MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
May 7, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:12 a.m. on Tuesday, May 7, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblywoman Teresa Benitez-Thompson, Assembly District No. 27
Assemblywoman Ellen B. Spiegel, Assembly District No. 20

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Brian O'Callaghan, Las Vegas Metropolitan Police Department
John T. Jones, Jr., Nevada District Attorneys Association
Lisa Rasmussen, Nevada Attorneys for Criminal Justice
Amber Sallaberry, General Manager, Great Basin Community Food Cooperative, Inc.

Luke Busby, Great Basin Community Food Cooperative, Inc.
Dagney Stapleton, Nevada Rural Electric Association
Bill Uffelman, President, Nevada Bankers Association
Mary Law
Philip A. Olsen
Alex Ortiz, Clark County
Jon Sasser, Legal Aid Center of Southern Nevada

Chair Segerblom:
I will open the hearing on Assembly Bill (A.B.) 116.

ASSEMBLY BILL 116 (1st Reprint): Revises certain provisions concerning accessories to certain crimes. (BDR 15-135)

Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27):
I have a presentation explaining this bill (Exhibit C). I would like to start by walking you through some of the status quo, after which I will explain the change I am seeking in A.B. 116. As defined by *Nevada Revised Statute* (NRS) 195.010, parties to a crime are classified as either principals or accessories. This bill has to do with accessories. The statutory definition of an accessory as found in NRS 195.030 states:

> Every person not standing in the relation of husband or wife, brother or sister, parent or grandparent, child or grandchild, to the offender, who ... after the commission of a felony harbors, conceals or aids such offender with intent that the offender may avoid or escape from arrest, trial, conviction or punishment, having knowledge that such offender has committed a felony or is liable to arrest, is an accessory to the felony.

What this statute means is that if, for example, one of those listed relatives knowingly participates in covering up a crime scene, he or she cannot be prosecuted as an accessory to the crime. That language was added to the NRS in 1911 as part of the Crimes and Punishment Act, which was a boilerplate statute adopted by many states. In the 102 years since then, many states have changed that legislation to say that relatives who help a relative escape, avoid arrest or avoid trial can be charged as accessories after the fact. In Nevada, we have not done this. We have no legislative record for the 1911 Legislative Session and thus no way to know what was in the minds of the Legislators who

enacted this statute. After 102 years, it is time to consider whether we need to change this section of NRS.

What has triggered the need to reconsider this statute is the case of Eric Preimesberger. Mr. Preimesberger was bludgeoned to death on April 24, 2010. The person who killed him was Timothy Morgan, who was convicted of second degree murder and sentenced to 25 years to life in prison. Kristi Preimesberger was Eric's wife and Timothy's sister. Kristi admitted on the witness stand that she had seen Timothy murder Eric. She also stated that she helped her brother clean up the scene of the crime, assisted in moving the body into an SUV to hide it, moved the SUV multiple times to avoid detection, helped purchase a large freezer that eventually became her husband's coffin and concealed her brother's whereabouts during police investigations. For some 4 months, she maintained that her husband left of his own accord and there had been no foul play.

With all this, the existing definition of "accessory after the fact" prevents Kristi from being charged as an accessory because of her relationship to the perpetrator. This case happened in northern Nevada, and it received quite a bit of media attention. Much of the coverage circled around the fact that Kristi testified on the witness stand about the way she participated in the crime, and yet no charges could be brought against her. Assembly Bill 116 tackles the question of whether the relatives listed in NRS 195.030 should be granted special exemptions under criminal law. Which actions by relatives are reasonable, and which are criminal?

Assembly Bill 116 allows for the judicial path to be opened in situations like these where we want to contemplate the role the relative played and whether he or she should be charged. At the moment, that path is completely closed because of NRS 195.030. Section 1, subsection 1 of A.B. 116 changes the statute to remove all relatives from the list except for spouses and domestic partners. It also alters the definition of accessory to include the language "destroys or conceals, or aids in the destruction or concealment of, material evidence, or harbors or conceals such offender ... ." This would mean that when those other relatives—brother, sister, parent, grandparent, child or grandchild—destroy material evidence or otherwise attempt to help the perpetrator avoid prosecution, our legal system will have the ability to bring charges against them.

The bill removes exemptions for brother, sister, parent, grandparent, child and grandchild, leaving exemptions for husband and wife. I have also added domestic partners to this list to reflect the language and thinking of 2013 rather than the language and times of 1911. We have also added a gross misdemeanor sentence in section 2, subsection 1 of the bill.

So what current remedies are allowed by law, and what different tools can be used by the judicial process for someone like Kristi? Kristi appeared in court because she was subpoenaed. All a person who does not want to testify against a relative has to do is ignore the subpoena. The only punishment for this, according to NRS 22.100, is up to a $500 fine and 25 days in jail. It is a stick, but it is a little tiny short stick and not intimidating. It is not a stick big enough to deter someone from trying to protect a loved one. Those who do not want to be forced to testify about helping loved ones escape arrest and trial can find a way to come up with $500 and sit out a couple of days in jail. They could also be charged with obstruction of justice if we know they are destroying material evidence that could convict their relatives of a felony. That is a misdemeanor, per NRS 193.150, with a penalty of up to 6 months in jail and a fine of $1,000 or community service. The gross misdemeanor charge is a much more weighty sentence. It would carry a maximum of 12 months in jail and 3 years of probation, per NRS 193.140.

When this bill was heard in the Assembly Committee on Judiciary, we had lots of conversations with the American Civil Liberties Union (ACLU) of Nevada, the public defenders and the district attorneys. We did not come to a consensus on the language in the bill. The district attorneys wanted to see a felony sentencing structure parallel to the felony accessory statute, which carries a penalty of up to 5 years in jail. I felt that was too severe, especially since this is our first time opening up this path. I did not want to pass a bill that had huge unintended consequences in the interim. I felt the gross misdemeanor charge was a good way to begin the walk down this path. The ACLU suggested adding domestic partners, which I think is right and appropriate.

I want to stress that the Preimesberger case is a rare one. Assembly Bill 116 does not change statute in a way that prohibits district attorneys from being able to prosecute relatives or public defenders from being able to defend relatives. However, the Preimesberger case was enough for my community in northern Nevada to say that there should be a path. When something this

heinous happens, there should be a statute that allows us to consider charges against the person.

