

MINUTES OF THE
MEETING OF THE SENATE COMMITTEE
ON JUDICIARY

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
May 5, 1981

The Senate Committee on Judiciary was called to order by Chairman Melvin D. Close at 8:10 a.m., Tuesday, May 5, 1981, in Room 213 of the Legislative Building, Carson City, Nevada. Exhibit A is the Meeting Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Melvin D. Close, Chairman
Senator Keith Ashworth, Vice Chairman
Senator Don W. Ashworth
Senator William J. Raggio
Senator Jean Ford
Senator William H. Hernstadt
Senator Sue Wagner

STAFF MEMBERS PRESENT:

Shirley LaBadie, Secretary

SENATE BILL NO. 476--Clarifies meaning of "interest" in relation to disclaiming interest in property.

Senator Don Ashworth stated if there is a joint tenancy situation, under the disclaimer statute passed last year, a person has a right to disclaim under joint tenancy which is not available now. If a husband and wife has a joint tenancy, and in the case of a death you do not want all the proceeds to go to the survivor, then you split the estate in two halves. This would allow that half of the property could be bypassed by the person and go straight out to the children. It is a mechanism in estate planning. A disclaimer happens before the property is awarded and it goes out to the heirs and the gift tax is the same rate as the estate tax.

Senator Hernstadt moved to Do Pass S. B. No. 476.

Senator Don Ashworth seconded the motion.

The motion carried. (Senator Keith Ashworth and Raggio were absent for the vote.)

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SENATE BILL NO. 481--Creates department of corrections.

Chairman Close advised the committee all the bill did was place the Department of Parole and Probation under the Department of Corrections. Senator Wagner was not in support of the bill because during testimony there was not one good reason for this.

Senator Don Ashworth moved to Do Pass S. B. No. 481.

Senator Hernstadt seconded the motion.

The motion failed. (Senators Close, Don Ashworth and Hernstadt voted for the motion. Senators Ford and Wagner voted against the motion. Senators Keith Ashworth and Raggio were absent for the vote.)

SENATE BILL NO. 535--Prohibits unauthorized interception of coded television signals.

The committee had been presented with some proposed amendments. (See Exhibit C attached hereto.) Chairman Close stated the amendment goes too far, they want to get the district attorney involved in civil litigations. Senator Hernstadt suggested a new section be added which prohibits the sale of plans or kits for devices or printed circuits to assist in unlawful interception. Chairman Close stated you could not prohibit the sale of printed circuits as they are used in many instances. Discussion resulted in an amendment on line 12 after device, add plan or kit. Also provide this bill does not prohibit the direct interception of a signal from a satellite.

Senator Don Ashworth moved to amend and Do Pass S. B. No. 535.

Senator Hernstadt seconded the motion.

The motion carried. (Senators Keith Ashworth and Raggio were absent for the vote.)

SENATE BILL NO. 544--Provides procedure whereby vendor of contract for conveyance of real property may elect to declare forfeiture upon default.

Chairman Close questioned Section 3, subsection 3 and the mailing of the notice and the time it starts to run. Line 35 provides the 35 day time period starts to run after 35 days after the recording of the notice. Mr. Frank Daykin, Legislative Counsel advised it starts after the recording of the notice.

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Mr. Frank Daykin said subsection 3 of NRS 107.080 provides for a 15 or 35 day period, depending on the age of the deed of trust, and commences on the first day following the day upon which the notice of default and election to sell is recorded in the office of the county recorder. It states further and a copy is mailed by certified mail with postage prepaid to the grantor or successor. That has been tracked effectively in the bill which says, must be mailed. The discussion resulted in language to be added on line 35 as to being recorded and mailed, whichever is later.

Chairman Close felt under section 3, subsection 2, the time period of 120 days was too long. Mr. Daykin stated he had tracked the deed of trust, if a change was requested, he would amend it. Discussion resulted in the time period being changed to 90 days.

Chairman Close asked about the provision which states where the sale may be made, why was it put in. Mr. Daykin stated he again had tracked the deed of trust, if it was silent here, it would raise some kind of implication especially because of the reference to sales on execution that there had to be an accounting.

Discussion of Section 4 resulted in a change to the effect that a period be inserted after real property and leave out the rest of the sentence.

SENATE BILL NO. 544

Senator Wagner moved to amend and Do Pass S. B. No. 544.

