

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
March 29, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Tuesday, March 29, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Senator Mark A. Manendo, Clark County Senatorial District No. 7
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Alice Baldrice, Nevada Rock Art Foundation
A.J. Delap, Las Vegas Metropolitan Police Department
Scott Black, Detective, Las Vegas Metropolitan Police Department
Tim Kuzanek, Captain, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association

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Katie Stueve, Sheriff Support Specialist, Washoe County Sheriff's Office;
Regional Graffiti Task Force
Kyle Davis, Nevada Conservation League
Kristin Erickson, Chief Deputy District Attorney, Nevada District Attorneys
Association
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's
Office
Tierra Jones, Office of the Clark County Public Defender
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of
Nevada
Jim Stout
Mary Ann Foreman
Michael Jabara
Bill Uffelman, President and CEO, Nevada Bankers Association
George Ross, Las Vegas Chamber of Commerce; Reno Sparks Chamber of
Commerce; Bank of America
David J. Guinan
George Flint, Reno Wedding Chapel Alliance
Margaret Flint, Reno Wedding Chapel Alliance
Kathleen Marino, Arch of Reno Wedding Chapel
Reverend Ronald Fisk, Agape Love Chapel and Flowers
Jim Pierce, Assistant County Clerk, Clark County Clerk's Office
Michael Foley, Clark County District Attorney's Office
Nancy Parent, Chief Deputy Clerk, Washoe County Clerk's Office
Alan H. Glover, Former Senator, Carson City Clerk-Recorder

CHAIR WIENER:

We have three bills before us, and Senate Bill (S.B.) 257 is my bill. Madam
Vice Chair Allison Copening will preside as I present S.B. 257.

[SENATE BILL 257](#): Revises various provisions governing graffiti offenses.
(BDR 15-616)

SENATOR VALERIE WIENER (Clark County Senatorial District No. 3):

To say that I know a little bit about graffiti and tagging is an understatement.
I am familiar with the damage that can be done by taggers and other graffiti
vandals who destroy the property of others. The first bill I sent to the Senate in
1997 was on this same issue. The story of how I first started learning about
this egregious problem can be found in my book *Gang Free: Influencing*

Friendship Choices for Today's Youth, which was published in 1996, and *Winning the War Against Youth Gangs: A Guide for Teens, Families, and Communities*, published in 1996. For the second book, I worked with youth gangs all over the Country, and tagging was one of the components of our discussions. The issue of tagging, graffiti and damage to property is real to me in another way. I live in urban Las Vegas at the center of the valley, and this is something my neighbors and I experience every day in a substantial way.

I had a conversation while visiting a school many months ago in which a young man asked me, "Why are the graffiti laws so tough?" I responded, "Because it's theft." The person who damages another person's property with graffiti is stealing the value of the property from that person. But the theft does not just injure the owner of the property. The graffiti "artist" is stealing from the entire neighborhood the value of the owners' property. He or she is also stealing the value of the neighborhood from those who experience it in a more transient way. And it spreads, and it spreads, and it spreads.

When we started working on this bill some months ago, I asked Linda J. Eissmann, Policy Analyst, to find out what is being done about this problem in other states. She gathered information from all 50 states, and this bill integrates the provisions from those other states that I believe will work in Nevada. As we were working on the measure, something traumatic happened in southern Nevada, and that was the damage to the Red Rock Canyon National Conservation Area. That incident rallied the community. The damage done to the petroglyphs at this historic site is something that cannot be repaired.

This bill makes it a Category C felony to deface any historic site with graffiti. I reviewed all of the Category C and Category D felonies in the *Nevada Revised Statutes* (NRS), and I believe this rises to the level of a Category C felony because of the irreplaceability of historic sites. Once they have been damaged, we can restore them almost to the state where they were before, but we cannot bring them back.

The bill also addresses the aggregate issue. Existing law requires that graffiti offenses be aggregated when the damage done to property reaches \$5,000. This bill changes that level to \$250, since that is the average cost of cleanup on a single offense. There will be suggestions to raise it higher. We could go to \$500, which would be at least two incidents. With a \$5,000 limit, it is difficult

to get the 20 to 30 incidents of serial tagging needed to rise to that level. Why wait until that much damage has been done?

I have two e-mails from constituents citing the repeated damage to their property caused by tagging, one from the owners of the Stremmel Gallery ([Exhibit C](#)) and one from Andrea Napoli and Don Morehouse ([Exhibit D](#)).

I would like to work on the definition of historic site used in section 3 of S.B. 257 to include historic buildings and other sites.

The bill gives the court the ability to require the tagger to keep the property that was defaced or a comparable property free of graffiti for up to a year. This is something we saw in two or three states. To me, this seems a substantial deterrent. If I had to be responsible for keeping the property clean for a full year, I might think twice about making it ugly with graffiti another time.

The bill allows the court to order counseling for the family of taggers under the age of 18. We do this for other crimes such as truancy because it is a family issue. This behavior is inappropriate, and family support needs to be there.

The bill also provides the opportunity for civil action by those whose property is damaged. That is in section 2, subsection 3 of S.B. 257.

SENATOR MCGINNESS:

You indicated that when you spoke to students, they were aware of the penalties for graffiti. Do you think students generally are aware of the consequences?

CHAIR WIENER:

I cannot speak for all the people who make these choices. The young man I spoke to certainly was, however. I do not want to presuppose that he was a tagger, but it was an interesting question to ask. I also told him, "Don't be surprised if the penalties get tougher." That was the moment that I decided to bring this bill.

SENATOR COPENING:

At an earlier Committee meeting, you gave us a summary of the different categories of felony. Do you recall the punishment for a Category C felony? What sort of offenses are classed as Category C?

CHAIR WIENER:

They are all over the map. The only one I can recall at the moment is the destruction of paperwork related to organ donations or organ transplants. If it is a Category C felony to destroy paperwork, it should be a Category C felony to destroy historic sites.

BRADLEY A. WILKINSON (Counsel):

A Category C felony carries a penalty of one to five years and a fine up to \$10,000.

ALICE BALDRICA (Nevada Rock Art Foundation):

We are in support of this bill. Rock art consists of petroglyphs, which are figures etched into the rock by people in prehistoric times, and pictographs, which are images painted onto the rock. We spend a lot of time and energy educating the public about why it is important to preserve rock art, and we have made great inroads. One group we have not been able to reach, however, is the taggers. It is difficult to get to everyone in society. Sometimes the only way to get people's attention is to have a stiffer penalty. Not everyone is going to warm to the tours and presentations during Historic Preservation Month.

Rock art is irreplaceable. It was created by people who are no longer with us. Their descendants live in communities around the State, in tribal colonies and reservations, but they are no longer producing rock art. In the incident at Red Rock, someone used spray paint to cover an entire panel. At this point, the experts do not know if or how it can be repaired.

Let me give you an example of the cost of this damage. A single panel of the Lagomarsino Petroglyph Site in Storey County was damaged. A conservator was brought out at our expense; it cost \$3,500 to bring out an expert to remove or disguise the graffiti. The work he did will stay good for three to four years, after which the conservator has to return and do the work all over again. That is \$3,500 each time for each panel.

When you are talking about deliberate damage to an irreplaceable resource, a Category C felony seems like a completely appropriate punishment. If it is only a misdemeanor, people do not think much about it. When you make it a felony, you are getting their attention.

I agree with Senator Wiener's statement that when you tag a building, you are stealing its value. You are stealing the past when you do this kind of damage to the petroglyphs. They cannot be replaced, and the destruction is grievous and disrespectful to the people whose ancestors made these images.

There has been an increase in graffiti because of gang activity in and around Las Vegas recently. We are aware of it, and we do not know what to do about it.

I would be in support of including historic buildings in S.B. 257. Section 1, subsection 1, paragraph (d) of this bill refers to "any designated historic site." It might be better to change this to "any historic site." The word "designated" has different meanings; it could mean sites on the National Register of Historic Places or the Nevada State Register of Historic Places. "Historic site" is defined under NRS 381.195, and that definition fits this need.

CHAIR WIENER:

I understand that some of the pictographs at Red Rock were originally created using blood as a sealant. Is it true that even if a restoration specialist were to come work on it, there is some damage that cannot be fixed?