Senator Hutchison:
I note that you struck the relatives clause for accessories to felonies, but not to gross misdemeanors. Can you explain your rationale for that?

Assemblywoman Benitez-Thompson:
Gross misdemeanor structures are unique to Nevada. After the hearing in the Assembly Committee on Judiciary, I thought we were casting our net too wide and falling into areas of higher level petty crimes. The example that was used in the Assembly was theft of an iPad from the Apple Store. That could be a gross misdemeanor. In no way, as the bill's sponsor, was it my intent for A.B. 116 to be used to prosecute a woman who knew that her son stole an iPad. My intent is to get at the heinous crimes that fall under the definition of a felony and at relatives who destroy material evidence, who are hands-on participating in hiding a crime scene after the fact.

Senator Hutchison:
I understand the district attorneys' view that if we are going to change the law for the heinous crimes you just described, it may make sense for accessory after the fact to be a felony rather than a gross misdemeanor. I know you were concerned about unintended consequences, but is keeping it as a gross misdemeanor an important point for you, or are you open to making it a felony? You are describing very serious crimes.

Assemblywoman Benitez-Thompson:
I went back and forth with that a lot. I looked at how other states have changed this law. Some defer to misdemeanor sentence rather than a gross misdemeanor because many of them do not have the gross misdemeanor structure. For example, in Ohio, Florida, North Carolina, California and Louisiana, half of them refer to a felony sentencing structure; the other half either use a misdemeanor structure or create a new structure that is lighter than a felony. My desire as this bill's sponsor is to know that if we pass this bill, the consequences for these actions are heavier than the status quo. The gross misdemeanor is not maybe the big stick we would like, but it is a bigger stick than we have. It is a step in the right direction, and that is my comfort level.

Senator Brower:
I am curious as to your thoughts on the existing exemption for spouses. Under the federal law, there is no such exemption. You apparently believe that defense should remain in our law, and you are willing to add domestic partners to the exemption. Why do you think it is important to have any sort of exemption to the law?

Assemblywoman Benitez-Thompson:
This seemed to be the language everyone—public defenders, district attorneys, ACLU and me—was most comfortable with. If we take out brother, sister, parent, grandparent, child and grandchild, we are in a good starting place. I am less comfortable contemplating removing the spouse exemptions, partly because I am less law-savvy than you are and do not know what the unintended consequences might be. I know there are special privileges for spouses in different parts of the law, and I do not want to mess with any of that.

Senator Brower:
Fair enough.

Brian O'Callaghan (Las Vegas Metropolitan Police Department):
I am also representing the Washoe County Sheriff's Office today. We support this bill.

John T. Jones, Jr. (Nevada District Attorneys Association):
We oppose A.B. 116 with the current amendments. My main concern is the gross misdemeanor punishment for this crime. I want to be clear that the public policy this Committee would be voting on is that someone who witnessed a murder, cleaned up the crime scene, assisted in moving the body, moved the SUV numerous times to help avoid detection, purchased a freezer to contain the body, concealed the perpetrator's whereabouts during the police investigation and tried to mislead police by saying her husband was still alive is guilty of a gross misdemeanor. That is the same punishment for carrying a burglary tool. That is the public policy statement this Committee would be making by supporting this bill.

Chair Segerblom:
At the moment, these crimes carry no punishment at all when committed by one of the named relatives. Is that correct?

Mr. Jones:
Yes, but there are other issues that come along with that. In the Preimesberger case, Kristi testified at her brother's trial. I do not know how compelling the jury found her testimony, but this bill takes away her ability to testify. If she becomes liable for punishment, her Fifth Amendment right to refuse self-incrimination attaches. She would then be liable for punishment with a gross misdemeanor, which in our opinion is not a severe penalty, and she could also assert her Fifth Amendment right and not testify. Not only are we giving her a light punishment, we are also hurting our case against the person who committed the murder by taking away important testimony.

If the charge for being an accessory was a Category C felony, as it was before the bill was amended, that is a little more of a stick a district attorney can use against Kristi and others like her to help compel her testimony. But as it is written, the bill is making a bad public policy statement. It is the opinion of the Nevada District Attorneys Association that it could potentially hinder serious cases.

Senator Brower:
Do you see a compelling reason to exempt any family member from prosecution?

Mr. Jones:
We have not discussed the matter as an association. This is not a bill we advocated for. We have lived within the existing law, and to my knowledge no one has questioned it.

Senator Hutchison:
In the Preimesberger case, was obstruction of justice the only crime Kristi could have been charged with?

Mr. Jones:
That is one of the crimes available. There is also another crime, under NRS 199.220, which is destroying evidence. That one is similar to accessories; it says:

> Every person who, with intent to conceal the commission of any felony, or to protect or conceal the identity of any person committing the same, or with intent to delay or hinder the

> administration of the law or to prevent the production thereof at any time, in any court or before any officer, tribunal, judge or magistrate, shall willfully destroy, alter, erase, obliterate or conceal any book, paper, record, writing, instrument or thing shall be guilty of a gross misdemeanor.

Senator Hutchison:
How do you feel about not striking the relatives clause from the acts of gross misdemeanors?

Mr. Jones:
We are neutral on that.

Senator Hutchison:
How do the other law enforcement agencies and prosecutor organizations feel about the gross misdemeanor versus felony debate we are having here?

Mr. Jones:
It is district attorneys who will be prosecuting these cases. As an association, we are against that provision.

Senator Hutchison:
Did anyone else speak against it in the Assembly hearing?

Mr. Jones:
We were neutral on the bill in the Assembly because it made the crime a felony. I have not spoken with anyone from the Attorney General's Office regarding the Attorney General's position on A.B. 116 as it now stands.

Senator Brower:
As you may know, there is an old common law concept known as misprision of a felony, and it is codified in federal law. Do we have a similar law in the NRS?

Mr. Jones:
I do not know of one off the top of my head. There may be one buried in there somewhere.

Chair Segerblom:
Are you saying that Kristi could have been charged with destruction of evidence?

