that the liens then attach to the bonds rather than the surety.

A second thing we have attempted to address is confusion regarding change work, which is always the subject of most litigation in our industry.

Finally, a bill was brought before this Committee earlier in the Session. We assured Chairman Anderson that we would meet with the sponsors of that bill, which died in this Committee, and we would try to take care of their problem. They wanted to lease property in Boulder City to a power company that wished to build another facility. It was a $440 million project. It didn't seem appropriate to them that this particular lessee, who had the financial means, should either have to post a bond, which would have been for $660 million, or set up a construction control account.

We have made provision for the owner, as a disinterested owner, to waive their rights to file a notice of non-responsibility and therefore put the lessee in the place of the owner. The protection to the contractor in those cases is that they can then lien the real property, the ground itself. They do not need the benefit of either the surety or the construction control account.

Chairman Anderson:
Are we hurting the contractors and subcontractors who depend upon this? They could go out of business if there isn't a bond.

Steve Holloway:
No, we are not. The way we have written S.B. 343, the land itself would become lienable and serve as at least partial collateral, as well as any improvements that had been made on that land.

Chairman Anderson:
Even in a place where the underlying owner is the city, such as the case in Boulder City?

Steve Holloway:
Yes, sir. If they filed a waiver, then they are waiving their immunity to be liened for that property. This also applies to other entities such as the Airport Authority, which is also leasing land through private developers.

Richard Peel, Legislative Advocate representing the Sheet Metal Air Conditioning Contractors of America, the National Electrical Contractors of America, and the Mechanical Contractors of America:
These three trade organizations have a number of union subcontractors as members. In addition to that, I have a host of contractors and subcontractors that our law firm represents. We have been actively involved in getting contractors' and subcontractors' laborers paid for work, materials, and equipment furnished for the improvement of projects located in the state for a number of years. I personally have experience with respect to the Venetian, the Aladdin, the resort of Summerlin, and most of the big projects you have heard about in the newspapers where there has been controversy regarding payment. One of the things we have learned is that our mechanics' lien statute is there for a purpose. It helps to get people paid.

In 2003 we did a major overhaul of the statute, which is there for a purpose. It is there to assist people who have improved real property so that they can get paid for their efforts. That is something that has proven to work over the years. In fact, our Nevada Supreme Court has consistently held that our lien law should be liberally construed in favor of lien claimants.

When the Aladdin started having its financial woes, my firm recorded approximately 125 mechanics' liens on behalf of about 30 separate contractors and subcontractors who had not been paid. As a result of the liens that were recorded, every one of my clients ended up getting either full payment or partial payment through the lien process. I would like to say that the lien process does work. Do we need to have some clarifications of the ambiguities and so forth that currently exist? Yes. Mr. Holloway spoke of some of the problems with surety bonds and the surety industry in general, and we do need to have some cures to the current problems that exist.

Section 12 confirms that a lien claimant's lien rights pertain to labor, materials, and equipment furnished, as well as that to be furnished. That is an important clarification in the statute, because many people go to great expense to purchase or fabricate materials for the improvement of the land, and they should be able to lien for that. Sections 12 and 13 confirm that a lien claimant has a lien for additions, changes, and extras whether priced lump sum, unit price, or tracked on a time and materials basis. This is a clarification of the

2003 legislation, when we made it clear that we did have the right to lien for extra changes and additions.

[Richard Peel, continued.] Section 13 confirms that the 15-day notice of intent to lien, which is applicable to residential projects and includes apartment houses, does not pertain to commercial projects. Section 14 confirms that a lien for closure action will not be staked pending an appeal, which allows the lien claimant to go ahead and have his case adjudicated while the appeal on a challenge to a lien is pending.

Section 15 requires property owners to serve the lessee and lessee's prime contractor with a notice of nonresponsibility that the owner may have caused to be recorded. This allows the prime contractor to then notify other contractors and lien claimants of the existence of the notice of nonresponsibility. Subsections 4 and 5 of Section 15 allow a lessee to obtain the removal of liens that may be recorded against tenant improvements by prospectively recording surety bonds or by establishing a construction control fund for the security of the lien claimant. The Chair had asked about this and asked whether this was satisfactory security. We believe it is. We think that either the land, the construction control funds, or a prospective surety bond would be a good way to secure lien claimants and the right to get paid.

Section 17 modifies the definition of interest and provides that the prevailing lien payment be paid at 4 percent over prime. Subsection 4 also allows an owner to opt out of the requirement that a lessee provide either a prospective surety bond or, alternatively, a construction control fund for the security of the lien claimant. Mr. Holloway briefly touched on this, but owners both on private property and where a public body is leasing the property for a nongovernmental purpose would be able to opt out such as that the lessee is not required to have that construction control fund or the surety bond. The land itself would be the security to lien claims.

