MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Sixth Session
April 8, 2011

The Committee on Judiciary was called to order by Chairman William C. Horne at 7:46 a.m. on Friday, April 8, 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, Chair
Assemblyman James Ohrenschall, Vice Chair
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:

Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jean Bennett, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Phil Pomeroy, Private Citizen, Fallon, Nevada
Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association
Yvonne Schuman, Private Citizen, Las Vegas, Nevada; and representing Concerned Homeowners Association Members PAC
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Christy Craig, Deputy Public Defender, Clark County Public Defender's Office
Teresa McKee, representing Nevada Association of Realtors
Jenny Welsh Reese, representing Nevada Association of Realtors
Nick Hacker, representing American Land Title Association
Joanne Levy, Legislative Chair, Nevada Association of Realtors
Michael Schulman, Private Citizen, Las Vegas, Nevada
Kermitt Waters, Private Citizen, Las Vegas, Nevada
Leo Dupre, representing Independence Realty
Dan Musgrove, representing City of North Las Vegas
Alex Ortiz, Department of Finance, Clark County
David Bowers, City Engineer, Las Vegas Department of Public Works
John McCormick, Rural Courts Coordinator, Nevada Supreme Court, Administrative Office of the Courts
Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada

Chairman Horne:
[Roll was called. Rules and procedures were explained.] We have four bills and a work session on the agenda this morning. Vice Chairman, James Ohrenschall, is in Las Vegas at the Grant Sawyer Building. As a reminder, between now and Friday of next week, any bill that we have

heard can come up in work session without notice. First, this morning we will hear Mr. Goicoechea's bill, Assembly Bill 373.

Assembly Bill 373: Prohibits the willful destruction of real property that is subject to foreclosure or repossession. (BDR 15-98)

Assemblyman Pete Goicoechea, Assembly District No. 35:
Assembly Bill 373 is a fairly simple and short bill. This bill would make the wanton and malicious vandalism, or destruction, of property that is in foreclosure, or is going into foreclosure, or which the property owner clearly does not have the ability to make payments on the property, a criminal act. It is my understanding that at present there is no criminal charge for wanton and malicious vandalism, or destruction, that can be brought against a person who has an interest in a property.

With me today is Phil Pomeroy. I brought this bill for him. He has given the Committee a handout, which consists of seven pages of photographs (Exhibit C). As you look at those pictures, it is necessary to understand this is a rural property. It had a domestic pump with a pressure tank, and the resident removed the domestic pump because it had some value. The residents of these rural properties can really damage property by dropping joints of pipe down well holes, or worse yet, putting a four-by-four down a well hole and drop pipe on top of it, which makes it extremely difficult to rehab a well. Such damage could amount to $10,000. Mr. Pomeroy can go into that. We are not talking about someone losing his property to foreclosure and then scraping a wall or even taking a refrigerator and stove with him. We are talking about people who pour cement down drains, take a sledgehammer to walls, take a shotgun to the walls, and remove all of the doors and fixtures. Clearly, any person would know when committing these acts that he is reducing the value of that property. At the point where a person knows he is not able to pay for the property, and he is facing foreclosure, damage like this should become a criminal act. There should be some way the lienholder has recourse against that person.

Chairman Horne:
Mr. Goicoechea, your memory might be better than mine, but did we try to tackle some of this during the 75th Session?

Assemblyman Goicoechea:
I did not bring the bill, so I will defer to you. However, with all the foreclosures in Nevada during the last several years, this is clearly an issue with which we have to deal. I am aware of properties that had nothing left when the lender walked into the property. The doors, windows, and even the fixtures were

gone. Clearly, that is an issue. Far beyond what the photos that Mr. Pomeroy submitted show, when all the windows are broken, a sledgehammer has been taken to the walls, and everything of value has been removed from the house, it does not leave the lender or property owner a property of any value.

Chairman Horne:
Have you spoken to anyone in the area of enforcement? Also, in a lot of these foreclosures people leave the home before the property is actually taken, but squatters come in and other types of vandalism occur after the property owner has left the property. I have some concern about just assuming it was the property owner who did it, when in fact it may have been squatters who did some or all of the damage.

Assemblyman Goicoechea:
I could see where that might be the case in the more urban areas, and where a lender is dealing with a number of properties. In this case, however, we are talking about the City of Fallon; everybody in the neighborhood knows that there are not a lot of squatters moving in and out of these properties. Again, it was Mr. Pomeroy's property. He knew his property was being destroyed, and there was no legal mechanism when he went to law enforcement, because technically the persons had a right to be in the home and were destroying it.

Chairman Horne:
Are there any questions for Mr. Goicoechea before I move on?

Assemblyman Frierson:
I would like to hear the details of Mr. Pomeroy's story before I formulate my questions.

Phil Pomeroy, Private Citizen, Fallon, Nevada:
My wife, Carla, and I have a small farm in Fallon, Nevada. I grew up in Fallon, and also do corporate flying, so I get to travel around the country and see much of what is going on throughout the United States. Everything Mr. Goicoechea said is correct. We do not have a retirement plan based on farming. Because we are self-employed, we decided to buy distressed properties, and fix them up. Most of these homes are rented out. That was our planned retirement down the road. Unfortunately, like most of the real estate in Nevada, due to recent circumstances, that plan is not working out.

One of our properties, which you can see in the photographs we supplied, was a mobile home. Mobile homes are very hard to finance. We sold that mobile home three or four years ago and carried the note on it ourselves, which was the only way we could sell the property. The couple who bought the home

ran into serious circumstances. The husband became ill and died. The wife went off the deep end, and you can see the damage she did to the property. She went completely "bonkers." As soon as her husband died, the wife stopped making all payments. My wife and I began the process of foreclosure to take the property back and save what we could. We continued to drive by the property and, as the months went on, the property became more and more deteriorated. She was very bitter; she would not return our telephone calls, and she would not talk with us. Initially, we tried to work with her to lower the interest rate and "the whole nine yards." She was unable or unwilling to work with us. To make a long story short, each time we drove by the property it was a little more damaged. Finally, I called the sheriff to see if there was anything that could be done. I called attorneys. Everyone said, "No." As long as she owns the property, there is no recourse. I have no legal right to even step foot on that property to save our investment. She did not pay the insurance. She is the type of person who, if I were to sue her, there would be nothing to go after. There would be no point in our incurring more costs. Once we were able to foreclose on the property, and were able to get the property back, the photos show what we walked into.

We had the property looking nice, and it was a good addition to the community. It just seems to us there is something haywire with the law if people can go in and vandalize property, and there is no recourse. This kind of vandalism can ruin the property values of surrounding properties, as well. There has to be a deterrent to this. I have friends nationwide that are going through this same thing.

Assemblyman Frierson:
Thank you, Mr. Pomeroy. I want to have your scenario straight. Did you sell the property and finance it yourself?

Phil Pomeroy:
That is correct. Because it was a mobile home and was not on a foundation, the lending standards make it very difficult to obtain financing. If I could have had a bank finance it, I would have had my money and could have walked away from it, and never had to see it again.

Assemblyman Frierson:
I honestly do not know the answer to this question. When you sell something like this and finance it yourself, are you able to get insurance the way mortgage insurance can be obtained? I do not know if that is even an option.

Phil Pomeroy:
I do not know about mortgage insurance. The legal documents and notes state insurance was supposed to be carried, and the property was supposed to be maintained, but obviously, none of those things were done.

Assemblyman Frierson:
Did you see these people do this damage?

Phil Pomeroy:
I did not see them do it. However, I could drive by the property and see the broken windows, while the wife was still occupying it. She also left us notes on the walls. It was very, very personal and vindictive.

Assemblyman Sherwood:
Thank you, Mr. Pomeroy. This is amazing. I have also had people in my neighborhood ask the question, "What is going on here?" It seems like this is an issue people do not pursue because there are always drug dealers to go after for killing innocent "kiddies," instead of pursuing this type of issue. A category E felony seems a little light. It does not matter who owns the property, a private individual or a bank. We all pay for it because property values go down. We had one home in our neighborhood that had to be rehabbed, and so much money was put into it that the property cannot be sold. I do not want a vacant house two houses from me because this was done. My question would be, if the persons were not occupying the house and did all this, would a category E felony be a little light?

Phil Pomeroy:
I do not know the penalties of the categories, but I have been in contact with Mr. Goicoechea about this matter.

Chairman Horne:
I do not want to jeopardize Mr. Goicoechea's bill, and I believe that would happen if the category were higher.

Assemblyman Goicoechea:
Thank you, Mr. Chairman. Again, we are looking for any penalty. Even if the penalty were just a gross misdemeanor, at least that would give a person the opportunity to go to law enforcement and file a criminal complaint, which should stop the vandalism and start the process.

Chairman Horne:
Are there any further questions for Mr. Goicoechea or Mr. Pomeroy? Are there any questions in Las Vegas? Mr. Ohrenschall, do you have a question?

Assemblyman Ohrenschall:
Under the existing law, have the owners been able to prosecute anyone?

Assemblyman Goicoechea:
Technically, under existing laws or ordinances, they could not. Mr. Pomeroy went to the Churchill County Sheriff, and asked him to intervene. The response from local law enforcement was that there was nothing on the books that would allow law enforcement to intervene. Since the people had an actual interest in the property, and were residing in the property, there was no way to make it a criminal act. That is what we are looking for in this bill. When a person recognizes the fact that his property is being destroyed, he would have the ability to file a criminal complaint.

Assemblyman Frierson:
I am trying to understand how, in a practical reality, we are trying to address this problem. It seems, conceptually, there are two situations. One is a person who damages his own property while he owns it and there is no crime. The other is a person who damages his property knowing he is about to go through foreclosure. My concern is that in an area such as Clark County, where there is such a high rate of foreclosure and a high number of vacant and damaged homes, this is a serious problem. How would we avoid every person who has walked away from his property from potentially being subject to criminal complaints, even if the charges ultimately are not proven because of lack of evidence? Probably most lenders or deed holders suspect that the previous homeowners did the damage, but do not know for sure.

Assemblyman Goicoechea:
This would give the lender the opportunity at least to notify law enforcement that damage was being done and an investigation could be commenced. Clearly, we are not talking about people who are just walking away from homes, and then squatters coming in and creating the damage. We are talking about people taking shotguns to walls, pouring cement down drains, and other vandalism. Then, when the owner has the opportunity to access the property, he discovers that walls have blown apart. It is very expensive to go in and replumb a building. Again, what we are discussing here is the mechanism that allows charges to be filed, allows the investigation to be started, and then allows the legal process to commence. At least the homeowner would have the opportunity to put an end to the vandalism.

Chairman Horne:
I am concerned about identifying the type of damage that would trigger this. I would not want someone being brought up on criminal charges for damages that were not vandalism. There is obviously an issue with the nexus that has

not happened. The person is still technically the property owner, and he is destroying his own property. I believe what he is doing, in reality, is destroying the security in that property on which a person or bank holds the note and deed of trust, and the security for that note and deed of trust. The person is supposed to take care of that security, but the person may no longer be able to maintain the home, the only thing the lender has to assure the investment is received back. I think there is some way to tighten this bill up.

Assemblyman Goicoechea:
Thank you, Mr. Chairman. In subsection 1, of the bill, at page 2, line 1, we are saying, "A person . . . shall not . . . destroy any portion of the real property with intent to diminish the value of the real property." If you damage the walls as you are moving the furniture out, clearly that is not within the intent of the bill. If you burn a wall down, however, clearly that is within the intent of the bill. We are hoping that the language in the bill does get to our intent. You have to destroy the property intentionally in order to diminish the value.

Assemblywoman Diaz:
I would like to ask Mr. Pomeroy, how long did it take for you to foreclose on this property, and at what point were you able to evict this lady?