Mr. Jones:
I do not know the particular facts of the case, so I am not sure. Potentially, yes, the charge could have been made.

Lisa Rasmussen (Nevada Attorneys for Criminal Justice):
In response to Senator Brower's question, we do not have misprision of a felony in the State statutory scheme.

In response to Senator Hutchison's question, we testified in opposition to A.B. 116 when it was heard in the Assembly, as did the ACLU. Vanessa Spinazola of the ACLU of Nevada could not be here today, but I have her written testimony on the bill (Exhibit D). Some of the issues we raised were that spouses should include domestic partners, and we were the ones who asked that the crime be reduced to a gross misdemeanor if you are going to take out the exemptions for siblings and grandparents.

As a criminal defense lawyer, it is often the very people you want to remove from the exemptions who are helping criminals to turn themselves in, contact a lawyer and do the right thing. That is particularly the case with grandparents. I have had two serious murder cases where it was the grandparents who brought the suspect to the police or to a lawyer. The idea that we would then charge these grandparents with a crime is nonsensical as a policy matter.

Assembly Bill 116 is about one case in Washoe County. We have always advised against reactionary legislation, and that is how we see this bill. In the Preimesberger case, there were other things Kristi could have been charged with. She could even have been charged as a principal to the crime. The fact that the State could not make that case against her or did not bother to bring the case is not a reason to enact this legislation.

The changes that were made in A.B. 116 in the Assembly were made at the behest of the ACLU and my organization. Mr. Jones said the original form of the bill made the crime a Category C felony and that he could use that to compel testimony. That does not make sense. He also said that if you take away the exemption, the person can refuse to testify and screw up your case. It has to be

one or the other. I do not understand the State's position on that. There are other crimes that could be charged. At a minimum, there is burglary, which is a felony.

In sum, it seems like this bill is a hodgepodge that is not accomplishing the sponsor's intent. This Committee is asking logical questions. The changes in the bill were made as the result of a proposed compromise, but I am wondering if we should have a statute that addresses accessory to murder after the fact only and not all other felonies. That is the crime we are talking about in this particular instance, and that is the heinous crime everyone is worried about.

Senator Hutchison:
If we limited this to accessory after the fact for murder, would it still be your position that it should be a gross misdemeanor rather than a felony?

Ms. Rasmussen:
As a defense lawyer, I would still be of the opinion that it should be a gross misdemeanor.

Senator Hutchison:
But it would not offend your sense of justice as much as the currently written statute, which covers more than just felonies involving murder. Would that be fair to say?

Ms. Rasmussen:
It would be fair to say. I would also say that I do not know that the statute is ever used outside the context of murder, kidnapping or something particularly heinous. The example Assemblywoman Benitez-Thompson used was stealing an iPad, but that would not necessarily be just a gross misdemeanor; it could be a burglary if the person walked into the Apple Store with the intent to steal it. If we are going to prosecute people as accessories, I would rather see it limited to murder and go back to a Category C felony.

Chair Segerblom:
But your preference would be murder and gross misdemeanor.

Ms. Rasmussen:
Yes.

Assemblywoman Benitez-Thompson:
Ron Dreher of the Peace Officers Research Association of Nevada was also in support of A.B. 116 but was unavailable to testify today. I do not know his opinion of the amendment, however, so I will ask him to talk to you, Chair Segerblom.

With regard to the heavier sentence for relatives who conceal and help a relative avoid trial, arrest or punishment, no matter what language we use, I will not get agreement between public defenders and district attorneys. With that in mind, we are talking about a matter of degree and the type of sentencing structure. I am most comfortable with a lighter sentencing structure, seeing how it plays out over the interim, keeping an eye out for unintended consequences and then perhaps considering a stronger sentencing structure down the road.

In reference to looking at the conversation about whether this applies to just murder or perhaps kidnapping, Ohio and Florida limit it to kidnapping or crimes against a child.

Ms. Rasmussen characterized the amended bill as a hodgepodge, and I do not believe it is. I believe we are taking a step in the right direction. It is not as big a step as we want, but it does put more tools in the pockets of our district attorneys to allow them to bring charges when warranted. If Kristi had wanted to get on the witness stand and plead the Fifth Amendment because of pending charges against her, she could have done that under the status quo. All she was compelled by was a subpoena. If she did not want to obey the subpoena and talk on the stand, the only punishment is 25 days in jail and a fine of $500.

We will continue conversations on this over the next couple of days and see if we can get to a better agreement.

Chair Segerblom:
Did you say that it is a misdemeanor or a gross misdemeanor in California?

Assemblywoman Benitez-Thompson:
It is a felony in California. In the states that have amended this statute since the Crimes and Punishment Act, about half have a unique sentencing structure for relatives and the other half make it a felony. There is not a lot of consistency around the United States, which means we can do whatever we want.

Chair Segerblom:
Exactly, and you have reached a good compromise. I will close the hearing on A.B. 116 and open the hearing on A.B. 366.

ASSEMBLY BILL 366 (1st Reprint): Revises certain provisions governing nonprofit cooperative corporations. (BDR 7-764)

Assemblywoman Teresa Benitez-Thompson (Assembly District No. 27:
A quick reading of A.B. 366 might make you think we were changing the entire chapter of NRS regarding nonprofit organizations. That is not true. We are going into NRS 81.020, which deals with nonprofit cooperative corporations, specifically hay cooperatives. In northern Nevada, we are at the forefront of an exciting trend: nonprofit cooperative food banks. But food cooperatives do not fit snugly anywhere in the existing statute. Assembly Bill 366 is intended to support this growing industry throughout the State. We are hoping to create an NRS structure that better suits it.

Amber Sallaberry (General Manager, Great Basin Community Food Cooperative, Inc.):
I have a presentation giving a brief history of the Great Basin Community Food Cooperative and explaining the need for A.B. 366 (Exhibit E). I need to clarify that we are not a food bank; we are a consumer-owned food cooperative, which is a community-owned grocery store. We are the first one in existence under this specific incorporation model in the State.

