MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
March 31, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:45 a.m. on Tuesday, March 31, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

Ben Graham, Administrative Office of the Courts
Larry D. Struve, Religious Alliance in Nevada
Thomas A. Beck, President, Religious Alliance in Nevada
Father Chuck Durante, Religious Alliance in Nevada; Roman Catholic Diocese of Reno
Steven Burt, Executive Director, Ridge House
Howard Skolnik, Director, Department of Corrections
Lee Rowland, American Civil Liberties Union of Nevada
Jan Gilbert, Progressive Leadership Alliance of Nevada

Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Robert C. Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada
Scott W. Anderson, Deputy Secretary of Commercial Recordings, Office of the Secretary of State
Steven Kondrup, Deputy Commissioner, Division of Financial Institutions, Department of Business and Industry

CHAIR CARE:
The meeting will come to order. We will open the hearing on Senate Bill (S.B.) 236.

SENATE BILL 236: Revises provisions relating to certain programs for criminal offenders and parolees. (BDR 14-896)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):
I am in front of you this morning with S.B. 236 and S.B. 238. Both bills were bill draft requests (BDR) that I requested. I gave these BDRs to the Advisory Commission on the Administration of Justice. When we created this Commission two years ago, we overlooked the fact that we did not give them any opportunity to offer BDRs. I gave two of mine to the Commission and they are scheduled for hearing today.

Senate Bill 236 is one of the recommendations from the Advisory Commission. Nevada law requires a judge to include an administrative assessment, currently, $25, in the sentence of a defendant who pleads guilty or is found guilty of a felony or gross misdemeanor. Section 1 of this bill increases that administrative assessment by $250 and requires that the money from the increased assessment be credited to the Fund for Reentry Programs, which is created in section 2 of this bill. Existing law authorized the establishment by a judicial district and by the Director of the Department of Corrections of programs for reentry of criminal offenders and parolees into the community. Section 2 authorizes the money in the Fund only to pay necessary administrative costs and for reentry programs of criminal offenders and parolees into the community, including correctional programs and judicial programs.

This is the summary of S.B. 236. It requires a two-thirds majority out of each House. This is the most important aspect of the bill.

BEN GRAHAM (Administrative Office of the Courts):
I want to apologize for not addressing an issue that has come up in the last few days. It has no substantive effect on the merits of this reentry program. The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court, asked me to give you his regrets for not being here today. He also asked me to give his strong support of this reentry program. When the bill was initially crafted, the fee was put in under administrative assessment. The problem with this is all sorts of formula adjustments kick in. We would like to have a separate fee, similar to a drug analysis fee rather than an administrative assessment (AA) fee, ordered by the court. If you look at some of your other bills, all kinds of issues with AA fees present concern. I apologize to Senator Parks for not discussing this earlier with him.

CHAIR CARE:
Are you talking about section 5 of your amendment? (Exhibit C)

MR. GRAHAM:
Yes.

CHAIR CARE:
Have you discussed that with the sponsor of the bill?

MR. GRAHAM:
I apologize. I have not discussed the mechanism with the sponsor. The $250 remains in the bill in a different form than an administrative assessment.

CHAIR CARE:
Last session, we got into a discussion about the practicality and payment of administrative fees. Someone brought forth a bill to increase administrative fees dealing with convictions for driving under the influence. Do you recall this, Mr. Graham?

MR. GRAHAM:
As you review legislation coming through, there is an effort to increase administrative assessments on nearly everything, including other felonies. The court system is trying to resist that to give a more realistic view of funding. It would be more secure if we could have the fee resemble a drug analysis fee rather than an assessment. The courts are taking a real resistive effort to

increase administrative assessments. For instance, a $5 traffic ticket becomes a $57 ticket after all the administrative assessments.

It was explained to me that funds are available to help pay the fee for a lot of these folks. There are programs available to assist in funding a reentry program, which we know is vital for recovery of these people. I urge support of this legislation. Whether we call it a drug analysis fee, a reentry fee or an AA fee, it is still going to need two-thirds vote of each House as indicated by Senator Parks.

CHAIR CARE:
I defer to the sponsor of the bill. You need to talk to him.

SENATOR PARKS:
I have reviewed the proposed amendment, Exhibit C, and it looks fine to me. I would support it.

LARRY D. STRUVE (Religious Alliance in Nevada):
Senate Bill 236 is the most important bill to us in this Legislative Session. Section 2 addresses the subject of reentry programs.

I would like to give you some history as to how this bill evolved and why the Advisory Commission on the Administration of Justice has made this recommendation to you. While chairing the Advisory Commission, Chief Justice Hardesty realized that the faith communities of our State might play an important role in helping prisoners being released reestablish themselves in the community and reducing the recidivism rates. He called a meeting in April 2008, involving all the bishops and heads of judicatories that comprise the Religious Alliance in Nevada (RAIN).

