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

Seventy-Fifth Session
March 25, 2009

The Committee on Commerce and Labor was called to order by Chairman Marcus Conklin at 2:01 p.m. on Wednesday, March 25, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 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/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Marcus Conklin, Chairman
Assemblyman Kelvin Atkinson, Vice Chair
Assemblyman Bernie Anderson
Assemblyman Morse Arberry Jr.
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 Oceguera
Assemblyman James A. Settelmeyer

COMMITTEE MEMBERS ABSENT:

Assemblyman Ed A. Goedhart (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3
Assemblyman David P. Bobzien, Washoe County Assembly District No. 24

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Dan Yu, Committee Counsel
Andrew Diss, Committee Manager
Patricia Blackburn, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Dan Musgrove, Las Vegas, Nevada, representing Sure Deposit, Livingston New Jersey
Dan Rudd, Chief Operating Officer, Sure Deposit, Livingston, New Jersey
Jon Sasser, representing Washoe Legal Services, Reno, Nevada
Julianna Ormsby, representing Nevada Women's Lobby, Carson City, Nevada
Jan Gilbert, representing Progressive Leadership Alliance of Nevada, Carson City, Nevada
Gregory F. Peek, Vice President, Ergs, Inc., Reno, Nevada
Roberta Ross, President, Northern Nevada Motel Association, Reno, Nevada
Jennifer Chandler, representing Northern Nevada Apartment Association and Nevada Court Services, Reno, Nevada
Linda Howe, Manager, Ross Manor, Reno, Nevada
Keith Lynam, Chairman, Nevada Association of Realtors, Las Vegas, Nevada
Jason Geddes, Board of Regents, Nevada System of Higher Education, Reno, Nevada
John C. Sagebiel, Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno
Kyle Davis, Policy Director, Nevada Conservation League, Las Vegas, Nevada
Don Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry
David Goldwater, representing Mortgage Advisory Council, Las Vegas, Nevada

Michael L. Brunson, representing Coalition of Appraisers in Nevada, Las Vegas, Nevada
Pamela Kinkade, President, Coalition of Appraisers In Nevada, Las Vegas, Nevada
Michael R. Cheshire, Commissioner, Commission of Appraisers of Real Estate, Real Estate Division, Department of Business and Industry
Gail J. Anderson, Administer, Real Estate Division, Department of Business and Industry

[The roll was taken. The meeting was started as a Subcommitte.]

Chairman Conklin:
We will open the hearing on Assembly Bill 512.

Assembly Bill 512: Revises provisions relating to security deposits for the rental of real property. (BDR 10-921)

Chairman Conklin:
Is it my understanding that we will be working from the mock-up?

Dan Musgrove, Las Vegas, Nevada, representing Sure Deposit, Livingston, New Jersey:
That is correct. (Exhibit C.) My thanks to you and your staff for the mock-up. At your direction, we worked hard with Mr. Sasser to put together a bill and language that we feel addresses any of the concerns that might be out there. This is an addition to statute that adds a concept, surety bonds, to *Nevada Revised Statutes* (NRS) Chapter 118A, landlord/tenant law. I would like to turn this over to Dan Rudd.

Dan Rudd, Chief Operating Officer, Sure Deposit, Livingston, New Jersey:
[Distributed background information on company and the bill (Exhibit D).] My company offers alternatives to security deposits in the form of surety bonds in 40 states, including Nevada. It has done so for the last nine years. At the moment, more than one million residents across the country have enrolled in our program. We consider ourselves a market leader. Our company insists that our clients make our program optional to residents and not make it a mandatory condition of a lease. We encourage and insist that our clients do not try to skirt landlord/tenant law simply by using our program. If you look at landlord/tenant law, it does not mention surety bonds at all. Someone looking from the outside could say it is simply unregulated and that these best business practices that we have put in place really are not necessary. As we have competitors who come and go, we want to make sure they are also operating in the best interests of tenants, in particular, and that nothing is done to take away the

rights of tenants or the responsibilities of landlords. We thought the best way to do that is to clarify and codify in the law that when surety bonds are used as an option, that landlords and tenants will act in a certain way, and then the rights and responsibilities will be enumerated.

[There was a quorum present.]

Chairman Conklin:
The surety bond option works as follows: Someone rents an apartment; that apartment has an up front cost of $1,000 plus first month's rent, et cetera. That $1,000 is considered a security deposit. The landlord can offer to the tenant the option to pay for a $1,000 surety bond. That way the renter keeps his $1,000, perhaps pays $100 for a surety bond, and the surety is there to provide security for the tenant and the landlord so that if there should be a problem with the property, the money is always safe and always there. It has not been spent by anyone, and it could be redeemed, if necessary. If not, then everyone walks away happy.

Dan Rudd:
Your understanding of it is right on target. The numbers are a little different. We charge $175 for a $1,000 bond. Our premium is not refundable, but that is a choice a resident can make when he is confronted with move-in costs. Does he want to put down $1,000, or does he prefer an alternative? It should never be made mandatory.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Gansert:
The tenant pays $175, and you provide the $1,000 to the landlord. So what happens if there is a default? Is the risk to the tenant only the $175?

Dan Rudd:
The way the program works, as in any surety, there are three parties involved, the landlord, the tenant, and the insurance company. The tenant is not off the hook for a violation; he says that he will complete all his lease obligations to the landlord. The only difference here is if he does not, then the surety has the right to step in and pay on behalf of the tenant to the landlord for that loss. The surety retains the right to make the tenant whole on his lease obligation. In other words, the surety can go back to the tenant to fulfill the lease obligations, but instead of owing the landlord, the tenant now owes the obligation to the surety company. The tenant gets the use of his money for the period of time

when he was in tenancy. It is not like an automobile insurance policy. The tenant is still obligated.

Chairman Conklin:
Are there any questions from the Committee? I see none. Mr. Musgrove, did you have some additional comments?

Dan Musgrove:
To further answer Assemblywoman Gansert's question, one of the provisions of the bill talks about the process for the tenant upon his exit of the tenancy. The protections are between the two parties to make sure there are no unnecessary costs and that everyone has received notice of any kind of damage. As has been put forth in NRS Chapter 118A, this now allows this new product to follow those same provisions.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Jon Sasser, representing Washoe Legal Services, Reno, Nevada:
I want to thank Mr. Musgrove and his client as well as others for working with us over the last number of months to get language that we are comfortable with. This can be a very positive thing for tenants who are having a difficult time raising the money for a security deposit. They often end up paying motel people rent as high as an apartment, but they cannot get into an apartment because of the threshold requirement. We had concerns with the original draft of the bill because it did not give the tenant an opportunity to dispute the charges if those charges were being paid on the tenant's behalf. The amendment gives them an opportunity to respond within 30 days to the itemized list of damages that the landlord draws up and gives to both the tenant and the surety. The amendment also makes clear that until there is some independent body, for instance, the court, to determine the tenant really was at fault, that information cannot be given to a credit bureau which would hurt the tenant's credit, because the tenant is not involved in the process. We are now comfortable with the bill.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Arberry:
Was there any discussion on weekly rentals?

Jon Sassser:
The time frames in the bill are identical whether weekly or monthly. I guess if you are a weekly landlord, you might want a little less time, but we did not have that discussion.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify? I see none. We will close the hearing on A.B. 512, and we may take this bill up again when more members are present today.

We will open the hearing on Assembly Bill 313.

Assembly Bill 313: Prohibits excessive late fees in rental agreements. (BDR 10-912)

Assemblywoman Peggy Pierce, Clark County Assembly District No. 3:
I am the proud sponsor of this bill which prohibits excessive late fees in leases. As you may know, in my private life I work for a nonprofit corporation which provides services to union members who are experiencing financial difficulties. One service we sometimes provide is to help these individuals raise late rent in order to avoid eviction. Following the last session, it came to our attention that a number of late fees that our clients were being asked to pay seemed outrageous. To determine whether what we saw were isolated incidents or, in fact, constituted a pattern, we began to keep track of lease provisions of all of our clients. As you can see from the attached (Exhibit E) Late Fee Data Base, we first looked at all these leases which came in between August 1, 2007, and September 5, 2007. Some leases charged a late fee ranging from$15 to $125 on day three. Others charged $20 to $100 when rent was five days late. Two extreme cases charged $100 on day one and another $100 on day two. Most also had daily fees of $5 or $10 on top of the initial fee. After that experience, I asked Jon Sasser to see if the legal services programs were also encountering the same problems. He reported back that they were also seeing high late fees. I determined that I would seek a bill this session to address the problem.

