

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
April 28, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:01 a.m. on Thursday, April 28, 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:

Assemblywoman Irene Bustamante Adams, Assembly District No. 42

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
Jay Logue, Chief, Capitol Police Division, Department of Public Safety
George F. Peek, President, ERGS, Inc.
Sylvia Smith, President, Nevada Land Title Association

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Michael Schulman
Jonathan Friedrich
Laurie Crehan, Ed.D., Quality of Life Regional Liaison, State Liaison Office,
U.S. Department of Defense
Laurence B. Irwin, Major, State Judge Advocate, Nevada Army National Guard
Keith M. Lyons Jr., Nevada Justice Association

CHAIR WIENER:

I will open the hearing on Assembly Bill (A.B.) 121.

ASSEMBLY BILL 121 (1st Reprint): Revises certain provisions relating to the security of court facilities. (BDR 1-653)

THE HONORABLE MICHAEL L. DOUGLAS (Chief Justice, Nevada Supreme Court):
With A.B. 121, we are asking that the Supreme Court be allowed to have our own security, if we are able to fund it.

CHAIR WIENER:

What prompted this bill?

CHIEF JUSTICE DOUGLAS:

We have had some issues recently with pro se litigants, including one who served a summons on my wife at our home in the evening. This particular litigant is suing me, my wife, my daughter, my grandchildren, five other Justices, the Attorney General and 30 of the 32 district judges in Clark County.

The Supreme Court is primarily housed in Carson City, and we also have a satellite location in Las Vegas. Security in Carson City is provided by the Capitol Police, but it is only on our floor of the building. In Clark County, we have been contracting with the Clark County marshals because the Capitol Police are not authorized to operate outside of Carson City. This also means the officers are not authorized to provide security when we visit local high schools and communities; we have been contracting with court security from the Eighth Judicial District to go with us. If all seven Justices speak at legal events or things of that nature, we have no security. Likewise, we have a satellite site here in Carson City where some of our staff are located, and the Capitol Police are technically not authorized to provide security for that off-campus site.

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CHAIR WIENER:

Did you say you would find the funding for this?

CHIEF JUSTICE DOUGLAS:

That is our intention. As Nevada's economy levels up again, we will have some administrative assessment dollars that we can put toward this need.

CHAIR WIENER:

Would this be a category I peace officer?

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

Yes. The persons the court would appoint would be category I.

JAY LOGUE (Chief, Capitol Police Division, Department of Public Safety):

We support this bill.

CHAIR WIENER:

I will close the hearing on A.B. 121.

SENATOR ROBERSON MOVED TO DO PASS A.B. 121.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR WIENER:

I will open the hearing on A.B. 271.

ASSEMBLY BILL 271: Regulates private transfer fee obligations that affect real property. (BDR 10-628)

ASSEMBLYWOMAN IRENE BUSTAMANTE ADAMS (Assembly District No. 42):

When I first heard of private transfer fees, they reminded me of peeling an onion. There are a lot of layers, and each layer is called something different—but when you get to the bottom, they are all the same thing. You can call it a private transfer fee, a transfer fee covenant, a freehold licensing transfer

fee or a GenEstate Legacy Covenant. It does not matter what it is called; it just does not smell right.

The private transfer fee is similar to a real estate transfer tax except that the fee is paid to private developers instead of the government. This is how it affects Nevadans. When a developer makes a lot subject to a private transfer fee, the developer collects a fee equal to 1 percent of the sale price every time the lot is sold. If Senator Kihuen buys a home for \$100,000, he must pay the developer \$1,000. If he sells the house to Senator Gustavson for \$200,000, Senator Gustavson must pay the developer \$2,000. Every buyer pays the private transfer fee, and all that money goes to the original developer. For the developer, these fees are a private investment and a vehicle to increase profits. I used an example of 1 percent to simplify the math, but the actual percentages range from 1 percent to 3 percent.

If you have private transfer fees attached to a property, it becomes harder to sell. In addition, the homeowner may have to lower the selling price to offset the cost of the private transfer fee. Affected properties are at a disadvantage in the market.

I do want to state for the record that the HOAs [homeowners' associations] and the management companies were concerned that this bill affects a reasonable fee to cover the cost of recording it in the books and the records of the association for the transfer of the ownership of the unit, and this is not what that bill does. So I just want to make sure that it is clear.