MS. BALDRICA:

That is correct. The pictographs are created with organic elements such as blood, ochre and plants. When those become damaged, it is almost impossible to repair or restore them. There has been some discussion of leaving a portion of the damage as an example of what happens when things go wrong.

A.J. DELAP (Las Vegas Metropolitan Police Department):

I am here to introduce Detective Scott Black. He has been assigned to the graffiti task force in Las Vegas for ten years. He was the lead investigator on the Red Rock graffiti case.

SCOTT BLACK (Detective, Las Vegas Metropolitan Police Department):

We support this bill. We support anything that increases the penalties for graffiti. Graffiti vandalism is the No. 1 property crime we face in southern Nevada. It is the property crime most frequently reported to the Las Vegas Metropolitan Police Department, and it is the most costly property crime. Our estimate is that it costs \$30 million, public and private funds combined, in the greater Las Vegas area each year.

We are seeing an increase in graffiti. We are also seeing an increase in graffiti on historical landmarks. This bill is timely. The incident at Red Rock Canyon is not the only incident we have had in the Red Rock area. We are seeing more graffiti to protected lands, including Red Rock, the Valley of Fire, Hoover Dam and Lake Mead.

CHAIR WIENER:

I have seen statistics that your team made 750 arrests for graffiti vandalism in 2010. Of those 750 arrests, were many of them repeat offenders?

DETECTIVE BLACK:

Yes. Most of our arrests for graffiti vandalism involve repeat offenders. A graffiti vandal does not do one act of graffiti vandalism and then stop. Vandals will do as much graffiti as they possibly can. Because of this, laws that allow us to aggregate smaller offenses together are important. For instance, a patrol officer may catch a graffiti vandal doing one offense, which would be a misdemeanor or gross misdemeanor. When I get that report, I may discover that the perpetrator is someone we have been looking for, someone whose work we have been documenting for years. We can then go into our files and pull out that documentation to aggregate all the other offenses together. While that vandal may have been arrested for a single misdemeanor offense, we may have \$20,000 to \$40,000 in documented damage. It is important that we have the ability to aggregate those offenses.

Graffiti is a serial crime. A graffiti vandal does not go out and damage one thing. That is not the way these vandals operate, and that is not why they are involved in graffiti. They want to put their moniker or tag on as many locations as possible. I would say at least half of our cases are repeat offenders. When we arrest them, they may have 20 or 30 prior offenses, and they are only in their early 20s, so they have been very active.

SENATOR MCGINNESS:

We received a letter from Orrin Johnson, Washoe County Public Defender's Office, stating that if a gang member is ordered to be responsible for a certain area or piece of property, that fact will quickly become known and make that area more of a target for graffiti rather than less. Do you think that could happen?

DETECTIVE BLACK:

It is hard to know for sure. In the case of Red Rock, the vandal appears to have targeted that location specifically for the shock value. A lot of people say graffiti vandalism is about artistic expression, but that is not the case. I have spent more than a decade arresting these people, interviewing them, getting to know them and learning what their motivations are. This vandal targeted Red Rock specifically to maximize the shock value. If we increase penalties on a location like that, it would not make it a higher priority for vandals; it would make it a lower priority because it carries heavier penalties.

A lot of graffiti vandals do not fear being arrested. In fact, being arrested actually increases their status, their street cred, among other graffiti vandals. The problem is the penalty on a lot of those cases is not severe. They know they can expect probation and perhaps a night in jail. They know they are looking at some community service, but they do not fear that. To be arrested, to be targeted by the police, just increases their status as taggers. However, when you increase the penalties so they are looking at more severe penalties than a night in jail, that will dissuade them from wanting to hit that area.

CHAIR WIENER:

Senator McGinness's question referred to a section in the bill that allows the court to require the graffiti vandal to keep the area where his or her offense was committed free from graffiti for up to a year. Mr. Johnson's argument is that once the vandal's area of responsibility is known, rival gang members will target that area specifically. My thought was that if I were a graffiti vandal, I might think a little more about tagging an area if I knew I might have to spend a year removing others' graffiti from that area.

DETECTIVE BLACK:

I agree with you. Currently in Clark County, we have a program called the Las Vegas Metropolitan Police Department (LVMPD) Graffiti Abatement and Investigation Program. We use convicted graffiti vandals who are housed at Clark County Detention Center. They go out under the supervision of LVMPD corrections officers and remove graffiti for up to eight hours a day. Right now, they remove over 300 scenes of graffiti in Clark County every month. Before they remove the graffiti, they photograph it, and we use those photos for our investigations. The corrections officers who deal with these guys every day talk to them and get to know them. We know for a fact that a lot of these vandals have removed graffiti they themselves placed. They have said they will not be

involved in graffiti anymore because they spend hours removing it. For that reason, it looks like it is a good deterrent.

As for the projected issue of rival gangs and rival taggers, that is hard to predict. There is a difference between a criminal street gang and a tag crew. The vast majority of graffiti around Las Vegas, probably more than 95 percent, is tagger graffiti, not gang graffiti. Most street gangs are involved in other types of crime. Most tag crews just want to do as much graffiti as possible. The tag crews do dare and challenge each other, and we get them competing over specific locations. For example, there was a blank billboard that changed every night until the two competing crews had a big confrontation over it. But if a vandal was assigned to clean up an area he had been marking, that would probably dissuade him from tagging that area again.

TIM KUZANEK (Captain, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association):

I rise in support of S.B. 257. I do not have a lot of experience with taggers. However, as a division commander, I have the opportunity to speak with a lot of people from community leaders to the average homeowner. I hear over and over the frustration felt by people at every level regarding graffiti, whether it is on the side of your business or across your back fence. It is a real challenge for law enforcement. For that reason, I am here today in support of this bill.

KATIE STUEVE (Sheriff Support Specialist, Washoe County Sheriff's Office; Regional Graffiti Task Force):

We support this bill. Changing the level of aggregation to \$250 or even \$500 would help us a lot. In the last 15 months in Washoe County, we have had over 45,529 sites of graffiti that were entered into the system and abated either by us or the Reno Police Department. Abatement in Washoe County involves the same kind of program as was described for Clark County. We take inmates incarcerated for graffiti and have them work on removing graffiti. They do not like the work, which is another reason why we like the provision in this bill where they have to adopt an area that has been hit by graffiti.

In our area, taggers do not paint over other taggers' marks. It is against their code to paint over another tagger's graffiti; it is considered disrespectful in the tagging community to cover someone else's tag. Yes, there are tagging wars. Normally, however, those tagging wars are more gang-related; they tell us that tagging crew has crossed a line and become a gang. Generally, taggers in our

area will not tag over another crew's graffiti. We do not think this bill would lead to other people tagging the area being cleaned because of the code. In addition, they would have to find out what areas were being cleaned by which taggers. This information is not going to be publicized, and the taggers being punished will be ashamed they got caught and will not want to tell their friends where they are working.

We also like the provision allowing the court to require family counseling. Taggers do it for notoriety. That is their goal: to put their tag on as many sites as possible. With a lot of underage taggers, their parents are working two and three jobs, and the children are unsupervised. This economy is hard for everyone. When we go to the home of a tagger, we often find the parents are not involved in their child's life. The tagger's room will be covered with his or her moniker. And they do not stop. In the last three months, I have arrested seven individuals who have been repeat offenders to the point that they have changed their moniker two or three times.

We also like the ability to take taggers to civil court and hold them financially responsible for their crimes. We find a lot of victims do not report it because they do not see what they are going to get out of it. If victims have the option to take taggers to civil court and show the judges how they were victimized, that would help them get some form of justice.

KYLE DAVIS (Nevada Conservation League):

We support this bill. The incident at Red Rock last year was a serious case, and it brought to light the possibility of losing some of our natural treasures to vandalism. We support anything we can do in the law to prevent or deter something like this from happening again.

With regard to the "designated historic sites," this is good language to cover historic sites. I would also like to point to other possible sites that are natural treasures of the State. You might consider some kind of language that would include sites like Valley of Fire State Park, which is not necessarily historic. We would encourage working on that definition so we can encapsulate those type of areas as well to make sure we are doing the best we can to protect all of our natural treasures.

