

**MINUTES OF THE  
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session  
May 20, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:41 a.m. on Friday, May 20, 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:**

Assemblyman William C. Horne, Assembly District No. 34

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Policy Analyst  
Bryan Fernley-Gonzalez, Counsel  
Judith Anker-Nissen, Committee Secretary

**OTHERS PRESENT:**

Jeffrey Mohlenkamp, Deputy Director, Support Services, Department of Corrections  
Lee M. Amaitis, President and CEO, Cantor Gaming  
Mark A. Lipparelli, Chair, State Gaming Control Board  
Bill Uffelman, President and CEO, Nevada Bankers Association

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John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts  
Jennifer DiMarzio, Nevada Credit Union League  
Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter  
Greg Ferraro, Nevada Resort Association  
Michael Mathis, Nevada Resort Association  
Richard Peel, Subcontractors Legislative Coalition  
John Ramous, NAIOP, Southern Nevada Chapter  
Andy Gabriel, NAIOP, Southern Nevada Chapter

CHAIR WIENER:

I will open the work session on Assembly Bill (A.B.) 136.

**ASSEMBLY BILL 136 (1st Reprint)**: Revises provisions governing credits for offenders sentenced for certain crimes. (BDR 16-634)

LINDA J. EISSMANN (Policy Analyst):

I will read from the work session document ([Exhibit C](#)). The proposed amendment, [Exhibit C](#), page 2, was presented by Sam Bateman and Kristen Erickson, Nevada District Attorneys Association; and Brett Kandt, Nevada Prosecution Advisory Council. The proposed amendment in [Exhibit C](#), pages 3 through 5, was presented by the Reno Police Department. Proposed Amendment 6983, on pages 6 through 8 of [Exhibit C](#), was presented by Assemblyman William C. Horne. I will read from the proposed amendment under section 1, subsection 8, paragraph (e), subparagraphs (1), (2) and (3).

JEFFREY MOHLENKAMP (Deputy Director, Support Services, Department of Corrections):

There were a few amendments submitted at the hearing, and we worked with Assemblyman Horne extensively to correct some issues. The proposed amendments are nearly impossible for the Department of Corrections (DOC) to implement. When we look at the Presentence Investigation (PSI) Reports, there is an inconsistency in their presentation—specifically, the three or more felony convictions. As a result, it would be difficult to determine if somebody had three or more separate felony convictions related to a separate court case. Furthermore, it would be difficult even if we look at the hard records. It would have required a significant amount of effort on the part of staff; we would have to add more staff to do investigative work and call courts across the states.

We asked Assemblyman Horne if he would be willing to look at an amendment that required only Nevada records because those are clearly identifiable within our system, so there is no extra work on our part.

The second part was lack of clarity as to what "involving a firearm" meant. As a result, we asked for specific clarification so it was not left to the judgment of the individual researching the PSI reports to determine whether a firearm was involved. That is a gray area and we do not want to apply sentencing law based on that because it subjects the DOC to legal action by the inmates. As a result, we are comfortable with the changes as submitted by Assemblyman Horne and can move forward.

SENATOR ROBERSON:

This bill is a dangerous bill. It guts truth in sentencing, which has been the law of this State for 15 years. Does your amendment change the fact that with this bill, more felons will be released from prison earlier, in many cases before they have served their minimum term sentence?

MR. MOHLENKAMP:

Our amendment merely clarifies how we apply sentencing law to ensure inmates are serving the proper amount of time according to the law. The DOC has not weighed in on the policy as to whether it is appropriate to release inmates earlier, and we remain neutral in that regard. That is more a matter for the Department of Public Safety to weigh in on, as opposed to the DOC.

SENATOR ROBERSON:

To clarify, this bill will still result in more felons being released from prison before serving their minimum sentences.

MR. MOHLENKAMP:

That is correct.

CHAIR WIENER:

I will close the work session on A.B. 136 and open the work session on A.B. 223.

**ASSEMBLY BILL 223 (1st Reprint)**: Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-989)

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MS. EISSMANN:

I will read from the work session document ([Exhibit D](#)). Venicia Considine submitted a new proposed amendment ([Exhibit E](#)), which replaces her proposed amendment in the work session document, [Exhibit D](#). The three proposed amendments are from Ms. Considine, [Exhibit E](#); John P. Sande, IV, [Exhibit D](#), pages 3 through 25; and Proposed Amendment 6849, [Exhibit D](#), pages 26 through 31.

CHAIR WIENER:

I will close the work session on A.B. 223.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 223 WITH MS. CONSIDINE'S AMENDMENT.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS GUSTAVSON, MCGINNESS AND  
ROBERSON VOTED NO.)

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CHAIR WIENER:

I will open the work session on A.B. 294.

[ASSEMBLY BILL 294 \(1st Reprint\)](#): Revises various provisions governing mobile gaming. (BDR 41-1042)

MS. EISSMANN:

I will read from the work session document ([Exhibit F](#)). Amendments were proposed by Robert Faiss, representing Cantor Gaming, and Dan R. Reaser, representing the Association of Gaming Equipment Manufacturers (AGEM).

SENATOR COPENING:

I am uncertain as to how the two amendments will interact with each other or if the second amendment presented by Mr. Reaser on behalf of AGEM may not be positive to the bill.

CHAIR WIENER:

During the hearing, we established they are not in conflict with one another.

BRYAN FERNLEY-GONZALEZ (Counsel):  
That is correct.

SENATOR KIHUEN:

What safeguards exist to keep the mobile devices within nonrestrictive compliance? I want to ensure the device does not expand beyond the hotel room.

CHAIR WIENER:

We already allow devices in other areas of the property footprint. We are expanding this area to include hotel rooms with substantial safeguards for entry into the mobile system. At any point, the system can request identification to ensure that the person who is entered into the mobile device is the same person who has been registered on that particular mobile gaming device. In testimony, we heard that technological security is in place to ensure that if the device leaves the property, it will not work. The State Gaming Control Board did not raise any red flags. I was concerned about access by juveniles, but there are many security measures being utilized to protect against this.

SENATOR KIHUEN:

That was my concern also; we neither want anyone under age accessing the mobile device nor having access extend to sidewalks or shopping malls.

CHAIR WIENER:

Though there can be offsite security monitoring of the mobile gaming device, the device will not work if a person leaves the footprint of the property. In other words, if I have a device for one property and walk across the street to another property, the mobile gaming device I am assigned to use at the original property will not work anywhere outside the footprint of that property.

SENATOR ROBERSON:

I want to clarify my understanding of what this bill does. Subject to regulations, the State Gaming Control Board permits a mobile gaming device within the building envelope; it could be a nightclub, restaurant or hotel room. I am in support of that concept but share Senator Kihuen's concerns that it does not go outside of the building envelope within the hotel.

CHAIR WIENER:

As long as they are on hotel property, customers using mobile devices can go to the pool and surrounding hotel property.

LEE M. AMAITIS (President and CEO, Cantor Gaming):

*Nevada Revised Statute* (NRS) 463.0176 states:

"Mobile gaming" means the conduct of gambling games through communication devices operated solely in public areas of an establishment which holds a nonrestricted gaming license and which operates at least 100 slot machines and at least one other game by the use of communications technology ... .

The law states that gaming devices cannot be used off the premises. It further states that the Nevada Gaming Commission may not adopt regulations pursuant to NRS 463.730 until the Commission first determines that:

Mobile gaming systems are secure and reliable, and provide reasonable assurance that players will be of lawful age and communicating only from the areas of licensed gaming establishments that have been approved by the Commission for that purpose ... .

SENATOR ROBERSON:

I am agreeable to that, but I have one more question for Mark Lipparelli, if he is willing to comment. Given the fact that this is anticipated to bring more revenue into this State, it is good policy for the State, but I would ask Mr. Lipparelli if he can give a date certain or a time period by which he will develop the regulations to put this into place.

MARK A. LIPPARELLI (Chair, State Gaming Control Board):

Mobile gaming is already in place. What this would do is remove the statutory prohibition of a mobile gaming device being placed in a hotel room. The burden would be on the applicants to create a plan of operation. Whether or not the Nevada Gaming Commission elects to adopt specific regulations related to this equipment as it might pertain to a hotel room would be at the Commission's discretion. All of the equipment presented by applicants goes through technical testing and is subject to a plan of operation satisfactory to the State Gaming Control Board.

SENATOR ROBERSON:

I understand mobile gaming is already here to the extent regulations have to be put into place. I am looking at the increase of potential revenue that we can bring into the State.

CHAIR WIENER:

That was part of the testimony on May 16 because we asked Mr. Amaitis about conservative projections.

SENATOR ROBERSON:

I recall \$18 million.

CHAIR WIENER:

And so much per day with those estimates.

MR. AMAITIS:

The \$18.5 million projection had a low threshold of take-up based on the amount of hotel rooms in Nevada today.

CHAIR WIENER:

That was also where we determined that only 7 percent of our visitors are children, Senator Kihuen.

MR. AMAITIS:

Less than 7 percent of visitors to Nevada who stay in hotel rooms bring children with them.

CHAIR WIENER:

The numbers are not high.

SENATOR GUSTAVSON:

I want to put on the record that the industry has many types of security devices and systems that can be used, and we are not privy to some of them right now. Some laptops and computers require a thumbprint or fingerprint so that when the owner picks up the device, that person is the only one who can operate it.

MR. AMAITIS:

That available technology was discussed in the 2005 Session when the mobile gaming bill passed. If I recall correctly, the regulations did not require the use of

that type of technology because there was an issue of false positives. As technology improves, no system can be used in the resort unless it passes the scrutiny of the State Gaming Control Board and the laboratory that examines the technology.

SENATOR GUSTAVSON:

I was not here for the 2005 Legislative Session, but technology is advancing more every day. I am all for whatever we can do to secure the protection of these devices.

MR. AMAITIS:

The rules proposed with the encryption of the number of log-in attempts, PIN numbers and security codes mirror the banking regulatory rules that allow people to access bank accounts through mobile devices. There is a significant amount of security applied to this type of connection to any mobile device.

SENATOR KIHUEN MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 294 WITH BOTH AMENDMENTS.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on A.B. 388.

[ASSEMBLY BILL 388 \(1st Reprint\)](#): Revises provisions relating to real property.  
(BDR 9-568)

MS. EISSMANN:

I will read from the work session document ([Exhibit G](#)).

CHAIR WIENER:

Based on the conversation I had with Assemblyman James Ohrenschall, he is amenable to replacing the bill with the amendment from the Nevada Supreme Court which would expand the notice requirements, watching the progress of



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the Supreme Court's Foreclosure Mediation Program and determining if anything additional needs to be done next Legislative Session.

SENATOR MCGINNESS:

Will that take care of the credit union problem or do we need to include Jennifer DiMarzio's amendment?

BILL UFFELMAN (President and CEO, Nevada Bankers Association):

We made a few additional amendments to the notice to include the mortgage lending division in Senator Copening's bill, S.B. 307, which is in the Assembly Committee on Judiciary in work session. To the extent that amendment is available to you, that amendment might be a slight improvement over what the Chair offered, and I suggest making the two amendments the same.

[SENATE BILL 307 \(1st Reprint\)](#): Revises provisions relating to the exercise of the power of sale under a deed of trust concerning owner-occupied property. (BDR 9-958)

CHAIR WIENER:

That was not part of the discussion I had with Assemblyman Ohrenschall. Assemblyman Ohrenschall was considering the Nevada Supreme Court proposed amendment as an appropriate substitute and amendment to the bill.

JOHN R. MCCORMICK (Rural Courts Coordinator, Administrative Office of the Courts):

The changes Mr. Uffelman referred to were technical to the proposed amendment and were included in the most recent version of the proposed amendment that I provided to the Committee ([Exhibit H](#)).

CHAIR WIENER:

Is this the Supreme Court's amendment?

MR. MCCORMICK:

That is correct. A few days ago, I sent the new proposed amendment to Ms. Eissmann.

MS. EISSMANN:

The original amendment from the hearing is not the more recent one.

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CHAIR WIENER:

Are there major changes or edits to that amendment?

MR. McCORMICK:

No, there are not. On page 3 of [Exhibit H](#) where it lists the people to contact and their contact numbers, we added the Division of Mortgage Lending to give the homeowner another avenue, based upon the fact that the Mortgage Lending Division is the regulatory body. Page 4 is correct with the removal of subsection 4, which referred to language no longer in the measure.

CHAIR WIENER:

Please help me out and restate that.

MR. McCORMICK:

On the top of page 4 of the proposed amendment, [Exhibit H](#), the language in subsection 4 with a double strikethrough was the other change of concern. The paragraph reads, "The trustee shall cause all social security numbers to be redacted from the copy of the promissory note before it is attached to the notice pursuant to paragraph (b) of subsection 3." Before the hearing, subsection 3, paragraph (b) was amended to remove the requirement that the promissory note be attached because it was premature. That language was an oversight in one of the many drafts.

CHAIR WIENER:

Is subsection 4 removed?

MR. McCORMICK:

Yes.

CHAIR WIENER:

Is the whole paragraph deleted? Is the Mortgage Lending Division added to the list?

MR. McCORMICK:

Yes.

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JENNIFER DIMARZIO (Nevada Credit Union League):

After looking at the proposed amendment presented by the Supreme Court, I find that the language from my proposed amendment in [Exhibit G](#) is not included. I ask that my proposed amendment be included.

MS. EISSMANN:

Mr. McCormick, can you help clarify the proposed amendment from the Supreme Court? This is a copy of the actual statute, not the bill, correct? Are your amendments to the statute and not the bill?

MR. MCCORMICK:

This is a replacement for the existing measure; our amendments are to the statutes, not amendments to A.B. 388.

MS. EISSMANN:

The language in A.B. 388 that had to do with credit unions is not in here. Is it a moot point?

SENATOR COPENING:

As you will recall, my bill, S.B. 307, was similar to Assemblyman Ohrenschall's bill. After speaking with the stakeholders involved in the other mediation program, Chief Justice Michael L. Douglas and Mr. Uffelman, we realized the bill could cause problems for the Foreclosure Mediation Program. I agreed to wipe out my entire bill and go with this new proposed amendment, which is now a stronger noticing. The homeowner is notified he or she has a right to participate in the Foreclosure Mediation Program. Foreclosure Mediation Program representatives told us that many homeowners do not know they have the right to do this because the noticing is not in effect; this would strengthen the program. The Foreclosure Mediation Program has a stronger letter that says you have the right to participate. Lenders are required to send the new form entitled "State of Nevada Foreclosure Mediation Program" with information about the program to a homeowner who is defaulting. Rather than start a new program, I agreed to change this. Assemblyman Ohrenschall's bill and my bill will be exactly the same.

CHAIR WIENER:

Assemblyman Ohrenschall felt this amendment should replace his bill.

SENATOR ROBERSON:

I came in thinking I was clear on this, but I am not. I am in support of the Supreme Court amendment that we have seen. Ms. DiMarzio, you have a separate amendment; are your concerns addressed in the original Supreme Court amendment in [Exhibit G](#) that we have reviewed?

MS. DIMARZIO:

It does not appear the language we were concerned with is in this new proposed amendment in [Exhibit H](#), which replaces the former bill.

SENATOR ROBERSON:

Are your concerns addressed in the proposed amendment that Ben Graham proposed from the Supreme Court?

MS. DIMARZIO:

I am not sure.

MR. UFFELMAN:

Ms. DiMarzio's proposed amendment, before the substitution of the proposed amendment by the Supreme Court, deletes all of the old pieces of A.B. 388. The proposed amendment by the Supreme Court refers to the issue of what you do when submitting a foreclosure notice. They have to do the same thing as everybody else when it comes to the notice. Ms. DiMarzio's proposed amendment was taking them out of all of the premediation items in the original A.B. 388. That is removed in this proposed amendment in [Exhibit H](#), so there is no need for her proposed amendment.

SENATOR ROBERSON:

That is what I thought; I just wanted to make sure. Are you okay with the original Supreme Court proposed amendment from Ben Graham in [Exhibit G](#)? Do you have any issues with that?

MS. DIMARZIO:

No.

SENATOR ROBERSON:

We have not seen the new proposed amendment.

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CHAIR WIENER:

Mr. McCormick explained the two corrections are technical.

MR. MCCORMICK:

The two changes in the proposed amendment, [Exhibit H](#), were to include the telephone number and contact information for the Division of Mortgage Lending on the page 3 list to be provided to the homeowner as the appropriate agency to contact. Transitory language that was removed referred to a section that no longer existed, subsection 4 on the top of page 4 of [Exhibit H](#).

CHAIR WIENER:

Both changes are on pages 3 and 4 of your proposed amendment, [Exhibit H](#).

MR. MCCORMICK:

Those are the only two changes; the substance of the proposed amendment remains the same.

CHAIR WIENER:

On the multipage proposed amendment, [Exhibit H](#), we have two modest corrections that are not substantive in any way.

MR. MCCORMICK:

No, not in my estimation.

SENATOR ROBERSON:

I understand now.

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 388 WITH THE MOST RECENT PROPOSED AMENDMENT FROM  
THE NEVADA SUPREME COURT.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR WIENER:

I will open the work session on A.B. 412.

[ASSEMBLY BILL 412 \(1st Reprint\)](#): Revises various provisions governing mechanics' and materialmen's liens. (BDR 9-833)

MS. EISSMANN:

I will read from the work session document ([Exhibit I](#)). Amendments were proposed by Steve Holloway and Richard Peel. There was a subcommittee meeting with Senator Copening and Senator Roberson on May 19 with lengthy discussion by all of the parties involved, and no consensus or resolution was reached. However, the parties continued to meet after the subcommittee meeting.

CHAIR WIENER:

I understand that the representatives from each of the positions had substantial dialogue last night. We have a proposed amendment dated May 20 ([Exhibit J](#)).

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors, Las Vegas Chapter):

We have reached a compromise. In the spirit of compromise, we have addressed the needs of the banking association, the title companies and the gaming association. The compromise with the gaming association removes the resort hotels from sections 8 through 11 in [A.B. 412](#). We have exempted the smaller projects of \$1 million or less. By exempting the hotel resorts with nonrestrictive gaming licenses, we are exempting the larger scale projects as those projects and entities have the financial backing to ensure that contractors will be paid at the end of the project.

GREG FERRARO (Nevada Resort Association):

Yesterday, we expressed a number of concerns related to the bill. In the efforts of following Senator Copening's and Senator Roberson's leadership in the subcommittee meeting, we can support the proposed amendment, [Exhibit J](#).

CHAIR WIENER:

The proposed amendment dated May 20, [Exhibit J](#), includes the gaming association as amended in section 8, subsection 5. These proposed amendments are complementary and everybody agrees to integrate these proposed amendments to [A.B. 412](#) as the compromise measure before the Committee.

MICHAEL MATHIS (Nevada Resort Association):

The only other comment is to thank this Committee for your patience yesterday. That is difficult material to read through and follow, and we appreciate your understanding of the issues from the gaming perspective. We all know we are working toward a common goal and therefore recognizing the flexibility that we need to achieve that common goal.

RICHARD PEEL (Subcontractors Legislative Coalition):

We worked hard on this issue; we tried to come up with something that we thought would work. Is it perfect? No, but this process has never been perfect. I have been doing this now for 17 years, and I have not seen a bill that is ultimately perfect. The one caveat is that this particular change, which amends section 8, subsection 5, is only with respect to sections 8 through 11 in A.B. 412 as amended. The gaming association would still be required to comply with mechanics' lien statute requirements and whatever contractual requirements the industry may enter into on an ongoing basis.

SENATOR ROBERSON:

I congratulate gaming for being excluded from portions of this bill. I am not opposed to them being excluded from portions of this bill because it is not a good bill. There are many problems with this bill as gaming made clear yesterday. My concern is all the parties that this will affect are not here at the table. This will affect development statewide, not just the gaming development. There are people in Las Vegas who would probably like to testify to this issue. This does not fix the problems in any significant way that we unsuccessfully dealt with yesterday. We made no real progress on the problems with this bill yesterday. I would like to hear from Mr. Uffelman because he is not just a lender to gaming; he is a lender to development statewide where he represents lenders who finance projects statewide, whether they are gaming or nongaming. Let us not all pat ourselves on the back as this does not fix the problem of this bill. I would like to hear from other people.

JOHN RAMOUS (NAIOP, Southern Nevada Chapter):

I want to highlight some areas of A.B. 412 that may not have been completely conveyed in our discussion yesterday, given the time restraints. Not dissimilar to the construction industry, our industry has seen 50 percent to 60 percent reductions in our workforce. In most cases, these are small to medium businesses—not just developer-owners, but architects, title companies, engineers and even contractors, and the list goes on—that have built or been

involved with the communities where we all live and work. These projects and businesses are the bread and butter of our State and will be the businesses that help turn our economy back and help generate jobs again moving forward. Let us not lose sight of this. This legislation potentially goes completely opposite of creating jobs and will add more risk for legitimate developers-owners who want to once again build projects that have not been the cause of many of the contractor issues discussed yesterday. Let us clarify and maybe go through that list. There are some options; maybe it is a threshold issue, maybe it is specific to the projects discussed. Obviously, the condominium and high-rise buildings have been an issue for the community over the last three to five years. Let us define that in this bill or increase the threshold so it does not detrimentally impact the companies that can produce jobs and build quality projects, unlike those with the reputation discussed.

With that, we have proposed language we hope mitigates some of the issues we still have. I would like to have Andy Gabriel discuss those with you and answer questions afterward.

ANDY GABRIEL (NAIOP, Southern Nevada Chapter):

We appreciated the opportunity to propose some amendments yesterday to the bill. Hopefully, they have found their way to you, Committee. We have not taken the position that it is a red light or green light on the bill. We can live with the bill if changes are made to clarify the intent and how to avoid some ambiguity and issues in interpretation of the legislation going forward.

The first concept the amendment addresses is the ambiguity in the bill as to whether an owner and lessee are jointly responsible for compliance. Mr. Peel clarified yesterday that no, the intent is that the contracting party is the one responsible for compliance; it was not clear throughout the bill. Our first proposed amendment attempts to clarify that if an owner contracts for the construction job, the owner is responsible. If the tenant contracts for the construction job, the tenant is responsible. They are not each responsible for the other. The Associated General Contractors indicated that was their intent, so we wanted to clarify that in the bill.

The next item we attempted to clarify related to the document recorded at the end of the project before a certificate of occupancy can be issued. There was some discussion yesterday as to whether the owner who records the document needs to certify that all of the retention monies have been paid to the



lower-tiered subcontractors. We expressed concern that the bill as drafted requires the owner to certify to that fact. In practice, the owner's retention is paid to the general contractor and then the general contractor pays the subcontractors. For the owner to have to certify under penalty of perjury that the general contractor has paid all of the subcontractors their pro rata share of the retention did not make sense to us. We tried to clarify that the prime contractor is responsible upon receipt of the 10 percent retention for paying out proportionate shares to subcontractors.

A third issue we addressed, of which Mr. Mathis spoke, has to do with the penalties for a party that does not comply with the statute. One of those penalties is the contractor's right to proceed to recover 100 percent of the projected profit on a job, even for work never done and even after the contractor has the right to stop work. One of the concerns in our group is that Las Vegas and Washoe County have a large proportion of construction funding from community banks. Many community banks that have gone out of business have been put into receivership by the Federal Deposit Insurance Corporation in recent years, and many of these banks had outstanding construction loans. When that happened, they stopped funding those construction loans in midstream on many construction projects. As this bill is drafted, owner-developers would have no ability to make further payments to their contractors when their construction loan funding dries up because their banks go out of business. Yet they would be obligated to pay their contractors 100 percent of the profits of the construction contracts as entitled to had the bank stayed in business and continued to fund the loan. We see a complete disconnect between owners not funding because they willfully elect not to fund versus lenders not funding because their banks have gone out of business and stopped funding their construction loans through no fault of the developers.

The last point addressed the language that changed the definition of commencement of work. We discussed this again yesterday briefly, but the concern is the case where an owner-developer has a contract with a site development contractor for site development work. That contract is complete, all construction trades have been paid, a notice of completion has been recorded pursuant to statute, and no contractors or subcontractors have filed a lien claim within the period permitted by statute. That contract is done and paid. Subsequently, the owner-developer enters into a different contract for vertical construction of buildings on the property with maybe the same contractor but often a different contractor; maybe with the same lender but often a different

lender. As the bill proposes to amend the statute, the commencement of construction on that subsequent building contract would relate back in time to the commencement of construction on the site improvement contract that closed out and was paid with no issues on mechanics' liens. We attempted to clarify that is not the intent of the statute. That can be significantly detrimental to developers and particularly their ability to obtain financing for construction contracts.

MR. UFFELMAN:

We certainly appreciate all of the effort that this Committee, the subcommittee and the other people put into the bill yesterday. This morning, I guess the newest amendment does not affect yesterday's amendment, all with the understanding that yesterday's deletions have been made. The subcommittee is aware that yesterday I talked about the notion of a sentinel event wherein the things that happened yesterday are the clearing of the site and all other actions unrelated to the construction. It is interesting that NAIOP has put a piece of paper out this morning speaking to that same issue: prework is prework and vertical work is vertical work. We still wind up with language that is kind of subjective. I worry that we will be back in court some day arguing about who has priority, whether the lender will achieve priority with its filing relative to the vertical work when prework may still be underway at the moment they are looking at the site. Say those are sewer lines and the whole project is 40 acres, and we are only talking about this south 10 acres being completed. There are days you want to make it as good as you can and it is an improvement; I just do not know that we made it as good as we could.

SENATOR ROBERSON:

I would like to ask Mr. Peel and Mr. Holloway if they are open to the amendments proposed by Mr. Gabriel.

MR. HOLLOWAY:

The answer is no, and let me tell you why. First of all, we clarified several of the items that they raised yesterday during the subcommittee meeting. We do not believe there needs to be additional clarifying language in this bill for those items. The two major items they are talking about are law. They want to use this bill to change statutory provisions implemented by the Legislature in 2003 and 2005.

The other problem I have is that this group did not testify in the Assembly, and I understand the latitude you have given to all of us. They came late to the game for this House, and it was only this morning that we got these proposed amendments in writing. We had discussed some of these issues with them and thought we had clarified them. Let me ask Mr. Peel to respond to the specific issues.

MR. PEEL:

I will address some of the things that Mr. Gabriel discussed in his testimony. As part of the proposed amendment to A.B. 412, he asked whether sections 8 through 11 would apply to both an owner and a lessee where one is not the contracting party. As I said yesterday, no, it would not. It is the contracting party. Section 8, subsection 1, paragraph (a), line 7 of A.B. 412 says, "The owner or lessee and a prime contractor." This means the provision applies if it is the owner and the prime contractor or a lessee and the prime contractor. The statutory construction is clear. While I penned the initial draft, this is Legislative Counsel Bureau's language. We do not need to have the changes Mr. Gabriel proposed in his draft amendment; with respect to section 8, subsection 1, he has created that same line of thinking into the balance of section 8.

Take the section that talks about the verification of compliance where an owner has paid a prime contractor the retention amount but the prime contractor does not pay the subcontractor's retention amount. The proposed language would remove the subcontractor's ability to lien the property for that retention amount never received. Everything we have been trying to accomplish—getting the money to flow downstream so it ultimately gets into the hands of the subcontractors and laborers—would be defeated. Essentially, this language says that if we made payment to the prime contractor, we are done; we have no further obligation with respect to that retention amount. I respectfully disagree with that. We have lien rights in this State that include retention amounts. Until that retention amount is paid, those lien rights stay in place, provided the lien claimant has complied with the statute.

Another troubling request involves the changes to the definition of work of improvement, which is set forth in section 13.5. Essentially, I agree with Mr. Holloway's statement that the Legislature made that change with respect to that particular definition in 2003 and 2005. We have been trying to clarify this and make it clear that if somebody goes to that site and they see that work has commenced, then they are on notice. This language is attempting to say, well,

we can divide this project up into phases, even though it is all one part of one work of improvement or scheme of improvement. We are going to make it such that one phase is different from another. That is not the law in this State. The law in this State is that a work of improvement gives lien claimants the right to lien the property back to the date construction commenced for the work of improvement. We object to that language for that reason.

I did not have a chance to go through this in detail, but I agree with Mr. Holloway. We are on the last day with the ability to move this bill, and we have put a lot of time and effort into this. It would have been nice for NAIOP to have come and met with us in March or April when we appeared before the Assembly. Why are we doing this the last day?

CHAIR WIENER:

We have an amendment from the construction industry and an amendment from the Nevada Resort Association that are complementary amendments to A.B. 412. I will close the work session on A.B. 412.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED A.B. 412 WITH THE AMENDMENTS FROM THE NEVADA RESORT ASSOCIATION AND ASSOCIATED GENERAL CONTRACTORS.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

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CHAIR WIENER:

I will reopen the work session on A.B. 136.

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

There were concerns in the drafting on how the provisions of A.B. 136 would be implemented. This bill was to address the habitual offender who had been convicted, and though not labeled as a habitual offender, was treated as one due to multiple visits to our correctional facilities for the purposes of good time credits as set under A.B. No. 510 of the 74th Session. You heard from one of the Reno Police Department detectives about certain individuals—while not

labeled as habitual offenders—whose conduct certainly supports that term and who should not enjoy those good time credits in the front end. We attempted to define that as three or more separate visits in terms of incarceration in Nevada prisons. The DOC had concerns about calculating that. If you said three terms without specifying Nevada, it would create a huge fiscal note to reprogram the whole program that the DOC uses in calculating this. If we addressed it as visits in Nevada DOC, that would be easy to do.

We wanted to exclude those who used a firearm in the commission of a crime. Then it became a concern on how to define that. It is simple: if you use a gun in the commission of a crime, you receive what is called a consecutive sentence; you have to serve one sentence before you begin serving the consecutive sentence for the firearm. If you do not have that on your PSI report, you do not receive a gun enhancement. That is how it will be discerned. For example, suppose Senator Roberson, Senator Breeden and Senator McGinness robbed a bank, and only Senator McGinness had a gun. After the negotiations, Senator McGinness, who used the gun, would be convicted of robbery with the use of a gun. The other two individuals might be convicted of robbery, but they are not going to receive the gun enhancement. If they were convicted of a Category B felony, they could possibly be eligible for good time credits on the front end, but Senator McGinness would not because he has the gun enhancement in his conviction. He would have to serve the time for the actual use of the gun.

That is what the amendment does. I would remind the Committee that these are to allow for those inmates who can get those good time credits and have the opportunity to go before the State Board of Parole Commissioners. The Board still makes the determination on whether offenders are entitled to early release. They can receive the good time credits and they can go before the Board; but at the end of the day, the Board can still deny them parole. We call that a "dump." The Board can give them whatever the relative "dump" would be for that particular sentence. The Board could give them a two-year dump or three-year dump before they can petition for parole release again. This bill gives them an opportunity to come before the Board earlier than they would have without the good time credits.

SENATOR MCGINNESS:

What if Senator Breeden had been involved in three of these incidents without using a gun, but was involved with Senator Wiener and Ms. Eissmann in

three separate robberies. Would she still be able to eligible for those good time credits?

ASSEMBLYMAN HORNE:

If Senator Breeden was a resident of the Nevada DOC on three separate occasions, while she may not have been deemed a habitual criminal like the small habitual offender in the system, it would show her with habitual conduct and she would not be eligible because she has had three separate visits to the facility, not three convictions on the one. Say you rob three different banks over a period of two weeks and are arrested on the third robbery. That is one incident, and you are going to go to prison for those crimes. But if you robbed a bank ten years ago, then did it again last year and this year, those are three separate incidents. That would give you the habitual status. You may not have been sentenced as a habitual criminal.

SENATOR ROBERSON:

Assemblyman Horne, this is a yes or no question. Will this bill with the amendments still result in more felons being released earlier than under the existing truth-in-sentencing law of this State?

ASSEMBLYMAN HORNE:

Some felons will be granted an early release if they receive the good time credits; they will go before the Parole Board and may receive an affirmative answer. As I stated in the hearing, truth in sentencing does not exist anymore. Across the Nation—pick a state—everybody is revising it, first, because it is too costly; and second, the states have found more effective means of supervising offenders besides prison. Prison is extremely expensive and is but one tool in managing our criminal offenders, not the only tool. So yes, Senator Roberson, some felons will get out early and some will not.

SENATOR ROBERSON:

I understand your perspective, but I vehemently disagree with it. It is a real problem that people convicted of a Category B felony—if this law gets passed—will not have to serve, in many cases, the minimum sentence, and the public will not be aware. This guts truth in sentencing in this State. That may be your intention, I do not know. People need to understand that if they vote for this bill, they are voting to let felons out of prison earlier.

ASSEMBLYMAN HORNE:

First of all, I do not believe this bill is gutting truth in sentencing. What does truth in sentencing mean today? Second, out of our felony categories, A through E, Category B is the largest population and Category A is the most serious. We have excluded the violent, dangerous Category B felons from receiving those credits. It is easy to sit there and say, it is a Category B felony and these are super bad people. If you look through all of the Category B statutes, you have violent Category B felons and you have nonviolent Category B felons. You have people—and I have had those clients—who have gone their entire lives without any infractions of the law whatsoever and then commit a nonviolent crime that is a Category B offense. They will do their time, but to say they are a danger to the community and do not deserve that second chance is simply not true. I would understand if this were a blanket attempt at reducing the sentences of all inmates in prison. But as I stated in the hearing, this proposal is from the Advisory Commission on the Administration of Justice. The Commission includes justices of the peace, district court judges, law enforcement, parole and probation officers, defense attorneys, parole board and victim advocates. Community members sit on the Commission. They recognized this category is extremely large and that it was important to look at where we could scale it down and grant good time credits and eligibility for early release to some of those who are eligible for them.

All of us understand the need for protection and our responsibility to protect the community. I have been doing this for a long time now, and I take my responsibility very seriously. No one knows better the dangerous people that we have than a defense attorney, because we sit up close and personal with them every day.

SENATOR ROBERSON:

If there is an issue of many crimes being classified as Category B felonies that should not be, maybe we should look at changing the classification of some crimes. However, to say that these people will be serving their time is simply not true in many cases. They will not be serving the minimum sentence that a judge said they should serve, and the public and the victims will not know. When we say these people deserve a second chance, the victims do not get a second chance. I stand by my previous statement—this bill lets felons out early.

ASSEMBLYMAN HORNE:

A suggestion on changing those to lower categories generated a greater push back than this proposal.

CHAIR WIENER:

I appreciate Senator Roberson's concerns about classification. That has been a conversation every Legislative Session. It seems inconsistent in a way because each Legislative Session has its own sentiment, its own dynamic as to what letter to assign to a particular infraction. Based on legislative history, Senator Roberson, there have been grave concerns through the years about reclassifying and taking another look about the appropriateness of which letters to assign. I appreciate that this was part of a conversation for the Commission, which is a broad-based advisory body with many voices.

SENATOR COPENING:

Can you remind us of the reason that the Advisory Commission on the Administration of Justice brought this particular bill?

ASSEMBLYMAN HORNE:

We have talked this Session about closing the Nevada State Prison on Fifth Street in Carson City and lacking the revenue—\$250 million-plus—to build a new facility. How do we hold down our prison population from the matter of best-based cost? Where can we find efficiencies in this area and beyond? This Commission looked at many areas for efficiencies in our law enforcement and correctional areas. In the area of the prisons, we noticed that Category B was disproportionately large to the rest of the categories. Dr. James Austin did studies on the plethora of different charges that rise to a Category B level and the times they were given. Category B felons do not enjoy those good time credits we passed in 2007; perhaps we could include some of that population. There was discussion on whether the Parole Board could keep up when the good time credits came through, and we managed. This would be another bump coming through but not quite as large. The whole purpose in addressing those concerns was to bring down that prison population by allowing a group to receive some of these good time credits and maintaining the Parole Board's discretion on those granted parole.

CHAIR WIENER:

When you refer to "510 good time credits," is that A.B. No. 510 of the 74th Session that applied to Category C, D and E felonies?



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ASSEMBLYMAN HORNE:

That is correct, with exclusions under the 2007 Legislative Session.

CHAIR WIENER:

Therefore, good time credits are already a statutory scheme for those felonies later in the alphabet.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED  
A.B. 136 WITH PROPOSED AMENDMENT 6983.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS GUSTAVSON, MCGINNESS AND  
ROBERSON VOTED NO.)

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CHAIR WIENER:

We are adjourned at 10:42 a.m.

RESPECTFULLY SUBMITTED:

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Judith Anker-Nissen,  
Committee Secretary

APPROVED BY:

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Senator Valerie Wiener, Chair

DATE: \_\_\_\_\_

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 136	C	Linda J. Eissmann	Work session document
A.B. 223	D	Linda J. Eissmann	Work session document
A.B. 223	E	Venicia Considine	Proposed Amendments to A.B. 223
A.B. 294	F	Linda J. Eissmann	Work session document
A.B. 388	G	Linda J. Eissmann	Work session document
A.B. 388	H	John R. McCormick	Amendment to SB 307
A.B. 412	I	Linda J. Eissmann	Work session document
A.B. 412	J	Steve Holloway and Richard Peel	Proposed amendment to A.B. 412