During that meeting, based on the testimony the Advisory Commission had received up to that point, Chief Justice Hardesty concluded there is no reentry program in the State of Nevada. Under current policy, when a prisoner is released, the State gives the prisoner a check between $20 and $100, no identification (ID) to cash the check unless the prisoner still has his or her prison ID, shoes and a bus ticket. The State puts the prisoners out on the streets, and they must figure out how to survive.

In theory, those on parole have someone there to help and supervise them. In any given year, between 3,000 and 5,000 people are released from our prisons back onto the streets with a policy that gives them no resources. These numbers concern RAIN. Many of these released prisoners do not have anything to eat and no place to stay, so they come to the churches. Many of our pastors and parishioners are asked to help. They become overwhelmed when trying to help these released prisoners. There are no resources to help the prisoners, and the churches confront barriers when trying to get the prisoners into transitional housing or work. They do not have resources to get identification, uniforms or job training. If you have an average of 4,000 prisoners released each year, in ten years we will have 40,000 prisoners on the street with no reentry programs. This has a tremendous demoralizing effect, which will affect how many of these people will go back to their old habits and reoffend.

We testified to the Advisory Commission on June 9. We brought home to the Commission that it would be unconscionable for them to consider all aspects of the criminal justice system without considering what to do with the released prisoners. There are no programs to deal with them. We wondered what could be done to make a statement in the 2009 Legislature that will empower all those groups that want to work with ex-offenders, bringing them back into the fold and reducing the recidivism rate. The result was this idea of setting up a special revenue account that would be capable of receiving gifts and donations. I have talked with Senator Parks, and if the account is set up by the Legislature, anyone who makes donations can deduct that donation from their income tax, providing an incentive for donation. Various groups want to work with ex-offenders. They could sponsor fund-raising events and have money put into this account, giving the groups working with these released prisoners some resources.

Passage of S.B. 236 would be a way for this Legislature to tell the people of the State that reentry is a significant public policy issue that we need to address. In future sessions, if money is in the budget, you might channel some money into the account. Chief Justice Hardesty was concerned about seeding this fund. That is where this idea of a reentry fee was established. This was not RAIN's idea; it was Chief Justice Hardesty's idea. He felt if we set up a system where we imposed an assessment on the prisoners at the beginning, then the prisoners would have a stake in the reentry programs. They know when they go to prison they are eventually going to get out. While the Coalition on Reentry develops the programs to help them, putting a little money into this fund would help

defray expenses with their reentry. Chief Justice Hardesty feels the fee should be part of the bill. RAIN agrees that if we can find a way to seed it and put initial funds into the account to get it started, that is all the better. The important point is you need to do something in this Session to give the faith communities a signal you understand that reentry is an important problem. You have before you my written statement (Exhibit D, original is on file in the Research Library) illustrating why RAIN supports S.B. 236 and why we think letting 3,000 to 5,000 people out with no reentry program makes no sense. We urge you to pass this bill and to send the signal we have called for.

While I was in Las Vegas over the weekend, I shared what I have been doing with four Lutheran congregations. Most of them were unaware of the numbers of prisoners released out onto the streets. I asked them to write their Senators and Assemblymen asking them to pass S.B. 236. I told them it would not solve the problem, but it is a first step. You have ten handwritten letters in Exhibit D. They had no problem with the administrative fee. Whatever you hear in today's testimony, keep in mind that the people who are working with ex-offenders need help.

The final comment I want to make is about an article I read in the Las Vegas papers titled "Why We Must Fix Our Prisons" (Exhibit E). It is written by Senator Jim Webb from the State of Virginia. He is going to introduce a bill in the Congress of the United States to establish a national commission to look at every aspect of our criminal justice system. The reason he is doing this is set forth in the article. One in every 31 adults in the United States is in prison, jail or on supervised release. This is a significant public policy issue. If Senator Webb gets his commission started, one of the issues he is going to ask Congress to address is how we can build workable reentry programs so our communities can assimilate former offenders and encourage them to be productive citizens. Nevada can be ahead of the curve on this by setting up this special revenue account in order to be ready when revenue is made available. Do not let this bill die. This is a prime example of sending a message and taking a first step.

THOMAS A. BECK (President, Religious Alliance in Nevada):
I want to speak in support of S.B. 236. It is clear there is a problem of insufficient reentry of folk from prison trying to make their way back into society. As was already mentioned, Chief Justice Hardesty requested judicatory leaders of RAIN to gather together for the Advisory Commission. There is no

reentry program in Nevada. Our value comes from a faith-based value I recall from the Gospel of Matthew, where Jesus says, "I was sick in a prison and you visited me." There is a compassionate attitude towards these human beings who have offended and served their time. We want to do the best we can to afford them every opportunity to regain the fullness of their citizenship. Faith is the motive that guides us. I speak for RAIN when I say that S.B. 236 provides a real means to establishing a reentry program in this State.

