

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

**Seventy-Fourth Session  
May 17, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:25 a.m., on Thursday, May 17, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at [www.leg.state.nv.us/74th/committees/](http://www.leg.state.nv.us/74th/committees/). In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: [publications@lcb.state.nv.us](mailto:publications@lcb.state.nv.us); telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT:**

Assemblyman Bernie Anderson, Chairman  
Assemblyman William Horne, Vice Chairman  
Assemblywoman Francis Allen  
Assemblyman John C. Carpenter  
Assemblyman Ty Cobb  
Assemblyman Marcus Conklin  
Assemblywoman Susan Gerhardt  
Assemblyman Ed Goedhart  
Assemblyman Garn Mabey  
Assemblyman Mark Manendo  
Assemblyman Harry Mortenson  
Assemblyman James Ohrenschall  
Assemblyman Tick Segerblom

**COMMITTEE MEMBERS ABSENT:**

Assemblyman John Ocegura (Excused)



**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Kaci Kerfeld, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County  
Ray Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department

**Chairman Anderson:**

[Meeting called to order and roll called.]

Let us turn to the work session document ([Exhibit C](#)).

**Senate Bill 103: Adopts the Uniform Unclaimed Property Act. (BDR 10-718)**

**Jennifer M. Chisel, Committee Policy Analyst:**

Senate Bill 103 is the first bill to consider this morning. It was presented by Senator Care on May 10th. The measure adopts the Uniform Unclaimed Property Act and repeals the existing unclaimed property laws in Nevada. Under these provisions, the State acts as the custodian for property considered abandoned by its rightful owner and upon a claim of ownership, the State must transfer the property to the rightful owner. As the custodian the State benefits from this source of revenue, and one nuance specific to Nevada is the abandoned property account is paid to the Millennium Scholarship Fund. In order to resolve a conflict with Assembly Bill 279 that deals specifically with gift certificates, the Committee is asked to consider an amendment to Section 8 of S.B. 103 to remove the provisions related to gift certificates in the Unclaimed Property Act. In Nevada, the law dealing with unclaimed gift certificates would then be dealt with in the stand alone provisions enacted by A.B. 279.

**Chairman Anderson:**

Assembly Bill 279 has already been signed by the Governor. By removing Section 8, we will have resolved the conflict and prevented other kinds of problems in the future.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS  
SENATE BILL 103.

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN OCEGUERA AND CONKLIN WERE ABSENT FOR THE VOTE).

**Chairman Anderson:**

I will assign this bill to Assemblyman Manendo.

**Senate Bill 131 (2nd Reprint): Makes various changes regarding certain court fees charged by county clerks. (BDR 2-385)**

**Jennifer Chisel:**

The Committee heard Senate Bill 131 (2nd Reprint) earlier this week. This measure was requested by the Nevada Association of Counties and was presented by Vinson Guthreau. Senate Bill 131 (R2) authorizes county clerks to charge an additional fee of \$5 for filing and recording a bond of a notary public. This fee would be used to fund technology improvements for county clerks. Additionally, the bill seeks to increase various filing fees for court proceedings that would be deposited in the general fund of the county. There are no amendments to this bill and no one testified in opposition to the hearing, although the Committee did hear that there were concerns from the district courts regarding the distinction between Executive Branch and Judicial Branch functions.

**Assemblyman Cobb:**

A user fee is a fee that is directly related to the purpose for which the fee is given. It is an unacceptable form of collecting revenue. I share the concern of my colleagues that there were no proponents for the court fees during our hearing. I also have problems with the other fees for the technology. Some of the local governments were not well prepared to describe, in detail, what they were going to do with the fees, but just said that they would like to look at new technology in general. The need should be greater in order for us to vote in favor of this. I would not encourage the Committee to change the bill on behalf of the people such as myself who have voiced concerns about this bill because I am not in favor of any particular section of it.