Senator Raggio seconded the motion.

The motion carried. (Senator Hernstadt was absent for the vote.)

SENATE BILL NO. 609--Provides for realignment of and increases number of judges in certain judicial districts.

Senator Raggio asked Mr. Daykin to explain the drafting of S. B. No. 609. Mr. Daykin said what is trying to be done is increase the number of district judges in several of the smaller districts, effective upon the imminent resignation of Judge Smart because of bad health without giving rise to the constitutional problem which underlies trying simply to doing it upon passage and approval and hope the Supreme Court will sustain it. The method used is first to consolidate all of those central districts into one district, effective upon Judge Smart's resignation. The third judicial district is enlarged to embrace all of them except all those which are now the first, second and eighth. The eighth

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will become the fourth, there will be four judicial districts. The vacancy is expected to arise in the 3rd judicial district. Then the bill divides that district into departments for convenience for administration. Then those coincide with the present districts. It further provides that the number of judges in that district will be increased, in Humboldt-Pershing, it goes to two as soon as this occurs. For departments 2, 3 and 5, which is Elko, Esmeralda, Nye, and Mineral, and White Pine and Lincoln, they go to two when the population goes to 20,000.

Senator Keith Ashworth asked how many judges are being increased in Clark and Washoe County. Mr. Daykin advised, four for Clark and two for Washoe, this would be seven sure and two possible. There are a total of 27 now in the state.

Mr. Daykin said this is the same approach as taken in S. B. No. 204 in respect to determining the amount of population for those various limits on expenditures. Since the state planning board coordinator does not legally exist and he is the one who provides for these population figures, they have to refer to certification by the governor. That office would supply the population figures.

Senator Don Ashworth asked Mr. Daykin to go over the constitutional prohibition on why a new judge cannot be appointed. Mr. Daykin stated the constitution provides that the legislature may change the boundaries of the districts or increase or decrease the number judges, but no such change shall become effective but upon the happening of a vacancy or the expiration of the term of office.

Judge Michael Fondi asked Mr. Daykin why in Section 3 of the bill, Eureka and Lander County were eliminated in the 3rd judicial district and does not seem to come back in. Mr. Daykin stated there was an error in the drafting which needed be corrected.

Mr. Daykin stated by bringing all the district together and increasing the number of judges, the next section of the bill, then Section 3 of the bill breaks them out again and that becomes effective upon the expiration of the terms in 1984 which is the next time a change can be made. This puts the districts back with some revisions. The 9th judicial district would be limited to Douglas County and Lyon County ends up with Churchill which is the 3rd district. Eureka and Lander were divided. Lander was to go with Pershing and Humboldt and Eureka was to go with White Pine and Lincoln.

Judge Fondi stated it appeared Section 1 and Section 2 are identical. Mr. Daykin said if the vacancy occurs before November 6, 1984, and section 2 does not become effective, sections 2 and 15 become effective upon the first occurrence of a vacancy and the reason

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for those lies in nothing being done in the central district but in the question of Washoe County. In 1979 the act in regard to Washoe County, picks up two judges upon the first occurrence of a vacancy there if it is not amended. Section 2 takes account of that.

Judge McKibbin asked about the concepts in Section 1 which creates the 3rd Judicial District which includes all the rural counties and when the vacancy occurs, then an additional judge may be added. Why is it not set forth in Section 1 to redistrict so that can be accomplished at the same time. The original idea was to allow Judge Young have an additional judge for Humboldt and Pershing, so then he could take Lander and Judge Smart would take Lyon County and Judge McKibbin would remain with Lyon County. Mr. Daykin stated this was looked at in 1977 and the view was that this vacancy would retain its force only so long. It could be used to permit the consolidation and then to permit the appointment of more than one judge, but then all of that has to occur in the 3rd Judicial District. Then it would seem there is no longer any vacancy, therefore you would have to wait.

Judge McKibbin stated there is no problem, before you appoint someone for that vacancy, the legislature by act now provides that the new districts are created. Mr. Daykin stated if the new districts are created before the appointment is made, then there is not a vacancy in the same district. He said if you want to disregard the constitution, you may do it in a variety of ways. Judge McKibbin stated the reason behind the redistricting is to apportion the work load among all of them. Mr. Daykin stated on the plan of Judge McKibbin, he is redistricting twice upon the occasion of one vacancy. That would probably not stand up in court.

