

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

**Seventy-Fifth Session
March 18, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m. on Wednesday, March 18, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/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 Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Barry Smith, Executive Director, Nevada Press Association, Inc.,
Carson City, Nevada
Jorge Labrador, News Editor, *The Rebel Yell*, University of Nevada,
Las Vegas
Ali Nahangi, Single Copy Distribution Manager, Stephens Media,
Las Vegas, Nevada
Joel Martinez, Publisher of Hispanic publications, Las Vegas, Nevada
Jose V. Garcia, Manager-Director, *El Mercadito*, Las Vegas, Nevada
Allen Lichtenstein, representing American Civil Liberties Union of Nevada,
Las Vegas, Nevada
Ron Titus, Court Administrator and Director of the Administrative Office
of the Courts, Carson City, Nevada
Ben Graham, Las Vegas, Nevada, representing the Administrative Office
of the Courts, Carson City, Nevada
Mark Woods, Deputy Chief, Northern Command, Division of Parole
and Probation, Department of Public Safety

Chairman Anderson:

[Call to order, opening remarks, roll call.]

I need to clear up the record. On Monday, March 16, we took up the question of Assembly Bill 244.

Assembly Bill 244: Provides for the public auctioning of certain confiscated and forfeited firearms under certain circumstances. (BDR 15-762)

Mr. Hambrick had indicated, because of some issues that had been brought forward, his desire that the bill be indefinitely postponed. The Chair entertained such a motion but did not rearticulate the motion.

According to *Mason's Manual*, the Chair has the responsibility of specifically stating for the record what the motion is, and until the Chair articulates the motion, it is not an official motion of the body. In this particular case, the Chair did indicate his willingness to accept a motion to indefinitely postpone, but I neglected to mention who made the motion.

Assemblyman Manendo:

I do not recall who made the original motion, but I will move to Indefinitely Postpone A.B. 244, at the sponsor's request.

Assemblyman Hambrick:

I concur.

ASSEMBLYMAN MANENDO MOVED TO INDEFINITELY POSTPONE
ASSEMBLY BILL 244.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

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

Chairman Anderson:

[Reviewed upcoming Committee business.]

Assemblyman Manendo, did you want me to wait for your testifier on Assembly Bill 251?

Assemblyman Manendo:

Yes, I would like to wait; I do not see Marion Ainsworth in Las Vegas. I would be happy to delay.

Chairman Anderson:

Then we will turn our attention to Assembly Bill 257.

[Assembly Bill 257](#): Prohibits the taking of an excessive number of certain free publications under certain circumstances. (BDR 15-532)

Assemblyman Ruben Kihuen, Clark County Assembly District No. 11:

Since introducing this piece of legislation, I have been asked repeatedly by numerous people and colleagues, how can a free newspaper or magazine be stolen? It is a valid and fair question.

What is important to understand is that the problem does not evolve from the word "free." It develops when copies of the publications are stolen for reasons other than for what the publications are intended. Let me explain and give a couple of examples. As some of you from southern Nevada may remember, a little over a year ago there was a controversial opinion article in *The Rebel Yell* newspaper (the University of Nevada, Las Vegas (UNLV) newspaper) that led to nearly 3,000 copies of the newspaper being thrown away. The reason these 3,000 newspapers were thrown away was to prevent people from reading the opinion piece. Unfortunately, at that time, UNLV Police decided not to open an investigation because no laws prohibited this type of action.

Another perfect example that will illustrate why we need to establish this law is the recent case of the free Spanish magazine *TV y Más*. Their problem is a much more commonly-occurring problem. In their situation, various racks were being emptied out by thieves, and the newspapers were being sold to Nevada Recycling. The owners of the magazine made several attempts to contact law enforcement but were denied because, again, there was no law prohibiting these actions. It is important to note that these are small businesses that are already struggling due to the economic crisis and are now having to shell out cash out from their pocket to replace the stolen publications. It is not fair either to the people that are deprived of reading these publications or to the owners.

