MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
April 4, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:02 a.m. on Monday, April 4, 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 David R. Parks, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

The Honorable Michael L. Douglas, Chief Justice, Nevada Supreme Court
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts
Tonja Brown
Connie S. Bisbee, Chairman, State Board of Parole Commissioners, Department of Public Safety

David Smith, Parole Hearings Examiner II, State Board of Parole Commissioners, Department of Public Safety
Ben Graham, Administrative Office of the Courts
Tony DeCrona, Lieutenant, Division of Parole and Probation, Department of Public Safety
Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Laurel Stadler, Northern Nevada DUI Task Force
Rex Reed, Ph.D., Administrator, Offender Management Division, Department of Corrections
Rene Reid
Michael Joe, Legal Aid Center of Southern Nevada
Bill Uffelman, President and CEO, Nevada Bankers Association

CHAIR WIENER:
I will open the hearing on Senate Joint Resolution (S.J.R.) 14.

SENATE JOINT RESOLUTION 14: Proposes to amend the Nevada Constitution to create an intermediate appellate court. (BDR C-1013)

THE HONORABLE MICHAEL L. DOUGLAS (Chief Justice, Nevada Supreme Court):
I have two handouts: an S.J.R. 14 fact sheet (Exhibit C) and a presentation (Exhibit D).

This measure would amend the *Constitution of the State of Nevada* to add an appellate court between our district court and the Nevada Supreme Court. This would reduce the Supreme Court's time to reach disposition and allow it to focus on matters of first impression, constitutional matters and death penalty cases. We are proposing that the appellate court handle what we term routine cases to allow the Supreme Court to focus on death penalty cases and cases with wide significance for the State, such as utility rate cases.

As you can see on page 3 of Exhibit D, the number of cases filed and disposed has been climbing steadily since 2006, though the number of published opinions has been dropping during that same period. This is because we have been trying to get cases resolved. When people come before us, they would like a speedy resolution, and they do not care whether we write an opinion or not. However, the business community would like to see more written dispositions. They would like to understand the predictability of the law in Nevada. Having an

appellate court would give us more time to weigh the cases and to write opinions.

Page 4 of Exhibit D gives a comparison of Nevada to other states in the region and elsewhere, some of which have appellate courts and some do not.

Page 5 of Exhibit D is the business plan for the court of appeals. It would have three new judges and staff using existing facilities at the Regional Justice Center in Las Vegas, so there would be no construction cost. The cost for implementation was estimated at $1.6 million in 2007. However, the earliest any cost would be incurred for this would be 2016, and the cost would have to be recalculated at that point.

For those who would like more details, there is a white paper online at <http://www.nevadajudiciary.us/index.php/courtofappeals>.

This is not a process that happens immediately. If S.J.R. 14 passes, it will return to the Legislature in 2013. If it passes at that time, it will go to the ballot in 2014. If it is approved by the people, it will come back to the Legislature for the necessary appropriations in 2015.

This same concept was on the ballot in 2010, and voters chose not to approve it. We have brought it back to you this Session because we hear from the business community that they would like to see the Supreme Court give more attention to business cases, have swifter resolution and produce more written opinions. This matter did pass in Clark County and did better in Washoe County than before.

CHAIR WIENER:
You imply that having more written opinions would encourage businesses to set up their headquarters in Nevada. Of the opinions you did not write last year, how many were business-related?

CHIEF JUSTICE DOUGLAS:
That is hard to say. However, with the business court still in its infancy, we are getting more matters coming to us that are business-related. Since the business court is a trial court, it comes down to the Supreme Court to do the writing on those matters. For the business community, the value of written opinions is that it gives them a road map and provides some predictability of how the law is

going to be enforced in Nevada. For the Legislature, written opinions mean that if we interpret a law differently than you intended, you can look at our opinion and make the appropriate changes.

SENATOR ROBERSON:
I agree that there is a real need for an appellate court in Nevada. How close was the vote on this issue in 2010?

JOHN R. MCCORMICK (Rural Courts Coordinator, Administrative Office of the Courts):
I do not have that information with me. I will send the Committee a breakdown of the vote totals. It was about four percentage points between the two sides.

CHAIR WIENER:
On page 4 of the measure, lines 4 through 6 state, "The terms of the court of appeals must be held at the place provided by law." Does this refer to a geographic location?