KRISTIN ERICKSON (Chief Deputy District Attorney, Nevada District Attorneys Association):

Graffiti is a statewide problem, and we applaud Chair Wiener for bringing this important bill forward. We are in full support of this bill and urge its passage.

CHAIR WIENER:

You and I discussed the possibility of changing the aggregate amount to \$500.

MS. ERICKSON:

Yes. That would be acceptable to us.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We are neutral on S.B. 257. We have submitted a letter stating some concerns with the bill and proposing an amendment ([Exhibit E](#)). This amendment would relieve some of our concerns. I have been a victim of graffiti, and I hate it as much as anyone else. I appreciate the intent behind the bill and applaud the protection of historic monuments.

Our first concern is the provision by which a judge could order a tagger to be responsible for a certain area. There has been some debate as to whether this will increase or reduce tagging in that area. No one can predict the future, but the consensus among the juvenile deputies who work with these folks is that it will almost certainly invite rival taggers to make the arrested tagger pay for all their graffiti. It will thus actually increase the amount of graffiti in that area.

There was some testimony that taggers are proud of being the targets of law enforcement and being arrested, and other testimony that they were embarrassed by it and would not tell anyone they were busted and made responsible for that area. In my experience, they tend to be proud of being arrested. Even if they are not, word gets around in the street about who is responsible for the cleanup. People will then start targeting that area and that individual specifically, forgetting that the property is owned by somebody else who has to pay for it.

Also, in our experience, taggers cover each others' tags quite often. I do not know if it is the violation of some code, but it is a territorial thing; the tag proclaims, "This is our tagging ground." This is part of the incentive we fear this

creates for other rival tagging crew members to tag these areas where somebody is responsible.

The deterrent of requiring offenders to clean up their own graffiti already exists in the law. There is a requirement that in addition to jail time, they are to be fined and required to do significant amounts of community service that should be related to graffiti to the extent practical. This is a good and directed penalty for this crime, and we think that would have the same deterrent effect being sought without also creating the incentive for other people to come in and tag that area. We would not object to increasing the required community service. Offenders would be forced to clean up graffiti but without holding them responsible for an area and thus making it a target.

The second portion of our amendment would not remove the civil penalties; instead, it would make civil penalties an alternative to criminal prosecution. In my experience, most of the judges in northern Nevada are extremely hard on taggers, as they should be. I teach a class to high school kids who get in trouble for drugs and alcohol, and I always talk about graffiti. I tell them, "Don't do it. The judges hate it, the voters hate it, everybody hates it." I also get asked why the penalties are so harsh, and it is because everybody hates graffiti. A standard penalty in front of my judge in Department 8 is that offenders get three years of probation for a gross misdemeanor, and as a condition of that probation, they will spend 30 days in Washoe County Jail in addition to the community service.

The other reality is that taggers generally do not have a lot of money. If they must go through a civil case, they will generally not have an attorney, and it could wind up costing them a lot of money they do not have. If there is a situation in which a civil penalty is a more appropriate penalty than a criminal penalty, having that as an alternative certainly would be another good tool to help deter this behavior. Having the penalty be both criminal and civil is excessive when the criminal penalties are already so severe. It will clog up the system with additional lawsuits without the commensurate deterrent that comes along with it.

I have never seen a graffiti case in which restitution was not ordered. It is required that the judge consider it in all criminal cases, and that is part of making the victims whole. It is not just a matter of the paint and the materials, but also the labor and time. Washoe County has a good graffiti abatement program. Often, the graffiti has already been cleaned up by the time restitution

has been ordered, and offenders pay for the time that has already been expended by the city workers who cleaned it up. It gets very expensive, as it should be. I do not want anyone to think I sympathize with taggers. We just want to make sure the punishment fits the crime and is appropriate and enforceable.

SENATOR COPENING:

Your amendment includes the statement, "Such a civil action resolved through either settlement or trial shall be a bar to criminal prosecution for the same offense." Can you explain what that means?

MR. JOHNSON:

If the language is problematic, it can be changed. The intention was to say that if there has been a civil judgment for a graffiti offense, the prosecutor may not then bring a criminal charge against that person for the same offense.

TIERRA JONES (Office of the Clark County Public Defender):

We are neutral on this bill. We agree with Mr. Johnson's comments.

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

I would like to echo the concerns of Mr. Johnson. We agree with many of his points. With regard to the counseling provision, judges already have the discretion to order such types of supervision when necessary. If it is going to be iterated in State law, there needs to be a phrase similar to that in NRS 392.220. This is the penalty for abetting truancy. When parents or guardians are looped into the criminal justice system as the result of the behavior of their children, they have to be found involved in some way.

You heard the testimony. We are in an economic situation in which parents often do not have immediate contact with their children or are not able to oversee or supervise them on a daily basis. That is unfortunate. When parents work two or three jobs, they are not at home much. Given that, taking them away from their jobs to attend and pay for counseling could have a more detrimental impact on the family as a whole than was intended. If the State is going to move forward on this bill, there should be a connection between the children's behavior and the parent's behavior. In NRS 392.220, it says a parent who knowingly induces or attempts to induce a child to be absent from school can be held accountable. Something like that is needed in this statute as well.

We see the benefit of counseling, but we do not want any unintended consequences to adversely affect the family as a whole.

SENATOR GUSTAVSON:

Are parents not usually brought into this process anyway when a child is arrested? What type of counseling are we talking about afterwards? That could get expensive.

MS. GASCA:

Mr. Johnson can answer that question better than I can. I understand that parents are involved in the juvenile justice system to the extent possible.

MR. JOHNSON:

Yes, parents are involved when their underage children are arrested. Juvenile judges already have the discretion to order parents to participate in counseling. We did not think that provision was obtrusive. In juvenile justice, the priority is rehabilitation. Let us fix the problem before they become adult criminals.

SENATOR COPENING:

I will close the hearing on S.B. 257.

CHAIR WIENER:

I will open the hearing on S.B. 346.

SENATE BILL 346: Revises provisions governing deficiency judgments on obligations secured by certain residential property. (BDR 3-276)

SENATOR BREEDEN:

As you are aware, deficiency judgments have a cumulative negative affect on a region, especially areas with high foreclosure rates like the ones Nevada has been experiencing. The aggregate of all deficiency judgments in a particular area leads to a net outflow of financial resources outside the region, typically to pay distant investors. Without a deficiency judgment, this personal income from local households remains close to home, and the income flows to local businesses. Similar to bankruptcy discharges, deficiency judgments harm local businesses and creditors. Absent the burden of deficiency judgments, many former homeowners would continue paying debts owed to local creditors and would not seek the discharge of their debts in bankruptcy.

Senate Bill 346 revises provisions governing deficiency judgment. The measure removes some of the criteria in State law that must be met for a court to be prohibited from awarding a deficiency judgment after a foreclosure sale or trustee sale. Last Session, A.B. No. 471 of the 75th Session was enacted. That measure established four criteria that must be met before a court is prohibited from awarding a deficiency judgment. Those four criteria were:

1. The real property is a single-family dwelling, and the debtor owned the property at the time of foreclosure;
2. The debtor used the loan to purchase the property;
3. The debtor continuously occupied the property as a principal residence; and
4. The owner did not refinance the loan.

This bill would remove the requirement that the debtor used the loan to purchase the property and the requirement that the owner did not refinance the loan. Under S.B. 346, a court would be prohibited from issuing a deficiency judgment if the two remaining criteria are met.

This bill also bars all types of deficiency judgments occurring in the future on mortgages that currently exist. If a homeowner has a mortgage now and no deficiency judgment has been awarded by the effective date of the bill, none can be awarded in the future. However, the bill does not undo any existing deficiency judgments that have already been awarded by the effective date.

During this economic downturn, the citizens of Nevada are being hurt. They have lost their jobs; they have lost their homes. The banks tell them they will not mediate, and the former homeowners walk away from their homes. They do not pay because they are unable to pay. If they file for bankruptcy, that extends their bad credit for an additional seven years. We have to do the right thing and help the little guy.

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):

I have a short handout with some of the major points of this bill ([Exhibit F](#)).

