

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

**Seventy-Third Session
May 26, 2005**

The Committee on Judiciary was called to order at 5:22 p.m., on Thursday, May 26, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst
Judy Maddock, Committee Manager

OTHERS PRESENT:

Renny Ashleman, Legislative Advocate, representing Southern Nevada Home Builders Association:

Gary Milliken, Legislative Advocate, representing Associated General Contractors, Las Vegas Chapter

Peter Krueger, Legislative Advocate, representing National Electrical Contractors Association of Southern Nevada, Mechanical Contractors Association of Nevada, and Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada

Greg Ferraro, Legislative Advocate, representing Sempra Generation

Dan Musgrove, Director of Intergovernmental Relations, Office of the County Manager, Clark County, Nevada

Chairman Anderson:

[Meeting called to order and roll called.] We have a quorum present, and while we cannot take a formal action on the bill, Ms. Lang, as I understand because the Committee no longer has jurisdiction because we passed that deadline last Friday, what I wanted you to take a look at was a proposed substitute amendment ([Exhibit B](#)).

In front of you is a yellow document, which is indicated as "S.B. 343 R1 Amendment 853." That was the amendment that initially came in front of us. There was circulation of that amendment ([Exhibit B](#)) before we brought the bill to the Floor and that caused some concerns, so that I delayed reporting the bill to the Floor.

As a result, there are some people here who have worked out additional compromises to the bill. The title of that is "Final Amendment to Senate Bill No. 343," dated May 26, 2005 ([Exhibit C](#)), submitted by Mr. Steve Holloway, who put these suggestions in place.

The purpose of this discussion is to see what the nuances of the change are and an explanation of why it is necessary. I've asked several different players—who participated in this initially—to come so that you can hear that they have again represented themselves to have had reached some level of agreement.

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

Gary Milliken, Legislative Advocate, representing Associated General Contractors, Las Vegas Chapter:

I'm representing Mr. Holloway.

Chairman Anderson:

Is the purpose of the suggested language to eliminate the proposed provision that would delay the Department of Aviation? Mr. Ashleman, is that what you're supposed to be talking about?

Renny Ashleman, Legislative Advocate, representing Southern Nevada Home Builders Association:

Yes. I've been asked by Mr. Holloway to present the legal implications of the two proposed amendments ([Exhibit C](#)). We had detailed out in the original set of amendments that delay and acceleration/destruction costs are lienable. They are generally agreed to be lienable by arbitrators and under the common law. However, this is a grey area.

There were those who wanted to leave themselves free to argue that it should not be lienable in certain cases and, for that reason, objected to the detailing that was in the bill. Our view was that it did not particularly affect the value of the bill and we would be able to do that to accommodate them.

The second issue involves ground leases at the Clark County Department of Aviation. They wish to be exempt from the requirement to record a surety bond or alternative, when establishing a construction disbursement account before constructing, altering, or repairing a work of improvement. To put this in proper perspective for you, the effect of the amendment would be to make, under some circumstances, the ground lease and the improvements lienable, as a substitute for these other matters of security.

The general effect of what we did was that if you are leasing from a government, you would have to get their permission to use the ground and make it lienable or use one of these other alternatives. This gets them out of that requirement and puts it to what is arguably the common law, which is that it's automatically lienable once you put the improvements on it for private purpose, unless somebody posts a supersedeas bond in the case that a lien is filed. That is the way that they want to handle it.

I brought this amendment to Dan Musgrove's attention. Mr. Musgrove, in my presence, verified with others that it was satisfactory with the Airport Authority. Obviously, it is satisfactory to the people who wanted the amendment.

Assemblywoman Gerhardt:

I need some clarification on why we need these exceptions. Maybe somebody can make that clear to me. It seemed that, prior to voting on the last round of amendments, everybody was pretty satisfied with where we were. I need to know how things have changed since then.

Renny Ashleman:

At the last Committee meeting I thought that it was clear to the Committee, and it was certainly clear to us. I know that it was clear to the Chairman that the folks who were involved in the Thomas and Mack construction operations are the ones that doing extensive ground leases at McCarran [Airport] were not satisfied. We tried to compromise with them, and we've satisfied some of their concerns, which they were expressing independently and through NEOP [New Employees' Orientation Program]. We did not satisfy them all and stated that before the Committee. Basically, we didn't satisfy this issue because we were trying to keep the law general. We reached the conclusion that we could not satisfy them without making a specific exception for this particular piece of property.

Chairman Anderson:

The understanding is that no undue influence would be used. The language here is the suggested language, recognizing that our bill drafter may not come up with these exact phrases. Mr. Milliken, are you okay with this?