CHIEF JUSTICE DOUGLAS:
It was not intended to refer to a geographic location. The initial intention is to start with a three-justice panel to be housed in Las Vegas because we have the facility there. The panel would rotate between Las Vegas and Carson City. We proposed that the judges would sit for two years initially and thereafter a normal period of time. This would mean they would be in line with all the other judges in the State and there would be no gap in terms of pay.

CHAIR WIENER:
Should we specify the geographic location in statute?

CHIEF JUSTICE DOUGLAS:
We would prefer not. They would more than likely wind up in the place of the Supreme Court, which would be Carson City.

TONJA BROWN:
I have a concern about how this would affect the time frame on inmates' appeals. Inmate appeals normally take three to five years, though it is much quicker if you have an attorney. We have heard a lot about business interests, but how is this going to affect inmates?

CHIEF JUSTICE DOUGLAS:
The Supreme Court would still hear all death penalty matters. Standard appeals where the law is settled would be handled by the court of appeals. We hope that for those inmates bringing appeals where the law is certain, their time to disposition would improve. Giving us additional hands will hopefully speed up the overall resolution of cases. We are mindful that anyone whose liberty is at stake deserves speedy justice.

LINDA J. EISSMANN (Policy Analyst):
I have the results of the ballot in November 2010. It was State Question No. 2 regarding the establishment of the intermediate appellate court. The yes votes were 46.82 percent, and the no votes were 53.18 percent.

CHAIR WIENER:
I will close the hearing on S.J.R. 14 and open the hearing on S.B. 265.

SENATE BILL 265: Revises provisions governing sentencing of criminal offenders and determining eligibility of prisoners for parole. (BDR 14-311)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):
This bill arose from discussion of issues dealing with corrections, parole and probation on the Advisory Commission on the Administration of Justice. I get many calls and complaints from constituents who were victims of crime that the perpetrators are given parole hearings soon after entering incarceration. I also get considerable correspondence from inmates complaining that their time is not being figured properly and they are being kept in prison longer than they should be. Last Session, we amended A.B. No. 474 of the 75th Session to look at aggregating sentences. This bill is along similar lines but carries it further.

CONNIE S. BISBEE (Chairman, State Board of Parole Commissioners, Department of Public Safety):
I have a detailed explanation of the need and function of S.B. 265 (Exhibit E).

As Senator Parks said, this is the second stage of a two-stage process. In 2009, you approved the aggregation of life sentences. Almost immediately after it became law, I called a victim to let her know that the parole hearing she thought was going to be in three days had been cancelled. She burst into tears and thanked the Legislature for having changed the law. She said it would be

much easier for her to deal with it 20 years down the road than it was at this 10-year period, and she was both relieved and very appreciative of the change.

We have two suggested amendments to S.B. 265. The first (Exhibit F) makes a change to section 9 to allow inmates to opt in to aggregated sentencing, if the timing of the judgments of conviction causes the sentences to not be aggregated by the court.

The second amendment (Exhibit G) adds a new subsection 3 and a new subsection 7 to *Nevada Revised Statute* (NRS) 213.1215. This is A.B. No. 474 of the 75th Session. At the hearings on that bill in 2009, Senator Wiener asked about a particular scenario that has now in fact occurred. We have a sex offender who was sentenced for two sexual offenses, one carrying a life sentence and one carrying a determinate sentence. We had to mandatorily parole him from the life sentence to the determinate sentence. The Psychological Review Panel has determined that he is at a high risk to reoffend sexually. But because of the way A.B. No. 474 of the 75th Session was written, we do not have any choice. All we can do is deny parole on the determinate sentence, and when he is through with that he goes out on the life sentence. The new subsection 3 we propose would change that so that if a prisoner is determined to be a high risk to reoffend sexually, we could have a rehearing.

The new subsection 7 covers an unintended consequence we did not consider in 2009. Because this is under the mandatory law, if an offender goes out on parole, commits another felony at any time in his or her life and returns to prison, we must revoke that first parole. Under the mandatory statutes, the offender is no longer eligible for parole on that sentence. In that case, that person, having been mandatorily paroled on a life sentence, comes back to prison under a sentence of life without the possibility of parole, even if the final felony was a minor one.

CHAIR WIENER:
You spoke of inmates opting in to this program. What would be a situation in which an inmate would choose not to opt in?

MS. BISBEE:
I cannot think of a scenario in which someone would find it detrimental to opt in. However, since the program would not be retroactive, we would make this an opportunity for those inmates.

CHAIR WIENER:
There is also a mention of an additional felony, in section 1, subsection 3 of S.B. 265. Does this refer to someone who commits a felony while in prison for a felony?