Senator Breeden and I share the distinction of having the worst areas for foreclosure and housing problems. Right now, 75 percent of the homeowners in southern Nevada are underwater—that is, they owe more on their homes than they are currently worth on the market. This bill is designed to address that. There have been some previous bills on deficiency judgments, and there are

others this Session as well, but they do not deal with two important issues. First, they deal only with mortgages that will be taken out in the future. This bill deals with mortgages that currently exist. Today's newspaper shows that home prices fell again in the last year. The value of houses in Las Vegas today is about what it was in 2000. Anyone who has taken out a mortgage in the last ten years is most likely underwater at this point.

Secondly, S.B. 346 essentially deals with all mortgages secured against real property, which includes second mortgages. In the past ten years, a lot of people have been induced by the banks to get a second mortgage. They are now underwater with both mortgages. If they do a short sale and find someone who will buy the property, the holder of the second mortgage then steps in and refuses to approve the sale. This means the homeowner is left with no recourse. With this bill, the homeowner could go to the bank and say, "I will walk away from my house unless you are willing to negotiate with me to reduce my mortgage." That is the reality of the situation in Nevada.

The only way to stem this crisis is to deal with current mortgages, not just future mortgages. We need to give homeowners some leverage that will induce banks to negotiate terms with them. If it is a question of whether homeowners or banks should suffer, it should be the banks.

CHAIR WIENER:

One of your requirements is that the home be the owner's principal residence. Would that be for more than half of the year? How do we define "principal residence"?

ASSEMBLYMAN SEGERBLOM:

It would be the place where the owner lives. This is not intended to cover someone who has several houses bought as a speculation. It is the place where the owner resides and votes. I am not sure how the person would prove that.

SENATOR COPENING:

Can you tell me what triggered this bill? Have you heard tales about the banks not working with homeowners?

SENATOR BREEDEN:

I have heard from many constituents in my district who have tried to work with the banks. They have gone to the mediation programs and done everything they

were told, and they still have no relief. I have family members in the same situation. I do not believe this is right. The banks came up with all that creative financing so people who made the minimum wage could buy \$400,000 houses that they could not afford. Here we are in a crisis, and the banks are continuing to trample on the little guys. In their book on foreclosures, the Nevada Association of Realtors says my district has over 8,839 homes in foreclosure. In this matter, I do not just represent my district; I represent the entire State. That is why I am here.

ASSEMBLYMAN SEGERBLOM:

There have been a lot of cases of people who have not lost their jobs. Instead, they paid \$800,000 in 2005 for houses that are now worth \$400,000. They could make payments for the next 20 years and still be underwater. Those people should be able to go to the bank and negotiate the mortgage down to the value of the house. If they cannot, they will walk away and let the bank deal with it. Right now, the banks will not negotiate with them. If homeowners walk away, they could have a deficiency judgment for several hundred thousand dollars that will follow them. There are people who have garnishments on their wages for hundreds of thousands of dollars based on these deficiency judgments. Whenever you owe more on your house than you will ever be able to pay off, the question becomes who is going to take the hit.

SENATOR ROBERSON:

I am surprised to learn about A.B. No. 471 of the 75th Session. I live in the same district as Senator Breedon, and I know the hardships Nevadans are going through. This is a big mess, and I do not pretend to know how to solve it. But after listening to Assemblyman Segerblom's statement, I wonder what has happened to the concept of personal responsibility. I bought a home at the top of the market in 2006, and it is currently worth about half of what I owe on that home. It is a struggle for a lot of us. But how much more difficult will it be for people to obtain financing to purchase homes if a lender knows he will not be able to get a deficiency judgment?

I am not here to attack the bill, and I do not have any solutions to the problem. I just do not know if this is the best way to get where we want to be.

ASSEMBLYMAN SEGERBLOM:

I have thought about this a lot, and I do not know of any other way to do it. I am on the board of directors of a bank. Every day, businesses come to us and

say, "We borrowed \$200,000 from you; will you take \$100,000?" We have to deal with that, and so does the Federal Deposit Insurance Corporation (FDIC) and every big bank. The National Association of Realtors reneged on the loan on their building in Washington, D.C. They just walked away from it. Why is it that the only people who cannot walk away from such loans are people who bought a home that is now worth half what they paid for it? If you have a 30-year mortgage, you are not going to get out from under that loan and be in the positive for 20 years. There has to be a way to force banks to come to the table and negotiate a reduction in the mortgage to the value of the house; or if you can find a short sale, to be able to go to the holder of the second mortgage and say, "If you don't approve the short sale, you'll get nothing." We need to give the homeowner leverage to rectify the situation.

The retroactivity is the key part of the bill. We have to be able to deal with current mortgage situations. If you have that, the banks will come to the table, and we can sift through this in a couple of years. Until we do that, we are going to be in the situation where we are in Never Never Land.

SENATOR BREEDEN:

There has been some speculation from those opposed to the bill that it might be unconstitutional. I would like to put on the record that when we worked with the Legal Division to draft this measure, that is one of the questions I asked. Mr. Wilkinson, is there current case law that would apply here?

MR. WILKINSON:

In drafting this legislation, we looked at the issue of constitutionality, particularly as it relates to the contracts clause in the *Constitution of the State of Nevada* and the U.S. Constitution. There is no recent case law in this regard. However, in 1934, the United States Supreme Court upheld the constitutionality of a Minnesota law that established a moratorium on foreclosures and extended the right of redemption of mortgages. Since that time, there have not been a lot of cases on that subject.

However, there is general case law on the contracts clause in Nevada and at the federal level. In looking at that, our office determined that it would not be unconstitutional to apply this provision retroactively. We understand that people will claim it is unconstitutional. However, interpreting the contracts clause is not as literal as it seems to many people. In order for a law to be upheld, there has to be a legitimate public purpose for it, and it has to be reasonable and

necessary to fulfill that purpose. The mortgage crisis is more severe in Nevada than in other states, and the court would take that into account.

Although there are no laws like this in other states as yet, there are analogous situations in bankruptcy court, for example, where debt is discharged and applied to existing situations. All bankruptcy law is in effect when a change is made. They apply to existing debts.

The short answer is that our office believes it would not be unconstitutional to do this.

SENATOR GUSTAVSON:
What was the Minnesota case you mentioned?

MR. WILKINSON:
The case was *Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1934).

JIM STOUT:
In my law practice, I represent about 100 homeowners in short sales. I have also done about 35 foreclosure mediations and defended homeowners and investors who have been sued for deficiency judgments. I am also licensed in Arizona and California.

I support this measure, though I do have an issue with the retroactivity provision. One way or another, the negative equity situation will go away. There has never been a community, a neighborhood or a state that has sustained itself when underwater. It is unsustainable for Las Vegas or Nevada to continue on with negative equity. Whether it is addressed at the legislative level or not, negative equity will go away. That is a fact.

The definition of principal residence can be worked out. At the foreclosure mediations, it is proved via utility or tax bills.

MARY ANN FOREMAN:
I have lived in Las Vegas for 11 years. I bought my house in May 2007, and my mortgage payments were \$1,800 a month for my first and second mortgage. I work as a fulltime model, and in the beginning of 2008, my work began to drop off. In 2009, with the sharp fall in convention work, my income fell

dramatically. I spoke with Chase, my bank, and they advised me to stop making payments in order to modify my loan. In May 2009, I stopped making payments and started receiving many phone calls from the collection department of Chase. In September 2009, Chase came back with a modification of my first mortgage but not the second. I made a decision to short-sell the house and hired a real estate broker in January 2010. I went into a contract with a buyer in 2010. At that point, Chase acted in bad faith by delaying the short sale while selling both loans to a third party who foreclosed in October 2010. I continue to receive collection notices for the second mortgage, totaling over \$50,000. I respectfully ask that the Nevada Legislature approve S.B. 346 in order to remove the stress and strain from all homeowners in my situation.

MICHAEL JABARA:

I support this bill. I have lived in Las Vegas for approximately 11 years. I am both a licensed real estate broker and a registered representative with Financial Industry Regulatory Authority, Inc. I consider myself an experienced financial professional. It is good public policy for Nevada to become a nondeficiency judgment state, similar to many other states in the U.S., including California.