**Assemblywoman Gerhardt:**

There is another bill that we are going to be voting on in general file that requires marriage licenses to be created at the county clerk's office as well. I think they are going to be getting additional fees for those too. Can that be clarified?

**Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County:**

I believe the bill you are speaking of is Senate Bill 419, which consolidates marriage certificates and recording into the county clerk's office. There is a

document fee that is within the clerk's office, but has not traditionally been applied to marriage certificates. With that particular bill, the \$3 technology fee would be applied to marriage certificates.

**Assemblywoman Gerhardt:**

That is my concern. We have a fee for technology and now we have another fee that we are increasing for technology. I am all for technology, but somebody is paying those fees.

**Assemblywoman Allen:**

I did not feel the testimony was compelling, so I plan to vote no. I hate to see the court system be more expensive for people to access.

**Chairman Anderson:**

I sense a reluctance to take the bill in its current format. Rather than asking for a motion, I will assume that none is going to be offered, thus we can move on.

**Senate Bill 155: Makes various changes to provisions pertaining to the prosecution of identity theft. (BDR 14-1008)**

**Jennifer Chisel, Committee Policy Analyst:**

Senate Bill 155 was presented to the Committee on April 25 by Senator Hardy. This measure provides authority for postal inspectors to make warrantless arrests, similar to the existing authority granted to the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Secret Service, and other federal agencies. The measure also enhances the penalty for identity theft offenses. During the hearing, Scott Scherer, on behalf of Dunn & Bradstreet, proposed three amendments as outlined in Sections 1(a) through 1(c) on the first page of the work session document.

The first amendment provides extra protection for Dunn & Bradstreet's typical business practices of obtaining information about individuals. The second and third amendments deal with the enhancement to the identity theft defense, to have it apply only to natural persons and to have the rebuttable inference only apply to the enhancement. During the hearing, Mr. Horne pointed out that in Nevada, we typically use the language "probable cause" rather than what is currently in the bill, which is "reasonable cause." There is a proposed amendment to change that language to conform to Nevada law. Additionally, "rebuttable inference" is another term on page 3, which is not a term used either. That could be changed to "rebuttable presumption" which is typically used in Nevada. Senator Hardy testified that he supported all of these amendments. In addition, the American Civil Liberties Union (ACLU) provided

written testimony in opposition but did not speak during the hearing and presented no amendments.

**Assemblyman Carpenter:**

I am concerned about arrests without warrants and arrests when the officers do not actually see the crime happen. As I understand it, this could be an arrest for many crimes, not just identity theft. In an arrest without a warrant, the officers never saw the offense being committed.

**Assemblyman Ohrenschall:**

I share the concern of Mr. Carpenter. During the hearing, Janine Hansen testified on behalf of the Nevada Eagle Forum that she was troubled by Section 1, subsection 2, which says that when the person arrested has committed a felony or gross misdemeanor, although not in the postal inspector's presence, the inspector could immediately arrest without a warrant. That troubles me.

**Assemblyman Horne:**

I do not think that this expands their police powers further than what we have already given to other federal law enforcement officers such as the FBI, DEA, and Secret Service who have been given this state authority as well. It does not exceed that.

I have concerns with the amendments proposed by Mr. Scherer. In amendment 1(a) where it is suggested to place the word "other" before "unlawful purpose," the unlawful purpose is not listed in the bill itself. If this reads "other unlawful purposes," there would need to be a list of unlawful purposes in which "other" is supposed to reference. Also, in amendment 1(b), which adds "natural persons," I believe we already have a statute that already exempts business entities which that amendment is trying to cover. Amendment 1(c) adds "for the purposes of subsection 3 of this section...." I do not see the rational reasoning for that addition in referencing subsection 3 of the bill. Once again, I do not think this gives postal inspectors any other powers than the powers given to the other federal officers.

**Chairman Anderson:**

There does not seem to be a great desire for this piece of legislation from the Committee.

**Assemblywoman Gerhardt:**

I support the bill. Being a person who has been a victim of identity theft, I am very concerned with it.