There have been numerous similar incidents with other free publications, some of which you will hear about today from our witnesses, including representatives of the Nevada Press Association.

As *The Rebel Yell* very eloquently stated in its editorial page recently, "Regardless of whether people take a large number of free newspapers for the sake of censoring material within those pages, recycling them for money, using them as insulation, or to make paper maché floats, taking them still hinders others' access to the information within the publications' pages. Such information is often necessary for individuals to make informed decisions regarding their personal lives, community, and government."

This is not just about the stealing of free publications; this is about protecting the rights of free speech.

We understand that this bill is not going to solve every problem in the world, and there are going to be cases where the perpetrator will not get caught, but this gives law enforcement the tools they need to prosecute these cases.

I have a proposed amendment ([Exhibit C](#)) which adds "magazine" in every portion of the bill that says "newspaper." This definition of magazine means that it has a volume and issue number.

I will now review the bill. Section 1, subsection 1 prohibits a person from taking more than 10 copies of a free or complimentary newspaper or magazine if the person has the specific intent to: profit by recycling the newspaper or magazine; sell or barter the newspaper or magazine; deprive others of the opportunity to read the newspaper or magazine; or harm a business competitor.

Section 1, subsection 2 explains who is excluded from the prohibition against taking more than 10 copies, basically, the owner or operator, publisher, printer, distributor or deliverer, and any person that advertises in the publication.

Section 1, subsection 3 establishes penalties for those who violate the law. The first offense is guilty of a misdemeanor and punished with a fine of no more than \$250. The second and subsequent offense is guilty of a misdemeanor and punished by imprisonment in county jail for no more than 10 days, or a fine of no more than \$500, or both.

Section 1, subsection 4 provides that, in lieu of all or part of the punishments just mentioned in subsection 3, the convicted person may be sentenced to perform 20 hours of community service for the first offense and 40 hours of community service for the second or subsequent offense.

This bill is modeled after a bill passed in California in 2006 sponsored by Assemblyman George Plescia, a Republican from La Jolla. I ask for your support and will entertain any questions.

Assemblyman Gustavson:

In section 1, subsection 6, in the definition of "current issue," why are we including the last half of that section "if not more than half the period until the distribution of the next issue of the newspaper has passed"? Why can we not just say current issue?

Assemblyman Kihuen:

I believe that Legal added it to define the period of time that would be the current period. If this newspaper is two or three weeks old, then sometimes the owner might want to get rid of them.

Assemblyman Gustavson:

This states that "if not more than half the period until the distribution of the next issue of the newspaper has passed." Why not include the entire current issue period?

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

The only thing I can say is that it helps to define what a current issue is, and we may be talking about daily, weekly, monthly, or even bimonthly. I do not think it is a problem to get rid of that phrase, but I think it helps to define "current issue" and at what point it no longer matters if these publications are taken.

Assemblyman Gustavson:

Maybe I misinterpreted the language.

Assemblyman Segerblom:

Do you know if anyone has been prosecuted in California under this law?

Barry Smith:

No, I do not.

I would like to make a couple of points. There have been a couple of incidents in the north. There was an investigative story that was critical of a particular business on health care benefits, and all of the copies in the vicinity of that business vanished. In another instance there was a cover story that was critical of former President Bush, and some racks were wiped out.

It does not happen frequently, and there is no way to say for sure what happened with those copies. The way I see this bill working is if a large portion, or all or most, of one's issues disappear one week or if in a certain neighborhood copies are vanishing every week, then this would give the newspaper the opportunity to investigate and find out what is happening. They could then file a complaint. While the bill, very importantly, talks about depriving readers of the opportunity to read the paper, and there is value to that, there is also the cost to create, print, and distribute the paper, and there is the value that extends to the businesses that advertised in that newspaper. They are depending on the paper being available with coupons, for sales, and so forth. So when, for any of the four reasons outlined in the bill, those papers are gathered up and disposed of, it is a significant loss of value.