The removal of the financial institution qualification in section 1, subsection 3 is most important. From a practical standpoint, what is happening around the U.S. is the large financial institutions that absorbed much of this toxic debt, this nonperforming distressed debt, are selling these distressed assets to so-called "vulture funds" for pennies on the dollar, thereby removing from their balance sheets the collection activities needed to recover those funds. The vulture funds consequently file mass-produced lawsuits against former homeowners and add exorbitant collection costs. The only recourse for former homeowners is to file bankruptcy, which is expensive and takes money away from other creditors who are thus punished because the homeowner could not pay a deficiency judgment.

I urge the Committee to pass S.B. 346.

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

I represent the FDIC-insured banks in Nevada, and we are in opposition to this bill, which I believe is unconstitutional.

Senator Roberson asked about what happened in 2009. In 2009, you passed a prospective measure: all new money purchase mortgages from October 1,

2009, had the protections, mimicking California which did it in 1933. Today, you are proposing we turn back the clock 75 years.

Section 1, subsection 3, paragraph (b) of S.B. 346 deletes the requirement that restricts the deficiency judgment protection to first mortgages only. Second mortgages are often used to buy automobiles, boats, airplanes and so on. This provision would mean if you walk away from your home and avoid the deficiency judgment, you still get to keep all the toys you converted the house into. If you are going to advance the bill, you should think seriously about whether the deficiency is relative to the house or relative to the things the homeowner converted the house into.

Through December 31, 2012, the federal tax code says if you had a \$300,000 mortgage and, through short sale, you avoided \$150,000 of that debt, that amount is considered taxable income. This has now been extended for two more years. But there is no federal tax consequence for the deficiency. If you pass this bill, people will figure out that if they delay past that deadline, they are going to owe the federal government 31 percent, 33 percent, whatever the tax rates are at the time. In California, because they do not allow deficiency judgments, people walked away from mortgages. The federal government excused it, but the state of California did not excuse it, which meant those people had to pay California income taxes on the excused money. The same thing will happen here.

If you pass this bill, within 24 hours of passage, we will see a reverse land rush. The 75 percent who are underwater are going to get out as quick as they can to avoid the federal tax consequences. We will find out what the bottom of the real estate market is in Las Vegas. We will find out very quickly how little residential real estate is worth in Nevada through this process. That will have some severe consequences. If you pass this bill with this retroactive provision, there are a whole lot of people who will take advantage of it.

If you are in bankruptcy, there is no bankruptcy cramdown for your principal residence mortgage. There is for second homes, but not for principal homes. In effect, we have just taken all the ways to get out of debt and put them into this one bill, and the folks who finance the homes here in Nevada will be the ones who suffer.

SENATOR COPENING:

Why is it that banks will not sit down with homeowners to try to work things out? We have heard this many stories about this, which is why bills like this come forward.

MR. UFFELMAN:

We hear the stories too. Recently, however, I heard statistics on the Foreclosure Mediation Program and how many deals have been worked out. I do not remember the exact number, but upwards of 9,000 mediations were held or asked for. Clearly, some banks are making deals.

We had some goofy mortgages from 2003 to 2006. There were lots of investors who thought they were going to get rich. The problem we have now is people who, through job losses because of the recession, do not have the money to pay a normal mortgage. All of this presupposes that the person has the ability to pay for the house they are in. If family income has been cut by two-thirds, I do not know that they can afford the mortgage.

I do not want to sound like some hardhearted Simon Legree, but think how mortgages are funded. Employee retirement funds fund mortgages because they bought mortgage-backed securities. They bought the financial institution stocks, all the rest of it. If you take money from one side to benefit the homeowner, you have then taken it out of their 401(k) on the other side. That is the reality of the way things work.

GEORGE ROSS (Las Vegas Chamber of Commerce; Reno Sparks Chamber of Commerce; Bank of America):

Mr. Troy Abney was unable to be here today; I am representing the Reno Sparks Chamber of Commerce on his behalf. We oppose this bill.

Knowing Senator Breeden and Assemblyman Segerblom, I am not surprised they brought this bill. These kinds of bills are brought because there are real human beings who are being hurt, and these bills come forward to try to alleviate their problems. Sometimes there are only two or three people in the State who are having severe problems; sometimes, as in this case, it is many thousands. It is a matter of the heart.

But Legislators have to take the longer-term view. It is not enough to worry about matters of the heart and those things that make us cry. We must consider

the long-term, overall good of the State of Nevada. Unfortunately, that involves looking at economics. What we have here today is a bill that retroactively changes the terms of economic decisions long after they have been made. Banks made decisions to make mortgages and make loans in a given economic environment, under a given set of laws, regulations and expectations. That is true of every business that decides to invest in a place.

One of the major themes of this Session is economic development, economic growth and jobs. One of the great things happening this Session is the cooperation between the leadership in both Houses and both parties on a long-term, much more vigorous economic development program. That program depends on attracting investment from other states and countries, creating a positive investment environment and the expectation of a positive investment environment. This bill says, "We can go back and change the rules after you invest."

For the record, my bank client does very few deficiency judgments and is neutral on the deficiency judgment bills that are before this Legislature, except for this one. The only reason the bank is against this bill is its retroactivity. It is the retroactivity that makes this a dangerous, pernicious bill.

I understand the human problems. I live in Senator Breeden's district. But I also understand that we need to make a giant step forward economically.

My first job out of the U.S. Navy was working for a multinational corporation as a political research analyst in international planning, what is now known as political risk analysis. My job was to look at all of the countries we were investing in to figure out if they would be stable enough to make investing hundreds of millions of dollars in those countries worthwhile. The testimony on this bill clearly differentiated between investors and firms inside and outside of Nevada, discriminating against the outside investors on behalf of Nevadans. That sounds good for Nevadans, but that is a common thing we hear for 20 years. We consider a bill that says, "We're going to change the rules of the game to favor Nevadans over money from elsewhere." And then we say, "Why can't we grow? Why can't Nevada get investment from other places?" We need that money from elsewhere if we are going to grow and diversify. That is the issue you have before you. It is the bigger issue, the bigger long-term economic welfare of this State, that is the real issue.

Many of my clients are in the same boat as the people you seek to help with this bill. Most of them are small business owners, and some of them are already in this situation. But you have to take the longer-term view. That is why we elect 63 Legislators and do not have a plebiscite every time we need to make a decision. You have the time to look at this issue and talk about it, and hopefully make a wise long-term decision.

SENATOR ROBERSON:

I had not thought about the unintended consequence of what Mr. Uffelman called a reverse land rush and its effect on our community. It is a scary proposition. Mr. Uffelman, could you elaborate on that? What would it do to the value of homes in Nevada if that were to happen?

MR. UFFELMAN:

About a year ago, I wanted to refinance the mortgage on my home. We got an appraised value of \$300,000, and it went to the mortgage company. Another house in the neighborhood, the same size but a different model, had been in foreclosure for months and was neglected. We were supposed to close the deal on a Monday. The Friday before that, the foreclosed house sold at auction for \$196,000. On Monday, the mortgage company called and told me they would be happy to refinance my mortgage if I brought another \$60,000 to the table. I did not; I am already so far underwater that pouring more water down the hole would not make it any better.

That is the reality. The trouble with a foreclosure market is typically a foreclosed house has fallen into a state of disrepair by the time it is sold, and the price reflects that. With a short sale, the owners take pride in the home even though they are having trouble; I would call them willing sellers. They are trying to get the best deal they can, so they make an effort to keep the property up. The auction price on a foreclosure will be lower than a short sale by 10 percent or 15 percent.

There are still some people who have enough equity to do a normal sale. However, their price is driven by the lower market of short sales and foreclosures. That is what all the houses will sell for. Everyone who is underwater has the potential to decide to get out before the tax deadline. If they go, you will have a reverse land rush. If the short sale market was \$200,000 and the foreclosure was \$165,000, that number could go down below \$150,000 in a heartbeat. It could happen.

Once you have taken all that value out of Las Vegas, will it make it more attractive? Yes. Will there be lots of investors buying? Will you turn Las Vegas into a rental community because investors bought all the homes? That will happen in some neighborhoods. Will it be attractive to people who want to retire to Las Vegas? As long as we do not have hurricanes like Florida or earthquakes like California, it is a desirable place to live. Retirees do not bring school-age children and other burdens on the services of local government, and they might come in and buy because it is cheaper. But you will have found the floor of the housing market in Las Vegas.