FATHER CHUCK DURANTE (Religious Alliance in Nevada; Roman Catholic Diocese of Reno):
I third what has been spoken. Two weeks ago I was at the Ridge House, one of two halfway houses in the State, and had dinner with the residents. Numerous times they said how blessed they felt being in that program since there are so few of them. There are 144 beds in the State for the 3,000 to 5,000 people released from prison. The people in the Ridge House are anxious to get back on their feet. Their stories were heart-wrenching. Senate Bill 236 is a beginning, and we support and encourage this bill be moved forward.

SENATOR WIENER:
This is more of a comment than a question. Prior to my coming to the Senate, I taught classes for the inmates at the Jean Conservation Camp, a female minimum incarceration facility. Every month I taught one full-day class addressing communication skills, anger management and ways of keeping their children in their lives while in prison. During the first class, one of the inmates asked me if I had ever been to a parole hearing. The prisoner felt I could not help them unless I knew what happened to them during a hearing. After attending a parole hearing, I realized I needed to go to a parole revocation hearing since that was another piece of the puzzle. The revocation hearing was more extensive because it dealt with taking rights and freedoms away.

To reinforce today's testimony, I would like to share one compelling situation. A prisoner entered a 7-Eleven and stole one beer, for which he spent many years in prison. He wanted to be sent back to prison because he did not feel he could make it on the outside. He only knew life in prison. If he was not sent back, he said he would do whatever it took to be sent back. This is not an uncommon story about those who do not know how to survive on the other side.

We set them up to fail. Our system says you have done what we told you to do; the law said you had to spend your minimum time. Our system says you get

another shot, but we set them up to fail and return to prison. The reentry concept is helping the system work. It gives people the opportunity to be taxpayers and contributors. If they blow this opportunity, those are choices they make. Thank you for allowing me to share.

STEVEN BURT (Executive Director, Ridge House):
We were asked by Chief Justice Hardesty to come together with RAIN and develop a statewide Prisoner Reentry Coalition so that when and if S.B. 236 passes, there will be a structure set up to develop statewide prisoner reentry programs. It became clear to the Advisory Commission that there are no reentry programs except for the small, start-up grassroots groups of individuals who are interested in serving people. Those groups are normally families and friends of former or current inmates who see that the services are just not available.

The Ridge House has been in existence for 27 years, serving prisoner reentry services in the State of Nevada. We are interested in pulling together this coalition. We have met six times to develop missions and strategies and identify the best practices that have worked in other states for prisoner reentry services. We have applied for Second Chance Act of 2007 funding through the federal government. If funds come through this, we want to make sure whatever we develop utilizes best practices and the money will be well spent. Reentry is a public policy and safety issue.

Prisoner reentry programs decrease recidivism rates. Over time, we know we can affect the prison population if we offer reentry services to as many prisoners as possible. They will be less likely to go back. A percentage of people in prison have been there before, and we want to keep those people from going back. We are talking with the Division of Parole and Probation and the Department of Corrections (DOC) in developing some intermediate sanction programs to keep them from going back. That is a bit further down the road. We will get to that through this Coalition and through our conversations with DOC, the Division of Parole and Probation and the State Board of Parole Commissioners.

We have approximately 156 individuals on our e-mail list. There are about 30 interested State and local agencies and private service providers interested in serving this population through this statewide Prisoner Reentry Coalition.

SENATOR PARKS:
I want to add a bit about reentry programs in Nevada. When we started up the Casa Grande program, we put the funding in the budget to go out and borrow against it. This falls under the same category of giving an individual sure footing once they hit the street. I serve on a nonprofit board that funded three halfway houses for persons being released from prison. Unfortunately, the zoning laws changed in Clark County. As a result, these three properties had to come in for a review and approval on their zoning. Two of them were disapproved. Even though the third house was approved, the program became financially unfeasible. That program has since gone away. However, the nonprofit is still interested in the issues and would like to continue the program.

CHAIR CARE:
Mr. Skolnik, I know you did not sign in to speak, but if this bill becomes law, your office is charged with the duties. It says in section 2, subsection 4, "All expenditures from the Fund must be approved by the Director ... ." It talks about paying for programs. Do you have some idea how that would operate?

HOWARD SKOLNIK (Director, Department of Corrections):
I would like to clear up a few things. We do have reentry programs in Nevada. We have the Northern Nevada Restitution Center in Reno which processes as many as 100 inmates at a time back into the community. As Senator Parks pointed out, we have the Casa Grande Transitional Housing program in Las Vegas. This program transitions and houses as many as 400 inmates. We have never been able to fill that program to capacity because of the restrictions on eligibility. For the record, we have eliminated all violent and sex offenders from most of our programming. Those folks would benefit the most from these programs. They are coming back into the community without much structure or support. The recidivism rate on parole has dropped to 15 percent. We are doing something right in the State of Nevada.

I do support this program. However, we have enough inmates getting out without receiving the kind of help they need. The Department of Corrections is already interacting with the reentry group. We were able to hire a new warden, Anthony Scillia, who has been the Director of Community Corrections in another state**.** Mr. Scillia has a strong background and has been working with the Coalition. I feel comfortable that our Department would administer these funds in a most appropriate fashion.