A lot of these free newspapers cater to specialized audiences. They may be Spanish language, religious, or senior publications. We have free newspapers in Nevada that print hundreds of thousands of copies, but we also have small

businesses which print only a few hundred copies and distribute to very specific locations, so that someone could very easily wipe out an entire edition.

Chairman Anderson:

So, if I am an advertiser and my competitor has the better advertising spot and I have a small ad, do I get to go to the rack and take all of the papers because I am an advertiser?

Assemblyman Kihuen:

In section 1, subsection 1, paragraphs (c) and (d) would apply to anyone who tries to "deprive others of the opportunity to read or enjoy the newspaper" or "harm a business competitor." So, obviously, if the owner of that newspaper sees that one advertiser takes 200 copies, then it would fall under these two conditions.

Chairman Anderson:

I was concerned about section 1, subsection 2, paragraph (d) "by any person who advertises in the current issue of the newspaper," but I think it is covered.

Assemblyman Mortensen:

I think this is a good bill. There are a lot of free newspapers around, and there is one in particular in the south that I read, which has a good editorial page and good news, and I would be very unhappy if I were deprived of being able to read that paper.

Assemblyman Segerblom:

Is there some notice that will be given to people so they will realize it is okay to take nine copies but if they take ten or more they are committing a crime?

Barry Smith:

Yes, there would be a prominent notice on the racks and the display so that people are aware of the potential circumstances.

Chairman Anderson:

That is not a requirement of the bill.

Barry Smith:

No, it is not a requirement in the bill.

Chairman Anderson:

Is it a requirement in the California bill?

Assemblyman Kihuen:

It is not. It is to the benefit of the owner of the newspaper or magazine to post a notice, since they are the ones losing money. We were thinking about mandating it in the bill, putting some type of red warning sign, but I think we are going to leave it to the businesses, since they are the ones supporting this bill and are impacted by the losses.

Assemblyman Manendo:

I am reading the phrase taking it "from a news rack." Would that also include on top of the news rack? I have seen where people have placed the extras on top, and then they blow away. I go out with the Boy Scouts picking up trash, and we spend time by the news racks because that is where a lot of flyers have accumulated.

[Chairman Anderson stepped out.]

Assemblyman Kihuen:

If I am mistaken, I will have Legal correct me, but I think it will include newspapers on top of the news rack. There are many types of news racks as well. I would assume that if a newspaper is popular and they want to make sure that everyone can get a copy, then it would include those copies on top.

Assemblyman Manendo:

I am trying, then, to figure out what a news rack may be. Let me give you a scenario. A lot of us have community centers or senior centers in our districts. When one goes inside there is a rack or a table or both, and I do not know if that table would be considered a news rack, but a lot of publications are placed there. Would that also count, so if a senior were to go in and take 15 or 20 copies of something to put in his clubhouse, would that fall under this purview? I have taken items myself and then distributed them to different areas.

Barry Smith:

I think the table would be a news rack, but in your scenario there is no intent to deprive someone of reading them. It happens all of the time. As a practical matter, the publisher would say why not have us deliver 20 copies to the other location in the first place?

Assemblyman Manendo:

So a card table would be considered a news rack?

Barry Smith:

It is my opinion that it would be.

Assemblyman Horne:

I was going to address Assemblyman Manendo's concern. The bill goes to the intent to get cash payment, to sell or barter, or to deprive others of the opportunity to read and enjoy. In his scenario, that intent is not there, and in actuality his intent was to do exactly what the publisher wanted, to get the information out there for others to read it.

Jorge Labrador, News Editor, *The Rebel Yell*, University of Nevada, Las Vegas:

Many have put the focus on the content of the article that was published last year and prompted the paper's removal, which deprived others of the opportunity to read it. The real issue was not the perspective portrayed in the article but, rather, the constitutional right to free speech and *The Rebel Yell's* First Amendment right.