DAVID SMITH (Parole Hearings Examiner II, State Board of Parole Commissioners, Department of Public Safety):
That section refers to a situation in which a person who is out on parole commits a new felony, but I believe it would be the same scenario if the person commits a new felony while in prison. We could not figure out a way to make it so offenders could aggregate new terms if they were already out on parole, and so we left it as consecutive terms.

CHAIR WIENER:
Could you explain section 9, subsection 3, paragraph (b)?

MS. BISBEE:
This is language from A.B. No. 474 of the 75th Session. If a prisoner has been considered on one sentence and has not earned a parole, this prevents him or her from being able to aggregate them all. We would not consider cases on which there has already been action; we would only consider cases that have not had any action.

SENATOR ROBERSON:
My primary concern is that at a high level, it appears to me that this bill would have offenders spending less time in prison than they otherwise would. That is not generally a good thing. Having said that, can you tell me what other states have moved to an aggregated sentencing model?

MS. BISBEE:
I do not know, but we can find that information for you.

SENATOR ROBERSON:
With regard to your amendment in Exhibit G, I understand the change in subsection 7. Could you explain what problem is being addressed by the change in subsection 3?

MS. BISBEE:
As the law stands, if a prisoner has consecutive sentences for sex offenses, we can only request a psychiatric panel determine risk to reoffend on the last sentence. Under A.B. No. 474 of the 75th Session, if a prisoner is serving a life sentence for a crime committed under the age of 16, we must mandatorily parole him or her, regardless of the circumstance, at the minimum eligibility into the next sentence.

The case that made us realize we had a problem concerns a gentleman with a sentence of ten years to life for a sexual assault committed under the age of 16. He also has a consecutive determinate sentence with a sentence of two to ten years. At ten years, we were required to mandatorily parole him from the life sentence to the determinate sentence. He is now eligible for parole on the lesser charge. The psychiatric panel has seen him and determined that he is at high risk to reoffend sexually. Because of mandatory credits off the end of his sentence, his case will expire in five years, and the board has to release him. He has to be released into the community from his life sentence for sexual assault, even though we know he is at a high risk to reoffend sexually and is a danger to the community. That is an unintended consequence of A.B. No. 474 of the 75th Session.

SENATOR PARKS:
Regarding Senator Roberson's question about other states that aggregate, the Commission heard testimony regarding a large number of states that aggregate sentences to avoid the continual litany of parole hearings.

I would also like to point out that this bill has financial ramifications. Down the road, it could substantially reduce the costs of incarceration.

SENATOR ROBERSON:
Does the Office of the Attorney General have an opinion on this bill?

CHAIR WIENER:
The bill was presented on behalf of the Advisory Commission, and the Attorney General is a member of the Commission.

SENATOR ROBERSON:
I understand that, but I want to know if the Office has an official position on this legislation.

SENATOR PARKS:
I do not believe we have that.

BEN GRAHAM (Administrative Office of the Courts):
We support the concepts in this bill.

TONY DECRONA (Lieutenant, Division of Parole and Probation, Department of Public Safety):
The Division of Parole and Probation is neutral on S.B. 265.

We would like to get some clarification as it relates to NRS 176.033. In that statute, if a parolee wishes to be released from parole supervision early, the Division has to consent. The offender must serve at least one-half of the parole term on the street. If the Division consents, the State Board of Parole Commissioners requests a modification from the court as to the sentence, and the court can lower that maximum term, but it cannot lower it less than the minimum term.

As noted, it is common that we make recommendations of an early discharge from supervision for probationers. However, that is based upon the probationer's supervision history and how he or she has done. Most typically, the court agrees with the recommendation for an early discharge. As to early parole discharges, I have been with the Division for over 20 years now, and I am aware of one person who has been discharged early on parole. On occasion, we get requests for early discharges from people convicted of murder, we look at those cases before any action is taken.

As to any fiscal note, the Division's staffing is based on a caseload projections. At this point, we do not have enough information to determine if there will be a fiscal impact on this bill.

CHAIR WIENER:
With regard to that one early discharge, how would that be impacted if the supervisory time were longer?

LT. DECRONA:
The one discharge I know of was done for employment purposes. It happened before I came to the Division.

CHAIR WIENER:
If we made the supervisory period longer—less time in prison but more postprison supervisory time—would you anticipate that there may be more early discharges from parole?

BERNARD W. CURTIS (Chief, Division of Parole and Probation, Department of Public Safety):
There would be an upside and a downside. It would probably cost the Division more. We might consider using it as a tool, but we have not done it a lot.