This bill received unanimous support in the Assembly Committee on Judiciary.

GEORGE F. PEEK (President, ERGS, Inc.):

I am here in support of A.B. 271. A transfer fee is generally added as a covenant to the deed on real property by the owner or another private party. This covenant states that every time the property is sold, often for a period as long as 99 years, new buyers have to pay the private party a fee equal to a set percentage of the sales price until the covenant runs out. On February 1, the Federal Housing Finance Agency (FHFA) issued a news release announcing a plan to publish a new federal regulation on private transfer fees. This regulation would limit Fannie Mae, Freddie Mac and the Federal Home Loan Banks from

dealing in mortgages that have private transfer fee covenants attached to the properties.

There are exceptions in the regulations for private transfer fees paid to homeowners' associations (HOAs), condominiums, cooperatives and certain tax-exempt organizations that use private transfer fees to benefit the property. Bottom line: Fees that do not directly benefit the property would be barred.

Private transfer fees exist in new home real estate contracts in 45 states. To date, 24 states have banned private transfer fees. By the end of the year, it is expected that four more states will ban them.

SYLVIA SMITH (President, Nevada Land Title Association):

The Nevada Land Title Association supports the passage of this bill. Most private transfer fee covenants are buried on page 75 of a 90-page conditions, covenants and restrictions document. Most are not easily identified by the buyer, and they may not be disclosed until near the end of a real estate transaction. This causes huge delays, frustration and expense for all parties. In some cases, they will cause the cancellation of the transaction.

Private transfer fee covenants are not written in plain language. They can be difficult for an experienced professional to understand or explain to a buyer. Frequently, we are not able to locate the person or company holding the private transfer fee to obtain a demand, which creates further delays. If we cannot get the demand and satisfy the transfer fee, it creates the potential for a lien on the property. Most lenders have trouble with that. If there is a potential lien in front of their loan, they are not going to lend money.

The FHFA passed the regulation change Mr. Peek mentioned; it was effective April 11. Fannie Mae, Freddie Mac or Federal Home Loan Banks will not lend on properties subject to private transfer fee covenants. That will shrink the lending pool and the amount of money available.

Private transfer fee covenants have no touch and concern for the property. In other words, they do nothing to benefit the property or the owner's physical enjoyment of the property. Most have 99-year lifespans and put an additional burden on property in our already fragile real estate market.

This bill provides that future private transfer fee covenants are void and unenforceable. It gives existing private transfer fee covenants a vehicle to record a notice that puts everyone on record that the property is subject to a covenant. It requires the person or company receiving the fee to provide a location for the title company to obtain a demand. It puts time frames in place, which means the transactions are not held up. The bill allows and defines acceptable fees that do touch and concern the property, such as those required by HOAs.

This bill protects our property rights system and the stability of our real estate market. More important, it protects Nevada consumers and future homeowners from these predatory hidden fees.

CHAIR WIENER:

Section 11, subsection 1, paragraph (d) of A.B. 271 lists several specific home values—\$100,000, \$250,000 and \$500,000. How do you handle homes with higher values?

MS. SMITH:

Those are sample values to illustrate to potential buyers the impact of a private transfer fee covenant. This bill would make void and unenforceable any private transfer fee regardless of the value of the property.

CHAIR WIENER:

When you put a number in statute, it becomes something more specific. This provision does not identify those numbers as examples.

Section 13, subsection 1, paragraph (b) refers to attorney's fees. In other measures in this Committee, we have been changing such references to "reasonable attorney's fees." Would you have any objection to that?

ASSEMBLYWOMAN BUSTAMANTE ADAMS:

We would not object to that.

MICHAEL SCHULMAN:

I represent several HOAs across the State, and I am in support of this bill.

I submitted an amendment to Assemblywoman Bustamante Adams for an exception to the definition of private transfer fee to allow the transfer fee that

management companies charge HOAs. There should be a limit on that type of fee, probably in the range of \$200 to \$250, but the limit should be set by the Commission for Common-Interest Communities and Condominium Hotels. If there is no exception for this type of transfer fee, management companies will put the fee in their contract, and HOAs will have to pay every time there is a transfer. The cost will not be passed through to the buyer; instead, it will be passed on to all the other owners in the community. We feel it is better if it is paid by the person actually buying the property.