It was also common practice to see leases containing provisions that in addition to late fees, the clients were responsible for filing fees, legal fees, and court costs if evictions were pursued. For those who put in a specific dollar amount, I entered those into the spread sheet. For example, the client had a $275 legal fee provision and another had a $150 fee.

I also asked the Legislative Counsel Bureau (LCB) to research whether there were laws limiting late fees in other states (Exhibit F). As you can see from the

attached memorandum, the laws in at least 11 states regulate the timing of late fees, the maximum amount, or both. The bill before you was modeled after the North Carolina law, as its provisions appeared to be the most comprehensive.

Since introducing the bill, I have learned that there is concern that the bill is broad enough to accomplish not only late fees but to prohibit landlords from seeking reimbursement of any costs which are actually incurred in filing evictions or billing to collect back rent. That is not our intent. If there is any question that the bill is overly broad, I would be glad to entertain an amendment.

Finally, ironically, after all the advance preparation on this bill, one of the more startling examples of late fees occurred just prior to opening day. As you can see from the attached first page of my lease (Exhibit G), when I moved into my Carson City apartment at the start of this session, the standard form lease that I signed requires a late fee of $160 if the rent is three days late. With the chair's permission I would now like to have Jon Sasser further explain the bill. We would then be glad to answer your questions.

Jon Sasser, representing Washoe Legal Services, Reno, Nevada:
[Spoke from written testimony (Exhibit H).]

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Gansert:
I am trying to figure out the amounts in the document that has the late fees for the different states. What do the other states allow?

Jon Sasser:
The footnotes are the back-up for those figures.

Assemblywoman Gansert:
I understand the issue with exorbitant late fees, but at the same time they have to be enough to get people to pay on time. There has to be an incentive. When your weekly rent was $250, the late fee was $7.50. That seems too minuscule. Why would you be on time? I think the fee has to have an impact on the person to make sure he pays on time.

Jon Sasser:
In terms of case law, it is the question of what does the landlord actually lose. I understand that you are saying that another reason to charge a late fee is a "stick" to get people to pay on time, and it needs to be not an unreasonable

"stick," but one that has some effectiveness. We chose the 5 percent figure as a middle ground when looking at the other states. Because it is a percentage figure, it results in the greater the amount of rent, the bigger the "stick." I think these are Legal Services clients who have very low rent, and so the amounts you see are not large. When you apply those percentages to $1,500 per month you do get into something a little more significant.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Jon Sasser:
I want to be sure a letter in support was received from Terrie Stanfill, President and CEO of Help of Southern Nevada (Exhibit I).

Chairman Conklin:
Everyone has a copy of that email.

Julianna Ormsby, representing Nevada Women's Lobby, Carson City, Nevada:
We urge your support of A.B. 313.

Jan Gilbert, representing Progressive Leadership Alliance of Nevada, Carson City, Nevada:
We are in support of this bill. When you look around the building it is clear to see you represent a variety of constituents, but low-income people and disadvantaged people, who are doing weekly rentals, do not come to this building. We feel it is important to come to support bills like this that are protecting people who cannot be here to voice their concerns. I hope you will support this bill.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in support of this bill? Is there anyone wishing to testify in opposition?

Gregory F. Peek, Vice President, Ergs, Inc., Reno, Nevada:
Our business model is that we develop apartment complexes and then rent them out. We have 680 units in the Reno area. We have a broad array of units, from entry level to fairly high-end units. Our current practice is to give a 5-day grace period for late payments and charge a 5 percent late fee on the 6th day. I strongly disagree with the notion that there are no out-of-pocket expenses when someone is late with rent payment. We have a staff that needs to track these. We have administrative costs. What happens when the late fee ends up becoming an eviction? There are definitely bad operators out there, maybe

something could be negotiated. A late fee is an incentive, but it needs to be at a number that is meaningful, 2 percent and 3 percent is not meaningful. I have a loan that comes due on the 6th of every month and another loan that comes due on the 13th of every month. I have to pay those.

One thing that we enjoy in Nevada is a fairly stable system. It allows us to keep our up front costs for people low. We have minimal deposits, and we ask for first month's rent only. Because it is so difficult to get someone out of an apartment, there are operators who have huge deposits, and they ask for both first and last month's rent. We want to make it more difficult for the few bad tenants so that everyone else does not have to pay. That is not fair. There are bad landlords, but there are also bad tenants. We need to strike a balance. I believe that 2 percent is not a meaningful number.

Chairman Conklin:
Have you read the bill?

Gregory Peek:
Actually, I just read it this morning.

Chairman Conklin:
The actual amount is 5 percent, the same that you charge. It is a cumulative effect. Fewer than five days is 2 percent, at 10 days it is an additional 3 percent. You are probably more lenient than this bill suggests.

Gregory Peek:
I would ask that the bill be clarified, because I do not read it that way.

Chairman Conklin:
I assume you have not spoken to the sponsor of the bill, is that correct?

Gregory Peek:
I just got off an airplane an hour ago, I apologize.

Chairman Conklin:
I would encourage you to talk to Ms. Pierce. She has indicated that she is open to discussion.

Are there any questions from the Committee?

Assemblyman Anderson:
Did I understand you to say that you do not require first, last, and a cleaning deposit?

Gregory Peek:
We have relatively low deposits, and I am talking about not only in Reno, but on a national level. We do require first month's rent. We do not require last month's rent.

Assemblyman Anderson:
I am surprised. When I rent an apartment each session, I pay the first, last and a cleaning deposit. I expected that was the norm.

Gregory Peek:
Well, cleaning deposit and first month's rent we do require. We do not require the last month's deposit. I cannot speak for other operators, but I will tell you that right now the market in the Reno area is pretty difficult. Occupancy levels have dropped and certainly rental rates have dropped. The tenant is in a good position to renegotiate leases.

Assemblyman Anderson:
I have a piece of rental property, and I ask for the first and last month's rent and a cleaning deposit. I thought that was the common practice.

Gregory Peek:
I apologize. I must not be making myself clear. We do not hold the last month's deposit.

Assemblyman Anderson:
You did make yourself clear. It was not my experience that that was a common practice.

Gregory Peek:
We found that people are sensitive to the up front move-in costs. We try to keep it reasonable. I cannot speak for others.

Chairman Conklin:
My initial concern with the bill is that there are costs, particularly if you are going to go to eviction. There is a list of legal things that you need to take care of to make sure that you have done everything that you are supposed to do if you need to remove someone from your property. You should be able to recoup those costs. Those fees were in some of the contracts that they presented, as well. So, there is a late fee that is not attached to anything. Then there is a whole list of other fees that are associated with eviction costs, postage costs, et cetera. I think the intention here is that we are talking about the interest rate of money, itself, as a late fee and not all the other costs that we believe you should have a right to recoup.

Gregory Peek:
That makes complete sense. When we have court costs, we pass those on to the tenants. There is some case law that you cannot charge the resident for certain court costs. We do, as best we can, pass on those direct costs. We do not mark them up. I appreciate the Chairman recognizing that there are some out-of-pocket costs, more than just foregone interest.

Assemblywoman Gansert:
Did you say you charge 6 percent? How many days late?

Gregory Peek:
We have a flat rate of 5 percent, which is late on the 6th day.

Chairman Conklin:
Your policy, of course, is not the issue here. But, you have a flat rate of 5 percent that does not go up. So, if I wait 30 days, after the first 5 days, there is no additional charge, right?

Gregory Peek:
You are making me want to rethink that policy. We consider ourselves to be a good, fair operator.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Anderson:
I would like to disclose that I own rental property and that A.B. 313 would not affect me any differently than it would other holders of rental property.

Assemblyman Atkinson:
I would like to make the same disclosure.

Chairman Conklin:
Are there any questions from the Committee? I see none. Mr. Peek, I would like to reiterate once again the willingness of the bill sponsor to work with you.