SENATOR WIENER:
One of my first bills on therapeutic communities in prisons had a piece comparable to reentry on the way out. I remembered that we had nothing to do with that jurisdictionally because it becomes part of the Division of Parole and Probation. Is that not an issue anymore? This is reentry on the way out. At Casa Grande, did they go into reentry while still serving their sentence under your jurisdiction?

MR. SKOLNIK:
That is right. They are still inmates. The relationship between the Department of Corrections and the Division of Parole and Probation has grown substantially over the past 10 to 12 years.

SENATOR WIENER:
Are we then reentering those who are in transition to parole and not those who are already paroled? Or are we doing both?

MR. SKOLNIK:
We would start prior to their actual parole, getting them ready and continuing on into the community.

SENATOR WIENER:
And that is when the Department of Parole and Probation comes into play?

MR. SKOLNIK:
Yes. We are also working with Senator Steven A. Horsford, Clark County Senatorial District No. 4, on an interim sanctions program which would stop people from coming into the correctional facility either from probation or parole. It is worth noting that we have about 1,500 inmates a year who come in on probation violations and stay with us an average of 18 to 24 months. If we could reach 300 of those inmates and keep them out, we could free up 600 beds. Instead of prosecuting them on a new crime, they do a violation of the existing probation. There is still a possibility that those folks could be sanctioned in an intermediate fashion.

CHAIR CARE:
I do want to note that Jason Frierson, Chief Public Defender at Clark County**,** indicated he is against S.B. 236 but did not sign in to testify. I guess that has something to do with the payment of the fee itself. The argument would be that

it is prohibitive, but there is no one to deliver that testimony. I will close the hearing on S.B. 236 and open the hearing on S.B. 238.

SENATE BILL 238: Revises certain provisions relating to the restoration of civil rights for certain criminal offenders. (BDR 16-895)

SENATOR PARKS:
In front of you is S.B. 238. Existing law provides for the automatic restoration of certain civil rights after honorable discharge from probation or parole, release from prison or the sealing of records. Existing law also authorized certain criminal offenders to apply to the State Board of Pardons Commissioners to have their civil rights restored. This was one of the issues we took up in the Advisory Commission on the Administration of Justice. We wanted to adopt a policy to provide for an expedited process for restoring civil rights of certain persons under certain circumstances. Existing law provides for the Board to consider such applications at a meeting after providing notice to the district attorney, the district judge of the county where the person was convicted and, if requested, each victim of a crime committed by the person whose application is being considered.

The bill is straightforward. Mr. Graham of the Administrative Office of the Courts is here, and he does have a clarification in the form of an amendment (Exhibit F).

MR. GRAHAM:
With the support of the Advisory Commission and Chief Justice Hardesty, we appreciate your considering this matter. For 20 years, my unit in the Office of the Clark County District Attorney has routinely sealed 1,500 or more records, as mandated by the Legislature. The pardons issue is a separate situation where the district attorneys are not really involved, but the Board is involved. Senate Bill 238 plays into giving those people released from prison the potential restoration of their rights in an expedited fashion. About 600 cases are pending right now, and between 70 percent to 75 percent of those are slam dunks. Senate Bill 238 asks that the Board be given specific authority to set up an expedited process. They ask that we specify without a hearing so they can clearly do that. The restoration of rights would not include automatic restoration of the rights to bear arms. That is not in this provision. Senate Bill 238 would help people get back on track so that they will not return to prison.

CHAIR CARE:
Mr. Graham, refresh my memory. We have visited this issue in past sessions. As I recall, we shortened the period depending on whether it was a misdemeanor, gross misdemeanor or felony. I do not think we have anything in law where there is automatic restoration. There must be a petition filed by the defendant. Is that correct?

MR. GRAHAM:
Yes. A petition is filed. Those that are relatively short are filed and can actually be sealed almost immediately, but it does require action on the part of the petitioner. That is different than pardons.

CHAIR CARE:
Yes. Is the victim on notice? Is the victim served with a copy of the petition for the restoration of civil rights? I am not talking about sealing records here.

MR. GRAHAM:
I believe they are. In this bill, an effort would be made to phone and notify a victim in writing if a pardon is being sought.

CHAIR CARE:
Let us say the family is served with a copy of the petition. Because there is rarely opposition to these, it is done in chambers and the court signs off on a matter of course. Is the victim obligated after receiving notice to request a hearing or to file a brief or objection? I am talking about current practice.

MR. GRAHAM:
In section 3, subsection 3 of S.B. 238, Senator Parks points out there is notice to a victim, and the victim can then request a hearing in writing. From a practical standpoint, about 75 percent of these have moved on. It is like a consent calendar.

CHAIR CARE:
Are the provisions in section 1, subsection 3 an alteration of current practice?

MR. GRAHAM:
No, it is not.

LEE ROWLAND (American Civil Liberties Union of Nevada):
We fully support S.B. 238 and thank Senator Parks for bringing this bill forward. A right to vote is a hallmark of our democracy. The ACLU fights for full reenfranchisement. This bill is incremental in that grand scheme of things.

