MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
April 14, 2005

The Committee on Judiciary was called to order at 8:40 a.m., on Thursday, April 14, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

Risa Lang, Committee Counsel
Carole Snider, Committee Attaché

OTHERS PRESENT:

Jim Nadeau, Governmental Affairs Director, Nevada Association of Realtors, Reno, Nevada
Ben Graham, Legislative Representative, Clark County District Attorney's Office; and Nevada District Attorneys Association
Jone Bosworth, Administrator, Division of Child and Family Services, Nevada Department of Human Resources
Kermitt Waters, Attorney at Law, Las Vegas, Nevada

Chairman Anderson:
[Meeting was called to order at 8:40 a.m.] I would like to enter into the record a letter I received from Margi Grein, Executive Officer, State Contractors Board (Exhibit B). She is concerned about the State Contractors Board implementation of information on S.B. 241. The Board is firmly dedicated in implementing all legislative mandates as quickly as feasible. They are trying to deal with that particular issue.

There is also a letter from Kummer, Kaempfer, Bonner and Renshaw (Exhibit C) in regard to A.B. 390. One of the requests the Committee made in regard to this bill, which is a neighborhood gaming bill, was in relation to the number of undeveloped properties in Las Vegas Valley that may be developed as neighborhood casinos. This particular document, coming from Russell Rowe of Kummer, Kaempfer, Bonner and Renshaw, outlines the specific undeveloped places in Clark County, as to location they were aware of. This may be helpful to you.

We have a work session document (Exhibit D). Let's begin with A.B. 290.

Assembly Bill 290: Makes various changes to provisions relating to common-interest communities. (BDR 10-951)

Allison Combs, Committee Policy Analyst:
Assembly Bill 290 is the first measure in the work session document on page 1. It was heard on March 31, 2005 and makes various changes relating to common-interest communities. The bill makes multiple changes requiring board members in these communities who stand to gain a personal profit, to disclose the matter and abstain from voting. The bill prohibits an association

from requiring a unit's owner to obtain its approval before renting or leasing a unit. It prohibits the executive board from meeting in executive session to open or consider bids for an association project and establishes new criteria for establishing adequate reserves. Finally, the bill specifies that a seller of a unit must furnish required documentation concerning the association at least 5 calendar days before an offer is binding. It provides authorization the purchaser may cancel after receiving the documentation.

[Allison Combs, continued.] There was some discussion from the sponsor that unit owners and representatives of Nevada Association of Realtors are in support of the bill and are in support of the changes in the bill. There were amendments offered. Some concerns were raised by individuals regarding the impact of these changes on the ability of the association to manage the community.

Pages 11 and 12 (Exhibit D) contain the amendments that are summarized below on page 1. The first one was offered verbally by a unit owner which would affect Section 2 of the bill, regarding disclosures and abilities to vote. The suggestion was to require board members to disclose and abstain from voting on any item that would benefit his property.

The second amendment was proposed by Karen Dennison, on behalf of the Lake Las Vegas Joint Venture, relating to rental property. She suggested adding language to the new language in Section 3 stating, "Nothing set forth herein shall preclude the association from enforcing provisions pertaining to the renting or leasing of units that are contained in the declaration or in Chapter 116 of NRS of other applicable laws."

Further, Ms. Dennison suggests revising the language regarding adequate reserves by deleting that language on the page 4 of the bill. There was a suggestion, during the testimony proposed jointly by Ms. Dennison and Mr. [Renny] Ashleman, to clarify the reserve that it has to cover the enumerated portions of the association in the existing statute and specify it has to cover those items that are of the association.

The next amendment relates to the delivery of the documentation before the offer is binding. The suggestion from the Nevada Association of Realtors was to delete that new 5-day requirement indicating the timing is problematic. For example, existing law requires the association provide documentation within 10 days, so there could be some difficulty with that difference between 5 and 10 days.

[Allison Combs, continued.] Finally, with regard to the proposed purchaser's ability to cancel the contract, the new language of the proposal would be amended to authorize the delivery of the cancellation notice to the agent as well as the unit owner or, in addition, to the unit owner that is proposed by the Nevada Association of Realtors. One of the Committee members, Assemblyman Carpenter, asked for clarification when the required notice is actually effective.

Chairman Anderson:
We put this bill off because we didn't feel we had enough time to develop it, when it was in a work session sometime ago. The amending section first suggested, on the bill, requiring board members to disclose and abstain. I have no problem with disclosure. Concerning abstaining from voting and if you are in a common-interest community, wouldn't every decision affect the property? If your board members are made up of members of the common-interest community, and if you have to abstain from voting every time that it affects you, that would be like every law that affects the state of Nevada and you are a member of the Legislature so you would have to abstain from voting. You would have to be from another state not to have Nevada laws affect you.