Roberta Ross, President, Northern Nevada Motel Association, Reno, Nevada:
I am also the owner of the Ross Manor Residential Hotel and Apartments in downtown Reno, where I have 162 units which I rent out on a weekly and monthly basis. This is an example of what most people call a weekly rental and a motel. As a motel association, we are able to make impacts on over 160 weekly rental landlords in Washoe County. These motels house thousands of weekly renters, families and, single occupants. While we understand the

good intentions of A.B. 313, the Motel Association feels that the bill does not understand the unintended consequences. The motels that rent both weekly and monthly to lower socio-economic layers of our populations work very hard with payment plans and move-in specials to keep a roof over these tenants' heads, and keep our units filled. It is not an easy business to rent weekly in motels. We are able to work with the tenants in what we call creative payments. We know the existing laws allow us to work with tenants where we are able to work out their problems. Our goal is to keep tenants in our units and paying their rent. It is not to collect late fees or evict them. We do not make our money from that. Our working with the tenants to make payments is how tenants who have financial problems stay housed. We work with many tenants every week and on a monthly basis. By tipping the scales away from the property rights that we have as landlords, the bill makes it increasingly difficult to work with the tenants.

Landlords often waive the late charges when warranted. The right to impose an immediate late charge of a minimal financial consequence will severely restrict the landlord's ability to provide an incentive for the tenant to stay housed. Weekly housing is a big component of keeping potentially homeless people off the streets. Please understand that in a weekly motel rental world, tenants usually make very little money, do not know how to take care of their money, and may live on mental or health funding, assisted housing, or disability subsidies. If this bill passes, the Motel Association feels that the weekly housing will be forced to rent only on a monthly basis or fall into selling out or into foreclosure. It will no longer make economic sense to stay in the weekly business.

Please understand that it is not that the late charges provide us with too much income, it is an incentive for weekly tenants to pay on time. The existing law works for the benefit of both the landlord and the tenant. Please do not forget that the system is not broken.

In closing, the Motel Association would like to emphasize that this bill, if passed, will create severe financial harm to motel owners which will have a dramatic negative impact on tenants who can afford to pay only weekly. The rent will be increased to cover the rent not received from those individuals who take advantage of the bill by paying their rent consistently late or not paying at all.

The prior testimony is very confusing in relation to subsection 1 of section 1. The bill says "A landlord shall not require, as part of a rental agreement, the tenant to pay a late fee for late or partial payment of the rent in excess of the provisions of this section." Paragraph (a) of subsection 2 of section 1 says it

has to be "[a]t least 5 days overdue, but less than 10 days overdue, a landlord may charge a late fee not to exceed 2 percent of the periodic rent." Please let us know what happens from days 1 through 5. It is our assumption, from reading this bill that a landlord cannot charge the late fees before five days. In the case of weekly, it reads "if the tenancy is from week to week and the rent is: At least 3 days overdue but less than 7 days overdue, a landlord may charge a late fee not to exceed 2 percent of the weekly rent." [Paragraph (a) of subsection 3 of section 1] Does this mean that we cannot charge a late fee until the 4th day, and there is nothing from day 1 through 3? We feel that needs clarification.

Chairman Conklin:
In doing some quick research on landlord and tenant dwellings, which is *Nevada Revised Statutes* (NRS) Chapter 118A, I am trying to decide. I will ask Legal if this applies to hotels and motels.

Roberta Ross:
Hotels and motels do dailies and weeklies through the Reno-Sparks Convention and Visitors Authority (RSCVA). If we take on a weekly tenant, we have to pay a motel tax as well as all our other taxes. If the tenant does not sign a 28-day contract, we are considered a motel.

Chairman Conklin:
That is my point. I do not think this applies if you are a daily or weekly motel for the simple fact that if you are being treated as a motel, then there are other statutes in NRS that would cover you.

Roberta Ross:
We go by NRS Chapter 118A to go to court or to evict tenants. We might try to go as innkeepers; we may have that chance, but I personally do not use that.

Chairman Conklin:
So, a motel owner must use NRS Chapter 118A to remove tenants?

Roberta Ross:
He can use NRS Chapter 118A. There is an innkeeper law and a weekly rental law.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Gansert:
What are your typical late fees, and are they levied on the first day that rent is due?

Roberta Ross:
I can speak only for my business. A typical late fee on a weekly rental is $5 per day. We need to get a weekly rental person to pay attention to that $5 right away.

Assemblywoman Gansert:
I do not understand the discussion you had with the Chairman.

Roberta Ross:
The city of Reno considers us a business rental. The RSCVA makes us pay room tax for the first 28 days. A person who pays a weekly rent is considered a weekly renter. If a tenant does not sign a contract for 28 days, he is responsible for paying taxes. We use NRS Chapter 118A to remove him from the apartments.

Assemblywoman Gansert:
So, a weekly renter who will stay for 28 days will be charged room tax?

Roberta Ross:
No. If he signs a lease to be there for 28 days, he does not have to pay room taxes. If they skip, the landlord is responsible to pay that room tax.

Jon Sasser:
To clarify, NRS 118A.180 talks about the applicability of that chapter that says if you are in a motel and you stay for more than 30 consecutive days, you are considered a Chapter 118A tenant. You may also be considered an NRS Chapter 118A tenant if you manifest the intent to stay longer than 30 days.

Chairman Conklin:
From a practical standpoint, how do you think this bill would apply in the case that Ms. Ross stated, where you have a weekly tenant. Does this apply to a weekly tenant or is that the intent?

Jon Sasser:
This would be an amendment to NRS Chapter 118A. It would apply to tenants who are covered by that chapter. That is, those who pay weekly but stay more than 30 consecutive days, or, those who have manifested an intent to stay longer than 30 days.

Roberta Ross:
Mr. Chairman, in October of last year, RSCVA changed our rules. If a person comes in and pays ten days rent at one time, they no longer have to pay room tax. So, at that time, they are immediately weekly renters, they no longer have to stay the 30 days.

Chairman Conklin:
Who did that? Who passed that rule?

Roberta Ross:
The Reno-Sparks Convention and Visitors Authority passed that rule, which applies to the entire Washoe County. Washoe County, the City of Sparks, and the City of Reno all agreed to this provision.

Chairman Conklin:
I understand the tax situation, but the RSCVA has no authority over NRS. They cannot change it or do anything to it. What we are talking specifically here is whether this applies to your weekly people who have no intent of staying 28 days, actually the statute reads 30 days. We are just trying to clarify. I want to make sure that we have it right.

Roberta Ross:
I came here as a Motel Association representative. Linda Howe is here as a Ross Manor representative. She could clarify that for you in a clearer manner than I am able to do.

I can guarantee that when those people who stay under 30 days, who are weekly, are given notices to move, we have to file evictions for them. It is the same pattern as if they are there over 28 days. It is not 30 days in Washoe County, it is 28 days.

Assemblywoman McClain:
I am wondering if there is anyone here who can explain the ordinances in Clark County. I understand the 28-day tax implication.

Jon Sasser:
The confusion here is that there are three separate bodies of law that cover three separate things. *Nevada Revised Statutes* Chapter 118A covers what can be in leases and what the rules of conduct between residential landlords and tenants are. That is what this bill attempts to amend on late fees. The local ordinances govern who does or who does not pay room taxes locally, and that is an entirely separate issue from late fees. Then, NRS Chapter 40 governs evictions and what notices people get for eviction. What we are focusing on,

solely, in this bill is NRS Chapter 118A which governs what can be or cannot be in leases and residential landlord and tenant situations. That does apply to weekly rentals if you stay beyond 30 days or manifest the intent to stay longer than 30 days. If you are there less time, then this late fee limitation would not apply.

Chairman Conklin:
What is the legal standard for manifesting intent to stay 30 days? Is that a signed contract for 30 days?

Jon Sasser:
It is worded broadly so you can bring in any evidence that you might have. If someone registered his car at that address or registered his children at school, it is like trying to prove residency in general. You look at whatever evidence is there. The safe thing to do is to assume that the tenant might stay longer than 30 days and if you are going to evict, use the NRS Chapter 40 eviction so that you will not run into someone saying he was really an NRS Chapter 118A tenant. That is the safe approach. There is nothing in the statute that says you prove intent to stay by doing just these things and not these other things.

Chairman Conklin:
In this particular case, how would one of Ms. Ross' constituent members know when someone has manifested the intent to stay 30 days? Or is it in her best interest to treat everyone who comes as a weekly renter? Is she to treat everyone who has been there one week as if he is going to stay 30 days, and apply this charge that way, or have a different charge until such time as he has stayed more than 30 days?