Studies do show that ex-offenders who actively seek to restore their right to vote are less likely to be reincarcerated. It makes sense that people seeking to be a part of our social fabric have a tie to the community. I am glad you discussed this bill in conjunction with S.B. 236 about reentry. Having your civil rights is a critical psychic manner of reintegration into society. This bill focuses on folks for whom there is little disagreement with respect to the victim or through respect to parole and probation. This is someone who deserves the restoration of their rights.

We encourage you to move further down the spectrum towards automatic restoration of civil rights for all crimes. Statistics show that restoration of rights helps with reentry and reduces recidivism. We support this bill. It is a great step down that path, and we urge you to think about further expanding restoration in the future.

JAN GILBERT (Progressive Leadership Alliance of Nevada):
We support S.B. 238. We too would like to see restoration of voting rights go further. The law is convoluted. We do have automatic restoration of voting rights for first-time offenders who commit minor crimes. The folks who commit more serious crimes have to wait five years to petition the court. Civil rights are defined in statute as voting rights, serving on a jury and running for office. This definition does not include guns.

CHAIR CARE:
Mr. Wilkinson, could you take a look at what Ms. Gilbert said about minor crimes? Please look at existing law on the automatic restoration of civil rights and when that would apply.

MS. GILBERT:
I became involved in this subject when the Progressive Leadership Alliance of Nevada (PLAN) wanted to register people to vote. The PLAN hired someone this last election to help ex-felons get their voting rights reinstated and realized then how convoluted the law is. The Office of the Secretary of State has been helpful trying to interpret the law. We would like to see it cleaned up and make

voting an automatic right. An offender completes his or her term, parole and probation. At that point, the offender deserves their right to vote. Voting is a right; it is not a privilege.

CHAIR CARE:
We do have a few people the Division of Parole and Probation signed in to testify as neutral.

BERNARD W. CURTIS (Chief, Division of Parole and Probation, Department of Public Safety):
We have no objection to S.B. 238, except one portion of this bill indicates there is no fiscal note. Pardons investigations require a significant amount of work. This bill will speed up the process creating a fiscal impact based on the workload my investigators would have to accomplish. They can complete 8 to 10 of these a month. In the last pardons hearing, we did 70 investigations. There is a fiscal concern from the Division of Parole and Probation.

CHAIR CARE:
If this bill were to become law, would section 1 still operate without the paperwork being completed by your office in the first instance? I appreciate there is a fiscal note, but if this becomes law, do you read this to mean that things would unfold so quickly that you would not have any input?

MR. CURTIS:
It indicates an expedited process which means more pardon requests would come forward. I suggest the percentages will equal what they are today for those in and out of custody. A greater number will be a fiscal concern for us in a shorter period of time. Maybe I am not being clear. We have an issue with the workload because extensive investigations are completed by our Division.

CHAIR CARE:
Let me see if I understand. The workload will remain the same, but you have to do it more quickly.

MR. CURTIS:
That is exactly right.

CHAIR CARE:
If your workload was not finished, then there would be no restoration. Do you have to do your work before you have the restoration of civil rights?

MR. CURTIS:
Unless there was an expedited and shortened process acceptable to the Pardons Board. It could be a shortened process, an abbreviated investigation if needed.

SENATOR PARKS:
There used to be one or more vacancies within the function you perform. What is your current staffing? Do you have any vacant positions relative to performing this function, and how does that play into your budget?

MR. CURTIS:
We are utilizing vacant positions for vacancy savings at this time. We anticipate hiring additional people to a level lower than once staffed. I believe this Session will be generous in reestablishing sworn positions within the Division. Those budgets are still out there. I have significant staff shortages throughout.

SENATOR PARKS:
If we had the staff, we could be saving tens of thousands of dollars by moving people out of the prison. Since we do not have the staff, we cannot process the paperwork. Hence, they continue to sit in prison.

MR. CURTIS:
During this last year, we accomplished every recommendation and investigation submitted to us through the Parole Board. We did not have a shortfall. An expedited process and greater numbers could have an impact.

SENATOR PARKS:
In our discussions in the Advisory Commission meetings, we envisioned some regulations would be promulgated by the Pardons Board to put this into effect.

CHAIR CARE:
There is no opposition to the bill. I will hold onto it until our next work session. Please follow up on the fiscal impact, Mr. Curtis, so we can have something to work with. Mr. Wilkinson, what did you find on the automatic restoration?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
A number of provisions in the *Nevada Revised Statutes* (NRS) relate to automatic restoration. You have that following discharge from honorable discharge from probation, honorable discharge from parole and release from prison. Automatic restoration is for the right to vote and the right to serve as a juror in a civil action. Four years after that is restoration of the right to hold office. Six years after is the right to serve as a juror in a criminal action. This does not apply to Category A or B felonies involving violence and resulting in substantial bodily harm or people convicted of two or more felonies in separate occurrences.

CHAIR CARE:
Is there anything about serving as a juror in a civil action?

