MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
June 5, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 9:49 a.m. on Sunday, June 5, 2011, 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Senator David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jeffrey Eck, Committee Secretary
Danielle Baraza, Committee Assistant

OTHERS PRESENT:

Garrett Gordon, representing Southern Highlands Homeowners Association; Southern Highlands Management Company; Olympia Group; and Alessi & Koenig, LLC
Pamela Scott, representing the Howard Hughes Corporation, Las Vegas, Nevada
Renny Ashleman, representing the City of Henderson
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association
Keith Lee, representing Default Services Division, Lawyers Title Insurance Corporation, Las Vegas, Nevada
Jan Porter, General Manager, Peccole Ranch Association, Las Vegas, Nevada
Chris Ferrari, representing Concerned Homeowners Association Members Political Action Committee
Connie Bisbee, Chair, State Board of Parole Commissioners
Florence Jones, Private Citizen, Las Vegas, Nevada
David Smith, Hearing Examiner, State Board of Parole Commissioners

Chairman Horne:
[Roll was called.] Good morning, ladies and gentlemen. Welcome to the Assembly Committee on Judiciary this fine Sunday morning. We have two days left in the regular legislative session. This morning we have two bills on the agenda. If you wish to testify in favor or in opposition of any particular bill, make sure you sign in. If you have a business card, please give one to the secretary so he can get your name right.

We will open the hearing with Senate Bill 174 (1st Reprint). Senator Copening, good morning.

Senate Bill 174 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-105)

Senator Allison Copening, Clark County Senatorial District No. 6:
Good morning, Mr. Chairman and members of the Committee. I apologize that you have to hear yet one more homeowners' association (HOA) bill, but we hope to get through this in a speedy fashion. I have prepared remarks, and I think it will be easiest to refer to them to relay all the information.

[Senator Copening read from a prepared statement (Exhibit C).]

You have a handout (Exhibit D) highlighting the collections policy and you can see the difference between what this bill is proposing and what is in current regulations.

[Senator Copening referred to Exhibit D.]

To highlight a few of the items, our current regulations allow charges up to $1,950 for collections costs. This bill caps it at $1,500. It also puts a cap of $1,000 on third-party hard costs. Current law has no cap. Generally, people do not cap third-party charges, but in this particular case, we wanted to make sure that nothing got slipped in that should not be there.

The bill puts a $600 cap on collection services related to a fine. Current law has no cap. It also caps collection services that do not include attorney's fees that are (1) incurred by an association because a unit owner filed bankruptcy, (2) incurred by an association when an action is filed to enforce, challenge, or related to the enforcement of any past due obligation when attorney's fees are authorized by the governing document of the association, or (3) awarded to the association by a court. Current law has no caps.

There is a nine-month superpriority for collection costs and reasonable attorney's fees on past due obligations. Current law also provides an exemption for the Federal Home Loan Mortgage Corporation (FHLMC), known as Freddie Mac, and the Federal National Mortgage Association (FNMA), colloquially known as Fannie Mae. So, if a federal law says that you can only collect a certain amount, our state laws obviously would not be in effect.

There is also a mandatory payment plan for homeowners who are in default. This is very important to the Legal Aid Center of Southern Nevada to make sure that homeowners who are having difficulty in paying their bills could be put on a payment plan before they are foreclosed upon.

[Senator Copening continued to read from a prepared statement (Exhibit C).]

We will continue to work with the HOAs. I believe our HOA lobby also worked with Mr. Ohrenschall to clear up some of those issues late last night, so there is a new mock-up of the bill (Exhibit E).

[Senator Copening continued to read from Exhibit C.]

The study will allow us to determine the necessity of a statutory interim committee. I thought this was important, as you all have been subjected to a lot of different HOA bills, many of them conflicting, many of them highly charged by different interests. Our staff has been similarly plagued with having to spend many hours on the bills. The Legislative Counsel Bureau staff person for the Senate Committee on Judiciary in the last interim spent over 50 percent of his time on HOA bills. This bill proposes that our interim committees take a look at these bills and get them fully vetted before they come before you and the Senate in the next legislative session.

[Senator Copening continued to read from Exhibit C.]

Because we have a new mock-up, the carve-out language is found on page 37, lines 22 through 37. This is existing law, so this carve-out has already been in law that basically states that if Freddie and Fannie have regulations that state they only pay six months, then they only pay six months.

[Senator Copening continued to read from Exhibit C.]

I want to address an article that appeared in the *Las Vegas Review-Journal* the other day. It spoke of some of the concerns of the investors. Rutt Premsrirut, who is the leader of Concerned Homeowners Association Members Political Action Committee (CHAMP), told the reporter that he would like to see Nevada have a bill similar to one in North Carolina. He said lawmakers in North Carolina unanimously approved a bill that would limit the ability of an HOA to foreclose on property owners because of unpaid dues or assessments. We agree with that, and that is why we put in the mandatory payment provision. So, we have addressed one of the issues they have.

The second issue, he said, was that the measure would require dues or assessments to remain unpaid for 90 days before the association could begin the foreclosure against the property owner. We agree with that, but we made it even stronger. Our bill calls for a 120-day waiting period before the foreclosure process can begin. He said that, among other provisions, the bill in North Carolina also required that an association's executive board vote before

they begin any foreclosure proceedings against an owner. We absolutely agree, and it is in the bill that the executive board must vote before they foreclose upon a home.

Mr. Chairman and Committee members, I am happy to answer any questions. I also have people in Las Vegas and some folks here who would like to testify on the bill.

Chairman Horne:
Thank you, Senator Copening. We have some questions. Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Senator, the part of your introduction that jumped out at me was that Freddie and Fannie have always paid the closing costs for the priority lien. Under this legislation, the only variables that represent more money under the priority lien appear to be reasonable attorney's fees and collection costs. Those were excluded from the priority lien before. Are they now included?

Senator Copening:
They have never been excluded. In fact, they have always been paid. They have been challenged in court for several years. Because our current law—*Nevada Revised Statutes* (NRS) Chapter 116—is very vague when it refers to collection costs. It just says that paid in that superpriority category are collection costs and other fees. The courts have determined that collection costs and other fees refers to virtually anything, including attorney's fees. The cases that have gone before the districts courts, where they have challenged it, have lost because the district courts, in three cases, have interpreted the law to mean it. We want to avoid these cases and just make it clear in statute what is included in a superpriority lien.

I have to look at the specific language in it again because we limited attorney's fees that could be collected to specific categories. I know Garrett Gordon can speak to that a little bit more. That was something negotiated in Mr. Horne's working group. The whole collection was worked out in that working group. That was a concern of Legal Aid.

There are only certain situations where attorney's fees can be collected, and if an attorney is the one who does the collection process, you cannot have a collection company and an attorney doing the exact same thing and collecting those fees. The cap is $1,500. It stays there. The only other thing we capped were hard costs. We estimated that those hard costs should never go over $1,000. In many cases, they will be less.

Assemblyman Sherwood:
Under this, the lien would be law, whereas before it has never been law. It has been vague, so now there is a new category of people who get priority liens.

Senator Copening:
It has always been honored as law. The district courts said superpriority is that. We are just making it clearer.

Assemblyman Sherwood:
Thank you.

Chairman Horne:
Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I have some questions about certain sections of the bill. It might be more appropriate for me to wait until Mr. Gordon speaks, so I can ask those questions as we get to them, as opposed to the overview.

Chairman Horne:
Okay. Are there any other questions for Senator Copening? I see none.

Senator, is someone going to walk us step-by-step through the mock-up, or through the bill?

Senator Copening:
Mr. Chairman, Garret Gordon is here to do it however you would like. Mr. Ohrenschall is also very familiar with sections of the bill, especially Assembly Bill 448, which got wrapped up into it. Senate Bill 174 (1st Reprint) was actually a pretty small bill before we wrapped A.B. 448 into it. I would be happy to have Garrett come up and walk through the bill.

Chairman Horne:
Okay. Mr. Gordon.

Garrett Gordon, representing Southern Highlands Homeowners Association; Southern Highlands Management Company; Olympia Group; and Alessi & Koenig, LLC:
I can say I also speak for the group of lobbyists sitting behind me, and for title companies, management companies, and other HOA groups, such as Howard Hughes Corporation. Pam Scott is in Las Vegas. She can help with the explanation.

I will touch on three points, and then I would be happy to walk through the bill. The first point I want to stress is that this is definitely a compromise. As you all know, through the last four months we have worked on over 20 HOA bills. In each case, we pulled out the collections piece. That has consistently been the controversial issue. We have used S.B. 174 (R1) to put together the collection compromise. It is definitely better than existing law. Many folks are not happy with it. I have received some emails from collection companies that are not happy with it. That is probably a good thing.

To be totally straight, here is the current law: Collection services are capped at $1,950. Hard costs are not capped whatsoever. Attorney's fees are not capped. This bill caps collection activities at $1,500, start to finish. That is worst-case scenario and the house is going into foreclosure. This bill would also cap hard costs at $1,000. We have put together a spreadsheet of exactly what that includes, and $1,000 is a reasonable amount of money for the hard costs required to get from start to finish.

Narrowing the scope of attorney's fees has been a major issue. We have narrowed those to only a claim of bankruptcy or litigations so long as the covenants, conditions, and restrictions (CC&Rs) provide for attorney's fees awarded by the court. We narrowed that significantly. In the spirit of compromise in putting together this mock-up, it also includes the ability for, as Assemblyman Sherwood mentioned, a superpriority. In exchange for significantly capping these collection costs, it was fair to the HOAs that they were able to collect these costs. Otherwise, the costs are spread across all other homeowners in an association, and assessments could go up.

Also wrapped in here are sections of A.B. 448. This Committee and your house have approved A.B. 448 a few times. I am happy to walk through those sections again, but I think we have vetted those issues very well. Mr. Ohrenschall and I have spent 20-plus hours going through section by section what works for associations, Legal Aid, and all the different components of this industry. That is built in here as late as this morning.

I have an update for Mr. Ohrenschall. An issue very important to him was that a house could not be foreclosed upon for delinquent attorney's fees resulting from arbitration or mediation. It is now in this bill. I know that was very important to you, Mr. Vice Chairman, and your colleagues at Legal Aid.

It is a compromise. It is a good bill. I will be very brief and answer questions regarding how this benefits each of the parties involved. Regarding HOAs, a nonprofit must balance its budget. With collection assessments to pay services, if an HOA cannot collect its assessments, all other homeowners' assessments

will go up. This is crippling HOAs and leading some to bankruptcy. So, this is a good bill for HOAs and a good bill for homeowners. Again, A.B. 448 has a lot of homeowner-friendly protections that are now in S.B. 174 (R1). Collections companies are a necessary evil, but they do a lot for HOAs. This, again, significantly caps what can happen with collection companies. The Concerned Homeowners Association Members Political Action Committee and others have passed out literature showing the egregious amounts—thousands upon thousands of dollars—billed to collect assessments. This caps that in statute, not in regulation.

There is a payment plan in here with different options to make sure folks can get back on their feet. There is a notice provision. With each attempt to collect a debt, the collection company or HOA has to inform the unit owner of what may happen next in full transparency about the process.

I think the Senator hit the Fannie and Freddie issue very well. I am happy to answer any questions. We were in the Senate Committee on Finance yesterday. Chairman Horsford asked of the members of CHAMP, "You understand that federal law trumps state law, correct?" I do not believe we are doing anything here to cause an issue with federal law, but at the end of the day, if we did, which we are not, federal law trumps.

I want to thank the Chairman for this hearing. The bill is not over here yet, but I think this represents hours and hours of compromise, and I think it is a good piece of legislation for everyone involved. I am happy to answer any questions. Thank you.

Chairman Horne:
Thank you, Mr. Gordon. I appreciate your working with the Vice Chairman on the many aspects of the bill and making it a better bill for the other stakeholders. I know you put in a lot of hours to do that. Are there any questions for Mr. Gordon? Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman. I have several questions. Mr. Gordon, I am still going through some of the sections. On page 5, starting on line 38, the bill talks about filling vacancies on an association's executive board. I am curious as to why they may not appoint someone who has been removed within the immediate six years and where that six years came from, whether it is currently more or less.

Garrett Gordon:
I will try to give my explanation, and then I think it would be worthwhile to have Pam Scott from the Howard Hughes Corporation testify from Las Vegas, if the Chairman is okay with that. I have worked hard on the collections piece. Some of the material in A.B. 448 that deals strictly with associations came from Ms. Scott. I understand that six years was in A.B. 448, which was approved by this Committee. That has not changed. How it got into A.B. 448 in the beginning, I may defer to Ms. Scott, but I think it was probably a compromise to say that if someone has been removed, there is probably a good reason why, and that person should not be able to come back onto that board for a period of time.