Jon Sasser:
I appreciate her dilemma. It is a judgment call. To clear this up we could say that the late fee provision does not kick in for weeklies until they have been there 30 consecutive days.

Assemblyman Anderson:
I do not think the RSCVA was trying to usurp anyone else's authority. They were trying to treat the week-to-week rental so that it was not considered a hotel room and being taxed as a hotel room.

Vice Chairman Atkinson:
Ms. Ross, did you have further testimony?

Roberta Ross:
I would like to say that the under-30-day treatment of weeklies does not have anything to do with the late payments. After that 30-day period, the tenant is still paying weekly rent. The point from the Motel Association is when a person pays seven days rent at a time, he usually has only very few dollars. If you do not hit him right away with late charges, he will "stiff" you if it goes beyond two or three days. We need to have the ability, even after the 30 days, to do a late fee up front on the first day. It will become very difficult for the landlord to operate a business if he cannot get rid of the bad tenants.

Vice Chairman Atkinson:
Are there any questions from the Committee? I see none.

Jennifer Chandler, representing Northern Nevada Apartment Association and Nevada Court Services, Reno, Nevada:
[Spoke from prepared testimony (Exhibit J).]

I want to speak to some of the documents Mr. Sasser distributed. There are people who take advantage and charge excessive late fees. In northern Nevada there are over 2,000 apartment complexes, and from what I see on this database, it is a conglomerate of all of Nevada. Late fees are something that the landlords and the managers use as tools to get people to comply with the agreements that they had signed. They signed the agreement and should be held to it. We do not have forms for nonpayment of late fees. We have forms of eviction for nonpayment of rent.

An eviction service can be done in our company for a flat rate of $36. That is automatically passed onto the manager or landlord, who in turn would pass it on to the tenant. Those are fees that are going to be incurred simply because a tenant did not pay his rent on time. When a tenant disputes the eviction notice and ends up in court disputing the late fee that he is being charged, the courts do not usually grant it due to the fact that the late fees or court costs, or filing fees, or anything else that is not rent is to be obtained through a small claims procedure. Those fees cannot be attached to the rent.

The courts rely heavily on the word "reasonable." The court will not grant any kind of late fee or any attachment to the rent of something that is not "reasonable." In this state, holding someone's belongings in the unit for 30 days after he has been evicted is something that is required, and the landlord can charge reasonable storage fees. We cannot charge anymore than a reasonable storage unit fee. The courts are very win-win oriented when it comes to making sure that they have a happy medium between the tenant and

the landlord. There are those people who charge unreasonable fees, but not so many that we need to change the law.

There are those people who may need that five-day grace period. They may need that little bit of extra time. I work with hundreds of apartment complexes and management companies, and Mr. Peek's policy is very lenient. This is an economic hardship for everyone and they are trying to keep their occupancy up. They are not trying to go eviction crazy and lower their occupancy rates.

The more the tenants can be in contact with the landlords the better. Many times the landlord would waive the late fee if he could be assured the payment would be made on a certain date. I think there should be some kind of "good for one, good for all" type of policy in place which would say whether you are late or not, you will have the same penalty as someone else. Logically, you probably should not be living in a place that you cannot afford. You need to go live somewhere else where you can afford the rent. It is a matter of budgeting. I think it has hit everyone, and you will see more of these things happen.

People are going to have to change their contracts. They will have to waive security deposits. The late fees are being reduced drastically. If the rent is $850, then at 2 percent the late fee is $17. For that amount of time and that amount of fee, the tenant might think why not be late? There is no incentive for them to be on time. A late fee is a tool that is used to be able to get people to comply with their rental agreements that they so eagerly signed. If we cannot uphold that, we are giving the tenants everything, and there is nothing the landlords can do to get people to conform with the rules that they signed and agreed to.

One of the items Mr. Sasser submitted was a copy of a bill from Wells Fargo with regards to what the late fee would be on his mortgage. Please keep in mind that we are not loaning money. These are rentals on a monthly basis. We are not charging interest. Fees are tools to get people to abide by the rules. Even the late fee on this loan is less than 5 percent. That is a great rate if you loan the money. These tenants are not borrowing money, they are renting something by the month that they agreed to pay for at a certain time. That is what landlords expect and what the owners and the investors expect, so they know what to expect when it comes to paying their own mortgages. We are not going to be able to tell mortgage companies that they will be paid when the rent is paid.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Linda Howe, Manager, Ross Manor, Reno, Nevada:
I have been in the rental field for 25 years. We oppose this bill. As landlords, we work very hard to retain and reward our good tenants. This bill discourages tenants who consistently pay on time, especially when they see that their neighbor next door always pays late and never has a financial consequence for at least three to five days, and then only of 2 percent. This bill allows and even encourages tenants to pay three to five days late. There is no immediate financial consequence for paying late. We do a lot of weeklies at Ross Manor, and by the time a weekly tenant is three days late, he is in trouble. He has either spent his paycheck or lost his job. He will not have any money until his next pay day. After four more days, he now owes an additional week. By this time he is two weeks behind in his rent. A weekly renter lives week-to-week. A tenant in a weekly rental situation can pay only one week at a time.

The late fee as proposed in this bill gives no incentive for prompt payment. A weekly rental at Ross Manor is $100. If a tenant is late for three days at 2 percent, we collect $2. On the seventh day that he is late, we collect an additional 3 percent, or $3, for a total of $5. This person now owes us another $100. Now we have a bill of $205. The tenant who is in this kind of situation will leave us after the second week, not paying any of it. He will go on to the next weekly and the same scenario will happen again to the next weekly person. Charging a late fee, up front, does two things. It will either force the tenant to leave because he cannot pay the rent, or it will encourage him to use his money, when he gets it, and pay us on time.

As landlords, we have the same bills that you have. We have mortgage payments, operational expenses, utilities, et cetera. We have to pay our bills on time. If we do not get our money on time, we cannot pay our bills.

We are asking you to please reconsider the time delays with this bill, especially for weekly payers.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Keith Lynam, Chairman, Nevada Association of Realtors, Las Vegas, Nevada:
We are opposed to this bill for some of the reasons that have been discussed, in particular the threat and the imposition of the late fee we feel is a deterrent to having late payments. The examples used and utilized are real. The late fees for $1,000 rent are comparable to the mortgage that was used as an example. Think about that, it would equal the late fee. We cannot negotiate with the bank to waive our late fees for our members who are in that situation.

Additionally, this bill proposes to take away the ability of the landlord to collect late fees from subsequent monthly rent payments. This takes away the incentive for the tenant to ever pay on time. Where are the protections for the tenants? Nevada law is explicit. Rental agreements are required to set forth, and I quote, "charges which may be required for late or partial payment of rent or for return of any dishonored checks." Tenants who do not like the provisions of that rental agreement can walk. They do not have to sign it. They do not have to enter into that agreement. The same can be said of the landlord who goes to acquire the mortgage. If he does not like the late fees that are set out by the bank, which are required, he can go look for another mortgage. It is a two-way street.

We believe that this bill will restrict the ability of the landlord to contract the amount of the late fee according to his own standards which will reduce the availability of the rental units to tenants with less than stellar credit, less than stellar income, and would act as an incentive for landlords to initiate early eviction for those very same tenants who build up late fees. This bill would harm tenants and landlords alike.

Chairman Conklin:
Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition to A.B. 313? I see none. Is there anyone in the neutral position? I see none. We will close the hearing on A.B. 313. Ms. Pierce, could you work with some of these opponents to see if there is an opportunity to find some common ground? Please keep me posted.

We will open the hearing on Assembly Bill 405.

Assembly Bill 405: Revises provisions relating to the Division of Industrial Relations of the Department of Business and Industry. (BDR 53-513)

Assemblyman David P. Bobzien, Washoe County Assembly District No. 24:
I think this is a simple bill but, more importantly, it is an interesting bill in that it is very focused on a particular situation in the district that I represent. This situation has broad implications going forward in the state as we seek to find new ways to gain energy and water efficiencies. You should have a copy of a *Reno-Gazette Journal* article (Exhibit K) from last summer detailing the University of Nevada, Reno's (UNR) attempts to install a water recirculation unit in a refrigeration and chiller room at the new Joe Crowley Student Union building in which there was some conflict with Nevada Occupational Safety and Health Administration (OSHA) over safety codes. This bill is an attempt to right that situation and hopefully return a little bit of common sense to not only this particular situation, but also look forward to the future for other such conflicts.