MR. WILKINSON:
That would be four years.

CHAIR CARE:
Let me close the hearing on S.B. 238 and go back to S.B. 236. There was no opposition to that bill. The Chair will entertain a motion.

Is there any discussion on the motion?

SENATOR COPENING:
Since I did not get a chance to review the amendments, please go forward with the motion, but I will refrain. I will read these and issue a vote later. Would that work?

CHAIR CARE:
Sure. Show the bill passing 6 to 0 with an abstention from Senator Copening.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 236.
>
> SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR COPENING ABSTAINED FROM THE VOTE.)

* * * * *

CHAIR CARE:
We will open the hearing on S.B. 350.

SENATE BILL 350: Makes various changes relating to business. (BDR 7-1118)

During every interim, certain sections of the State Bar revisit evolving case law and examine the existing statutes. In this case, I will call it the corporate code, NRS Title 7. What you have before you is the product from the Business Law Section in the form of S.B. 350. Robert Kim is no stranger to the Committee.

ROBERT C. KIM (Chair, Executive Committee, Business Law Section, State Bar of Nevada):
You have before you today S.B. 350, a product of the executive committee's yearlong work. We accumulated different ideas and revisions for business law statutes and worked together to propose changes submitted in the form of the bill. It is this process that yielded S.B. 350. I have provided two memorandums. One provides a high-level summary of why we made certain changes contained in S.B. 350 (Exhibit G). The second memorandum (Exhibit H) proposes further amendments to S.B. 350 based on our review of the Legislative Counsel Bureau's draft of our revisions as well as conversations we have had with other practitioners and the Secretary of State.

I would like to run through Exhibit G to identify the key things we have done in S.B. 350. There was no particular theme. We typically look at our business laws, keeping track of things we have come across in practice, looking at trends in other states and looking at trends of different case law. In sections 1, 81 and 82 we wanted to clarify a potentially ambiguous area as it relates to attorney-client privilege in the context of attorneys who would serve as registered agents for their clients. The goal is to make sure any information requested of an attorney who serves in that capacity is limited to those materials the attorney possesses only in their capacity as a registered agent.

Sections 2, 3, 4, 5, 6, 9, 10, 11, 13, 14, 47, 55, 56 and 79 of S.B. 350 are mainly technical changes, typographical errors and conforming language-type changes. These changes do not change the law but merely clarify its purpose.

Sections 7, 8, 15, 19, 21 and 22 look to revise the default venue for different corporate matters from Carson City to the registered office of the entity. We thought this would be a more appropriate default rule for venue on those various matters addressed therein because that is where the entity is located. This is where they choose to have their registered office. Most likely, many of these venue decisions drive on corporate or business-related matters best served by the designated business court if they happen to have their registered office in Washoe or Clark County.

Sections 12 and 67 clean up changes to the NASDAQ Stock Market. It has changed over the years and is no longer a quotation medium as typically defined. It is a national securities exchange; we made a few changes to get rid of archaic reference in Title 7 of NRS.

Section 16 of S.B. 350 talks about the validity of contracts and acts of a foreign corporation. It provides a standard as to what happens to contracts entered into by a corporation required to be registered as a foreign entity.

Section 17 removes the "Assets and Liabilities" requirement from the publication requirement in NRS 80. We thought it was unfair to have a foreign entity disclose information when domestic entities do not. We wanted to address that inconsistency. The publication requirement still remains.

Sections 18, 20, 23 and 24 help clean up provisions related to nonprofit entities. They are not major changes, but they help nonprofits conduct business in an easier fashion. For example, they will permit an electronic notice and empowering not just board members but also committee and officer members as well.

MR. KIM:
Sections 25 to 27, 30 to 32, 37 to 41, 44, 49, 50 and 52 create the concept of restricted limited-liability companies (LLC) and restricted limited partnerships. These were proposed by estate planning lawyers who we have dealt with in the past. It is another feature they wanted to introduce into Nevada Entity Law. It was designed to help create default rules which help maximize discounting

principles as it relates to creating family estate plans. You could opt into this rule if you wanted and only if you wanted to.

Sections 28, 29, 33, 35 and 36 are amendments to the limited liability chapter, NRS 86. The use of LLCs has grown immensely in the last ten years. We looked at our statutes to see if they are sufficient to provide the public the right tools and needs to operate these LLCs since they have replaced corporations and limited partnerships as the entity of choice. We took a look at the recently adopted Uniform Limited Liability Company Act as a potential model for our laws. We felt the Act had gone too far and was too cumbersome to use. It would have been a drastic move from our current statute to that statute. In lieu of that, we proposed a series of changes that clarify governance, membership, admission as members and the rights of third parties as it relates to LLCs.

Sections 33, 34, 42, 43 and 51 of S.B. 350 try to clarify the burden of maintaining information required by the registered office of an entity. In lieu of having that maintained by two separate parties in two locations, we thought it would be less onerous if the same information was cross-referenced and maintained by the same party.