I have no problem with the disclosure if there is an economic interest at risk. In fact, a person would be well advised to follow that procedure. I have a little problem with that suggestion from Mr. [M. J.] Harvey [Unit Owner].

Assemblyman Manendo:
I had some concerns about that also. I was thinking if there was a situation where there is an issue that goes before the association board. For example, they are asking to have solar screens on their unit but not everybody is going to get one. I know there have been cases where the board has denied certain people solar screens or an improvement, but when it comes to their own unit, they will vote for it. Disclosing is fine and abstaining is taking it too far.

Chairman Anderson:
Do you think it is covered in this first suggestion? Are you trying to get to a solution for a different problem than disclosure and abstention from voting?

Assemblyman Manendo:
I think disclosure is fine. I think abstaining stretches it a little bit too far. There are cases where residents are voting for themselves, but they will deny someone else.

Chairman Anderson:
I'm not sure dealing with this particular issue is going to solve that problem. It just makes it more apparent.

Assemblyman Conklin:
Because I don't live in a common-interest community, I have a question for clarity. Are board members of common-interest communities elected by the common-interest community?

Chairman Anderson:
That is correct. At an annual board meeting and have terms of 2 years.

Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada:
I cannot represent myself as an expert in common-interest communities. It is my understanding that the terms are typically 2 years.

Chairman Anderson:
Does the entire board change every 2 years or do they stagger their terms?

Jim Nadeau:
I cannot answer that. I don't know the answer to that.

Assemblyman Conklin:
They are not elected like a member of the Legislature is. They are not elected just by 25 units but by all the homeowners. Correct?

Chairman Anderson:
I believe the by-laws of most common-interest communities sets up the size of their board depending upon what they consider to be a representative body, and they are all elected at-large.

Assemblyman Conklin:
Then lastly, disclosure would be something that goes into the published minutes.

Chairman Anderson:
One would hope that they would be.

Assemblywoman Gerhardt:
I think it is important to disclose if it is something that benefits only your property. I think there are times when you may want to alter something on the property. If you are going to be voting on it, you need to disclose that

you are talking about just your property. I don't think you should abstain but I think you should disclose.

Chairman Anderson:
You may need to abstain in such case.

Assemblyman Horne:
I think it is important to remember sometimes these disclosures are not necessary just because an action is going to be taken on their particular property but by actions that are going to be taken on the property. For example, hiring of personnel to do repairs, landscaping, and things like that. If you are hiring your brother-in-law to do that, or it's your business, you should disclose that. These types of disclosures are also relevant.

Chairman Anderson:
Are you suggesting that the language should conceptually include members to disclose situations that would directly benefit their property and abstain from voting where there is a direct cost-benefit to that person? We don't want to micro-manage their boards or by-laws, but there do seem to be some problems there.

If disclosure is absolutely essential maybe we need to deal with the bill in terms of the disclosure requirement. In Section 2 of the bill, it does state, "Member of an executive board who stands to gain any personal profit or compensation of any kind from a matter of execution before the board shall disclose…" So we have already taken care of that. I think we already have it covered in Section 2, page 2, lines 4 through 7. I have no problem with further amending to clarify disclosure. Maybe Mr. Harvey wants a stronger statement, but I am not sure we can provide that in terms of disclosure.

I'm also a little concerned about suggestion number 2 regarding rental property. It seems to be the first part and the second part are in conflict. In the first part we say "An association may not require a unit owner to secure or obtain any approval from the association in order to rent or lease the unit." Then it turns around and says, "Nothing set forth therein shall preclude the association from enforcing provisions pertaining to the renting or leasing of the units contained in the declaration of Chapter 116 of *Nevada Revised Statutes* or in other applicable law." This contradicts the whole thing. I think it is fine if you belong to a property that says you are not allowed to rent out any of the condominiums. The suggested language, "may not require a unit's owner to secure or obtain any approval from the association." If it is in the original CC&Rs [Covenants, Conditions and Restrictions] that you are not going to have this privilege available to you,

you knew that going in that this was not a rental or that you could put it out for sublet. If the CC&Rs for the property already has that or is modified to that effect, I think we are going a little bit too far.

Jim Nadeau:
In discussion, we are very comfortable with this language. We feel it addresses the issue we had, in regard to suitability and that type of tenant. In Chapter 116, there is a specific section that deals with short-term rentals. Again, the declaration is the CC&Rs. Therefore, what we are saying is that if the CC&Rs have a provision that applies to rentals, so be it. There may be a chapter or specific section within Chapter 116 that deals with it or any other laws but not necessarily governing rules of the association, but rules that may apply. We felt this really did apply to the particular section. We felt the law was applicable to our concerns in regard to associations attempting to determine suitability of tenants, and the language met our needs to that application. We have worked extensively with Ms. Dennison, other homeowners associations, and common-interest communities. The language met everybody's concerns.