We started in 2004 as a small buying club that wanted to be able to buy from local farmers and producers in northern Nevada. We set up a community-supported agriculture model run out of a garage. Eventually we saved $814 and opened up a small 100-square-foot store in the back of a record store. We quickly outgrew that small space and moved to a larger space that allowed us to be open to the public and accept food stamps. In 2011, we were able to raise $7,000 to move from 500 square feet to 7,000 square feet. We now sell food from 87 producers in northern Nevada and employ 30 people at true cost-of-living living wages. At the current rate, we are expected to do just under $3 million in annual sales by the end of December.

The Cooperative is open to the public. As of yesterday, we have 5,800 member owners who pay $20 a year for membership. We are working on gaining access to a larger cooperative entity called the National Cooperative Grocers

Association, which would allow us to buy things we cannot get locally. This would allow us to be the second largest buying power behind some of the Nation's largest organic corporate entities.

We have defined "local" as within our watershed. If you have good, sound agricultural practices, you will greatly influence the health of lakes, rivers and the surrounding ecology. Inside the Cooperative, we have a huge map painted on the wall showing all 87 local producers and which areas they fall into. I grew up in northern Nevada, and I saw that if Interstate 80 closes, we would understand how food insecure we are here. Our goal is to get 20 percent of our food coming locally in the next 20 years. We want to support both rural and urban producers so they can get their yields up and be able to bring those goods to market in a way that is easy and cost-effective.

Luke Busby (Great Basin Community Food Cooperative, Inc.):
The bill has three main parts. Section 1 revises existing law to authorize a nonprofit cooperative corporation to deal in the products of nonmembers. As a practical matter, that means a statute designed primarily to help producer cooperatives—such as when a group of farmers gets together to operate a grain silo—can also be applied to consumer cooperatives, where members get together and establish a grocery store such as the Great Basin Community Food Cooperative.

Section 2 of A.B. 366 clarifies that if you want to use the statute to incorporate in Nevada, you must indicate in your name that you are a nonprofit cooperative corporation.

Section 3 of A.B. 366 changes the law to allow management of a nonprofit cooperative corporation to be retained by the group that started it. This allows directors to operate a food cooperative without the need to go to a member vote for every change in the bylaws, as is required in existing statute.

Sections 4 through 11 alter the applicability of NRS 92A, which covers mergers, conversions, exchanges and domestications, to allow the board of directors of a cooperative to approve mergers and conversions under certain circumstances if permitted by the bylaws.

This statute was passed in the early 1900s. It was meant to apply to a particular kind of producer cooperative. Assembly Bill 366 provides greater

flexibility such that consumer-based cooperatives can operate in Nevada with ease.

Chair Segerblom:
Can you give us an example of something you want to do that you cannot do now?

Mr. Busby:
A technical provision in subsection 4 of NRS 81.020 states that cooperatives cannot deal in the products of nonmembers in amounts greater in value than the products of members. That fits with farmers operating a grain silo and selling their own products. If you have a consumer cooperative, you are essentially providing a retail function in the community. This requires dealing in the products of nonmembers.

Ms. Sallaberry:
One of the concerns we had when we originally reincorporated under this model is that this subsection of NRS states vendors have to produce over a certain percentage of the overall goods. Our largest distributor, a company called United Natural Foods, Inc., would then have to be a member of Great Basin Community Food Cooperative. We would like the incorporation model to be a little more flexible so that consumer-owned food cooperatives and producer-owned food cooperatives can both exist within this type of incorporation model.

At this time, two other food cooperatives are trying to get started in rural Nevada and one in Fallon. They have seen the powerful economic impact that the cooperative model has had in the Reno community, and they would like an easier route to do this. This bill would make it easier for other cooperatives to start.

Chair Segerblom:
What producer cooperatives do you work with?

Ms. Sallaberry:
We do not work with any producer cooperatives. However, Dagny Stapleton was able to check in with some of the electrical cooperatives and run A.B. 366 by them to make sure it would not impede them or harm their operations in any way. As I understand it, those cooperatives gave the bill a thumbs-up.

Senator Hutchison:
I am trying to understand the mechanics of how a cooperative works, looking at this from a corporate law standpoint. Section 3 of A.B. 366 seems to be where you make the material changes in the statute. It looks like you are moving from a membership model, where the members control the organization as you would expect in a cooperative, to one where directors can perform that function. Is there still a provision that allows the cooperative, if it desires, to continue to maintain the model where the organization is run by the members? I am looking for a provision that says that unless otherwise provided by the bylaws or the operating agreements, this is the way it is going to function. That is typically how we set it up.

Mr. Busby:
That is exactly how section 3 of A.B. 366 is structured. Basically, if the cooperative is organized by the directors, control can be maintained by the directors. If it is established by the members, control can be maintained by the members. In any case, there is a catchall provision which provides that the members are ultimately in control of the cooperative, and that is in section 3, subsection 3 of A.B. 366. This is required to be laid out in the bylaws that are to be adopted by the corporation within a month of incorporation with the Secretary of State.

Senator Hutchison:
With regard to section 1, subsection 5 of A.B. 366, does it often happen in cooperatives that surplus funds are returned to members? Is that handled through procedures in the bylaws or the operating agreement?

Mr. Busby:
The bylaws are required to state how surplus funds are dispersed to members. These funds are typically called patronage dividends in the cooperative world. Section 1, subsection 5 provides the flexibility for those funds to be distributed according to IRS rules.

Ms. Sallaberry:
In the cooperative world, patronage refunds are a common thing. If you are a member of REI in northern Nevada, for example, sometimes you get a check back at the end of the year. That is an example of how that would work. Cooperatives across the United States have various models. It is up to the membership to vote on it each year. We have not yet had a year where we

were fully in the black; because we borrowed quite a bit of money from our members, we project that we will be repaying those funds for at least 5 or 6 years more. When we do have net profits at the end of the year, we will vote about what to do with those funds. I have seen cooperatives vote to retain 80 percent of the net earnings and invest the money back into a store-owned or community garden or urban plot to grow more food. I have seen stores invest it into assets to grow the business. I have also seen stores invest it in the store margins so they could subsidize some goods and lower prices for the entire membership. We like to put the vote out there for our membership every year to see what their will is. For 3 years in a row, our members have voted to subsidize prices for everyone rather than receive individual patronage dividends. However, if our members would like to receive those dividends, we can do that.