Assemblyman Frierson:
Mr. Gordon, on page 8, in section 2.9, subsection 5, it talks about a hearing being postponed if the unit owner cannot attend. It specifically mentions medical documentation as the reason. I wonder if consideration has been given to extraordinary reasons rather than specifically medical reasons. It may not be medical, but there may be an extraordinary reason why someone is unable to attend. I wonder whether or not that has been discussed, because it seems to me there may be some justifiable reasons why someone cannot attend that are not necessarily medical.

Garrett Gordon:
I believe, in a lot of these cases, there were circumstances—usually a narrow set of facts—that triggered some language. So, I believe this came from a narrow set of facts. Someone was ill, or there was another issue and he could not make it to the meeting. I believe that there is some other language in here that gives the executive board the discretion to continue a hearing. I would argue that if someone did not show for good cause, and a hearing went forward, there would be a violation of that person's due process at a higher level. We wanted to make sure that medical documentation and a medical issue was, in fact, a justifiable excuse not to be there.

Assemblyman Frierson:
Thank you. I will look further to find out about the good cause that likely exists for other reasons. I am glad we made a record of it either way.

On page 10, section 3, subsection 2(b), the mock-up changes "adversely affects the use and enjoyment" of nearby units from being one of four factors to being a precondition of the other three factors. So, it has to adversely affect the use and enjoyment of nearby units and meet one of the other three criteria. My concern is, if there is a public nuisance that affects the aesthetics, for example, it might not affect the use and enjoyment. If it affects the aesthetics

but does not affect anyone else's use, then they would not be able to do anything about it. The short and simple of it is, if it is something really ugly that does something to the aesthetics of the community, they would not be able to do anything about it unless it also affected the use. That seems to me to be the effect without the intent.

Garrett Gordon:
I believe you are correct. I think the issue here was trying to define "public nuisance." Obviously, through the length of this statute, a lot of times terms are ambiguous, and it leads to a lot of disputes. I think moving that language up to paragraph (b) qualifies the definition of a public nuisance. I believe that comes from other code or other language in statute that kind of defines it.

I am happy to work with you if you would like to further expand on, or take away from, that section. I think the goal here was—and, again, this was in A.B. 448—to qualify what a public nuisance was and to give some certainty to in fact what would have to be removed or abated.

Assemblyman Frierson:
In case I overlook it, I know there are some notice requirements in here. It has not received a lot of attention, but I personally think it is one of the most important provisions in here for the folks who do not recognize how bad it could get. I appreciate that being added.

On page 12, the caps are mentioned. We have had discussions about this, about whether there had been any effort to make it proportional. As it reads, there is a cap of $1,500 regardless of what the balance is. If somebody owes $200, there is a cap of $1,500. If somebody owes $2,000, there is a cap of $1,500. It seems to me that if, for example, the balance is lower and it is mitigated earlier, maybe there would be an opportunity to have a proportional fine so that it is smaller when the amount is smaller.

Garrett Gordon:
Over the last couple of weeks, that has been on the table through every discussion and through every working group. The difficulty with tying it to the amount of the underlying obligation is that the same work and the same perfection of the lien and process goes into the effort, no matter what the underlying debt is. In this compromise we tried to say, "Okay, if we cannot tie it to the underlying debt, what else can we do?" Here is what we did. You will see the sentence on page 12, line 2, sets forth a cap of $1,500. It says the association ". . . may not charge a unit's owner fees to cover the costs of collection services in connection with the collection of a past due fine which

exceed $600." So, we capped the fine at $600. I know that is the source of a lot of worry for a lot of people and that there should be a cap there.

We also tied this $1,500 to the regulation. I think you have all seen on numerous occasions that the Commission for Common-Interest Communities and Condominium Hotels capped each service at each step in the process. If you read this in conjunction with the regulation now, that if you only get through steps 1, 2, or 3 and pay, then, in fact, there is a subordinate cap on what the Commission has said. In exchange for not tying it to the underlying obligation, we tied it more to timing. We are now saying in here that you cannot file a lien until that past due obligation has been there for four months. If you have blown your assessment after month one, after four months has accrued, I think you are starting to get into a substantial number that harms the association.

Finally, we put in here that a past due amount has to be past due for at least 12 months. Again, I do not think you are going to get the $50 or $100. I think if you are past due for 12 months, then there is the ability to foreclose. In summary, and to answer your question, we could not tie it to it because there were some logistical problems and work and effort problems, but we tried to build in some other protections. We have sat down with Legal Aid to address that point.

While we are on page 12, subsection 4 of section 3.5 is the notice provision, which says that upon "Each written attempt to collect from a unit's owner a past due obligation which is more than 60 days past due . . . ," the association must include a statement of the current amount due and a schedule of what could happen if there is a continual delinquency. I know that was important to you. In the spirit of transparency and making sure everyone understands the law and the process, we made sure that was included.

Chairman Horne:
All right, Mr. Frierson.

Assemblyman Frierson:
I have a couple of questions about this page, and then I will let Mr. Gordon go for a little bit.

On the notice provision, which is section 3.5, subsection 4(b), where the schedule has to be included with the notice, is there anything that requires a deadline be set? That is, if they do not pay by this date, it will be these fees. Or is that not contemplated as really being part of this?

Garrett Gordon:
That was absolutely the intent, where it says the ". . . schedule of the amount of fees, costs, charges or other amounts which may be charged to the unit's owner if the unit's owner fails to pay the total amount due." So, it would absolutely be the intent to say by the next 30 days, per state law, this charge could accrue. That is definitely incorporated into that section.

Assemblyman Frierson:
Thank you. That was very important to me. On the same page, subsection 2 deals with collections fees and caps them at $1,000. I want to make sure the intent is to capture the collection fees. This talks about the association recovering it, and I want to make sure that is including the company that the association employs to cover it, so that the other company does not tack on more charges on top of this.

Garrett Gordon:
Absolutely. The goal and the intent is to provide a cap on the association and on the agents that it hires to move forward with collection activities.

Assemblyman Frierson:
Thank you, Mr. Chairman.

Chairman Horne:
Mr. McArthur.

Assemblyman McArthur:
Thank you, Mr. Chairman. I want to stay on the same topic. Under section 3.5, subsection 5(b), I just want a point of clarification. It says, "For past due obligations in an amount greater than $1,000, a plan for the repayment in 24 equal monthly installments of each past due obligation . . . ." So, with the first part, it looks like we are aggregating all the past due obligations to get the $1,000, and then on the second sentence, it looks like it is for each past due obligation. Are we aggregating the $1,000 to get up to $1,000, or does each fine or each part have to come up to $1,000 on its own?

Garrett Gordon:
That is a great question, Assemblyman. The intent is to provide a unit owner the ability to enter into a payment plan for past due obligations, and that term as defined includes both assessments and fines. Another provision in NRS Chapter 116 is that you must have separate accounts for fines and assessments. They cannot overlap. The intent of this section is that your past due obligation would be included if your assessments exceed $1,000, or if you have some fines that exceed $1,000. In working with Legal Aid, it was

important to them to let these folks dig out of a hole in a period of time that was reasonable, so if either a past due obligation, assessment, or fine exceed $1,000, then they would have a 24-month payment plan. In short, you could have two payment plans. That would be consistent with NRS Chapter 116—keeping those obligations separate—because foreclosure and other provisions treat those two terms separately in NRS Chapter 116.

Assemblyman McArthur:
You could have a whole bunch of fines and fees, each of them less than $1,000, and the owner could not get the payment plan then.

Garrett Gordon:
That is a good point. However, paragraph (a) in subsection 5 provides for a 12-month payment plan for obligations of $1,000 or less. We just tried to pick an amount that was reasonable to the homeowner and clients of Legal Aid to get through this stage in their lives and to get these obligations paid off.

Assemblyman McArthur:
Thank you.

Chairman Horne:
Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Mr. Gordon, I have a concern here that if I were a collection agency, I would immediately say, "Okay, there is $1,500, and there is another $1,000." So there is $2,500 that is superpriority. Why would you not just say, "Here is my $2,500, and now that is a cost to sell the home." As a homeowner trying to get out of the house, that is who I am worried about. As a new homeowner trying to buy the house and move in next to me so that it does not get trashed and turned into a blight on the neighborhood, that is who I am worried about.

The HOA will always get its money at closing because it has a 9-month superpriority lien. It will be paid 9 times $45, or 9 times $200, or whatever that number is. We have been seeing accounts that are turned over very early in the process. Part of the reason we pay HOA assessments is to keep track of the paperwork. I do not see anything in here that says the HOA has to, in good faith, try to collect any outstanding debts for a period of time, such as 12 months, before it is turned over to a $2,500 superpriority lien. Help me with that, because that is a real drag on everybody.

Garrett Gordon:
That is a great question. First, like it or dislike it, the regulation was codified this session. Existing law provides for $1,950. Without this, $1,950 would be the cap. There would be no cap on the hard costs or attorney's fees. The intent here, with capping it at $1,500 and reading it in conjunction with the regulation, is that there is a cap at each step of the process. You could not just tack on $1,500 in months 1 through 5.

Assemblyman Sherwood:
But when does it get turned over? I understand existing regulations are fine. We are trying to fix this so that we do not have to form committees and come back here and do this for the next five sessions, right? Where in here does it say an HOA cannot turn it over to a collection agency immediately? That would solve a lot of our problems, if we said month one does not happen until the HOA tries in good faith to collect.

Garrett Gordon:
I think I have a suitable answer for you, Assemblyman. The question of when it would go to a collection company was a concern of Legal Aid as well. Under NRS Chapter 116, a collection agency, as defined in another statute, is responsible for recording the lien. So we said in the amendment that you cannot file a lien, which is the first step of the process, until four months have passed. Now you have a four-month period, which was negotiated with Legal Aid, to allow the homeowner to get back on his feet and to be offered the opportunity of a payment plan. However, if you get to that four-month period, then you are really starting to affect the association's budget and also starting to affect, and eventually impact, the assessments on other homeowners. That is when it would go to collection.

You mentioned 12 months; that number was thrown around. There was also mention of 1 month. The compromise was 4 months to go to collections, and 12 months to go to sale. Nothing can be done until all past due obligation is there for at least 12 months.

Assemblyman Sherwood:
What is the obligation on the HOA to make the homeowner aware that their $45 . . . ? In my constituent's case, it is $45 a month. Let us say it is $50. That times four months is $200. You send it to collections, and suddenly a $200 past due fee turns into $2,700 immediately. Now I have to pay Legal Aid or somebody $100 to get into a payment plan. It seems like we are setting folks up for a superpriority lien that does not help the HOA. So, let us put some teeth into this that makes the HOA try to collect the debt on its own first. Four months before a $2,500 superpriority lien seems way out of line.

Garrett Gordon:
Let me attempt to answer that question. I see Ms. Scott, who works for the Howard Hughes Corporation. She deals with this on a day-to-day basis. Maybe she can put some real-life experience on your question. You asked how would your constituent know what could be coming. That addresses Assemblyman Frierson's point that he has made from day one, which is the subject of notice at each attempt to collect. With the 30-day notice of past due, there would be a schedule and a list of everything that could happen in the event of nonpayment. You cannot foreclose on the unit for at least 12 months, as I have indicated. With that built into the schedule, I do not believe it would be $2,700 immediately. It would take 12, 13, or 14 months to get to that point. Perhaps Pam Scott can address if from a practical standpoint. Thank you.

Chairman Horne:
Ms. Scott, would you like to attempt to answer that question and bring some clarity?

Pamela Scott, representing the Howard Hughes Corporation, Las Vegas, Nevada:
Some associations bill monthly, so you know every month what it is. Others have coupon books and maybe a quarterly statement goes out to let you know where you are at. Mr. Gordon is correct in that you cannot file a lien prior to four months. Before you can file that lien, you must send an intent to lien letter. There is language in the new compromise that says that letter must say what the costs are going to be and what the steps are going to be. It has to be spelled out extremely clearly. Once that notice of delinquent assessment is filed, which is generally 30 to 60 days after the intent letter, then you may go to a notice of default and intent to sell. I believe there are provisions in here where the board has to meet to discuss that and vote on that and have the intent to sell. The notice of default cannot be recorded prior to six months of assessments or an obligation of a minimum of $500. In many of the smaller associations, that would be over a year's worth of assessments.

I think there are multiple opportunities for noticing homeowners in this to that point. And what prevents it from being $2,500 from the beginning is that the regulation allows a set amount to send an intent to lien letter. The regulation allows a set amount—a cap—at each step, so you cannot be four months delinquent and suddenly be sent to collections and have $2,500 worth of collection costs. You probably would have the cost for the intent letter, and at the point the lien is filed you will have the cost for filing the lien, but it would not be anywhere near the caps. Summerlin pays $325, I believe, to have a lien filed. I believe the new cap on releasing a lien is $30. Thank you.