I have with me Regent Jason Geddes and Mr. John Sagebiel who is UNR's Manager of Environmental Affairs. They would be happy to present the particulars of this situation and give you a background of the bill.

Jason Geddes, Board of Regents, Nevada System of Higher Education, Reno, Nevada:

We are bringing this bill forward because last year when we were finishing construction of the Joe Crowley Student Union building at the University of Nevada, Reno, we ran into a problem regarding constructing the building to be as energy efficient and green as possible per the students' requests and demands. We were looking at all the options we could incorporate into the building, a green roof was not an option, but we realized we had a lot of rinse water coming out of our facility. We had put in an evaporative chilling system for the building that would provide the primary cooling for the building. In order to keep scale from building up on that system, similar to a small cooler that you would have in your home, it requires the system to rinse with fresh water to keep that scale from building up. We decided that since we had such a high volume of fresh water used in the rinse, we could collect that water, put it in a cistern, and use it to water all the plants around the building. In that way we would not have to dispose of the water, and we would not have to buy fresh treated water for watering the plants.

We ran into conflicts with state code as it got closer to occupying the building and turning on the chiller. The state Public Works Board had been a member of the entire design team all the way through construction, and they had agreed that putting in such a cistern and watering system was agreeable to state code. It was not until OSHA came through and was inspecting the mechanical room that they said it did not adhere to code. We had spent a lot of time and money and ran into this conflict between the state Public Works Board interpreting it one way and the state OSHA interpreting it another way. We could not get a resolution because there was no way to get those two agencies to decide that one was right and one was wrong, or that it was a better situation for all of us.

We are hoping, with this bill, to allow state OSHA and state Public Works Board to sit down and try to reconcile the need for more energy efficient buildings and let us look at some innovative ways to do it. We should be able to agree to move forward on it. In this situation, we ended up hitting July, and they still would not certify the room. It became too hot for the swamp cooling system to keep the building cold. We had to turn on the chiller, so we had to tear out the water system.

John Sagebiel succeeded me as the environmental affairs manager at the University. He was actually there when they ran into the problem. I was there

during the design phase, so we are both here to answer any questions you might have.

Chairman Conklin:
I have a concern with line 38 of the bill, where we are talking about operating costs, repairs, replacements, et cetera. Listed in that area we have added "contract labor costs." Why is that in the bill?

Jason Geddes:
I would have to defer to bill drafting for that. My assumption would be that when we were looking at the language to put into the bill, we looked at NRS Chapters 332 and 338 which have provisions on energy retrofits and what costs and changes to a building would make sense. That language is in those sections. I do not know why that was added to this bill.

Chairman Conklin:
What I am concerned with here is that the bill not interfere with standard contracting rules associated with government properties and prevailing wage. That is not the intent, right?

Assemblyman Bobzien:
This might be a good question for Legal. The direction in drafting was to go ahead and use language from one section and apply it in this bill. We would be willing to look into that.

Jason Geddes:
That language was specifically put into NRS Chapters 332 and 338 to ensure against what you are suggesting. It was to make sure that in the contract, labor costs were part of it and not excluded from it.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Anderson:
We are not abrogating a responsibility of the state to set a higher standard of behavior than those that are set by the federal regulations, are we?

Assemblyman Bobzien:
Yes, except as otherwise required by federal law or regulations, so it is our intent not to be crosswise with any higher standards or additional standards that may come into play.

Assemblyman Anderson:
Are we not abrogating our standards entirely to the federal government, either to the bottom or the top? I have no problem if they are going to have a higher standard than we do. I have a disagreement if we have a higher standard than they do. We might have concerns in the future.

Assemblyman Bobzien:
I would look at this as a balance between safety and efficiency, and so we are striking a different balance. Hopefully, we are not abrogating our responsibilities to provide a safety standard, but that would be one way to look at it.

Jason Geddes:
That was not our intention. Our intention was that since we had a set of codes that was interpreted one way by state Public Works and a different way by state OSHA, that we provide a mechanism for those two agencies to have a debate and discussion and not run into a brick wall where they are not willing to look into each other's side of the fence.

Assemblyman Anderson:
While we are not saying the federal regulations were right or the state was right, all this bill is going to do is provide that there is a mechanism for the debate to take place?

Jason Geddes:
That is correct, that is what we are trying to do. We ended up in our situation of going up and down the chain of Public Works Department and the Public Works Board and up and down the chain of OSHA, and we could never get the two to communicate on how they were interpreting the same language.

Assemblywoman Gansert:
This talks about being "cost-effective." How do you define cost-effective? Is there a payback period or what?

Jason Geddes:
It would be determined on a case-by-case basis. In our case we did a cost analysis where we could show the savings of installing the system because it was an increased cost based on the code and how we were building it to put in the cistern. When we calculated in the long-term savings from the water and sewer disposal, it made sense in that application. There is more language in NRS Chapters 332 and 338 that better defines cost-effective.

Assemblywoman Gansert:
My concern is with the words "must" and "cost-effective" which are not defined. At times we had different time frames to use for payback to determine cost-effectiveness.

Chairman Conklin:
Are there any questions from the Committee? I see none.

John C. Sagebiel, Environmental Affairs Manager, Environmental Health and Safety, University of Nevada, Reno:
I am here to support this bill. I think looking forward, the state is going to need to have opportunities to engage in new and innovative ways of building our buildings that are more efficient for all kinds of parameters. I think this kind of a process will be essential. In many cases the codes have not caught up with the technology.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Kyle Davis, Policy Director, Nevada Conservation League, Las Vegas, Nevada:
I do not have much to add. I think it was explained very well. The environmental benefits of putting a policy like this in place for future buildings are great. I am in support of the bill.

Chairman Conklin:
Are there any questions from the Committee? Legal has advised me that the "contract labor" language was used for consistency in how operating cost savings measures are defined in NRS 333A.040. This is not a labor/wage issue; it is strictly for consistency across chapters and does not affect prevailing wage and other wage matters.

Is there anyone else wishing to testify in support of A.B. 405? Is there anyone wishing to testify in opposition? Is there anyone wishing to testify in the neutral?

Don Jayne, Administrator, Division of Industrial Relations, Department of Business and Industry:
We sent an email to Assemblyman Bobzien to raise the question about what particular section of NRS we have this in. As is often the case with OSHA matters and other safety matters, it is confusing as to what section is involved and the section that controls the inspection of boilers, elevators, and pressure vessels is NRS Chapter 455C. I think the bill drafters preferred taking it into NRS Chapter 616 to make it broader in nature, but NRS Chapter 616 is specific

to OSHA, and the two are governed by different standards. We would like to try to work with the bill drafters or the sponsor to try to craft it into the appropriate sections. It may, in fact, be in both sections.

Chairman Conklin:
Are there any questions from the Committee? I see none. Mr. Bobzien, would you please work with Mr. Jayne and find out if this is an issue?

Assemblyman Bobzien:
We did have that email exchange and I did obtain an opinion from Legal. The Legislative Counsel Bureau seems to think it is not an issue. I would be willing to share that email with you.

Chairman Conklin:
Please forward it to Mr. Ziegler, Mr. Bobzien, and our Committee Manager, Mr. Diss, so that we can share it with committee members and also share it with Mr. Jayne.

Are there any questions from the Committee? I see none. We will close the hearing on A.B. 405.

We will take up the matter of Assembly Bill 512 again, and I will entertain a motion.

> ASSEMBLYMAN ATKINSON MOVED TO AMEND AND DO PASS ASSEMBLY BILL 512.
>
> ASSEMBLYMAN MANENDO SECONDED THE MOTION.

Chairman Conklin:
Is there any discussion?

Assemblyman Horne:
I was under the impression that this bill would be discussed in relationship with the bill that I have.

Chairman Conklin:
I think this bill works in tandem with your bill.

Assemblyman Horne:
There are some references to surety bonds and renters.

Chairman Conklin:
The only thing that this bill does is provide provisions in statute that govern the use of surety bonds. It does not require them. Your bill, as I understand it, requires certain protections. It may be that in your bill this would be one of the options, but this bill, as amended, only speaks to the rules if you are going to use that option. There is an amendment.

> THE MOTION PASSED. (ASSEMBLYMEN BUCKLEY, GOEDHART AND SETTELMEYER WERE ABSENT FOR THE VOTE.)