CHAIR WIENER:
We will need specific language on that.

MR. SCHULMAN:
I will get that to you.

JONATHAN FRIEDRICH:
I support the bill in concept, but I would like to see it go further. I would like the bill to also apply to HOAs. If a limit on the amount is to be determined, it should be determined by the Legislature and not the Commission, since the Commission takes such a long time to make changes like this. In addition, section 12, subsection 1 and subsection 3, paragraph (e) give a deadline of 30 days. I would like to see this changed to 10 days.

ASSEMBLYWOMAN BUSTAMANTE ADAMS:
I do want to state also for the record that I am working with the Howard Hughes Corporation that had a concern about some of their master developers. And so there may be a minor amendment that may be coming to make sure that the—in a master plan—that the lots don't stay empty. So we are working the verbiage out, and we may have an amendment. But I just want to make you aware of that.

CHAIR WIENER:
Will you have that for us by next Wednesday?

ASSEMBLYWOMAN BUSTAMANTE ADAMS:
Yes.

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SENATOR ROBERSON:

In section 13, the suggestion was made to modify attorney's fees to say "reasonable attorney's fees." Since this section provides for costs being incurred by someone who violates this new law, the burden should be put on the violators to prove that the attorney's fees they were charged were unreasonable. I would lean toward not including "reasonable attorneys' fees" in this section.

CHAIR WIENER:

I will close the hearing on A.B. 271 and open the hearing on A.B. 313.

ASSEMBLY BILL 313 (1st Reprint): Revises provisions governing the custody and visitation of children for persons who are members of the military. (BDR 11-627)

ASSEMBLYWOMAN IRENE BUSTAMANTE ADAMS (Assembly District No. 42):

It is not a secret that there has been an increase in the need for our armed forces outside of Nevada. Being in a military family is becoming even more challenging because of issues that have arisen with moms and dads who are no longer married. I have worked with the U.S. Department of Defense (DOD) to make sure we advocate for the welfare of the children and also to make sure the demands of military service do not interfere with parents' rights. Assembly Bill 313 seeks to protect the rights of military parents as well as the best interests of the children. As a military spouse, I appreciate the chance to present this bill.

I recently became aware that Senator Gustavson has a similar bill, Senate Bill (S.B.) 284, that passed out of the Senate unanimously. I am glad to know we are both passionate about serving military families in Nevada.

SENATE BILL 284: Makes various changes concerning the custody of children. (BDR 11-785)

I worked with the DOD and the Nevada National Guard to make sure we addressed some additional protections for families. Rather than going through all of A.B. 313, I will review the additional provisions we added for families.

In section 10 of A.B. 313, we specifically spell out the window of time allowed before a final custody or visitation order is given after deployment. Subsection 1

provides that this should not happen until 90 days after the termination of the parent's deployment.

Section 12 speaks to the topic of temporary orders. Subsection 2, paragraph (d) states if there is a change of address or phone number of the nondeployed parent, that person must provide the service member written notice of the change as soon as practical, but not later than 30 days after the change. This springs from an issue where the nondeployed parent moved and the service member did not know how to get in contact.

Section 13 has to do with expedited hearings. We are requesting that the court allow testimony by electronic means, affidavit or both.

Section 16 provides that when deployment is imminent, the court must hold an expedited hearing when petitioned to issue a temporary order establishing custody and visitation.

Section 17 has to do with the cooperation of both parents in arriving at solutions and requiring the parent being deployed to provide notice of the deployment within ten days after receiving the orders.

In section 19, if either parent causes unreasonable delays, the court may award costs and reasonable attorney's fees.

In section 20, if there is a restraining order in place regarding domestic violence, the provisions of this bill do not apply.

I know this Committee wholeheartedly supported S.B. 284. I welcome your support on these additional provisions as well.

LAURIE CREHAN, Ed.D. (Quality of Life Regional Liaison, State Liaison Office, U.S. Department of Defense):

We support this bill. I have written testimony explaining the need for this measure and the actions taken by other states ([Exhibit C](#)). Every time another state creates a bill addressing these issues, we learn more about what is needed in this area. Nevada's bill is an exceptional one.