[Ms. Scott submitted a letter of support for S.B. 174 (R1) from the Howard Hughes Corporation (Exhibit F).]

Chairman Horne:
Thank you, Ms. Scott. Ms. Diaz.

Assemblywoman Diaz:
Thank you, Mr. Chairman. To piggyback off that concept, public entities like the City of Las Vegas have a more efficient system, and they only charge $29 to file a lien if someone is delinquent on his sewer fees. Republic Services charges a $36 lien on delinquent garbage bills. The HOA industry gets to charge $350. I am wondering why Republic Services, Clark County Taxation, and the City of Las Vegas Sewer Department all have superpriority liens and do not tack on thousands of dollars of what I feel are junk fees. Can you imagine the public outcry if Clark County and other municipalities were allowed to tack on up to $2,700 to people's properties? I want to get your thoughts on that.

Senator Copening:
I have the experts here, and Pam can speak a little bit more to the processes that HOAs go through. I also saw that in the newspaper today, so I do not know anything about the way they operate. I am not even certain that a municipality forecloses on a home. I am not certain, so maybe I can just turn that over to one of the experts. I agree that this is one of the reasons we capped it. If you look at the regulations, they are more, so we are trying to bring it down to less than the regulations. I do not really have any control over what are in regulations, but I can put some hard caps into law to bring those prices down. I will turn it over to Ms. Scott.

Pamela Scott:
The reason that the city can do that is that the city is not required under Nevada statute to use a licensed collection agency to collect their past due assessments. They simply record a lien.

A few years ago, a number of management companies were recording liens on behalf of the associations, and the Legislature passed legislation mandating that associations use licensed collection agencies. So, this is a service that the associations have to purchase. It is no different from purchasing the service of a landscaper. The collection companies have set their fees, just as the title company charges $300 to $400 for a title sale guarantee document. This all has to be coordinated through a licensed collection agency, and the association is not allowed to do that on its own. It is a cost that we incur.

Chairman Horne:
Does that answer your question, Ms. Diaz? [Ms. Diaz responded off microphone.] Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman, and thank you, Senator Copening. You are always very efficient. I appreciate that.

I have a question for Pamela Scott. I think we are all trying to look out for the best interests of our constituents. I live in an HOA, and I received a fine for $400 or $500 for a light that was out in front of my home. We are required to maintain the bulbs in the lights. I think that was a $25 infraction originally. I was a little taken aback, because my HOA did not really provide good service to me by mailing me a notice. They did not alert me that this was a problem.

Three months into this, and not realizing the light was out, I received a bill from a collection agency for more than quadruple the amount of the original fine. This was before I knew about all these HOA issues and before I came up here to the Legislature. This was over a year ago. It bothered me because the people on the HOA executive board are my neighbors. Somebody could have sent me a notice or put a notice on my door.

How can we make HOAs more accountable to receive the fees or the delinquencies for the infractions of individuals before they go to a collection agency? A collection agency is in the business to make money. With all due respect to you, you mentioned that you need to use licensed collection agencies. I would like to know how many of those licensed collection agencies are subsidiaries of HOAs.

Pamela Scott:
I will address your last question first. I have no idea. None of the collection agencies are subsidiaries of HOAs. They are a service that we purchase. There are some management companies that have also started licensed collection agencies. There is a relationship there between some management companies and some collection agencies, but they are, to my knowledge, separate corporations. Howard Hughes and Summerlin do no use those collection agencies, so I really cannot address that.

Assemblyman Brooks:
I am sorry. I meant to ask about property management companies, and not HOAs. They impact the HOA very significantly because they manage the property.

Pamela Scott:
Fining needs to be separate from delinquent assessments. I will go to your question about your fine and where you said you suddenly discovered you had a fine without any notice. Quite frankly, your HOA and your management company broke a law that has been in effect for many years. An HOA must give notice of a violation. It must put the homeowner on notice. It is mailed first class mail, but not all homeowners open their mail. I am not saying that is your case, but that is the case with many HOA issues. A homeowner cannot be fined until the homeowner has been noticed of a specific date and time for a hearing either before the board of directors or the compliance committee. They broke the law; it is as simple as that. My HOA sends a minimum of three notices about the issue before we schedule a hearing. No fine, under existing law, can be assessed until the hearing has been held. That does not mean the homeowner has to show up. If he does not come to the hearing, it is no different from when a person skips his court date. The association prevails in that case.

I believe your third question had to do with making sure homeowners know they owe this money. I think that management companies and associations bend over backwards by sending out statements and intent letters to let people know what is happening. There is some very specific language in this bill, in this compromise, with the collection language that describes everything that has to go out in that intent letter, such as how to have a payment plan and what the additional costs would be if you ignore this letter. So, I think the noticing is well-covered in this.

Assemblyman Brooks:
Yes, but here is where the integrity situation comes into play. All players are not good players. All property management groups are not the same. I would think it would work in the interest of the property management group if it owned a collection agency to not do due diligence so that it can collect on the other hand. Maybe we should look into possibly explaining that there is a conflict that lies there, and we need to alleviate that conflict as well.

Pamela Scott:
I have no relationship or any knowledge of the relationships between any collection companies and management companies. They are separate corporations. I have not heard that they are not obeying the law. That would be a decision of the Legislature if you want to say, “Absolutely not. There can be no relationship.” I believe the reason we were forced into using licensed collection agencies several years ago is because they did not want management companies per se filing liens. Thank you.

Chairman Horne:
Thank you. Mr. Sherwood.

Assemblyman Sherwood:
To dovetail on the remarks of Assemblywoman Diaz and Assemblyman Brooks, the testimony sounds as if right now it is a really bad law in regulations, so we have compromised, and now it is just a bad law and regulations for the consumers. It is really hard to justify what should be a $29 filing fee, which the City of Las Vegas charges. Now it is ten times that because we have to use a collection agency. The comfort level for taking folks who maybe do not want to get out of their house and who fell a little behind in their assessments . . . . Now you send the account to a collection agency, and that is now a lien. After 12 months, if it is not paid, they can foreclose on your house.

I appreciate the Howard Hughes Corporation. It does a great job, and you do not have an issue here, and Southern Highlands does not have an issue. Unfortunately, there are thousands of homeowners who do have issues. You said you have never heard of a particular situation. Assemblyman Brooks just told you of a situation, and that happens every single day. Until we take out the incentive of rewarding collection agencies . . . . The testimony is that they are a necessary evil, but at this point it is just an evil. This is bad legislation. Until we can wrap our arms around how we do not punish homeowners at ten times the regular fee, I am really not comfortable with this.

Chairman Horne:
Are there any other questions? Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Chairman, for the opportunity to follow up. I am making my way through the mock-up.

Mr. Gordon, in section 6, on page 21, it deals with the responsibility to maintain walls. I am envisioning common-interest communities (CICs) where there are external walls and landscaping on the outside of the community or outside the wall that is adjacent to shrubs and the like, even the watermarks from the inside that end up on the outside of the community. For example, say there is an accident on an external wall in someone's backyard that backs up to a street. Does section 6 suggest that it is the responsibility of the homeowner to maintain and repair that external wall, even if it is not a result of neglect or conduct of their own, or would that still be the responsibility of the CIC?

Chairman Horne:
Before you answer, Mr. Gordon, I know Mr. Ashleman is here, and I know this is something we touched on last session. It is very familiar to me. First, you answer, Mr. Gordon, and then we may have some follow-up with Mr. Ashleman wishing us to delete this from the bill. Mr. Gordon.

Garrett Gordon:
Pam Scott wrote this line, and I will let her answer that. If you need a legal analysis, I can provide that afterward.

Chairman Horne:
Okay. Ms. Scott.

Pamela Scott:
For the record, I did not write the language. It came out of a working group. Let me tell you the main reason for the working groups that brought forth S.B. 174 (R1). Last session, things went down to the last minute again, and there were three separate conference committees made up of different persons. Some things that came out of it caused some unintended consequences, confusion, and inconsistencies.

Chairman Horne:
We are bad legislators.

Pamela Scott:
No, I just said there were some inconsistencies and unintended consequences. Maybe there was some lack of communication as well.

The main problem with this was in section 6, subsection 4, which is on page 22, line 13 of the mock-up. It has been red-lined out. But the definition of a security wall does not, and did not, address the fact that there could be a multiple association relationship. You could have a subassociation and a master association. *Nevada Revised Statutes* Chapter 116 does not address subassociations, and in the eyes of NRS Chapter 116, every association is equal. So, it does not address who should be repairing, or which association should repair, that wall. It talks about a final map recorded around a subdivision tract, but in many cases it might not even be the same master association. You could have two individual, small, gated communities, and the wall is really just the backyard of two yards that back up to each other, the same as with any public street. It was very confusing as to who should be reserving for which wall.

I understand that Mr. Ashleman would like the existing language to remain, but I think that the Legislature has some obligation to clear up some of the confusion, so that the association that needs to be reserving for this is clear on who should be doing that. That was the reason for changing the language in section 6 to simply say it is based on the documents and who owns the property. There was never any intent to put any obligation back on the City of Henderson to have to maintain walls that they did not feel were their obligation.

Chairman Horne:
Mr. Ashleman.

Renny Ashleman, representing the City of Henderson:
We are still talking to the folks in the HOA and the sponsor of this bill about rewriting some things. If the definition in subsection 4 is their concern, we can certainly address that. The reasons we want the HOA to be responsible for the security walls are both for safety and from the blight viewpoint of the community as a whole. As you know, the problem we foresaw, which was chasing all the individuals down, has gotten a lot worse since we wrote the act because of the foreclosures, the properties owned by banks, and the other difficulties. It is a considerable problem to figure out who is going to fix that in the case where the resident is insolvent, there is nobody in the house, and that sort of thing. We think it is best to put that on the association.

We have no objection to the part of the bill where it asks for the ability to go after whoever caused the damage. We will be happy to work with them to rewrite section 6, subsection 4, if that is the principal problem.

They have also offered to address the other part of our problem, which talks about a government assuming responsibility in writing, which is really not the situation. We do not own these properties. I would be happy to answer any questions.

Chairman Horne:
At the risk of oversimplifying it, why does it not set the association responsible for the repair and upkeep of the security walls with the exception of damage that occurred not in the ordinary course of living by a tenant, or something like that? Basically, if a tenant backs his car into it, he must pay it. If it is just because it is stained from sprinklers, that is ordinary wear. Why is that difficult?

Renny Ashleman:
Mr. Chairman, I do not know that it is difficult. We will sit down and see if we can fix this with them.

Chairman Horne:
We are on day 119 of the session. Are there any other questions or concerns? Senator Copening, do you have anyone else listed you wish to call up to the table?

Senator Copening:
No. Anyone who wishes to speak may do so. I will give up my seat. Thank you.

Chairman Horne:
Mr. Uffelman.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
Good morning, Mr. Chairman and members of the Committee. I appreciate the opportunity to be here on this Sunday morning.

In 2009, we worked on this topic, as has been alluded to, and we came up with a regulatory process that was going to do these things. At that time we came up with the extension of the priority lien from six months of regular assessment to nine months, except in the case of a Fannie or Freddie loan and all of that which has been alluded to previously. We then found out that some things we thought were reasonable and were going to be set by regulation kind of took off on us.

To the extent that S.B. 174 (R1) gives us these hard caps, it takes the collection down to $1,500. It puts the $1,000 cap on the hard costs, and the $600 cap on collection services that limits the attorney fees to the three places that they were mentioned, and continues, obviously, because of federal law, the priority that Fannie and Freddie have over how long the superpriority is for. It tells us, yes, this is a $3,100 thing, as opposed to $1,950, plus whatever they come up with. So to that extent, it makes it a more desirable event, if you will. I do not want to use the word "event." It allows us to kind of put a pencil to it and say, "That is what it costs if this goes." We know where we are at with all the other issues that go on in foreclosure. We know where we are and can come up with a reasonable value for an effort to sell that real estate owned by the financial institution and post foreclosure. For all those reasons, we have said that these provisions are okay.

Chairman Horne:
Are there any questions for Mr. Uffelman? I see none. Thank you, sir. Mr. Lee.