CHAIR WIENER:
I suppose it is one of those hypotheticals we cannot guess at.

LAUREL STADLER (Northern Nevada DUI Task Force):
I am opposed to this bill. I attended the meeting of the Advisory Commission in which this issue was discussed, and there were members of the Commission who had concerns about the aggregation of sentences. I do not want to speak for those members, so I will simply refer the Committee to the minutes of that meeting.

I am skeptical that an offender who has not behaved well enough to get early parole in the first hearing would make those changes for a parole that will be coming 16 years down the road. Criminals by definition want immediate rewards. I do not think they will behave better earlier because their parole hearing is further down the line. It does not make a lot of sense. If the carrot is there early on, they may change their behavior more quickly to get the first parole on the first sentence, and then continue a better behavior knowing that they have to be accountable for their behavior every four years than rather at the end of a 16-year window.

What about the concept of aggregating parole years? Parole could be tacked on to the end of the whole sentence, rather than having the in-prison parole capability.

CHAIR WIENER:
Ms. Bisbee, did you consider the idea of extending parole on the other end?

MS. BISBEE:
In essence, parole is aggregated by this bill. You have one sentence at the end and one sentence at the beginning, so we are aggregating the paroles of all those sentences.

MS. BROWN:
I am opposed to this bill. I have written testimony explaining my concerns and suggesting amendments (Exhibit H).

REX REED, PH.D. (Administrator, Offender Management Division, Department of Corrections):
The Department of Corrections is neutral on S.B. 265 in its overall intent. However, we do have some concerns about one item in the bill that was not in the first two drafts of the bill we were shown. Section 9, subsection 3 states that inmates:

> ... may submit a request to the Director of the Department of Corrections to determine the effect of aggregating the sentences. After the Director informs the prisoner of the effect of aggregating the sentences, including, without limitation, any effect on the amount of credits that may be earned to reduce the minimum and maximum terms of imprisonment and when the prisoner may be eligible for parole ...

This requires the DOC to help inmates determine what happens if they aggregate their sentences. That puts us in the role of advising inmates, and we prefer to stay away from that if we can because it opens us and the State up to civil suits later on. If we tell an inmate what we think could be the consequences and that is not what happens, we could wind up in court having to explain what transpired. If, for example, the Legislature makes changes to sentencing laws in the future, it could cause our original estimates of the impact of aggregating sentences to no longer be true.

Inmates with life sentences can aggregate their sentences right now. They do not seem to have a problem deciding whether to have their sentences aggregated. They do that on their own or with the help of their own counsel.

To us, this is not a problem that needs a solution.

Ms. Brown recommended that the bill define the term "credit," and a lot of people are confused about this. The DOC considers that a credit is the same as a day. I mentioned this during the presentation I gave the Committee on February 23 on sentence credits. Many people with loved ones in prison do not understand the math behind the estimation of sentence dates that we provide inmates. When we make those estimates for them, the math makes the dates look like they are not moving the way inmates and their families expect, so they immediately jump to the conclusion that a credit is not a day. In fact, it is.

CHAIR WIENER:
Is it all of section 9 you are concerned about or just subsection 3?

DR. REED:
It is just subsection 3, and only the part that requires the DOC to provide inmates with the consequences of aggregating their sentences. In addition to our other concern about this requirement, it would also require staff time, which would add to the fiscal note on the bill. I have not had the time to figure out the cost, but we are stressed to the maximum right now. You have to remember how complicated this whole process is. Nevada has a lot of sentence law. We have one-quarter parole law. We have one-third law. We have truth in sentencing. We have good time credits, and now we have aggregation of life sentences. That is a tremendous number of elements to take into consideration when managing sentences.

MS. BISBEE:
We would agree to strike that language.

DR. REED:
If that language is removed, it takes care of our concerns.

CHAIR WIENER:
I will close the hearing on S.B. 265 and open the hearing on S.B. 307.

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

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
I have written testimony explaining the purpose of S.B. 307 (Exhibit I).

I have one amendment to offer to this bill. I have met with ex-Assemblywoman Barbara Buckley and Verise Campbell, Deputy Director of the Foreclosure Mediation Program (FMP), as well as with representatives of the Nevada Bankers Association, to get their input on this bill. Assemblywoman Buckley and Ms. Campbell informed me that the FMP is overwhelmed at the moment. They are concerned that if they are a part of the process of S.B. 307, they will get even more bogged down. In addition, Assemblywoman Buckley suggested banks send out a letter 30 days before they send the notice of default, and Ms. Campbell suggested the letter be sent 60 days before. This gives the lender and the homeowner the opportunity to work out the problem before it goes to mediation. The bill does not preclude them from going to mediation, but once they have tried to work it out on their own, if the homeowner is not satisfied with the process, they can request mediation at that point.