Assemblyman Christensen:
I would like to reserve my right to change my vote on the floor.

Chairman Conklin:
We will open the hearing on Assembly Bill 513.

Assembly Bill 513: Makes various changes to provisions governing licensing of escrow agencies and mortgage brokers, agents and bankers. (BDR 54-1136)

David Goldwater, representing Mortgage Advisory Council, Las Vegas, Nevada:
Good regulation is always a solid partnership between the people who are being regulated and policy makers. This bill represents that excellent partnership, and I would like to commend our working group. Assemblyman Conklin works year round on these important issues to protect consumers and make sure that we have a good industry. We also work well with Joe Waltuch, the Commissioner of the Division of Mortgage Lending.

The goal of this bill and the goal of all our regulations are to advance the professionalism of the mortgage industry. It is important that what we do is viewed as a profession by the people who participate in it, and I think this bill does that. We have made a lot of progress in this area in the regulations over the past ten years. The current stresses on the market have become the ultimate stress test for whether or not this market or these regulations are working. Over the past five years we have had tough times. If the current market conditions would have happened five or ten years ago, we would have had much finger pointing, blaming, receiverships, and bankruptcies. Instead, because of what this body has done over the past five years, we have good participants involved in the market, working with borrowers and investors and homeowners, trying to get out of this.

We want to maximize the value of the underlying assets that are mortgaged. When market fundamentals return to normal, we want to make sure that the

professionals that are involved in the mortgage industry have a significant role to play. We do not want to do things that are punitive, we want to be sure we have a good solid regulatory scheme.

I would like to walk you though A.B. 513. Section 1 has to do with construction control. Construction control companies must file bonds with the state Contractors' Licensing Board. There is currently no licensing or regulatory authority over them, and aggrieved persons must sue to obtain relief. Monies they hold are also not subject to audit. This bill would permit the Division of Mortgage Lending to exercise oversight over these companies and suspend or revoke licenses for violations. Some of you in northern Nevada might remember a company that was engaged in shenanigans with their construction control. Construction control is when you make a construction loan. They use a professional third-party to draw the money down.

Section 3 deals with the fact that currently there are no education requirements for escrow agents to operate as such. Anyone can become an escrow agent without knowing anything about the escrow business. This section, along with section 4, would require the Commissioner to adopt both pre-licensing and continuing education requirements for escrow agents, much like the education requirements for mortgage brokers established in Assembly Bill No. 375 of the 74th Session.

Section 5 of the bill would permit the Commissioner to discipline the escrow agent or escrow licensees after their licenses have expired or been surrendered for conduct that occurred prior to the expiration or suspension. This closes a loophole in the law that would permit someone to surrender a license or let it expire prior to disciplinary action. After that is done, they claim the Commissioner has no jurisdiction over them. That section is based on a similar section that is already in the real estate law.

Section 6 permits the Commissioner to subpoena documents without the necessity of requiring the subpoenaed party to be present to testify about them. In almost all instances of subpoena the Division does not seek the testimony at that time, and subsequently waives the required attendance. This simply clarifies the law so that the subpoenaed party need not be present.

Section 8 amends and codifies a portion of the Division's current regulation regarding the servicing of private investor loans. It would permit 51 percent of the investors to direct matters pertaining to the loan, rather than the current regulation permitting such direction only in the event the loan is in default. There needs to be a few changes to section 8. First, we need to clarify how the 51 percent is calculated. The intent is to be 51 percent of the money in the

loan, not the number of investors. There is also no requirement that it be in writing in the bill, and we want to make sure that the 51 percent is in writing. This is how it is currently operating. We just want to codify it in statute.

Section 9, like section 5 for escrow agents, would permit the Commissioner to discipline a mortgage broker licensee after his license has expired or been surrendered for conduct that occurred prior to the expiration or suspension.

Section 10 deletes an exemption given to consumer finance companies from having a mortgage broker's license. This is deleting an exemption. Therefore, consumer finance companies would be covered under this section. We do not have anyone currently in this business in Nevada, but they are starting to pop up in different states. That would be someone who comes in and calls themselves a consumer finance company and starts doing loans under $5,000 to people. It is almost like a payday loan, but a different type of almost predatory lending. If they do start doing this type of business we want them to have to register with the state.

Section 11 complements the change in section 10 to be sure the person seeking an exemption for licensing as a mortgage broker in Nevada, be experienced in mortgage lending, and have the authority to do so under their home state's authority.

Section 12 permits the Commissioner to subpoena documents without the necessity of the party being present.

Section 13 requires a mortgage broker to disclose the fees he is earning on the loan, who pays those fees, and the impact those fees will have on the loan. This is done in many other states. Mortgage brokers would be required to provide information about yield spread premiums paid by the lender, and a more full disclosure of the costs of the loan. This will increase competition as consumers search for better deals. This section also amends the requirement that all loans include a fee for loan servicing thus deleting any conflict with conventional home mortgage loans purchased or insured by Fannie Mae. This is an important part. The failure of a loan servicing company made it unattractive for any other company to take over those loans and help those people out.

Section 14 will permit the Commissioner some latitude from having to revoke a mortgage broker's license for some unintentional violation of the law prior to the license being officially issued. This part will give the Commissioner discretion so that if a person did not get a document in on time, The Commissioner does not have to revoke that license.

Section 15 would permit the Commissioner to discipline a mortgage banker licensee after his license has expired or been surrendered.

Section 16, like section 10, deletes the exemption for the consumer finance company. Under current law the licensed consumer finance company in another state, permitted by that state's licensing board to make unsecured loans of $3,000 or less with no experience in mortgage lending can claim the Nevada exemption. This section deletes that exemption.

Section 17 complements the changes in section 16. Section 18 permits the subpoena of documents.

Section 19's intent was to try and deal with the self-dealing that is involved. We would like to completely delete this section. It does not belong in *Nevada Revised Statutes* (NRS) Chapter 645F or in this bill.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Anderson:
I am concerned about the subpoena question in sections 6, 12, and 18 of the bill. Is the intent to make the subpoena specific as to what is needed?

David Goldwater:
It is more along the lines of being able to subpoena a box of files rather than having to subpoena the party.

Assemblyman Anderson:
Sometimes in searching for a particular document, it might be important to have the whole box and not just the specific document that you are looking for. You often find it in another section of the paperwork. This would not take away the ability to get the entire box. Who is going to make sure that the documents have been copied in their entirety?

David Goldwater:
The Commissioner would make sure. This would be like any other subpoena or any other production of documents. There are severe penalties for not producing the entire requested documents. The goal of this was not to have the person appear, just the documents.

Assemblyman Anderson:
In section 8 of the bill, on page 4 where you talk about the 51 percent and contemplate the dollar amount of the loan, why are you using 51 percent rather than simple majority of the dollar amount?

David Goldwater:
I am not sure I understand the question.

Assemblyman Anderson:
I want to know the difference between a majority and 51 percent.

David Goldwater:
Okay. I think it was an arbitrary number. The problem we are trying to solve in section 8 are these multi-beneficiary trust deeds, and a lot of the issues that need to be dealt with after a default or foreclosure. You essentially have a group of people who do not know each other who are partners. There are a lot of decisions that need to be made. Generally we have relied on the fact that the people with the most money should have the ability to make the decisions so that something does not get locked up. Whether it is a simple majority or 51 percent, it is up to your discretion and your legal counsel's discretion.

Assemblyman Anderson:
I have an observation. Fifty-one percent is a line as compared to a majority. I was wondering if there had been some reasonable discussion about why the 51 percent was included in the bill.

Chairman Conklin:
The 51 percent is a flat number. If you had $100,000, it would be $51,000. What you are asking for is a majority, which would be 50 percent plus one penny. The question becomes would that 1 percent allow someone who was not the majority holder the ability to hold up the decision making.

David Goldwater:
It is completely arbitrary. We could use simple majority or 51 percent. The hope is that we can have a group that is governed by the bulk of the financial interest in the loans, so that you do not leave borrowers and investors frozen in a position where a small minority can adversely affect what would be positive for the rest of the group.

Chairman Conklin:
Is it currently the case that if this is not enumerated that would happen?

David Goldwater:
Most of the people in the business today are relying upon the 50 percent rule, but it is not clear in statute. The Commissioner has passed a regulation, title companies and courts have called on policy makers to make this clear.