Keith Lee, representing Default Services Division, Lawyers Title Insurance Corporation, Las Vegas, Nevada:
I am here to answer any questions you may have on the hard cost cap of $1,000, as reflected on page 12 and beginning on line 5 in section 3.5, subsection 2. Those hard costs do not even begin to accrue until such time as the collection agency decides to file a notice of intent to lien. Under current provisions of NRS Chapter 116—the CIC laws—if the decision is made to file a notice of intent to lien, everyone in the chain of title on that particular piece of property must be given notice. In addition, as we move through the foreclosure proceedings, there have to be recordations with the county recorder. There have to be publications and costs incurred in the local newspaper, I think publishing once a week for three weeks. In addition, what my clients provide are essentially preliminary title reports, which are in the range of $350 to $450, depending upon the amount of the guarantee that is given. In other words, my client gives the title report and guarantees the accuracy of it, so that if there is a problem with ownership in the chain of title somewhere, my client is on the hook for any inaccuracies they may have provided. Mr. Chairman, I will try to stand for any questions you or members of the Committee might have.

Chairman Horne:
Are there any questions for Mr. Lee? Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Chairman. Mr. Lee, let us use the scenario where the house is not for sale, and we have homeowners who want to stay in their house. As Mr. Brooks related, his light was out. A collection agency takes it over. A $25 fine turns into a $500 fine. The only way they got that money was to file an intent to lien. That triggers your client, and now he is on the hook for $400 or $1,000, or do you only get paid if the home is foreclosed on or sold? The unintended consequence would be everything triggers as soon as it goes to the collection agency, so everything downstream triggers, or does that not happen unless it is a sale?

Keith Lee:
The hard costs are not triggered until a notice of intent to lien is recorded. That is when the hard costs are incurred for us or for the provisions of section 3.5, subsection 2. None of those costs are triggered until such time as the HOA directs the collection agency to file a notice of intent to lien.

Assemblyman Sherwood:
So, in this case it would be 12 months; it could not be anywhere between 4 and 12 months.

Keith Lee:
If I understand the law, it could be incurred as early as 4 months, because that may be when they decide to do the notice of intent to lien. As I understand it, it is the foreclosure that has to wait 12 months. If they decide to file a notice of intent to lien, it is possible that the beginning of that $1,000 could be incurred then.

Assemblyman Sherwood:
So, that $25 light bulb fee turns into a bunch of unintended fees, and there is no incentive to stop it. This is probably not very well thought out. I think your client should not be paid unless, and until, the house is being sold or foreclosed. You should be at the 12 months and then there should also be a trigger with the sale. You should not just be able to run some paperwork and then bill another $500 or $1,000, and then another $100 to put Mr. Brooks on a payment plan.

Keith Lee:
We are not involved in any of those processes. We are only involved at such time as we are directed to provide a trustee sale guarantee. I am not sure that they can even foreclose on just a fine or loan. I think it has to be an assessment, but I stand to be corrected.

Chairman Horne:
Mr. Lee, who is your client?

Keith Lee:
The Default Services Division of Lawyers Title.

Chairman Horne:
And what do they do?

Keith Lee:
They provide the trustee sale guarantee at the point in time that the collection agency is directed by the HOA to file a notice of intent to lien.

Chairman Horne:
Okay, so it sounds like your question, Mr. Sherwood, should be directed to a collection agency and not to the one providing the title insurance. Mr. Lee, basically, your client is assuring that when the title comes up for the final sale . . .

Assemblyman Sherwood:
All I am suggesting is that we put a governor in there that makes it so an overambitious collection agency does not trigger that expense. That seems pretty reasonable.

Keith Lee:
If I may, Mr. Chairman, and not to belabor the point, my client gets paid by the collection agency whether the collection agency is able to collect from the homeowner or anyone else. We are retained, if you will, by the collection agency to provide the title report so that the collection agency then can comply with state law.

Assemblyman Sherwood:
Your clients are not the bad guys, but the threat of losing your home is the issue. It is the collection agencies that now have the superpriority lien that can make sure that everyone gets paid, and that is what this legislation says. Nobody is impugning your clients, but let us not make it so they start to.

Chairman Horne:
Is there anyone else? Ms. Scott.

Pamela Scott:
To clarify, the title sale guarantee is triggered at the point where there is a notice of default and intent to sell. Under this bill, that would have had to have gone to the board of directors for a vote on taking the property to a foreclosure sale. I believe it is six months or a certain dollar amount to do that. It is not triggered when the lien is filed. It is much further in the process, and it is by law that we obtain this, as Mr. Lee said. I just wanted to make that point.

Chairman Horne:
Thank you. Also, since we are down south anyway, I see Ms. Porter there and signed in and in favor.

Jan Porter, General Manager, Peccole Ranch Association, Las Vegas, Nevada:
I am a homeowner, a board member, and a former member of the Commission for Common-Interest Communities and Condominium Hotels. I am the manager of Peccole Ranch, a master planned community, and I was involved in the initial working group that was led by Senator Copening on this bill.

I want to answer the question that was posed regarding section 3, subsection 2(b), regarding the aesthetics issue. I had the privilege of working with Assemblyman McArthur on this during the last session, and the question regarding this section, I think, is clarified in the new language. I am very happy

with the way that clarification has come up. The situations we were looking at when we asked Assemblyman McArthur to work on this with us during the last session were issues of trees overgrown in the backyard of a home that was delinquent for about three years. We could not do anything with regards to some of the homes that were vacant and foreclosed upon. We are so grateful to Assemblyman McArthur for working with us on this. I think the integrity and intent of that bill is further clarified in this one.

In regards to section 6, this is a situation that is present in our HOA, Sage Creek. I think the language in S.B. 174 (R1) clarifies that. I stand in support of this bill, and I thank you for your hard work on this.

Chairman Horne:
Thank you, Ms. Porter. Are there any questions for Ms. Porter? I see none. Let us move back to Carson City. Is there anyone else present wishing to testify in favor of S.B. 174 (R1)? Is there anyone in Las Vegas in favor?

We will move to the opposition. Anyone who is opposed to S.B. 174 (R1), please come to the table. Mr. Ferrari.

Chris Ferrari, representing Concerned Homeowners Association Members Political Action Committee:
I am here in opposition to S.B. 174 (R1). As you have noticed today in the roughly 90 minutes we have been here, most of the dialogue has focused around collection practices and the collection aspect of this legislation. We believe S.B. 174 (R1) is a dangerous bill for Nevadans, and it provides significant financial benefits to the HOA collections industry without any commensurate benefit to the HOAs themselves. There has been a compromise among the collectors, and not with the consumers, or those purchasing property, as is the case with my client.

The practices undertaken by HOA collectors, under current law, are under legal scrutiny. There are several mentions of courts ruling in favor of inclusion of attorney's fees in collection costs within the superpriority. There are also an equal number of courts that have ruled that that is not the case and that they should not be included therein. As a matter of fact, Nevada courts are debating that very issue.

The proponents of this bill have been management companies and collectors, and in some regard this is a very significant win for them. While there is a cap, those fees are now included within that superpriority lien. As some of the Committee members have questioned, what that means on an elemental level is this: Say the monthly assessment of an HOA is $30. The only thing the HOA

gets, under current law, is nine months of that past due assessment. The most they can ever get is $270, period. Under the new bill, the most money the HOA can get is also $270. Now you have a fixed cost that is actually up to $3,600 plus attorney's fees included therein. In this example, the collection agency would receive that $3,600, and the HOA would get that $270. We do not believe that is in the best interest of furthering the real estate market or in protecting the homeowner.

In addition to the fees, there was also mention of a payment plan option, which, obviously, we fully support. There is a $100 fee to enter that payment plan. If someone is struggling to pay their back due assessment, to incorporate a $100 fee just to enter into a payment plan seems to be a questionable policy to move forward on behalf of the residents of the state of Nevada.

In section 15.3, there is a very low bar set for the initiation of the foreclosure process. It can be initiated after six months in arrears or $500, and it leaves an executive board, typically consisting of two to three people, to make that decision.

It was stated by one of the proponents of the bill that there has been some misinformation being disseminated by my client. I like to think that I am pretty good at what I do, but if I were able to contact a federal agency—in this case, it was the Federal Housing Finance Agency (FHFA)—and ask them to write a letter, I would be really good at what I did. That is certainly not the case. On Nevada Electronic Legislative Information System (NELIS) is a letter (Exhibit G) to Lucas Foletta, the General Counsel for Governor Sandoval, from Alfred Pollard, General Counsel for the FHFA, which is the oversight regulating agency for Fannie Mae and Freddie Mac out of Washington, D.C. I am going to read a couple of excerpts from that letter, if I may, Mr. Chairman, with concerns pertaining to S.B. 174 (R1).

> "As we discussed, the provisions of the bill which relate to the collection of unpaid homeowners association (HOA) assessments raise significant issues."

[Mr. Ferrari read from the letter (Exhibit G).]

> "Finally, I would note that this measure would represent a significant change to existing law and practice and could have unintended consequences in the current market environment."

For that reason, I believe this matter is bigger than all of us. For the Legislature, and for advocates for one side or another, this concerns the availability of federal loan dollars in our state.

[Chairman Horne left the room, and Vice Chairman Ohrenschall assumed the Chair.]

There was also another point made, saying that the federal law will trump the state law. To refute that allegation, I provided you an email (Exhibit H) from one of the foremost experts on this matter. This gentlemen's name is James Adams, and he is one of the leading HOA attorneys in the state of Nevada. He writes:

> "Fannie Mae has internal underwriting guidelines which precludes it from buying loans in states that permit superpriority liens against Fannie Mae which exceed a six month assessment cap. Fannie Mae does not pass regulations as it is a 'government sponsored entity.' Therefore, the current language in S.B. 174 which is meant to protect Fannie Mae is meaningless."

[Mr. Ferrari continued to read from the email (Exhibit H).]

The concern at this level, in my estimation, is that there will be different sides. Would my folks like to have a lower threshold for collection fees? Of course, but that is not really what we are talking about. You are the policymaking board here, and the broader concern on this matter is, again, the federal involvement and the threat of loan dollars being taken from our state. I would only ask this body to work with this federal agency and to get approval from them to make sure that we do not have to end up in some kind of a special session if something passes and those dollars are cut off.

Mr. Adams concludes in his email to me:

> "The bottom line is that the language of S.B. 174 is legally flawed and the ramifications for the residents of the State of Nevada could be severe. If Fannie Mae stops buying loans originated in Nevada, there will be no housing market left."

I thank you for your time.

Vice Chairman Ohrenschall:
Thank you very much, Mr. Ferrari. I have a question from Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. Mr. Ferrari, can you point to the provisions in section 15 that you believe are problematic with respect to a federal agency? It seems to me that not all of us are on the same page. I do not know that we, as a state, need to seek any approval from Fannie Mae or Freddie Mac for anything we do, but we can take into consideration how it might impact the state.

Chris Ferrari:
This is kind of outside the realm of most of our expertise. However, my understanding is this: As government sponsored organizations, Fannie and Freddie look at our state, and they determine whether they are going to invest money in purchasing loans in this state. The letter from Mr. Pollard of the FHFA essentially says that if this bill is passed, and there is further inclusion of assessments within the superpriority, it could be problematic for them to continue buying loans in this state.

Assemblyman Frierson:
My question is specific. I understand what you are saying, but we have two days left, and we have an extremely long bill that we are looking at. You provided us with these letters. We need to know which part of section 15 is problematic. And if it is problematic, we can look at how to correct it, but to generally say section 15 is a problem does not help us fix it.

Chris Ferrari:
Absolutely. I believe the superpriority portion is now included in section 3.5 of the bill, so if there were to be a cap and this body were to review that and agree that there should be a cap in place, and if you were to remove the inclusion of those dollars within the superpriority, I believe it would alleviate the concerns of the FHFA.

Assemblyman Frierson:
Are you talking about section 3.5 at the beginning of the bill?

Chris Ferrari:
Yes. Section 3.5 addresses the different levels of collections. If there is still a piece in section 15, I apologize. I will have to take a look. We just saw this mock-up for the first time this morning.

Mr. Vice Chairman, if it is appropriate, perhaps Mr. Gordon would be able to tell us where the current inclusion of collection fees in the superpriority is within the new mock-up.

Vice Chairman Ohrenschall:
Mr. Gordon, will you come forward?

Garrett Gordon:
Thank you, Mr. Ohrenschall. I believe Mr. Ferrari is referring to section 15, page 37, lines 22 and 23, which states, ". . . fees and costs not to exceed the amounts set forth in NRS 116.310313 to cover the cost of collecting the past due obligation . . . ." I would think it is relevant to continue reading that section because of existing law that was put in in 2009. Since then, there has not been, to my or Senator Copening's knowledge, any comment or opposition from Fannie, Freddie, or the Bankers Association. The section continues, ". . . unless federal regulations adopted by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association require a shorter period of priority for the lien, the period during which the lien is prior to all security interests described in paragraph (b) of subsection 2 must be determined in accordance with those federal regulations, except that notwithstanding the provisions of the federal regulations, the period of priority for the lien must not be less than the 6 months immediately preceding institution of an action to enforce the lien."

