

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
May 29, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 9 a.m. on Friday, May 29, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn E. Trowbridge

COMMITTEE MEMBERS ABSENT:

None



GUEST LEGISLATORS PRESENT:

Senator Becky Harris, Senate District No. 9

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

George Ross, representing Nevada Bankers Association
Jon Sasser, representing Washoe Legal Services, and Legal Aid Center of
Southern Nevada

Chairman Hansen:

[The roll was called and Committee protocol was explained.] We have two bills on the agenda today. One of them is the technical correction bill, which we will hear first.

Assembly Bill 488: Makes technical corrections to measures passed by the 78th Legislative Session. (BDR S-1292)

Brad Wilkinson, Committee Counsel:

This is a trailer bill that was prepared by our office. There are two minor changes related to Senate Bill 175 (1st Reprint) and Senate Bill 240 (1st Reprint).

The first change is deleting one sentence relating to the reciprocity requirements from S.B. 175 (R1). These requirements would have required the Nevada Sheriffs' and Chiefs' Association to agree with the list of states for the purposes of reciprocity. You will see that change on lines 17 through 20 of page 2 in section 1 of the bill. We deleted the requirement that the Nevada Sheriffs' and Chiefs' Association agree with the list prepared by the Department of Public Safety.

Regarding the second change, S.B. 240 (R1) and S.B. 175 (R1) contained identical provisions relating to preemption. However, there were two items that were not the same. One had a date of October 1, 2015, and the other bill said effective upon passage and approval. We are changing one bill to reflect the effective date of October 1, 2015, to make them identical.

Chairman Hansen:

I would like to entertain a motion on Assembly Bill 488.

Assemblyman Thompson:

Regarding lines 16 through 17 on page 2, should we strike those as well?

Brad Wilkinson:

There is still going to be a list of states prepared. However, the Nevada Sheriffs' and Chiefs' Association will not have to sign off on the list. This was a correction that would have been included in S.B. 175 (R1). It was part of the amendment that failed on the floor of the Assembly.

Chairman Hansen:

I will entertain a motion to do pass Assembly Bill 488.

ASSEMBLYMAN JONES MOVED TO DO PASS
ASSEMBLY BILL 488.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN DIAZ VOTED NO.
ASSEMBLYMEN ARAUJO AND GARDNER WERE ABSENT FOR
THE VOTE.)

Chairman Hansen:

Assemblyman Jones will handle the floor statement. Next, we will hear Senate Bill 321 (1st Reprint).

Senate Bill 321 (1st Reprint): Revises provisions concerning real property.
(BDR 9-728)

Senator Becky Harris, Senate District No. 9:

This bill is related to the foreclosure mediation program. As an attorney that sees firsthand the challenges that homeowners face, it became obvious to me that until a process is begun by another party, homeowners are in a reactive position rather than in a proactive status. Currently, when homeowners know that they are going to default or have difficulties paying their mortgage, they have to wait until a notice of default is filed by their lender before there is a process in place to do anything about it.

Because homeowners are not able to initiate the process and a homeowner has to wait until that notice of default is filed, I have brought forward Senate Bill 321 (1st Reprint). I cannot tell you how many times there has been a homeowner that knew he was in trouble, wanted to do something about it by being proactive, and was unable to initiate a process. The process I am talking about is the foreclosure mediation process. Currently, a notice of default has to be filed before the homeowner is in the process. Once \$200 is paid, he will then be able to have a discussion with his lender about the possible options regarding his home. Sometimes it is a retention option; sometimes it is a short-sale option. The best thing about the foreclosure mediation program is that it is an opportunity for a homeowner and lender to get together and have a conversation about the homeowner's finances and the ability to retain the house.

This bill would allow a homeowner, upon imminent risk of default and upon attending a counseling session with a local housing agency or counseling agency, to initiate mediation through the foreclosure mediation program. Homeowners would file with the program and pay \$200, which is the same as the program currently charges. There is no requirement that the parties agree to a loan modification. There is no requirement that the parties agree to any type of solution. It is simply a process where the two parties can come together and have a discussion about the possible options that are available. Should a mediation take place pursuant to Senate Bill 321 (1st Reprint), the preforeclosure mediation requirement that is currently required in statute would be deemed completed. A second mediation would not be required.

Financial hardship is defined in this bill the same way as it is defined at the federal level, which is the death of a borrower or coborrower, serious illness, a change in marital status such as divorce or separation, or a job loss or reduction in pay. In my experience, I have found that if homeowners are proactive and initiate a process prior to default, they are often in a much better financial position than if they wait for a bank to file a notice of default, which can sometimes occur many years after the fact. By that time, additional fees and interest charges are applied, making the homeowners financially unable to retain the house or be in a position to have a home retention option.

"Imminent risk of default" is defined as a person who is unable to make his mortgage payment within the next 90 days. Therefore, the homeowner would essentially be unable to meet his financial obligations. It would be documented through the U.S. Department of Housing and Urban Development (HUD) counseling center, and there would be a review of all the financial documentation. Through the foreclosure mediation program, a lot of financial documentation is required, and it is a fairly rigorous process. It would be very

difficult to game the process because HUD would be looking at bank statements and W-2s or self-employment income. There is a rigorous review to be completed as part of the initial counseling process and then again through the mediation program where the lender has an opportunity to review the financials as well.

That concludes my testimony. I ask that you give some consideration to this bill. I think it is a good and productive thing.