The removal and discarding of college papers, regardless if they are free or not, amounts to censorship. Because the paper is a free publication, the police could not investigate who was behind the hindering of our constitutional rights.

Free speech is meant to protect all speech, especially unpopular speech. If the throwing away of unpopular publications is a form of censorship, then throwing away newspapers or magazines, even if they are free, must be criminalized. Censorship must not be tolerated, and A.B. 257 is a step in the right direction. Passing this bill will protect First Amendment rights. These free publications are frequently a voice for many segments of the population who do not have a voice in the mainstream media, whether it is a community which speaks another language or just a smaller segment of a larger community. What else do we have if our Bill of Rights is not followed, enforced, and protected? It gives us all liberties and freedoms. I, along with *The Rebel Yell*, would like to thank Assemblyman Kihuen for proposing this bill, and I strongly encourage all members of the State Legislature to support it.

Vice Chair Segerblom:

Was there an incident at UNLV where someone stole a bunch of papers?

Jorge Labrador:

The incident at UNLV was that about 3,000 papers, almost our entire print run, were discarded.

Vice Chair Segerblom:

Do you know who did it?

Jorge Labrador:

We do not because it was not investigated.

[Chairman Anderson returned.]

Assemblyman Kihuen:

Part of the reason why the police decided not to investigate was because there is no law prohibiting this type of action. When the paper went to law enforcement, they said, "Well, they are free publications."

Ali Nahangi, Single Copy Distribution Manager, Stephens Media, Las Vegas, Nevada:

Stephens Media publishes the *Las Vegas Review-Journal* and distributes the *Las Vegas Sun*.

This bill would not affect the daily *Review-Journal*, the largest newspaper in Nevada, since it is a paid-distribution publication. However, Stephens Media is also the largest publisher of free-distribution publications in Clark County. Each week we distribute more than 150,000 copies of free publications, which serve a variety of typically underserved media markets.

Among these publications are *El Tiempo* and *Concha*, both of which serve Clark County's growing Hispanic population. *CityLife* is the largest alternative newspaper publication in Clark County, *Rebel Nation* serves UNLV fans, the *Nifty Nickel* is the largest free classified publication, et cetera. All of these publications are free and offer news and information not found in a daily newspaper. In many cases they have robust and vigorous contributors, some of whom are here today joining us in this important effort.

Free publications offer readers and advertisers a way to serve markets not reached by traditional media. We distribute our free publications through news racks, on public streets, and in store locations on private property. Many of our store locations utilize the services of paid distribution, and pay for the right to distribute on private property.

These publications are all printed on newsprint or coated stock papers which have risen tremendously in value in the past few years. As a result, many of our publications are taken in large quantities from news racks and store locations whenever recycling prices rise. We also believe that copies are taken in larger numbers whenever there is a controversial article in a publication.

When free publications are taken in large numbers, we cannot simply reprint these publications since the press runs have closed. The loss of these publications from news racks deprives many readers of the chance to get news and advertising information at no cost. It is a form of censorship by theft. We have seen people removing large quantities of publications from racks, but

under current law we cannot gather evidence to present to law enforcement authorities since no law has been broken. With the passage of A.B. 257 we would be able to gather evidence for law enforcement authorities and ask them to prosecute those who would deny others the chance to receive news and advertising information.

Joel Martinez, Publisher of Hispanic publications, Las Vegas, Nevada:

I am a publisher of two small Hispanic publications, and I am also a distributor for the *Las Vegas Review-Journal's* free publications. I have seen how racks have emptied here in Las Vegas. We usually stock racks on Friday evening, and there should be papers on Saturday morning, but we have gone by and the racks are empty by morning. We did some research and found that most of these papers have been sent to recycling centers.

We have spoken with several managers of the recycling centers, and we have done some things to make this practice stop. They are now checking the dates of the publications. But we still have the problem because there is no law to protect us from theft.