Senator Jones:
A lot of farmer's markets are getting started in southern Nevada, like fresh52 Farmers & Artisan Market and others. Would those LLCs be able to convert into the cooperative model if they chose? What would be the process?

Mr. Busby:
I believe the process would be a merger conversion under NRS 92A. Converting from an LLC to a nonprofit cooperative corporation would require a supermajority vote of the members of the LLC, but it would certainly be possible. If A.B. 366 passes, it would provide these LLCs with an excellent tool and a lot of flexibility for how to operate in the way they choose according to whatever bylaws they adopt.

Chair Segerblom:
You said people do not have to be members of Great Basin Community Food Cooperative in order to shop there. What is the incentive to join in that case?

Ms. Sallaberry:
The incentive is the chance to support an alternative economic model that has been proven through various data to retain much more of every dollar spent in the community within the community. People seem to understand and respond to that idea. Members are also allowed to place bulk special orders with us at discounted prices. In addition, we have a hands-on owner program whereby people can join and contribute their sweat equity. Working 8 hours or more a month allows them to wholesale order through us and receive discounts on the food they purchase. The final incentive is that members are actually owners of

their community grocery store; they can participate in democratic elections and run for seats on the board of directors. This allows members to govern and provide direction to the cooperative. That is how we have always operated, and it seems to allow for a huge buy-in.

Dagney Stapleton (Nevada Rural Electric Association):
I am a board member of the Great Basin Community Food Cooperative. I wanted to address the question about the effect this bill would have on other producer cooperatives. We reached out to the other cooperatives incorporated under this section of NRS, which are mostly hay cooperatives. We gave them a copy of the proposed legislation, and they were all fine with it. The electric cooperatives are incorporated under a different section of statute, and so they are neutral on A.B. 366.

Chair Segerblom:
I will close the hearing on A.B. 366 and open the hearing on A.B. 332.

ASSEMBLY BILL 332 (1st Reprint): Revises provisions relating to real property. (BDR 9-732)

Chair Segerblom:
This bill looks quite similar to S.B. 278, which was passed previously by this Committee.

SENATE BILL 278 (1st Reprint): Establishes an expedited process for the foreclosure of abandoned residential property. (BDR 9-134)

Assemblywoman Ellen B. Spiegel (Assembly District No. 20):
Assembly Bill 332 is indeed quite similar to S.B. 278, which was sponsored by Senator Ford, though it has some fundamental differences. He and I have been working together on a number of the provisions, so a lot of A.B. 332 may look familiar to you. I have a presentation laying out the need for A.B. 332 and explaining its provisions (Exhibit F).

Chair Segerblom:
One of the things I notice is different between A.B. 332 and S.B. 278 is that your bill has the ability for a local government entity to buy distressed homes. Is that still here?

Assemblywoman Spiegel:
No, that is in S.B. 278. My bill does not have that, and that is one of the fundamental differences.

Chair Segerblom:
The bill does describe the operations of a land bank, a nonprofit corporation.

Assemblywoman Spiegel:
Yes. I will come to that in a moment.

Many Nevadans want to buy homes and cannot for various reasons. For some, it is because of problems with credit; for others, it is because there are not enough properties on the market. One of the reasons for the differences between A.B. 332 and S.B. 278 is that Senator Ford and I approached the problem from different perspectives. A key component for me is the lack of homes on the market. The inventory has been decimated. What happens is that as properties go through the foreclosure process, many are put into bulk sales. Some investors buy homes in bulk and turn them into rentals, which takes them off the market for sales. Some investors pay cash for properties, and anyone who needs financing is unable to compete effectively. This means our neighborhoods that have consisted of owner-occupied homes with a few rentals here and there are being turned into neighborhoods filled with rentals, which leads to less neighborhood stability.

This bill hopes to remedy that situation by dealing with the issue of abandoned properties. We have all seen the abandoned properties in our districts when we were out campaigning. These homes need some care, and they need to be put into the care of people who want to live in them and own them. This bill provides a mechanism to expedite foreclosure of abandoned properties. It also helps Nevadans buy properties by increasing the available housing stocks. Finally, it gives banks and financial institutions an incentive to sell the properties to Nevadans who wish to live in those homes.

Section 2 of A.B. 332 establishes the criteria for determining if a property has been abandoned. Subsection 1, paragraph (b), subparagraphs (1) through (6) are mandatory conditions; all of these conditions must be met. In addition, three or more of the conditions listed under subparagraph (7) must exist.

Section 3 of A.B. 332 details the procedure to be used to declare a property abandoned. It includes the use of a private process server, which is different from the process in S.B. 278. In A.B. 332, the process server would be working on behalf of the beneficiary. He or she would go to the property to ascertain if these conditions exist, then put together an affidavit with documentation and submit that to a county recorder.

Sections 3.5 and 4 of A.B. 332 establish the owner-occupier advantage program and related criteria.

Over the past several months, I have been working with stakeholders from the financial services industry, Legal Aid Center of Southern Nevada, counties and real estate attorneys on the provisions in A.B. 332. We came up with a couple of conceptual amendments for the bill. In section 2, subsection 1, paragraph (b), subparagraph (7), sub-subparagraph (V), homeowner's association (HOA) assessments should be at least 6 months past due. We do not want homes declared abandoned because an HOA assessment was 1 day late. In section 3, subsection 2, I would like to clarify that process servers cannot enter the dwelling, but they can be on the property to do a physical inspection.

Next, we come to an issue that has emerged since the Session began: zombie foreclosures. What is happening is that some foreclosures are not happening. The notice of default is sent out, but the property just sits there. You can see that it has been abandoned and you know it is going into foreclosure, but for some reason the financial institution never completes the foreclosure process. The homeowner has no way to force the bank into foreclosing on the property, nor is there a time when the homeowner can say, "I am going to put it behind me; I am going to start repairing my credit and just move forward from this."