Section 18 allows lien claimants to join an ongoing lien for closure action by filing a statement of facts. Sections 19 and 20 confirm that a surety liability and a surety bond are limited to the penal sum, as Mr. Holloway discussed. Section 19 allows a principal to record a surety bond prospectively in an amount equal to one-and-a-half times the amount of the prime contract. Section 25 confirms that a provision in a contract is against public policy and is void and unenforceable, if the provision requires a contractor or subcontractor to waive or release damages, delays, or impacts under certain circumstances or conditions.

[Richard Peel, continued.] Section 26 limits joint check payments to a lien claimant and another joint payee in the same chain of privity. Section 26 also modifies the four waivers and release forms that our industry currently uses for releasing or discharging your rights to lien. It makes certain that you are only releasing the amount of the payment received.

Finally, Section 2 defines consequential damages in more detail. These are the main highlights that the Chairman had asked for with respect to the bill.

Assemblyman Horne:
In Section 5 of S.B. 343, concerning construction control, it calls for a provision that shall disburse money to lien claimants. It seems they would be obligated to do this prior to any other litigation. If there is a dispute of payment, would they pay this anyway?

Richard Peel:
The answer to your question is that the word "meritorious" in our amendment has been replaced with the word "legitimate." If you look at the definition of the word legitimate in *Black's Law Dictionary* or in *Webster's Dictionary,* it talks about a viable claim or a claim with merit. We believe that the word legitimate should go in there. If the construction control believes that particular lien claim is not legitimate, they have the right to go ahead and interplead the funds attributable to that lien claim to the court. The construction control in later provisions is entitled to be reimbursed for the reasonable cost in doing so. That way they are not going to be on the hook for wrongfully paying it, unless they pay a nonlegitimate claim.

To answer your question: yes, the construction control would be required to pay lien claims that may arise during the course of the project that are legitimate.

Assemblyman Horne:
If we are going to allow this construction controller the authority to make the determination on whether a lien is legitimate or not, who are going to be the construction controllers?

Richard Peel:
They currently exist in the industry. Almost every project of any considerable size uses a construction control. For example, I just built a building, and my bank required me to use Nevada Construction Services as my construction control. They do a decent job in going through and making sure that they have all the paperwork to protect the lender, the owner, and also to make sure that the work has been performed out there on the job. It is a normal and customary course that is currently being utilized.

Assemblyman Horne:
In Section 17, subsection 2, where you increase the interest rate plus 4 percent, you're increasing it from 2 percent?

Richard Peel:
That is correct.

Assemblyman Horne:
Why?

Richard Peel:
Our interest rates are so low right now, it is actually cheaper for many owners not to pay their debts and obligations, because the money that they are able to save or realize from not paying the debts and obligations is less expensive than it would be to borrow it out in the open market. So, we raised it in order to try and create a disincentive for nonpayment of monies that may be owed for work, materials, and equipment on a project. It is not too high, in our belief. In fact, we think it is a fair amount that will encourage owners to more promptly pay.

Assemblywoman Buckley:
I don't have a lot of sympathy for some of these folks that get work done on their property and then don't pay for it. However, NRS 108 applies also to a single-family homeowner who may get work done on their home by a fly-by-night contractor who then puts a lien on their home. What I would like for you to do is walk through the bill changes with that scenario in mind and tell me how those types of situations would be handled. I am worried about the 1.5 times amount for a single-family homeowner. The lease situation only applies in a commercial context, so that seems fine; but I'd like to focus on any other provision in NRS 108 that may affect a bad contractor with a single-family homeowner.

Richard Peel:
The sections that I think would answer your concerns are located throughout the bill. If a single-family, natural person homeowner has a concern regarding a lien that has been placed on their property, they have a right under NRS 108.2275 to challenge that lien by way of what is called an "order to show cause." That particular statute has been around since 1995. It has worked to the extent that the lien is not meritorious and was not timely recorded, meaning that notice had not been properly given pursuant to the statute. That is one of the mechanisms available. As you correctly note with respect to the lessee aspect of it, that really doesn't come into play, but we really didn't change the surety bond aspect as it pertains to the riddance of liens that may be recorded against real property in the future.