Jose V. Garcia, Manager-Director, *El Mercadito*, Las Vegas, Nevada:

I am the manager-director of *El Mercadito* newspaper. It is a Hispanic publication that has been in Las Vegas since 2001. We have been facing the problem of losing large quantities of papers from the racks. Normally, papers go little by little, but we have noticed that papers have disappeared 100 or 200 at a time. We did a little research as to who is taking these papers, and we found that they are being taken to recycling centers by people who are just picking up paper. I am in favor of A.B. 257 because there is no law against this. Without the law, these losses affect the market and industry of newspapers and our customers.

Chairman Anderson:

Is there anyone who would like to testify in opposition?

Allen Lichtenstein, representing American Civil Liberties Union of Nevada, Las Vegas, Nevada:

We have one concern on an otherwise unobjectionable bill. It is within section 1, subsection 2, paragraph (b), and it is a question about the owner of the property. We have had numerous court fights relating to the public sidewalks and to whether a public sidewalk, which is a public forum even though it is built on land that is owned by a private company, is in fact a free speech area.

The *Venetian* case went to the Ninth Circuit Court of Appeals many years ago, and they even petitioned the Supreme Court. It was clearly stated that regardless of who owns the land beneath a sidewalk, if it is a public function, then it is protected. The way this bill is currently written, while I think it is inadvertent, suggests that if there are news racks on the public sidewalks a hotel-casino would have the right to say, "We do not like the content of this particular publication" and get rid of all of them. Clearly that would go against the *Venetian* case and could open up Pandora's Box again.

We had suggested, in an email, removing that particular section, but while sitting here I realized it could be fixed by making an exemption in section 1, subsection 2, paragraph (b) that would refer to public sidewalks or property that is not a public forum. That would probably solve the problem.

As an aside, Assemblyman Manendo had asked a question about papers on top of news racks. Those particular publications, if on top of a news rack, are not legally there anyway, so, in my opinion, they would not be addressed by this bill.

Chairman Anderson:

The Chair received an email yesterday afternoon. Assemblyman Kihuen, did you have any concern about it?

Assemblyman Kihuen:

I personally did not, but I know that the Nevada Press Association did have some concerns. Since this is affecting their businesses, I defer to them.

Barry Smith:

We did see the proposed amendment from the ACLU and had some discussion on it. While I appreciate the work they have done and understand the issue and would not want to undermine them, although I am not an attorney, my opinion is that A.B. 257 would maintain the status quo. It is not a crime now to remove those publications, and the bill would keep it as is. That is my analysis.

Assemblyman Segerblom:

Are you saying that under this bill it is not a crime to take more than 10 papers?

Barry Smith:

For the owner of the property.

Assemblyman Segerblom:

That is the exemption you have put into the bill. Mr. Lichtenstein is talking about a situation where you have your news rack in front of the Venetian, you

run an article that is critical of them, and they come out to the sidewalk and take all of the papers. It is their property, but it is a public sidewalk. Are you saying you do not mind that?

Barry Smith:

The language that was proposed would cover any kind of property, whether inside or outside. The owner of a piece of property would have the right to remove the copies.

Assemblyman Segerblom:

But given Mr. Lichtenstein's proposed amendment, which deals with public sidewalks, you would still allow the Venetian take those papers?

Barry Smith:

That part of the amendment to the amendment I just heard this morning makes sense. I think it is possible to apply that so there is an exemption to the exemption that covers a public right-of-way.

Chairman Anderson:

That leaves me with a quandary. His suggestion is the removal of section 1, subsection 2, paragraph (b) "By the owner or operator of the property...." There is a news rack inside the building. There is also a news rack in front of the building on the sidewalk. You are saying the owners can remove the papers in the lobby because it is their property, but they would not be able to remove the ones on the sidewalk because it is not their property, it is a public right-of-way. However, if we remove this language "By the owner or operator of the property on which the news rack is placed," they would also not be able to remove the papers from their lobby.

Assemblyman Segerblom:

Mr. Lichtenstein just proposed a change to the amendment which would cover this kind of a situation where the Venetian owns the sidewalk but it is considered to be a public sidewalk. Is that correct, Mr. Lichtenstein?