George Ross, representing Nevada Bankers Association:

It is our pleasure to be here supporting Senator Harris' bill. We think it addresses an issue that has long been discussed in the community and in this Committee through the years. There are people who, through their values and common sense regarding their credit rating, abhor the idea of missing payments. These are responsible people. This bill is tightly written and solves the issue of trying to give those people a chance. This bill addresses one of the biggest complaints we have received over the years, and it corrects the problem. Additionally, it is carefully written so that someone cannot take advantage of the system. There are situations that are beyond the person's control. You are certified by a responsible party who knows what he is doing. Homeowners will not have to have another mediation after the initial mediation. We applaud Senator Harris for bringing this bill forward, and we think it is an excellent bill.

Jon Sasser, representing Washoe Legal Services, and Legal Aid Center of Southern Nevada:

I am happy to be here in support of S.B. 321 (R1). We represent low-income homeowners who are faced with the foreclosure process. We have frequently been frustrated, and our clients have frequently been frustrated, by the inability to connect and communicate with their lender prior to getting into arrears. People want to deal with this up front. Although the economy is better, there was an article in last week's paper saying there was a huge jump in notices of default this April compared to April of last year. We are still number two in the nation in foreclosures and number one in homes being underwater. There were also a number of interest-only loans taken out ten years ago that are coming due. We think this bill will continue to be needed in the future, and we appreciate your support.

Assemblyman Ohrenschall:

Thank you for this bill. Constituents have told me, especially when the crisis was at its worst, they felt that nobody would pay attention to them unless they were three or four months behind in their loan payments. My question is on page 3, line 26. It talks about serious illness as a qualifier for financial hardship.

Often, I hear from constituents who fall behind with their mortgage due to the serious illness of a parent or a child rather than themselves. Do you think this would be broad enough to cover the serious illness of an extended family member and not just the borrower or coborrower?

Senator Harris:

That is the intent. As I am sure you have experienced, often people will discuss a family member who has suddenly been diagnosed with cancer making them reallocate their budget to contribute more towards medical expenses. With the shift in their family's income and expenses, it puts other things at risk including the mortgage payment. That was the intent of including the illness provision. If we need to tighten it up, we can certainly do that. We are looking at the structure of the family and the challenges they are facing.

Assemblyman Nelson:

I cannot possibly see how anyone could consider voting against this bill. I would like to personally thank you for all that you have done this session for homeowners regarding the foreclosure process and homeowners' associations. It has been fantastic.

I am looking at the definition of financial hardship, and I wonder if it might be a good idea to add insolvency. There could be situations where people do not meet any of the criteria, yet they are financially insolvent under the two definitions in the U.S. Bankruptcy Code. Either they are not able to pay their bills as they come due or their debts exceed their assets. For example, as Mr. Sasser just mentioned, a lot of these ten-year notes are now coming due. The people may not be sick or may not have lost their jobs, but all of a sudden they may now be insolvent because the debt is due or the house is severely underwater. That is my only concern, and I wonder if we could broaden it a little bit.

Senator Harris:

Certainly, if you are in the middle of an active bankruptcy and you are in mediation, you would suspend the mediation until the insolvency or bankruptcy proceeding has been adjudicated and you are able to get into the foreclosure mediation program. However, it is not uncommon for lenders to suddenly decide they want to start looking at home retention and home modification options while a client is in bankruptcy. I have had that happen several times.

Assemblyman Nelson:

I understand that, but what if they are not in bankruptcy?

Senator Harris:

If a certified housing counselor wants to say that the homeowners are in imminent risk of default on more than just the mortgage, which would make them insolvent, I do not have a problem broadening the definition.

Assemblyman Nelson:

Maybe if they are insolvent, it would fall under the category of risk of imminent default. However, I just want to make sure it is as broad as possible.

Jon Sasser:

If you look at the definition in the bill starting on line 21, page 3, it says, "(a) 'Financial hardship' means a documented event that would prevent the long-term payment of any debt relating to a mortgage or deed of trust secured by owner-occupied housing, including, without limitation...." I do not think that we need to amend the bill to cover what you are talking about because it is covered already.

Assemblyman Thompson:

I want to thank you for bringing this forth. Mediation works, and many of my constituents in North Las Vegas were hit very hard with foreclosures. A lot of people called just to vent because they could not talk to anybody. This is a good first step for people to feel like they have been heard.

Senator Harris:

I have had an opportunity to participate in several of these mediations. One of the most productive things about the mediation, whether or not the homeowner is able to ultimately work out a solution, is the ability to sit down to explain the circumstances. They get to explain how they got there and how they had not intended to default on their mortgage. There is something very healing about the process and the ability to have a face-to-face conversation.

Assemblyman Elliot T. Anderson:

I think this totally makes sense. I have often heard the same stories. I do not understand why we would not pass this bill. To do so would be like saying that you have to default. I do not think that it is encouraging people to take care of their personal obligations if they have to default in order to work out a deal. The more that we can do to keep people current and out of arrears, the more likely they are to come to an agreement that works for everyone. That makes sense in the housing market for the long term. Senator, thank you for bringing this bill forward.

Assemblyman Araujo:

I am very much in favor of this bill. I worked on foreclosures for five years in Senator Reid's office. I was in the trenches trying to get people connected to the mediation program. This bill is a long time coming, and I commend you because it is a huge step forward. I do not think there are enough kudos that I could give to commend you for your work.

Chairman Hansen:

Is there anyone else who would like to testify in support of S.B. 321 (R1)? Seeing no one, is there anyone in opposition or neutral? [There was no one.] We will close the hearing on S.B. 321 (R1). We will now open it up for public comment. Is there anyone who would like to address the Committee? [There was no one.] The meeting is adjourned [at 9:21 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Judiciary

Date: May 29, 2015

Time of Meeting: 9 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster