

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Fifth Session  
February 6, 2009**

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 12:20 p.m. on Friday, February 6, 2009, in Room 4100 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/75th2009/committees/](http://www.leg.state.nv.us/75th2009/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 Marcus Conklin, Chairman  
Assemblyman Kelvin Atkinson, Vice Chairman  
Assemblyman Bernie Anderson  
Assemblywoman Barbara E. Buckley  
Assemblyman Chad Christensen  
Assemblywoman Heidi S. Gansert  
Assemblyman William C. Horne  
Assemblywoman Marilyn K. Kirkpatrick  
Assemblyman Mark A. Manendo  
Assemblywoman Kathy McClain  
Assemblyman John Ocegüera  
Assemblyman James A. Settelmeyer

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Morse Arberry Jr. (excused)  
Assemblyman Ed A. Goedhart (excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Ellen Koivisto, Clark County Assembly District No. 14

Minutes ID: 121

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**STAFF MEMBERS PRESENT:**

Dave Ziegler, Committee Policy Analyst  
Dan Yu, Committee Counsel  
Earlene Miller, Committee Secretary  
Sally Stoner, Committee Assistant

**OTHERS PRESENT:**

Ann M. McDermott, Administrator, Real Estate Division, Department of  
Business and Industry  
Barry Smith, Executive Director, Nevada Press Association, Inc., Carson  
City, Nevada  
Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services,  
Reno, Nevada  
Teresa McKee, General Counsel, Nevada Association of Realtors, Reno,  
Nevada  
Judy Stokey, Director, Governmental Affairs, Government Affairs, NV  
Energy, Las Vegas, Nevada

**Chairman Conklin:**

[Roll was called.] We will start with Assembly Bill 71.

**Assembly Bill 71:** Requires the Real Estate Division of the Department of  
Business and Industry to keep confidential certain records and information  
obtained in regulating the sale of subdivided land. (BDR 10-431)

**Ann M. McDermott, Administrator, Real Estate Division, Department of  
Business and Industry:**

I am here to present A.B. 71. This is a housekeeping bill proposed to simplify and clarify issues in Chapter 119 of *Nevada Revised Statutes* (NRS). The purpose is to add language regarding confidentiality of certain records due to public safety in response to the problem of identity theft. It will ensure compliance with federal regulations concerning criminal records and ensure that financial records are confidential, consistent with other provisions under the jurisdiction of the Real Estate Division. The criminal records referenced in this proposed bill refer to background checks that are performed for those who want to be credentialed with the Division. The financial records to which we refer include: tax records, bank statements, life insurance policies, and data on spouses' salaries. That is the information we are seeking to hold confidential ([Exhibit C](#)).

**Chairman Conklin:**

I have spoken with a representative of the Nevada Press Association. Have you met with them?

**Ann M. McDermott:**

I have met with them, and we have had some discussions about the language that is currently in the bill. We have agreed to some revisions.

**Chairman Conklin:**

I will let Mr. Smith talk to us about comments from the Nevada Press Association. I am glad that you are working with them. The bill will probably need work. Are there questions from the Committee?

**Assemblywoman Buckley:**

In the first section, is it not already required to keep social security numbers confidential and not collect them unless required?

**Ann M. McDermott:**

The information is addressed in Chapter 239B of NRS. As with other statutory sections that the Real Estate Division regulates, we address each of those issues within each statutory provision so that a lay person, when looking at a particular section of the statute, can see what applies to them and have a full understanding of the law without going through all of the statutory sections.

**Assemblywoman Buckley:**

Are you collecting social security numbers?

**Ann M. McDermott:**

In some instances, we do.

**Assemblywoman Buckley:**

Why?

**Ann M. McDermott:**

We keep them to compare with possible erroneous background information that we may obtain.

**Assemblywoman Buckley:**

What areas are you discussing to revise in potential amendments?

**Ann M. McDermott:**

The proposed language reads, "Except as otherwise provided in subsection 1 of NRS 119.265, unless otherwise ordered by a court...." We have agreed it

would be amenable to change the word "shall" to "may." In section 2, subsection 2, we have discussed with staff the necessity of including the language "Except as otherwise provided in section 1 of this act...."

**Assemblyman Anderson:**

We put a great deal of time into a statute several years ago regarding keeping social security numbers confidential in any public documents. Would this change your Division's requirement to protect the public from Internet fraud and identity theft?

**Ann M. McDermott:**

The Division's concern is to maintain confidentiality of this information. By having this wording within this particular section, it makes it easier for the Division to help ensure that this information does not fall into the wrong hands.

**Assemblyman Anderson:**

This will not lessen your responsibility for the older existing records to make sure that they are eradicated of information that might be open to identity theft?

**Ann M. McDermott:**

That is correct.

**Assemblywoman Kirkpatrick:**

We have problems when we allow agencies to keep things confidential that even legislators cannot obtain. Does this bill include us?

**Ann M. McDermott:**

This will not prevent us from providing data or statistics from information we gather. It will only limit the substantive content of the information.

**Assemblywoman Kirkpatrick:**

Hypothetically, would we be able to get information on how a person got a license?

**Ann M. McDermott:**

The application would remain public information. The information that would be confidential would be from the background check and the financial records.

**Assemblywoman Kirkpatrick:**

Would the Attorney General's Office have to go to court to request that information?

**Ann M. McDermott:**

If there was wrongdoing by a licensee, we would investigate that, and this would not preclude us from being able to bring a disciplinary complaint against a licensee.

**Chairman Conklin:**

Are there any other questions from the Committee? Is there anyone else wishing to speak in support of A.B. 71?

**Barry Smith, Executive Director, Nevada Press Association, Inc., Carson City, Nevada:**

I have spoken with Ms. McDermott, and there is no disagreement on the intent of this bill. I have some concern about language. I believe that most of what they are trying to do is covered in the open records law in Chapter 239B of NRS on social security numbers and other personal information.

Also, the language about confidentiality changes from the language in NRS 645.180, which states "may refuse to make public, unless ordered to do so by a court," to "keep confidential" in the bill. My point is, why tie your hands? You can continue to keep confidential what is confidential, but if a legislator requests information or if it is in the public interest, you may want to make that information public. When you say criminal records and financial records, depending on the circumstances, some are confidential and some are public records. We can arrive at language that is in NRS 645.180 which will satisfy that issue.

In section 2, subsection 2, of the bill, the language "Except as otherwise provided in section 1 of this act" is confusing because we are talking about a complaint that has been initiated. That paragraph, the way it reads now, says that information is public record. To put an exemption at the beginning of the paragraph changes the intent of the paragraph and is confusing ([Exhibit D](#)).

**Chairman Conklin:**

Mr. Smith, are you working on an amendment, and is there some agreement between the parties on how to move forward?

**Barry Smith:**

I think so.

**Assemblywoman Buckley:**

It might make sense to have our staff look at all of the other statutes to ensure consistency about confidentiality in all licensing boards.

**Chairman Conklin:**

I had requested that we find out what language is necessary to conform, so staff will take that under advisement.

**Assemblywoman McClain:**

It is a great idea to change some of these statutes so everyone can refer to one section.

**Assemblyman Anderson:**

The Judiciary Committee has been dealing with this issue relative to judicial documents in sealing and closing records. We hope our legal staff makes sure our language is consistent.

**Chairman Conklin:**

Is there anyone else wishing to testify in opposition to A.B. 71? This bill will go back to Committee, and staff will ascertain the common language that is used and whether there are other divisions who do not conform to the standard language. The parties will work out their differences in section 2, subsection 2, and the Committee will work out the problems in section 1. We will close the hearing on A.B. 71 and open the hearing on Assembly Bill 58.

[Assembly Bill 58](#): Revises provisions governing residential landlords and tenants. (BDR 10-636)

**Assemblywoman Ellen Koivisto, Clark County Assembly District No. 14:**

I am bringing Assembly Bill 58 on behalf of some apartment dwellers in Las Vegas. They are dealing with ratio utility billing systems and master meters in their apartment complexes. When people move into apartment complexes which have amenities such as pools and hot tubs, they pay higher rent for those amenities. The renters assume that their rent covers the cost of the amenities, but they get supplemental bills from a master meter for utilities from a third-party biller. These renters question how the amount of the supplemental billing is derived. They have been told the information is confidential. They want some transparency about the total bill and to know why they are being billed for amenities already billed in their rent. This would cover apartment complexes in a similar manner as mobile home parks.

**Chairman Conklin:**

I have spoken with several groups who have also spoken to the sponsor and are in support of this bill with some minor changes. Are there any questions?

**Assemblywoman McClain:**

We were subjected to that here in Carson City for water, so I can relate. It is only fair that people know what they are being billed for.

**Assemblyman Atkinson:**

This is becoming common practice for a lot of apartment complexes and townhome facilities. Do any of these put the charges in their contracts?

**Assemblywoman Koivisto:**

Yes, I believe they do. It is a utility addendum to the contract. The renters have no clue when they sign a lease what the amounts will be.

**Assemblyman Anderson:**

Are some of these apartment complexes trying to alleviate the difference between a true apartment complex and a common-interest community, and are they confusing the rules of one with the other?

**Assemblywoman Koivisto:**

These people are concerned only with apartment communities.

**Chairman Conklin:**

Does this mean there is now an addendum to the rent for an unknown amount for utilities, and the renter does not know how the amount is determined?

**Assemblywoman Koivisto:**

That is correct. I do not think it would be one lump sum. It would be for each utility for which there is a master meter. They could be billed for several lump sums.

**Chairman Conklin:**

When some condominium conversions were developed, owner-occupied units with master meters were created. Does this apply to those units as well? Do homeowners associations have to comply with this as well?

**Assemblyman Anderson:**

If there are vacancies, this would shift a larger part of the burden to the remaining occupants.

**Chairman Conklin:**

If you are in a homeowners association in a condominium conversion, your fees pay for common amenities, but your fees would obviously increase if the number of occupants decreases. If you lived in such a community, you would

want to know what was fair. Are there any other questions for Mrs. Koivisto? Is there anyone else who wants to testify in support of the bill?

**Jon Sasser, Statewide Advocacy Coordinator, Washoe Legal Services, Reno, Nevada:**

I want to thank Assemblywoman Koivisto for bringing this disclosure bill which would help tenants understand what they are getting into and understand the charges they are being asked to pay. This is not a regulatory bill. It does not say what you can or cannot charge.

The mobile home park laws in *Nevada Revised Statutes* (NRS) 704.905 have the Public Utilities Commission regulating and having the power to deal with complaints on these types of issues. They have some very specific rules which say that the utility charges have to be divided evenly among the tenants and that the total amount charged to tenants cannot exceed the total amount that the landlord is being charged. Utilities for the common areas cannot be passed to the tenants.

This bill only relates to Chapter 118A of NRS, which applies to residential landlords and tenants, not homeowners associations or common-interest communities. Our question is: what makes the landlord comply if the bill does not have any regulatory power to make the landlord follow the law? There is nothing in the bill that would do that. I suggest giving the tenants the opportunity to file a civil action if the law is not followed and to seek not only actual damages, but statutory damages. If the landlord knows that potential, there is an incentive to give the disclosure.

The amendment I offer ([Exhibit E](#)) tracks the language which exists in Chapter 118A of NRS for violations of NRS 118A.390, which is utility shutoffs or lockouts. It also follows NRS 118A.510, which includes the language for retaliation and states that the tenant can recover up to \$1,000 in statutory damages if the landlord fails to follow the law. The court does not automatically give \$1,000. The court determines if the landlord acted in good faith, the course of conduct between the parties, and the degree of harm the tenant suffered. The section gives the court a tool to determine the fine.

The other question I raised with the sponsor concerns page 2, line 7, about the fees, and I do not want this to be read as authorizing fees that do not exist.

**Chairman Conklin:**

Are there any questions from the Committee?



**Assemblyman Settelmeyer:**

My interpretation of the word fees would be the landlord's expense of printing and postage. In lieu of that, could the landlord post the information in a common area?

**Jon Sasser:**

There is another amendment from the Association of Realtors which will address the cost of complying with this bill. I am open to a meaningful disclosure which is not expensive for the landlord.

**Chairman Conklin:**

Does charging a fee grant some legal standing, Mr. Sasser?

**Jon Sasser:**

This is not a regulatory bill, so it is not saying what you can or cannot charge. I was concerned that the use of the word "fee" would trigger the use of fees not now being charged. The intent is for the tenant to understand what they are being charged.