That was the compromise in 2009. To make associations whole, there would be nine months of assessments. Fannie and Freddie said their regulations say six months. That was put into current law. That will not be changed by S.B. 174 (R1). Federal regulations from Fannie and Freddie will remain the same. It will be six months. If Fannie and Freddie have a regulation that says they do not pay collection costs or attorney's fees, I think that letter was clear. It did not say they were going to pull back loans. It did not say there would be an issue. It says they will not reimburse the lender. You heard from Mr. Uffelman. He did not oppose this. It would fall on the lenders. He said that as long as we are getting some certainty in the market, we are fine. I think with that section, read in conjunction with this existing law that has been there since 2009, we are okay, in my humble opinion.

Assemblyman Frierson:
Simplifying that particular section, it seems to me that section says, essentially, to the extent that it does not conflict with Fannie Mae or Freddie Mac . . .

Garrett Gordon:
Correct.

Assemblyman Frierson:
. . . which was already enacted in NRS in 2009.

Garrett Gordon:
Correct.

Assemblyman Frierson:
There was testimony during the introduction of this bill that the superpriority language was more for clarification and not new provisions. Is it your position that, currently, that is the state of the law anyway, and that this superpriority language is clarifying that, or is the superpriority language new provisions?

Garrett Gordon:
That is a great question.

Assemblyman Frierson:
Thank you.

Garrett Gordon:
If I can turn your attention to section 15, subsection 1. It says, "Unless the declaration otherwise provides, any penalties, fees, charges, late charges, fines and interest charged . . . are enforceable as assessments under this section." The argument is—and I think it is a valid interpretation—that the charges the association must incur to hire a third-party collection company, and to hire a title company, and to publish in the newspaper are necessary for the association. If they cannot recoup those charges, they are passed along to all the other unit owners. I would argue that, yes, that is existing law. However, to clarify this issue and to put some hard caps in state law, we have made it absolutely clear that the fees and costs set forth in NRS 116.310313 to cover the cost of collecting past due obligations are included. This was important to homeowners and HOAs. That subject of federal law remains in law, unchanged. We have not heard any negative comment on that existing law since it was enacted in 2009.

Chris Ferrari:
Mr. Vice Chairman, if I may have the opportunity to speak again.

Vice Chairman Ohrenschall:
Please go ahead.

Chris Ferrari:
With all due respect to Mr. Gordon, and understanding the intent of the language in section 15 to exclude the federal loans, the letter from the FHFA (Exhibit F) that I continue to reference is dated April 26, 2011. To imply that there is no current interest in the passage of this bill and the potential ramifications, even with that current statute included, raises concerns.

Therefore, I continue to request that if such a law is passed, we do indeed check off with this group so as not to jeopardize the funding.

Regarding your question as it pertains to inclusion of superpriority, it is absolutely not my understanding that this is a clarification in any manner. There has been an arbitrator's ruling in southern Nevada, indicating that 9 months is 9 months, period, whether it is only three months of back due assessment . . . Say it is $30 per month, or whatever the case may be. It would be up to $270. So, if there is $90 in past due assessments, plus another $180 and attorney's fees or collection costs, that can still be included, but it caps at 9 months. Essentially, that is the crux of this entire issue—the 9-month provision and the superpriority component.

There is pending litigation in district court in the state as to the interpretation thereof. Of the many examples I provided in previous testimony, the most recent from one of the proponents is $1,380 in assessments, and the payoff demand is $84,000. Those are under scrutiny right now, and the legality of that practice is in question; so by passing this law and including these fees in superpriority, that certainly could alter the judicial outcome of those pending cases.

Vice Chairman Ohrenschall:
Thank you. Mr. Brooks, do you have a question?

Assemblyman Brooks:
Thank you, Mr. Vice Chairman. I think he kind of answered it, so I am comfortable with the testimony I have heard.

Vice Chairman Ohrenschall:
I have a couple of questions. On page 37 of the mock-up (Exhibit E), if you look at the existing carve-out for Fannie and Freddie, which I believe starts on line 24 and goes to line 37, that was put in earlier as a time carve-out. We wanted to expand the superpriority from six months to nine months. If the federal agencies are saying they will only pay six months of past due assessments and that they will not pay collection agency fees and attorney's fees, will this carve-out be enough, since this seems to deal with time, as opposed to the substance of what the collection agency's liening is, to not run afoul of Fannie and Freddie?

Bill Uffelman:
I will give you a layman's interpretation of what they do. When Fannie and Freddie say they will buy a loan, they have a whole instruction book that goes out to the lenders that says if it is a condominium with X number of units, you

have to have, say, 60 percent under contract or sold. They literally have checkboxes. They ask if the loan conforms.

I know we had the six-month cap on the fees. It says, ". . . unless federal regulations adopted . . . require a shorter period." So it was, in fact, time limited, I suppose to err on the side of caution. It is said in the Fannie and Freddie rules that they will say to a lender, "Subject to these things, we will buy the loan." If they say, "Subject to . . . " whatever this bill becomes, "we will buy the loan," then it becomes an obligation to the lender to make it a conforming loan to purchase it. If they say they will only pay six months and not the other things, those become a cost that the lender has to price into the loan in terms of risk and the like. It puts a cloud on the loan, but it does not kill it. It just makes it kind of an additional compliance issue in terms of writing a conforming loan that Fannie and Freddie will buy.

It presumes that Fannie and Freddie will survive this U.S. Congressional term. We are dealing with a lot of presumptions on securitizing loans with federal agencies. Presumably there will be one. There may only be one. There are a lot of other things going on in Washington, D.C., that we can sit here and try to figure out. The reality is, whatever their rules are, they are the rules with which the lender will have to comply. They will have to comply with the six-month cap, only because it comes up. They had a very specific rule about the six months.

Vice Chairman Ohrenschall:
Thank you, Mr. Uffelman. Maybe you could walk us through a hypothetical situation. Let us say I am a homeowner in an HOA, and I have fallen on hard times. I have stopped making my mortgage payment; I have stopped making the HOA payments. I am trying to get caught up on my mortgage payment. Maybe I go through our Supreme Court's mediation program. I am trying to work that out. Maybe I have worked out a loan modification, so there is no more fear of foreclosure by the bank.

Say I am $500 or $600 behind on the HOA assessments. The HOA sends it out to a collection agency. If this bill passes, $2,700 would be the maximum that could be tacked onto that unless there is some litigation involved that is provided for in the bill. Let us assume that another $1,000 or $2,000 is tacked on for litigation. So I started with $600 in arrears for assessments. Now let us say for the purpose of argument, I am up to $4,700. The collection agency wants to lien the house. If it is a Fannie or Freddie loan, what is going to happen, since they will only pay the $600, and they will not pay the other $4,100?

Bill Uffelman:
I guess that is why I hate hypotheticals. There is a whole variety of things going on here. You got to mediation because of your mortgage.

Vice Chairman Ohrenschall:
Right.

Bill Uffelman:
We have dealt with those issues, and now you have gotten $600 behind. In this bill, there is a 24-month payment plan. Hopefully, when you went through the mediation you got the Consumer Credit Counseling Service, and they sat down and walked you through a realistic budget so that when we are going through all the exercise that you described, you figured out how you were going to pay your obligation.

As I said, we have been through the mediation. The bank is not your problem anymore; it is your neighbors. To now lose the house over $600, I am appalled, I guess. As an individual who did not figure out how to pay those back HOA fees . . . Philosophically, recall the conversations we had about mediation and foreclosure. The irony is, Colorado law in mediation says you have to keep paying your HOA fees, and you have to keep paying your taxes as a sign of good faith and that going through the mediation is a worthwhile effort.

Now that we have saved your house from the financial institution that was foreclosing on you because you were not paying your mortgage, and we got all these things taken care of, to now turn around and lose the house for $600 instead of $400,000, I guess I do not want to get there. Fannie and Freddie are not going to have anything to do with that until the foreclosure. The mortgage is a priority over . . . Well, if we are going to go to foreclosure, and the HOA is going to try to buy it for $4,500, the bank will be there buying it for its mortgage. Fannie and Freddie are not going to be an issue anymore.

Vice Chairman Ohrenschall:
Say this bill passes as it is, and I lose the house after it goes to foreclosure, and it is a Fannie or Freddie loan. I owed $600 in past due assessments, and the collection costs went up to $2,700. There were some litigation costs. Tack on another $2,000 for the purpose of argument. Fannie and Freddie, pursuant to the letter on NELIS, will reimburse the $600 to the servicer, but they will not reimburse that $4,700. What kind of effect do you think that will have on the servicers and on the real estate market in general?

Bill Uffelman:
It is a great hypothetical for a law school exam. I do not know. I have been sitting here trying to figure out how it got that far over $4,700, given all the effort we have put into it to this point. You are the homeowner, and you are back at consumer credit and say, "I've got this problem again." With the 24-month payment option and all the other things, maybe we expended too much effort in the first place in trying to keep you in the house.

Vice Chairman Ohrenschall:
Will the servicer try to recoup the $4,700 that was tacked onto the superpriority lien?

Bill Uffelman:
The costs are on the table, and you start adding it up. Now it is real estate-owned. Somebody owns it, whether it is the bank that bought it, or a third party or whoever who is going to resell it. I had to pay this much, this much, and this much. You know, it was a $200,000 deal; now it is a $206,000 deal. When I go to sell it and want a reasonable return on my money, or I am getting rid of the toxic asset as a financial institution, I am going to sell it for what I can get for it. If it is $206,000, $220,000, $190,000, or whatever, it is money that is lost in the system. You read all the newspaper stories about how many trillions of dollars were lost in the real estate market. These are the numbers they are talking about. There is $2,600 here, $3,500 there, $10,000 there, and pretty soon it adds up to all the money that has been lost as we try to stabilize this market. These unreimbursed costs—all the money gets reimbursed in the resale activity, or it is just part of the charge-off of . . . Once, we had a $400,000 loan as an asset. We got $190,000 for it; we lost $210,000. That is how the system works.

Vice Chairman Ohrenschall:
Would you envision the servicer who, I guess, might have to eat that $4,700 because Fannie and Freddie will not reimburse them? Do you think they would sue the HOA to try to get reimbursed? What do you think would happen in terms of them trying to recoup that?

Bill Uffelman:
First off, the servicer does not lose it; the lender loses it. The portfolio, if it was in a retirement funds portfolio as a mortgage-backed security, that is what gets lost. We have other bills here that talk about when a debt buyer buys the debt. One of the bills limits the debt buyer to collect only what they paid for the debt. They cannot go after the differential between buying the $400,000 debt for $190,000.

Yes, we are messing with the system. Will the system ultimately stabilize at some reduced value? Yes, it will. The question is how long it will take. Those are all just costs that get added on. I do not envision that they would go after the HOA. How would they? It does not work. I do not see in this bill that the servicer, on behalf of the lender, somehow would come back looking for the $4,600. If you are the HOA, and you have done the foreclosure over $4,600, as I said, the bank is going to be there protecting itself, and you will get your $4,600, and the bank will wind up owning the property again. I presume we would not have to go through another mediation over that one.

Vice Chairman Ohrenschall:
But then a $100,000 house might become a $106,000 house because of the collection agency fees and attorney's fees, in terms of trying to sell it.

Bill Uffelman:
The market is what the market is. Ultimately, if it will not sell for $106,000, it will sell for something less. That dollar value gets eaten by the lender. Remember, all of this ultimately works back to the lender.

Vice Chairman Ohrenschall:
Thank you. Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman. We are now hearing testimony in opposition, right? I just want to get back to that. Mr. Ferrari, it sounds like the bill presented here is admittedly, by the sponsors and those testifying, really bad right now. This will make it really bad, but it is better than it was. If your choices were status quo or this bill, how do you feel about the bill?

Chris Ferrari:
From the perspectives of my client and the state, we appreciate some of the intent—to have some sort of solid cap. My clients are real estate investors. Are they disproportionately affected because they are buying five or six homes per month versus the person who is buying one home? Sure. But at the same time, we also began this endeavor working with the Consumer Credit Counseling Services folks. As the Vice Chairman mentioned, and as Mr. Uffelman indicated, the fees we are talking about just get priced into the new loan. The lender absorbs it, et cetera. That is what happens, but who pays for that? All of us. All of that accumulated debt is spread out into the loan that you are going to get, and that your constituents are going to get, through higher service fees and interest rates. In some cases, that is why the FHFA is looking at this. They do not want to be responsible for paying $74,000 on a $1,300 back due lien.