CHAIR WIENER:
Are you offering that as an amendment?

SENATOR COPENING:
Yes. It has not yet been drafted, however. I will continue to work with all parties to see if we can arrive at agreement. I met with a lobbyist from one of the banks who said the banks were not opposed to the bill, but they were concerned about the extra step. They asked that the letter be as simple as possible.

RENE REID:
I am a former Washoe County Commissioner. I am here today as a homeowner and a victim of the loan modification procedures of my bank.

I went through four loan modifications with my bank when I experienced financial difficulties in 2009. I spoke with ex-Senator Bill Raggio about my experiences, and he suggested I write a bill to cover my situation. I have a copy

of the proposal I came up with for your review (Exhibit J). If these provisions are not part of S.B. 307, I request that you consider adding them.

My first proposal is a communication requirement between the lender and the borrower. I copied the language from another state. First, when a hardship letter is submitted, the lender will acknowledge it within 10 days and respond to it within 30 days. If the decision is to decline the request, the lender must supply the name and phone number of a contact person with whom the borrower may follow up and explore ways to proceed. As things are now, there is no one to contact and no way to communicate with the bank. When I first submitted a hardship letter to my bank, I was ignored. I continued to write, phone, e-mail and fax until I got a response. I was never allowed to speak to the same person twice.

My second proposal has to do with the loan modification agreement. I entered into four separate loan modifications with my bank, one on my home and three on investment properties. The interesting thing about loan modifications is that only the borrower signs them. I do not know of any other legal agreement which only one party signs and it is still considered binding. For this reason, my second proposal was that the lender also be required to sign the loan modification.

In my case, I went through three or four months of forbearance, then entered into modification; I signed it and had it notarized. Over the next year, I made forbearance and modification payments as I had been directed. My bank reneged on the modification agreements three times. Twice they claimed there was something wrong with the agreement; once I was told my payment had not arrived in time, but later I was told that it had arrived in time but it had not been posted to the right department. I was encouraged to continue making those modified payments and reassured by whomever I spoke to, the customer service representative of the week, that it would eventually get posted and it would all be worked out. In the meantime, I started getting notices that the loan would be accelerated because I somehow did not have it all official. I was told something different by each person I spoke to, but the general line was that if I would keep making payments, it would all work out eventually. I was told by one customer rep that the modification had been issued by Department A, but Department B was measuring my payments against my original loan, not the modified loan. That meant I was falling deeper in debt with every payment.

Finally, I made it to the office of the president of my bank. A specific person was assigned to work with me, and I thought I would finally be able to resolve the problem. In the process, they raised the interest rate on the third property. Paragraph 2 of my loan modification spelled out exactly what my payments were going to be between now and the end of the loan. However, the person assigned to me by the president explained to me that paragraph 4 overrides paragraph 2, and it says the bank can change the interest rate as they choose. I fought this, and they offered to let me enter into a new modification. I proposed that we both sign the new modification so I would have some assurance that they would stick to it, and the bank personnel refused. They said, "That's not how this works. You sign it; we don't."

In all, I am now more than $40,000 deeper in debt than I would have been if I had just walked away from my properties as soon as I knew I was in trouble. But I followed the rules and paid the money I was supposed to pay. I did everything I was supposed to do, and I still received notices on two properties that the loan was being accelerated for failure to pay the appropriate amount. In two cases, I have been foreclosed; I have lost my homes. I am not here today to win my own battles because they have already been lost. But there are many thousands of Nevada homeowners who do not know how to read a legal document, who do not have the time or the skills to be as persistent as I was, and they could still be saved.

The benefit of my proposal is that it gives homeowners an opportunity to remain in their homes, and lenders cannot arbitrarily override the modification agreement.

My third proposal has to do with foreclosure proceedings. There are around 20 judicial foreclosure states. I am not proposing that Nevada become a full-fledged judicial foreclosure state. If the borrower and lender both agree that they cannot fix the situation and the borrower will lose his or her home, there is no reason to resort to the courts to resolve it. But I did not agree. I did not think it was right for the bank to foreclose when I had paid all my modification payments, and I wanted a chance to fight. I went to a real estate attorney, and he told me I could win the battle, but ultimately I would lose the war.