Gary Milliken:

Yes, we are okay with it. I know that it will come out different than what it is here. However, we are just trying to get it specific for those ground leases at McCarran Airport.

Chairman Anderson:

What harm does it do to other airports in the state?

Gary Milliken:

That I do not know.

Renny Ashleman:

For the other airports, it probably gives them some powers that they arguably do not now have under the common law. The common law is interpreted in some parts of the country, but there is no ruling in Nevada on the issue to say that once you lease to a private entity, then your land—even though it is public land—becomes lienable. There is not any definitive decision on that in the state of Nevada. Different district courts have done different things with the issue. This one states it is not lienable unless the bill specifically put a waiver into

effect. It gives all of the rest of them a power that they arguably do not now have. Most of them are going to be handling that by lease, whether we pass this law or not. However, it doesn't damage the other authorities. It makes a particular situation automatic at McCarran Airport, which apparently they are satisfied with.

Assemblywoman Ohrenschall:

I am unclear on the language on page 2, Section 4, paragraph 5(c) of the amendment ([Exhibit C](#)). What is meant by "Land administered by the Clark County Department of Aviation means land located within the Clark County Department of Aviation's cooperative management area, and includes land within the McCarran International Airport's 60 and above day/night average decibel level noise contours, and which may have been historically administered by the Clark County Department of Aviation"? Do you use noise to measure land? I don't understand that particular language.

Renny Ashleman:

That is how a document describing land boundaries is named. The federal government gave them control over land within that area because it is too loud to have residential, and it was federal property. That is how they have it described in the document. That's not the legal description document. That's the description of the document with the legal description.

Assemblywoman Ohrenschall:

What you are saying then is that in common law, if a public entity leases some of its land to a private lessee, that land could then be liened upon. However, this is to make an exception where it could not be liened. Is that the gist of everything?

Renny Ashleman:

Ms. Ohrenschall, the fact is that the common law is grey in Nevada, but there are administrations that say that it becomes lienable, so under this bill, the benefit would go to all of the other jurisdictions, but they would have the right to either waive or not waive that lienability, and it would declare the law in Nevada to be that it is not automatically lienable.

Assemblywoman Ohrenschall:

That is the purpose?

Renny Ashleman:

Yes, that is the purpose, and then this is an exception. My guess is that it is probably the cause of the volume and the already-decided relationship of these

ground leases. I don't speak on behalf of those people; I just know that they want it.

Assemblywoman Ohrenschall:

Thank you for explaining that in simple language.

Gary Milliken:

When you use this definition, that tells you what can and cannot build on this type of land—the last three lines that you were starting to read. There is movement within the county now that any of this future stuff will be done through the county and not through the Department of Aviation. This clarifies, in case some of this is being done in the future, that this gives them the right to do it under that, as well as the Department of Aviation.

Peter Krueger, Legislative Advocate, representing National Electrical Contractors Association of Southern Nevada, Mechanical Contractors Association of Nevada, and Sheet Metal and Air Conditioning Contractors' National Association of Southern Nevada:

We are in agreement with the proposed amendments. We see that it is a way to gain passage of a very important bill on lien rights. We think that all of the parties have agreed that this form of the bill will go forward to the Governor's desk, and we will give it a try, see how it works, and, if necessary, come back next session and make any changes. We are prepared to do that.

Chairman Anderson:

I see several of you out there with the yellow document ([Exhibit B](#)). I want to tell you that the yellow document ([Exhibit B](#)) is not the document that will be going to the Floor. If that's what you're using as your base of discussion, you might find yourself misinterpreting.

Greg Ferraro, Legislative Advocate, representing Semptra Generation:

We come to this bill a little differently. We come to this bill through this Committee. If you recall, Mr. Chairman, we were working with Assemblyman Joe Hardy's A.B. 238.

We appeared before this Committee in March and presented our issue that related to the surety bond requirement. Assembly Bill 238 expired at the Committee deadline and we agreed under your direction, Mr. Chairman, to work with this bill, S.B. 343, and the parties that had been joined on this bill in the Senate.

[Greg Ferraro, continued.] We have reviewed each series of amendments, concluding with this amendment ([Exhibit C](#)), and as far as our concerns, they are satisfied. We do not object to the amendment.

Dan Musgrove, Director of Intergovernmental Relations, Office of the County Manager, Clark County, Nevada:

This was actually generated on behalf of the Thomas and Mack. Early on, we were okay with the amendments that Mr. Ashleman had done earlier in the bill, so we weren't taking a position against it. Apparently, they feel that this language is necessary. If it gives them comfort, then we are in support of it.