[Richard Peel, continued.] We added a new provision that allowed you to record surety bonds prospectively so that liens would attach to that surety bond rather than the land. With respect to a homeowner, they still have the right to get a surety bond to get rid of liens against their own property. As for a natural person, they are treated, to some extent, similar to other types of owners of property, and knowing that, if they are going to have people work on their property, they need to get waivers and releases. In fact, the Contractor's Board does a very good job in NRS 624.600 of requiring contractors to notify natural person homeowners of their rights and what steps they should take in order to protect their property. It is a statutory mandate that general contractors on a residential project have to give these notices. That is another place that they can be educated or notified of what their rights are.

If they get their waivers and releases, make sure who is on the project, and utilize the statutory remedies available through the Contractors Board, natural persons have a lot more remedies than commercial owners do, with respect to mechanics' liens.

Assemblywoman Buckley:
The 1.5 surety amount would apply to them, too?

Richard Peel:
The 1.5 surety amount that you are talking about has always been in the statutes since the date that the mechanics' lien statute enacted the right to record a mechanic's lien release bond. That is really what it was. That came up over 30 years ago. We did not change or modify that surety amount with respect to a natural person homeowner.

Assemblywoman Buckley:
With regard to the release of that amount, was that the language change?

Richard Peel:
If you are going to build a custom home and you do not want any liens to attach to your property, you could have your general contractor obtain and record a prospective mechanic's lien release bond, and that bond would need to be one-and-a-half times the amount of the prime contract. That would give you the protection of knowing that your property would not be subject to liens, and instead, those liens would attach to that bond.

Assemblyman Horne:
Why did you want to remove the 15-day notice requirement for commercial construction?

Richard Peel:
In 2003, when we were negotiating the mechanics' lien statute revisions, the Southern Nevada Home Builders had a concern that they would like to get notice prior to the date that the lien is actually recorded. Through discussions and negotiations, that language was inserted in 2003. We are not changing anything with respect to the language. What we have modified is simply to clarify that apartment houses are a residential project as set forth in that particular subsection of NRS 108.226, and therefore, apartment houses would need to also be the subject of the 15-day notice of intent to lien, because they do pertain to residential structures. With respect to commercial projects, they have never been required to give a 15-day notice.

Starting out with Section 2, there are a couple of changes to that particular provision that would delete the word "or" and add a comma, and delete the word "significant" and add the word "impact." With respect to Section 4, which is the section that deals with a lessee's obligations in the event that it is leasing real property, we have modified several of the provisions and deleted certain language that was set forth, mainly as a result of discussions and negotiations. Certain other groups felt that the language that was set forth in subsection 2 needed to be revised. We did that by adding a new subsection 4, which is discussed on page 3 of the amendment (Exhibit E), and that is the main highlight of that particular section.

With respect to Section 5, which is discussed on page 4 of the amendment, we discuss what type of notice needs to be given by a construction control and who it needs to be given to. We also discuss what a construction control's obligations are in subsection 5, on page 4. With respect to Section 12, which modifies NRS 108.222, we made certain lien rights pertain to materials, equipment, and work furnished, as well as that to be furnished. On page 5 of our amendment (Exhibit E), we have also made certain that lien rights would apply to additional, extra, or changed work, materials, or equipment. This is a term of art in the industry, and it is very important that this language be put into the draft in that format.

Chairman Anderson:
Would you like the bill drafter to come fairly close to your language? Is that what you are trying to say?

Richard Peel:
Yes. In Section 13, we have cleaned up the actual form that is being used to record a notice of lien by adding the words "additional, extra, or changed" in subsection 1. The rest of the changes set forth are to clarify and make certain that you have a lien for work, materials, and equipment to be furnished. In

subsection 7, that applies to Mr. Horne's question regarding commercial versus residential, and we have added the words "nonresidential" versus the word "commercial" as it is currently set forth. Section 15 modifies the statute that pertains to the notice of nonresponsibility and provides that an owner must give that notice to a prime contractor and a lessee. It also provides the method for the prime contractor to give notice to the lower tier trades. In subsection 2, we have modified the definition of "disinterested owner." We believe the current language that is set forth in the statute has too many exceptions to the exception. We are trying to make certain that it is understood and a court can easily understand what the intent of the Legislature was.

[Richard Peel, continued.] Section 16 has the same type of cleanup work with respect to lien rights from materials, work, and equipment to be furnished. With respect to Section 24, which is the notice of right to lien section, we are asking that the changes that were proposed in the first reprint be restored to the current statutory language as set forth in subsection 3. With respect to Section 25, we are asking that the language that was set forth be changed to our proposed language. This would relate to delays, acceleration, disruption, or impact-type events that may arise with respect to a project.