Phil Pomeroy:
It took about eight months from the time we first filed the papers until we finally received the ownership back. I would like to point out to the Committee, when you buy a piece of property, you do not technically own it. The bank owns it. You are in a contract with the lender to pay for that property. The owner of that property, whether it is a private individual or a bank, has a typical set of standards regarding normal wear and tear on property. You can see from the pictures I provided to you, that this obviously was not normal wear and tear. Perhaps you could put in language about normal wear and tear, with a threshold damage above $2,500, $5,000, or some other figure. There has to be something. I understand there is a problem with squatters. However, the people should have to notify the lender they are vacating the property, and the lender should have an opportunity at that point to secure that property. There should be a middle ground to protect the property, the community values, and the neighborhoods.

Assemblywoman Diaz:
I just want to make sure that you are saying it took you eight months to gain the ownership of the property back. Is that the point when the lady vacated the premises? At what point did she leave?

Phil Pomeroy:
I really do not know. We watched her pack up her things, because we knew that she was in the process of moving. Then about the second or third day, we could see the broken windows. She took her time. She supposedly was a disabled person on state benefits but she was very able, and had the ability to do a lot of work and damage.

Assemblywoman Diaz:
She took off without letting you know?

Phil Pomeroy:
That is correct.

Assemblyman Frierson:
I am curious, has a similar bill been passed in other states? Would the sponsor be amenable to this applying to nonfinanced homes? Typically, banks have mortgage insurance and management companies that can monitor property. However, for individuals who do not have a bank involved, would the sponsor be amenable to this applying to circumstances not involving a bank?

Assemblyman Goicoechea:
If you think that is reasonable, in the absence of some type of mortgage insurance, I am more than willing to do whatever has to be done to bring this bill forward. However, to be honest, I would prefer to look at the bill and set some threshold of damage. I understand this is a different scenario than large segments of subdivisions being foreclosed. At this point, we are discussing vandalism or destruction that is occurring before the actual foreclosure. We are willing to take small steps, just so we can get something out there.

Assemblyman Sherwood:
At the risk of doing open negotiations here, and to respond to the suggestion that we limit the scope of this, I would make a comment that the problems are actually worse in high-density locations than in rural locations. In the district I represent, every 12th house is vacant, or is a short sale. When that happens, everyone pays for it. The banks are not the bad guys on this. This destroys entire neighborhoods. Ultimately, we all pay for this through our insurance.

Assemblyman Brooks:
I have two questions. If this bill had already been passed, would it truly have helped you in your situation, since the owner of that particular mobile home could still trash her own property, if she wanted to? Second, is it the government's responsibility to regulate what happens with a private contract between a bank and an individual? If the individual decides he wants to tear up

his home for whatever reason, how is that a neighborhood issue? I understand it causes blight in the community, but if it is occurring internally, how do we define that as a neighborhood issue? I just do not see it as being one. I see this being a civil matter between the bank and the individual. How would this bill have helped you in this case?

Phil Pomeroy:
I believe it would have. It may have been a deterrent because when a person does not have anything, and you cannot sue him for anything, he has nothing to lose. However, if he is looking at jail time or prison time, or some deterrent, then, yes, I think he would think twice about vandalizing. I disagree with your thought that the person completely owns the home. It is his own home, but he is usually in a contract with a lender to pay for the property. The lender still owns it. The lender is letting the people use the house, and live there, and use the property. I believe it is a blight issue for the entire community. It is not just that one house that affects that one person. This affected the whole state.

Assemblyman Brooks:
We can agree to disagree and that is irrelevant. The reality is that this is a civil matter. It is a contract between the bank and the individual. Whether we like it or not, that is the situation we are dealing with.

Assemblyman Goicoechea:
We do not want to lose sight of where this bill is headed, and I think we are getting there in a hurry by talking about blighted areas and the impact on the community. This bill only allows for a person to be able to call law enforcement and have them come to the scene and establish that there is, or there has been occurring, damage and wanton destruction to a piece of property that is in foreclosure. We are not going to talk about whether neighborhoods are destroyed. This bill creates a mechanism that allows a lender to have local law enforcement come onto the property to begin its investigation and establish a record of vandalism. This bill gives the property owner some place to go from here. We do not currently have that in the law. Today, local law enforcement cannot even enter onto a piece of property to investigate what is occurring because it is not a criminal offense. Whether we make this a misdemeanor, a category E felony, or whatever you want to call it, this bill would allow a record to be established at the point law enforcement is called.

Assemblyman Hansen:
The purpose of this bill is to make the specified conduct a criminal act. Whether the lender is a bank or an individual, the bottom line is that this is a wanton act of vandalism on a piece of property, regardless of who owns it. This should certainly be something we have in statute to protect a homeowner,

or a lending institution. I think we need to make sure that is the focus of what we are trying to do here. The purpose of the bill, as I understand it, is to simply allow an individual who owns a property or has an interest in the property simply to prosecute someone who is wantonly vandalizing that property while it is in his possession. Is that correct?

Assemblyman Goicoechea:
That is correct. Technically, all this bill allows for is the ability to file a criminal complaint, and it establishes a record.

Assemblyman Hansen:
For the record, I have seen numerous cases where people trash homes. This is a significant problem that needs to be addressed, whether the property is in a rural or an urban area.

Assemblyman Daly:
How will this work? Will this only apply if the home is going into foreclosure, or if there is some other proceeding against the deed? Will you need to have a reasonable suspicion that a person is going to commit an act? Will you then file a complaint, and then the sheriff will come out and investigate and take pictures? Is that how this will work? Are we going to end up with automatic potential complaints being filed along with the foreclosure? If I had a property going into foreclosure, I would immediately file a complaint. We might end up with too much burden on law enforcement.

Assemblyman Goicoechea:
Clearly, it will not be perfect, but it does give us another vehicle. Again, I do not think banks will automatically go out and file a complaint just so they can have law enforcement come to the scene. We do have to believe in our due process. The fact is, if there is an issue, a complaint can be filed. When law enforcement comes out to investigate that complaint, it would at least stop any further vandalism and core destruction of the property that would be a deterrent to try to stop some of these people. These people are clearly mad at the world. They had money invested in a property. They are going to have to walk away from the property, so they start punching out walls. At some point we think it would be appropriate to call law enforcement and say these people are destroying my equity in this property. We are hoping this will become a deterrent. We understand that it will not be the “end all” and will not solve all problems.

Chairman Horne:
Are there any further questions? [There were none.] The Chair would like to thank Mr. Pomeroy for coming to testify. Mr. Uffelman is next.

Bill Uffelman, President and Chief Executive Officer, Nevada Bankers Association:
On the Nevada Electronic Legislative Information System (NELIS) you will find photos (Exhibit D) of a home in Henderson, Nevada, where the mortgage was held by one of Nevada's community banks. This was a property that at one point was worth about $900,000. In the autumn when the people began having difficulty, the home was appraised for $525,000. In February, as a result of the damage that the owner-occupant inflicted, the house was sold "as-is" for $250,000. This is a problem. It was very evident that the owner-occupant was doing this damage. Some of the damage included doors ripped off and a set of double doors leading to the patio was removed. The owner-occupant physically removed the air conditioner and compressor, the granite countertops, the surface-mounted sinks, and anything and everything that could be removed. He was intentionally diminishing the value of the property that provided security for the bank mortgage. The house is the security for the mortgage; it is the civil part of the contract. The irony is, if the people had moved out, and vandals or squatters had moved in, there would be a claim for trespass, and criminal charges could be pursued against the people who had not contracted to maintain the integrity of that home. Instead, the owner-occupants destroyed it. The bank attempted an initial foreclosure sale at a price that was close to the note value of $565,000 and could not sell the house. This occurrence can be multiplied across Las Vegas. Not everyone does this kind of damage to homes. Most people have integrity, and do not decide to take out their dissatisfaction on the property. For these reasons, the Nevada Bankers Association supports the concept of this bill, and appreciates Mr. Goicoechea bringing the bill.

Chairman Horne:
Thank you. Mr. Brooks has a question.

Assemblyman Brooks:
Thank you for your testimony, Mr. Uffelman. I have two questions. First, at the point that the owner-occupant is living in the home, are the air conditioner and the granite countertops his property?

Bill Uffelman:
The home, what is called the real property—but not the appliances—was financed based on the presence of the countertops, the surface mount sinks, the doors to the exterior, the air conditioners, and like items. That was the security for the agreement on which the money was loaned. The money was loaned based on a promise to maintain the integrity of that property. Homeowner's insurance is required to be maintained, to protect the property in case of fire, theft, and other such things from third parties. However, when the

homeowner inflicts the damage, it is completely different. The bank and the homeowner both have an interest in that property. The Chair inquired earlier about whether we did something like this two years ago. The reality is that two years ago we said the homeowners' association (HOA) had a right of entry to maintain landscaping, and to fix things that were falling off houses that were in foreclosure, even though they were still owner-occupied. We now have had local ordinances mandating that lenders do certain things. At this point, it is a mixed bag because of clause 25 in the mortgage document that says the homeowner will maintain the integrity.

Assemblyman Brooks:
With all due respect, is that a "yes" or a "no" answer?

Bill Uffelman:
You have an interest in the property and so does the institution.

Assemblyman Brooks:
So the homeowner does not own the air conditioner and the granite countertops while he is in possession of the property? This is just a "yes" or "no" question.

Chairman Horne:
We are not going to get combative or anything like that.

Assemblyman Brooks:
I just want an answer. If I buy a house, and I own the house, and I live in the house, if I want to change the granite countertops in my house, I have every right to take off those granite countertops and put on something else, correct?

Bill Uffelman:
You have a right to do that. However, there is a presumption that you will maintain the countertops at some level of quality sufficient to back up the mortgage note on the property.

Assemblyman Brooks:
My next question would be, before the mortgage crisis and everything "went south" with the mortgage industry, how often did you see this occurring?

Bill Uffelman:
It would only be anecdotal. I do know that before the mortgage crisis people said, "Well, it is not my fault and, therefore, I am going to sledgehammer everything in here." This could be seen, and there were newspaper articles about it, but I cannot tell you it was 1 percent, or what it was.

Assemblyman Brooks:
I heard your side of the story concerning a home being worth $900,000 and being sold for $250,000. I know of homes that were purchased at $800,000 and because of the economy, the homes can only sell them for $300,000. My question to you is: How long was this person in this home before he committed this type of damage?

Bill Uffelman:
I looked up this piece of property last night on the Zillow website. In 2007, the property was valued at $900,000; in August of 2010, the same property was for sale for $569,000; and the public record on February 17, 2011, shows that it sold for $250,000. The irony is that the chairman of this bank had called me in December 2011, because he had the same situation and he asked if we could introduce a bill. At that time, it was too late to have the bill introduced. However, Mr. Goicoechea introduced this bill which is consistent with what we are seeking.

Chairman Horne:
Mr. Hansen, if it is a question. Is it a question?

Assemblyman Hansen:
It is a question. In the transactions we are describing, the home is collateral, and while technically I own the home, until my mortgage is paid off, the lender and I have a mutual interest in that property. Is that correct? While I do not own it, I might replace a granite countertop, and there is an assumption that I will try to improve or maintain the value of the property. In the case you described, it was intentional vandalism. Is that correct?

Bill Uffelman:
That would be my take on the situation. In a way, it is like buying a car; the bank has a security interest in the car. The car is hit intentionally with a sledgehammer. The value of the collateral for that loan has been diminished.

Assemblyman Ohrenschall:
I have a short question either for Mr. Uffelman or for the sponsor, if he is still there. Do you envision any problems with law enforcement obtaining search warrants if this bill passes?

Bill Uffelman:
The actual enforcement of this law, and the law enforcement procedures, are beyond my expertise. I am sure there will be some difficulties. If the representative of the bank finds somebody in the process of doing this damage, and the bank calls law enforcement, it would be a lot easier. Of course,

when the rear doors have been ripped off the house and the courtyard gates have been torn down, perhaps the entry portion of the search is a little easier. Sometimes the possibility of a criminal prosecution will be a deterrent to some people, as opposed to a moral obligation.

Chairman Horne:
We have someone in Las Vegas wishing to testify in favor of A.B. 373. Please state your name and spell it for the record.