Alan Lichtenstein:

Yes, in looking at the proposed amendment this morning, I realized that this concern could be solved by, instead of taking out that full line, just adding: "unless the property is on a public forum." That would solve the problem.

Chairman Anderson:

I will close the hearing on Assembly Bill 257. I will open the hearing on Assembly Bill 271.

Assembly Bill 271: Makes various changes relating to the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 14-903)

Ron Titus, Court Administrator and Director of the Administrative Office of the Courts, Carson City, Nevada:

This bill is on behalf of the Advisory Commission on the Administration of Justice. The intent of A.B. 271 is to provide broad authority and responsibility to the Administrative Office of the Courts (AOC) to coordinate and ensure the collections of assessed fines, fees, and restitutions in the district courts for individuals convicted of gross misdemeanor and felony counts.

The intent is to ensure the coordination between various district courts, county entities, the Department of Public Safety, the Department of Corrections, and other state agencies that collect these fines, fees, and assessments.

The history behind this bill and why it is being proposed is because late last year Washoe County did an audit on the district court. They found out that there were \$26.7 million in uncollected fines and fees. These fines include some administrative assessment fines, and according to the auditor, \$6.6 million in public defender fees, \$1.2 million in DNA fees, as well as almost \$7 million in fines. While reviewing the audit with the Administrative Office of the Courts, it became apparent that the *Nevada Revised Statutes* (NRS) does not assign responsibility for collection of these fines and fees. The courts assess them, but no one, with the exception of the Division of Parole and Probation (P&P) with their responsibility for collecting restitution, is assigned the responsibility or given the authority to collect fines and fees, so they fall between the cracks.

This bill intends to correct that problem and to place the responsibility in this case on the Administrative Office of the Courts. It is not our intention to create a collection agency. Parole and Probation has various individuals that do that, various counties use collection agencies to collect some of these fees and fines, and other programs have efforts, but no one is coordinating those efforts or ensuring collection.

I would like to briefly review the bill. Section 1, subsection 1 assigns the responsibility to the AOC for the collection of the fines and fees for gross misdemeanors and felonies. We believe this may need to be broadened a little bit, and we would like to be able to talk with Legal to make sure our intent is carried out. In subsection 1, "If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter for a felony or gross misdemeanor, the Office of Court Administrator shall:" (a) says collect and (b) says distribute. We believe it probably should say, "the Office of

Court Administrator on its own or in cooperation with judicial districts or Parole and Probation" or similar language to ensure the coordination of the various entities. Basically, subsection 1 gives the authority to the Administrative Office of the Courts to collect and then distribute the fees and fines.

Section 1, subsection 6 requires Parole and Probation, the Department of Corrections, and the courts to cooperate with us in sharing information. We are not quite sure that includes all of the entities that actually do collections, so that is another area we would like to talk with Legal about to make sure it is clear.

Section 2 of the bill institutes something called administrative probation. Currently the bill states that the period of administrative probation would be tacked on to the regular probation at the time of sentencing. We think that it may be more appropriate for it to be determined after or towards the conclusion of the probation period.

Subsection 5 of section 2 makes it clear that we are not talking about normal probation. In other words, none of the aspects of normal probation apply here: there are no fees for administrative probation. It is only a term used to extend the period for which we have authority to collect the fines and fees assessed.

Section 4 says that once they pay all of their fines, they are off administrative probation, period. That includes restitution.

There will probably be a slight fiscal impact to get started. Also, we would probably like to defer the effective date to January 1, 2010, to make sure we have everything coordinated with Parole and Probation and other agencies.

There is a bill before the Legislature, Assembly Bill 87 by the Office of the State Controller, which addresses collections. The State Controller is one of the agencies we would work with to help us collect.

Although A.B. 87 does not impact the Judicial Branch, it does not preclude the Judicial Branch from contracting with the State Controller for collections.