Senator Raggio asked when the nine districts effectively go back. Mr. Daykin replied January 1, 1985, except that the judges will run in the individualized districts in 1984. The same thing had been done on the consolidation with Carson City and the 9th district.

Senator Hernstadt questioned the cost of changing the forms. Mr. Daykin said he would be agreeable to have them for the first, second, third and eighth with a hold in the middle. That would eliminate changing forms in any of the three largest districts. The others are relatively small and the form could be struck through and the appropriate number inserted.

Mr. Daykin said the bill carries a fiscal note but primarily for the salaries of the judges and supporting personnel. He informed the committee sections 5 through 12 set out the number of judges

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separately in the judicial districts and the reason for that is to avoid complications which occur when changing the one section upon so many contingencies.

Judge Young stated in reference to the population figure of 20,000, one of the things which needs to be taken into account is the transient population on Highway 80. On any given day 30,000 to 40,000 people go through. Winnemucca is three times larger than Lovelock, but there is not three times as much crime. He stated statistics relating to the increases in cases, all of which amounted to approximately 50%. Judge Young stated a judicial counsel was set up and a representative on the counsel has to spend 10 days to work on this. There is also a requirement that all lawyers have to be educated, the bar requires this. This takes additional time. Vacations are also hard to take, the most time usually taken is a week.

Chairman Close asked Judge Young how a judge could be justified for every 10,000 population. Judge Young stated he had not said ten. Chairman Close replied when the population goes over 20,000, then a second judge is appointed and it cuts it down to one for 10,000 people. Judge Young stated again, the transient population should be considered. Most of his crime comes for that. He said Reno has the same problem, the transient population is not being taken into account. They need more judges also.

Senator Virgil Getto stated he was the primary sponsor of the bill. He said he had talked with Judge Young for about six years and the problems in the rural counties. There is a problem with traveling the distances because Judge Smart has an impact with the changing of the county seat from Austin to Battle Mountain. He must drive through Judge Young's district to sit in Battle Mountain and this should be addressed. He further stated the transient population is a real problem.

Judge McKibbin, 9th Judicial District, Douglas and Lyon County, stated the bill is designed for two purposes. One is to redistrict in the Churchill, Lander Eureka area and in Humboldt and Pershing because of the travel problems. Judge Smart is not physically able to handle commuting. By adding Lander County to Humboldt and Pershing, that would increase Judge Young's work load to cover Battle Mountain and this cannot be done with one judge. An additional judge would be added in this district under this bill. The bill was also supposed to eliminate Lyon County from the 9th Judicial District and it would go with Churchill County. However the bill does not do this. Judge McKibbin gave the

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committee statistics on the case load in his districts which indicated he disposed of approximately 60 more cases than in Carson City and had approximately 200 fewer cases filed during that period. Judge McKibbin advised the committee Douglas County had built two district court rooms in the new court house which is presently under construction. He asked the committee to pass the bill which would allow Douglas County to have an additional district court judge. He stated he works long hours and still has not been able to get the case load down. He requested under Section 1, which creates a new district which is the Third Judicial District, solely for creating a vacancy, and an additional judge is going to be added, at this time, that they also redistrict. He asked that the bill be amended to provide when the vacancy occurs, it will be the county of Churchill and Lyon county. Then in Section (d) Humboldt, Pershing and Lander will constitute department 4. And under (e) the counties of Lincoln, White Pine and Eureka will be department 5. Then Douglas County would constitute Department 6. This was the concept of S. B. No. 609 and distribute the case load and responsibilities.

Judge McKibbin stated if the additional judges requested under this bill are received, it should take care of the problems for the next six to eight years.

Judge Michael Fondi, Carson City, Nevada stated he had notified some of the judges which would be affected by S. B. No. 609. He said he was not directly affected but wanted to speak in support of the bill. He had talked with Judges Hoyt, Becko, McDaniel and tried to contact Judge Smart. Judge Hoyt expressed the opinion that putting Eureka in his district is acceptable to him. Judge Hoyt did say he was extremely nervous about the MX possibilities and population increases in his particular district. Judge Fondi said in his conversations with Judge Becko, that he agrees with the trigger mechanism on the population. However Judge Becko will retire at the end of the his term. Judge McDaniel was also concerned with the impact of MX and made particular mention of the 20,000 population trigger mechanism for another judge.