Yvonne Schuman, Private Citizen, Las Vegas, Nevada:
I am here representing myself on A.B. 373. I am here to offer my enthusiastic support for this bill. What this bill is trying to do is make what would otherwise be an act of vandalism and/or theft by people who do not own or occupy a home, be an act of vandalism or theft by people who do own or occupy the home. If a person has a home that is encumbered by a loan, the home is not in that person's name. You have a duty, both contractually and legally, to maintain the security interest in that property. Except for the fact that these people had a deed, or a loan, what they did could otherwise be considered vandalism or theft, and I think that should be the case for people who own or occupy a home. Thank you.

Chairman Horne:
Thank you, Ms. Schuman. Who is next in Las Vegas?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
I fully support this bill. I have personal knowledge of a home in a gated community that was foreclosed. The homeowner literally trashed the house. The homeowner took a sledgehammer, smashed the floor tiles, broke the bathroom fixtures, and when departing the home he turned on the faucets in the bathtubs, showers, and sinks, and put all of the stoppers down. These people then walked away from the house. The house almost floated down the street. The result was mold that covered the interior of the entire house. All of the Sheetrock had to be removed, the cabinetry had to be removed, and the floor tiles had to be replaced. Many lending institutions will go in and inspect the house immediately after the foreclosure takes place, and the owner has departed, so it can be determined at that point if it is squatters or vagrants that did the damage. In Clark County, there are many homes in gated communities where access is restricted. You can access craigslist and find components for sale that have been stripped out of homes. It took more than one year before a person was willing to buy the home with the serious mold damage. The value of that house was decreased substantially. There is an adverse effect on appraisals when attempting to find comparable sales in the immediate area.

I see this bill as an important tool to stop this type of behavior by people who are bitter upon losing one of their most valuable possessions.

[The Chairman left the hearing room and Assemblyman Frierson assumed the Chair.]

Acting Chairman Frierson:
Thank you, Mr. Friedrich. Are there any questions for Mr. Friedrich? [There were none.] Are there any others in Las Vegas who would like to testify in support of A.B. 373? [There were none.] We will hear opposition to the bill from Las Vegas.

Christy Craig, Deputy Public Defender, Clark County Public Defender's Office:
With all due respect to the author of the bill, this is not a narrowly focused, narrowly tailored bill only intended to get the worse offenders. Instead, what this bill contemplates is creating a giant class of new felons, people who ordinarily would not be felons. We are talking about a substantial burden on the entire criminal justice process, including the courts, the parole and probation department, and the police departments. This bill will ultimately be a cost to the state because we are talking about potential prison time for this group of people that ordinarily would not be considered criminals. In addition, as I look through this bill, while I found Mr. Pomeroy's story compelling, the vast majority of alleged victims in this case are going to be banks. As a criminal defense attorney, I cannot tell you how much I would enjoy going to trial and having the bank as a victim in a prosecution. In particular, I would like to have a bank claim to be a victim in today's economic climate, when people are losing their homes. I believe we are all aware of the Nevada Supreme Court case that contemplates banks are not participating in the mortgage refinancing and loan modifications. Homeowners cannot even get the banks to come to court, and cannot prove ownership of properties because the deeds are so messed up.

When I look at what is written in the body of the bill, the language really concerns me. For example, it talks about damage. Some people have alluded to this already. Can you explain exactly what damage the bill is talking about? How will a determination be made as to when that damage occurred? The way the bill is written, the damage would need to have occurred after the homeowner, or even the renter, had personal knowledge of a pending action, not only a foreclosure but any other action affecting the title. I suppose that could even mean a sale. Therefore, personal knowledge would have to be proven. I am not sure how you could prove that damage, however "damage" would be defined, occurred after personal knowledge.

In addition, what is the damage? The way damage was described by Mr. Pomeroy and the author of the bill, they wanted it to really be egregious damage. One of the comments was, "wanton and tremendous acts of vandalism." However, that is not the way the bill is written. This bill contemplates any kind of damage. The definition is wide open to interpretation. The idea of proving the intent to diminish the value of the real property is another problematic area. I believe Mr. Brooks said it best, and he was completely right. This is a civil matter. There are civil remedies in law. To criminalize this and make it a 1- to 4-year-felony is not a good idea, and I would ask the Committee to not pass this bill.

Acting Chairman Frierson:
Thank you, Ms. Craig. Could you go over with the Committee how this concept of damage, in ordinary criminal law, is based on a determination of value, for instance, damage over $2,500, or under a certain monetary amount? Can you elaborate on that issue?

Christy Craig:
It is not uncommon in criminal matters to have damages assigned a particular value. The potential penalty will change as a result of that value. The felony of possession of a stolen vehicle would be a good example. If the vehicle is worth more than $2,500, it is a serious felony. If the vehicle is worth less than $2,500, it is a less serious felony. In this case, the term "damage" remains undefined, both in cost and in what actually constitutes damage. There has to be some difference between ordinary wear and tear and damage. Frankly, how do you tell that difference? I was watching Channel 8, and its News Now I-Team did a story about this bill. The reporter followed a marshal who was serving an eviction notice on a family whose house had been foreclosed. Like many people facing foreclosures, the family had delayed leaving until the man knocked on the door and told them it was time to leave. The family is shown with only a few minutes to gather up what they could. They pushed out the baby stroller and stuff. When the home was entered there was furniture, clothing, and trash everywhere, because the family left very quickly. Clearly, it was the family's own fault for waiting until the last minute, but it was reported that there was damage because of the horrible condition in which they had left the property. Is that the kind of damage this bill is intended to cover? It does not sound like it from what the sponsor and Mr. Pomeroy talked about. However, this bill would allow a felony prosecution for that kind of act. I think that it is a very poorly written bill and it should not pass as it stands.

Acting Chairman Frierson:
Thank you, Ms. Craig. Are there any questions?

Assemblyman Hansen:
I find your comments very interesting, except I was disturbed with the diatribe against banks. Why is it that if a bank is involved with this type of thing that intentional acts of vandalism and destruction of property is somehow less serious than if, let us just say, I own the property? Frankly, your comments were really inappropriate. If there is an issue with the penalty side of this bill, would you be agreeable to having it reduced to some form of misdemeanor?

Christy Craig:
I do not think it should be criminalized at all. I think there should be a civil remedy for the bank and the person, and that remedy is already in place. When I was talking about the banks, I meant that in the current climate it is very clear that a bank as a victim would be a benefit to a criminal defense attorney in a trial. I was speaking purely from my point of view as a defense attorney. When you look at whether or not you would win at trial, and what kind of case could be presented to a jury, a bank is a much less empathetic victim than is Mr. Pomeroy. You cannot deny what is going on currently with the economic conditions. Just as an aside, I would point out that there has been a lot of press recently in the southern part of the state about what happens after banks have taken over foreclosed properties. Homeowners' associations (HOAs) and neighbors of these properties have been begging banks to take care of the properties that have been foreclosed on. The banks have not done so and, consequently, the property becomes a detriment to the neighborhood. I believe the man from the banking association touched on that, as well. The lenders have a responsibility when they foreclose on a home to take care of that property. They are not always doing that. Does that make the bank liable under this law? I think it might. Charging a bank with a felony for not maintaining a property is an interesting concept.

Assemblyman Hansen:
I like what you are saying to a certain extent, but the comments about the banks seems so biased. The banks have as much of a reasonable right as anyone else to have their property protected, and if someone intentionally attacks their property, to also have some form of criminal statute to turn to. I think it is crazy that we would sit here and say that someone can go in and commit these acts, and it would simply be a civil action. If someone went in and destroyed anyone else's property, for example, if Mr. Kite came to my house and began smashing windows, I think I could call the sheriff and say "I have some guy ruining my property," and Mr. Kite could be charged criminally. Why would it be different in a situation where it is a bank and an individual who is just bitter about the situation?

Christy Craig:
It is not just any person who is bitter about the situation. It is a person who has an ownership interest in the property. I believe one of the things the banker talked about was what would happen if you took a car you owned down to the bank and destroyed it in the bank parking lot. That is not a crime. Even though the bank has an ownership interest in that car, destroying your own car is not a crime. You are still responsible for paying for the car. The bank can come after you in a civil lawsuit, but it is not a crime. It is the same thing in this case. It should not be a crime to destroy the property in which you have an ownership interest. Does the bank have a remedy? It does. It has a civil remedy. Whether or not it is a viable remedy because the person may or may not have any money is another thing entirely. People win civil judgments all the time against people who cannot afford to pay the judgment. However, that does not make it appropriate to turn it into a criminal offense and to turn someone into a felon who potentially can go to prison for 1 to 4 years at a cost of something like $73 per day to keep someone in prison.

Acting Chairman Frierson:
Are there any further questions for Ms. Craig?

Assemblyman Brooks:
Ms. Craig, I think that your comments are correct, and I agree with you. I disagree with my colleague from the City of Sparks. Hundreds of thousands of Americans have no recourse when they have entered into certain contracts to purchase a home. They have been bamboozled in many ways, and have no remedy for some type of criminal charge against the banks, the big corporations that cannot fail. It is irrelevant that we, as taxpayers, have bailed the banks out. There is no bailout for us. At the end of the day, I understand the intent of this bill, and I appreciate it. I would be more than happy to work with Mr. Goicoechea to see if there is some way to help the individual who has financed a home. He was "done wrong." By the same token if we are saying that the subsidiary consequences of this bill are to help banks pursue people, I know of certain circumstances where a bank can foreclose upon a property; the bank has mortgage insurance to cover damages to the property; the bank can sell the property. Then the bank can go after the individual personally to pay the remainder of what is owed. Who is the real loser? I do not sympathize with the big businesses that have made money getting into these contracts and then have made money getting out of these contracts. I just want to know if you have any personal experience with banks that have done this before.

Christy Craig:
With banks that have done what?

Assemblyman Brooks:
Banks that have foreclosed on a property, received insurance proceeds on that property, and then went after the individual after they sold the house for less than the person owed on it?

Christy Craig:
I am sorry, but I am a criminal defense attorney and normally deal with serious crimes. I am just not privy to that sort of information.

Acting Chairman Frierson:
Are there any further questions for Ms. Craig?

Assemblyman Ohrenschall:
We have all heard the expression, "You can't get blood out of a turnip." If this bill passes, and someone is criminally prosecuted for damaging a home after it has been foreclosed upon, does this bill require that the damage is intentional? Could normal wear and tear, on the other hand, be something that resulted in a prosecution?

Christy Craig:
I think that is part of the problem with the way the bill is written. It is not entirely clear. This bill contains the phrase, "shall not remove, damage, or otherwise destroy . . . with an intent to diminish the value of the real property." There is a lot of room in that phrase because of the word "or" and because of the use of the word "damage." It would have to be shown at some point that the damage occurred, not only after the person had personal knowledge of a foreclosure, but also prove somehow that the damage happened with the intent to diminish the value, which is an odd thing to have to prove. I am thinking about people who are just poor homeowners, who perhaps have financial problems and are not able to keep up the house long before the foreclosure. There could still be significant damage to the house, but how would anyone ever be able to prove when it occurred and why it occurred? If it were proven, what we are talking about is putting a money value on that damage. In addition, I would suspect that most of the people who would be found guilty of something like this would not have a prior criminal record and would likely be put on probation. If that were to happen, it would be a burden on parole and probation. A part of the person's probationary period would be to pay restitution, which presents a real problem. If a person cannot pay the restitution, that would be a violation of probation, and then we are talking about putting that person in prison because he is unable to pay his restitution. At that point, the state of Nevada will be paying $70 per day, or whatever it costs, to keep someone in prison because he damaged his own property at some point during a foreclosure process.

Another part of this bill that is troubling is the word "or" on line 8 that states, "or any other action affecting the title." I am not a banker, and not a real estate agent, but I suspect that selling my house to another person would be an action that affects the title. When I bought my last home, the 70-year old woman who sold the house took out the curtains and some lamp fixtures because she did not know any better. She certainly did not have the intent, but that could be the kind of damage to fixtures that would qualify under this bill, and could potentially make someone like that a felon because she removed items that caused the house to be worth less money. I just think this bill is far too broad, and creates a new class of felons out of people who are just ordinary citizens. It could potentially cost the criminal justice system money to prosecute and defend, and everything else that goes along with creating a felony prosecution.