To address this, we have put together an idea that I am calling a completed self-abandonment. The way it would work is the homeowner would declare that he or she is intentionally walking away from the property. The financial institution would have 6 months from that date to complete the foreclosure. If the foreclosure is completed in that time, that ends the process. If the foreclosure is not completed within those 6 months, it would create this arbitrary event called a completed self-abandonment. That would be placed on the consumer's credit report. After that date, a deficiency judgment could not be placed and no negative credit information could be posted to the consumer's credit report related to that transaction. The consumer would be able to start

rebuilding his or her credit regardless of whether the bank foreclosed on the property or not. That is the public policy need A.B. 332 looks to address.

Section 3.5 of A.B. 332 establishes a land bank. Issues have come from stakeholders related to a physical land bank. We are changing it slightly to make it an owner-occupier advantage program, which is not necessarily its own entity. It could be something that a government has. It could be its own entity, or it could be a program of a benefit corporation or an investment group. Owner-occupiers, people who say they intend to live in the property, will get a 30-day first-look window and an exclusive opportunity to buy that property. These properties would need a moderate amount of work, and the people would agree to reside on the property and not rent it out for at least 3 years. It also cannot be a second home for the owners.

We would also include a provision that the properties going through this first-look or owner-occupier advantage program would have to be sold through a real estate agent. This would make sure things are being done correctly and would also ensure sure buyers have somebody guiding them through the process.

The last issue is something that just came up last weekend. For lack of a better term, I am calling it an "unforeclosure." A couple of times in Las Vegas recently, we have had a situation where a notice of default has been rescinded without the homeowner being notified. This means the foreclosure does not go through, and since the owners do not know it is not going through, it leads to more zombie foreclosures. In other cases, the property goes through foreclosure and the bank takes possession, but the bank is unable to sell the property. Occasionally, the bank puts the property back in the name of the original owner without notifying him or her. I have received an email from the Clark County Recorder confirming that both of these events are possible. I do not know the extent to which they are occurring, but I am told it is an emerging issue.

Chair Segerblom:
Why would the banks do that? What is the advantage to them?

Assemblywoman Spiegel:
Typically, whoever has the property in his or her name is liable for both property taxes and nuisances that occur on the property. There are also liability issues. I checked Clark County property records yesterday, and there were

77 properties in the name of the Bank of America and 42 in the name of Wells Fargo. I may have reversed those numbers. Homeowners think the foreclosure has gone through and walk away. Now, all of a sudden, they are once again liable for property taxes and responsible for the property, and they do not know it.

The remedy to that is if either situation occurs—if a notice of default is rescinded or if the property is reconveyed to the prior owner—the homeowner should be given notice. In those cases, the bank is saying, "We don't care about your mortgage; we have written it off, and we're just giving you the house back." It is not a matter of selling it back to the original owner; it is just putting it back into his or her name. According to the Clark County Recorder's Office, existing statute does not require notice to be sent to the owner. This bill would require notice to be sent to the prior owner at the last known address, the address of the property and the owner's last known place of employment. The owner would then have notice of what is going on and decide whether he or she wants to move back in and fix up the house, sell it or donate it.

Senator Jones:
As you know, my district has one of the highest rates of foreclosure in Nevada, so this is something that is important to people in my district. Can you walk me through the zombie foreclosure part again? It is not in A.B. 332, so I am trying to understand your solution.

Assemblywoman Spiegel:
It can be remedied in two ways. The primary way is completed self-abandonment, where the owner declares that the property has been abandoned. We do not have definitive language yet. I have met with all the stakeholders, including representatives from the credit reporting industry, to make sure the language we come up with is compliant with the federal Fair Debt Collection Practices Act and the federal Fair Credit Reporting Act. The stakeholders I have been meeting with like the idea and think it has merit, but they are not sure it can work. It is a novel approach. What we are doing with a completed self-abandonment is creating a determination that is put on the consumer's credit report.

If you think about how bankruptcy works—and again, I am not an attorney and have just a basic understanding of it—when a bankruptcy is finalized, nothing from the past can then get put on the person's credit report. Someone could

come up the day after the bankruptcy and say, "You owed me $200 a month ago and I didn't get it through beforehand," and the consumer can just say, "It's too late," and that is it. A hard stop is put on the consumer's credit so he or she can start repairing and rebuilding. This would work that same kind of way. The bank still has the ability to complete the foreclosure in whatever time frame works, but it would at least put a halt to the consumer being strung along and not ever being able to move forward because the foreclosure has not been completed.

Senator Jones:
Would you be allowed to do that if you were in loan mitigation efforts, foreclosure mediation or any of those processes?

Assemblywoman Spiegel:
When property is abandoned, it is not subject to the foreclosure mediation process.

Senator Jones:
The process server provision in A.B. 332 is novel. Have you talked to process servers to see if this is something they would be willing to do? It is far afield from what they normally do, which is serve legal papers.

Assemblywoman Spiegel:
I believe members of my stakeholder group spoke to process servers; I did not speak with them directly.

Chair Segerblom:
Can you indicate who are the stakeholders who worked on this bill?

Assemblywoman Spiegel:
The group included representatives from Legal Aid, the Nevada Bankers Association, financial services institutions, credit reporting agencies, Chase Bank and attorneys. It was a fairly large group.

Chair Segerblom:
Do you have language on zombie foreclosures for us?

Assemblywoman Spiegel:
We are still working on some of the exact language, which gets back to the completed self-abandonment process.

Senator Hutchison:
So the completed self-abandonment procedures are not in the bill yet, is that right?

Assemblywoman Spiegel:
That is correct.

Senator Hutchison:
I had several questions about that. I will hold them till we get the language.

Assemblywoman Spiegel:
If you would like, we can discuss this outside of the Committee so your concerns can be addressed as we create the language.

Senator Hutchison:
I would be happy to talk to you.

Bill Uffelman (President, Nevada Bankers Association):
We support both A.B. 332 and S.B. 278. One of these bills is not better than the other, though at some point we will have to pick one process over the other.

I too await the completed self-abandonment language. We have had lots of conceptual discussions and made a lot of progress. In the end we may wind up with a missing piece because it did not get finished. In the end, though, we need to move forward with a bill like A.B. 332 or S.B. 278 to deal with abandoned properties. We hope to come up with a process for completed self-abandonment that meets everyone's ideas.

Process servers came into this because we ran into trouble when we said the inspections should be done by local governments, and they came up with some interesting pricing. We tried to find a way for someone other than the bank to say the property was abandoned, some dispassionate third party.