**Assemblyman Carpenter:**

Where are these cases actually going to be brought before? Are they all going to come before the district attorney or are they going to be tried on a federal level?

**Ray Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department:**

If an arrest is made under our state statute for a state crime, it is our district attorney who will prosecute those charges within the district courts.

**Assemblywoman Gerhardt:**

Law enforcement was very supportive of this bill and felt it was an important tool in addressing the problem. Is that correct?

**Ray Flynn:**

Yes. Not only Las Vegas Metropolitan Police Department (LVMPD), but the Nevada Sheriffs' and Chiefs' Association is also in favor of this bill.

**Assemblyman Carpenter:**

Do the postal inspectors already try to catch identity theft? I do not know what the situation is if someone is arrested strictly on a state statute and if the district attorney then has to prosecute that case. He would then have an officer who is not part of the everyday police activity to testify. That would bring another branch of government into the prosecution.

**Ray Flynn:**

The guidelines of the United States Attorney do not support probable cause arrests from federal agents; they ask them to go for warrants. Speaking with postal inspectors, the people whom they come across on the street are normally not readily identifiable. By making a probable cause arrest on a state charge, they will get them into a county jail where we will start the process of positively identifying them.

**Assemblyman Horne:**

I do not see a problem with the bill other than my concerns which I stated earlier.

**Assemblyman Conklin:**

I am willing to support the bill with amendment numbers 2 and 3.

**Chairman Anderson:**

The Chair will entertain a motion.

ASSEMBLYWOMAN GERHARDT MOVED TO AMEND AND DO PASS SENATE BILL 155 WITH AMENDMENT NO. 2 ARTICULATED IN THE WORK DOCUMENT.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN ALLEN, CARPENTER, GOEDHART, MABEY, MANENDO, OHRENSCHALL, SEGERBLOM AND ANDERSON VOTED NO. ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE.)

**Senate Bill 303: Amends the Charter of the City of North Las Vegas concerning the qualifications of municipal judges prospectively contingent upon voter approval. (BDR S-80)**

**Jennifer Chisel, Committee Policy Analyst:**

Senate Bill 303 was presented to the Committee on May 1st by Senator Lee. This measure would add the requirement that municipal judges in North Las Vegas be Nevada licensed attorneys. During the hearing, Kimberly McDonald, on behalf of the City of North Las Vegas, opposed the bill since the city did not grant prior approval of the amendment to the City Charter. Chairman Anderson has proposed an amendment ([Exhibit D](#)) to the City Charter regarding the qualifications of municipal judges go to a vote of the people in the 2008 election. You will find that amendment in the mock-up starting on page 2 of the work session document.

**Chairman Anderson:**

I was concerned that, procedurally, nothing has formally been done within the communities. The communities should have an opportunity to make a decision. While I feel it is not necessary to be an attorney in order to fill the position of justice of the peace or municipal judge, I know that particular point of view is not held by many members of the Legislature. By putting this requirement in place, we trust the people to make up their mind on how their community should be adjudicated. As a person who has always trusted the will of people, I believe it is better to inform them of the need than to ignore their desires. The Chair will entertain a motion.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 303 WITH THE AMENDMENTS SUGGESTED BY THE CHAIR.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS ABSENT FOR THE VOTE).

Let us turn to Senate Bill 542 (R2).

**Senate Bill 542:** Revises provisions governing the homestead exemption.  
(BDR 2-1364)

**Jennifer Chisel, Committee Policy Analyst:**

The Committee heard S.B. 542 on May 2nd as presented by Josh Hicks, legal counsel to the Governor. This measure seeks to increase the homestead exemption from \$350,000 to \$550,000. Questions from the Committee members established that a person's ability to borrow money may be reduced the greater the homestead exemption is.

There are two amendments that were proposed by Chairman Anderson. The first amendment would add an additional exemption for the amount of a security deposit that a tenant is required to provide to his landlord for the tenant's primary residence. This would give renters the same protection for their primary residence as it would for a person who owns his home. The second amendment reduces the proposed homestead increase to \$450,000 instead of the \$550,000, which is proposed in the original bill.