Assemblyman Ohrenschall:
We heard earlier the discussion that most of these people are judgment-proof. Even if they were sued civilly for the damage to the property, the plaintiff would not get anything out of these people in terms of recovering the damage to the property. If someone is criminally prosecuted and put in jail, is that going to help the banks and mortgage companies obtain any recovery?

Christy Craig:
Not unless they want a few cents per day, whatever it is the person earns in prison. It certainly makes it less likely. Once a person becomes a felon, as you can probably imagine, it makes it far less likely that the person can find a job and be able to pay back any money in the future. I would point out that a civil judgment, as I recall, is good for seven years and I believe that judgment can be extended at the end of that seven-year period. I hope we are not contemplating that this economic crisis will last forever. Even though the person may be judgment-proof at this time, it does not mean he will be like that forever. He will likely remain employed, or be able to find employment, and if a judgment exists, banks are very good about turning it over for collection. I just believe the civil remedies that already exist are the appropriate way to go.

Assemblyman Ohrenschall:
Thank you, very much. However, if a person does become a felon, theoretically it is more likely he would be judgment-proof forever.

Christy Craig:
Absolutely it would, because he will find it much more difficult to find and keep employment. If he is in prison, he is not earning money at all; he is just costing us all money.

Assemblyman Ohrenschall:
This bill, then, would not help anyone recover any money for the damages?

Christy Craig:
It absolutely would not, not even the tiniest bit. Earlier we talked about what it would be like if the police were called. If the police show up at a home that someone other than the complainant owns, this bill would place the police in a very awkward position. The people in that home have a constitutional right to privacy in their own home. There will be significant issues about how the police get into the home, and what the police are allowed to do once they are inside. How are the police going to be able to tell the difference between damage that could have been there for a year and damage that occurred only the day before? How would the police know, without extensive investigation, if the people had knowledge of a foreclosure? What kind of proof will the complainant have to show that a foreclosure is pending before the police can even go into the house? How can the police prove prior knowledge? I would not want to be a police officer who had this placed in my lap and have to try to figure out what to do.

Acting Chairman Frierson:
Thank you. Are there any further questions for Ms. Craig? [There were none.] Are there any others who wish to speak in opposition in Las Vegas or in Carson City? [There were none.] Is there any testimony that is neutral either in Las Vegas or in Carson City?

Teresa McKee, representing Nevada Association of Realtors:
The Nevada Association of Realtors is neutral on A.B. 373. We do support the intent of the bill, and we look forward to working with the bill sponsor to address the concerns that have been raised today.

Acting Chairman Frierson:
Thank you, Ms. McKee. Are there any questions for Ms. McKee? [There were none.] Is there any further neutral testimony in Carson City or in Las Vegas? [There was none.] I will bring this bill back to the Committee and close the hearing on A.B. 373. I will open the hearing on Assembly Bill 271.

Assembly Bill 271: Regulates private transfer fee obligations that affect real property. (BDR 10-628)

Assemblywoman Irene Bustamante Adams, Clark County Assembly District No. 42:
Thank you for the opportunity to present A.B. 271 to you. With me today are two individuals who have been instrumental in bringing forth this legislation.

Sitting to my right is Ms. Jenny Reese, from the Nevada Association of Realtors, and also Ms. Teresa McKee from the same association. We will be your "A" team today for the presentation. I am going to paint a picture of the current problem for Nevadans with this issue, and Jenny will provide a broader picture about the federal level and will highlight which states have banned private transfer fees and which states are currently hearing legislation to ban those fees. Teresa McKee is our technical guru and she is going to go over the sections of the bill.

When I first heard about private transfer fees, it reminded me of peeling an onion. This issue has so many layers. I soon began to realize that the phrase "private transfer fee" had many different meanings as far as titles are concerned. It is also called a "transfer fee covenant," a "freehold license transfer fee," and a "general estate legacy covenant." All of those phrases mean the same thing. It just did not smell right to me when I started reviewing the issue. The private transfer fee is similar to a real estate transfer tax, except the fee is paid to a private party instead of to the government. This is how it affects Nevadans. Let us assume we have a developer who has a lot and attaches a "subject to private transfer fee" clause to that lot, which will allow the developer to collect, as an example, 1 percent of the sale each time the lot is sold. In our example, our Acting Chairman, Mr. Frierson, will be buyer No. 1. He pays $100,000 for the lot and is charged $1,000, or 1 percent of the sales price, as a private transfer fee, on top of the $100,000. Five years later, Mr. Frierson sells his lot to Mr. Brooks for $200,000, who will be buyer No. 2. Mr. Brooks pays the $200,000 and is charged $2,000, as the 1 percent private transfer fee. Two years later, Mr. Brooks sells the property to Mr. Daly, buyer No. 3, for a price of $300,000 plus the 1 percent private transfer fee of $3,000. You can see how this will go on and on. By the time the property is sold to Mr. Hansen 99 years later, he has an old property and we can only guess what the price of the private transfer fee will be. That is how the private transfer fee works. I used the 1 percent as easy math, but the fee could vary anywhere from 1 percent to 3 percent. The developer uses this private transfer fee as a private investment vehicle to increase profits. This makes the home much more difficult to sell, creating a hardship for the homeowner. In addition, the homeowner may have to lower the sales price of the home, since the home will be more expensive comparable to other similar homes. At this time, I would like to have Jenny Reese give you a broader picture of what is happening on the federal level and why we are bringing this legislation to Nevada.

Acting Chairman Frierson:
Thank you. I believe Mr. Kite has a question now.

Assemblyman Kite:
Does this affect commercial property, as well as private property?

Assemblywoman Bustamante Adams:
Yes, it does.

Assemblyman Kite:
The reason I ask is that currently there is a 5 percent commercial property transfer tax. Is that tax in addition to the private transfer fee you are discussing?

Assemblywoman Bustamante Adams:
If you do not object, I would like Ms. McKee to answer the question.

Acting Chairman Frierson:
That will be fine. Ms. Bustamante Adams, if you think we should perhaps wait to answer that question until Ms. McKee completes her presentation, we can.

Assemblywoman Bustamante Adams:
I think that will be helpful, once we have gone through all the sections of the bill.

Acting Chairman Frierson:
If you have no objections, we can do that and revisit the question after the presentation. Thank you, Mr. Kite.

Jenny Welsh Reese, representing Nevada Association of Realtors:
The realtors are here in support of A.B. 271, and we would like to thank Assemblywoman Bustamante Adams for bringing this legislation forward. A private transfer fee is generally added as a covenant to the deed on real property by the owner or another private party. As a result of that covenant, every time the property is sold, often over a period as long as 99 years, new buyers have to pay a private party a fee equal to a set percentage of the sales price until the covenant runs out. On February 1, 2011, the Federal Housing Finance Agency issued a news release announcing its plan to publish a new federal regulation on private transfer fees. The proposed new rule would limit Fannie Mae, Freddie Mac, and the Federal Home Loan Banks from dealing in mortgages that have a private transfer fee covenant attached to the property. There are exceptions in the regulation for private transfer fees paid to homeowners' associations (HOAs), condominiums, cooperatives, and certain tax-exempt organizations, as they use private transfer fees to benefit the property. The bottom line is that fees that do not directly benefit the property would be barred. At one time, private transfer fees existed in new

home real estate contracts in 45 states. To date, 18 states have banned private transfer fees, including some in those 45 states. By the end of this year, it is expected that 28 additional states will have banned these fees. You should all have a map in front of you (Exhibit E), which shows where we are currently with private transfer fees, which states are in the process of banning these fees, and the states which have already banned the fees or have laws in effect. This is not the most up-to-date map. I believe a few more states have passed legislation at this point. If there is no objection, I would like to turn the presentation over to Teresa McKee at this time to go over the technical aspects of the bill.

Teresa McKee, representing Nevada Association of Realtors:
My role is to walk you through the sections of A.B. 271. I will start on page 4, section 9, which is a very important section of the bill that talks about public policy. One of the basic tenets of property law that is taught almost immediately in law school is that property should be freely transferrable, and that transfers should not be subject to encumbrances that restrict the transfer, or cause alienation of the property. Earlier in this decade, Wall Street got very creative and came up with the creation and expanded use of private transfer fees during the real estate boom. We have all witnessed many other problems that Wall Street's creativity has created. Section 9 states that, "public policy favors the marketability and the transferability of interests" which is something not stated by the Nevada Legislature previously. It is important to keep property free from defects in the title or unreasonable restraints on alienation of real property. Section 9, paragraph 2, states that it does not matter how long unreasonable restraint lasts, whether it is 99 years or whether it is 1 year, any kind of restraint is alienation. The amount of a private transfer fee does not matter; it could be a few dollars or it could be in some cases tens of thousands of dollars. Once again, neither the dollar amount nor the duration matters; both are alienation of real property. It is important that public policy address that issue and make Nevada's policy on that issue clear.

I will get to Mr. Kite's question on exemptions. Section 5 of the bill contains a definition of a private transfer fee, so that we all know what it is. It is a transfer fee that goes to a private party and not to a government entity and is not something that runs with the land, such as with condominiums. There are important fees that may look like private transfer fees, and we want to make sure these are excluded and not considered private transfer fees. Section 5, page 2, subsection 2, states that, "The term private transfer fee does not include any: (a) Consideration payable by the buyer to the seller for the interest in real property . . . including any subsequent additional consideration . . . payable on a one-time basis . . . ." What is being looked at is seller financing. If a seller finances a property, of course, the buyer has to

agree to pay the seller down the line, but that is an agreement between the buyer and the seller, not an independent, separate private party. Paragraph (b) talks about commissions paid to real estate brokers, which is something that is allowed by law. Commissions are for a service provided to the buyer and seller, so again that is very different from a private transfer fee for which no service is provided, and which does not benefit the land in any way.

Page 3, paragraph (c) talks about interest charges, or other amounts payable to a borrower, for consenting to an assumption of the loan, or transfer of real property, or any amount paid to a lender pursuant to an agreement which gives the lender the right to share subsequent appreciation in the value of the property. Usually in seller-financed transactions, there are times when a borrower will agree that if there is still money owing, and if the property appreciates, the borrower will pay more. That is not payment to a private property for no benefit to a person or to the land. Paragraph (d) talks about rent reimbursement charge or fee between lessor and lessee, which is a service for occupying a property. Paragraph (e) talks about consideration payable for an option to purchase, or a right of first refusal. Again, this is something that may look like a private transfer fee and might creatively be put into that category, but we wanted to create a specific exemption because this is a valid option to purchase, with a right of first refusal, and it is not a private party, with no ties to the land. Paragraph (f) speaks to Assemblyman Kite's concern: taxes, fees, charges, assessments, and fines payable to a governmental entity. Those are important, and clearly exempted. I hope that answers your questions that if there are local and state taxes paid to a governmental entity, they do not fall within the private transfer fee definition.

Finally, of concern to many people are amounts paid to HOAs, and common-interest communities. If fees, charges, assessments, and fines are paid in accordance with the governing documents of the common-interest community, they are paid for the benefit of the land. They pay for common areas, and for making certain the property is maintained properly in accordance with the declaration. These are payments that run with the land, that benefit the homeowners, benefit the community, and benefit the land. We worked very hard to capture what should be exempted without allowing improper uses of other things that might be considered private transfer fees.