Chairman Anderson:
You don't perceive this as being contradictory?

Jim Nadeau:
No. Basically, the way our attorney looks at it and the way we view it, if there are laws that deal with certain elements, that is, fair housing laws and those kinds of things, then everything has to mesh together. We don't believe it is in conflict and we felt it met our concerns.

Assemblywoman Buckley:
They don't conflict but the underlying language swallows up the whole intent of changing the law. My own personal opinion is that if you own your home, you have the right to rent it out. If you have a bad tenant or if the association sees any conduct that is not acceptable, then they can move against the owner by a fine or some kind of action. If you own your own home, you have the right to rent it out. We do have the laws that we passed last time on transient commercial use. I believe we struck a good balance there. Perhaps we could have it subject to that. I think we have to pick one or the other, if we say they can't require approval except if their documents require approval. They all will just put it in their documents and we haven't really done anything, so why waste our time.

Jim Nadeau:
I believe there is case law that says an association has the legal authority within their CC&Rs to make rules that say they can't rent anything or there can only be a certain percentage of rentals. This deals with a variety of elements that come into play. So there is existing case law that says you can make rules within your CC&Rs that set that down. I agree with Ms. Buckley and that is our position. If you own the property, you have a right to exercise your interest in that property in whatever manner you see fit. We agree with that. Again there is a chapter within NRS 116 that deals specifically with the transient housing. Other than that, you should go with whatever is the sense of your Committee.

Chairman Anderson:
NRS 116.31123 (Exhibit E) has most of the provisions laid out clearly. It might be of concern and reaffirms the use of the unit that the governing documents of the association and any master association do not prohibit such use. So there is a cross reference back to the master agreement. Ms. Buckley's suggestion is while this is a general reference to NRS 116, it may be suggestive of that, rather than the full exemption in the declaration that makes a specific reference to NRS 116.31123. Ms. Buckley, is that what you are suggesting or do we just drop the underlying language?

Assemblywoman Buckley:
Whatever the Committee thinks, I just think it is foolish to do both because it swallows it up. I would be more comfortable with something like "except for this transient commercial use an association may not require in order to rent or lease." There are always problem tenants. I acknowledge that. I just think a person's personal property rights come first. You grow out of your first house so you want to rent it to your kids. Why does an association get to say you can't do that?

Assemblyman Mabey:
Personally, I disagree. If it's in the CC&Rs and you knew that when you bought the property, I would support that rather than the way Ms. Buckley is going.

Chairman Anderson:
NRS 116.31123 is currently state law. Even though the CC&Rs would require that, they still have to follow that part of the statute which is a requirement. Ms. Buckley's suggestion is that except as provided for in NRS 116.31123, the association may not require unit owners to secure or obtain any approval from the association in order to rent or lease the unit. Those are fairly specified terms and make it quite clear what they can do there.

Assemblyman Mabey:
It says under NRS 116.31123, Section 1, paragraph (a), "The governing documents of the association and any master association do not prohibit such use." So I think it's okay and I support this.

Chairman Anderson:
Ms. Buckley, is that what you were suggesting? Then we drop the deleted language which really accomplishes something of the same thing.

Assemblywoman Buckley:
Yes.

Chairman Anderson:
Mr. Nadeau, do you think we could move forward with that specific cross reference and drop "Nothing set forth herein shall preclude the association from enforcing provisions…" We can make that just one simple statement in the very beginning.

Jim Nadeau:
I would be less than candid with you if I didn't tell you we have been working on this with some other legislation also, and this is the language we worked out. We are comfortable with this language, but we had agreed on this other language.

Chairman Anderson:
So he is saying no.

Assemblyman Carpenter:
What you handed out here applies just to Clark County. I think in other areas they are very relevant.

Chairman Anderson:
I had failed to note that except for Section 2, "in a county whose population is 400,000." Ms. Buckley, I'm not sure this solves our problem in its entirety because of the population question. We will be asking bill drafting to make an appropriate amendment to make the applicable areas similar throughout the entire state in NRS 116.31123 and not just to Clark County.

Assemblywoman Buckley:
You could do that or you could track the concept except for short-term rentals and insert those same protections. So either delete the population cap on NRS 116.31123 or just bring the language over.

Chairman Anderson:
Deletion of the population cap is an interesting concept. It may endanger the bill for some other reason, but it lets everybody play on the same playing field.