Section 26, subsection 1 relates to the joint pay rule, and we are asking a change be made of that. We added a new section on the last page of our proposed amendment that would modify the definition of owner to include the state or political subdivision of the state, or an incorporated city or a town, if they lease property and it is being used for a nongovernmental purpose, and also to clarify that if a private person owns land and leases it to a governmental body, that particular land is also subject to mechanics' liens. In subsection 2, which defines what an owner is not, we have clarified that if the land being leased is the subject of a governmental purpose, it would not be the subject of an owner, meaning the definition of an owner.

Assemblywoman Ohrenschall:
In which section did you use the phrase "term of art"?

Richard Peel:
It was number 5 on page 5 of the amendment (Exhibit E). The words we are asking to have inserted are "including any additional, extra, or changed" work, materials, or equipment.

Assemblywoman Ohrenschall:
That is a term of art in the industry?

Richard Peel:
When you talk about additional, extra, or changed work, those are significant phrases with respect to construction practices.

Assemblywoman Ohrenschall:
What exactly does that mean within the industry?

Richard Peel:
It is work that is outside the scope the contractor or subcontractor has contracted for. It is in addition to the original contract.

Assemblywoman Ohrenschall:
Thank you. I just wanted to be sure I understood.

Chairman Anderson:
On page 3 of the amendment (Exhibit E), relating to the changes in number 4 of your number 15—the reference to NRS 108.245—"within 10 days after the owner's receipt of a notice of right to lien or 10 days after the date the owner records..." Is that consistent with other sections in the statutes?

Richard Peel:
Yes. This is simply providing that if an owner chooses to opt out, they would give a copy of that notice of waiver of NRS 108.234 to any lien claimants that may serve that owner with a notice of right to lien during the course of the project.

Chairman Anderson:
We are not cutting down the window of opportunity for somebody. This already exists in current statute?

Richard Peel:
No, Mr. Chairman.

Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association:
We wish to emphasize the importance of having the waiver be something that is optional on behalf of the landowner, because we are bringing public bodies into this, and we don't want them to be automatically waiving their right to be immune from liens. For the first time, we probably have this so that a notice of nonresponsibility actually could work, so that an owner might have some rights in these matters. If we make an automatic waiver of it, we have destroyed the value of a notice of nonresponsibility.

[Renny Ashleman, continued.] We think this more carefully balances things. It leaves the question of the waiver and which way you might have a notice of nonresponsibility done as a matter of negotiations, and that is where we appropriately think it should be. I am principally worried about protecting the governments in this area, and I might add in that regard that I am on the State Public Works Board and that I also represent the City of Henderson. Because of the lateness of the negotiations here, I wasn't able to get official authority from them on this issue, but I am certain that they would find, as I do, that it is extremely important that it be a matter of a waiver and not automatic.

Karen Dennison, Legislative Advocate, representing Sempra Generation, San Diego, California:
We represent the lessee's point of view and are in complete agreement with what Mr. Ashleman said regarding the fact that where you have a lease, the owner would have the discretion to waive or not waive its rights under the notice of nonresponsibility statute. We feel that in a commercial setting, as these normally are, the bargaining power between the owner and the lessee would be sufficient, so that the owners could protect themselves in other ways by requiring the lessee to provide guarantees, bonds, or other forms of security. We are in complete support of the amendment (Exhibit E) and especially with respect to what Mr. Ashleman said.

Vicki Mayes, City Manager, City of Boulder City, Nevada:
We feel the compromises reached through the amendments here today are good balances that protect our City's interest, yet protecting the interests of the contractors and subcontractors. We fully support the amendments that have been presented this morning.

Chairman Anderson:
This Committee, while recognizing the unique nature of Boulder City, would still like the City to play by the State's rules. We want to make sure contractors, homeowners and, particularly, subcontractors are protected. The City feels that their needs will be met?

Vicki Mayes:
They will, and we agree completely.

Jack Jeffrey, Legislative Advocate, representing the Southern Nevada Building and Construction Trades Council:
We support S.B. 343. It is important for the health of the industry. It is important that our people be paid.

Michael Newman, Legislative Advocate, representing the National Association of Industrial and Office Properties (NAIOP) and Trammell Crow Company, Las Vegas, Nevada:
We appreciate the work that has gone into this bill and support the bill in most regards. There are certain provisions of the bill that cause us concern, primarily those which require a lessee to post a surety bond and to establish a trust account. Our concern is very specific. There are instances in which folks hold ground leases for large parcels of land for multiple years, and our concern relates to the fact that the term "lessee" is not clearly defined to exclude those ground lessees.

The second issue we have a concern with is the fact that disbursements for construction distribution accounts are defined, as Mr. Peel said, as being payable once a legitimate claim has been made. We do not feel that the term "legitimate" has been properly or appropriately defined, and we would like to have a discussion on that.