Judge Fondi said the case load in Douglas-Lyon County which Judge McKibbin has is extremely heavy. He has worked there for him on occasion. He had advised Judge McKibbin he should let the lawyers approach the legislature if they cannot get their cases heard. He felt that Judge McKibbin needed another judge in his district. He did feel the redistricting could be done by this bill, contrary to the remarks of Mr. Daykin.

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Chairman Close stated Clark County had requested to speak to the committee regarding the problems of having a graduated flat tax relating to gaming. This occurred from the passing of S. B. No. 502 by the committee.

Mr. Dan Fitzpatrick, Clark County and Mr. Patrick Pine asked to address the committee in regard to S. B. No. 502. Mr. Fitzpatrick stated a question had been raised as to whether Clark County could develop a graduated flat fee system which has built into it the equity and fairness that is inherent in the gross revenue system. Also the question of property tax and gross revenue was raised which Mr. Pat Pine will address.

Mr. Fitzpatrick stated he had prepared a handout for the committee. See Exhibit D attached hereto. The chart indicates groups of clubs based on the fact they have approximately the same number of slot machines and same number of live games. Then the gross fees received over the last six quarters by Clark County were reviewed. Even though the clubs were similar in size, the payments to the county varied tremendously. He stated the analysis of the handout demonstrates the variance between establishments within a particular grouping. Without getting into specifics, there are nine specific instances where a gaming establishment in one grouping has a higher gross than establishments in a grouping which has more slot machines and live games. Simply stated, there is no logical way to develop an equitable, fair fee structure based on a graduated flat fee system based on number of machines and live games. If there a way to do it, even with the political heat the commissioners of Clark County are taking with the one and one-half years on the gross, he and the staff would have done it. The resort association could not develop a fair graduated fee system. Their proposal was a graduated gross fee schedule. Mr. Fitzpatrick corrected himself, it not necessarily the resort association, it was four or five of the larger casinos which made that presentation.

Senator Wagner recalled from previous discussion there had been a proposed ordinance dealing with the graduated fee schedule. Mr. Fitzpatrick said the other ordinance which was on at the same time was the old flat fee system which was not graduated, it was \$39.50 per slot machine and so much for each table game. It was multiplied by 30%, that was the only other alternative ever discussed or ever on the table as an ordinance. It was never developed because a graduated fee system cannot be done. All the Class A, restricted establishments, 15 or less, are paying \$39.50 per slot machine. He cannot charge any establish-

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ment who has more than that, less than \$39.50 per slot machine. There are at least twenty examples out of seventy, and if you multiple the number of slot machines in an establishment times \$39.50, they will be paying more under than that system than under the gross system or an equal amount. The slot-heavy establishment just get "cheated" when it comes to a flat fee system.

Mr. Pat Pine said he understood there was an argument because Clark County was the only local government on the gross and somehow because of the cap on S. B. 411, primarily the residents of Paradise and Winchester would be receiving a presumed break on their property taxes due to that tax which no other resident of the state could avail themselves of. That is an incorrect statement. The gross gaming revenues do not go back to the town funds, they go to the general funds so it would affect all county tax payers, not just those in those two areas. An analysis was done on the current gross of how the cap of S. B. No. 411 would work. Assuming 15% growth in the gross revenues and roughly a 12% C.P.I., at most the property tax levy would be reduced by two-thirds of one cent and one half of one cent for all county property tax payers using the cap in S. B. 411. There is not a substantial change in property taxes for Clark County residents. It has been suggested publicly that Clark County residents are getting a slightly smaller break than other residents of the state under S. B. No. 411.

Chairman Close asked if a prohibition was passed for the purpose of reenacting a flat tax of some kind, how much time would be needed. Mr. Fitzpatrick stated he hoped this did not happen. It took six public hearings to do the last ordinance. This has to be done at regularly scheduled meetings, they cannot be special meetings.

There being no further business, the meeting adjourned at 10:15 a.m.

Respectfully submitted:


Shirley L. Badie, Secretary

APPROVED BY:


Senator Melvin D. Close, Chairman

DATED: May 14, 1981

SENATE AGENDA

EXHIBIT A

COMMITTEE MEETINGS

Committee on JUDICIARY, Room 213.
Day Tuesday, Date May 5, Time 8:00 a.m.