Moving on to page 4, section 10, this assures that the bill is not retroactive, so as to void private transfer fees that are currently on the property. It does not endorse the validity of existing private transfer fees, or prohibit enforcement of existing transfer fees. However, it makes certain that any private transfer fees created and recorded after the effective date of this bill, are void and unenforceable. This is one of the most important parts of this bill. We wanted

to make sure that existing private transfer fees are disclosed, and section 11 provides specific procedures that must be followed that will disclose and explain existing private transfer fees. Section 11 requires that the private party to whom the private transfer fee is paid, the payee, has to record a notice in the county recorder's office by December 31, 2011. There are a number of provisions that have to be in the notice. It gives notice to the world what the private transfer fee is, how it will be calculated, gives an example of different values of property, and how much the private transfer fee will be. This makes it very clear to anyone who is looking, what the amount of the private transfer fee is, or even if the private transfer fee exists. If the notice is not recorded as required, then the private transfer fee will become void and unenforceable, and the property can be conveyed clear of that private transfer fee. Section 11 also states that if the payee does not file the notice, the owner of the property can file a notice stating that the notice was not filed by the payee and, therefore, the private transfer fee no longer exists. The affidavit is prima facie evidence, which means the owner has proved his case, and the required notice was not recorded. After that, if the payee wants to challenge the affidavit, it will be the payee's burden of proof to show that he did everything correctly.

Section 12 requires a payee, if asked to do so, to provide a written statement of the amount of the private transfer fee to the requester within 30 days. In a property sale situation, the escrow officer would ask for a payoff statement to close escrow. If the payee does not provide the payoff statement before the time requested by the escrow officer, the private transfer fee is void and unenforceable, and the property can be transferred free and clear of that fee. The fact that the payoff statement was requested and was not received by the escrow officer prior to closing of escrow is prima facie evidence that the payee did not do what he was supposed to do, and if there is a disagreement, the burden of proof will fall on the payee.

Section 13 provides for civil liability if the payee does not record the notice and provide the payoff statement, as required. The civil liability damages would include being responsible if a private transfer fee is paid improperly. A payee can also be held responsible for attorney fees and costs in an action to quiet title.

Section 14 creates a disclosure required by the seller to a buyer that states the property is subject to a private transfer fee. This puts a buyer on notice that this private transfer fee exists and may be valid and to perform additional due diligence, if needed. Therefore, there will be no surprises at the close of escrow regarding the private transfer fee. The buyer will know what he is getting into.

That is the extent of the bill that I am going into. There is also someone here from American Land Title Association, who can also answer technical questions that I am unable to answer.

[Chairman Horne returned to the hearing room and reassumed the Chair.]

Chairman Horne:
Thank you. Are there any questions?

Assemblywoman Diaz:
Who will bring this to the attention of the buyer? For instance, if I am looking for a property and working with a realtor, how am I informed if there is a private transfer fee attached to property I choose to buy? Are the clients educated about the private transfer fees by the realtor?

Teresa McKee:
Unless you look at the title initially, there is no way that you, as a buyer, could see this. This is the reason why, at the time of a sale, a separate disclosure covering separate fees, et cetera, is required, similar to a seller's disclosure statement. The disclosure is required when an offer to purchase has been made to the seller, and that offer has been accepted. This would be the first point at which the buyer would know, unless the buyer has had a search done of the county records before making the offer to purchase. These private transfer fees have to be recorded on the title of the property. The private transfer fees will also show up on the preliminary title report. This disclosure has to be made during the escrow process so the buyer has time to reject the offer to purchase the property without penalty, if he does not want to pay a private transfer fee.

Assemblyman Kite:
I had a specific purpose for my initial question. We have a commercial development in a redevelopment district. How would the exemptions in this bill affect transactions on that property? You have used the word "private" throughout this presentation. Commercial property sales can also be between two private parties. Will future transactions involving commercial property be exempt from the private transfer fees? In rural areas, we sometimes have a problem attracting commercial developments. I want to make sure there is no adverse effect on that type of transaction.

Teresa McKee:
To answer the first part of your question, yes, there are private transfer fees that currently exist against commercial properties. This bill will not affect anything that is in place, as long as the procedures are followed. When we are speaking about private transfer fees that means the party that is receiving this

fee each time the property is transferred, not the government, and not an association. The party receiving this fee has done nothing. The person just exists and is paid for doing absolutely nothing in the transaction. There is no ownership interest and that is what the term "private" is referring to in this situation. As far as rural areas are concerned, we believe that private transfer fees do not benefit commercial development, private development, owners, sellers, or buyers. We believe private transfer fees are harmful and reduce the amount of property tax that will come into a county. The private transfer fees harm homeowners who are selling down the line, because they have to lower the sales price of their homes. People come up with many creative ways to make things happen. We just want to stop things that are harmful to property owners.

Assemblyman Kite:
I understand this so far, and I believe I will support the bill. I just do not want to cut my own throat.

Chairman Horne:
Are there any further questions for Ms. McKee? [There were none.] Is there further testimony in support of A.B. 271?

Nick Hacker, representing American Land Title Association:
On behalf of our 3,800 member companies, we thank you for holding this hearing, and we strongly support this legislation (Exhibit F). The members of the American Land Title Association operate in every single county in Nevada, and every county in the United States, and range in size from small, one-county operations, to large national title insurers. Assembly Bill 271 addresses a growing concern about predatory private transfer fee covenants, and how they affect both residential and commercial consumers. These covenants provide no benefits and no service, increase the cost of homeownership, and alienate property. These predatory private transfer fees create a drag in the transfer of property resulting in an increased risk of title insurance claims, complicated escrow services, and title industry compliance. Ultimately, these fees decrease the equity that has been built up in a home or piece of property over time, and also increase the down-payment amount each buyer will be required to make in order to purchase the property. It is simply a mechanism in which equity is being stolen from the consumer each time the property is sold.

It might be easier to explain what private transfer fee covenants are in laymen's terms. A private transfer fee covenant is a fee attached to the title of property through a covenant, made by a developer or a homeowner. The covenant is that any future owner of that property is required to pay a percentage of the selling price, which could be any amount, for example, one-tenth or one-half

of 1 percent, 2 percent, 3 percent, or a fixed amount. However, it is a fee the buyer will pay when the property transfers for the next 99 years.

Proceeds from these fees are typically collected by a trustee who retains a portion of the fee for administrative expenses, and then distributes the proceeds to the developer and/or a third-party company. None of these beneficiaries have any ownership interest in the property. For instance, there is one major company in favor of private transfer fees, and it is trying to securitize these fees in order to create a financing scheme similar to what hit Wall Street in 2008. Under this arrangement, which is prevalent in Nevada at this time, the third-party company receives 30 percent of the fee, the developer receives 60 percent of the fee, and the trustee receives 10 percent of the fee, for the first 30 years. During the subsequent 69 years of that 99-year covenant, 90 percent goes to the third party and 10 percent to the trustee. This is a financing scheme that is being deployed to line the pockets of individuals who have no ownership interest in the property.

What happens if a consumer does not pay the fee? A lien in the amount of the unpaid fee, plus interest and costs, is established against the property. Before that property can be sold or refinanced, that lien must be satisfied, or the property is unmarketable, meaning that title insurance will exempt that portion, and the lender will not loan money to a new buyer against the property. It is important to note that regardless of whether or not that property appreciated in value or has fallen in value, as we currently see in Nevada, that consumer still has to pay the fee.

An example was given earlier that I will try to put into a broader context. Keep in mind that during the past 100 years, Nevada property has appreciated at about 3 percent per year. Using an example of a modestly priced $250,000 home, with a 1 percent fee based on 1.7 percent appreciation over time, in 20 years all purchasers of that home will pay a collective $9,300 in additional fees to own the property and will lose appreciation of over $2,100, which will be a net loss of more than $11,300 on that modestly priced home (Exhibit G). If after buying this home, the owner improves the property, and adds a basement, or installs new landscaping, including adding trees, or adds a shed, and uses his time, effort and resources to add value to the property. When he decides to sell the property, there is still the same private transfer fee on the property. The improvements have added $100,000 value to the home, and it may now sell for $350,000. Now a 1 percent fee will be paid on the new sales price. This is why I made the comparison of stealing equity, because it really is.

In addition, the concerns for this private transfer fee amplify the current real estate cyclicality, and the cyclicality of the market. These fees are hidden when

markets rise, and when markets fall the fees are passed to the seller by the buyer, and the issue comes into play late in the escrow. It is difficult for the seller to negotiate at that point, so the seller ends up paying the fee. Subsequently, especially in a down-market when property values come close to or below the amount owing on the mortgage, this additional fee will sink the seller further in the hole.

These fees also increase the risk of title claims. Because of the 99-year life of these fees, two things can occur. It is more than likely that such a covenant will go undiscovered in the search, and create a potential for a title claim. The failure to discover that covenant will result in a fee not being paid and create a lien on the property, making the property uninsurable. When a title insurance policy is purchased, the title company insures that there are no outstanding liens against the property. In order to keep consumers costs low, a title search does not go back 99 years. Under this bill, a title search will be required to go back 99 years, substantially increasing the cost of title insurance. The 99-year life span also makes it more likely that title companies will have issues curing discovered defects. Today, title insurance companies and title agents generally cure defects in one out of three closings. This fee only expands that risk and the amount of work necessary to cure a defect.

What will happen if you cannot find the trustee to whom you have to pay this fee, and what happens on the 99th year? What happens if the original trustee is no longer alive? In a neighboring state, two elderly ladies sold a piece of property to a developer with owner financing, thereby becoming the lenders. Subsequently, the developer, without the lenders having knowledge, placed a private transfer fee on the property. The developer went belly-up. The lenders needed to foreclose to get the property back, and when they tried to notify the trustee could not be found. The original address was in Florida for the trustee who was from a state neighboring Nevada. The lenders tried to notify the Florida trustee of the private transfer fees. The lenders foreclosed on the property, and now there will be a cloud on the title, and the property will be uninsurable until the trustee can be found.

In addition, these fees fail to meet a very important common law test called the touch and concern test. Common law sets out the conditions that must be met for the touch and concern test to apply. The most important condition that needs to be met is that the benefit and the burden of a covenant must touch and concern the land. In order to burden a property with a fee such as this, some type of benefit has to be provided. At the front-end, the developer could lower the price, so the first buyer gets a small benefit since he gets a lower price. However, the third, fourth, and fifth buyers get no benefit. These fees fail the common law touch and concern test.

Twenty-four states have passed very similar legislation to this bill. The FHA rule that bans these private transfer fees is very close to being finalized at this time. An additional 17 other states have legislation in process as we speak.

Chairman Horne:
I do not see any questions from the Committee. It looks as if you have done a thorough job. Are there any others who wish to testify in favor of A.B. 271? [There were none.] Are there any others in Las Vegas who wish to testify in favor of A.B. 271?

Joanne Levy, Legislative Chair, Nevada Association of Realtors:
I have been a real estate licensee for 34 years and a broker for 32 years. The Nevada Association of Realtors supports A.B. 271.

Chairman Horne:
Thank you, Ms. Levy. I also have a Michael Schulman signed in to speak in favor.

Michael Schulman, Private Citizen, Las Vegas, Nevada:
I am an attorney from Las Vegas and I represent approximately 600 HOAs in Las Vegas and around the state of Nevada. I have also been on national committees regarding this particular issue. In essence, what the last gentleman said is true. Basically, developers have created an annuity for themselves for no purpose, other than greed. The language in the bill exempting fees paid to HOAs makes perfect sense. The only suggestion I have is to add an exemption for management companies. I do not represent management companies, but I do know those companies create what they call transfer fees. In essence, it is a fee that is payable to a management company for work that it has to do when a new owner comes into an association. Some of those have been abusive and substantial amounts. I do know that Senator Schneider and his bill created an exemption for those fees. He had the Commission for Common-Interest Communities and Condominium Hotels study the amount those fees should be, and I think the range was around $200 or $250. I feel that some fees we have seen have been far too high. I would like to suggest a change be considered regarding adding an exemption for management fees in section 5. If the management companies are not exempted, the buyer and seller will not pay the fees and all of the members of the association will have to absorb it.

Chairman Horne:
Thank you, Mr. Schulman. I will ask you to get in contact with the sponsor of the bill and talk to her about the amendment. We will take it under advisement as a Committee when it comes to a work session.

Michael Schulman:
Thank you. I will be happy to talk with her and present language.

Chairman Horne:
Are there any others in Las Vegas who wish to testify on A.B. 271?