LAURENCE B. IRWIN, MAJOR (State Judge Advocate, Nevada Army National Guard):

We support this bill. I have written testimony describing my practical experience with this issue ([Exhibit D](#)).

CHAIR WIENER:

Is section 12, subsection 1 referring to a situation in which one parent has full custody? If the parents have joint custody, would the parents not be able to work it out? I would assume, for example, that abandonment would not be part of the conversation if the parents shared custody.

MAJOR IRWIN:

Many times, parents cannot work things out on their own. Military custody battles can be as bitter and acerbic as civilian custody battles. The intention here is to allow a temporary order changing custody from one parent to the other as the primary physical custodian while the service member is deployed. When the service member returns from deployment, he or she will not be facing that uphill battle of a permanent change in custody.

I have seen situations in which a soldier returns from deployment to find that custody has been changed to the nondeployed spouse. It places the service member at a disadvantage because now the inertia is going in favor of the nondeployed parent. It might be in the best interests of the children to stay in the same school, the same day care, the same location. In effect, what we are doing is punishing people for deploying and doing their jobs.

CHAIR WIENER:

In both measures, there is consideration to maintain continuity if it is in the best interests of the child.

MAJOR IRWIN:

Yes, and I support that. In 2001, the Nevada Legislature changed *Nevada Revised Statute* (NRS) 125C.050, which had broad third party visitation rights. *Troxel v. Granville* (99-138) 530 U.S. 57 (2000) 137 Wash. 2d 1, 969 P.2d 21 narrowed down some of those because it was considered to be a fundamental imposition on the constitutional rights of the parents. A party must meet a number of factors under NRS 125C.050 in order to have visitation with a child.

I am working on a case now in which a deployed serviceman has granted visitation to the paternal grandmother twice a week, and the mother is fighting that. The nondeployed parent can leave the children with whomever he or she wants when the deploying parent is gone. We ought to honor the wishes of deployed parents in allowing them to delegate family members who have preexisting relationships with the children.

SENATOR GUSTAVSON:

This bill has some language that does not exist in S.B. 284, and my bill has some language A.B. 313 does not. I suppose those bills will be reconciled if they both pass. Is that right?

BRADLEY A. WILKINSON (Counsel):

They would have to be reconciled at some point, yes.

KEITH M. LYONS JR. (Nevada Justice Association):

We strongly support this bill and encourage you to pass it. About half of my law practice is family law. I have represented military personnel who have been deployed for as short a period as 30 days, and they end up giving up their custody when they come back from deployment. Under the case of *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007), military personnel are at a disadvantage if they try to change custody back to joint physical custody. If the ex-spouse will not agree, it is not only expensive, it is also difficult to accomplish legally. This bill puts our servicemen and women who are serving their country on a more equal playing field so that when they return from duty, they can reintegrate with their families just as they were before they left.

CHAIR WIENER:

I will close the hearing on A.B. 313.

SENATOR GUSTAVSON MOVED TO DO PASS A.B. 313.

SENATOR MCGINNESS SECONDED THE MOTION.

SENATOR MCGINNESS:

Senator Gustavson, are you going to work out the differences between A.B. 313 and S.B. 284?

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SENATOR GUSTAVSON:

The Legal Division will do that after both bills are passed.

MR. WILKINSON:

That is correct. However, in this case there will need to be a policy decision as to how to reconcile the two bills. Some provisions cannot be merged, and a choice will have to be made because there is a conflict.

CHAIR WIENER:

What are the options of the Committee?

MR. WILKINSON:

The Committee can simply pass the bill as is. This does not need to be sorted out now.

SENATOR MCGINNESS:

It would be easier for the two sponsors to work it out now rather than doing it in a conference committee in the last three days of the Session.

SENATOR GUSTAVSON:

I agree. I would be happy to work with Mrs. Bustamante Adams and counsel on a compromise.

SENATOR GUSTAVSON WITHDREW HIS MOTION.

SENATOR MCGINNESS WITHDREW HIS SECOND.

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CHAIR WIENER:

Is there any public comment or any further business to come before the Committee? Hearing none, I am adjourning the meeting at 9:58 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 |
| A.B. 313 | C | Laurie Crehan | Written testimony |
| A.B. 313 | D | Laurence B. Irwin | Written testimony |