Assemblywoman Buckley:
All you are saying is transient commercial use of planned communities that have CC&Rs. I don't think the world would end if we added a population cap.

Risa Lang, Committee Counsel:
So you are looking at taking the population cap off that section?

Chairman Anderson:
What would happen if we were to make the cross reference and remove the population cap in NRS 116.31123, so that it applied to the state as a whole? Would that be a net effect?

Risa Lang:
So, in Section 3, you would say, "as provided in NRS 116.31123?" Then in that section you would remove the population cap?

Assemblywoman Buckley:
Yes.

Assemblyman Mortenson:
I think Mr. Parks had a very good idea. I believe if a person rents a property, he has certain rights to that property. I certainly think a person ought to be able to sub-rent or sublease their property.

Chairman Anderson:
I don't disagree with the basic concept. I think they are concerned about their condominium or rental property does not become a weekly or monthly rental, but rather a longer term rental depending upon that group's CC&Rs. I don't think they should be able to preclude your ability to rent your property, because I think that would be wrong for a wide variety of reasons. On the other hand, people who live in gated or planned communities are not looking for it to become Motel 6. We need to make that assertion in the very beginning and remove the population cap in NRS 116.31123.

Assemblyman Carpenter:
Do most of these planned communities have restrictions against renting in their declarations, or is it just a few of the elite?

Jim Nadeau:
I can't say, but there are those out there that have both prohibitions of any type of rental within their CC&Rs. In other words, nothing can be rented. In other units, there may be a percentage of units that can be rented, perhaps 10 or 20 percent. It's my understanding that some of those are based on lending rates and financing within the communities. As far as most common-interest communities, I don't know, but I do know there are some that have a variety of restrictions within their governing documents.

Chairman Anderson:
I would like to point out when we heard the testimony on the bill, it seemed to me the representative from Lake Las Vegas indicated that Lake Las Vegas was concerned because of the nature of their particular property. Oftentimes, there were people who would like to lease it on a daily or weekly basis and they were not open to that. There is some property within their venture that is open to it, but not all of their property. Therefore, there was a very strict requirement relative to those kinds of concepts. They were trying to protect their ability to have the differentiation within their planned community. Is that a fair representation?

Jim Nadeau:
I think that is correct.

Assemblyman Carpenter:
It would seem to me that if we removed the population cap then we should have another hearing on it. If you can put some of the language in without removing the population cap, that is probably a safer way to do it, similar to what Assemblywoman Buckley said. When you start telling people what you can or cannot do with your property, to this extent, it is not a very good deal. Maybe they are doing it and they have the court decisions that say that they can. It's fairly complicated.

Chairman Anderson:
The CC&Rs are truly a new world of law. They seem to follow a consistent pattern because they don't have a uniform code that applies throughout. Most of us live under a uniform code of law.

Let's move to item 3 of the work session document (Exhibit D) that deletes new language in Section 7, on page 4, lines 6 and 7, because of concern for possible ambiguities in interpretations of the new language. For me, it does not cause any concerns. Mr. Ashleman wanted "of the association" on line 11 of page 4 to clarify the reserve is only used for certain needs. Is there a conflict there? I think we can do both of these things in item 3. Delivery of

documents 5 days before the offer is binding was proposed by the Nevada Association of Realtors in Section 9 of the bill. That was one of the primary concerns of the Nevada Association of Realtors. I don't think any of us had any concerns in that area.

[Chairman Anderson, continued.] To amend language in Section 9, subsection 2, page 6, lines 30 to 38, regarding cancellation of the contract, authorizes a purchaser to cancel within 5 days. Mr. Carpenter, did you wish to talk to us regarding some suggested language for this area?

Assemblyman Carpenter:
The way it reads now is you are going to send them a letter. I don't see there is any way to determine if that letter was sent or not. I think at least it should be sent by certified or registered mail so there would be a date on it, when you deposited in the post office. Otherwise, there is no way to tell a letter has been sent. I think there needs to be some clarification there.

Risa Lang:
We can certainly add that language.

Chairman Anderson:
What I am suggesting, if I am to understand the will of the Committee, is that we probably do not need to move with further clarification of Section 2, at least as suggested by Mr. Harvey. The language is sufficient in the bill. In item 2 (Exhibit D), we further modify the proposed language and do not add the suggested language, but rather make a reference to NRS 116.31123 and remove the population cap on that particular issue, with the hope it will get further discussion on the Senate side.