Jonathan Friedrich, Private Citizen, Las Vegas:
I am in support of this bill. I have two documents which I will fax to the Committee. They are both statements of accounts on foreclosures. The statement from Hampton and Hampton (Exhibit H) has an item which states, "transfer fee—Mgmt, $200." Another statement from Nevada Association Services (Exhibit I) has a charge for a transfer fee of $750, and directly below that is a charge for an "FC transfer fee" of $750. I am going to ask a question for which I do not expect an answer. Who is getting this money, and why? I see this as unjustified greed.

Chairman Horne:
Thank you, Mr. Friedrich. I see no questions. Is there anyone else in Las Vegas who wishes to testify in favor of Assembly Bill 271?

Yvonne Schuman, representing Concerned Homeowners Association Members PAC:
We enthusiastically support this bill. We would like to find a way to address the issue raised by Mr. Friedrich, which is to cap or control the fees charged by the HOA management companies. We would like to see some cap there because we also look at an average of $1,500 in transfer fees, and we do not know what they are for and to whom those fees are going. In addition, we have a couple of friendly suggestions or amendments to the bill. The first relates to section 12, subsection 1, line 10, page 6, which says that the statement must be provided no later than 30 days after the date of mailing. In a typical real estate transaction situation, time is of the essence, and 30 days is a long time to wait to find out if there is a transfer fee and, if so, the amount of the transfer fee. We recommend that this time be shortened from 30 days to 10 days, which should be sufficient time for the payee of a transfer fee to be able to provide this information. Consistent with that suggestion, and in conformance with that suggestion, we would also suggest in section 12, paragraph (e), that the last line also be changed from 30 days to 10 days.

Our next recommendation is regarding section 13, paragraph (a) and deals with liability for damages resulting from enforcement of the private transfer fee. Very often, damages in a situation like this are very difficult to prove. We recommend that this section be modified to include a flat liquidated damages clause of $1,500, or actual damages, whichever is greater. That way

it will not be necessary to use legal resources arguing and fighting over how much damage was incurred.

Those are the recommendations we would like to offer the Committee, and I am happy to email or fax a copy of these recommendations.

Chairman Horne:
Thank you, Ms. Schuman, for your recommendations. Are there any questions for Ms. Schuman? [There were none.] Are there any others in Las Vegas in support of this bill? [There were none.] I will move to opposition. Are there any others in opposition to A.B. 271, here in Carson City or in Las Vegas? [There were none.] Is there anyone wishing to speak in a neutral position, here in Carson City or in Las Vegas? [There were none.] I will close the hearing on A.B. 271. When we reconvene, Assemblyman Ohrenschall will present Assembly Bill 346.

[The Committee recessed at 9:41 a.m. and reconvened at 9:53 a.m.]

Chairman Horne:
The Assembly Committee on Judiciary will come back to order. We will open the hearing on Assembly Bill 346.

Assembly Bill 346: Provides a cause of action against public agencies which delay certain actions after adopting a resolution of intent to exercise eminent domain. (BDR 3-531)

Assemblyman James Ohrenschall, Clark County Assembly District 12:
Chairman Horne, I want to personally thank you for allowing me to participate via videoconference in today's meeting of the Assembly Committee on Judiciary from the Grant Sawyer Building in Las Vegas.

I was inspired to introduce A.B. 346 after hearing about private property owners in Nevada who have lost tremendous value in their homes and commercial property due to the actions of some public agencies. Dating back to our nation's roots in England, our country has a long tradition of allowing government to take someone's private property for a public use. By "take," of course, I mean that the government may force or compel an owner to sell private property to the government. To paraphrase the 5th Amendment to the *United States Constitution*, private property shall not be taken for public use without just compensation. The courts have interpreted just compensation to mean "fair market value."

When things operate correctly in an eminent domain proceeding, a private property owner is compensated fairly by the public agency for the forced sale of his property. However, A.B. 346 attempts to address a situation that has become more frequent in our state, and that is when private property owners, in my estimation, are not being treated fairly. Imagine you own a piece of real property. It could be your home, or it could be a commercial property. A government entity such as Nevada's Department of Transportation (NDOT), notifies you that, in the future, it is going to take your property. However, it does not begin the eminent domain proceedings. You and the public are just advised that at some time in the future NDOT is going to take your property. Imagine things go on like this for 10 or 15 years. During those 10 to 15 years, the property basically has a cloud over it. People are not interested in purchasing that property, or developing that property. The value of the property plummets, because everyone knows about the cloud over the property, even though it has not been declared when that public agency will take the property. Ten or fifteen years down-the-line when NDOT decides it is going to take your property through eminent domain, the value has fallen considerably, and your just compensation under the 5th Amendment to the *U.S. Constitution,* will now be not quite as just. It will be much smaller. Assembly Bill 346 is modeled after the statutes of one of our sister states that has provided this kind of protection to private property owners since the 1970s. The bill is being supported by some of Nevada's preeminent eminent domain attorneys. Laura FitzSimmons has submitted a letter of support (Exhibit J) that the members should be able to find on the Nevada Electronic Legislative Information System (NELIS). In Carson City, Kermitt Waters is present to testify in support of the measure. I will be happy to take any questions. Otherwise, I can turn this over to Mr. Waters.

Chairman Horne:
Thank you, Mr. Ohrenschall. Are there any questions for Mr. Ohrenschall? [There were none.] Mr. Waters, please proceed.

Kermitt Waters, Private Citizen, Las Vegas, Nevada:
Last night I was apprised of an amendment proposed by Clark County. Is that going to be considered at this time? If it is, I want to oppose that amendment. However, I am currently supporting the bill as proposed. I want to know what my ground rules are before I testify.

Chairman Horne:
Typically, what happens is you give your presentation on how you support the bill, and that you understand that there is an amendment that you do not support. Persons are permitted to come up and say that they are opposed to the bill or they are neutral, and would like this amendment, and the Committee

gets to consider whether or not they are going to entertain that amendment in work session.

Kermitt Waters:
So what I need to do now is cover the bill as proposed, as well as the amendment, is that correct?

Chairman Horne:
Yes. Give us the testimony you were going to give today. You have already put on the record that you do not support the amendment, and you can give us a brief statement as to why.

Kermitt Waters:
A practice began in California many years ago, where cities, in order to avoid liability, passed a resolution of need and necessity. It is a requirement before a city can file an eminent domain action under *Nevada Revised Statutes* (NRS) Chapter 37. Cities realized that when this resolution is filed, it freezes the property. A resolution of need and necessity is like a notice of *lis pendens*. I know that all of you know what a *lis pendens* is, but this is like a stealth *lis pendens*. Once such a resolution is passed by the city, and you may or may not know that it has been passed, basically it says that your property is going to be taken at some unknown time in the future. After that happens, you can no longer obtain financing on the property if the bank knows about the resolution, and if you do not tell the bank about it, that is fraud. You cannot sell the property unless you disclose to the buyer that the resolution exists. If you do not disclose it, that is fraud. A broker cannot be involved in a transaction unless he discloses the resolution, because his license would be in jeopardy, so this action has the effect of freezing property. The Nevada Department of Transportation never does this. Within 30 days of NDOT passing a resolution of need and necessity, it files a complaint. This does not cause a problem. It is the cities that cause the problems. What cities are trying to do in most instances is force the landowner to dedicate his property. If it is a total taking, it is different, but if a resolution is passed for a total taking of a home, it runs the prices down further in a normal market. In this market, prices are all down anyway. The point is it has a tendency to depreciate the market. It stops you from developing your property. If it is a commercial piece of property, for example, and the tenants find out about the issue, they begin to move out. Meanwhile, you have no tenants coming in, you have payments to the bank, and the city still will not file the condemnation suit. Once the city files the lawsuit and obtains possession, it has to deposit money. In reality, this is a constructive possession of property. As I have stated, you may or may not know about it.

Cities in the Las Vegas area are bad about doing this, because if there is a vacant piece of property the city wants to run a channel through, the city will say that the property owner has to dedicate the property to it. The property owner says, "No. I am not going to develop the property. Your channel is not my problem." Yet, if the property is not dedicated, the resolution keeps the property owner from selling it. It is a stealth matter that the property owner does not know about unless he keeps track of what is going on with the city. He will find out if he tries to sell it, because it will come out at that point in time. I would like to give you an example. You own a home on which you are making payments, and you are in the military. The military sends you to New York, or somewhere across the country. You now have to move. When you try to sell your home, you find out that there is a resolution of need and necessity to take your home. You cannot sell it. This happens far more frequently than is known. We have two current instances right now of which we are aware. There have been many more over a period of years. This bill in itself is quite good. Now the 15 years that is in the bill is not some number that just came out of the clear, blue sky. That is the statute of limitations set by the Nevada Supreme Court in *White Pine Lumber and Lake-Ridge v. The City of Reno,* 106 Nev. 778, 801 P.2d 1370 (1990). It is the same statute of limitations that applies in prescriptive easement cases. That is the reason for the 15 years. Clark County has come along and offered an amendment to it that has insidious consequences. First, the County wants to cut it back to 1 1/2 years. The state came here about two sessions ago, and tried to get the statute of limitations cut back from 15 years to either 5 or 7 years. The Legislature did not go for it when it learned the reasons.

Many of these acquisitions are stealth acquisitions. You do not know that this has been done until you find out later, sometimes two or three years later. We have a case in Las Vegas where the resolution was passed, almost four years have gone by, and Las Vegas still has done nothing. It has not filed a condemnation proceeding and has not rescinded the notice of need and necessity. The resolution could be rescinded if Las Vegas decided not to go through with the taking. The amendment the County is trying to put through not only cuts it back to 1 1/2 years, but it allows the County to rescind the resolution if the County gets word that a complaint is going to be filed. This has a direct adverse effect on property owners. It freezes their property. I also wish to state that this amendment is terrible. If you adopt the amendment, you might as well just kill the bill. That is how bad it is.

Chairman Horne:
Are there any questions for Mr. Waters? [There were none.]

Leo Dupre, representing Independence Realty:
I support this bill because it brings clarity to a disclosure issue in the brokerage business that mandates that we disclose material facts. The six-month timeline in the bill prevents brokers from inadvertently not knowing what is going to happen to a property based on a resolution that may have occurred two or three years in the past, where even the property owner is no longer aware of the situation. This is a good bill in terms of bringing clarity and helping to protect property owners. The bill certainly assists the real estate brokerage community in giving proper disclosures to prospective buyers. I believe Mr. Waters covered the issue of the 15 years adequately. That is a legal definition. I am here speaking as a private broker to support the bill because of the disclosure aspects of it. Thank you.

Chairman Horne:
Thank you, Mr. Dupre. Are there any questions for Mr. Dupre? [There were none.] Are there any others in Carson City who wish to testify in favor of Assembly Bill 346? [There were none.] Are there any others in Las Vegas who wish to testify in favor? [There were none.] Are there any others who wish to oppose A.B. 346? I have you down as neutral, Mr. Musgrove.

Dan Musgrove, representing City of North Las Vegas:
I was going to testify as neutral regarding the amendment that Mr. Ortiz from Clark County is going to submit. However, based on Mr. Waters earlier comments, I think it is appropriate at this point that opposition comments are placed on the record, so you have those comments when this bill is in work session. A Nevada Supreme Court case, *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. Adv. Op. 21, 181 P.3d 670 (2008), has been discussed in this proposed bill. In that case, the Court declared that an individual may be entitled to precondemnation damages. It is the right of the Legislature to turn that case on its head. However, the Supreme Court decided that should be something that is decided by the fact finder on a case-by-case basis and not mandated. We believe this would add a tremendous fiscal note to local governments, and that it would encourage frivolous lawsuits. Essentially, I agree that we have a responsibility to the homeowners not only to notify them that there has been that resolution of intent to acquire property, but that we should be expeditious in our actions. However, sometimes there are mitigating factors that prevent us from actually beginning the eminent domain proceedings. If you remember, all that took place on U.S. Highway 95, when a wildlife group stopped a lot of the action. A "stay" was placed on everything. We had hoped to have our attorney at the hearing today, but we did not realize it was being televised because it was not noted on the notification of the hearing this morning. However, from my layman's perspective and from information I received from our city attorney, there are instances where it just

takes time. This bill would give the right after 18 months, automatically, whether or not there were mitigating factors, to stop proceedings. We feel it needs to be left up to the courts, and should be something that is worked out between the two parties. I believe this bill would make this mandatory and would take the discretion away from the courts to determine whether precondemnation damages are appropriate. That is our position.

Chairman Horne:
Thank you, Mr. Musgrove. I would like to state that, first, this Committee is always televised in Las Vegas. I can only think of two occasions when this Committee was not televised in Las Vegas. You are not new here, so your guy should have been here. Second, I am not going to beat you about the head and shoulders for not having the expertise on eminent domain. I have brought several bills on eminent domain. However, I am not an expert on it either. Do you have an answer as to where you anticipate the large fiscal note to be, should this bill pass? It sounds as if the fiscal note is driven by the fact that you will not be able to give a notice of intent on a taking, and then sit on it.

Dan Musgrove:
That is an excellent question, Mr. Chairman. We are assuming that individuals like Mr. Waters will use this opportunity to file a great deal of lawsuits at the 180-day time period. We obviously would have to go to court to defend those, or begin to pay damages immediately, because this legislation states that damages would automatically be given after 180 days if we have not commenced an action. We are just assuming that if this takes place, our position would be to act accordingly, to try to be expeditious in these matters. We understand that eminent domain is not always the taking of someone's house; it can also be just a small strip of land to move a sidewalk a few feet, to insure that we have access for the expansion of a road. There are many different kinds of taking that would not necessarily result in a lawsuit.

Chairman Horne:
In that scenario Mr. Musgrove, . . .

Dan Musgrove:
That would be an agreeable taking . . .

Chairman Horne:
We are talking about takings of property where the property owner has seen the value of his property diminish. It is not likely we will have someone come in and say his property value has been diminished because a sidewalk is going to be taken. We are talking about something more substantial than that. Let us focus on the intent of what we are trying to get at with the bill.

Dan Musgrove:
I agree.

Chairman Horne:
In addition, you mentioned that in spite of the 18 months, there are mitigating circumstances where things might come up that will keep you from filing within that period. Has anyone proposed a one-time extension, due to mitigating circumstances? This would not be a continuing extension, over and over again. Perhaps, 30 days before the 18 months has expired, since mitigating circumstances should have been discovered, and you would have a duty to apply for an additional six months due to this mitigating circumstance.

Dan Musgrove:
Again, it is 180 days, which is six months, not 18 months. Obviously, I would like to have the opportunity to show your suggestion to our people in Las Vegas. We would be willing to work with the sponsor to try to do anything to make what we see as a very tough bill to deal with more palatable to both sides. Maybe that might be an automatic notification requirement that homeowners receive. The example given was an individual who did not know this had taken place. I think we have a responsibility to the homeowner to make sure that he understands that this has taken place. It is done in a public meeting and the homeowner should receive notice of that meeting. I would be willing to put something like that in the bill to calm some fears that we are just doing this "willy-nilly," without notifying property owners. We would take full responsibility for something like that. We are willing to meet with the sponsors. We tried to meet with Mr. Ohrenschall yesterday. He agreed that we will sit down and talk, but he was called into a hearing he thought was going to be at 1:30 p.m. instead of 1 p.m. We did not realize this was Mr. Waters' bill until we met with him.

Assemblyman Daly:
I understand from watching various condemnation proceedings that different people hold things up at different times, for a variety of reasons. Some want to get more money out of the government, some want to keep their property and not be condemned, even if it is a legitimate public use. The question is, are there already safeguards in the process that you use to determine the fair market value, where you look at similar property not situated for condemnation to obtain a price? Is that correct?

Dan Musgrove:
I do not have personal knowledge, but in being part of this legislative process for a number of years and seeing how often the issue of eminent domain has come in front of this legislative body, I would have to think that it is exactly as

you said. There is a great deal of work done to insure that homeowners receive fair market value for their homes.

Chairman Horne:
I see no further questions. Thank you, Mr. Musgrove. We are done with the opposition. Is there anyone in a neutral position here in Carson City?

Alex Ortiz, Department of Finance, Clark County:
I am here to speak on behalf of this bill from the County's perspective. We did speak to the sponsor about amendments to this bill. First, we were afforded the opportunity to offer an amendment to the bill (Exhibit K). We appreciate that. Second, as you know this bill was patterned after the *California Code of Civil Procedure*, so some of the amendments we are proposing today are to bring it in line with the *California Code of Civil Procedure*. Third, I am not an attorney, but I will do my best to work through our amendments to this bill for you. In the spirit of cooperating with the sponsor, our original position was opposed, but we decided to change that to neutral as long as we could propose amendments.

This bill greatly expands the government's potential liability for both inverse condemnation and precondemnation damages, as described in the Nevada Supreme Court case of *Buzz Stew, LLC* previously mentioned by Mr. Musgrove. However, there are significant provisions of the *California Code of Civil Procedure* that were omitted from this bill. In the proposed amendment before you, we recommend that subsection 2 be amended from 15 years to 1 1/2 years. This would mirror the California provision to require that a statutory action be filed within 1 1/2 years after adoption of the resolution, rather than 15 years. We also recommend that the language in new subsection 3 be included. It was omitted in this draft of the bill. This will allow the government to rescind the resolution anytime before the landowner sues. Subsection 4 is cleanup language. Throughout the bill, it states "public agency" and not "public entity." We would like to request the word "agency" be stricken and "entity" be added in its place.

Subsection 7 of our revised amendment, defines "resolution of necessity," but the definition is very broad and includes any announcement of intent to acquire property. This would be construed to include the board of county commissioners, or any governing body's authorization for the willing-seller purchases, without any intent to condemn, in such cases as the Southern Nevada Public Lands Management Act, funded purchases, and the airport strictly voluntary home sale program. In effect, even though the county wanted to purchase property only if the owners were willing sellers in these situations, any authorization would start the six-month clock on this statutory

inverse condemnation liability, and require that the county take the property and pay for it. The definition of resolution of necessity must, therefore, at a minimum, be amended by adding three words at the end of the bill, to read, "(2) Announces the intent of the public agency to acquire property *by eminent domain*." [Emphasis added by Mr. Ortiz.] Additionally, if this recommended change is not made, any authorization to appraise and commence negotiations to purchase property needed for a public works project, would start the six-month clock to file the action which would have an effect on the county's ability to obtain an appraisal and negotiate mutually acceptable terms of purchase. Thus, requiring the county to file a condemnation action prematurely before the landowner has had an opportunity to evaluate the offer and make a counteroffer. It could also motivate a landowner to drag out the negotiations. Those are the proposed amendments to this bill, sir.

Chairman Horne:
Are there any questions for Mr. Ortiz? [There were none.] Your proposed amendment is on NELIS and will be part of a work session document for the Committee's consideration.

David Bowers, City Engineer, Las Vegas Department of Public Works:
Initially, I was not going to testify but I came up today to show that we understand that there is current state law that indicates that landowners do have this right already. We support that, and we do not want to take advantage of anyone. There are just certain circumstances where an entity cannot take a property as quickly as it would like. However, we understand that any actions of this nature may actually cause increased costs for infrastructure construction, or issues of trying to build highways through the State of Nevada. We would like to work with Mr. Waters in trying to resolve this issue.

Chairman Horne:
Are there any questions for Mr. Bowers? [There were none.] Is there anyone else in Carson City or in Las Vegas who would wish to testify in a neutral position on A.B. 346? [There were none.] Do you have a final statement, Mr. Ohrenschall, before I close the hearing?

Assemblyman Ohrenschall:
Thank you, Mr. Chairman. Thank you for hearing this bill. One comment I want to make: If the members would look on the Internet at the fiscal notes for A.B. 346, I want to point out that they all came back zero from the state, local, and municipal governments. I would ask all members of the Committee to imagine how each would feel if his home or a piece of land he had invested in was going to be taken by a government entity; he would be forced to sell,

but he would be put in limbo. He would not be told for a number of years. How would he feel about having a cloud hanging over the property and therefore be unable to develop the land or sell the property? I believe that A.B. 346 as written is a reasonable measure. Eminent domain is a power that government needs, but that should be used only when extremely necessary for a public use, and I believe the law should have protections for the private property owner. I urge your consideration.

Chairman Horne:
Thank you, Mr. Ohrenschall. We will close the hearing on A.B. 346. We will now open the hearing on Assembly Bill 355. Is Mr. Frierson ready to go?

Assembly Bill 355: Revises provisions relating to the Fund for the Compensation of Victims of Crime. (BDR 16-597)

Assemblyman Jason Frierson, Clark County Assembly District No. 8:
I bring before you today A.B. 355. As background on this bill, at the work session held on June 23, 2010, the Advisory Commission on the Administration of Justice approved six recommendations for drafting legislation. One recommendation was approved to include a statement in the final report. Seven recommendations were identified for consideration at a future work session to be held in August or September. Recommendation No. 10 that came out of that Advisory Commission was to draft legislation to amend *Nevada Revised Statutes* (NRS) 217.260, to provide that any remaining money in the Fund for the Compensation of the Victims of Crime at the end of the fiscal year remain in the Fund and not revert to the State General Fund. This issue was addressed in 2009, as Assembly Bill No. 114 of the 75th Session. This provision was one of the provisions in A.B. No. 114. However, at that time there was some confusion around the intent of preserving these funds. The intent of this bill is to make sure that the funds generated to support the Fund for the Compensation of the Victims of Crime are solid. The problem is that sometimes the process takes a long time. If, at the end of the fiscal year there is money remaining in that Fund, there was a concern that money might go back into the State General Fund, and the intention of this bill is to make sure that does not happen. This will help victims access those funds when they apply. It is my understanding that this is the normal practice but it is not in statute. What this bill intends to do is to make certain that the money generated for this Fund stays in the Fund, so that it does not become depleted in any off session in the midst of victims seeking relief from the Fund. Just because the Fund is small, I have learned that does not mean anything about the complexity of A.B. 355. On page 2, subsection 4, line 20, it simply states that "Any money remaining in the Fund . . . at the end of each fiscal year

does not revert to the State General Fund and must be carried over into the next fiscal year."

Chairman Horne:
Thank you, Mr. Frierson. Are there any questions for Mr. Frierson, on A.B. 355? [There were none.] We have testimony here in Carson City in favor of A.B. 355.

John McCormick, Rural Courts Coordinator, Nevada Supreme Court, Administrative Office of the Courts:
I am here today on behalf of Justice James Hardesty, who serves as a Commissioner on the Advisory Board for the Administration of Justice. Justice Hardesty is a major proponent of this legislation and we would like to put our support on the record.

Chairman Horne:
Thank you, Mr. McCormick. Are there any questions?

Assemblyman Sherwood:
How much money are we talking about during the last couple of years?

John McCormick:
I pulled the legislatively approved budget for this account for the current biennium, and it appears the total amount in this Fund for the biennium was $22,589,000, with 73 percent of that going for payments to victims. This funding comes from a couple of sources that do not include the State General Fund.

Chairman Horne:
Are there any further questions of this witness?

Assemblyman Frierson:
Mr. Chairman, there is communication on the Nevada Electronic Legislative Information System (NELIS) from Laurel Stadler, Rural Coordinator of the Northern Nevada DUI Task Force, who issued her support (Exhibit L). In addition, Bryan Nix is the coordinator of the Victims of Crime program, and is in support of this legislation. He intended to submit something in writing, and will attend future hearings if this bill progresses.

Chairman Horne:
To clarify, the $22 million is biennial?

John McCormick:
Yes. That was the total as reported on the Nevada Open Government site for the biennium.

Chairman Horne:
However, that is not the amount that remains in the fund at the end of the biennium. I just want to clarify for the record that there is not $22 million sitting in the Fund unused.

John McCormick:
During this biennium there will be a reduction of reserve funds to move money to make payments to victims.

Assemblyman McArthur:
You mentioned there were a couple of sources for these funds. What are those sources?

John McCormick:
One is bail forfeiture, and the other is part of the Executive Branch portion of administrative assessment revenue, pursuant to NRS 176.059.

Assemblyman Hammond:
Thank you. As you stated, Assemblyman Frierson, although it has been standard practice to carry over, it is not in statute. We have a pretty good record. What do we typically carry over from one biennium to the next?

John McCormick:
I do apologize. I do not have the carry-over number. It is my understanding it is relatively small, because a large portion of the Fund is paid out as claims. We would have to ask Mr. Nix, specifically, to obtain that number.

Chairman Horne:
Are there any further questions? [There were none.] Are there any others who wish to testify in support of A.B. 355? [There were none.] Are there any others who wish to testify in Las Vegas? [There were none.] We will move to the opposition. Are there any others who wish to testify in Carson City, or in Las Vegas, who are opposed to A.B. 355? [There were none.] Are there any others either here or in Las Vegas who wish to testify as neutral to A.B. 355? [There were none.] We will close the hearing on A.B. 355. We will bring this back to the Committee.

Those are our bills for today. We will now move to our work session document, which is Assembly Bill 259. Mr. Ziegler, if you are ready?

Assembly Bill 259: Requires a portion of certain existing fees to be used for certain programs for legal services. (BDR 2-817)

Dave Ziegler, Committee Policy Analyst:
Assembly Bill 259 was sponsored by this Committee (Exhibit M). It was heard on March 22, 2011. Former Assemblywoman Barbara Buckley, representing the Legal Aid Center of Southern Nevada was the proponent. Assembly Bill 259 relates to district court fees and fees paid upon the recording of a Notice of Default on a note secured by a deed of trust. For each existing fee imposed on the commencement of an action in district courts in counties where populations exceed 100,000, on the filing of the first paper by the defendant, the bill directs $20 to the organization operating a program for legal services in that county. [Mr. Ziegler continued to read from the work session document on A.B. 259 (Exhibit M)].

Members may recall that on the day of the hearing there was concern from some of the smaller counties. Former Speaker Buckley has proposed an amendment intended to address that issue, and a copy of her amendment is attached. In addition, this Committee has received a letter from Debbie Conway, Clark County Recorder, who has also proposed an amendment. The letter is attached and the amendment is in the very last sentence of the letter. On the fee that is paid at the time of the filing of the notice of default, the Clark County Recorder takes 1 1/2 percent of that fee for its effort. The way the bill was drafted, the 1 1/2 percent would go away on the portion that was directed to the legal program, and the recorder is simply asking that the 1 1/2 percent stay in there and still come to the Clark County Recorder. On a $15 amount, that would be 22 cents. We are, of course, impartial, but I would say that it is a small amount, but that it adds up because there are a lot of these actions. On a $10 fee, it would be 15 cents. Thank you, Mr. Chairman.

Chairman Horne:
Thank you, Mr. Ziegler. In my communications with the interested stakeholders, I know that Ms. Buckley and Justice Hardesty have been working together on the $15 fee. I think they are in agreement about making the fee $10 and moving $5 to foreclosure mediation. Grants will still be created for that program. That would be a proposed amendment, as well.

Dave Ziegler:
There is a question from the members as to whether the former speaker was aware of the proposal by Debbie Conway. The answer is, she is aware of the proposal and has no objections.

Chairman Horne:
I want to make sure it is clear about changing the $15 to $10.

Nick Anthony, Committee Counsel:
Yes. I believe that is clear on page 6. We would simply be amending line 38 to read $40, instead of $35, and on line 44, instead of $15, it would be $10.

Assemblyman Sherwood:
I have two questions relating to the aggregate number. Debbie Conway's amendment says that of the $200 collected, 1.5 percent works out to $15 and that number adds up. The first question is: How much money would we be taking away from the State General Fund if we reduce the fee? Hopefully, that number will be going down because of fewer foreclosures, but that is not money coming out of the State General Fund. The other question would be, as amended, how much money would be directed toward the legal defense fund, or whatever fund would benefit from the redirection of the $20 fee and whatever other fees are being redirected? I do not need to know exactly to the dollar, but a rough estimate would be fine.

Barbara Buckley, Executive Director, Legal Aid Center of Southern Nevada:
The foreclosure mediation fee does not go to the State General Fund. It inures to the benefit of the foreclosure mediation program accounts. At $15, in Clark County, the estimate so far, year-to-date in 2011, is approximately $628,000. That was at the $15 level, so that would have to be reduced by one-third. I went to law school because I cannot do math. However, using the back of a napkin math method, that figure would go down to about the $400,000 level. Using the 2010 numbers, it ended up being $839,000, and again the year 2011 started lower so it will depend on the default rates. In Washoe County, the figure is estimated to be about $100,000 a year, again based on the $15 fee, so that would have to be reduced by one-third. In the rural counties, it is about $60,000.

Chairman Horne:
Thank you, Ms. Buckley.

Assemblyman McArthur:
I have two questions. Under existing law, it looks as if these fees are to pay court costs. Are we taking fees away from running our courts with this bill?

Barbara Buckley:
Last session, when the court fees were increased, it was recognized that there would also be an increase in the number of people who would be receiving legal assistance: the indigent abused children, victims of domestic violence, and the elderly victims of fraud. Therefore, built into the fee structure was an increase of legal aid to the indigent. Unfortunately, that was removed from the bill at the very last second, and this reinstates that money without raising fees. Therefore, the cost is revenue-neutral, resulting in no new increase in fees. The fees are redirected only in Washoe and Clark Counties, and there is no opposition to the bill from the courts. I think that is because of the recognition that we make life easier for the court system, because people do not have attorneys and are lost, so they take up more court resources. In the end, the nonprofit sector is able to be more cost-efficient, and reduce the amount of time that the courts spend with people lost in the system because they have no legal help.

Assemblyman McArthur:
It looks like some of this money is going to foreclosure mediation. I thought both sides in that mediation were actually paying for the mediation costs.

Barbara Buckley:
The foreclosure mediation program is funded in two ways. First, regarding the actual cost of the mediator, the mediator is paid $400, $200 from each side. The costs of the program, which includes the cost of setting up the program, the cost of administering the program, the cost of the information technology system, and the cost of issuing certificates, are all funded by a $50 Notice of Default fee. The redirection comes from that fee.

Assemblyman Hammond:
Listening to the testimony when we first heard this bill, I learned that for the last two years the courts have been putting their budgets together, and that the legal defense center has not received this money, and has done without additional money. With our courts in such a bind right now, I wonder why the courts have not suggested this. I would feel more comfortable with having the money already in the place where it is right now. Why is this money not directed to the specialty courts such as the drug courts, or the mental health courts, where some of that money is needed right now?

Chairman Horne:
I believe we already have assessments that go to specialty courts. This is for another purpose.

Assemblyman Hammond:
We do have fees that go there. However, with those courts in the crisis they are in right now, I would feel more comfortable if the $20 in this bill went to those courts.

Assemblyman Sherwood:
Regarding Mr. Hammond's question about the $20, where does the $20 go? Approximately how much money are we discussing? Mr. Chairman, as the issues have come up, I am not really comfortable with this. If I vote "No" in Committee, I would reserve my right to vote "Yes" later.

Chairman Horne:
We have already discussed what the amounts are going to be.

Assemblyman Sherwood:
Is this $20 million, or is it $200 million, or is it $2 million?

Chairman Horne:
Those are the numbers that were discussed.

Assemblyman Sherwood:
Can someone do 20 times the number of cases? That is the only question. I think that is a fair question, since there is no money committee here, and there is no fiscal note. If we are talking about $200,000, then you will get more votes. If it is $200 million, that is just "101" stuff. I think we should know before we are asked to vote on this.

Chairman Horne:
Very briefly, Ms. Buckley, before we move this bill, do you have a rough estimate of the dollar amount we are discussing?

Barbara Buckley:
Yes. Thank you, Mr. Chairman, I do. In Clark County, at the $20 level, it is $1.2 million. In Washoe County, it is $108,000. In the rural communities, it is approximately $150,000. Under the amendment, this bill is discretionary in the rural communities pursuant to the request of the district courts and the Supreme Court, so it would be one of the eligible activities allowed, and would be and/or any of those eligible activities.

Chairman Horne:
Thank you, Ms. Buckley.

Assemblyman Frierson:
I want it on the record that my recollection is that there was no opposition, that the Court Appointed Special Advocate (CASA) association expressed some concerns that the amendment addresses, and that the courts supported this legislation. My biggest note was that Dashun Jackson, who has been tremendous when testifying at the Legislature, testified about how this bill would impact him and children in the system like him, by the legal representation provided through the Legal Aid Center of Southern Nevada. Regardless of all the other things that is what this bill concerns. I am wholeheartedly in support of the measure.

Assemblyman Segerblom:
I want to echo that. I totally am in support of this bill, and would like to move with amendments.

Chairman Horne:
I have one more speaker and then I will accept that motion.

Assemblyman Hansen:
How do they account for the moneys in these programs? Is there a specific way the programs account for the dollars that the program will receive? I had questions from some officials in Washoe County wondering how accounting would be handled regarding this bill.

Barbara Buckley:
I am happy to answer that question. The nonprofit organizations in each county have a board of directors. The organizations are accountable to the Access to Justice Commission, chaired by Chief Justice Douglas and Justice Hardesty. We are partners with Clark County. Washoe Legal Services and Washoe County are partners in trying to serve people in need, and since the nonprofit sector serves it more affordably, with no Public Employee Retirement Services and no Public Employee Benefit Services, those partners rely on us to provide these services, which is how accountability is provided.

Assemblyman Hansen:
Thank you.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 259.

ASSEMBLYMAN FRIERSON SECONDED THE MOTION.

Assemblyman Brooks:
Mr. Chairman, a point of clarification. The legal aid organizations will now be getting $10 as opposed to $15. Is that correct, and are those organizations okay with that?

Chairman Horne:
That is correct.

Assemblyman Hammond:
I would also like to state here that if I vote "No" now, I would like to reserve the right to vote "Yes" later on.

Chairman Horne:
That is perfectly okay. Is that "ditto" for everyone on that side? Just tell the Chair whenever anyone decides to change his or her vote.

> THE MOTION PASSED. (ASSEMBLYMEN HAMMOND, HANSEN, KITE, MCARTHUR, AND SHERWOOD VOTED NO. ASSEMBLYMAN OHRENSCHALL WAS ABSENT FOR THE VOTE.)

Chairman Horne:
We will now close the hearing on A.B. 259. Thank you for being present, Ms. Buckley, and working with everyone on getting the amendments processed and getting the bill moved out. Thank you very much for your time this morning. Tomorrow morning the Committee will begin at 10 a.m. Is there any further business to come before the Committee? [There was none.] We are adjourned [at 10:53 a.m.].

RESPECTFULLY SUBMITTED:

_____
Jean Bennett
Committee Secretary

APPROVED BY:

_____
Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 8, 2011 **Time of Meeting: 7:46 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 271	C	Phil Pomeroy, Private Citizen	Photographs
A.B. 271	D	Bill Uffelman, Nevada Bankers Association	Photographs
A.B. 271	E	Jenny Welsh Reese, Nevada Realtors Association	Map Showing Each State's Status Regarding Private Transfer Fees
A.B. 271	F	Nick Hacker, American Land Title Association	Letter of Support
A.B. 271	G	Nick Hacker, American Land Title Association	Handout regarding Detriments of Private Transfer Fee Covenants
A.B. 271	H	Jonathan Friedrich, Private Citizen	Hampton and Hampton Statement of Account in Foreclosure
A.B. 271	I	Jonathan Friedrich, Private Citizen	Nevada Association Service Statement of Account in Foreclosure
A.B. 346	J	Laura Wightman FitzSimmons	Letter
A.B. 346	K	Alex Ortiz, Department of Finance, Clark County	Proposed Amendment
A.B. 355	L	Laurel Stadler, Rural Coordinator of the Northern Nevada DUI Task Force	Memo to Assemblymen Horne and Frierson
A.B. 259	M	Dave Ziegler, Committee Policy Analyst	Work Session Document