SENATOR ROBERSON:

It sounds like you are saying that those who want to stay in Las Vegas will see the value of their homes go down as a result of this legislation.

MR. UFFELMAN:

Prices will decline further. There is no question. Ironically, those who walk away from their homes will be back. Instead of having a seven-year wait before they can get back in the market, they will be eligible for a federal mortgage in three years. They will not get the best terms, but they can reenter the market. This is called a strategic default. Homeowners will reason that for three years they can rent a house down the street bigger than the one they just got rid of and for less money than they were paying on the mortgage. In the meantime, they can either save the money or pay off all their other debt, and three years from now they can buy another house. They will make a personal business decision, and this bill certainly provides additional motivation.

DAVID J. GUINAN:

I am neutral on S.B. 346. I have written testimony explaining my concerns about the bill, particularly with regard to its constitutionality ([Exhibit G](#)).

I think it would be helpful to put this in some historical perspective. The antideficiency statute works hand in hand with the one-action rule. The one-action rule, NRS 40.430, says that when there is a default on a secured loan, the lender must foreclose on the property before the lender can sue directly on the note. That is why, whether it is a first deed of trust or a second deed of trust, there are no direct lawsuits until after a foreclosure.

The antideficiency statute in NRS 40.455 historically put a short time limit, 90 days, on the ability of a lender after the foreclosure to go in and seek the

deficiency. In the last Session, as we have talked about, A.B. No 471 of the 75th Session broadened the antideficiency statute to include purchase money mortgages given by financial institutions. I applaud that.

My concern about S.B. 346 is that I do not think it will accomplish what it intends. Under existing law, if a second deed of trust is wiped out because the first has foreclosed, the second can sue, and it does not come under this antideficiency statute. While the sponsors seem to think it will apply to all deeds of trust, in my opinion it only applies to those deeds of trust that actually go through the foreclosure process and then go to the trustee's sale. Section 1, subsection 1 of the bill talks about the beneficiary of the deed of trust after the date of the foreclosure sale. That refers to the deed of trust being foreclosed. It does not apply to the second. Under existing law, when the first forecloses and the second is sold out, the security of the second is wiped out because of the foreclosure and the holder of the second can sue directly on the note.

I have had a lot of clients ask me what they should do when they are upside down in their mortgage. Should they go through a short sale? Should they go to foreclosure? The people who come to me generally have some money, so they might be at risk for a deficiency action. Typically, my advice has been to go to foreclosure. If you do a short sale, you have to give the lender all of your current financial information, so they know whether you have assets or not and whether it will be worthwhile for them to go after you. I tell them to let it go to foreclosure, come under the protection of the antideficiency statute, and then wait to see if a lawsuit will be filed.

I went through the Washoe County court filings, and I was unable to find any action filed in the last four or five years that appeared to be a deficiency judgment. I suspect the reason is that the lender, having gone through foreclosure, realizes that the borrower does not have any money. Why spend the money to file another lawsuit to go after the deficiency if all you are going to get is a piece of paper? That is why it would be helpful to expand this antideficiency statute to include junior mortgages. This is what happens in California. Under the California law, you cannot get a deficiency on any purchase money mortgage, whether it is a first or a second. Under this law, I do not think it would affect the second.

My biggest concern with this bill is the retroactive application. In my opinion, it is unconstitutional and violates the provisions of Article 1, section 15 of the

Nevada Constitution. When lenders made those loans, they looked at them in the context of existing law. If you take away a lender's right to sue on a deficiency, you have impaired their contract. Mr. Wilkinson mentioned the bankruptcy laws. Those laws have been in place for some time. They are federal laws, and when lenders make loans, they go in knowing the bankruptcy laws exist and the debt could be wiped out. But they did not know that they could be prevented from suing to get the deficiency if they felt it was economically feasible.

CHAIR WIENER:

I will close the hearing on S.B. 346 and open the hearing on S.B. 381.

SENATE BILL 381: Revises provisions regarding who may issue a marriage license. (BDR 11-227)

SENATOR MARK A. MANENDO (Clark County Senatorial District No. 7):

We hear a lot about public-private partnerships. We talk about how important it is for businesses working together with government. Sometimes, government just does not get it right. Not only do we have citizens who come before our body and ask for help, we have two people who come before us for assistance in their industry. We have an amendment we will be working from ([Exhibit H](#)). We will be speaking about the proposed amendment rather than the original bill.

CHAIR WIENER:

Is this your amendment?

SENATOR MANENDO:

Yes. I will ask the experts to walk you through the amendment.

GEORGE FLINT (Reno Wedding Chapel Alliance):

You have heard the arguments that have been bandied about both for and against the concept of privatization of marriage license sales in the State for years. Those arguments came before you first in 2001 and then again in 2009. In both of those Sessions, the bill passed unanimously out of the Senate Committee on Judiciary and the full Senate. Last Session, there was a lot of debate and many attempts to put the bill away. Regardless, we went to ex-Senator Maurice Washington and took out the portion related to the chapels having the ability to issue licenses, and you passed that bill unanimously.

We are back again, and our opposition is as tenacious as we are. Next Session, I will be entering my ninth decade of life, and I do not know how many more times I can keep doing this, but I will keep trying until we prevail.

For the last hour, I have been listening to testimony on another bill that keeps reminding me that we are in trouble financially. The wedding industry is hurting. I remember when there were six wedding chapels in Carson City; today there are none. I remember when there were three wedding chapels in Douglas County; today there are none. Seven have closed in the Reno area in the last three years, including the Heart of Reno Chapel, which was opened by Dawn Gibbons and had been in business since 1968.

In approximately 40 days, we will begin our fiftieth year in the business, and I do not know if we will last the whole year unless we get help. Last year, A.B. No. 2 of the 26th Special Session gave the county commission the right to change the hours of the offices of county clerks from their usual shift of 8 a.m. to midnight in Washoe and Clark Counties. Clark County is still selling a lot of marriage licenses, approximately 95,000 last year in 95 chapels. In Reno last year, we had the smallest issuance since 1938: less than 10,000. In January and February, we are down another 15 percent.

When the change in hours kicked in last June, we were immediately confronted with the fact that we are losing weddings faster than we can count them. It hit us awfully hard when the Washoe County Commission decided to close on Christmas Day, although they later recanted and opened for four hours. They closed on Thanksgiving Day; I had three weddings scheduled for that day. All three couples decided to get married in Las Vegas instead. The offices now close at 8 p.m. Monday through Thursday. The other day, we had two couples walk in at 8:35 p.m. who could not get a license. One came back the next day; the other did not.

We need your support and help. We have attempted to work with the County, but they will not even meet with us any longer on the issue.

MARGARET FLINT (Reno Wedding Chapel Alliance):

Our proposed amendment would require the county commissioners in counties with a population under 400,000 to either ensure an office where marriage licenses can be issued is open to the public from 8 a.m. to midnight or to provide for the establishment of a program whereby a commercial wedding

chapel that has been in business in the county for five years or more is authorized to issue marriage licenses to qualified applicants.

Section 1, subsections 1, 2 and 3 of [Exhibit H](#) prohibit the county commissioner from limiting the number of wedding licenses we may issue. They cannot tell us we can only issue two licenses a night. This would only occur in the event the Marriage License Bureau is not open.

Section 1, subsection 6 of [Exhibit H](#) was inserted because when the previous bill was presented in 2009, one of the concerns of the county clerks was that they did not want to have to worry about dealing with licenses from other counties which were issued through agents. In the proposed amendment, licenses may only be issued through chapels. This would make it easier on the counties. If we issued a license to a couple at our chapel, they would have to be married in Washoe County. This amendment does not pertain to Clark County officials. However, if we can show them that it works, in a few years they might consider it.

I have a packet of information which includes my written testimony and a number of letters and other material supporting our amendment of this bill ([Exhibit I](#)).

Pages 4 through 7 of [Exhibit I](#) are letters that go back to the 2009 Session, when the County Clerk in Washoe County originally was willing to work with us on this issue. The Clerk's Office was able to find areas where it did not have to cut its budget and would be able to maintain the statutory hours.

Page 8 of [Exhibit I](#) shows what the hours of the Marriage License Bureau are now. The area where it hurt us was 8 a.m. to 8 p.m. Monday through Thursday. That seems reasonable, but at this time of year we do get a few requests after 8 p.m. The problem is that the office started this on June 28 at the beginning of our tourist season, when it is still daylight outside at 8 p.m. We do get people arriving in Reno at night who walk into the chapel expecting to get married, and those hours did complicate things for us.

We had to go back to the County Commission over dates like 10/10/10 and 1/1/11. When dates like that fall on a weekend, they are extremely lucrative for us. We have had to go back to the County Commission and ask for extended hours on those dates. The Commissioners are not always amenable to us; they

do not like to deal with us. In fact, at some point, one of the commissioners said, "I am really tired of hearing this. I wish you could work something out."

Pages 9 and 10 of [Exhibit I](#) provide a flyer from the Chapel of the Bells, Lake Tahoe, with whom we are not affiliated. The Chapel of the Bells in Lake Tahoe is on the California side. At the Chapel of the Bells in Lake Tahoe, you can purchase a California marriage license 24 hours a day as long as you meet the requirements set forth on pages 9 and 10. The California chapels are begging for this bill to die because they profit from the closure of Nevada's chapels. They are posting signs on their doors that say, "Call this number 24 hours a day, and we will take care of you."

Pages 11 through 13 of [Exhibit I](#) show the decline in the industry in Washoe County since 1938.

Pages 14 through 20 of [Exhibit I](#) contain information about hunting and fishing licenses. The big opposition we keep hearing is the safety and security of the personal information—social security number, driver's license number and so on. However, you can go to the Department of Wildlife's Website and print out an application for a fishing license or hunting license that requires a social security number. I have included a list of every location in this State where you can purchase a hunting or fishing license. We are giving this personal information to Wal-Mart clerks right now.

Pages 21 and 22 of [Exhibit I](#) are from a study done by the Reno-Sparks Convention and Visitors Authority that shows up to 11 percent of our tourist base is for anniversary and wedding events. The per capita spending is in the area of \$1,000. We have crunched numbers and estimate that each tourist wedding includes approximately ten people. Seventy-five percent of that license issuance is for tourist weddings. These tourist weddings bring in approximately \$60 million annually. If tourists cannot get married in Reno, they are going to go to Lake Tahoe.

This is not personal. This is business. This is about tourism, our economy and jobs, the No. 1 things we need to be looking at right now. We have brought you a solution. We have come to the table with a solution we are willing to work with, but we cannot get the opposition to sit down at the table with us. If they have a better idea on how to do this without putting us out of business, we

welcome it. We want to work this out because we do not want to be out of business.

SENATOR MANENDO:

In my nine sessions at the Legislature, I do not recall too many times when the sponsor of a bill has reached out to the other side, and the other side has said, "No, I'm not interested in sitting down and talking with you." That is wrong. We need to move forward. There are times, as I mentioned in my earlier testimony, that businesses need an avenue to be heard. When government is not going to work with businesses to help our economy, they come here and ask for help. We have presented a good product, and we ask you to amend and do pass S.B. 381.

SENATOR COPENING:

Section 1, subsection 4 of your amendment mentions a misdemeanor provision, stating any violation is a misdemeanor. What if fees were collected and not remitted? That is a larger crime than a misdemeanor.

MS. FLINT:

We will be taking out a \$50,000 performance bond, which will cover that. However, if you are more comfortable with language that is more strict on that area, we would be open to that.

SENATOR COPENING:

Not necessarily. I had overlooked the bond, and that does provide for the provisions.

SENATOR MCGINNESS:

Section 1, subsection 1 applies this to counties with a population less than 400,000. Is Washoe County getting close to that?

MR. FLINT:

Advisors from the Legislative Counsel Bureau told us that every statute referring to counties under 400,000 in the NRS will be raised to 600,000 to 700,000 when the census information is released to keep Washoe County out of statutes intended to affect Clark County alone.

CHAIR WIENER:

Is that done every ten years after we have new census data?

MR. WILKINSON:
Yes.

CHAIR WIENER:
How did you arrive at the amount of \$50,000 for a performance bond?

MR. FLINT:
We reached that figure in consultation with Senator Manendo and Brenda Erdoes, Legislative Counsel. It would be possible to raise it higher. Currently, we are dealing with Lloyd's through State Farm Insurance to work the specificity for that.

One of the things I have dealt with for the ten years since we began this is the feeling permeates that we cannot be honest, that we are going to cheat, that we are somehow going to cut corners. I have been in business a long time, and there are no complaints against the Reno Wedding Chapels. If we were to have this blessing from you, we would consider it a sacred trust, knowing if we did not treat it fairly we could lose our business license, our permit to perform marriages. The law states if we are convicted of any type of moral turpitude, it can be taken away from us. There are two areas in the law that protect you: one is a misdemeanor, and the other alludes to an additional \$1,000 fine and a jail sentence. We are not going to break the rules.

We would like you to sunset this bill on June 30, 2013, so we can come back next Session and prove to you that it worked. I have had two letters from people in Las Vegas who are also interested in this concept, but they are waiting to see if it works in Washoe County. We have to try this; we know it will work, and we would like to prove it to you. It would not be something you would have to take away from us because it would die on June 30, 2013, in any case.

KATHLEEN MARINO (Arch of Reno Wedding Chapel):
I am in support of this bill. I have written testimony explaining my background ([Exhibit J](#)). Our industry is 100 percent reliant on the availability of marriage licenses. If the Marriage License Bureau is not open, we are not open. There is not another industry with a similar situation. This bill affects Washoe County and possibly Elko. It does not make sense for other county clerks to oppose this bill because it does not affect them. Hawaii has licensing agents. I spoke with some supervisors there, and they state it works wonderfully. The marriage

licensing agents have deposit slips; they deposit any fees the next day, and they have never had any problems. The clerks can cut off the agents immediately if they see any problems. It sounds like South Lake Tahoe is doing this, and even Winnemucca is issuing marriage licenses out of a flower shop.

I see deeper cuts coming. It is important we pass this bill to keep our industry viable. Our capability has come under question. I have been around wedding chapels all my life. I went to church at the Heart of Reno for many years; my mother, my grandmother and myself worked there. We are all credible people. You are more than welcome to talk to us about our history. We can do a good job, and we have good people working for us.

REVEREND RONALD FISK (Agape Love Chapel and Flowers):

I am in full support of this bill and would like to see it pass. I am a graduate of the Southern Baptist Theological Seminary in Louisville, Kentucky. I take great offense when someone questions my ability to issue a marriage license or implies that I am going to cheat them. I am a minister and have been one for several years. My family has been caught up in the economic struggle just like everyone else. I have the newest wedding chapel in town, and I am on the verge of closing because my income has dropped 50 percent over the last two years for two reasons. First, the economy has gotten bad. Second, the County has made it next to impossible to obtain a marriage license. It is easier to get a license in California than in Nevada. That is why people used to come to Reno to get married: it was easier to get married here.

JIM PIERCE (Assistant County Clerk, Clark County Clerk's Office):

We oppose S.B. 381. I have a letter from Diana Alba, Clark County Clerk, expressing her strong opposition to the bill ([Exhibit K](#)).

This bill was presented as not having a fiscal impact. It will have a fiscal impact if we have to implement a program, screen and train applicants and oversee the marriage licensing agents.

More important, the conflict of interest is an issue with us. We see ourselves as representatives of the State, making sure vital records are collected and maintained properly. We look at identification, make sure the people are who they say they are and gather that information required for the application.

It is not a matter of trust as much as it is a matter of making sure we have the proper checks and balances. It would be easy for us to say go ahead, we trust you. But the reality is if I am trying to sell a service, when customers walk in without the proper identification, it will be very hard for me to turn them away. From a standpoint of checkpoints, that is the major concern we have.

Keep in mind the importance of the integrity of vital records. Maybe years down the road, a couple will require their marriage certificate, and in researching it they will find out there is something wrong. From our standpoint, it is important we obtain the correct information and make sure things are executed properly as best we can. That way, when they need that information, we will have it, and it will meet all the legal requirements of the international marriage code.