Sections 45, 46, 48, 53 and 54 acknowledge that we have two foreign limited partnership regimes in Nevada by virtue of the fact that the Revised Uniform Limited Partnership Act was adopted in 2007. In lieu of eliminating one regime, we recommend harmonizing the statutes that exist between the two so that people who have elected to use one or the other are not left without one.

Section 57 and 58 address professional entities. Based on our conversation with the State Bar of Nevada, we wanted to clarify who could own an interest in a professional LLC or corporation.

Sections 59 to 78 comprise the largest section of our bill. They revamp and revise the dissenters' rights statutes of NRS 92A as it relates to corporations and stockholders. These statutes have not been substantially revised since first adopted from the Model Business Corporation Act. Based on what the Model Business Corporation Act evolved into over the years since first adopted in Nevada, we picked and revised our statutes according to what would reflect these updates.

The last item is a clarification for section 80 of S.B. 350 relating to fictitious firm name filings. There is an ambiguity related to the ability of persons to file fictitious firm names as related to general partnerships and different activities on that level. We want to clarify who could do that and when they could do that. It does impact who has to qualify as a foreign entity, and we want to make sure that our proposal does not impact and change those standards.

Exhibit G is a broad summary of the changes we are proposing in S.B. 350.

SENATOR WIENER:
In section 26, we tend to be a little cautious when we get one more type of new person in law. I am looking at this whole configuration you presented. Would the one you shared be used in either estate or trust development? Was this the new breed for that?

MR. KIM:
Yes, that would be correct.

SENATOR WIENER:
As I recall in your testimony, there was a request that those in this field of legal practice found this would be something beneficial in those kinds of planning arrangements. Could you tell us why this new entity is needed and what the benefit would be?

MR. KIM:
I am not an estate planning lawyer, but I discussed it with members of the Bar who are estate planners and members of our own executive committee who practice estate planning. I wanted to make sure this concept would not be offensive and would not view Nevada as untoward in terms of what the State is doing with its business laws. We would not be creating a new type of entity. This will still be a limited liability company governed much the same way. It would have features related to the ability of a restricted LLC to make distributions from the LLC to its members.

I have been advised that estate plans are put together in light of applicable Internal Revenue Service (IRS) rulings and regulations. The IRS tends to look at the default rule as it relates to an entity. By adopting this restricted LLC that has severe default rules as it relates to the provision on distributions from the entity to its members, it is that constant the IRS will look to in determining whether

this estate plan was prepared sufficiently and whether the discounts taken by the estate planners when they place assets and different family property in these estate plans are appropriate and within permitted guidelines.

CHAIR CARE:
I need to disclose that a member of my firm is part of the Business Law Section and worked on this. Am I correct, Mr. Kim?

MR. KIM:
Yes, his name is Andrew Gabriel**.**

SCOTT W. ANDERSON (Deputy Secretary of Commercial Recordings, Office of the Secretary of State):
I have been in contact with Mr. Kim. It has only been within the last few days that we have had a discussion. They have covered the main concerns we had with the bill, and we are supportive of their efforts toward S.B. 350. We want to make you aware that the addition of the restricted LLC or limited partnership would have a minor fiscal impact on our Office. We would have to make some changes for our system to reflect that designation.

In the packet that I have given you (Exhibit I), there is proposed language for amendment to current law in the creation of new sections pertaining to those businesses and individuals that fail to comply with the filing requirements of Title 7 of NRS. Whether they are foreign corporations in the State and not qualified or individuals purporting to be an entity which they are not, they should be on file with us. While I have given some proposed language, I would be willing to work with Mr. Kim and your staff to come up with proper language. The fine of $500 is an old provision and not much of a deterrent that should be increased and possibly done on a graduated scale or timing where a person is given a certain amount of time to rectify. If they do not, then the penalties come into place. We would also like to put in provisions that if S.B. 350 goes into effect, the Office of the Attorney General or the office of the district attorney be able to recoup their costs in going after and making these exactions.

CHAIR CARE:
Please work with Mr. Kim. I do not know if some of that could be done by regulation or we would have to do that by statute. If it becomes law, the effective date of this bill is October 1; no other date is given. There have been

occasions where your office has requested a later effective date because you need the additional time to modify your system.

MR. ANDERSON:
That is correct. We are looking at a number of different changes to our system from this and other bills. The Business Law Section has indicated they would be willing to put this out to a later date. If the Business Law Section is agreeable, it might be a good idea to put it out to July 1, 2010.

CHAIR CARE:
Thank you. Please continue to work with the Business Law Section.

MR. KIM:
I would only clarify that the deferred effective date would only be restricted to LLC and limited partnership concepts and not to the balance of the bill.

CHAIR CARE:
We can write it that way.

MR. ANDERSON:
That is correct.

CHAIR CARE:
Mr. Kondrup, you may come forward. I have read your letter (Exhibit J). You have two sections where you are bothered by the attorney who acts in the dual capacity of registered agent as well as counsel for the entity. You may elaborate on your letter.