In item 3, delete the new language in Section 7, page 4, lines 6 and 7, and insert alternate language on line 11, page 4, as suggested by Mr. Ashleman and Ms. Dennison. Keep the suggestions in item 3, the suggestion in item 4 of the changes in Section 9, page 6, line 14, and the suggestion in item 5, referring to cancellation of the contract authorizing delivery of the cancellation notice to the agency of the unit owner, and such cancellation be by certified by registered mail.

> ASSEMBLYMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 290 WITH THE AMENDED LANGUAGE LISTED IN EXHIBIT D FOR AMENDMENTS 1, 3, 4, AND 5 AND MODIFYING THE LANGUAGE IN AMENDMENT 2 TO MAKE REFERENCE TO NRS 16.31123 AND REMOVE THE POPULATION CAP.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:
Let's turn to Assembly Bill 329.

Assembly Bill 329: Revises provisions governing juvenile justice. (BDR 5-66)

Allison Combs:
Assembly Bill 329 is on page 2 of the work session document (Exhibit D). This is the bill that provides a juvenile court with the power to designate proceedings as "extended jurisdiction juvenile prosecution," which is a criminal prosecution. However, during the discussion on the bill on March 8, 2005, there was an amendment to essentially replace the bill deleting the existing provisions and replace the bill. That amendment started on page 13. There is a summary prepared by the Legal Division as well as the amendment presented during the hearing.

Risa Lang:
The changes that were made from the last version that was discussed in Committee are actually very minimal. On page 15 and 16, the only change to the amendment was what is stated in paragraphs (a) and (b). It basically provides that a juvenile court may commit a child to a youthful offender facility for a period of not less than 1 year and not more than 3 years, if the child is at least 16 years of age at the time of commitment and the child has been adjudicated delinquent for committing an act.

Basically this covers all Category A and B felonies. It gives the court the option of sending offenders who commit crimes that would be a Category A or B felony, if committed by an adult, into one of these youthful offender facilities for up to 3 years. Other than that, the amendment is more or less as it was when it was presented to this Committee during the hearing.

Chairman Anderson:
Several questions have come forward relative to recent cases and older cases involving the rights of juveniles who might fall under this question as discussed in *McKeiver v. Pennsylvania* [403 U.S. 528 (1971)]. There is also an email that members of the Committee received from Mary Berkheiser, the Boyd School of Law (Exhibit F). She indicated to me she was concerned about A.B. 329 and had an opportunity to review the amendments and felt

there was a Sixth Amendment right in this particular case. As a result, Mr. Graham tried to clarify the juvenile trial question for us. I think it is an important step because we are moving these juveniles forward and now all of a sudden we are going to be treating them in the adult offender area. So we need clarification that we are not taking away a Sixth Amendment right.

Ben Graham, Legislative Representative, Clark County District Attorney's Office; and Nevada District Attorneys Association:
I believe what has been crafted is a pretty good piece of legislation. It puts some things into place that I have used as a defense attorney: holding a younger person back into the juvenile system and not tagging them as an adult felon. In the few cases I did that and it worked fairly well.

In the beginning of our discussion, we talked about the right to a jury trial and the right to an attorney in the adult system for any penalty that is longer than 6 months. The juvenile system does not carry that right to a jury trial constitutionally. I received some information dealing with the right to a jury trial (Exhibit G).

We are leaving these young people in the juvenile system. We are leaving them in the system to their benefit. If the district attorney wants to be hard-nosed about it, we will continue to seek certification, if there is any doubt, and try these people as adult offenders and possibly tagging them as felons. I think this offers an opportunity for the juvenile system, the prosecution, and the defense to leave this young person in a juvenile court. As indicated on the last page of the memo, there are some jurisdictions that have granted rights to jury trials in this situation. But it flies contrary to the entire concept of the juvenile rehabilitation process, and it is not constitutionally mandated. There may be philosophical concerns.

Assemblywoman Buckley:
I still have a lot of questions about the proposal. I support trying to do something more blended. It's like we are creating a whole new system. We don't have the facility yet. How many crimes is this going to cover? It just seems so radical. We have such little time left. I don't know whether adding a jury trial is a good thing. Maybe it is. Maybe we need to re-refer it to Ways and Means and have some discussion about facilities and give us more time to ponder it all.

Ben Graham:
I have been involved in the juvenile system continuously since 1989. Every session there has been an interim study and every session nothing has happened. The most significant thing that happened was in 1996 when

Governor [Robert] Miller signed the bills including sexual offender concepts and the juvenile justice system. This would be a good opportunity to see how the system works. I think there are a lot of other things in play like Ms. Buckley indicated. This is totally and completely optional. It offers some opportunity to divert some of these young people that would not give the district attorney an incentive from mandating adult treatment.