I think the biggest issue, in response to your question, comes down to superpriority. While we do not love the $1,950 that is in the CIC Commission, I think that is a safer and better route to go, although it is not capped, which we would prefer. It was indicated by Chairman Wiener in the Senate that, if and when at the time they were looking at that $1,950 CICC cap being the resolution on this matter, they would work as a commission to put an actual hard cap into that. I believe that is the best resolution at this juncture.

Assemblyman Sherwood:
So, if we could keep the HOAs whole with their superpriority lien and not codify that there is a superpriority lien for collection agencies, would you be comfortable with all the other compromises and concessions the sponsor has made?

Chris Ferrari:
Yes, Mr. Sherwood.

Assemblyman Sherwood:
Thank you.

Senator Copening:
Mr. Vice Chairman, I have to do a work session in the Senate Committee on Judiciary. I want to give some closing comments for clarification and just get very real with what is going on.

Vice Chairman Ohrenschall:
Go ahead, Senator. We understand how busy you are.

Senator Copening:
Thank you. First, I want to address the letter from Mr. Pollard (Exhibit F). With that, he was working off the original bill that did not have half of what we had. It did not have caps in place. It did not cap attorney's fees. The first thing we need to understand is that he was addressing an original bill that has changed dramatically.

I also want to state in response to the CHAMP lobbyists that we did not have collection companies as part of the negotiations. There was a lobbyist for a collection company, but there were many more, including Legal Aid, who were there to make sure they were representing the people who were having financial hardship. I take exception that we purposely left the collection agencies out of this because, frankly, we do not care. We realize they have taken advantage of the system. We do not want any business to go under. We need to keep

businesses alive, and we need to make sure they have a reasonable profit, but we also have to stop what they have been doing, and these hard caps do that.

The realtors who were originally opposed to the bill are no longer opposed to the bill. They realize the benefits of getting these caps in place and the superpriority.

One thing we are not remembering in this, because it has become very muddied, are all the other homeowners who live in the association. When you use the term "HOA," you are not talking about a management company or a collection company. You are talking about the unit owners who make up that HOA. The budget of that HOA is from the assessments to which the unit owners contribute on a monthly basis. You heard that a group of investors—CHAMP and some others—are suing over 500 HOAs for collection fees. This is the reason they do not want attorney's fees to be included in this.

You members are probably all aware that many HOAs are going bankrupt. Some have. I will use the example of Paradise Spa in Las Vegas. They are $1 million in arrears because of a person who owned 261 units there two years ago decided he was going to stop paying his assessments. They are flat broke. Their infrastructure is literally crumbling. They do not have money. They have let their insurance lapse. They cannot pass these costs onto their members, because their members are elderly and primarily just do not have the money. What will happen if superpriority is not included to make the HOA whole, meaning the costs for collections will all go back to the members? Many of these members—your constituents—are financially fragile. Many of them are barely hanging on and are probably a month away from foreclosure themselves. The members have to defend themselves, so the attorney's fees that all those 500-plus HOAs have to pay are now going to get divided up among those homeowners living in those HOAs. The HOAs do not have money. They are already lost on their assessments, so most of them are in arrears. Special assessments have to be put in place, or the monthly assessments have to be raised.

We have certain groups that we are talking about. We are talking about those who are in foreclosure who are having problems paying it. This bill will help them by capping these fees. You are talking about the investors on the back end who buy the homes, who would like these fees to be as low as possible, and who do not want superpriority. If they get what they want, and it is not superpriority, and they are doing these lawsuits for these reasons, those costs get passed on to all the other members in those HOAs—our constituents. The third group is all the other members in the HOAs. How much are we going to protect them? My district is almost all HOAs, which are all members. I have to

protect them. The reason I brought this bill forward was to make sure that those HOAs are kept solvent.

You did not hear a part that was in the Senate Finance Committee when this bill was heard. We currently have no law in place that says what happens to the infrastructure of an HOA when it dissolves. We need to do that. Unfortunately, we cannot address it. So, with Paradise Spa, even though they are bankrupt, there is nobody to take over the infrastructure. There is no government entity. The more we put pressure on these HOAs and cause them to go bankrupt—and if they have members who do not want to pay their bills—they may choose to dissolve, however, there is nobody to take responsibility for that community if it dissolves. It is a problem we are going to have. We must keep these HOAs solvent and not pass the cost on to the members who are financially fragile as well.

I thank you very much for your attention. I know these folks can handle any other questions that you have. I apologize that I have to leave for the other committee.

Vice Chairman Ohrenschall:
Mr. Segerblom has a question.

Assemblyman Segerblom:
Can you briefly tell us the status of this bill? I am not clear. It has not left the Senate yet, right?

Senator Copening:
That is correct. We are doing these things concurrently. It had a hearing in the Senate Committee on Finance. They will be voting that out today, I think. You probably cannot take any action on it until that happens and it goes to the Senate floor. We are trying to get the hearings done, so that when the process happens, this Committee will be prepared to make a decision.

Vice Chairman Ohrenschall:
Mr. Frierson, do you have a question?

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. I realize that Senator Copening has to leave. This question is more for Mr. Uffelman and Mr. Ferrari. If anyone else has a question for the Senator, I will let them go first.

Vice Chairman Ohrenschall:
Mr. Sherwood, do you have a question?

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman. Senator, the irony in the bankruptcies is it sounds like the HOAs have to pay for collection agency fees that were not part of the superpriority lien to begin with. I find it ironic that the collection agencies with their excessive fees are the ones that are making the HOAs go bankrupt. Would you be comfortable with changing the law as stated to say 12 months for both sending Mr. Brooks to collections for his lightbulb and exercising a bankruptcy? Would that work? A lot of these are quarterly. If we made it 12 months, would that be acceptable to you as the sponsor?

Senator Copening:
I am not an expert. I would have to defer to the people who do this type of work—those who run HOAs and know what the unintended consequences may be. We can certainly consider that. They have heard it, so they can speak about it.

I also want to say that when an HOA utilizes a collection company—bearing in mind that most of these HOAs do not have money—the collection company will work for the HOA because they know that they are made whole on the back end in superpriority. Their fees have always been paid. The banks have never had any problem. Actually Freddie and Fannie, in their guidelines, allow for a certain amount of fees and fines, contrary to what was said today. It has always been paid; we have had no problem whatsoever. If the collection costs are not made whole on the back end, an HOA is not going to be able to get a collection company to work for free. Again, HOAs do not have the money to pay them because they are behind in assessments. That is another reason why it works well for the HOAs. They can essentially get the companies to do the work up front because they know they are made whole on the back end. We want to cap what they are made whole on.

Vice Chairman Ohrenschall:
Thank you. Mr. Frierson.

Assemblyman Frierson:
Thank you, Mr. Vice Chairman. Mr. Ferrari, in reviewing the emails and the letter that you forwarded to us, at least with respect to the email, the question seemed to be the use of the word “regulation,” when Fannie Mae does not regulate. It seems to me that would be relatively easy to fix. Simply referring to them as “rules” or “provisions” would resolve that. With respect to the letter, it seems to me that that would be resolved if we just clarified a sentence, making it very clear that we are trying to operate within the operations of Fannie and Freddie. That is just food for thought.

Mr. Uffelman, I have to say I was concerned about a comment you made. If you feel the need to respond or not, that is fine. You said maybe we have tried too hard to keep homeowners in their homes. I think that is at the crux of this and a lot of what we are trying to do this legislative session. The frustration I recognize on the part of housing and lenders exists but exacerbates the problem.

Bill Uffelman:
My comment was relative to the potential situation where we have spent all the time and effort to come up with a mortgage payment the person could afford, and did all the mediation, only to find out that the person does not have the wherewithal to pay the $600 of back HOA fees. The Consumer Credit Counseling Service will want to know about all the debts, where a homeowner is at, what he is doing, and how to clean all these things up so that he can pay whatever the new mortgage is. It would be very frustrating, after all this effort, to get to a point of stability and then find out that for $600, the battle was lost. That was what I was expressing.

Vice Chairman Ohrenschall:
Thank you. Are there any further questions for either Mr. Ferrari or Mr. Uffelman? I do not see any. Are there any other witnesses who wish to speak on S.B. 174 (R1) either in Carson City or in Las Vegas?

Chris Ferrari:
Mr. Vice Chairman, with your indulgence, may I make one more comment.

Vice Chairman Ohrenschall:
We are short on time. Go ahead.

Chris Ferrari:
In response to Senator Copening's comments, I understand and I appreciate the work that has gone into this bill. I believe the intent is to try to make HOAs whole. The fact is they are still only going to get nine months out of this bill. You are guaranteeing $3,300 in collection fees, and that HOA is going to receive that nine months when the property transacts, regardless of whether or not a collector is involved. The question related to your earlier question of Mr. Uffelman is, "Are my folks disproportionally impacted because they are buying multiple homes?" Of course, but this is affecting every homeowner who goes to buy a property. That lien is going to be on there whether he is a first-time homebuyer or an investor, and we are ultimately going to be paying for that. Thank you for your indulgence.

Vice Chairman Ohrenschall:
Mr. Ferrari, I thought the maximum allowed under S.B. 174 (R1) would be $2,700. How are you arriving at $3,300?

Chris Ferrari:
Section 3.5 provides $1,500 for delinquent assessments, $600 to collect fines, $1,000 for delinquent assessments, and $200 in management fees. Those total $3,300. That is from my last reading of the bill and is based on the mock-up from yesterday.

Vice Chairman Ohrenschall:
Mr. Gordon, do you agree with those numbers? I thought $2,700 would be the maximum, unless attorney's fees for bankruptcy or litigation were involved.

Garrett Gordon:
I disagree. We have assessments, and we have fines. Collection costs related to fines were a big concern of yours and Assemblyman Frierson and others on this Committee. We have capped those at $600.

Vice Chairman Ohrenschall:
That would be a separate cap for fines.

Garrett Gordon:
And the reason is you cannot foreclose on a fine, except in . . .

Vice Chairman Ohrenschall:
Construction penalties, health, safety, and welfare.

Garrett Gordon:
Yes. So, the effort to perfect your lien for the fine only takes a couple of steps. You cannot foreclose on it. The reason we went to $1,500 for the assessment is there is a lot more work and a lot more requirements under state law to go through to the foreclosure process. I would argue the fines be capped at $600 and assessments, in the worst-case scenario, be capped at $2,700.

Vice Chairman Ohrenschall:
I have a question for either of you. If this does not pass, and collection agencies are not part of the superpriority lien, will they not get paid? Will they not be able to place a lien on the property and get paid? Will they be out the money they expended in trying to collect $500 or $600 in past due assessments?

Garrett Gordon:
I would argue that, if this does not pass, as you have heard the testimony as reflected, you need a licensed collector to do this process. So, if that money cannot be recaptured, as Ms. Scott and the sponsor testified, the cost of that will be spread out to all the other homeowners with a special assessment or with the regular assessments being bumped up. The third party costs are a requirement. They include publishing, title fees, and any collections. Those costs have to be paid. It is just whether or not this body believes that it should be subject to the unit owner who is in default and is tied to that property. Or, do you want to spread it out to everyone else who has been paying their assessments on time?

Vice Chairman Ohrenschall:
Could not the collection agency do what other collection agencies do now—garnish wages, attach property such as a vehicle, and those kinds of things? Do they not have other avenues right now, other than being part of the superpriority lien?

Garrett Gordon:
Nevada Revised Statutes Chapter 116 is set up so that the mechanism to collect on past due assessments is nonjudicial foreclosure. You are bringing up judicial foreclosure, civil action, or something to that effect. I would argue that taking that route would clog the courts. It would have an excess of attorney's fees that would not be capped, which I think is not a preferable option to how NRS Chapter 116 is currently set up with reasonable caps. I can get back to you with some more detailed answers if you like.

Vice Chairman Ohrenschall:
Thank you. Mr. Hammond.

Assemblyman Hammond:
Thank you, Mr. Vice Chairman. Mr. Gordon, in your explanation, you were talking about what can be foreclosed upon and what cannot. I thought I heard you say you can, but then you said you cannot, when you were talking about foreclosing on fees. Can you explain that to me? Because that, with all due respect, sounded like my three-year-old saying he did and he did not do it.

Garrett Gordon:
You cannot foreclose on a fine unless it relates to the health, safety, or welfare of the unit owner or the association. It is a very narrow circumstance of when you can. To my knowledge, there has never been a fine foreclosed upon in this state.

Vice Chairman Ohrenschall:
Mr. Sherwood.