The intent is to coordinate these collections in order to manage this debt to society that needs to be either paid or written off appropriately.

Assemblyman Horne:

I have a concern in section 2, where it talks about the administrative probation; particularly subsection 4, paragraph (b), where it says "remains subject to the

provisions of NRS 176.064." Basically it says that a judge would be able to put them back in jail. This could occur after they had served their entire sentence. And then there is no limit in the bill on how long the judge could keep them in jail. The concern for someone who has already served their time: to put them back in jail for these administrative fines and fees becomes a debtors' jail.

Ron Titus:

Yes, that is existing language, and it is my understanding that this language does not apply currently but it would apply even to misdemeanors. This is because NRS Chapter 176 applies to the collection of the administrative assessment, fee, fine, or any other punishment.

Assemblyman Horne:

The bill expands probation because now we are applying it to those who are no longer on probation. I mean, with parole and probation there is still that underlying sentence remaining, and the person still has that obligation to serve the debt to society in jail, but that has been suspended. There comes a time when those days are gone and one has no more days to give back to the state or county for the crime committed.

I do not have a problem with using collection agencies to collect the debts, but when we start putting people back in jail for this, and jail is expensive, it becomes problematic.

Ron Titus:

I agree, it is not the intent of the bill to allow the courts to put people back in jail, and that is made clear in subsection 5 where it says, "Except as otherwise provided in this section, administrative probation pursuant to this section shall be deemed not to constitute a form of probation for the purposes of any other provision of law." We would not have a problem with that being excluded; it is not the intent of the bill to throw people into debtors' prison.

Assemblyman Horne:

So when we are redrafting the amendments, we need to make that clear.

Chairman Anderson:

Am I to understand that you are actively looking for some amendments?

Ron Titus:

Yes, we are not quite sure that it is clear in the bill as written that we do not want to create our own collection agency. We want to coordinate the efforts.

Chairman Anderson:

I would agree with Assemblyman Horne that it is not our intent to turn it into a debtors' prison for people who otherwise have fulfilled their obligations, but part of the punishment is a monetary one, and it should be paid.

I was under the impression that while the judges are not responsible for the collection of fees and fines, the clerks are responsible.

Ron Titus:

The clerks' offices do collect the money, but they do not actively go after the individuals, and that is the problem with the statute. It does not state "this entity is responsible for collecting." The only place where statute designates responsibility is with respect to restitution, where the law states "Parole and Probation shall collect restitution." In the case of Washoe County, the courts are being criticized for not collecting \$26.7 million. Well, if we are going to be criticized for it, give us the responsibility, and we will try to do something about it.

Chairman Anderson:

Maybe that is another philosophical discussion we could have regarding to whom the clerk belongs.

Ron Titus:

It depends on the county.

Chairman Anderson:

That is part of the problem, though.

Ben Graham, Las Vegas, Nevada, representing the Administrative Office of the Courts, Carson City, Nevada:

We are currently working with the other groups and agencies to try to make the bill effective to collect what is due to the taxpayers of the State of Nevada.

Chairman Anderson:

I think it is shocking to find out that on some of the smaller fines, which are part of a sentence, the judge anticipates that his order is going to be followed, but the person walks out the door and there is no follow-up from anybody. Then to find out that neither the clerks nor Parole and Probation are responsible to collect.

Am I to understand that you will be coming up with additional writings for us?

Ron Titus:

We would like to discuss this with Legal to make sure we get the right language.

Mark Woods, Deputy Chief, Northern Command, Division of Parole and Probation, Department of Public Safety:

We have been talking with the sponsors of the bill, and we are in support of the bill with the changes they have spoken about earlier. For clarification, the Division is responsible for collecting restitution, supervision fees, DNA fees, and, if applicable, psychosexual fees. Regarding the rest of the fees we have talked about, the administrative assessment fees, public defender fines, and such, while we push the offender to pay them, we basically have no jurisdiction over them.

