

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
February 14, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:02 a.m. on Monday, February 14, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Sheila Leslie, Washoe County Senatorial District No. 1
Assemblyman William C. Horne, Assembly District No. 34
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Guy Rocha
Chris Brown
Jim Hulse
Theo McCormick

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Larry Wahrenbrock

Glenn C. Miller, Ph.D., Professor, Natural Resources and Environmental Science,
University of Nevada, Reno

Kyle Davis, Political and Policy Director, Nevada Conservation League

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of
Nevada

Gayle Sherman, Comstock Residents Association

Allison Woodman

Michele Busk

Robert Elston

Cynthia Etchegoin

Tim Crowley, Nevada Mining Association

John Bennetts

Laura Granier, Midway Gold Corporation

Ann Cammett, Associate Professor of Law, Co-Director of the Family Justice
Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas

Orrin Johnson, Washoe County Public Defender's Office

Patrick Conmay, Division Chief, Records and Technology Division, Department
of Public Safety

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General

Sam Bateman, Office of the District Attorney, Clark County

Rex Reed, Ph.D., Administrator, Offender Management Division, Department of
Corrections

John Tatro, Justice and Municipal Court II, Carson City

CHAIR WIENER:

I will open the hearing on Senate Bill (S.B.) 86.

SENATE BILL 86: Revises provisions governing eminent domain. (BDR 3-132)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):

I am the chair of the Assembly Committee on Judiciary. I would like to express my support for S.B. 86. Eminent domain has been one of my issues since joining the legislative body in 2003. Senator Leslie and I will work closely together to usher this bill and my bill on the same issue, Assembly Bill (A.B.) 180, through the process.

ASSEMBLY BILL 180: Makes various changes to provisions governing eminent domain. (BDR 3-115)

CHAIR WIENER:

Are there any distinctive differences between the two measures?

ASSEMBLYMAN HORNE:

My bill is limited to cases involving mining companies. This bill also includes the sugar beet companies. I do not object to the change.

SENATOR SHEILA LESLIE (Washoe County Senatorial District No. 1):

Last summer, I heard about two industries with special powers of eminent domain in Nevada. One is the mining industry, and the other is the sugar beet industry. I am familiar with the limited use of eminent domain for the greater good, such as for roads, schools and hospitals, as well as the controversial decision by the U.S. Supreme Court in *Kelo v. City of New London*, 545 U.S. 469 (2005), in which it was decided that eminent domain could be used to transfer land from one private owner to another to further economic development. I am sure you will recall the case, as well as the public outrage that followed the decision.

Although I did not know that mining corporations have the ability to acquire private property through eminent domain in Nevada, it did not surprise me as much as learning that the sugar beet industry has the same right. In 1907, the sugar beet industry convinced Nevada's State Legislature to allow them to acquire private property by eminent domain to run pipes carrying sugar beet pulp to their factory in Fallon.

This bill removes the provisions in the *Nevada Revised Statutes* (NRS) that allow for the use of eminent domain by the mining industry and the sugar beet industry. Mr. Rocha will walk you through the history of the law, which was enacted in 1875 and granted mining the power of eminent domain because it was the paramount industry in Nevada. He will also give you some examples of how it has been used in the past, including one mining company taking the property of another mining company. He will also talk about the Legislature's action in 1907 granting this power to the sugar beet industry in order to promote that industry. The legislative record is long and fascinating, and we have provided you with three documents: a newspaper article ([Exhibit C](#)), a letter from Guy Rocha ([Exhibit D](#)) and a research paper by Mr. Rocha ([Exhibit E](#)) on the subject. [Exhibit E](#) was presented by Mr. Rocha in 1981 when the Legislature last took up this issue through a bill presented by former Assemblyman Joe Dini. For those who would like further information on

this at a later date, I also have examples of cases involving eminent domain and mining in more recent years in places such as Riepetown in White Pine County.

The key question I would ask you to keep in mind as you hear this bill is when or if you think private corporate interests should have the right to acquire personal property through eminent domain to further their private interests. Is it when the industry is of paramount interest to the State, when it produces a certain number or level of jobs, when someone decides the asking price is sufficiently high? What special circumstance would convince you that the basic principle of willing buyer, willing seller, should be ignored? This is not about the greater good, but rather about the private corporate interest of a privileged industry. Both of these provisions should be repealed by the industry in the interest of the private property rights of our citizens. That is what S.B. 86 is about.

CHAIR WIENER:

With regard to section 2, subsection 2 of S.B. 86, there was a situation in Clark County some years ago in which private property was taken from a family and turned over to a private interest, which then built a parking garage on the spot. Is it a pivotal piece of this bill that there cannot be profit if the property is given to a private enterprise? There might be those who would argue that a public garage provides a public good.

SENATOR LESLIE:

I am not suggesting any change in that section, which is in NRS 37.010. I have not looked closely at that situation. My interest is in not giving one industry more of a right than any other industry. There are other areas of this statute that bear review.

GUY ROCHA:

I am a Nevada historian, and I was Nevada's state archivist for 28 years until my retirement in 2009. I support this bill. I have written testimony ([Exhibit F](#)) detailing some of the history of the eminent domain law in Nevada.

CHAIR WIENER:

Have there been attempts in the past decade to address this part of eminent domain?

MR. ROCHA:

Yes. What spurred this discussion most recently was activity in Elko County last year. I note that the mining industry has representatives here today, and they will represent the point of view of mining companies trying to open or expand operations and property owners trying to take advantage of the situation. I am sure they will argue for the value of eminent domain when it comes to opening mines when people are not willing to work with them.

CHAIR WIENER:

Senator Leslie mentioned a situation in which one mine uses eminent domain against another mine that is not active or producing.

MR. ROCHA:

That was under the 1915 law. The study I did, [Exhibit E](#), was written in 1980. The U.S. Supreme Court's decision in the *Kelo* case set a limit on this in 1982. One mining company pushed this with another mining company, and the court ruled that since both were in operation, neither was the more necessary public use.

CHRIS BROWN:

I have written testimony describing my support for this bill, in the form of a letter written by my wife, Bonnie Brown ([Exhibit G](#)).

JIM HULSE:

I was a professor of history at the University of Nevada, Reno, for 35 years. I have written testimony explaining my support for this excellent bill ([Exhibit H](#)).

THEO MCCORMICK:

I have written testimony explaining my support for S.B. 86 ([Exhibit I](#)). You will have to excuse my enthusiasm for this bill. There is a mining company drilling in our town right now that has in their plan the intention of displacing local landowners.

LARRY WAHRENBROCK:

I have written testimony explaining my support for S.B. 86 ([Exhibit J](#)).

GLENN C. MILLER, PH.D. (Professor, Natural Resources and Environmental Science, University of Nevada, Reno):

I support this bill. I have a letter from John Hadder, Director of Great Basin Resource Watch, expressing his support as well ([Exhibit K](#)). I have had an interest in this issue since Houston Oil used threats of eminent domain in the early 1980s. I was surprised to find that a law existed whereby a private entity could take private land without a public hearing. There is no question that mining is important, in that it brings jobs to Nevada and increases the economic strength of the rural areas in which it takes place. The only issue in this bill is whether the mining companies must negotiate based on their evaluation of the land. If the land is of high value, they can buy it. This eminent domain law has rarely been used, since the threat of it is unambiguous.

You look at the language that exists in the law, and you have to smile. For example, NRS 37.010, subsection 1, paragraph (f), subparagraph (2), allows the exercise of the right of eminent domain "... for the flow, deposit or conduct of tailings or refuse matter and the necessary land upon which to erect smelters and to operate them successfully, including the deposit of fine flue dust, fumes and smoke." Some of that will be regulated under existing air laws, but this law can be used for anything related to mining. That exclusive use is far different from what most Nevadans would consider in terms of private land value.

Eminent domain is rarely used, but it is a sword of Damocles hanging over the landowner, who usually is not as wealthy as the mining companies. They say, "Talk to us now, or talk to us later. We will either give you more than the value of your land, or we will give you the appraised value, which will be considerably less." Negotiation is therefore overwhelmingly difficult for the landowner, because if eminent domain is used, the company can punish the landowner by paying only the appraised value. There was a situation in eastern Nevada around the Pequops, in which a ranching group called me about offers made by a mining exploration company. I told the group, "You're going to have to negotiate. The law is unambiguous." Ultimately, the ranchers settled with the mining exploration company. I do not know what they got, though it probably was more than the appraised value of the land. Who decides the value of the land? Is it the value the mining company will ultimately realize, or is it the value the rancher realizes from living on that land?

Getting rid of the eminent domain law for mining makes sense. The law is contrary to what most Nevadans want. It allows private companies to condemn

a person's land for private gain. When a mine opens and takes part of the land, it has the right to put a tailings facility, a waste dump or any other kind of processing on adjacent land. This means the value of the remaining land may go to zero, and the rancher's livelihood is gone. The private landowner should be able to negotiate the true value of the land.

I strongly encourage you to vote yes on this legislation.

KYLE DAVIS (Political and Policy Director, Nevada Conservation League):

We want to go on record as supporting this legislation. Eminent domain is a power that does not benefit the public interest or the environmental interest, and we feel that it is good to remove this ability.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):

We are here to express our support for this bill. This is a good move for the Committee and the Legislature to make. It is high time for these rights and responsibilities to be respected. This bill does not go as far as it could. The remaining portions of the statute still allow multiple nongovernmental agencies to exercise the right of eminent domain, which is not in the best interest of private citizens.

GAYLE SHERMAN (Comstock Residents Association):

We support this bill, and I have written testimony explaining my position ([Exhibit L](#)).

ALLISON WOODMAN:

I support this bill. I am a property owner in Silver City and live directly below where Comstock Mining is doing exploration drilling on historic land. When I moved to this community, I was delighted by the wonderful, tight-knit community. I have been raising my granddaughter Madison there; it is the only home she has ever known. I was hoping to pass it on to her eventually, or at least to sell it at my leisure rather than be forced to sell by a private company whose major investors do not even live in Nevada.

Why is this possible? I had no idea when I moved here and put years, money and labor into developing my property and restoring my home. Part of that house was built in 1870, and I would hate to see it bulldozed. I would hate to see any of that area bulldozed and turned into a big open pit. Beyond preserving

our right to our home, I am asking that the Legislature pass S.B. 86 to preserve my granddaughter's right to have that history available to her, that this historic district not be ripped up. There is plenty of room for industry in Nevada without them destroying neighborhoods, historic or otherwise. The sanctity of the home should be protected.

If I was forced to sell my home, I could never recoup the money and the time I put into it. I no longer have the energy to expend the physical labor that went into making it a more livable piece of property. In all fairness, it is not reasonable to ask anyone to be forced into the position wherein a privately owned company can dictate where people will live and when they must move. If I had to pick up and leave, it would do more than upset me financially. It would also have the potential of ripping my family apart.

I am hoping you will do the right thing and pass this bill.

MICHELE BUSK:

I support this bill. My husband and I are residents of Silver City; he has been there since 1975, and I have been there since 1993. We have put 17 years of hard labor into building our home. I have another property that is over 100 years old, and I have put a fortune into it. Nevada was into the housing boom—"Come live in Nevada! Come move to Nevada, and bring your business!" Now that the boom is over, it seems the State is open to scavengers making money any way they can. The Comstock is a great area to live. It is close to Reno and Carson City, and it is not in the middle of cow pastures or out in eastern Nevada.

I sit on my deck, and all I hear is the roar of the drilling equipment. All the birds have flown away. The peace and quiet is gone, and I think how dumb I was not to research this possibility before I bought the property and put all the work into it. It is too late for that now, and so I am asking for your help.

ROBERT ELSTON:

I support this bill. I have lived in Silver City since 1971. Like everyone else who lives there, I have put a considerable amount of time, money and effort into my property. I have also spent a lot of time on the town board and the park board. In 1986, the Nebex corporation wanted to put an open pit mine in the same place Comstock Mining wants to put it today. The Storey County Commissioners would not give Nebex permission to change the master plan and

zoning. Nebex could not get a special use permit, so that mining operation was abandoned. Anyone who has moved to Silver City since then has felt fairly safe from mining, since this decision was made by the County Commission. Ms. Busk has no reason to feel silly for investing in her property, since this precedent made us feel safe.

There is no monetary compensation that mitigates the effects of destroying the community. People ask themselves what their price would be, but there is no price that could compensate me for my property if someone were to take it. There is no place I could go that would offer what I have in that town and what I have put into it.

CYNTHIA ETCHEGOIN:

I support this bill. I am a fifth-generation Nevadan. I have only lived in Silver City for the last 3.5 years, but I have lived on the outskirts of this community for more than 25 years. The residents of Silver City took a little town that had been abandoned, and they revived every one of the historic buildings as a personal residence.

Virginia City is a historical community that brings people from all over the world to visit Nevada. I used to be a travel agent, and tourism is a huge part of our economy. Everyone who comes to northern Nevada makes a visit to Virginia City. We have something to protect that is not just about money or even personal housing. A big part of Nevada is our history, and if we let this go, they will be taking Virginia City too. That is not right, and this is the time to make things right.

TIM CROWLEY (Nevada Mining Association):

We are opposed to S.B. 86. I have written testimony explaining our opposition to this bill ([Exhibit M](#)).

SENATOR ROBERSON:

How much did mining pay in taxes last year?

MR. CROWLEY:

In 2009, we paid \$204 million in State and local taxes.

SENATOR ROBERSON:

What percentage of the net profit of mining companies did that represent?

MR. CROWLEY:

We do not track net profits. What is often referred to is gross value. One piece of our Net Proceeds of Minerals Tax (NPOMT) is divided into the gross value of the minerals we produce. You hear that reference in the press quite often, but it ignores the taxes we pay through sales and use taxes, conventional property tax, the Modified Business Tax, which is the payroll tax, and the county portion of the NPOMT.

SENATOR ROBERSON:

So how much does mining pay?

MR. CROWLEY:

We paid \$204 million in taxes in 2009.

SENATOR ROBERSON:

Is it true that most of those profits go to Canada and shareholders of the various mining companies?

MR. CROWLEY:

Like all industries, we have to reinvest to stay viable and build for the future. If we are not reinvesting in our properties, we cannot deliver for our employees, our communities or our shareholders. Now, more than ever, we are seeing reinvestment in Nevada in tremendous ways. Along with existing mines expanding, there are new gold mines coming on board, new copper developments in Yerington, a new lithium mine being developed and built near Orovada, a new molybdenum mine in Mount Hope and over \$2 billion worth of investments. Those are our profits. At the same time, there is an investment in capital, in which a mine that produces low-grade ore and struggles to be efficient now has the opportunity to invest in new equipment and technologies that will make it more efficient in preparation for a day when the price of gold drops.

SENATOR ROBERSON:

I grew up in Galena, Kansas, a small mining town that produced lead and zinc. I saw firsthand the devastation that mining companies have on the land when they leave. What is the unemployment rate in rural Nevada? With as much money as mining is making and supposedly contributing back to Nevada, there should not be a single person in rural Nevada who does not have a job.

MR. CROWLEY:

We are proud of our reclamation program and our ability to restore the land to public use when a mine comes to closure. Nevada leads the world in reclamation efforts, and we are proud of how we leave a mine at closure. Unemployment is significantly lower in rural Nevada than it is in urban Nevada. Unemployment is below 10 percent in counties where mining exists, whereas the State's overall unemployment rate is over 14 percent.

SENATOR ROBERSON:

It is not anywhere close to zero, however.

MR. CROWLEY:

No. I do not believe any community has ever had zero unemployment at any point in history.

SENATOR ROBERSON:

That may be the case, but I am still trying to get a handle on this. I keep hearing that mining pays only 1 percent of the profits in taxes back to the people of Nevada. In return, mining takes our natural resources and ships them out of the State. Is it true that mining only pays 1 percent?

MR. CROWLEY:

It is not true. The math that has been used by some anti-mining elements is to take the State portion of the NPOMT, which is roughly \$50 million, and divide that into the gross value. That is not a reflection of profit. That is a reflection of the value of the minerals and metals we mine, everything from geothermal energy to lithium to gold. This results in a number that is meaningless.

SENATOR ROBERSON:

I am still not getting the answer on how much mining companies pay as a percentage of what they make off the minerals and the people of Nevada.

MR. CROWLEY:

To answer that, I would have to know our net profits, and I do not aggregate that information. It is important to keep in mind that most if not all mining properties are either on private property, where they own the minerals, or on federal property, where the federal government owns the minerals.

JOHN BENNETTS:

I oppose this bill. I am a third-generation native of Silver City. I was born there in 1939, and my dad, my uncles and my aunts were all born and died there, as did my mother. My grandfather came there in 1873, and my grandma got there in 1886. I lay awake at night and hear the roar of the stamps from the mills, and I miss it. When I die, I want to be buried in the Silver City cemetery, where I can hear the sounds of the roar of the Dayton Mine.

Eureka County does not have a master plan, but it has an unemployment rate of 5.5 percent. Lyon County has a master plan, and it has an unemployment rate of 14.5 percent. That might answer your question about unemployment. Of course, you never get zero unemployment because some people are unemployable.

When I grew up, Silver City was welcoming to outsiders. Various kinds of people came through Silver City when I was a kid. We had the dust bowlers, and then we had the hippies, and we were always welcoming to all these people. We welcomed all these people with open arms. But as soon as they got to Silver City, they immediately wanted to start restricting everyone. I resent that, because I like the free spirit of the Old West.

Those of you who are from Las Vegas know of a big scam going on there now where some people from outside of Nevada are trying to buy property from private people to build sports complexes. You are probably aware of all the under-the-table deals going on between various politicians in Clark County and other places so that these people can get control of this land. They are then going to build these sports complexes using public money and grants.

We all know that companies like Newmont and Barrack will be able to do anything they want to do. No one is going to stop them. But if they no longer have the right of eminent domain, that will just mean they have to play politics under the table. All this bill would do is give great opportunities for politicians to enrich themselves by helping these big companies get the land they need.

My wife and I are two of the biggest landowners in Silver City. We own over 40 acres. If a mining company wants to come and condemn our land, we would be happy, because there is no way we could get more money for it.

I would like to ask Senator Roberson a question. I just wondered if the people in Galena, Kansas, made more money working for the mining company or for some farmer raising corn.

SENATOR ROBERSON:

By the time I grew up there, the mines had left town. They had left chat piles and open pits throughout the town. There were much higher rates of cancer and other diseases in Galena. Ten miles away in Picher, Oklahoma, they had to shut down the entire town; the Environmental Protection Agency condemned it. That is the experience I have from Galena.

LAURA GRANIER (Midway Gold Corporation):

We are opposed to this bill. During these difficult economic times, I have been involved in discussions about how to bring Nevada out of this recession. Great work has been done on vision statements, but while we need to look to the future and build a more diversified economy, we also need to put to use what we have here and now. Mining is a key industry, and it can be of great benefit in creating new jobs both in the short term and in the long term.

Rural counties in Nevada have benefited greatly from mining. The per-pupil spending in these rural areas is the highest in the State, in some cases as much as double that in the urban areas. Levels of unemployment are also much lower in the rural counties, probably as a result of mining. Those benefits can be expanded beyond the rural counties if we leverage the significant resource we have today in the mining industry.

Nevada has a world-class endowment of mineral resources. That translates to lots of jobs and revenue in Nevada. Like railroads, mines are limited in the lands they can use. The ore body is where it is. It cannot be moved, and if you cannot get the land you need to develop it, it simply will not be developed.

We respectfully request the opportunity to work cooperatively with the sponsor of the bill if you believe additional safeguards for property owners are necessary. The existing safeguards are substantial. Existing law requires that a landowner who is the subject of a condemnation action be paid fair market value based on the highest and best use of the property. If the landowner comes forward with an appraiser who values the property based on mining, a jury of the landowner's peers would decide the appropriate value to be paid. As you have heard, these cases are often settled long before they go that far.

In the interest of full disclosure, I was an attorney of record in the case in Elko last summer. I am not here to speak as an attorney in that case, but I would like to tell you some of the public facts in that case, since it serves as an example of why this important industry should retain the power of eminent domain. The land at issue in that case had been listed for sale on the Internet for some time before the mining company approached the owners to buy the land. The company tried for over a year to negotiate a private sale and offered the landowners many times the fair market value of the land based on an appraisal. The landowners were speculators who had actually bought the land as an investment and were looking to make a profit. They had internal disputes and were engaged in litigation with a former rancher on the property, so they could not provide clear title.

The delay in negotiating the private sale threatened to delay some 200 jobs in Elko. Those were just the jobs in the mine itself; there were also jobs with ancillary services, goods and products at stake. The result in that case was the correct one. The property owners accomplished what they had hoped for: they sold the property for a significant profit. The rancher publicly stated that he continues ranching, and he is happy to work cooperatively and coexist with the future mine and exploration activities.

With respect to the private corporate interest, if that is truly the issue, I would urge you to look at chapter 37 of the NRS in its entirety. Many other private interests would retain the power of eminent domain even if this bill is passed. Railroads, utilities, monorails and cable television companies would continue to have the power of eminent domain.

A reference was made to mining companies exercising the power of eminent domain against other mining companies. There was a case of this sort brought before the Nevada Supreme Court in the 1980s. The decision in that case suggests that a property owner who intended to develop land for mining could oppose the condemnation.

With respect to the difference between mining and gaming, redevelopment and other private interests, the difference is that you cannot move the ore body. It is where it is, and if there are holdout property owners, they can prevent the development of the mine and the creation of many jobs. We also have a public lands issue in Nevada, in that 87 percent of our land is publicly owned. The issue of access to those public lands has been raised again and again in the

effort to help us prosper and create economic development and diversity. Given the checkerboard status of land in Nevada, where many acres of private lands are adjacent to public lands, eliminating this power could further impede development of mines because of the many acres required for exploration to discover the ore bodies.

With respect to environmental damage, there are significant federal and State regulations in place to protect against environmental damage. Substantial bonding requirements make sure that if the reclamation required by law is not done, there is money for the government agencies to make sure it happens.

Reference was made in [Exhibit H](#) to the Fraser Institute. The Fraser Institute recently downgraded Nevada's ranking as not being so favorable to mining as a result of a claims fee passed during the Twenty-sixth Special Session of the Legislature. Junior exploration companies today bring hundreds of millions of dollars into Nevada every year for drilling, exploration, and goods and services to support these exploration companies. I urge you not to create any policy that would chill that investment or impede the ability of these companies to help bring new jobs and revenue to Nevada.

CHAIR WIENER:

I will close the hearing on [S.B. 86](#) and open the hearing on [S.B. 87](#).

[SENATE BILL 87](#): Enacts the Uniform Collateral Consequences of Conviction Act. (BDR 14-58)

CHAIR WIENER:

Assemblyman Segerblom, since you are an attorney and a Uniform Law Commissioner from Nevada, please explain to the Committee what a "uniform act" is and where it comes from.

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):

The Uniform Law Commission is a 118-year-old organization comprised of 300 attorneys, state and federal trial and appellate judges, law professors, legislators, practitioners and deputy attorneys general. I am a member of that body. Its purpose is to have each state have similar laws on issues that are not federally mandated. There is no political agenda; the measures are just what the Commissioners consider to be good laws. Often, when these bills come to Nevada, we modify them to take into consideration the nature of Nevada law.

Ex-Senator Terry Care holds the national record for the most Uniform Law bills passed.

Senate Bill 87 is based on the Uniform Collateral Consequences of Conviction Act (UCCCA) drafted by the Commission in 2010 ([Exhibit N](#)). After offenders have served their time, they should be allowed to be honorable members of society. We have many laws tied to the fact that they were convicted, and there are many things they cannot do for the rest of their lives. They cannot take up some professions; sometimes, they cannot vote. The UCCCA asks the Legislature to look at the consequences flowing from convictions and identify them so defendants know what they are agreeing to when they plead guilty. This bill also makes it possible for them to remove those consequences over time so they can lead productive lives, which is what we want. If you pay your dues to society, you should be allowed to become a productive citizen again.

ANN CAMMETT (Associate Professor of Law, Co-Director of the Family Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas):
I am here in support of S.B. 87. I have written testimony explaining the effect of this bill and what it will do for Nevada families ([Exhibit O](#)).

This bill comports with public policy in an important way. It incentivizes good behavior, and it is good criminal justice policy. People coming before the court have an opportunity to say how they are going to turn their lives around. It acts more as a carrot than a stick and can help to fulfill the objectives of our criminal justice policy. The time for reform of collateral consequences is now.

ORRIN JOHNSON (Washoe County Public Defender's Office):
We support this bill. Our experience is that the more attention we pay to collateral consequences and take them into account when we are negotiating with our clients, the less likely they are to come back. This bill will be a net benefit to the community and our clients, and we appreciate your consideration.

PATRICK CONMAY (Division Chief, Records and Technology Division, Department of Public Safety):
I oppose S.B. 87. I have written testimony describing the impact of the bill ([Exhibit P](#)).

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General):
The Attorney General has placed a fiscal note on S.B. 87 due to the requirements of sections 13 and 23 of the bill. I have a handout detailing the impact of these sections ([Exhibit Q](#)).

CHAIR WIENER:

You have cited several sections of the bill that you do not support. Are there any sections you can support?

MR. KANDT:

The Office of the Attorney General is not taking a position on the bill. We just wanted to point out the fiscal impact on our office, as well as the other potential problems: the expansive definitions, the effect on the hundreds of professional boards and the probable increase in the number of criminal trials. Finally, any attempt to limit liability or prevent creating a new right or remedy under State law has no effect on federal law. Most of the postconviction claims and civil rights actions seen by the Office of the Attorney General will have to be defended. We could see increased or new litigation as a result of an alleged failure to comply with this Act. All of those cases need to be defended at the taxpayer's expense.

SENATOR MCGINNESS:

What was the fiscal impact?

MR. KANDT:

The bill indicates my office is entitled to rely on a national study to create a searchable database specific to Nevada. However, I contacted the group working on that study, and I learned that it is a multiyear project that will not be completed by January 1, 2012, which is when the bill requires our database to be in place. This means we would have to create the database from scratch, which is beyond the current capacity of our office. Our fiscal note is in the amount of \$416,100 for fiscal year (FY) 2011-2012, \$200,122 for FY 2012-2013, and \$200,122 for every year thereafter due to the ongoing responsibility of maintaining and updating that database. The fiscal note consists of hiring one additional full-time deputy attorney general and one full-time legal researcher, in addition to the anticipated cost of building the database.

SENATOR BREEDEN:

Have you expressed your concerns to the sponsor of the bill?

MR. KANDT:

No, I have not met specifically with the sponsor of the bill. As with the other measures that come out of the Uniform Law Commission, this bill was presented to the Senate Judiciary Committee for consideration.

CHAIR WIENER:

This bill was generated by Senator Care, the former chair of the Senate Judiciary Committee, and I brought it forward on his behalf out of respect for the continuity of the process.

SENATOR GUSTAVSON:

Over the years, Senator Care has brought many Uniform Law acts to us, and generally I have agreed with most of them. However, I get concerned sometimes that we are losing our individuality as a state to make and pass our own laws. Perhaps we need to tweak this one for our use in Nevada. I am also concerned that we could be creating more loopholes for defense attorneys to challenge convictions.

SAM BATEMAN (Office of the District Attorney, Clark County):

We do not have a significant problem with providing information to criminal defendants so they can make whatever decisions they need to make. I do not necessarily have a concern about the concept of someone making a motion to the court to try to relieve them of some of the disabilities that come with a conviction. My concern, from a district attorney's perspective, is the practical nuts and bolts of this bill. First, it says it does not provide any additional requirements of defense counsel. However, section 19, subsection 1, states this relief may be requested at or before sentencing. Before sentencing, the defendant has not actually been convicted, since conviction takes place when the defendant is adjudicated at sentencing. At sentencing, the only individuals present would be the criminal defense attorney and the district attorney. As the proponents of the bill know, these are civil penalties. What we are talking about, therefore, is granting civil relief in a criminal proceeding where the prosecutor was representing the State in a criminal proceeding and the defense counsel representing the defendant.

I am concerned about the burden S.B. 87 places on defense counsel to be aware of all these collateral consequences. Down the line, there will be inevitable "ineffective assistance of counsel" claims when counsel misses a collateral consequence. Section 14, subsection 2 states that "... Before a court accepts a plea ... ," the court is to canvas the defendant and defense counsel about the notice and all these collateral consequences. There is some inherent inconsistency with that. If we are presuming the defense counsel has discussed these matters with the defendant, counsel therefore has some responsibility for providing that information. We need to be cognizant of that because it is the prosecutors who will later on defend criminal defense attorneys from "ineffective assistance of counsel" claims. I do not want to go down that road; previously, legal authority was that collateral consequences were not part of a criminal defense attorney's responsibility.

The other thing I want to note is that district attorneys are not to take positions for political subdivisions of the state, whether the state, the city or the county is providing these collateral consequences through ordinance. A prosecutor is in no position to defend or be a party to a civil proceeding in granting a limited order addressing those particular subdivisions. We do not have notice going out to the actual party, which would be either the State agency, a county or a city attorney's office, if in fact their ordinances or the State statutes are what provides the collateral consequence. There are a number of references in section 19 to the information being provided "at the time of sentencing," perhaps by a prosecutor.

Those are my concerns. I am concerned about expanding sentencing hearings to include litigation over orders of limited relief. We do not want to be a part of that process because we do not represent those parties. Those ought to be issues where we file a civil proceeding, have a civil petition or file for a civil declaratory relief or injunctive relief and get the prosecutor out of that process.

REX REED, PH.D. (Administrator, Offender Management Division, Department of Corrections):

We are currently neutral on this bill, which has a fiscal impact on us. We release about 6,000 inmates a year, and we would be required to provide each of them with this information within 10 days of their release. The numbers in our fiscal note are derived by multiplying the cost of producing one informational publication by 6,000. That comes to \$506 for FY 2011-2012 and \$1,012 for FY 2012-2013.

JOHN TATRO (Justice and Municipal Court II, Carson City):

We neither support nor oppose S.B. 87, but we do have some concerns. First, the lower courts are high-volume courts, and we process literally thousands of cases every year. To add this colloquy is going to add time to each case. Second, this bill does not differentiate between felonies and misdemeanors. Third, section 14 requires courts to give notice and ask defendants if they have had an opportunity to discuss the notice with counsel. In many of our cases, defendants waive the right to counsel. Thousands of cases go through without attorneys, and they are criminal cases. We are also concerned about the order for limited relief adding to the process. It may or may not be a good thing, but we are concerned about the time involved and our ability to keep up with the caseload. Professor Cammett did not mention county jails and misdemeanors; she spoke mainly about felonies and prisons. However, the bill as written would apply to both situations.

CHAIR WIENER:

Is there any further business to come before the Committee? Hearing none, I will adjourn at 11:50 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 86	C	Senator Sheila Leslie	<i>Las Vegas Sun</i> article of 6/24/2010
S.B. 86	D	Senator Sheila Leslie	Letter from Guy Rocha, 2/23/1981
S.B. 86	E	Senator Sheila Leslie	"Nevada Mining Law, Eminent Domain, and Historic Preservation: A Study in Conflicting Public Use and the Limitations of the Police Power" by Guy Rocha, 1980
S.B. 86	F	Guy Rocha	Written testimony
S.B. 86	G	Chris Brown	Letter from Bonnie Brown
S.B. 86	H	James Hulse	Written testimony
S.B. 86	I	Theo McCormick	Written testimony
S.B. 86	J	Larry Wahrenbrock	Written testimony
S.B. 86	K	Glenn Miller	Letter from John Hadder, Great Basin Resource Watch
S.B. 86	L	Gayle Sherman	Written testimony
S.B. 86	M	Tim Crowley	Written testimony
S.B. 87	N	Assemblyman Tick Segerblom	Uniform Collateral Consequences of Conviction Act

S.B. 87	O	Ann Cammett	Written testimony
S.B. 87	P	Patrick Conmay	Written testimony
S.B. 87	Q	Brett Kandt	Written testimony