Chairman Anderson:

What is the pleasure of the Committee?

Assemblyman Horne:

My concern is defining state public political subdivisions, which is at the bottom of page 5 ([Exhibit B](#)). If someone defaults, public property becomes lienable, and the taxpayers could end up footing the bill to pay that lien off.

Chairman Anderson:

I think that your question needs the resolution of Sections 4 and 5 of the bill and their inner workings.

Renny Ashleman:

If you allow yourself the lienability to get yourself into a ground lease and do so without requiring a bond be posted or, under the new bill, a construction control account, arguably that could happen now. That is the way that some courts have held. Under the bill with the amendments that we have presented ([Exhibit C](#)), combined with the previous part of the yellow part that is preserved ([Exhibit B](#)), the situation will be as follows: No entity that is a public entity in this state will have their property posted as security in lieu of a bond or in lieu of a construction control account, unless they execute a waiver. If they do execute such a waiver in that case, it would become liable before closed upon.

There are reasons why you might sensibly do such a thing. If you are doing a 99-year lease and you've really transferred the incidence of ownership, you might be paid enough that you would be willing to take a chance, or you've made an independent assessment of the credit. The purpose of the amendments we brought was for the entities not to be automatically lienable, so that they would have to make a knowing decision on behalf of the constituents that they represent. The sole exception to that would be if they choose not to put up a bond or put up a construction control account, which they may be required to do by contract. I don't know how Clark County does its business. If

they don't do that—in that case, after this bill is passed—the Clark County leased land will be lienable. That is the only entity that will be automatic, without a waiver being signed by the government entity.

Assemblyman Horne:

If no bond is...?

Renny Ashleman:

Correct. If they are not requiring a bond or if they are not requiring construction control, then it would be lienable.

Chairman Anderson:

These are the choices for the Committee. We can leave now and not send the bill to the Floor, and the bill dies. We can move the bill to the Floor with the original yellow amendment ([Exhibit B](#)), knowing that it could eventually be vetoed by the Governor, or we can accept the suggestions made in the final amendment to S.B. 343 ([Exhibit C](#)), which appears to be signed off by all of the interested parties and hope that will take care of all of the issues. We all understand the impact of what we will be doing.

Assemblywoman Ohrenschall:

I would move that we accept the concept presented in the final amendment to S.B. 343 ([Exhibit C](#)). It seems to me that it gives them opportunity to protect some property that belongs to the State from an unintentional effect of common law. When you come into grey areas of the common law, sometimes it is very advisable to come in with the mathematical exception difference. I think this probably would do it.

Assemblyman Conklin:

So that I am clear: in accepting the proposed amendment, is that in addition to the yellow document ([Exhibit B](#)), or is it separate? Does the yellow document ([Exhibit B](#)) go away and we now have a new one?

Chairman Anderson:

Ms. Lang, would you please explain how much we will keep of the yellow document ([Exhibit B](#)), and that we are going to supplement it with the additional language at Sections 2 and 4? Is that how it's going to work?

Risa Lang, Committee Counsel:

That is correct, Mr. Anderson. We will incorporate those changes ([Exhibit C](#)) into the previous amendment ([Exhibit B](#)).

Assemblyman Conklin:

Then I am in support of Ms. Ohrenschall's position.

Chairman Anderson:

It is clear then that everybody is on board? Does this Committee wish to move the amended document to be further amended to reflect the will of the Committee, as suggested in the penmanship dated May 26, 2005?

ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND SENATE BILL 343 WITH THE PROPOSED CONCEPTUAL AMENDMENTS IN THE FINAL AMENDMENT TO THE BILL.

(There was no second to the motion.)

THE MOTION CARRIED. (Ms. Buckley was not present for the vote.)

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Chairman Anderson:

[Submitted a letter from the Southern Nevada Chapter of the National Association of Industrial Properties, [Exhibit D](#), in support of the final amendments to S.B. 343.] The meeting is adjourned [at 5:45 p.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Committee Attaché

Katherine Andrews
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 26, 2005

Time of Meeting: 5:15 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
<u>S.B. 343</u>	B	Legislative Counsel Bureau	Amendment to <u>S.B. 343</u>
<u>S.B. 343</u>	C	Steve Holloway, Associated General Contractors	Final Amendment to <u>S.B. 343</u>
<u>S.B. 343</u>	D	Chairman Anderson	Letter from Southern Nevada Chapter of National Association of Industrial Properties (NAIOP), supporting final amendments to <u>S.B. 343</u>