**Chairman Conklin:**

If there is no objection from the bill sponsor or the Committee, I would like staff to look at the language and adjust it so that is not a concern. Are there any other questions? Is there anyone else wishing to testify in support of the bill? Is there anyone opposed? We will start with those wishing to testify from a neutral position.

**Teresa McKee, General Counsel, Nevada Association of Realtors, Reno, Nevada:**

We have members who are landlords in large complexes, and this bill causes them some concern because the requirements would be costly. They do not think that all of their tenants will request this information. Therefore, we would like to add an amendment, which we have cleared with the bill sponsor, which will add to section 1, subsection 1, line 6 that the landlord shall "upon request" provide to each tenant the charges [Amendment not received.]

**Chairman Conklin:**

Are there any questions?

**Assemblyman Anderson:**

Do large apartment complexes have other forms of communication with the tenants such as a quarterly newsletter? Why do they not use one of their other communications to inform tenants?

**Teresa McKee:**

I think the problem is trying to do a catchall by trying to treat every landlord the same. A smaller complex may not have a monthly newsletter. You cannot treat every landlord the same way. There is a multitude of ways fees could be divided. If we can develop one type of notice that would fit all, we would not oppose it. In large complexes, not everyone wants or needs this information. Therefore, if it is requested, the landlord can decide how to best provide this notice.

**Assemblyman Anderson:**

The reality is that many groups do not do this at all. The burden would be upon those who choose to fall into this category.

**Teresa McKee:**

There is not a "one size fits all" solution in the realm of landlord-tenants. The tenants have the right to ask for this information, and it is something that should generally be known in an apartment complex. I do not think that is objectionable.

**Chairman Conklin:**

If we change this from "shall" to "upon request," is it also necessary to include some conditions of time? Otherwise it could never go to court. The parties need to work on this issue.

**Teresa McKee:**

I agree that is a concern which we need to discuss.

**Assemblywoman Gansert:**

I agree that "upon request" would make a difference.

**Chairman Conklin:**

Responding to a request should not be a lengthy process because the math has already been done.

**Assemblyman Settlemeyer:**

My concept is to put it on a billing cycle. We should make it vague enough so the landlord can determine the best method within a reasonable period of time.

**Chairman Conklin:**

It may be one of those things where there is not a set time frame but a reasonable standard which works and includes full disclosure for the renter.

**Assemblyman Manendo:**

How would the people even know that this exists? Something needs to be included so all tenants are informed.

**Teresa McKee:**

There is currently no way to put that in. An agreement like that should be done by contract. Not all leases have a written contract. A division of utility charges should be done by contract, although there is no requirement to put any notice on that part of the contract.

**Chairman Conklin:**

Are there any further questions for Ms. McKee? Is there anyone else wishing to testify against A.B. 58? Is there anyone to testify from a neutral position?

**Judy Stokey, Director, Governmental Affairs, Government Affairs, NV Energy, Las Vegas, Nevada:**

We are neutral on this bill. In a mass-metered complex, our customer is the landlord, not the tenant. The landlord will need to provide the information.

**Assemblyman Atkinson:**

Does this bill affect power? Even in apartment complexes, individuals usually get separate power bills. Is this bill more about sewer and water?

**Judy Stokey:**

We actually have just over 100 mass-metered units in the state. We do not encourage them and prefer individual meters.

**Chairman Conklin:**

Are there any other questions for Ms. Stokey? Is there anyone else wishing to testify in the neutral position? We will close the hearing on A.B. 58.

The meeting is adjourned [at 1:15 p.m.].

RESPECTFULLY SUBMITTED:

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Earlene Miller  
Committee Secretary

APPROVED BY:

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Assemblyman Marcus Conklin, Chair

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

**EXHIBITS**

**Committee Name:** Committee on Commerce and Labor

**Date:** February 6, 2009

**Time of Meeting:** 12:20p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
A.B. 71	C	Ann M. McDermott/Real Estate Division, Department of Business and Industry	Memorandum
A.B. 71	D	Barry Smith/ Nevada Press Association	Statement
A.B. 58	E	Jon Sasser/ Washoe Legal Services	Proposed Amendment