Chairman Conklin:
Is the Commissioner's regulation 51 percent?

David Goldwater:
Yes.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Christensen:
I had the same question regarding the 51 percent. In corporate governance when you are dealing with shareholders, there may be one shareholder that has 49 percent and another with 2 percent and those two together could establish the 51 percent.

Is the intent of this bill to cover all existing loans that are out there now, or is it every loan that is created from the effective date of this bill?

David Goldwater:
The intent is to have section 8 apply to all existing loans. It is currently the practice. We just want to codify the current practice and create some clarity. If that is not clear in the statute, we need to amend the language to reflect that.

Assemblyman Christensen:
I appreciate that. I would like to see the passage of this bill and want it to affect everything that is currently out there.

Chairman Conklin:
Are there any questions from the Committee?

Assemblywoman Gansert:
Could you please explain section 13, which speaks to a private investor who has acquired a beneficial interest in the loan? I am not clear on that point.

David Goldwater:
There were two problems that occurred in the USA Capital case. They had a fund that invested and then they had the multi-beneficiary trust deeds that were governed by NRS Chapter 645B. That is the area this state is mostly concerned

with. USA Capital serviced their own loans. When that company closed, there was no one to service those loans. There were many things that needed to be done with those loans. It was very difficult for the bankruptcy court and the receiver to dispose of those loans because there was no fee attached for servicing. There was no incentive for anybody to do the things to make the investors whole. What we are attempting to do with this section is to make sure that when someone makes a loan, there is some servicing fee included that follows that loan, so there is always somebody there to service the loan. That servicing fee sometimes is paid by the borrowers and sometimes by the investors.

Chairman Conklin:
Are there any questions from the Committee? There is also in statute or regulation that a hard money lender, who is also involved in the loan, itself, has to disclose that fact is that right?

David Goldwater:
Correct.

Chairman Conklin:
That is why section 19 should be deleted, because it is already implied in current law that you can do that but you must disclose it.

Are there any questions from the Committee? I see none.

Is there anyone wishing to go on the record in support of this bill? I see none. Is there anyone wishing to testify in opposition? I see none. Is there anyone wishing to testify in the neutral position? I see none.

We will close the hearing on Assembly Bill 513.

[There was a short recess.]

Chairman Conklin:
The meeting is called to order. We will open the hearing on Assembly Bill 287.

Assembly Bill 287: Makes various changes concerning appraisals of real estate. (BDR 54-1019)

Assemblyman William Horne, Clark County Assembly District No. 34:
In the past few years we have witnessed one of the largest, if not the largest drop in home prices in the state's history. The housing bubble burst at the worst possible time as our state and the national economy were already in

decline. There were many causes for the burst in the housing market. Whether one cause is more responsible than the other is unimportant. What is important to our state is fixing any problem that was the cause of this unprecedented failure in the housing market.

One possible cause of this failure was the lack of oversight in real estate appraisals. Specifically, there are problems with oversight of the real estate appraisal management companies. These companies placed undue pressure upon real estate appraisers and hampered the appraisers' independent judgment. This bill will regulate appraisal management companies and it will primarily prevent these companies from interfering with the independent judgment of real estate appraisers. This bill will also prevent real estate and mortgage brokers, agents, and others from interfering with the independent judgment of the appraisers. This bill will also regulate the way in which compensation can be paid to real estate appraisers.

To my left is Mr. Brunson who will present the bill in more detail.

Michael L. Brunson, representing Coalition of Appraisers in Nevada, Las Vegas, Nevada:

I have the honor to serve as the 2009 Vice President and the 2009 Government Relations Chair for the Coalition of Appraisers in Nevada. I am a certified residential appraiser in the State of Nevada and in Utah. I am also certified by the Appraisers Qualification Board of the Appraisal Foundation to teach the uniform standards of professional appraisal practice. I would like to especially thank the sponsor of this bill. He and his staff have been a pleasure to work with and extremely patient as this is my first time and the Coalition's first time going through this legislative process. I would like to apologize for handing you such large amendments (Exhibit L, a summary; Exhibit M, and Exhibit N) with your busy workload. We were unaware of deadlines and there were some miscommunications.

The issue of appraiser independence has long been recognized as important by federal and state regulators, by industry groups, by appraisers, and the users of appraisal services. In 2002 I was present when former Housing and Urban Development (HUD) secretary Cuomo presented a keynote address to a group of appraisers in Las Vegas. Among other things, he mentioned that housing was the mother's milk of the nation's economy, and that the residential appraisers were gatekeepers watching over this important aspect of the economy. He went on to address the looming housing bubble by referencing the savings and loan crash in the mid 1980s. The overall point in his address was that the same behavior that was ultimately vilified and criminalized had been going on for

decades. The extreme behavior was overlooked because of extreme profits until the point where it was no longer possible to ignore.

In 2004 and 2005, Nevada led the nation in home price appreciation, the number of residential permits issued, and the value of raw land appreciation. In the frenzy of that market it was not only records, but also laws, regulations, and guidelines that were being broken.

Once again we see that extreme markets tend to occur with extreme behavior. Today, the housing bubble has burst. Many Nevadans that purchased or refinanced their homes during the period between 2004 and 2007 are upside down. Nevada leads the nation in foreclosures, in short sales, and in bank owned resales. We are faced with another extreme market and we believe it is time to take action against the extreme behavior that we have seen in the past which puts both the State of Nevada and the entire nation at risk.

As mentioned earlier, appraiser independence or the lack thereof has been and continues to be a significant contributing factor to the subprime mortgage crisis. Since 1989 and 1990 when the uniform standards were first referenced and when the existing *Nevada Revised Statutes* (NRS) Chapter 645C was enacted, it has been illegal under federal and state law for an appraiser to succumb to pressure of any sort that violates their independence, objectivity, and their impartiality in an assignment. Literally, hundreds of appraisers in the State of Nevada face disciplinary action every year before the Nevada Commission of Real Estate Appraisers. Many of those appraisers lose or voluntarily surrender their license. As it is written, this bill recognizes that it should also be illegal for the primary users of appraisal services, those that are licensed under NRS Chapters 645 and 645B, to improperly influence an appraiser.

Our first amendment will accomplish three things. It will make the bill more meaningful, and will allow meaningful enforcement. First, it expands section 3 of the bill by providing specific and real work examples of improper influence. Second, it provides application to any person rather than just to those persons licensed under NRS Chapters 645, 645B, and 645C. The example would be loan processors, real estate assistants, underwriters, credit managers, and any other non-licensed person that is involved in the ordering or the completion or delivery of an appraisal. Third, it establishes an administrative fine of $5,000 for violations of this law and just for the Committee's knowledge, that fine is modeled after existing NRS 645C.555.

At this point it might be appropriate for me to pause and take any questions on the first amendment that we are offering.

Chairman Conklin:
I think we will ask you to proceed.

Michael L. Brunson:
The second amendment that we are talking about is in regard to the registration of appraisal management companies. Appraisal management companies (AMC) are basically a lender's service entity. They sprang up about a decade ago and they offer bundled services to mortgage lenders, including managing lists of appraisers, placing orders, receiving payments for those appraisals, distributing payment to the appraiser, reviewing the appraisals, and ultimately delivering them to the lender.

Initially, this was seen as a way to promote appraiser independence by providing a separation between the loan originator and the appraiser. The separation allowed the major lenders to be in technical compliance with regulations. I say technical because what many lenders did was simply form their own subsidiary AMC and transfer the inappropriate pressure to that non-regulated entity. It is important to recognize that these AMCs are not subject to any state or federal regulation or oversight of any kind. This is where Mr. Cuomo, once again, enters the picture. Acting now as a New York State Attorney General, Mr. Cuomo along with Fannie Mae and Freddie Mac negotiated what is known as the Home Valuation Code of Conduct (HVCC). The HVCC is set to be enacted on May 1, 2009. Among other things, it prohibits mortgage brokers and real estate licensees from selection of appraisers if they wish to sell their mortgages to the secondary market. This forces independent appraisers to either work as staff appraisers for the primary lenders or to sign up with the AMCs.

The prohibition has spurred a dramatic increase in the number of AMCs across the nation and has caused some of that extreme behavior I referenced earlier to come into the light. There is currently a Racketeer Influenced and Corrupt Organizations Act (RICO) case that has been filed against one of the largest lenders and their subsidiary AMC, Countrywide's LandSafe. It is my understanding that Wells Fargo and their subsidiary, the Real Estate Lending Solution (RELS) AMC, have been added to or will be added to this case.