So my proposal is that when the borrower and lender disagree, we should become a judicial foreclosure state and let a court of law decide between them. If I had my wish, it would be on the order of small claims court where you do

not have to hire an attorney; you simply state your case, and the judge renders a decision.

My fourth proposal has to do with deficiency loss. I have lost four properties. Now I have to worry about the lender coming after me for deficiency loss. That battle is still ahead of me, and I am terrified that it will happen. My fourth proposal is that if the homeowner cooperates with the lender, it should be put into writing in the agreement that the bank will not come after the homeowner for deficiency loss. It is one more terror homeowners do not need, and I am living it right now. I so mistrust the banking industry that I do not think I will ever be free of this worry. I am told this threat will hang over me for six years. This means that if I do recover, the bank can take it away from me again.

My final proposal is about recording. I would not have had the problems I had if my loan modification had been (a) signed by both parties and (b) recorded. The original document was recorded; why should the modification not be recorded? I suggest that it be recorded in the county where the property is located. I have learned that with the advent of the Mortgage Electronic Registration Systems (MERS), the county is being deprived of any kind of recording fee. One side benefit of my proposal is that when the modification is recorded, the recording fee would go to the county.

Those are my five proposals. I ask you to seriously consider them. I have nothing to gain from this; I have lost. But we could help a lot of homeowners by not making them go through what I went through. I urge you to step forward and make a change in the law.

SENATOR COPENING:
There are some good suggestions in this. I will be in contact.

SENATOR BREEDEN:
You might want to know that I submitted a bill, S.B. 346, to restrict deficiency judgments. Those who oppose the bill have suggested that if deficiency judgments were eliminated, there would be a terrible backlash. However, there are a lot of people who understand that the banking industry is taking advantage of the hard economic times.

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

MICHAEL JOE (Legal Aid Center of Southern Nevada):
I support this bill. As an attorney with the Legal Aid Center of Southern Nevada (LACSN), I specialize in foreclosures, and I have heard stories like Ms. Reid's many times. One of the biggest problems homeowners have is communications. Lenders have addressed many of the issues, but there is still a lack of communication between homeowners and lenders.

This bill is a good complement to the FMP. We have suggested that homeowners have a chance to get a loan modification before they go to mediation. Loan modification is all about putting the documents in the hands of the lenders and having the analysis done. This bill, in conjunction with the mediation program, would accomplish that.

We are not suggesting that lenders must modify every loan, but they should give homeowners the opportunity to explore the possibility. There are many homeowners who do not deserve a loan modification. But there are a large number of people in the middle who do not get the opportunity, whether through lack of communication or a lack of understanding about what needs to be done. This bill can clarify and put into the hands of homeowners everything they need to do to modify their loans.

As to whether this is a burden on the banks, yes, it is an incremental requirement. But most deeds of trust right now require that they send a notice prior to foreclosure. As Ms. Reid noted, it is generally called an acceleration letter.

This bill is an important piece of the process, and it can work to save a lot of Nevada homeowners.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
We are opposed to this bill.

I want to note that this bill and the FMP both target owner-occupied homes rather than investment properties. Investment properties have not been the focus of Nevada's mediation program or of any of the federal or bank mediation programs.

I have handed out a document titled "Core 30 Day Letter" (Exhibit K).

We have found nationally that almost half of the people who get modifications again default within six months after the modification. Those who have gone though credit counseling or something like LACSN have a much higher success rate and are much more likely to be able to make the new modified payments.

I also need to comment that the first wave of foreclosures we saw, the one that motivated much of the legislation last session, even back into 2007, were goofy mortgages. They had a low teaser rate that got you into the home at 1 percent, and two years later it became a market rate, which was probably 7.5 percent. So homeowners who started with a small payment suddenly had their payments increased dramatically. As the recession came in 2007, those mortgages were gone. That was in part what triggered the 2007 collapse.

The defaults we are dealing with today are from homeowners whose income has been dramatically reduced. In such circumstances, the homeowners may not have the ability to make the payments of even a modified mortgage. That is where you fall into the options of the short sale or deed in lieu of foreclosure.

In Nevada, how you get to foreclosure is that when you miss a payment, you get a call from the mortgage company and a letter like Exhibit K. Before you miss a second payment, you have gotten multiple phone calls. Federal collection law limits how many times I can call you about the same debt. The collection side is highly regulated. If you miss a second payment, you get another letter much like this one. The process continues from there. If you actually take one of those calls, the process changes.