Work Session -- 8:00 a.m.

9:00 a.m.

S. B. No. 609--Provides for realignment of and increases number of judges in certain judicial districts.

SENATE COMMITTEE ON JUDICIARY

DATE: May 5, 1981

EXHIBIT B

PLEASE PRINT

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NAME

ORGANIZATION & ADDRESS

TELEPHONE

Michael E. Fondi

District Judge - Carson City

882-1619

Mike Griffin

Dist Judge Carson

882-1997

Ronald G. Boyer

" Sixth District

EXHIBIT C

1 (a.) Any person who:

2 (1) Knowingly carries out an unauthorized interception of
3 a subscription telecommunication;

4 (2) Knowingly attempts to carry out or conspires to carry
5 out an unauthorized interception of a subscription telecommuni-
6 cation;

7 (3) Knowingly uses an unauthorized interception of a sub-
8 scription telecommunication for his own commercial advantage or
9 financial gain; or

10 (4) Knowingly manufactures, distributes, sells, possesses
11 or installs any device designed to carry out an unauthorized
12 interception of subscription telecommunication;
13 shall be liable for civil penalty under subsection (b) and shall
14 be subject to criminal penalty under subsection (c).

15 (b.)

16 (1) Any person who is aggrieved by any violation of sub-
17 section (a) may commence a civil action for actual damages,
18 for damages under paragraph 1 hereof and for equitable relief
19 against the person who is alleged to have committed the violation.
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21 (2) Any person who willfully violates subsection (a) is
22 subject to a civil penalty of \$100.00 per day for each day of
23 violation and for each act of violation. All civil penalties
24 recovered shall be paid to the State of Nevada.

25 (c.) Any person who violates subsection (a) shall be guilty
26 of a misdemeanor.

27 (d.) For purposes of this section:

28 (1) The term "interception" means the receipt of
29 any subscription telecommunication.

30 (2) The term "subscription telecommunication" means
31 any telecommunication which is intended for receipt in intel-
32 ligible form only by a person who has agreed to pay a fee or
charge to the person originating the telecommunication or his
agent.

1 (3) The term "telecommunication" means any transmission,
2 emission, or reception of signs, signals, writing, images, and
3 sound or intelligence of any nature by wire, radio, optical,
4 microwave or other electromagnetic systems.
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**Groups of Clark County Gaming Establishments
Based on Similar Number of Slot Machines and Live Games**

EXHIBIT D

	<u>Slots</u>	<u>Live Games</u>
I. Circus Circus	1,277	90
Stardust	1,070	90
MGM	984	118
Caesar's Palace	953	102

In Group I, the payment of gross fees to the county vary by the following:

Highest gross - lowest	\$600,000
- next lowest	\$400,000
- next lowest	\$150,000

II. Las Vegas Hilton	875	50
Aladdin	874	49
Silverbird	857	49

In Group II, the payment of gross fees to the county vary by the following:

Highest gross - lowest	\$350,000
next lowest	\$110,000

III. Hacienda	531	32
Treasury	522	26
Landmark	521	30

In Group III, the payment of gross fees to the county vary by the following:

Highest gross - lowest	\$26,000
- next lowest	\$25,000

	<u>Slots</u>	<u>Live Games</u>
IV. Holiday Casino	468	45
Barbary Coast	435	43
Sam's Town	407	46

In Group IV, the payment of gross fees to the county vary by the following:

Highest gross - lowest	\$100,000
- next lowest	\$130,000

V. Silver City	393	31
Marina	373	30
Sands	324	35

In Group V, the payment of gross fees to the county vary by the following:

Highest gross - lowest	\$185,000
- next lowest	\$170,000

VI. Pop's Oasis	113	4
Western Village	92	5
Las Vegas Auto Truck Plaza	86	3
Regency	75	6

In Group VI, which is a sampling of our smaller casinos, the payment of gross fees to the county vary by the following:

Highest gross - lowest	\$8,500
- next lowest	\$7,800
- next lowest	\$3,000

The above analysis only demonstrates the variance between establishments within a particular grouping. Without getting into specifics, there are nine specific instances where a gaming establishment in one

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grouping has a higher gross than establishments in a grouping which has more slot machines and live games.

Simply stated, there is no logical way to develop an equitable, fair fee structure based on a graduated flat fee system based on number of machines and live games.