**Assemblyman Carpenter:**

I am in favor of the amendments. I believe that \$450,000 is more in line with what the home prices are today.

**Chairman Anderson:**

I added the first amendment because I was presented a recent Supreme Court decision about somebody who was occupying a home under a lease agreement and had paid a security deposit, the first month's rent, and the last month's rent. The homeowner had gone into default on their mortgage and the tenant's security deposit was used. The tenants were then evicted. There was not an opportunity for them to regain their security deposit or their last month's rent. This would give them an opportunity to exempt that part so that somebody in a lease would have the opportunity to protect their property interests—their first, last, and security deposit—from being taken away from them. The Chair will entertain a motion.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS  
SENATE BILL 542 WITH THE AMENDMENTS OUTLINED IN THE  
WORK SESSION DOCUMENT.



ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

**Assemblyman Conklin:**

I have concern with this bill. I do not agree with \$550,000 or \$450,000. It is a matter of personal preference.

**Chairman Anderson:**

This would be moving it forward by \$100,000. Would you prefer we do not pass the bill?

**Assemblyman Conklin:**

It is a matter of philosophical opinion. We moved it forward \$250,000 in 2005. If we move it forward again and again, there is the question of personal responsibility and how far we are going to draw the line of personal responsibility.

**Assemblyman Segerblom:**

I had a question about the deposit. Does the bill define what the dollar amount is?

**Risa Lang, Committee Counsel:**

You are not required to specify a dollar amount, but you certainly could. This proposal does not specify a dollar amount. The language would be along the lines of "money deposited with a landlord by a tenant to secure an agreement to rent or lease a dwelling that is used by the tenant as his primary residence."

**Assemblywoman Allen:**

I support the first amendment, but would rather not see the second amendment in the bill. However, I will go with the will of the Committee. In my district, the median house prices got up to \$700,000 to \$800,000. The amount of \$550,000 does not afford my constituency the protection of their primary residence. I will vote for the motion, but I would prefer to see the amount at \$550,000.

**Assemblyman Conklin:**

If I have \$550,000 of equity in my home, what do I need to homestead it for, from a credit standpoint? Homestead is supposed to protect you in times of need. If you have that much money in equity sitting in your home, you should have the fiscal responsibility to protect that. We keep pushing this number up, so at what point in time do we say that someone has to be financially responsible to protect that asset? I am not arguing against the bill. I will go with the will of the Committee as well.

**Assemblyman Goedhart:**

Does the homestead exemption also assist a person who is on the receiving end of a lawsuit? It is not in every case that a homestead exemption is used to get out of paying fees. You do not know when a kid on a skateboard is going to crash on your driveway and hit his head. Then you would have an attorney filing a suit against you.

**Chairman Anderson:**

Yes, it does. You have certain insurance protection, but by homesteading, parts of your assets become protected. Homesteading is not always used for irresponsible behavior; that is only one of its uses. This exists so that your home will be protected from the potential of economic damages that could come forward so that you do not lose your home and your investment, which may be the only asset you have.

**Assemblyman Goedhart:**

I believe that bad things happen to good people. I am in support of this bill with the first amendment.

**Assemblyman Horne:**

I support the bill and both of the amendments. Assemblyman Goedhart said that homesteads also protect someone if they are sued and can keep a roof over their head at bad times. I do not like that it is being raised every session. It seems like we might as well make a homestead that says the home is exempt, regardless. The real public policy is if we only protect part of that home, they may have to move into a smaller home. The purpose is to give them some protection.

**Assemblyman Mortenson:**

I agree with Assemblywoman Allen. I would rather see the number at \$550,000.

**Assemblyman Mabey:**

I support the motion and feel that \$450,000 is fine. Originally, this law was made for farmers and ranchers who lived in the country and lost their farm and needed a place to live. I am in favor of the motion.