Assemblyman Sherwood:
Thank you, Mr. Vice Chairman. The only reason you have to use a collection agency right now is because it says that in regulation. Why would we not simply change the regulation or, better yet, the law, and have the management company, which is being paid to ostensibly do this kind of work, do their job. Then they can do a $29 filing fee instead of a $350 fee, and all the costs go down. Did I oversimplify that?

A final thought on these amendments: Would the help from Legal Aid, for $100 on a $1,000 loan, be subject to the superpriority lien as well? Would Legal Aid basically now get $100 every time somebody falls behind? If that is the case, that would give us cause, I would think.

Garrett Gordon:
Currently, the regulations address payment plans. There is an initial start-up fee of, I think, $30. Certain letters are capped at $25 or $30. They send those letters out, and they let them default. So the goal of that $100 was not to add it on top, but to actually cap even further what is allowed in regulation. I would argue that you could send out five, six, or seven letters, and you are going to get a couple hundred dollar fee for payment plans. This would cap that at $100. That is defined in the regulations as a cost of collections, and that would be put into the superpriority lien with the ultimate cap of $1,500.

Assemblyman Sherwood:
That is a pretty big number when everyone who is behind $1,000 gets put into that pool. One hundred dollars times 20,000 people, or whatever the number is, is a big figure. It is guaranteed money for an agency that was supposed to be "helping out the consumer."

Garrett Gordon:
I disagree. It is better than current law. There is no cap on payment plans in current law. This would cap it at $100. I would argue it is better.

Assemblyman Sherwood:
Except it is not guaranteed. We understand the cost of the transaction gets baked into the sale of the house. We all pay for it because in reality my house was valued at $100,000, but because my neighbor's house sold for $94,000, my property value just went down. We know that we are going to be paying those fees. It is a trade-off.

Vice Chairman Ohrenschall:
Thank you, Mr. Sherwood. I do not see any other questions from the Committee. There are two points I want to clarify.

I appreciate all the hard work by Mr. Gordon and Mr. Munford, who was the original sponsor of A.B. 448, and Senator Copening. There were a lot of other parties. Mr. Sasser worked on it. I want to verify a part of the compromise. Was the agreement that a lien could not be recorded for past due assessments for six months, or is it on notice of default? That is the language I see in the bill now. I am a little confused.

Garrett Gordon:
I understand the terms of the compromise are set forth in this mock-up, but I am happy to go back and review my notes and talk with you off-line to ensure that is correct.

Vice Chairman Ohrenschall:
The other thing I do not see is what came from our discussions last night regarding sections of A.B. 448 having to do with attorney's fees awarded by the arbitrator when a complaint goes to arbitration. I believe we had agreed to take in two sections from A.B. 448, having to do with each side paying its own attorney's fees, unless the declaration otherwise provides, or unless the action is brought to harass or delay. I am not finding that in the mock-up either. That was near the end of A.B. 448.

Garrett Gordon:
As I mentioned a couple hours ago, I thought we strengthened that section. Your concern was someone losing his home on attorney's fees for mediation and arbitration. I think the law says no already, but to make that absolutely clear, the answer is no.

Throughout the hours this morning working with Senator Copening, there were a couple other tweaks. I mentioned that to you this morning. I am happy to go through and make sure all your issues are addressed.

Vice Chairman Ohrenschall:
I appreciate that. Thank you very much. I do not see any further questions. Is there anyone else who wants to speak against S.B. 174 (R1)? Is there anyone who is neutral? I see none. We will bring that back to Committee and close the hearing on S.B. 174 (R1).

Senator Parks has been very patient. We will open the hearing on Senate Bill 265 (1st Reprint). Thank you, Senator Parks, for your patience.

Senate Bill 265 (1st Reprint): Revises provisions governing sentencing of criminal offenders and determining eligibility of prisoners for parole. (BDR 14-311)

Senator David R. Parks, Clark County Senatorial District No. 7:
Thank you, Mr. Vice Chairman. If I might make one final comment on the mock-up you were given on S.B. 174 (R1), it shows that section 24 is lined out. In my Legislative Operations and Elections Committee, we are seriously considering establishing an interim committee to study the issues. As I explained to Senator Copening, I hope that that stays in. She assured me that she wants it to stay in. Thank you for allowing me to make that remark.

Vice Chairman Ohrenschall:
Thank you, Senator Parks. I think that would be a great interim committee. I am not sure you will have many volunteers in this room who will want to serve on it, but that definitely needs to happen.

Senator Parks:
I am here with S.B. 265 (R1), which was a recommendation that came out of the Advisory Commission on the Administration of Justice, which is a 17-member committee that replaced the old Sentencing Commission some years ago.

Senate Bill 265 (R1) provides for the aggregation of consecutive sentences. Under existing law, a person who is convicted of committing more than one crime may be sentenced to serve the sentence imposed for each crime concurrently or consecutively. If a person is sentenced by the judge to serve consecutive sentences, he or she must complete or be paroled from one sentence before beginning to serve the next sentence.

Under the current process, he or she may be eligible for a parole hearing on a lesser charge shortly after entering a prison. Chairwoman Connie Bisbee of the State Board of Parole Commissioners is here with me. She will be able to give you some of the details. She is the expert.

We found that certain inmates, shortly after entering prison, are eligible for a parole hearing. Usually it is because they have already been granted time that they have served in the county jail toward their sentences. The current process places a burden on the Board of Parole Commissioners, and especially the victims of crime. Aggregating consecutive sentences means that an inmate does not get his or her first parole hearing until he or she has served the minimum time for the total consecutive sentences.

This bill does a number of things. First, it simplifies the sentencing and helps reduce a lot of confusion and the lack of confidence in our judicial system. I am sure that you get a lot of letters relative to individuals who are either victims of crime or are inmates. Victims of crime are always re-traumatized whenever they realize that the inmate is going to have a parole hearing shortly after he enters the corrections system. On the part of inmates, I have received many letters dealing with the confusion for those inmates as to how their sentence structure will operate. I think this bill will greatly improve that.

The bill allows inmates to adjust to the prison environment and begin rehabilitation efforts in an appropriate manner before their initial parole hearing comes due. It may also allow for shorter periods of incarceration and longer periods of community supervision under parole.

Aggregating sentences may also assist in the rehabilitation efforts. We certainly know that, if you have to be paroled from one sentence before you can start another, inmates will serve longer time in prison.

The last advantage of S.B. 265 (R1) is that—and I am not trying to put Chairwoman Bisbee out of a job—it would mean fewer parole hearings and certainly save the money and time spent in the parole hearings, as well as time served in the corrections system. There are a lot of inmate years that are served just by the fact that the initial parole hearing was denied.

With that, I will happily answer any questions you may have. Connie Bisbee and Mr. David Smith are here to answer any technical questions you might have. Thank you.

Vice Chairman Ohrenschall:
Thank you very much, Senator. We appreciate your being here and all the work you have done with the criminal justice system. Are there any questions for Senator Parks? I see none. Chairwoman Bisbee, you may proceed.

Connie Bisbee, Chair, State Board of Parole Commissioners:
Good morning, Mr. Vice Chairman and members of the Committee. If you will note, we have given you handouts. One is the original report that was presented to the members of the Senate Committee on Judiciary, dated March 30, 2011 (Exhibit I). You also have a requested amendment with a cover date of April 4, 2011 (Exhibit J). That amendment is included in the first reprint, which was adopted by the Senate, and which you have in the actual current form of the bill. We have given that request for an amendment so you can see what was added as a result of that original hearing.

The Chairman of the Advisory Commission on the Administration of Justice (ACAJ) is Assemblyman William Horne. We had a conversation after the Advisory Commission decided that they wanted to go forward with presenting this to the Legislature this year. He pretty much laughed at me and said, "See if you can explain this in English to anyone." Hopefully, the report goes step by step. I would be more than happy to present the report, if you would like, Mr. Vice Chairman, or I could just answer questions if that is easier for you.

Vice Chairman Ohrenschall:
I think answering questions would be the way to go. Mr. Daly has a question.

Assemblyman Daly:
Thank you, Mr. Vice Chairman. I read through it, and I think I understand it, but can you give me a math problem so that I can be certain about what "aggregating" means? You have sentence 1 and sentence 2, both with different time frames, and then you aggregate it. When does it come up for parole? I think I understand consolidating, separate paroles, and narrowing hearings, but could you give me a math problem so I understand it?

Connie Bisbee:
I would be happy to do that. We are just going to decide which one would be the best. You will find this on page 5 of the report dated March 30, 2011 (Exhibit I).

We will use this particular offender. This offender was sentenced January 1, 2010, to four consecutive terms of 4 to 10 years for robbery with the use of a deadly weapon enhancement. For the purpose of the illustration, bear in mind that credit earnings off the maximum sentence are calculated at the rate of about 50 percent. That means a 4- to 10-year sentence is really about a 4- to 5-year sentence because of the credits off of the maximum sentence. In this particular setup, there is no minimum sentence credit. The minimum sentence remains that four years. So, what you have is a level 1, 2, 3, and 4. You have four sentences. Count one is robbery, which carries a penalty of 4 to 10 years. Remember, he was sentenced on January 1, 2010, so his parole eligibility date at his minimum is January 1, 2014. However, legislatively, he gets credits off the back end. He will actually expire that case January 1, 2015. So, he will do 5 years on that case. He would gain parole eligibility after 4 years and have 1 year remaining on the sentence. If you assume that in this particular setup that he is paroled at each of those minimums, the years remaining on each sentence that is paroled would expire as he hits that next minimum. So, it is really a 4- to 5-year sentence, even though it is a 4- to 10-year sentence. So, at 4 years, he is paroled to that next 4-to-10. Well, when he completes the first year of the next 4-to-10, he has expired the case above. It continues down

until he hits that last case, which in this scenario is the use of a deadly weapon, with a 4-to-10. After he has completed that 4 years, the last case that was above has expired. So, if he is granted parole to the street on that last sentence, he will have 1 year on parole. However, once he goes out on parole, the credits that apply to parole will actually knock that down to 10 1/2 months. So he will have served 16 physical years in prison, and if he is paroled on the last case, he will serve 10 1/2 months on parole.

If he goes into the case where the sentences are aggregated, instead of consecutive, he would serve the 16-year minimum because he would add all those four minimums of the four cases together. Before he ever reaches the Parole Board, his sentence would not be 4-to-10, 4-to-10, 4-to-10, active, pending, pending, pending; it would be a minimum of 16 and a maximum 40, because we would add all the minimums together and all the maximums together so that he has one sentence. He then would have a 16-to-40. The beauty of that is, if he gets granted at his minimum, he has served those 16 years, but his expiration would be January 1, 2026, based on that same sentence of January 1, 2010. However, because he has not expired all the tail ends in prison, his expiration would be January 1, 2030. So, there is the opportunity to supervise that person for those 4 years, rather than have him serve them in prison consecutively with the other cases. Instead of only being able to reintegrate in a very short 10 1/2 month period, there is a period of up to 4 years when he can be supervised on parole.

Some folks can come out after 16 years of incarceration and do fine on parole. Let us say for 2 years he has done everything wonderfully. He has gotten a job; he is working, et cetera. Then, the Division of Parole and Probation (P&P) can request through the Parole Board that we contact the court and ask that his parole cease at that point. There is a carrot there, but there is also a stick. If, during that 4-year period, he goes back to drug abuse or other criminal behavior, we can reincarcerate him for a period of time in order to address those issues and so that he is not out on the street without skills and without support after 10 1/2 months, recommitting crimes and facing new felony charges.

[Chairman Horne reassumed the Chair.]

As Senator Parks pointed out, one of the beauties with aggregated sentences is that there is no programming condition where a person must be on his last sentence to have access to this, that, or the other program. There could be somebody who would have greater access to programming from the get-go. Instead of the guy who thinks, “Well, I’m going to get out eventually anyway, and it does not really do me any good to program,” there is that person who has

that carrot of, "I can program now. I can learn that vocational skill. I can be employable as I go out the door."

One of the things you find with vocational programs in the Nevada Department of Corrections (NDOC) is that many of the programs are such that these inmates are given jobs immediately with the same company that they did their vocational programming with.

That is, in a nutshell, the difference between keeping sentences separate and going aggregated. I would also like to add one more comment. Senator Parks had requested this because we had a lot of questions about whether this was something new—whether it was a foreign concept to corrections. We queried the other 49 states and Canada and asked how many states and provinces are using aggregate sentencing today. We got 20 responses, which is pretty good. Nineteen states and Ottawa, Canada responded. Of those 20, 16 use aggregated sentencing.

[Senator Parks submitted an informal survey of states for the record (Exhibit K).]

Chairman Horne:
Thank you. Are there any other questions? I see none. Does anyone else wish to testify in favor of S.B. 265 (R1)? [There was no one.] Is there anyone in Las Vegas?