MICHAEL FOLEY (Clark County District Attorney's Office):

We have not seen the amendment, but as I understood the oral presentation, this would not apply in Clark County.

I will give you just one quick perspective from my side. When someone comes to the counter to get a marriage license at the County Clerk's Office, if there is something that seems wrong, clerks will ask their supervisors; if it is something new they have not handled before, they will ask the County Clerk, and the County Clerk will call me. I get a call from them approximately once a week on average for some legal issue. We get some odd situations. For example, two weeks ago a 40-year-old man came to the Marriage License Office with a 16-year-old girl. When you are under 18 years old, you must have the consent of your parent or guardian to get married. The man was the girl's legal guardian, and he wanted to give his consent for her to marry him. Under NRS 122, it says only that any parent or guardian can give consent. However, since I also handle the Public Guardian's office, I know something about guardianship laws. I was able to tell him that there was a conflict of interest in this case and he could not give his consent.

We have over 100 wedding chapels in Clark County, and odd situations like this come up all the time. We have one office that handles these issues, and thus we have a countywide policy that is uniform. Sometimes these issues are important, especially for the couple. A friend of my parents lost her social security benefits when the husband she was married to for 40 years found out she had had a defective divorce from her previous husband. These matters can affect people 40 years later.

In the case of the 40-year-old man and the 16-year-old girl, maybe the first wedding chapel would tell him no. But with over 100 wedding chapels, he can just keep trying chapels until he finds one that will accommodate him.

SENATOR BREEDEN:

If this bill moves forward, would you not recommend adhering to some type of training, just as for any employee hired by a clerk's office?

MR. FOLEY:

Yes. The original bill specified some sort of training. With over 100 wedding chapels and over 1,000 ministers licensed to perform marriages in Clark County, we would have to create quite a few positions at the county to provide effective training.

SENATOR BREEDEN:

As I understand, the amendment states the measure will not apply to Clark County.

MR. FOLEY:

I heard that stated, yes. I have not seen the amendment.

NANCY PARENT (Chief Deputy Clerk, Washoe County Clerk's Office):

We agree with Mr. Pierce's concerns regarding identification and the permanent record.

We recognize that fewer marriage licenses are being issued and the wedding chapel industry is down. When we changed our hours pursuant to A.B. No. 2 of the 26th Special Session, we did it based on statistics, and we stayed open the hours we knew we would be busy. In 2010, with six months of reduced hours, marriage licenses dropped another 6.7 percent; however, they were down 12 percent in 2009, 13 percent in 2008 and 8 percent in 2007. Our hours did not affect the number, which would have gone down regardless of what we do.

The Board was accommodating to the needs of the chapels, giving them additional hours. We worked with them to make sure we would be there for them on the big days when we knew they would be busy.

As to the amendment, I have concerns how we would define what a commercial wedding chapel is and how we would verify that it has been in

business for five years. There is a concern about whether this excludes the chapels in the casinos. Does it exclude new industry from coming in? If we are going to go here, maybe we should think of these things. If chapels were to issue the licenses, this amendment does not provide for a person to be trained. If we did this, we would want to restrict the types of licenses the chapels could issue because of the legal concerns they mentioned about minors. There is a provision in statute for a single-signature license that the clerk can do based on certain circumstances. In fact, if the clerk does not, the couple can go to the district court. It would not be wise for chapels and untrained people to issue a single-signature license. We have not even done one in a couple of years. If somebody is sick and in the hospital, we send a clerk to them and have both of them sign. I would submit we would need to tailor that back.

Also, for the minors and guardians, they should be limited and that should come to our office so we can make sure and protect the minors.

Section 1, subsection 3 of the amendment says the clerks would provide the program and whatever is necessary without charge to the chapel. We cannot do that. I do not know if it would happen by way of a computer program or if special forms would be printed and given or sold to the chapels, but the County is not in a position to absorb that cost. We would need to make arrangements for the chapel that wants to go into this business to pay the actual cost of setting them up.

There is nothing in this bill that would limit the chapel industry from charging additional fees for the license. We should set that so the fee would be \$60 regardless of where you get your license.

With regard to the provision saying the chapels would be guilty of a misdemeanor if they violated any provisions of the statute, that puts us into the position of criminal prosecution. At the same time, it does not give us a way to revoke the permission in the meantime. We need provisions if we have concerns for a review process or revocation process that would be needed.

Lastly, the effective date of July 1 would be difficult for Washoe County to accomplish at this point.

ALAN H. GLOVER (Former Senator, Carson City Clerk-Recorder):

I cannot add much more than Washoe and Clark Counties but would strongly emphasize we as the county clerks feel our offices are the proper place to buy a marriage license. This is an important document. It involves the legal rights of not only the married couple but also their children and their estates. As was pointed out earlier, these documents contain a great deal of personal information, including social security numbers, mothers' maiden names, places of birth, dates of birth and mailing addresses. We have spent millions of dollars in this State on protecting identity theft. This bill puts a large hole in that.

The personal information on hunting licenses was raised earlier. If you have a hunting license, you should pull it out and look at it, because I was surprised when I got mine last year. It now requires only the last four numbers of your social security number for exactly this reason: we did not want people in Wal-Mart having that kind of information.

County clerk offices are permanent; chapels come and go. You heard testimony today that some of the people testifying may not even be in business in two years. However, we have to live with these records for generations to come. Back in the 1960s in Carson City, we used to give the chapels blank forms to fill out. We are now living with the problem that we cannot read these forms.

I would also like to point out that the amendment applies to all of the small counties. In section 1, subsection 1, it states that either we have to stay open from 8 a.m. to midnight every day or we have to allow a commercial wedding chapel to issue licenses. Most of the small counties do not have chapels, so there is no point in the county clerk in Goldfield staying open until midnight every night. We have changed our hours quite a bit over the years simply because we did not have any business.

I have been around the business for 25 years, about the time my good friend George Flint has been at this business. I am convinced that no matter what you do, it is not going to return Nevada to the golden years for the chapel business. It is an industry that is in deep trouble for many reasons: people are not getting married anymore, they are not coming to Nevada and other states do not have blood tests or waiting periods anymore. I am not sure there is much we can do by passing legislation. By doing that, we damage the credibility of our documents for years to come.

SENATOR GUSTAVSON:

Do you know of any serious problems that have happened in other jurisdictions where they allow this?

SENATOR GLOVER:

California issues a different type of license. Those are confidential marriages, and you cannot get a copy of the license without a court order. They have been around for 130 years. When we had ten chapels in Carson City, we did have problems with some of the people who ran them. They defrauded people who came in to get married; they did not have the marriages properly witnessed; they got excess funds out of couples in a variety of ways. There was a lot of litigation over the years. George and Margaret Flint have run a successful business for a long time, and I truly believe they would do the right thing. But that does not mean that all of the other people who want to enter into this business have good motives or are as dedicated to this industry as they are.

SENATOR BREEDEN:

"Perhaps there could be a period, if a new owner comes in and establishes a new chapel business, that they are in business for three to five years."

CHAIR WIENER:

Is that an amendment you would like to offer?

SENATOR BREEDEN:

Yes.

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CHAIR WIENER:

Please work with our counsel to draft that.

I will close the hearing on S.B. 381. Is there any public comment or any further business to come before the Committee? Hearing none, I am adjourning this meeting at 10:59 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 257	C	Senator Valerie Wiener	Document titled "Stremmel Building & LuLou's Graffiti"
S.B. 257	D	Senator Valerie Wiener	E-mail from Andrea Napoli and Don Morehouse
S.B. 257	E	Orrin Johnson	Letter and proposed amendment to S.B. 257
S.B. 346	F	Assemblyman Tick Segerblom	Presentation introducing S.B. 346
S.B. 346	G	David J. Guinan	Letter regarding S.B. 346
S.B. 381	H	Margaret Flint	Proposed amendment to S.B. 381
S.B. 381	I	George Flint	Document titled "The Present Dilemma Facing Northern Nevada Chapels"
S.B. 381	J	Kathy Marino	Notes for testimony supporting S.B. 381
S.B. 381	K	Diana Alba	Letter from Clark County Clerk opposing S.B. 381