Chairman Anderson:
I have a letter that was addressed to Mr. Holloway and signed by Mr. Rice (Exhibit F). We have distributed that. Are your concerns raised in this letter?

Michael Newman:
They are generally raised in that letter. We appreciate the chances we had to talk with Mr. Holloway; however, our concerns are not adequately addressed.

Chairman Anderson:
Do you have a written document you are planning on submitting?

Michael Newman:
We posed all of those concerns in detail to Mr. Holloway. This letter does represent those concerns. We can prepare something additional and submit it within a couple of hours if necessary.

Robert A. Snow Jr., President, Thomas and Mack Development Group, Las Vegas, Nevada:
I would like to use this letter (Exhibit F) as the format over the next couple of minutes. My first point regards ground leases. Our proposed language and the language we have discussed with Mr. Holloway would indicate that if there is a ground lease of 10 years or greater, the ground lessee would be termed a noninterested or disinterested owner. The people sitting here with us and our firm, combined, have built over ten million square feet of industrial offices, which have a value of $1 billion or greater. We are the lessees of ground leases

with the Department of Aviation. We feel this particular area has not been covered to our satisfaction.

[Robert Snow, continued.] My second point regards the distribution from construction distribution accounts. In talking to Nevada Construction Services this morning and to Ann Dwyer, the senior vice president, she indicated that the word "legitimate," in her opinion, is somewhat subjective and would make it difficult for her to automatically distribute on a claim made by a party that has liened the property. The language we proposed to Mr. Holloway would indicate that the distributing service would do so upon a court decision that it is a legitimate claim and could then be paid out of the construction services.

My third point, which deals with finance, has been met and we appreciate that being struck. The fourth point in the letter indicates the posting of the required surety bond or funding of a construction account automatically renders the landlord a disinterested party. We believe if the lessee of space, whether it is retail, office, or industrial, posts this bond or funds a construction account, the landlord, including the long-term lessee, should be exempt from further language.

In Section 15, the process of posting a notice of nonresponsibility is very cumbersome. In fact, preliminary lien notices regarding the Department of Aviation's ground leases sometimes go to the ground lessee, being the Department of Aviation, and sometimes to the ground lessor, being ourselves as the developers. We would like to see the word "or" placed under paragraph 14(a).

Chairman Anderson:
Mr. Snow, if you wish to put this proposed amendment in, you need to put it in writing and submit it right away. Did you raise these concerns when the bill came out of the Senate several weeks ago? [Mr. Snow answered in the affirmative.] Did you raise those questions during the Senate hearing on S.B. 343? [Mr. Snow answered in the negative.] Why not?

Robert Snow:
Because we received notice very late and could not put our thoughts together at that point.

Chairman Anderson:
When S.B. 343 passed from the Senate to the Assembly, did you have anyone participating up here? On the face of the bill it states that the bill was introduced on March 24, 2005. How come you didn't have somebody here participating?

Michael Newman:
When we read S.B. 343 the first time we saw the word "lessee," and quite frankly, it did not dawn on us that the word lessee was not so clearly defined as to exclude ground lessees and ground leases. Typically, that term would refer to someone who is leasing space in an office or a retail center and building out tenant improvements, not building infrastructure and physical buildings and so forth. When we realized that the term could be interpreted differently than we had anticipated, we contacted Steve Holloway immediately. It has been about three weeks since we began these conversations.

Steve Holloway:
I would like to point out that I have been trying to work with NAIOP for the last three weeks. They are right. They did contact me shortly after this bill passed into the Assembly. We have tried to incorporate as many of their concerns as we can.

Chairman Anderson:
I think it would make the Committee feel more comfortable if their concerns were addressed. I don't think any of us like to see a bomb dropped at the last second, especially when everything we are dealing with needs to be out of Committee a week from today. This is not an exempt bill.

Steve Holloway:
I'll be happy to do that.

Chairman Anderson:
We are adjourned [at 10:53 a.m.].

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

RESPECTFULLY SUBMITTED:

Terry Horgan
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 13, 2005 Time of Meeting: 8:17 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 172	B	Fidelity National Title	Proposed Amendments to S.B. 172
S.B. 444	C	Bob Faiss/Palms Casino Resort	Proposed Amendments to S.B. 444
S.B. 444	D	Bob Faiss/Palms Casino Resort	Proposed Amendments to S.B. 444
S.B. 343	E	Senator Warren B. Hardy, II / Associated General Contractors	Proposed Amendments to S.B. 343
S.B. 343	F	Robert A. Snow/National Association of Industrial and Office Properties	Letter to Steve Holloway with issues and concerns regarding S.B. 343