Chairman Anderson:
Having served on a few juvenile justice study committees and the nature of several different crimes, sometimes things just don't go the way the District Attorneys Association wants them to go. That doesn't mean they are not doing something about the law.

The case of blended sentences is one we have tried to put in the juvenile justice study several times. I am hopeful that the Legislature will pick it up. I see that there is another piece of legislation dealing with family and youth services that is trying to broaden the health area, into the judicial area, which raises the level of concern to this Committee.

Assemblyman Carpenter:
I need some clarification. If we would adopt the new version of this bill, would we then automatically be bringing these offenders into a jury trial?

Ben Graham:
No, there would not automatically be a jury trial.

Chairman Anderson:
I think that is part of the Sixth Amendment question brought up by you in *McKeiver* that juveniles do not have the statutory prerogative unless they have been adjudicated to the adult level.

Assemblyman Carpenter:
Any time they are adjudicated to the adult level, they have the right to a jury trial?

Ben Graham:
That is accurate.

Assemblyman Carpenter:
It states that it would constitute a Category A or B felony if committed by an adult. Under that situation, that is where they would have the right to a jury trial?

Ben Graham:
They would if they were in the adult system. It would remain the option of the court in the juvenile system and there would be no jury trial.

Chairman Anderson:
I was hoping a study would go forward on the concept of blending sentencing and juvenile justice. It is a recommendation to look at the concepts behind blended sentencing. Clearly, one of the major elements of the blended sentencing concept is the facility that would be needed to accomplish the outcome of those determinations. There is a possibility that those kinds of things are going to move forward, but there is no guarantee because it doesn't currently exist in the correctional system. That is why the Division of Family Services has concern about the fiscal impact.

Assemblyman Horne:
I am willing to go along with Ms. Buckley's earlier suggestion. I just want to state that my problem is that the *McKeiver* case states a jury trial is not mandated for juvenile proceedings. This is a 1971 case and while we recognize it can still be good law, I think it is important to point out the juvenile justice system and its direction in 1971 was far different than it is today. What I understand from this ruling is that the juvenile justice system is different, and we don't want to place it in the same realm as a criminal proceeding. We are going to keep it different and, therefore, afford it other constitutional protections. With this bill today, it does treat the juvenile in a criminal atmosphere. It is different. We may disagree on that but I believe it does. If we are going to be treating them in a criminal manner, then I don't think this ruling would apply, because it goes against the rationale in making the decision. As I said before, I would have no problem with Ms. Buckley's recommendation to re-refer.

Chairman Anderson:
I think what we could do here with this bill is amend and re-refer without recommendation to Ways and Means. I will ask Mr. Horne if he would pursue some development of language for review by this Committee and further recommendations to Ways and Means, if they are going to move forward with the Committee, so that we can give ourselves the opportunity to address some of the other concerns within this bill that may remain. That would move it away from us and put it to a place where it currently is not a protected bill. There is no extension in time that has been given to it, so we would have to explain to Ways and Means that we need it right away.

Assemblyman Carpenter:
I am going to vote against this motion because the topic is more under our purview and disagree with moving it to Ways and Means. I would much rather not act on this and have it come back in a study so we would have time to look at all the options. There are some good things in it. On the other hand, I just think you should not put these kids into any old jail which this amendment refers to. I think it came up because of one case. I think it's wrong to move it to Ways and Means. I think we need an interim study on blended sentencing.

Chairman Anderson:
I don't think we are going to abrogate the responsibility of the Committee by allowing you, if you would like, and Mr. Horne to work out some of the issues relative to the bill. The reality is regardless if it comes from a study or if we move in this direction, it is going to have a fiscal impact, because the facility itself is a key element in the whole blended sentencing concept. We can't avoid the clock whether we would like to or not.

We can send a letter to the Ways and Means Committee of our concern relative to the concept of trying to keep the issue alive, because there are quite a few issues that are being recommended for interim study this time. I am very concerned that this might not be one of the ones that comes forward. There must be some dialogue on this particular issue. While these interim studies continue to go, the issues do not percolate into what would be meaningful acceptance here. They seem to be a good way to shuffle the responsibility away from us. This still keeps it in front of this group of people.

Jone Bosworth, Administrator, Division of Child and Family Services, Nevada Department of Human Resources:
I echo what Ms. Buckley and Mr. Horne stated with respect to the impact on the juvenile system. We do recognize that there is a great need to provide community balance in Nevada. We also don't want to put at risk juveniles in the juvenile justice system in the care of the Division of Child and Family Services. We are concerned about the determinant sentence and what impact or projection of the impact is, in terms of keeping youth for a 3-year period at our facilities would have. We appreciate the opportunity to bring that fiscal information forward.

Chairman Anderson:
On the motion, to amend and re-refer to Ways and Means without recommendation, we should request a letter to follow asking the committee

to present further amendments if it is given an exemption. Obviously, if it is not given an exemption that means that the bill dies.

> ASSEMBLYMAN HORNE MOVED TO AMEND AND RE-REFER WITHOUT RECOMMENDATION ASSEMBLY BILL 329 TO THE WAYS AND MEANS COMMITTEE.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION CARRIED WITH ASSEMBLYWOMAN ALLEN, ASSEMBLYWOMAN ANGLE, ASSEMBLYMAN CARPENTER, ASSEMBLYMAN HOLCOMB AND ASSEMBLYMAN MABEY VOTING NO.

Chairman Anderson:
The bill is passed and I will take care of the amendment on the floor.

Let's turn our attention to Assembly Bill 531.

Assembly Bill 531: Provides additional or alternative penalty if first responder suffers substantial bodily harm or death during discovery or cleanup of premises wherein certain controlled substances were unlawfully manufactured or compounded. (BDR 40-105)

Allison Combs:
Page 8 of the work session document (Exhibit D) contains A.B. 531. It provides an additional or alternative penalty when first responders suffer substantial bodily harm or death when cleaning up premises where controlled substances were unlawfully manufactured or compounded.

This was a bill from April 7, 2005. The Attorney General's Office testified on the bill to provide additional deterrents or punishment for individuals involved in this activity, which are often very risky involving fire, explosion, and caustic chemicals. There was also testimony in support of the bill from law enforcement. There were no amendments proposed during the hearing on this bill.

Chairman Anderson:
This is a protection bill for first responders. Obviously when you are responding and you know where you are going has hazardous materials, because you have been informed by the police before you get there, you

have to take due diligence for obvious protection. This doesn't expand that scope of protection.

Allison Combs:
I would just note there are some things that would have to be approved with regard to the crime: that it was proximate cause resulting from the manufacturing or compounding of certain controlled substances, so there are some additional elements to the crime that may address your concern.

Chairman Anderson:
We heard testimony on the bill recently. At the time it looked like we were willing to move with the bill. Unfortunately, there were two recommendations that the Attorney General was making and the other one overshadowed this one. I think, as a result, we did not move forward with this one as we could have at the time.

Assemblyman Oceguera:
Could you go over your concern again?

Chairman Anderson:
I want to make sure that my concerns are met here. If you are going to clean up a hazardous cite because the police have already identified it, you would be taking proper cautionary steps, and that doesn't give you the opportunity to get an enhanced penalty just because you didn't follow precautionary steps.

Assemblyman Oceguera:
Sometimes we know, sometimes we don't. If I get a response to a possible meth lab, I show up there, I have a hole in my glove, and I get injured, is this a way out of an enhanced penalty because I was injured while responding to something I knew or should have known was hazardous?

Chairman Anderson:
I think it was one of the questions that was brought up during the testimony of the hearing. We were concerned about making sure those folks who are responding are obviously taking proper caution. If you have a faulty piece of equipment and you know that you have a faulty piece of equipment, then you are not practicing safe entry for the simple reason that would not entitle you for enhanced penalty.

ASSEMBLYMAN HORNE MOVED TO DO PASS ASSEMBLY BILL 531.

ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

This bill is assigned to Mr. Oceguera.

Let's turn our attention to Assembly Bill 469.

Assembly Bill 469: Revises certain provisions governing forfeiture of bail. (BDR 14-909)

Allison Combs:
Page 7 of the work session document (Exhibit D) contains A.B. 469. This is a bill that revises the list of exceptions under state law to eliminate, as one of the grounds for setting aside forfeiture bail—the defendant appearing before the court after the date of forfeiture and presenting satisfactory evidence that the surety did not in any way cause or aid the absence of the defendant.

There was testimony on the bill that this would reverse a change from the 2003 Legislature. The testimony noted the change from 2003 protects sureties from any bond forfeitures in which they did not act, cause, or aid the absence of the defendant as long as the defendant reappears. There has been litigation on this issue since that time.

The opposition presented the change explaining existing law governing the exoneration of a surety and would discourage sureties from looking for the defendant.

On pages 21 to 25 of the work session document is a letter from Mr. Wadhams who testified in opposition to the bill. Pages 23 and 24 present the information that the Committee was asking for, as far as comparing the current situation of the law versus the effect of the bill passed.

There was one amendment proposed to make the effective date upon passage and approval from the District Attorneys' Association.