For the first 90 days after a missed payment, the lender makes multiple attempts to contact the borrower. After that, it steps up. You will now get the letter that gets you into Nevada's mediation process. I will send you a notice of default and election to sell. That notice of default includes the documents necessary for you to enter a request for mediation.

The process has changed since 2005. I know of two banks that have in excess of 35,000 people working on this process nationally. The process is constantly being refined. At the same time, lenders are changing their internal processes. One of the major national lenders has now gone to a program where borrowers who call are assigned to one staff person to handle their problems. Even so,

there will be times when that person is not available. If you call at 4:45 p.m. on Friday while the person is in the middle of a call with someone else, you are not going to get your call today.

MR. UFFELMAN:
Many of the complaints are ones we have heard since the beginning of time. They come from people dealing with a personal issue, and it can become a full-time job trying to save your house. But if you are trying to save your single largest investment, maybe it is worthy of being a full-time job, as opposed to saying, "Oh, the heck with it; I'm out of here."

Every lending institution gives borrowers a chance to work out their loan problems long before they get to the mediation process in letters like Exhibit K.

On a national basis, it takes between 18 and 24 months from the day the person first misses a payment till he or she is locked out of the house. The thing that is going to get Nevada's housing issues resolved is to clear out the backlog of foreclosed and underwater homes. I have seen figures suggesting that Las Vegas is 2 to 2.5 years away from clearing that existing inventory and the shadow inventory of potentially foreclosable homes. If we try to prolong it some more, it just keeps moving that goal further and further down the road.

Ms. Reid mentioned deficiency judgments, and we discussed this the other day with Senator Breeden's bill. The retroactive deficiency clause of that bill changes the contract between the parties. There is another amendment that applies it to junior liens going forward, and there are other bills having to do with deficiency judgments. I would presume that at some point, we will find that Nevada residential mortgages will not carry deficiency judgment language anymore. I have heard that lenders are no longer pursuing deficiency judgments on first mortgages of owner-occupied houses. Whether second mortgages are being pursued by others, I cannot say. Some are, and some are not. In many cases, it is too early to tell.

It is a mess. But as you can see in Exhibit K, we are already asking homeowners to talk to us. If they will not, whether through embarrassment, hopelessness or some other factor, we cannot do anything to help them. Once the homeowner talks to the mortgage company, then we can start to explore solutions. Are you not paying because you no longer have a job? Is it because you are underwater and you are frustrated by the process? Is it because your next-door neighbor got

a better deal than you did when he went through a mediation and you are trying to trigger that? That is how you initiate the process. If you do not, I cannot help you.

Regarding MERS, with the deed of trust you have the document that says I promise to pay you my mortgage. The deed of trust is the document that creates the security interest that backs up that promise to pay. The note itself, the promissory note, is a negotiable instrument. Just like other negotiable instruments, it can be freely traded. The underlying deed of trust does not trade in that process. It is easy to confuse them.

It was suggested that Nevada become a quasi-judicial foreclosure state. Nevada has always been a quasi-judicial foreclosure state. Think about what it would do to the caseload in our courts if we were to add to their burden. If the trigger, as Ms. Reid suggested, is lack of agreement between the borrower and the lender, you have just created an additional incentive for those who want to stay in the house for as long as possible to bog down the courts.

Finally, the sponsor of the bill suggested it was based on Maryland's law. I have talked to my Maryland counterpart. When Maryland made that law four years ago, the situation was that foreclosure proceedings could be started after the first missed payment. You could miss one payment and be out of the house by the first of the next month. Maryland went to this system because it had a different system than we do.

SENATOR BREEDEN:
Do you meet with the heads of the different banks on a monthly basis?

MR. UFFELMAN:
I have lots of e-mail correspondence with them. During the Legislative Session, I have a weekly phone call that everyone is welcome to join.

SENATOR BREEDEN:
It sounds like you have a constant dialogue. Do you feel the industry has taken every step possible that they can to help people in foreclosure?

MR. UFFELMAN:
I do not know what "every step possible" might entail, so I would say no. We can always add something more on. I know the industry has shifted dramatically from the way it was in 2007.

SENATOR BREEDEN:
I know you are on the hot seat. But with the economic downturn, so many people have been hurt. With almost 9,000 people in foreclosure just in my district, it seems the banking industry would be able to do more than just say no all the time. Instead of going an inch, you could go a mile and help to keep people in their homes.

SENATOR COPENING:
You said many calls are made before the letter goes out. Are those calls to say you are late on a payment, or are they calls that say come in, let us work on a loan modification program for you, let us help?

MR. UFFELMAN:
It is more the latter than the former. Before 2005, you would have gotten a call that said, "You're late. What are you going to do about it?" Today, the call is to say, "You're late with your mortgage. Is there an issue? Is there something we can work on? How can we remedy this? What can we do to help you with the situation? Is it a temporary pay loss or did you lose your job?"

SENATOR COPENING:
Homeowners mostly do not trust banks. We have heard of many bad outcomes. A lot can be said with the words you choose to communicate with. For example, Exhibit K is both intimidating and threatening, and you have to read to the very end to find anything that hints the bank might be willing to bend a little: "If you would like to discuss the present condition of your loan ... " tells me nothing. That is not an invitation for a loan modification. It is not a friendly letter, and that might be the reason people do not respond. They are afraid.

You said one major bank is assigning each borrower an individual representative, which is great. Homeowners would rather have one person to talk to, even if they cannot reach them on the weekends. Was that the bank that was forced to do that as a result of a settlement?

MR. UFFELMAN:
Yes. That would be one way they resolved that situation. If that system works, I suspect others will try it. You asked if bankers talked to each other. There are many conferences on this matter on a global basis. Everyone is looking at how others are handling these issues and which ones work. It is a continual process of refinement. One bank I know now has multiple mitigation centers in Clark County where you can make an appointment, bring in your documents and go through the process. This happens before you get to the FMP.

With regard to the wording of Exhibit K, much of the format of the letter is determined by federal law on debt collection. Perhaps a sentence can be added, but it always has to start off with "You've missed a payment; we need to talk." I should point out that Exhibit K is about Oregon.

CHAIR WIENER:
I am confused. If the banking industry's focus is on clearing the inventory in 2.5 years to make way for new homes, higher prices and bigger loans, I see some conflict with making every effort to keep people in their homes.

MR. UFFELMAN:
I may have been careless in my choice of words. The fastest that I can foreclose you in Nevada, in the current environment, from the day you miss your first payment through the nonjudicial foreclosure process until the house is sold on the courthouse steps, is about 210 days. That includes the 90 days you are late, the 90 days of notice, and at least two weeks, Saturdays and Sundays excluded, from the date that I first publish the notice of sale. That is about seven months. If you stop paying your mortgage in April, it will be Thanksgiving before you are out of the home and I can go in and see whether you ripped out the cabinets. The FMP has made every effort to get the mediations in during that 90-day window after my initial filing. You have 30 days to request mediation, the FMP has X number of days to schedule it and then X number of days to make it happen. If you did not get what you wanted in the mediation and decided to go to court, that extends the process indefinitely.

CHAIR WIENER:
You are explaining time lines. What I am asking about is the culture of the banking industry. You said your ultimate goal was to clear out the inventory in 2.5 years, and that means wow, we can build again, we can sell homes for higher prices, we can have better loans and a better return on our loans. With

that 2.5-year window in front of us, what is the incentive for the banking industry to do everything possible to keep people in their homes? It keeps that inventory lagging, so we cannot go into new home growth.

MR. UFFELMAN:
The fact that the banking community is working through mediation, trying to come to new terms with borrowers for a different payment or a reduced interest rate and all these other things, is a recognition that we cannot do any less. The problem is that the solution is different for every house in foreclosure. You could have a customer whose only debt is their mortgage. You could have another who has two cars and a boat in addition to the home. I have to work around income ratios. There is a whole litany of factors that personalize it.

CHAIR WIENER:
I will close the hearing on S.B. 307. Is there any public comment or any further business to come before the Committee? Hearing none, I am adjourning this meeting at 10:40 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.J.R. 14	C	Michael L. Douglas	SJR 14 Fact Sheet
S.J.R. 14	D	Michael L. Douglas	SJR 14 presentation
S.B. 265	E	Connie S. Bisbee	Presentation on S.B. 265
S.B. 265	F	Connie S. Bisbee	Amendment to S.B. 265 re: section 9
S.B. 265	G	Connie S. Bisbee	Amendment to S.B. 265 re: NRS 213.1215
S.B.265	H	Tonja Brown	Written testimony opposing S.B. 265
S.B. 307	I	Senator Allison Copening	Written testimony supporting S.B. 307
S.B. 307	J	Rene Reid	Proposal re: home mortgage hardships
S.B. 307	K	Bill Uffelman	CORE 30 Day Letter