When we work on a discharge, we put those fees and fines in our discharge request to the judge, but the reality of the situation is that we concentrate first and foremost on restitution to make the victim whole, and then we look at our supervision fees, then DNA fees, and then psychosexual fees.

Chairman Anderson:

Is there anyone else who would like to give testimony on A.B. 271?

We can anticipate that there will be some additional information coming to us on this bill and some clarification that may be needed from Legal. The parties are going to work on that and will get it to us in a timely fashion.

Is there any opposition to A.B. 271? [There was none.] I will close the hearing on A.B. 271.

We will take a recess.

[Fifteen minute recess.]

I will open the hearing on Assembly Bill 251.

Assembly Bill 251: Revises provisions relating to common-interest communities. (BDR 10-555)

Assemblyman Mark Manendo, Clark County Assembly District No. 18:

I brought forward Assembly Bill 251 for various constituents and there are two pieces to A.B. 251.

For disclosure, I do reside in a homeowners' association community, but I do not serve on a board. The intent of the first portion of the bill was to put into statute that if there is an election of the members of the board that are unopposed, then ballots would not have to be sent out. Each year, thousands of dollars are used on labor, paper, envelopes, and stamps to send out ballots for people running unopposed for reelection.

As an example, if there were a board of five members and two members happen to be up for reelection, a notice would be sent that there is going to be an election and if anyone would like to run, they need to fill out the information and send it in to the management company or property manager. Management then verifies that the person really lives in the community, provides a little biography, puts his name on the ballot, and everything is ready to go. In some cases, no one files to run except for the two, for example, that are already serving. To me, this will save a lot of time and money if they win by acclamation. That is the intent of the first part of the bill.

The second part of the legislation is about property managers. My constituent is a trained property manager. She had a situation where she went into the hospital and nearly died, and during her recovery, her license lapsed. When she came back, she found out that she had to pay her fees and take some classes, but the law also says that a property manager has to train under a supervisor for two years. I do not know of any other profession, not attorneys, dentists, or accountants, who have to have two years of trained supervision to get their license renewed.

She asked me to submit a bill to take that portion out, and that is what I am asking you all to consider.

Chairman Anderson:

I have a letter here from Caughlin Ranch, from Michael Trudell, in support of this bill, and I will enter it into the record ([Exhibit D](#)).

Assemblyman Hambrick:

I am in agreement with a vast majority of the bill, but I have a question of interpretation on section 2, subsection 1, paragraph (c), where it says "previously issued a certificate." Do you have any time frame involved? I can understand in your example where an individual is hospitalized and 60, 90, or even 120 days have lapsed. But what if it has been five or six years?

Assemblyman Manendo:

I think that is something we can consider policy-wise. One thing that has to happen for someone to renew their license is to complete some continuing

education. This has to be completed regardless, and the intent of this bill is to say that they do not need someone standing beside them every day, five days a week, for two straight years making sure they are doing their job correctly.

Chairman Anderson:

Are there any other questions? [There were none.] Is there anyone else to speak in support? [There were none.] I will close the hearing on A.B. 251.

It is the intent of the Chair to place this bill along with several other homeowners' association bills into a subcommittee. There are three bills that have yet to be heard, Assembly Bill 311, Assembly Bill 350, and Assembly Bill 361. In addition, we have already heard several other bills that deal with homeowners' associations: Assembly Bill 251, Assembly Bill 108, Assembly Bill 204, and Assembly Bill 207. I am going to appoint these pieces of legislation to the subcommittee and then have the subcommittee make a recommendation to the Committee for our work session. I will appoint Assemblyman Segerblom, as the chair, and Assemblyman Hambrick and Assemblyman Kihuen to the subcommittee. If you all could report to us no later than April 6, we will be moving into full work sessions.

We are adjourned [at 9:54 a.m.].

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 18, 2009

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 257	C	Assemblyman Ruben Kihuen	Proposed Amendment
A.B. 251	D	Michael Trudell	Letter in support