**Assemblyman Carpenter:**

Another part of the Homestead Act would enable Assemblyman Goedhart to keep his cows.

**Assemblywoman Gerhardt:**

I like the larger figure as well, but I will support the motion.

**Assemblyman Ohrenschall:**

Last session we raised it \$150,000, not \$250,000.

I would prefer to see the \$550,000 because, while it does protect people and their house, homestead does not protect against the Internal Revenue Service (IRS), the mortgage company, or fraud. I do not feel like people can play a shell game with the homestead because it is truly something to protect people when they have a major medical illness or car accident. I will support the bill either way, with the amendments or without, but I do prefer the larger amount.

**Chairman Anderson:**

There continues to be a concern about this issue and its misuse. I tried to find a figure that is acceptable, and that is how we arrived at \$350,000.

The amendments that have been suggested are acceptable. We would change the exemption to \$450,000 and use the language making sure that security deposits held by a landlord for a tenant are exempt so that they are not subject to the lien laws.

**Assemblyman Conklin:**

I understand that the motion is for both amendments, and I will support the bill in the spirit of compromise, even though I would rather see it lower.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS  
SENATE BILL 542.

ASSEMBLYMAN MORTENSON SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

I will assign S.B. 542 to Assemblyman Ohrenschall.

**Senate Bill 243: Requires an affidavit and a report in an action against certain design professionals involving nonresidential construction. (BDR 2-695)**

Let us turn our attention to Senate Bill 243. This bill requires an affidavit and report in an action against certain design professionals involving nonresidential construction.

**Jennifer Chisel, Committee Policy Analyst:**

Senate Bill 243 was heard by the Committee on May 14th and it was presented by Bob Crowell. This would expand the affidavit to report by a qualified expert indicating that there is a reasonable basis in fact to bring a nonresidential construction claim. In current law, we have the same requirements for residential construction. This would require that the affidavit be filed in a lawsuit for nonresidential construction. There were no amendments presented. The opposition came from the construction industry.

**Chairman Anderson:**

Greg Ferraro made a very sound argument in favor of this bill. Paul Georgeson, who represented the Associated General Contractors (AGC) of Nevada, was in opposition.

**Assemblyman Segerblom:**

I had asked the AGC representative why you could not third-party in the architect and the witness who testified because they will prove the contract. In my understanding, if they were involved in the building and the architect was involved in the problem, one could third-party that person in.

**Risa Lang, Committee Counsel:**

It would depend on the circumstances. They were indicating that it has been an issue. I would be happy to look further into that.

**Chairman Anderson:**

Let us turn our attention to Senate Bill 483 (R2).

**Senate Bill 483 (2nd Reprint): Makes various changes to provisions relating to business. (BDR 7-868)**

**Jennifer Chisel, Committee Policy Analyst:**

Senate Bill 483 (R2) was presented to the Committee by Robert Kim on behalf of the State Bar Association. This bill makes various changes to corporations, limited liability companies, and businesses and professional association law. During the hearing, there was substantial testimony about how the bill was changed in the Senate to conform to everybody's concerns. There was still one concern left, which was to amend the bill by deleting Section 19. Section 19 deals with the limited liability of managers and members not being forfeited if the company fails to observe certain company formalities.

**Chairman Anderson:**

The Chair will entertain a motion.

ASSEMBLYWOMAN ALLEN MOVED TO AMEND AND DO PASS  
SENATE BILL 483 (R2).

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN OCEGUERA WAS  
ABSENT FOR THE VOTE.)

I will assign Senate Bill 483 (R2) to Assemblywoman Allen.

Meeting adjourned [at 9:41 a.m.].

RESPECTFULLY SUBMITTED:

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Kaci Kerfeld  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 17, 2007

**Time of Meeting:** 8:00 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Jennifer Chisel, Policy Analyst	Work Session Document
S.B. 303	D	Assemblyman Bernie Anderson	Proposed Amendment