We will move to the opposition. Does anyone here in Carson City wish to testify in opposition to S.B. 265 (R1)? Please proceed, Ms. Jones.

Florence Jones, Private Citizen, Las Vegas, Nevada:
I bring a different perspective on this bill—the perspective of the inmates. It is no secret that I have two sons who are in prison and who have been there for 30 years. I am a retired educator. I would like to bring to you my education skills this morning. Unfortunately—because I did not realize this was coming down the pike until the 11th hour—I have information that I asked to have presented to you. In case that is not done, I would like to be able to call your attention to a letter that has been prepared by inmates to give you some specific information about how they feel regarding this bill.

The idea that S.B. 265 (R1) will save Nevada money is flawed. Aggregation of consecutive sentences under this bill will result in longer incarceration of inmates either in prison or on parole. No inmate will volunteer for such a longer sentence without some incentive. Any proposed savings from volunteer inmates is unrealistic.

I was asked by Senator Parks to give him specific examples, which I did starting in April 2011. I did not realize until the night before last that it had not been included. I am trying to recover and get the information out to the rest of you so that you can make an informed decision.

The first sample is by an individual named Harold Smith. He lists his back number and his specific information, knowing that he might very well be retaliated against. He is serving two 5- to 20-year consecutive sentences. If he is paroled after 5 years on his first sentence and then paroled after 5 years on his second sentence, he would have served 10 years in prison and have 15 years on parole to expire the term of incarceration. Under S.B. 265 (R1), if he were paroled after 10 years—that would be an aggregated sentence—he would have 30 years left on parole to expire his sentence. Why would he accept?

The second example I have is Michael Spencer. He also listed his back number and information, knowing full well that he is disclosing information publicly, and that he is subject to possible retaliation. He is serving a 5- to 20-year sentence and a consecutive 4- to 10-year sentence. When paroled off his second sentence, he would have 6 years on parole to expire. When paroled off his aggregated sentence, he would have 21 years on parole to expire. Why would he volunteer for more time?

This bill is convoluted, very complex, and does not make a difficult situation simpler. In fact, it just makes a bigger maze. These examples use the best-case scenario for parole at the earliest opportunity. Unfortunately, our Parole Board has a history of granting parole when the inmate has only a few months left to expire his sentence. These practices are commonly known as "dumps." They come up for parole, and they are dumped. Current parole practices do not match actions suggested by the Board of Parole Commissioners. Under a more realistic picture of later parole grants, inmates would be serving far greater time in prison under S.B. 265 (R1) than under current circumstances.

Consider Brian Sutton, again with his number and information. I would like to point out that these inmates have all given me their express permission to share their specific information with you. He is serving three 12- to 30-month consecutive sentences. Aggregated, the Board would have him serve 84 months until parole, 6 months short of expiration. Currently, he would be paroled at 24 months on each sentence, 6 months short of expiration on each. His total incarceration, as the law now stands, would be 60 months before release on parole. That is 24 fewer months of incarceration than what this bill

proposes. There is no reason to expect that the Board of Parole Commissioners would change its parole grant rate.

The expected savings will not occur. A copy of Connie Bisbee's June 16 letter to William Horne and the members of the ACAJ is in the packet I am attempting to present to you. I believe I emailed it to you around 4 a.m. today. According to Connie Bisbee's letter to the ACAJ, an expected 10 percent of inmates volunteering to participate in S.B. 265 (R1) might benefit by receiving parole at their minimum aggregated parole date, rather than receiving the denials the Board has been issuing on separated sentences. The cost savings is thereby estimated to be $900,000 from the shorter periods of incarcerations. The savings fallacy occurs with the assumption that 100 percent of inmates will accept the aggregated sentence structure.

The research in the prison shows that barely 10 percent of the current inmate population would elect to have their sentences aggregated. We already have Nevada Supreme Court decisions in place—*Biffath v. Warden*, 95 Nev. 260, 593 P.2d 51 (1979) and *Bowen v. Warden,* 100 Nev. 489, 686 P.2d 250 (1984)—which deal with aggregated sentences and nonaggregated sentences. In fact, *Bowen*, which was passed in 1986, gives the NDOC the right to separate all sentences or aggregate them, whichever is best and has no detriment to the inmate. They cannot do either to the detriment of an inmate. So someone has to sharpen their pencil and do some work at the NDOC. We already have law on the books to cover this aggregated business. Now we are just trying to redo something here with S.B. 265 (R1) that would change what we already have.

Research shows that 10 percent of the current inmate population would elect to have their sentences aggregated. Therefore, the participating 10 percent would only affect 1 percent of the total prison population. The very best result could be a savings of $90,000. The cost of implementation for S.B. 265 (R1), according to Ms. Bisbee, is $300,000. That was for software updating. Quite frankly, that will probably more likely cost us money than save us money.

There is a table showing the breakdown. I hope that handout is presented to you. The basis for cost savings by S.B. 265 (R1) is that the Board of Parole Commissioners would not have the opportunity to issue dumps to inmates serving consecutive sentences if all consecutive sentences were aggregated. Since the dumps would not have been issued, the cost of housing those inmates for the years dumped would not be incurred. There is no reason to expect that the same dumps will not occur when the inmates are seen at their aggregated minimum. We still have the same Parole Board. There will be no cost savings unless parole is granted at an earlier date.

Here is a hypothetical example: An inmate serving two 5- to 20-year consecutive sentences receives a 3-year dump on his first sentence and is paroled at 8 years to the consecutive sentence. On that consecutive 5- to 20-year sentence, he receives a 2-year dump and is paroled at 7 years. I might add that this is consistent with what is going on—a total of 15 years of incarceration. With the sentence aggregated, he would just as likely receive a 5-year dump on his 10- to 40-year sentence. Why would we think the Board would change its thinking?

There would be no cost savings. In fact, because the inmate now has 25 years left on parole instead of the 13 years on parole resulting from the separated sentences, the state will automatically incur additional costs. The average cost between minimum and maximum security to incarcerate an inmate is about $20,000 a year. There is no assurance incentive that the Board will grant parole at the aggregated minimum. As they tell us very succinctly, parole is not a right; it is a discretionary policy that they may choose to grant or not. It is totally discretionary. Probably nothing is going to change their policies.

Ms. Bisbee implies that 10 percent of the inmates with aggregated sentences may be paroled at the minimum aggregated parole eligibility date. These inmates, she admits, were not paroled at the minimum eligibility dates on their separated sentences. Why would the inmate expect the change?

I do not know if this Committee is really interested in saving the state money. If that is true, I will continue on. There are some very specific suggestions from folks who have spent quite a bit of time in prison and know the system well.

Chairman Horne:
Ms. Jones, let us stick with the bill. We are a half hour late, so . . .

Florence Jones:
Thanks. I appreciate your input. Thank you very much, Chairman Horne. In the final sentence review case scenario, on page 3 of this letter from May 6, Joe Tracy is serving two 5- to 15-year sentences. I was asked for specific examples. Specific inmates have stepped up to the plate to explain their situations. Mr. Tracy would be paroled from his first sentence without a hearing before the Board of Parole Commissioners if he met the conduct criteria requirements that the prisoners are suggesting to you would be considered, calling for a prison conduct review statute which would set in place that they need to get their education and training, follow programming, and behave well. If they do all those things, then they would have completed and be eligible for release. If there is a consecutive sentence, they will be eligible for parole to the consecutive sentence without having an arbitrary, subjective decision-making

group to determine whether they have the right and are not a threat to society when, in fact, they are still just going to be in prison.

The second example is a man named Mohammed. He is serving twelve 3- to 12-year sentences consecutively. This man would not agree to an aggregated 36- to 144-year sentence under S.B. 265 (R1). He would receive paroles on each of his sentences after passing the prisoner conduct review test conducted by the prison caseworker who knows him the best and sees him every day. Only on his last sentence would he be seen by the Board. He would have served 36 years in prison and be subject to 9 more years on parole or the balance of his sentence to expiration, rather than the huge amount of extra time under S.B. 265 (R1).

I have two examples of lifers.

Chairman Horne:
If you could wrap it up, I would appreciate it.

Florence Jones:
Senate Bill 265 (R1) does not save us money. It is a convoluted approach, I hope, to clarify a situation, but I do not believe it accomplishes that task at all. I encourage you to deny it and stop it at this point. Thank you very much for your time.

Chairman Horne:
Thank you, Ms. Jones, for your testimony and patience. Are there any questions for Ms. Jones? I see none. Is there anyone else wishing to testify in opposition? [There was no one.] We will move now to neutral. Is there anyone here or in Las Vegas in the neutral position? I see none.

Before I close the hearing, does the sponsor have a brief closing remark?

Connie Bisbee:
It will be absolutely quick. I will pass the baton to Mr. Smith.

David Smith, Hearing Examiner, State Board of Parole Commissioners:
During the last session, there was a bill passed that aggregated consecutive life sentences going forward, and allowed inmates to opt in if they were already serving their life sentences. After that law was enacted, I recall sitting down with staff in Sentence Management at NDOC. Not only did they have a flood of letters from inmates with life sentences who wanted their sentences aggregated, but they had letters from inmates who were not serving life sentences and who wanted their sentences aggregated.

Consecutive sentences are generally saved for the inmates with the most serious offenses. They have consecutive enhancements for weapons where they had multiple victims. Chairman Bisbee did not elaborate in her testimony that when they serve those short periods and they are coming right from the jail, they are generally getting denied parole because they have not programmed, they have not adjusted to prison, and those parole denials become detrimental going forward. The example Ms. Jones gave you involved four 4- to 10-year sentences, but she gave you the scenario where they are being granted every 4-year period. If they were denied, they will have served 5, 10, 15, or 19 years, and then they will have 10 1/2 months left on their sentence.

There may be a number of inmates currently in prison who have been paroled, or served a number of years who would not benefit through aggregating, and they would have the option not to opt in. But I cannot imagine any scenario where an inmate would not want to opt in because they limit the risk of those denials between those sentences. It gives them the opportunity to adjust, program, and basically be ready for parole when they come up on that aggregated minimum term instead of being denied during that time.

Connie Bisbee:
The current grant rate is 63 percent, which is the highest in the nation. The chances of going up to 80 percent . . . . Ms. Jones is correct. The grant rate probably would not change at all, but it would mean when you did serve all that time, there was at least a 63 percent chance that you are going out the door at that point. No, it is not meant to change grant rates.

Chairman Horne:
Mr. Brooks.

Assemblyman Brooks:
Thank you, Mr. Chairman. If we aggregate these sentences, there is no guarantee that the 16 years you used as an example will be probational. They just have a greater percentage of opportunity to be paroled, but it does not necessarily mean that they will be paroled. Is that correct? And they have to do more probation?

Connie Bisbee:
This is not a soft-on-crime suggestion whatsoever. You will find inmates who will do the minimums, who are absolutely appropriate, and not considered a risk to the public, who would be paroled at the absolute minimum. There are inmates who come to the minimum, and they are denied because they continue to be a threat to the community. For those who meet the requirements and are not a safety issue for the community, it would reduce their overall time in

prison. It would absolutely increase the time they are supervised by the appropriate authorities in the community.

David Smith:
Mr. Chairman, may I make one last comment?

Chairman Horne:
No. We are done. I am going to close the hearing on S.B. 265 (R1). We are going to recess to the call of the Chair. We may take action when we come back sometime today.

Assemblyman Hansen:
Chairman Horne, will we be coming back?

Chairman Horne:
We are recessing. I do not know what the floor will entail, but we are recessing to conclude business.

[The meeting was recessed at 12:40 p.m. The meeting was reconvened at 7 p.m. and adjourned at 7:01 p.m.]

RESPECTFULLY SUBMITTED:

_____
Jeffrey Eck
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: June 5, 2011 **Time of Meeting: 9:49 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 174 (R1)	C	Senator Allison Copening	Overview
S.B. 174 (R1)	D	Senator Allison Copening	Amended Collections Policy
S.B. 174 (R1)	E	Senator Allison Copening	Mock-up Amendment 7336
S.B. 174 (R1)	F	Pamela Scott	Letter of Support from the Howard Hughes Corporation
S.B. 174 (R1)	G	Chris Ferrari	Letter to Lucas Foleta from Alfred M. Pollard
S.B. 174 (R1)	H	Chris Ferrari	Email from James Adams
S.B. 265 (R1)	I	Connie Bisbee	Presentation on Aggregated Sentencing
S.B. 265 (R1)	J	Connie Bisbee	Request to Amend
S.B. 265 (R1)	K	Senator David R. Parks	Informal Survey of States' Aggregated Sentencing Practices