Chair Segerblom:
Have you talked to the process servers?

Mr. Uffelman:
No, I have not. We look forward to moving the finished product.

Chair Segerblom:
We need to focus on a way to get the two bills together.

Senator Hutchison:
With regard to the land bank idea, I note that the language is permissive. What is the incentive for a nonprofit agency to engage in this land bank procedure? Banks want to foreclose, get their money and move on. Investors who buy up houses want to either rent them or flip them, make a profit and move on.

Mr. Uffelman:
The land bank idea came from an article about Cuyahoga County Land Bank in Ohio. This is a different process, but the notion comes from the first-look system used by many financial institutions. After a foreclosure, the bank now owns the property. The bank then invites nonprofit organizations or state agencies to take a first look at the property and see if it meets their criteria for acquisition or getting it into an owner-occupied status. In some cases, those agencies buy the property and use it as public housing. Assemblywoman Spiegel's desire was to broaden this to fit the owner-occupier model she has described. These groups are almost transfer agents. They facilitate the transfer to the owner-occupied status described here. They may be local government entities, or they may be nonprofit entities. It could be a church group.

Senator Hutchison:
Assemblywoman Spiegel, I think your owner-occupied housing requirements are articulated in the NRS reference. Is that where we get the 3-year obligation? I do not see that 3 years in your bill, but I do see a reference to NRS 107.

Assemblywoman Spiegel:
At this point, the 3-year obligation is only in the conceptual amendment. It will be clarified when we come up with the final language.

Chair Segerblom:
Anything we can do to get these homes back into the hands of owner-occupiers rather than as part of a hedge fund in New York City is beneficial for all of us.

Mary Law:
I support the concept of A.B. 332, but I have some concerns about the language. Under section 3, subsection 2, regarding who gets to come onto my property, and it has already been cleared up. They do not get to come into my house. As long as that is clear, I am okay. The concern is that the beneficiaries have not always used the best judgment when they have done this in the past. They are not using process servers; they are using real estate agents. In my case, there is a group that hires retirees who come knock on your door and ask if you are still living in your house. Before they come into my house, I want to make sure they have more than their "informed belief" that the house is abandoned.

With regard to section 3.5, as a homeowner, I am competing with these hedge funds. I do not know if I need land banks and nonprofits also competing. I am trying to get my lender to come to the table and negotiate a principal- or interest-reduction loan because economically, that is what I need.

Chair Segerblom:
That is what this bill is trying to help you get.

Ms. Law:
I appreciate the effort and the due diligence.

Philip A. Olsen:
I am an attorney-at-law and have been a member of the State Bar of Nevada since 1976. A number of my clients are northern Nevada homeowners who are facing foreclosure.

I have written testimony explaining two of my concerns about the language in A.B. 332 (Exhibit G). My first concern was that the bill appeared to give process servers the right to enter private homes without the owners' consent. Assemblywoman Spiegel assures me there will be an amendment preventing them from doing so. She has also assured me the intent of the bill is not to give process servers any rights they did not previously have.

My second concern has to do with the concept of due process. I do not think it is right for a process server to be making a determination that affects a homeowner's property rights.

Chair Segerblom:
Who would you have check out the property to see if it was abandoned?

Mr. Olsen:
It does not matter to me who goes to the property as long as they do not enter the house without permission. What is important is who makes the determination.

Chair Segerblom:
Let us be constructive. How would you change it?

Mr. Olsen:
I would have a court make the determination. I would have a procedure where the beneficiary would go into court, give notice to the homeowner and give the homeowner an opportunity to be heard. The beneficiary would have an affirmative obligation to present evidence and bear the burden of proof on the issue.

Chair Segerblom:
You would have the beneficiary file a legal action and basically adjudicate whether the home was abandoned.

Mr. Olsen:
Yes. However, it is no problem for me if it is a summary action such as a summary eviction, which usually goes fairly quickly. There is no need for a jury trial or a long, drawn-out procedure. In many cases, if the property is truly abandoned, the homeowner when served with the summons would simply not appear and a default judgment would be entered. But the important thing is who makes the determination. I think a court should make the determination.

Under this bill, once the process server has determined that the property is abandoned, the process server files an affidavit stating on information and belief that he or she considers the property abandoned. The homeowner can negate the determination by filing his or her own affidavit with the county recorder stating that the property is not abandoned. At that point, the process server's

determination becomes irrelevant, a nullity. However, the only notice given to the homeowner is by first-class mail, not even certified mail. The homeowner has to take the affirmative action. This essentially shifts the burden of proof from the beneficiary to the homeowner.

Chair Segerblom:
It seems to me it is a lot simpler for the homeowner to file an affidavit with the county recorder than it is to go to justice court and state that the house has not been abandoned.

Mr. Olsen:
But it is the homeowner who has to take that action. In a legal action such as I am suggesting, it would be the beneficiary who had the burden of proof.

Chair Segerblom:
The process in A.B. 332 is that the process server investigates the property and fills out an affidavit that says the home is abandoned. The homeowner fills out an affidavit that says it is not abandoned and files it with the county recorder. Under your scenario, the bank files a legal action and serves the homeowner, and the homeowner has to show up in court and say the home is not abandoned. I do not see that much difference. It seems harder for the homeowner to come to court than to simply file an affidavit.

Mr. Olsen:
My main concern is with the notice provision.

Chair Segerblom:
You are concerned about how the homeowner is notified that the house seems to be abandoned.

Mr. Olsen:
That is correct.

Chair Segerblom:
How about if we have the notice served on the homeowner rather than sent by first-class mail?

Mr. Olsen:
That would be better. I still do not think that is enough to ensure that the homeowner has notice; but certainly, certified mail would be better than first class.

Another problem with the bill is that the process server mails the affidavit saying the property is abandoned, which the homeowner can negate by filing an affidavit. But the homeowner has to send his or her affidavit to the beneficiary by certified mail. Also, the notice provided to the homeowner only says the counter-affidavit has to be mailed to the beneficiary; it does not say that it has to be sent by certified mail. That should be corrected as well.

Mr. Uffelman:
I understand Mr. Olsen's concern. However, the declaration of abandonment is attached to the notice of default, which is served on the homeowner in the traditional fashion. The homeowner is still getting the traditional notice of default with this piece that says the property has been abandoned.

Chair Segerblom:
To do a notice of default, you do not have to go to justice court and file anything.

Mr. Uffelman:
Correct, unless you are doing a judicial foreclosure. The irony is when this all started 8 to 10 months ago, I talked to one of my counterparts in a judicial foreclosure state. In that state, if the bank thinks the property has been abandoned, the sheriff looks at it and fills out a ticket. The bank then goes to the equivalent of justice court; the last Friday of the month is abandoned property day. The homeowner has been served and the house has been tagged. Once the court has ruled, it bypasses the rest of the foreclosure process and gets the property back on the market. We talked about adding a judicial step in the middle of a nonjudicial foreclosure, and that was why we transitioned to this method. There are 50 states and 50 models for this.

Mr. Olsen:
I respectfully disagree with Mr. Uffelman. As I read A.B. 332, the first step in the process is the recording and service of the notice of default, as noted in section 3, subsection 1 of the bill.

Chair Segerblom:
We will hear this bill again next week, so we need to have proposed amendments. If you like the concept but you want to change the way it works, give us your proposed amendment in writing, and we will consider it.

Mr. Olsen:
I will be happy to do that. However, I wanted to point out the determination that the property is abandoned only occurs after the recording of the notice of default.

I have other concerns. I am concerned the affidavit establishing that the property is abandoned is based on information and belief only. "Information and belief" is a term of art that means "I don't know, but I think it might be true." Once the affidavit is filed with the county recorder, it affects the homeowner's property rights. I will put my other concerns in writing.

I would now like to offer my view of A.B. 332 as a whole. It says that if this procedure is followed, there are consequences. Those consequences are in section 3, subsection 5, paragraph (b), subparagraph (2) of the bill. The consequence of the property being deemed abandoned is that it excuses the beneficiary's failure to comply with A.B. No. 284 of the 76th Session. If a process server files an affidavit based on information and belief stating that your property is abandoned, and you do not file your own affidavit stating that it is not abandoned, any failure of the beneficiary to comply with A.B. No. 284 of the 76th Session—that is NRS 107.080, subsection 2, paragraph (c)—is inconsequential. The beneficiaries are excused; they are exempt from that statute. They are also exempt from NRS 107.080, subsection 7, which is an action for damages if the beneficiary fails to comply with the various requirements of the notice of default and the notice of sale. This means that if a lender beneficiary can persuade a process server to sign an affidavit and record it with the county recorder and the homeowner does not respond, we are excusing the beneficiaries from these other requirements that are designed to help homeowners. And I wonder why we are so trustful of the beneficiaries in this case, especially with their track record in Nevada, which led to the Attorney General joining with the attorneys general of most other states to file a major lawsuit resulting in a $25 billion settlement.

Chair Segerblom:
Here is the reality. We are all seeing abandoned homes in our districts, and we are trying to find a way to take care of them. We do not want to trust the banks; we know they are the reason we got in this mess. On the other hand, to have the property just sit there and deteriorate when the homeowner has clearly abandoned the property is something we need to fix. We want to make sure the home has really been abandoned.

Mr. Olsen:
Yes.

Chair Segerblom:
We are willing to work with you to tighten that up. But if the property really has been abandoned, why worry about A.B. No. 284 of the 76th Session or NRS 107? Let us just get the abandoned property moving. It is a blight to the neighborhood; it brings down property values; it is an invitation to crime; it is not healthy.

Mr. Olsen:
I agree completely, but I think this is the wrong way to do it.

Chair Segerblom:
Then give us the right way to do it, and we will consider it.

Alex Ortiz (Clark County):
We have a proposed amendment to A.B. 332 (Exhibit H). We have spoken to Assemblywoman Spiegel about this, and we are told she considers it a friendly amendment. It is a revision of the land bank provision. The first change is to section 3, subsection 6, paragraph (b) and clarifies that the land bank is a program of the entity operating it and not necessarily its own separate entity. We want to make clear that nonprofits and local governments can operate a land-banking program without creating a separate entity. The second change is in section 3.5, subsections 1 and 2. This language is intended to ensure we do not lose any existing powers we have.

Jon Sasser (Legal Aid Center of Southern Nevada):
We are neutral on A.B. 332. The real problem here is that banks have not in fact been completing these foreclosures. That is why the properties are piling up in an abandoned state. We are not following through, as

Assemblywoman Spiegel said. We worked with Senator Ford to come up with a meaningful process for self-abandonment with consequences if the bank did not follow through in 6 months. We were not able to work out the details on that, so we remain neutral on S.B. 278. We are still waiting to see if Assemblywoman Spiegel's completed self-abandonment amendment, which would straighten out someone's credit if the bank does not follow through in 6 months, will work in this case. If so, we hope to be able to support A.B. 332. Otherwise, we remain neutral.

Chair Segerblom:
If you want to draft your own language, we will be happy to consider it.

Mr. Sasser:
It is not a matter of drafting the language. If we put something in someone's credit report and we do not have any control over the people who do credit ratings, will this be effective? That is our concern.

Assemblywoman Spiegel:
With regard to Mr. Olsen's comments on section 2 of A.B. 332, I would like to reiterate that the bill includes strict criteria for determining that property has been abandoned. It includes things like having the utilities shut off, having there be no children at that address enrolled in school and having no public assistance tied to that address. It is highly unlikely a home that is not abandoned would be determined to be so under this bill.

Chair Segerblom:
Is there any public comment? Seeing none, the meeting is adjourned at 11:02 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE:

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	4		Attendance Roster
A.B. 116	C	11	Assemblywoman Teresa Benitez-Thompson	AB 116: Accessory after the fact
A.B. 116	D	1	American Civil Liberties Union	Letter from Vanessa Spinazola
A.B. 366	E	15	Amber Sallaberry	Great Basin Community Food Cooperative, Inc.
A.B. 332	F	11	Assemblywoman Ellen B. Spiegel	AB 332 presentation
A.B. 332	G	2	Philip A. Olsen	Written testimony
A.B. 332	H	2	Alex Ortiz	Proposed Amendment