State and national regulators and industry groups support the concept of AMC registration and they recommend that the existing appraiser boards and commissions in the individual states are in the best position to regulate and oversee appraisal management companies. These friendly amendments will protect both the independence of the appraisers and the interests of the public. The primary features of these amendments (which are modeled after the Utah legislation which has been passed and is waiting signature by the governor),

provides regulatory authority to the Nevada Real Estate Division by requiring AMCs to register with the Division in order to do business in the State of Nevada. It provides definitions of key terms for better understanding and meaningful enforcement, and the appraiser independence section of that amendment, which is identical to the added language we put into the first amendment, defines and codifies many requirements to the Home Valuation Code of Conduct.

Chairman Conklin:
Did you bring additional colleagues with you?

Michael L. Brunson:
Yes, I have Pamela Kinkade, the President of the Coalition of Appraisers in Nevada, and Michael R. Cheshire who is a Commissioner of the Commission of Appraisers In Real Estate, Real Estate Division.

Chairman Conklin:
Is that just for support or do they have additional testimony?

Michael L. Brunson:
I believe they want to answer any questions and reference a couple of letters from the industry groups and from the Commissioner.

Chairman Conklin:
Because the amendment contains a fee, it changes the requirements of statute in terms of votes. I think you are trying to get at any person acting in the capacity of an appraiser without being licensed. I need to clarify that we are talking about people who are doing appraisals who should be licensed, but who are not. That is fine from the Commissioner's standpoint of governing those people, but we want to be careful that we do not cross the line to cover people who may be acting in some way that are not appraisers because the Commissioner does not have jurisdiction over them. There may be civil remedies available, but the Commissioner does not have jurisdiction over them. I want to make sure they are not caught up in the mix.

Michael L. Brunson:
I would like to clarify that. The reference in the summary is to an existing statute, NRS 645C.555 which does, in fact, give the Nevada Commissioner of Real Estate Appraisers the authority to impose an administrative fine against any person acting in the capacity of an appraiser. That statute exists. We are suggesting that A.B. 287 apply only to licensees, and there are many people in the process of ordering an appraisal and getting that appraisal delivered to a lender, including underwriters and processors, who are not licensed and who

can exert inappropriate pressure on appraisers. We are suggesting that similar to the existing NRS 645C.555 which applies to any person, that this regulation should apply to any person exerting undue or inappropriate pressure on an appraiser.

Chairman Conklin:
We will have to look at it. I am not sure if they are acting as an appraiser. Perhaps they should be licensed. But getting someone who is not under the jurisdiction of the Commissioner may be problematic. I will ask staff to look at it. We just need to clarify that and be sure we get it right. That is not to say they are not responsible; I understand where you are trying to go. I do not know if we can give the Commissioner that much jurisdiction. There may be other ways to get at that through civil processes.

Assemblyman Anderson:
If I acquire a piece of real estate and I want it appraised for estate purposes, I would have to go to an appraiser. Therefore, those people are currently licensed by the state. This bill would not change that status, would it?

Michael L. Brunson:
The appraiser's status would not be changed.

Assemblyman Anderson:
So, his standard of behavior would not be affected, in any way, by this bill, other than who he can be associated with?

Michael L. Brunson:
The appraiser's behavior will not change. The appraiser profession is highly regulated by both federal and state governments. Improprieties practiced by licensed or certified appraisers in the State of Nevada have and will continue to meet with significant oversight by the Commissioner of Real Estate Appraisers.

Assemblyman Anderson:
The purpose of this bill is to guarantee that the holders of the business do not intimidate the appraiser?

Michael L. Brunson:
That is absolutely correct.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Pamela Kinkade, President, Coalition of Appraisers In Nevada, Las Vegas, Nevada:
I support this bill. We are very excited about this bill. The whole nation is looking at what we are doing here in Nevada. Utah has already passed their bill and it is waiting for the governor's signature. New Mexico has also passed their bill. The west is ahead of the curve.

The information that Mr. Brunson gave you is unfolding every minute; it is coming down through the Internet and through the federal regulatory agencies. We are trying to place Nevada in a position where we can respond to what we know is coming.

On behalf of five of the professional organizations that have members in the State of Nevada, I have presented to you a letter of support (Exhibit O) which highlights some specific features to our bill that they are especially pleased with in terms of trying to maintain our professionalism and protect the people of Nevada. The organizations that have signed this letter are the Appraisal Institute, the American Society of Appraisers, the Property Economics Professionals, the American Society of Farm Managers and Rural Appraisers, and the National Association of Independent Fee Appraisers.

Chairman Conklin:
Are there any questions from the Committee? I see none.

Michael R. Cheshire, Commissioner, Commission of Appraiser of Real Estate, Real Estate Division, Department of Business and Industry:
I am here to direct your attention to a letter that I submitted to you (Exhibit P) from the Commission of Real Estate Appraisers. The Commission discussed this bill and the letter describes some real world instances of what is going on with appraisers being threatened not to be paid, or threats that they will "never work in this town again," et cetera. We think this bill will give us the tools we need to help Nevada protect its citizens and stay ahead of the industry in the United States.

Chairman Conklin:
Are there any questions from the Committee?

Assemblyman Settelmeyer:
Have the other organizations seen the amendment?

Pamela Kinkade:
Yes they have. They saw the bill as it was introduced, and they have also seen both of the proposed amendments.

Chairman Conklin:
Is there anyone wishing to testify in support of this bill? Mr. Horne, do you have additional people to testify?

Assemblyman Horne:
No, but I know that Gail Anderson is here to present a friendly amendment.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry:
The appraisers are under the regulation of the Real Estate Division, NRS Chapter 645C. The Real Estate Division has no opposition to A.B. 287. We recognize the issues caused by unregulated appraisal management companies, the issues that are caused by pressure that is put on appraisers, so we acknowledge that and support efforts to see that appraisals are fairly, accurately, and objectively prepared. I have spoken, briefly, to the Chairman and the bill's sponsor and I am requesting permission to work with the sponsor on a couple of technical issues in NRS Chapter 645C. I would give that information to Mr. Horne and work with him on those technical points.

Chairman Conklin:
Are they technical pertaining to the specific issues this bill is addressing, or are they technical and belong in this chapter but deal with something else?

Gail J. Anderson:
Yes, one of them is in a section that is open. It is section 4 of the bill. It adds language. It does not get at the exact nature of the two issues that are being addressed here. One of them is in response to our federal audit at the end of last year. It would assist us greatly to become compliant with our federal regulatory oversight in the area of continuing education. It is not specifically germane to the issues raised in A.B. 287.

Chairman Conklin:
I will ask you to work with Mr. Horne, but when we bring this bill up for work session, just so my Committee has a chance to hear the changes separate from what we have already heard, I would like you to be here so that you can answer any questions.

Gail J. Anderson:
I will be here.

Chairman Conklin:
Is there anyone else wishing to get on the record? We will close the hearing on A.B. 287.

[The meeting was adjourned at 4:35 p.m.]

RESPECTFULLY SUBMITTED:

_____
Patricia Blackburn
Committee Secretary

APPROVED BY:

_____
Assemblyman Marcus Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: March 25, 2009 Time of Meeting: 2:01 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 512	C	Dan Musgrove	Proposed amendment
A.B. 512	D	Dan Rudd	Background information
A.B. 313	E	Assemblywoman Peggy Pierce	Late Fee Data Base
A.B. 313	F	Assemblywoman Peggy Pierce	Legislative Counsel Bureau Memorandum
A.B. 313	G	Assemblywoman Peggy Pierce	Rental agreement
A.B. 313	H	Jon Sasser	Written testimony
A.B. 313	I	Jon Sasser	Letter in support from Terrie Stanfill
A.B. 313	J	Jennifer Chandler	Written testimony
A.B. 405	K	Assemblyman David Bobzien	*Reno Gazette Journal* article
A.B. 287	L	Michael L. Brunson	Summary of amendments
A.B. 287	M	Michael L. Brunson	Proposed amendment
A.B. 287	N	Michael L. Brunson	Proposed amendment
A.B. 287	O	Pamela Kinkade	Letter in support
A.B. 287	P	Michael R. Cheshire	Letter in support