STEVEN KONDRUP (Deputy Commissioner, Division of Financial Institutions, Department of Business and Industry):
The Financial Institutions Division does not have any objection to the bill. However, the Division is concerned with parts of the bill that reference the proposed language changes in NRS 604A and NRS 675. In section 1, the bill excludes attorneys who are resident agents from the requirement that the resident agent disclose to the Commissioner that a corporation is conducting unlicensed lending activity due to his professional confidentiality. The Division understands that as an attorney, confidentiality and client relationship is important. However, in the aspect of an attorney acting as a registered agent, it is necessary to notify the Division when a prospective client is in violation of the

law to protect the constituents in the State of Nevada. We should be notified so we can investigate the activities of that individual or business.

Sections 81 and 82 restrict the power of the Commissioner to inspect the books held by an attorney unless the information is privileged based on an attorney-client relationship. However, if the individual is acting on behalf of a resident agent, the resident-agent documentation held in the attorney's office is not considered attorney-client privileged. Both NRS 604A and NRS 675 have language which provides that the investigation of a registered agent pursuant to both of those statutes includes, without limitations, any books, accounts, papers or records used therein. They will be held strictly as confidential information obtained by the Division except to the extent necessary to enforce any provisions of this chapter. During the last Legislative Session, the Division felt that with some of the actions taking place throughout the resident agents' activities within the State—in regard to shielding unlicensed and criminal activity with respect to loans, constituents in the State of Nevada were neither protected nor able to have the Financial Institutions Division give complete investigations and provide necessary enforcement action as required by statute.

CHAIR CARE:
Let me go back two years. My recollection is the Model Registered Agents Act came out of this House and went to the Assembly. The Assembly attached an amendment that really did not go to the Model Act. I remember the discussion about the real role of a registered agent. The reporting requirements were quite narrow compared to what was initially suggested in the original amendment. I think that is what happened. I may be wrong.

Let me go to your objections in section 81. The only alternative is that an attorney could not be a registered agent. There are several practitioners in small firms throughout Nevada who act in a registered-agent capacity. These are not commercial registered agents. We cannot say that you cannot do that anymore. Zeroing in on section 81, I can personally make a distinction between records kept by a resident agent in that capacity and documents kept by an attorney in his capacity. I am talking about documents, not communications. It is not clear to you. Is that correct?

MR. KONDRUP:
That is correct. In regard to the letter I proposed, Exhibit J, I recommend the attorneys have the clients sign a consent regarding the activities of the

individual. If for some reason they are found to be in violation of the NRS 604A and NRS 675, then the information the attorney has could be released to the Financial Institutions Division for the completion of the Division's investigation.

CHAIR CARE:
I am uncomfortable doing that, but we can talk to the Business Law Section. It seems to fall under the purview of the court in regulating the profession. That is not the role of the Legislature.

Going back to section 1, when you have an attorney acting as a registered agent, and a corporate officer or director says something to that attorney who now has this knowledge, he is serving as a resident agent. He would be precluded from divulging the contents of that communication. Mr. Kim, you saw this letter.

MR. KIM:
I did have a brief opportunity to look at the letter. The goal is to address a paramount professional rule of conduct as related to attorney-client privilege and confidentiality. The goal is not to undermine any kind of investigation or enforcement action. Responding to the comments of sections 81 and 82 pertaining to NRS 604A and NRS 675, we thought the language was necessary or recommended because it allowed the Commissioner to investigate and examine books of any registered agent who possesses a license but did not clarify what books or records those happen to be. The proposed language in sections 81 and 82 identifies there is no right to investigate books and records other than those books, accounts, papers and records maintained in his capacity as a registered agent. The goal was to be exact about what could be reviewed and looked at in the context of an investigation. If it is viewed as too strong, that was not the intent. It was meant to only clarify that a registered agent, who may happen to be an attorney as well, could hold two types of records: One in his capacity as a registered agent and one in the attorney-advocate capacity.

SENATOR WIENER:
Would that require they be separated? What if there is duplication? Would there ever be a time where the same records would be used or crossed over?

MR. KIM:
It is difficult to say how an attorney conducts his practice. If you have registered-agent capacity, the best practice would be to have a separate file. For other matters that you represent, the information should go into those files. It should not be a problem, but we know people do not keep records as well as they should.

CHAIR CARE:
There were four of us in the firm I was with for 15 years who were registered agents, most always for an entity with which we had a relationship and matters in litigation. In the larger firm I am with now, we have a subsidiary that is a commercial registered agent. We have people who handle these matters; we never talk to them about it, and we never see them. But if you are a small firm, your sole practitioner is where this issue generally would arise.

Mr. Kim, please talk to the Division to see if something can be worked out. I appreciate what you are trying to do, and I understand the concerns. Sections 81 and 82 are not as problematic as section 1. Keep talking to see if we can work something out.

CHAIR CARE:
April 10 is the deadline for bills to be moved out of Committee of the House of origin. We will close the hearing on S.B. 350. We are adjourned at 10:13 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: