MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
June 5, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 10:14 a.m. on Sunday, June 5, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator 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 Paul Aizley, Assembly District No. 41
Assemblyman Jason Frierson, Assembly District No. 8
Assemblyman William C. Horne, Assembly District No. 34
Assemblyman John Oceguera, Assembly District No. 16

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Paul Georgeson, Nevada Chapter Associated General Contractors
Steve Holloway, Executive Vice President, Associated General Contractors, Las Vegas Chapter

Thomas H. Gallagher, P.E., President and CEO, Summit Engineering Corporation
Jay Parmer, Builders Association of Northern Nevada
Jesse Haw, President, Hawco Properties
John Madole, Nevada Chapter Associated General Contractors
John Griffin, Nevada Justice Association
Scott Canepa, Nevada Justice Association
Susan M. Cavallero, Vice President, Cavallero Heating and Air Conditioning, Inc.
Mary Davis, President, J and L Windows
Frank Brock, Nevada Concrete
Jim Richardson, Nevada Faculty Alliance
Marcia Turner, Nevada System of Higher Education
F. Steven Donahue
Pete Ernaut, Nevada Resort Association
John McCormick, Rural Courts Coordinator, Administrative Office of the Courts, Nevada Supreme Court
Richard Boulware, First Vice President, Las Vegas Branch 1111, National Association for the Advancement of Colored People
Brett Kandt, Special Deputy Attorney General, Office of the Attorney General
Amy Coffee, Nevada Attorneys for Criminal Justice
Vicenta Montoya, Chair, Si Se Puede Latino Democratic Caucus

CHAIR WIENER:
I will open the informational hearing on Assembly Bill (A.B.) 401.

ASSEMBLY BILL 401 (1st Reprint): Makes various changes concerning constructional defects. (BDR 3-382)

ASSEMBLYMAN JOHN OCEGUERA (Assembly District No. 16):
The concept of constructional defect resolution process is making its way through the other House. We want to further define constructional defects and clarify the availability of attorney's fees in constructional defect claims. The statute of limitations and statute of repose need work as well.

We want to clarify the term "constructional defect" to include a rebuttable presumption. If workmanship of design, construction, manufacture, repair or landscaping exceeds the standards in the applicable law—including without limitation the applicable law, local codes and ordinances—such workmanship does not constitute a constructional defect. This would deter meritless claims

by limiting the types of claims that may arise and ease the evidentiary burden on the construction industry by providing a simple and valid defense.

There is some conflict over whether this bill would require that attorney's fees be awarded to claimants. The law says reasonable attorney's fees may be recovered as damages in a claim resulting from a constructional defect. The bill does not make attorney's fees automatic. They will be awarded to the prevailing party.

Regarding the statute of limitations and statute of repose, the law says actions for known deficiencies are ten years, for latent deficiencies are eight years and for patent deficiencies are six years. We clarified that by saying deficiencies resulting in willful misconduct or fraudulent concealment would be any time up to three years after discovery; nonwillful or fraudulent concealment of deficiencies would be six years after substantial completion of the residence and three years after the discovery of the defect. This provides a more definitive time line within which these actions might be commenced. Nevada would have one of the shortest statutes of repose in the Country.

In summary, we want to further define constructional defect, clarify when and where attorney's fees are awarded and revise the time limits for residential construction claims.

CHAIR WIENER:
Did you use the work done in this Committee last Session as a starting point? How did you integrate that into this measure?

ASSEMBLYMAN OCEGUERA:
Over the interim, we worked for approximately 11 months with the construction industry and passed drafts back and forth. The construction industry suggested five items on which to work. Three of those items are in this bill. You will hear testimony this bill does not go far enough.

SENATOR ROBERSON:
What are the two items you did not include in the bill?

ASSEMBLYMAN OCEGUERA:
The construction industry asked for the repeal of *Nevada Revised Statute* (NRS) 40, which was not an option because we worked for many years on it. I cannot remember the other item.

SENATOR ROBERSON:
What is wrong with deleting NRS 40?

ASSEMBLYMAN OCEGUERA:
We have worked on NRS 40 since 1996. In 2003, we negotiated for the right to repair. All parties walked away from that thinking we had fixed any anticipated problems. We have had explosive growth and building throughout the State. Some substandard home building came with that, which is why NRS 40 came about.

SENATOR ROBERSON:
Trial lawyers have run amok in this State. They are destroying the construction industry and raising the cost of every home in this State. It is time to stop protecting trial lawyers.

ASSEMBLYMAN OCEGUERA:
This is about protecting the rights of homeowners, not trial lawyers.

SENATOR ROBERSON:
We will agree to disagree.

PAUL GEORGESON (Nevada Chapter Associated General Contractors):
I am an attorney representing the Associated General Contractors of Nevada (AGC). We oppose the bill, even though we hoped it would fix the problems my client perceived with NRS 40.

The AGC and construction industry in northern Nevada focused on two issues —attorney's fees and the definition of constructional defect—that should be addressed to repair NRS 40 meaningfully, making it more fair to all parties involved, including homeowners, contractors and subcontractors in the State. The right to repair is not working. The statute of limitations and statute of repose can be fixed.

Plaintiffs' attorneys do not want to call attorney's fees automatic, but they are in this situation. The American rule in the United States provides that each party pays for his or her own attorney's fees. A limited exception is when a prevailing party is automatically entitled to that party's attorney fees. In personal injury claims, plaintiffs do not automatically get attorney's fees when they prevail. In medical or legal malpractice claims, plaintiffs do not automatically get attorney's fees even if they prevail. In breach of contract claims, parties do not automatically get attorney's fees if they prevail unless a clause in the contract allows attorney's fees.

That is not the case with NRS 40. The plaintiff/claimant in an NRS 40 claim is entitled to his or her attorney's fees. That poses a problem and corrupts the entire NRS 40 process. These claims become about the attorney's fees rather than the construction defects when the initial NRS 40 demands are made, during the mediation phase and during the litigation phase. We want that issue solved. Last Session, this Committee passed a bill prepared by then-Senator Terry J. Care to address that. It removed the issue of automatically awarding claimants their attorney's fees if they prevailed. We believe that solution is appropriate.

The definition of construction defect is another important issue. No one will argue that legitimate construction defects have never occurred in Nevada. There are legitimate construction defects. When you combine the definition of a defect with the impetus of automatic attorney's fees, you end up with claims that are not legitimately construction defects.

I have submitted a construction defect settlement demand made against one of my clients a few years ago (Exhibit C). It shows the problem that arises when the attorney's fees issue is combined with the definition of construction defects. This settlement demand was made as part of the mandatory mediation process under an NRS 40 claim before litigation was filed. The list, Exhibit C, shows the repair estimate, expert costs, prior repairs, interest and attorney's fees. The total repair estimate of $978,000 was for a gravel horse path that had eroded throughout a development because it had not been properly maintained. No building or house was involved in this demand. There was no life, health or safety defect. The attorney's fees demanded in this mediation process were $558,441. The mediation process is supposed to bring parties together to resolve these claims before the lawsuit phase. The demand for these attorney's fees is not unusual; it is the standard calculation used by many

attorneys in Nevada. The attorney's fee of $558,441 on a $978,000 demand is 57 percent at this stage of settlement. A complaint has not been filed; all the attorneys have done is put together an NRS 40 notice.

We want to fix these types of issues by addressing the definition. The definition of a defect should include something that poses a life, health and safety issue to homeowners or causes actual property damage.

We want to remove the concept of automatic attorney's fees. The claims should be driven by legitimate defects defined as such under the law, not by an attorney asking for $550,000 in fees on a $978,000 claim during mediation and before filing a lawsuit.

Assembly Bill 401 does not make meaningful changes to issues that need to be addressed. For example, A.B. 401 changes the definition of constructional defect to say if certain work exceeds the standard, it is not a defect. We do not need legislation to tell us that.

Assembly Bill 401 changes the language clarifying that attorney's fees go to the prevailing party. It does not change anything. That is the point; this already happens in statute. Why should attorneys get automatic fees in these claims when they do not get them in other types of claims? In theory, this bill addresses the definition and the attorney's fees. In reality, it does nothing to address the concerns.

A six-year statute of repose is not a problem. However, section 4, subsection 3, paragraph (f) of the bill has been amended to say a lawsuit must be filed within three years from the discovery of a problem. That sounds good, but it changes the interpretation of the law. Under the law, a diligence standard applies to homeowners and plaintiffs making claims. The law states it is four years from the time of knowing about the defect or reasonably should have known using reasonable diligence. This bill removes the reasonable diligence provision and goes to actual discovery. While it is narrowed to three years on one hand, the bill removes the obligation of plaintiff's attorneys and homeowners if they have a problem. Under the statute, if a drip is seen but it is not known what was causing the drip, the three years would not be triggered. Assembly Bill 401, as amended, appears to assist and reform the problem, but it does not do so and hurts the issue.

For those reasons, the industry and my clients have worked for the last two or three sessions to obtain meaningful reform to NRS 40. The attorney's fees issue and the definition need to be fixed. Other items, such as the right to repair should be addressed. For example, people have the right to repair, but that does not get them out of lawsuits. The issues Assemblyman Oceguera mentioned were addressed but did not change anything the industry needs to have changed.

Therefore, we oppose A.B. 401. We would rather have nothing this Session than A.B. 401 because we could come back next Session and obtain meaningful reform.

STEVE HOLLOWAY (Executive Vice President, Associated General Contractors, Las Vegas Chapter):
We oppose A.B. 401 for the reasons enunciated by Mr. Georgeson.

THOMAS H. GALLAGHER, P.E. (President and CEO, Summit Engineering Corporation):
I will read from my written testimony (Exhibit D). I have attached my attorney's interpretation of the bill, Exhibit D, page 2. I encourage you to review it in detail. The news has indicated that construction defect is a hangup in the budget process. I request that you kill this bill and come back in 2013 with meaningful reform to NRS 40. If that means eliminating NRS 40, so be it. It worked fine before. Since we began fixing it, it has become worse, not better.

I was involved as an expert in the defect suit of which Mr. Georgeson spoke. I reviewed every expert report prepared by the attorneys for the other side. I do not know how much was charged for experts, but if my firm charged more than $1,000 to prepare those reports, I would fire them.

JAY PARMER (Builders Association of Northern Nevada):
A number of people have come to speak on this issue, many of whom are construction industry people. Mr. Haw will speak on behalf of the northern Nevada homebuilders.

JESSE HAW (President, Hawco Properties):
Our family has been building houses in Henderson, Winnemucca and Reno since 1960. In 2002, we had 209 employees. Now, we have three. Our insurance premiums in 2002 were $750,000. I cannot imagine what they would be now

since we cannot build houses. In those 45 years, we have never been sued. Since November, 33 lawsuits have been filed against me. These lawsuits involve homes that are approximately ten years old with claims such as fence pickets falling down and common household maintenance items.

Changing the definition of construction defect will not help. This is about tort reform and unintended consequences of NRS 40, not construction defect. These cases do not go to court; they settled with insurance companies. If you change the time within which lawsuits can be filed from ten years to six, we will be sued sooner.

The recession has stopped the construction industry, but NRS 40 will prevent us from building houses again. I cannot hire people and go back to work because my family will be sued and lose everything. Please do not pass A.B. 401 unless you remove automatic attorney's fees.

SENATOR GUSTAVSON:
Please give us one or two examples of recent lawsuits against your company involving life, health or safety issues.

MR. HAW:
The average house has been sold three times. These attorneys go door to door and ask if the caulking is cracked, if any fence pickets are loose or if the garage door squeaks. They send the owners a list of these items and a photograph of a house, which is not the owner's house. If the contractor repairs these items, he or she is still sued. For example, why is a painter involved in a lawsuit about a fence? The contractor stays in the lawsuit until his or her insurance company settles. The insurance premiums rise, and the contractor can no longer afford to stay in business.

SENATOR ROBERSON:
I am frustrated with this bill. I respect Assemblyman Oceguera, but this bill is insulting to the construction industry. It is pretend reform. I appreciate your being here to tell this Committee the truth about this bill.

JOHN MADOLE (Nevada Chapter Associated General Contractors):
We supported the bill passed in the 2009 Session. Assembly Bill 401 lacks provisions that would make a difference. I know the State has financial difficulties. Our industry does too. Members of our association have had to go

out of business. Many people in Nevada make their living in the second largest industry in the State and cannot go back to work until this problem is solved. I spoke with someone in our industry who said he has worked on the issue for three sessions. He has been hit with 10 to 12 more lawsuits and does not know how much more he can take. Time is running out.

JOHN GRIFFIN (Nevada Justice Association):
We are neutral toward the compromise legislation brought by Assemblyman Oceguera. The compromise removes some homeowners' rights and issues, but we tried to do what was right. We disagree with many issues reported by the press. Many people are trying to make this issue about attorneys. It is not about attorneys; it is about homeowners and construction defects.

For example, an owner has a $50,000 defect in his or her home and goes through the right of repair in NRS 40. If the contractor does not make the repair, the owner must go to court and incur $20,000 in attorney's fees. If the owner prevails and is awarded $50,000 to repair his or her home, but the court does not have discretion to award attorney's fees, he or she is left with $30,000 with which to repair a $50,000 defect. As a result, we have discussed guaranteed or mandatory attorney's fees. This Committee is familiar with the terms "shall" and "may." The attorney's fees provision for homeowners in NRS 40 says "may." Attorney's fees are not guaranteed or mandatory.

SCOTT CANEPA (Nevada Justice Association):
It is misleading to say attorney's fees are guaranteed. The statute plainly says a homeowner is entitled to make a claim for attorney's fees if those fees are proximately caused by a construction defect. That means homeowners do not get attorney's fees until they prove they purchased a defective dwelling. It is incorrect as a matter of law to say homeowners are guaranteed attorney's fees.

The essential premise of NRS 40 was to ensure the purchaser of a defective dwelling would be made whole upon establishing the dwelling was defective. A trade was made in 1995. The homebuilding industry did not want to face punitive damages and noneconomic damages such as emotional distress damages. *Nevada Revised Statute* 40.655 includes limitation on damages, and homeowners are only entitled to what is enumerated under that statute. If an owner purchased a defective dwelling in Nevada and the defect was caused by willful misconduct or fraud, he or she cannot pursue the builder for punitive

damages. The owner is not entitled to emotional distress or other noneconomic damages. The statute has been stripped to the bone regarding the original concept. If you remove owners' entitlement to attorney's fees, the owners cannot be made whole as Mr. Griffin pointed out in his simple math example.

Assembly Bill 401 is not the panacea. We are neutral because we understood it to be a central part of the budget deal and because everyone has to give to fund education and balance the budget. It is not good public policy to reduce the statute of repose from ten years to six, shorten the statute of limitations or put a statute of limitations on fraud claims.

SUSAN CAVALLERO (Vice President, Cavallero Heating and Air Conditioning, Inc.):
We have served Nevada for 35 years. We may have to close our business because of NRS 40. I will give one example of hundreds of claims in my office. Assembly Bill 401 does not correct this or help in any way.

This particular home was built in 2002 and sold to the homeowner for $222,000. We charged $7,395 for heating and air-conditioning services. We received a construction defect claim requesting that we clean heaters and debris around the air conditioner, missing storm collar, and other nonlife and health problems. The original claim on the home was for the roof. However, any contractor on this job was included in this action. The owner demanded $17,500 in repairs for heating and air-conditioning. The fees and costs for that claim totaled over $50,000. Where does the law say we should pay four or five times more than the original charge to take care of a claim? If there is a legitimate problem, most contractors still in business will repair the problem at any time, whether that is 10 or 12 years later. We want a good name as a contractor. The State Contractors' Board will take away the license of a contractor who does bad work. Why do we pay attorneys to solve issues not talked about in mediation?

SENATOR MCGINNESS:
Are you able to obtain liability insurance?

MS. CAVALLERO:
Two liability insurance carriers offer insurance in Nevada right now. This is out of control.

SENATOR MCGINNESS:
How much is your annual premium?

MS. CAVALLERO:
We pay more than $100,000, and we only have 30 employees. Our deductible is $5,000 to one insurance company and $2,500 to another. In essence, we are paying back $500 for having done the job in 2002.

MARY DAVIS (President, J and L Windows):
In 1978, I started my business, and it grew to over 110 employees. I had an 80 percent market share in Reno. In our peak, we did $23 million per year. I closed J and L Windows and have over 300 lawsuits. I am being sued so much because I had so much of the market share. I had the market share because I do good work. I am a certified installer, and my employees are trained. We have never had a leak. People say they are not suing me because there is nothing wrong with my work. They do not realize they are suing me.

I agree with the comments made today. Assembly Bill 401 is bad law.

FRANK BROCK (Nevada Concrete):
We are all lumped together as good contractors and bad contractors. This law does nothing to separate a good contractor from a bad contractor. We would like our insurance premiums to reflect that. It does not cost Nevada anything to fix this, but it is dragging down the whole economy.

Mediators want to close the cases. I bring letters from engineering stating the issue on a home is not a defect. When I arrive, the mediators are past that and just want to close the case and go onto another one. It does no good to do a repair. I have never been let out of a lawsuit when I have done a repair.

My deductible incrementally increased from $1,000 to $10,000. My insurance company paid $45,000 for the first lawsuit in which I was involved. I had one lawsuit in 10 to 12 years. I decided to purchase insurance with a higher deductible because my insurance went from $80,000 to $240,000. I did a high volume of work and had 120 employees. We did a big percentage of foundations in town. However, if the roof or windows leaked, I was named in the lawsuit. This is not a good bill.

CHAIR WIENER:
I will close the informational hearing on A.B. 401. I will open the informational hearing on A.B. 128.

ASSEMBLY BILL 128 (1st Reprint): Prohibits smoking on the property of the Nevada System of Higher Education. (BDR 15-911)

ASSEMBLYMAN PAUL AIZLEY (Assembly District No. 41):
You have a mock-up of a proposed amendment to A.B. 128 (Exhibit E). The purpose of the bill is to provide a smoke-free environment for students and others on university campuses. I have received letters of support for this bill from students.

Anything outdoors is considered a smoking area. Students inhale smoke while walking between campuses or sitting outside at the student union building. That is a concern for some.

The original bill prohibited smoking everywhere. The proposed amendment, Exhibit E, would allow campuses to designate smoking areas. That is reasonable because if someone wants to find a place to smoke, he or she would have to walk quite a distance to find a place where smoking is allowed. The proposed amendment addresses these concerns.

Section 2, subsection 1, Exhibit E, says: "Except as otherwise provided in subsection 2, smoking tobacco in any form is prohibited on any property or campus owned and occupied ... ." This was changed from "owned or occupied" to "owned and occupied." Assemblyman Tom Grady was concerned that the Western Nevada College holds classes in the Fallon Convention Center. We do not want this law in effect there. Local control would decide whether smoking would be permitted on those premises. Assemblyman Grady agreed with this change.

We required that smoking not occur where people are walking or going in and out of buildings. I was on the University of Nevada, Las Vegas (UNLV) campus for 40 years and have experienced second-hand smoke. Ten years ago, I would not have brought this bill. In the last few years, we have repeatedly heard that second-hand smoke shortens lives. Taking care of illnesses caused from second-hand smoke is expensive.

The fiscal impact of this bill has been removed. The original bill called this a misdemeanor and required that citations be issued. The proposed amendment, Exhibit E, does not include citations. The campuses will enforce the law. Another issue was when someone drives onto campus and is smoking in his or her car. The proposed amendment says that person is told to put out the cigarette and proceed.

A small fiscal note involved signs. Several organizations have volunteered to help with this. The campuses can handle this expense. We will have events where we know smoking will occur. We will designate events to allow smoking, and it will not pose a major problem. I have accommodated most of the concerns with the no-smoking issue.

SENATOR GUSTAVSON:
The State Prison Industries could make the signs to reduce the cost.

ASSEMBLYMAN AIZLEY:
I will pass that suggestion on to the campuses.

SENATOR MCGINNESS:
Section 2, subsection 1, Exhibit E, says, " ... smoking tobacco in any form is prohibited on any property or campus owned and occupied ... ." In rural areas, campuses rent buildings. Would you need to include both those elements?

ASSEMBLYMAN AIZLEY:
For this law to apply, yes.

SENATOR MCGINNESS:
Every high school has a smoker's corner. I had a bill in a previous session where we tried to address that. Youth under 18 years of age cannot buy cigarettes, but they can possess them. I tried to make it illegal to buy and possess cigarettes, which would eliminate problems. If you are looking for a noncontroversial amendment, here is another one.

SENATOR ROBERSON:
Why would the Legislature get involved? Why can individual campuses not make their own rules?

ASSEMBLYMAN AIZLEY:
The bill says campuses may make the rules by providing smoking areas. Apparently, they are not providing a smoke-free campus. The University of Nevada, Reno (UNR) is essentially smoke-free; UNLV is not.

SENATOR ROBERSON:
Can they do that without this legislation?

ASSEMBLYMAN AIZLEY:
No, because the outdoors is a smoking area. Under statute, people can smoke away from the doors leading into the buildings, which includes any walkway or place where people sit to have lunch. Those can be smoking areas.

SENATOR ROBERSON:
Can those universities develop their own reasonable regulations prohibiting smoking in certain areas outside of buildings?

ASSEMBLYMAN AIZLEY:
I do not know if they have that legal ability. They do not do it.

SENATOR ROBERSON:
If they have that discretion, I do not know why we would tell them what to do.

SENATOR KIHUEN:
This would apply to all campuses, and they would have the option of implementing the policy. Did a student movement prompt this bill? Did faculty or staff request this?

ASSEMBLYMAN AIZLEY:
There are several motivating factors, one of which is my personal experience on campus. Several agencies have supported this since I introduced the bill, among them the American Lung Association and the schools of nursing at UNLV and UNR. This support has grown since I first presented the bill.

SENATOR KIHUEN:
Have the Nevada Faculty Alliance and some student groups supported this legislation?

ASSEMBLYMAN AIZLEY:
The Nevada Faculty Alliance supports the bill. For disclosure, I used to be president of the Nevada Faculty Alliance.

SENATOR KIHUEN:
For disclosure, I work at the College of Southern Nevada, and I prefer not to have smoke around me.

JIM RICHARDSON (Nevada Faculty Alliance):
We support this bill. There is a varied approach around the system. It would be preferable to have a standard approach that affects all campuses.

MARCIA TURNER (Nevada System of Higher Education):
We have met with Assemblyman Aizley regarding this bill. As I understand it, the proposed amendment, Exhibit E, incorporates some of our concerns regarding the original bill, including making it a misdemeanor and referring to facilities we owned or occupied. Assemblyman Aizley was willing to change the language to "owned and occupied" and to have a designated entrance around sports facilities where smoking would be permitted. We were concerned about the ability to administer this if it goes forward.

CHAIR WIENER:
I will close the informational hearing on A.B. 128. I will open the informational hearing on A.B. 219.

ASSEMBLY BILL 219 (1st Reprint): Provides that unredeemed slot machine wagering vouchers escheat to the State. (BDR 10-811)

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):
This is a ticket in, ticket out bill. Coins no longer come out of slot machines. If a person wins while playing a machine, that person will get a voucher to redeem for the amount on the voucher. Sometimes, people put $20 in a slot machine and decide to cash out. If a person has not played the entire $20, he or she gets a ticket from the machine, which can be redeemed for the remainder of the $20. Every year, many of these tickets go unredeemed throughout these properties.

A constituent called and explained she had attempted to cash an unredeemed ticket. She was told the ticket had expired and would not be redeemed. She

wondered why the casino was allowed to keep that money. That is why I brought A.B. 219.

Originally, I asked that the State redeem all unclaimed money on expired tickets. We have reached a compromise wherein the State keeps 75 percent of unredeemed tickets, and the casino keeps 25 percent. The amendment coming from the Assembly provides that patrons will have 180 days within which they can redeem these tickets. Most of these tickets have a value of a few cents to a few dollars, but they add up. I asked the State Gaming Control Board to give me an idea of how much money that is over a period of one year. The Board asked properties to volunteer that information. That amount from February 2010 to January 2011 was approximately $11 million. It is difficult to extrapolate that number throughout the entire State, but it is an idea of the amount we are looking at.

Assembly Bill 219 went to the Assembly Committee on Ways and Means and has become part of the budget package. I do not know all of the particulars on how this bill ties into the budget. These vouchers will expire 180 days after issuance unless the Nevada Gaming Commission specifies a shorter period of time. The Commission asked that it not be less than 90 days. One of the problems is collecting the money before the regulations are in place. We will probably not collect any of this revenue until approximately April 2012. This will apply to nonrestricted gaming licensees. The Commission shall adopt regulations by January 31, 2012. Mark A. Lipparelli, Chair, State Gaming Control Board, said the regulations would probably be done before that date, but he appreciates the buffer zone.

CHAIR WIENER:
Section 1.7, subsection 1 of the bill says " ... 30 days after a wager is placed, ..." Has that been changed to 180 days?

ASSEMBLYMAN HORNE:
Yes.

CHAIR WIENER:
You mentioned an informal survey to determine the approximate amount of money involved. Was that nonrestricted gaming licensees?

ASSEMBLYMAN HORNE:
Yes. Initially, I thought it was mixed properties, but the Assembly Committee on Ways and Means was later informed it was nonrestricted properties.

CHAIR WIENER:
Were approximately 25 percent of all properties surveyed? Was the $11 million reflective of 25 percent, or does it represent what would be extrapolated from the 25 percent surveyed to a total amount?

ASSEMBLYMAN HORNE:
That was from those properties surveyed.

CHAIR WIENER:
Did that represent different-sized properties?

ASSEMBLYMAN HORNE:
Yes. This was an unscientific study. It included properties the Commission was auditing at the time. Approximately 70 properties statewide were audited. For example, one property had $655.83 for that one-year period; another had $20,279; another had $596,097; another had $1.2 million.

CHAIR WIENER:
Did the $11 million represent an accumulation over a one-year period?

ASSEMBLYMAN HORNE:
It included the above properties only. Some unredeemed vouchers were 60 days old and were added back into the property's revenue. Properties keep the vouchers on their books as a liability until they expire. They are then moved into the revenue column.

CHAIR WIENER:
Is the 60 days you mentioned a standard in the industry or the house standard?

ASSEMBLYMAN HORNE:
It varied. Some tickets expired in 30 days, some in 60 days and some in 90 days.

CHAIR WIENER:
This bill is a reprint. Originally, did all the money go to the State?

ASSEMBLYMAN HORNE:
In the initial bill, the money would escheat to the State through the Office of the State Treasurer as unclaimed property. That was changed because there were possible legal problems. Part of the compromise was that the money would go to the State through the State Gaming Control Board and not through the State Treasurer.

SENATOR GUSTAVSON:
This unclaimed property is never claimed because the gaming industry would retain 100 percent of that money. Is that correct?

ASSEMBLYMAN HORNE:
For the last ten years, the gaming industry has kept all of it. They pay taxes on it after it is moved to the revenue column.

SENATOR GUSTAVSON:
Are we instituting a 75 percent tax on the gaming industry if we pass this bill?

ASSEMBLYMAN HORNE:
It is not a tax. That property did not belong to the gaming industry originally. If a person puts $20 into a slot machine and breaks even, that person gets a ticket back for $20; the $20 is not lost. That ticket can be taken home, but it will expire. Why would that $20 belong to the casino? Other unclaimed property goes to the State, and this should not be treated any differently. In New Jersey, the money is split with the State, but the casinos keep 75 percent, and the State, 25 percent.

SENATOR GUSTAVSON:
When the State retains unclaimed property, it is held by the State Treasurer, and every effort is made to contact the person who owns that property. In this case, the State cannot know who holds those vouchers. I would rather see the casino keep that money if the individual is unwilling or unable to claim it.

SENATOR MCGINNESS:
I do not see how the gaming establishment can keep that because unclaimed property is not theirs. We can have laws that make it unclaimed property, and it goes to the State. Why could gaming establishments keep 25 percent?

ASSEMBLYMAN HORNE:
The 25 percent was a compromise. Because casinos have done this for so long, it has become part of their business plan and expectations. I do not have a problem with not taking it all in one fell swoop if this Committee wishes to explore that rationale again in the future, but it was a good compromise.

SENATOR MCGINNESS:
Is there a basis in law? If I drop my wallet in a casino with $1,000 in it, do they get to keep that too?

ASSEMBLYMAN HORNE:
Your wallet may contain your identifying information, and they would attempt to return it. The vouchers have no identifying features other than the name of the property issuing it and the amount of money for which the voucher can be redeemed. The players' cards used to play the machines cannot even be linked to the person playing the machine. The compromise of 75 percent to the State and 25 percent to the casino is good because the casinos can enter it into the formulary and expectation of revenue.

SENATOR MCGINNESS:
Section 1.3 of the bill says, "'Slot machine wagering voucher' means a printed wagering instrument ... ." Are they sometimes magnetic cards? Section 1.3 says "printed." Are we putting ourselves in a box? If technology changes, do we want to be tied to "printed"?

ASSEMBLYMAN HORNE:
I thought about how technology would change and how vouchers might change. Arguably, we could say magnetic card, and this would not apply. The spirit of this is unclaimed property; it is unclaimed property coming from these machines.

SENATOR BREEDEN:
Is there an expiration date on the vouchers?

ASSEMBLYMAN HORNE:
It varies per establishment. I have seen a 30-day voucher and a couple of 90-day vouchers. I have heard that some properties have 60-day vouchers. The policies vary per establishment. When I first introduced the bill, a number of

establishments stated—for customer service—they still honor the expired vouchers.

SENATOR BREEDEN:
Will this bill require establishments to include an effective date on those vouchers?

ASSEMBLYMAN HORNE:
It will require an effective date. It is in statute, and the regulations will require those dates. If someone comes into an establishment with a $5 expired ticket and the establishment honors that ticket, it would be able to redeem the tax initially paid on the portion of the $5 it kept.

SENATOR ROBERSON:
You say the gaming licensee would print on the back of the voucher that it is redeemable within a certain period of time. After that time, it becomes the property of the licensee or it is nonredeemable after that point. Is it your contention, notwithstanding, that this is not the rightful property of the licensee? Is this unclaimed property? What happened to the idea two parties can contract for given terms? I would like to hear your perspective.

ASSEMBLYMAN HORNE:
This is not a contract because the person receiving the voucher does not have that contract until after the game has been played. The gaming establishment, in printing that voucher, has said this money is not ours; it is yours. The expiration date does not change the fact it no longer belongs to the person who possessed that voucher. The gaming establishment has said it lost this money or did not win this money, if it is a wash. If a person put $20 into a machine and the ticket is now $20, that voucher either says the establishment lost this money or it belongs to the person. However, if the person does not reclaim the money within a certain period of time, it does not mean it belongs to the establishment. It means this is unclaimed. The unclaimed property goes to the State.

SENATOR ROBERSON:
When people willingly walk into an establishment, they are agreeing to play by the establishment's rules. If they do not redeem the voucher within a certain period of time, they forfeit their right to redeem the voucher. People do not have

to walk into hotel resorts in southern Nevada, but once they come in and put their money into a machine, do they have to play by the establishment's rules?

ASSEMBLYMAN HORNE:
A player plays by the establishment's rules by not cheating machines. Part of the rule is the establishment will pay out what it says it will pay out. It is not part of the rules to say if people do not collect their money, the establishment keeps it. That was never intended to be part of the rules. Furthermore, this new money was realized almost immediately. When coins came out of machines, people would collect those coins themselves. The property never realized that money. An employee may have cleaned up the money. Another player may have played credits left on a machine. The casinos did not realize that money until they went to ticket in, ticket out. They saw unclaimed tickets the first month of accounting. They probably had a good attorney who said to pay the taxes if they kept the money, and they appropriately paid the taxes. That still does not mean the money was theirs. It is abandoned property and should go to the State. We compromised and decided to share that abandoned property.

SENATOR ROBERSON:
It is problematic for me when the State dictates to private enterprise that the rules of the game must be changed because the State does not have enough money. This has been the course of conduct for quite a while. I understand where you are coming from; I disagree.

SENATOR KIHUEN:
What is the approximate amount of uncollected money going to casinos?

ASSEMBLYMAN HORNE:
I received an estimate of $11.7 million covering approximately 70 properties statewide over the time from March 2010 until February 2011. Those estimates varied. It is difficult to extrapolate that figure statewide because of the way the data was collected. I do not know the figure from the Assembly Committee on Ways and Means. I heard for budget purposes, $2.5 million per quarter is anticipated. As our economy improves, that number will increase because we will have more visitors who will likely leave Nevada without redeeming their vouchers.

SENATOR KIHUEN:
Under your proposal, would this money go to the Unclaimed Property Program, Office of the State Treasurer, and revert to the General Fund or to education? We introduced a gift card bill in the past where money from expired gift cards would go to the Unclaimed Property Program to be used for education.

ASSEMBLYMAN HORNE:
This bill would require the money to go through the State Gaming Control Board to the General Fund, not unclaimed property at the Office of the State Treasurer. I do not know if it will be earmarked for something specific.

F. STEVEN DONAHUE:
I recently spent some money at a slot machine in Las Vegas. I had $6 left and was planning to return to the casino the next day, but I had to leave unexpectedly. I am out the $6. I would rather the State have that money than the casino. It is unclaimed property. It does not belong to the casino. I could have cashed it in, so it is my money. This is the same as giving my grandchildren gift cards they do not use. It belongs to them, not the house. I do not see why an expiration date should be on the vouchers. The money belongs to the State. Perhaps casinos should be allowed a small percentage for administrative work, but 25 percent is too much.

PETE ERNAUT (Nevada Resort Association):
The Nevada Resort Association conditionally supports A.B. 219. I have a conceptual amendment to describe that conditional support. Section 1.7 is confusing. That was an attempt to synchronize the expiration date in the establishment, not as it is abandoned to the State. Every establishment had a different date. Some were 30 days; some were 60 days; some were 90 days. We ask this be changed to 90 days. The State Gaming Control Board had agreed.

We agree with Assemblyman Horne regarding the expiration date of 180 days. The 75 percent and 25 percent split is a compromise between the two entities. I testified in the Assembly that we opposed this bill. However, for every argument this is not the establishment's money, you could make an equal argument it is not the State's money. It is the player's money. This is difficult to synchronize.

It is problematic to use this as unclaimed property because with unclaimed property, attempts are made to match the property with the owner. That is virtually impossible in this case. Given all those challenges, the 75 percent and 25 percent split is appropriate.

This is supposed to become effective July 1, and the six-month ticker would begin. The regulations are supposed to be completed by October. This would first be accounted for in January 2012. The first payment would be due the State on April 24, 2012. The payments would be quarterly thereafter. This was our conditional agreement. I ask you to ensure these circumstances happen when this amendment comes to you.

CHAIR WIENER:
This bill includes an effective date upon passage and approval, which you stated would be July 1. The regulations are required as of October 1. There is no reference to the January 2012 date. Is that all spelled out in the amendment being considered?

MR. ERNAUT:
Yes. The synchronization of those dates is there because the assumption of that money is in the final budget bill. It is our understanding those are the dates the money will be due. The effective date in the first reprint is likely to be changed to June 30. We will synchronize that as we see the amendment.

CHAIR WIENER:
When it comes, we will ensure that is addressed. I will close the informational hearing on A.B. 219 and open our work session with A.B. 300.

ASSEMBLY BILL 300 (1st Reprint): Revises provisions governing foreclosures on property. (BDR 9-668)

LINDA J. EISSMANN (Policy Analyst):
I will read from the work session document (Exhibit F). We received a letter from Keith J. Tierney containing an amendment (Exhibit G).

BRYAN FERNLEY-GONZALEZ (Counsel):
Mr. Tierney proposed four changes. I will read from his letter, Exhibit G.

MS. EISSMANN:
We received a letter from Alice Thomas of the Civil Rights for Seniors, which is not proposing an amendment (Exhibit H). We received a letter from Philip A. Olsen, which is not proposing an amendment (Exhibit I).

ASSEMBLYMAN JASON FRIERSON (Assembly District No. 8):
I have met with the proponent of the amendment and Mr. Olsen. It seems those are considerations the court is not precluded from considering—the bad behavior. A copy of an order from the district court was circulated where the court considered the conduct of the lender beyond the basic provisions of the bill.

The suggestions, Exhibit G, are either harmful to the existing program, in the absence of A.B. 300, or are things the court can consider now. The court is not precluded from considering the behavior of the lender. The rebuttable presumption provisions do not require the homeowner to bear any burden. The mediator checks boxes and provides that. Some mediators wanted to do more. Mediators testified if they are required to do more, they would have to pick a side. That is inconsistent with the philosophical purpose of mediation.

The letter, Exhibit G, does not include provisions that would not be accomplished through the Foreclosure Mediation Program, Regional Justice Center, Office of the Court Administrator, Nevada Supreme Court.

CHAIR WIENER:
Mr. Allen from the Nevada Dispute Resolution Coalition was concerned about the mediators engaging at a different level than their profession requires, such as providing information or reports, which is contrary to the relationship between the mediators and the parties. It is a concern that might violate the practices of their profession and the intentions of that relationship. Please address that.

ASSEMBLYMAN FRIERSON:
These proposed amendments go further than A.B. 300 in putting mediators in that position. This is not mandated on the part of mediators. Some mediators are uncomfortable being put into that position. They can choose not to participate in the Mediation Program. We discussed that the phrase "in the program" is a matter of semantics. The Program is designed to bring parties together to have a discussion and pass relevant information to the court. The

amendment attempts to remove the mediators to some extent from that conflict. Rather than requiring the mediators to recommend sanctions, this requires that the mediator reflect the facts—they came or they did not come; they brought the right documents or they did not; they sent the right person or they did not. The court can make the decision whether there was a lack of good faith. We actually move closer to the pure intention of mediation in its philosophical sense.

CHAIR WIENER:
Would there be subjective engagement in terms of providing information?

ASSEMBLYMAN FRIERSON:
No.

SENATOR COPENING:
You attempted to talk it out with some of the opponents. I understand there was no resolution. Please speak to what you discussed and why there was no agreement.

ASSEMBLYMAN FRIERSON:
We went through the five general goals of A.B. 300. The lenders' representative said there was not a single provision about which they could agree. We talked about the reporting and posting of that information on the Program's Website. That was opposed at the hearing. Some may have been more flexible.

The rebuttal presumption language was at the heart of the bill. The lenders' representative steadfastly opposed that from its inception even though we removed some language lenders regarded as problematic, specifically saying the court would be directed to order sanctions in the form of loan modifications. We said it would be a modification if that was already part of the agreement in the Program.

Section 8 of the bill deals with a petition for judicial review. We thought this would strengthen it because a petitioner had to want affirmatively to challenge the findings of the mediator rather than have an automatic challenge. A few were concerned this required an extra filing fee from the homeowner. We answered the homeowner had not been paying his or her mortgage, so an extra filing fee was not overly burdensome. The lenders did not agree.

Some opposed section 9 of the bill, which was odd because it helps lenders foreclose sooner. If a homeowner cannot afford the payment and stay in the home, modification will not work. The homeowner still had to wait for the natural progression of the Program before the process could move forward. That provision was added to assist in moving forward if everyone agreed.

Section 10 deals with short sales, and it caused some concern. We added this because when the Program was created, there were no provisions dealing with short sales. That section included a provision dealing with the deficiency. Nothing prevents a bank from short-selling a home and addressing the deficiency outside the parameters of the Program. If mediation is not reached at the conclusion of the Program, the bank can still go forward with a short sale. The banks can still deal with the deficiencies as they deem fit. It was an attempt to say if that is part of the agreement under this Program, the deficiency would be part of that deal.

We went through all of the provisions, including the provision saying the lender cannot pass to the loan its half of the participation fee for the Program, which is $200. That was the intent of the Program. We provided copies of bills where it had been added to the principal of the loan.

The State of Nevada Foreclosure Mediation Program Advisory Committee was formed to discuss things that affected daily operations of the Program short of statutory provisions. It can make recommendations however it sees fit. Nevada will have to wait two years to make any of those adjustments. In the meantime, participants are still frustrated that the scheme does not provide enough guidance and structure to ensure things happen the way it was designed, even if that means no agreement is reached.

SENATOR COPENING:
I would like to hear from someone representing the Mediation Program. I had a bill that would affect the Mediation Program. After meeting with them, I gutted my entire bill in an effort to let them work out the kinks. This could alter the way the Program is run. How would this impact the Program?

JOHN MCCORMICK (Rural Courts Coordinator, Administrative Office of the Courts, Nevada Supreme Court):
The primary fiscal impact would result from keeping and posting statistics. We can deal with that appropriately. The other parts can be incorporated into the Program. The fiscal impact has been mitigated.

ASSEMBLYMAN FRIERSON:
I contacted the Program administrator who responded the Program is not in a position to speak or advocate for or against any provision dealing with the policy direction. The Program's job is to follow the policy directives.

CHAIR WIENER:
I will close the work session on A.B. 300.

ASSEMBLYMAN FRIERSON:
The provisions in the Tierney letter, Exhibit G, would be harmful. The provisions from Ms. Schuler-Hintz, Exhibit F, pages 2 and 3, did not result in her supporting the bill. I did not see any productive provisions. A majority of them referred to the parties as opposed to the lender. The homeowner is distinct from the lender because the lender is not going to lose a house. The homeowner would, which is the hammer for the homeowner and the reason for the distinction in the original bill. Four or five concessions were made leading up to today, which made changes that were far more than my original intention.

CHAIR WIENER:
Was that version presented to this Committee?

ASSEMBLYMAN FRIERSON:
Yes.

SENATOR ROBERSON:
Are you proposing any amendments?

ASSEMBLYMAN FRIERSON:
Not at this time.

CHAIR WIENER:
Do you support any amendments in our work session document?

SENATOR KIHUEN MOVED TO DO PASS A.B. 300 WITH NO AMENDMENTS.

SENATOR BREEDEN SECONDED THE MOTION.

SENATOR COPENING:
I have concerns. I am hopeful the parties can continue to work together. I will reserve the right to change my vote on the Senate Floor.

THE MOTION CARRIED. (SENATORS GUSTAVSON, McGINNESS AND ROBERSON VOTED NO.)

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CHAIR WIENER:
I will open the work session on A.B. 552.

ASSEMBLY BILL 552 (3rd Reprint): Revises provisions related to the collection of biological specimens for genetic marker analysis. (BDR 14-539)

MS. EISSMANN:
I will read from the work session document (Exhibit J). We have a mock-up of Proposed Amendment 7382 (Exhibit K). We have an amendment from Alfredo Alonso (Exhibit L) changing "and" to "or."

MR. FERNLEY-GONZALEZ:
Mr. Alonso's proposed amendment, Exhibit L, would change the identifying information sent to the Central Repository for the Nevada Records of Criminal History, Records and Technology Division, Department of Public Safety, or gathered from a person arrested for a felony. Rather than saying "date of birth and other information," it would say "or other information." Any of that information could be submitted, not necessarily all of it.

The first change, Exhibit K, is rounding the $2.50 administrative assessment to $2. Section 3, subsections 1, 2 and 3, remove the requirement to obtain the biological specimen from people arrested for Category E felonies, unless the Category E felony is a sexual or violent offense. It also specifies a law enforcement agency must not obtain a biological specimen from people

detained, arrested, issued a citation for or convicted of misdemeanors that are not sexual offenses.

Section 3, subsection 2, paragraph (d) specifies if a court or a magistrate determines probable cause does not exist for the arrest, the biological specimen must be destroyed by law enforcement within three business days after the determination of the court or magistrate, such as when a person is arrested for a felony without a warrant, and the court determines there was no probable cause for that arrest.

Section 3, subsection 5, requires the Department of Public Safety to create a standard form for use by law enforcement in this State. That form would set forth the permitted uses of the biological specimen, the circumstances under which the person from whom the specimen was obtained can have it expunged and the procedure for expungement. The form must be such that people could fill the forms out and send them to the Central Repository to have their specimens destroyed when the grounds for expungement arise.

Section 3, subsection 6, specifies that before obtaining the specimen upon releasing a person from custody, a person from whom a biological specimen is obtained, and at the request of the person eligible for expungement, the law enforcement agency which obtained the specimen must provide the form for expungement created by the Department of Public Safety.

Section 3, subsection 10, Exhibit K, clarifies the court or magistrate shall make the biological specimen a condition of persons being released on bail or on their own recognizance. This pertains to people arrested for an offense to which this section applies, both felonies and misdemeanor sexual offenses.

Section 3, subsection 16 reduces the time line within which the Central Repository must forward an expungement request and documentation to the forensic laboratory holding the specimen from 90 days to six weeks. Subsection 15 also reduces the amount of time for any additional criminal charges before the person becomes eligible for expungement from ten years to five years.

Section 3, subsection 19 adds the requirement that when the biological specimen and genetic marker analysis are expunged, the expungement order be sent to the person at his or her last known address.

Section 3, subsection 20 specifies the cost of expungement is a charge against the county in which the person was arrested.

Section 3, subsection 21 states the biological specimen can only be used to obtain the identification characteristics which are stored in the Combined DNA Index System (CODIS).

Section 3, subsection 24, beginning at line 39, provides a civil action in certain circumstances when biological specimen and genetic marker data are misused.

SENATOR KIHUEN:
Can someone from the National Association for the Advancement of Colored People (NAACP) present the proposed amendment, Exhibit J, pages 5 through 8?

RICHARD BOULWARE (First Vice President, Las Vegas Branch 1111, National Association for the Advancement of Colored People):
Our proposed amendment, Exhibit J, is a follow-up to A.B. No. 500 of the 71st Session. When that bill passed, there were no dissenting votes. This included a study regarding traffic stops that collected demographic data. The NAACP submitted this proposed amendment because this Legislature has significantly increased the types of traffic stops that may occur and the collection of private data in terms of DNA.

The prior study found significant disparities by race in traffic stops, arrests, searches and handcuffing. There has been no follow-up to that study. Given the fact this bill is a significant intrusion related to arrests without individuals being convicted, it is appropriate to ensure there be an attempt to track that process. We need to ensure the process does not run afoul of state and federal law. State law prohibits racial profiling in the context of stops or arrests, and the federal law does the same on the vehicle protection clause.

This proposed amendment specifically tracks what was proposed at the time it unanimously passed in the 2001 Legislative Session through this Committee, passed by the Legislature and signed by the Governor. The purpose of the proposed amendment is to do a follow-up but also to ensure there is no violation of the law with respect to disparate treatment in the implementation of this bill.

Part of the issue is that, as we have found from A.B. No. 500 of the 71st Session, minorities—particularly African Americans and Latinos—are disproportionately stopped, arrested and handcuffed. It was found that minorities—particularly African Americans and Latinos—had their cars searched more often and were arrested more often. These searches and arrests yielded less significant or less chargeable evidence than for the majority of the population. It is appropriate, in the context of this bill and the far reaches of this bill, this proposed amendment be accepted.

SENATOR KIHUEN:
Would this have a fiscal note? Do we know how much?

CHAIR WIENER:
The proposed amendment, Exhibit J, page 6, says "the Attorney General shall." This would impact the Office of the Attorney General by requiring it to collect data from the Departments of Motor Vehicles and Public Safety. The Attorney General would be mandated to collect the data.

BRETT KANDT (Special Deputy Attorney General, Office of the Attorney General):
We would most likely submit a fiscal note. We are doing more with less in the budget climate today.

However, in order to prepare a proper fiscal note, we might need some clarification on what the study would encompass. The study in A.B. No. 500 of the 71st Session and the language in this proposed amendment reference traffic stops. This bill does not deal with the reasonable suspicion that might lead to a traffic stop. It deals with the collection of a DNA sample only after a judicial determination has been made of probable cause that a crime was committed by the arrestee. We ask for clarification of what this study would encompass. Is it a follow-up within the same parameters of the study from 2001, or is it something more in line with what this bill proposes?

MR. BOULWARE:
Our intention was twofold. The process was already put into place by the law enforcement agencies and Attorney General's Office to collect this data. We hoped to use the process already in place.

The purpose of keeping the parameters of the study somewhat similar and trying to include information related to DNA collection is to use the information

for comparison. Otherwise, with different parameters, it is more difficult to use the information historically.

I understand the representative from the Attorney General's Office is talking about probable cause, but the probable cause determination is made by a magistrate without a lawyer present for the person arrested and for viewing a police report.

The traffic stops—and the incidents to arrest were to include stops—are particularly relevant here. To take pieces of the study, based upon what was done previously, would undermine the usefulness of the information, particularly the ability to determine disparate treatment of minorities.

We submitted this proposed amendment so we could have some consistency in using the data. The process was already in place. The traffic stops are interconnected in terms of arrests and incidents to arrest with the collection of DNA because most of these arrests will probably occur in the context of stops.

MR. KANDT:
Am I to understand correctly that this study would encompass traffic stops as the study did in 2001? Although there was a process in place to conduct that study a decade ago, that process is not necessarily still in place. That is why we would have to look at a potential fiscal impact.

AMY COFFEE (Nevada Attorneys for Criminal Justice):
We have proposed an amendment regarding the liability (Exhibit M). Although there was language in the latest amendments, it is not the exact language we had proposed. We have asked that access to one's own specimen be included. This is significant because, as the liability paragraph was included, it was included to ensure compliance. It is part of ensuring compliance with this scheme because as many more specimens will be taken, there is more chance for confusion or for things to get mixed up.

We addressed the assessment. I do not think the misdemeanors have been removed. The number of people is reduced. However, if there is an assessment, those having a specimen taken should be assessed, not others. We should keep in mind that everyone coming to court in the Eighth Judicial District pays administrative assessments, fines and fees. Everyone convicted pays the

$150 DNA collection fee automatically. That does not change with this bill. The assessment should be limited to those whom it affects.

We asked that some data be collected. Often, it takes months to get DNA processed whether it is a murder case, a sexual assault case or a routine case. It is a slow, labor-intensive process. Adding this new category of collecting and processing specimens will cause a burden on the system. It could affect the ability to process legitimate evidence needed in the cases my office defends and the prosecutors prosecute. For that reason, it is important to track these numbers and this process to see what effect it will have. It would be expensive to outsource the DNA processing pursuant to this bill. There would be a whole process along with that. This might have a significant impact on our system. It already takes months in the judicial district where I practice.

SENATOR KIHUEN:
Section 3, subsection 1, paragraph (a), Exhibit K, requires the social security number. I propose eliminating paragraph (a) in section 3, subsection 1 and paragraph (a) in section 3, subsection 2 because they require the social security number. The original proponent of this proposed amendment is available to testify, Vicenta Montoya.

CHAIR WIENER:
This is only regarding Senator Kihuen's proposed amendment.

VICENTA MONTOYA (Chair, Si Se Puede Latino Democratic Caucus):
We propose an amendment to A.B. 552 (Exhibit N) regarding social security numbers. I am an immigration attorney, and many times the social security number is a threshold issue regarding immigration status. There have been difficulties with this in the past. We suggest this not be in the bill because it creates concern within the community, especially within the undocumented community. Law enforcement has tried diligently—especially in the Las Vegas and metropolitan area—to have a better relationship with the immigrant community. To foster that, police officers have extended into the community. A bill like this would alert immigration to the status of individuals, and victims of crime have less desire to come forward and cooperate with the police. This would impede police action. There are many victims of criminal activity, especially the undocumented. They are targeted because of their particular situation.

For instance, it is common in the Las Vegas area that people carry cash around pay day loans locations. They have checks needing to be cashed, and pay day loans outlets are the only places their checks can be cashed. As soon as they leave those areas, they are robbed of their money. It has been difficult to address this situation effectively because the perpetrators know these victims do not want to come forward. Therefore, the problem continues. That is only one small example. Other examples are related to abuse of women and to domestic violence situations. The more you impede that process, the more a significant part of the population will continue to be victims of crime.

We would urge you to support this amendment, Exhibit N.

SENATOR ROBERSON:
Removing those provisions kills the bill. We tried to address your concern where it says, "Submit the name, social security number, date of birth and any other information ... ." We changed that "and" to "or" because we understand not everyone will necessarily have a social security number. I propose going with that change rather than removing these provisions.

MS. MONTOYA:
I understand your concern; however, if someone is arrested and convicted, you will be able to get all that information. I am concerned these are arrests, not necessarily convictions. The data will be forwarded for anyone arrested for the various crimes indicated. This person may not actually be a criminal but someone who falls within this parameter. A greater concern is that people will not want to cooperate with law enforcement because of these provisions. We already see that in the community.

We support the amendment, Exhibit M, requesting a study of arrests. From what has been indicated in the past, it negatively impacts the Latino and black communities. I am not convinced that particular proposed amendment will cure the problem we have presented.

SENATOR ROBERSON:
It is important to understand the only people required to furnish this information are those who have been arrested for Category A through E felonies—a Category E felony that is sexual or violent in nature, or a sex-related misdemeanor. We have worked with many people to include protections for people's civil liberties. It is important that if someone is arrested without a

warrant, is booked into jail and the magistrate thereafter finds there was not probable cause for the arrest, the government is required to destroy the DNA sample and information within three business days or five business days. We are working on those details, but that information is destroyed within a very short period of time. Other than the classes of offenders I have spoken about, no one will be subjected to a cheek swab. It is not done when people are stopped for traffic violations. There must be probable cause a felony or sex-related misdemeanor has occurred.

MS. MONTOYA:
I am not speaking specifically about the DNA sample. I am speaking about the data collected that is not destroyed. That data, regardless of whether the person is convicted, is sent to the Central Repository. Unless I am misreading the law, all that information is sent whether the stop is made under a warrant or not. I am concerned about the data and social security numbers collected from people arrested and not convicted.

SENATOR ROBERSON:
If no probable cause is shown, no information is sent to CODIS. The information is destroyed. I am happy to clarify that in the language. Once probable cause is shown, it is no different than your fingerprint and all the information that goes along with that.

MS. MONTOYA:
If that could be clarified regarding persons who are arrested and not convicted, that would take care of one of the concerns.

SENATOR COPENING:
This has several fiscal notes.

CHAIR WIENER:
I will close the work session on A.B. 552.

SENATOR COPENING MOVED TO REREFER A.B. 552 TO THE SENATE COMMITTEE ON FINANCE WITHOUT RECOMMENDATION.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR ROBERSON VOTED NO.)

* * * * *

CHAIR WIENER:
I have been working on some measures coming back to us to concur and not concur. Senator Roberson had some concerns about S.B. 57, Amendment No. 735.

SENATE BILL 57 (2nd Reprint): Establishes procedures for the Children's Advocate or his or her designee to obtain certain warrants. (BDR 38-289)

SENATOR ROBERSON MOVED TO CONCUR WITH AMENDMENT NO. 735 TO S.B. 57.

SENATOR BREEDEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
We have S.B. 348 with Amendment No. 663. We had A.B. 223 before the Committee. There was a Senate Floor amendment from Senator John J. Lee reducing the $1,000 to $400, but that original bill was amended into S.B. 348.

SENATE BILL 348 (1st Reprint): Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-779)

ASSEMBLY BILL 223 (3rd Reprint): Makes various changes concerning the execution on property of a judgment debtor or defendant. (BDR 2-989)

SENATOR ROBERSON:
This is my bill. Assembly Bill 223 was added on against my wishes in the Assembly. Having said that, A.B. 223 stood on its own in a different bill, was passed out of both Houses, and the Governor has it on his desk.

SENATOR ROBERSON MOVED TO NOT CONCUR WITH AMENDMENT NO. 663 TO S.B. 348.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR WIENER:
The hearing is open for public comment. There being nothing further to come before the Committee, we are adjourned at 1:05 p.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 401	C	Paul Georgeson	Construction Defect Settlement Demand
A.B. 401	D	Thomas H. Gallagher	Written testimony
A.B. 128	E	Assemblyman Paul Aizley	Mock-Up of Proposed Amendment 7115
A.B. 300	F	Linda J. Eissmann	Work session document
A.B. 300	G	Linda J. Eissmann	Proposed Amendment to A.B. 300 from Keith Tierney letter
A.B. 300	H	Linda J. Eissmann	Proposed Amendment to A.B. 300 from Alice Thomas letter
A.B. 300	I	Linda J. Eissmann	Letter from Philip A. Olsen
A.B. 552	J	Linda J. Eissmann	Work session document
A.B. 552	K	Linda J. Eissmann	Mock-Up of Proposed Amendment 7382
A.B. 552	L	Linda J. Eissmann	Proposed Amendment from Mr. Alonzo
A.B. 552	M	Amy Coffee	Proposed Amendment
A.B. 552	N	Vicenta Montoya	Proposed Amendment