Chairman Anderson:
Mr. Wadhams has clearly put a good deal of time in trying to raise our awareness of his particular point of view. I believe the way it was working

prior to the amendment change in the statute, seemed to follow the essence of what sureties are suppose to be doing. I think we are all a little surprised by the change in the law and whether we, in fact, are taking grandma's house or not. I don't believe we are under the old law or under the new at least in a practical application of the way it is going forward. I would suggest that A.B. 469 is a good piece of legislation and what we should do is pass the bill, which would be effective upon passage and approval, rather than on July 1, 2005.

> ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 469 WITH THE AMENDMENT TO CHANGE THE EFFECTIVE DATE TO PASSAGE OF THE BILL.
>
> ASSEMBLYWOMAN BUCKLEY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Let's turn our attention to Assembly Bill 465.

Assembly Bill 465: Prohibits person from allowing child to be present within certain distance of any conveyance or premises wherein certain crimes involving controlled substances other than marijuana are committed. (BDR 40-112)

Chairman Anderson:
Assembly Bill 465 is on page 5 of the work session document (Exhibit D). It is another Attorney General proposal. I am of the opinion that we can move with the bill by putting the location of the legal activities so it is on the premises of the event. I also believe we can move forward with the suggestions of the Attorney General's Office, other than the 500 feet, because I think it should be on the premises and adopting his suggested language "is a participant, conspirator, aider or abettor, or is in any manner knowingly engaged in such activity." We then would end up with a clean piece of legislation that may have some impact upon the prison system. We are also including adding "in a conveyance." The reason we need "in a conveyance" is that so we are including motor homes.

The amendments on this bill are that it takes place on the premises and that the participant, aider, or abettor is indicated in narrowing the scope of the crime as suggested by the Attorney General's Office. We are also including

within that definition that we are including both the conveyances and the premises. We eliminated all distances so it has to be on the premises.

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 465 WITH THE AMENDMENTS AS DISCUSSED ABOVE.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Assemblywoman Angle:
Yesterday we discussed A.B. 194 and you said we could discuss it again today. I have Mr. Kermitt Waters in Las Vegas ready to answer questions about cases that have come up since 1999 relating to this interest problem.

Chairman Anderson: Let us open the hearing on Assembly Bill 194.

Assembly Bill 194: Revises provisions governing amount of interest paid by plaintiff in action relating to eminent domain. (BDR 3-850)

Kermitt Waters, Attorney at Law, Las Vegas, Nevada:
I support this bill and the change in A.B. 194 for compound interest. The judges have knowledge of the market rates when they hear testimony from the economists. We are trying in eminent domain and in every case to put the landowner back in the position where he would have been had the project come and not take his property.

Frequently, the deposits are so insignificantly low that he doesn't have possession of property, and he doesn't have the money. If he had the money for the property, he could invest it almost anywhere and get compound interest. Compound interest is not a windfall for the landowner at all. It is just a method of putting him back in the position he would have been had the project not taken his property. The federal court of appeals and many states courts have ruled that compound interest is part and parcel of just compensation. That is a summary of what I would like to pass on to the Committee.

I recommend this amendment so that the landowners are made whole. It is not a windfall. Anybody that is given the money can go invest it and get compound interest anywhere. Without that, he is not getting a fair shot.

Chairman Anderson:
It is evident in Mr. Waters' belief, which is reflective of the testimony presented by Ms. Angle yesterday, that it is broadening the discretion of the judges, in terms of whether folks are going to get compounded or simple interest when we take their property. It would be the judges' ability to make the decision in what would be considered the best interest. He would not be required to do so as it would be a matter for the judge.

The hearing is closed on A.B. 194. I will entertain a motion from you, Ms. Angle, but I don't believe I can support it. The amendment is as presented on page 9 in the work session document (Exhibit D)—that the court shall determine on a case by case basis whether the interest being paid by the plaintiff must be simple or compound interest.

Assemblyman Horne:
I will vote yes but I reserve the right to change my vote on the floor because I am still not comfortable with the history on why it changed.

Assemblyman Conklin:
There is statute already in place that mandates a specific interest rate. What this bill does is allow the court to decide if that mandated rate shall be compound or not. There is no market condition that is guaranteed where that actual interest rate is absolutely guaranteed. Real estate is a speculative investment. It always has been and it always will be. Over time, general property values go up. Present windfalls in Las Vegas of 20 or 30 percent are not happening everywhere in our state. There are some places in our state where property values are actually declining.

The opposition on this bill is twofold. We are guaranteeing the interest rate that is not guaranteed anywhere under market conditions. If we are going to allow the court jurisdiction to make such decisions, then I think a whole plethora of other things, like what market conditions are happening in the current market, should be taken into consideration. It is a very complex issue and I disagree with the way it has been put together in this bill.

Assemblywoman Ohrenschall:
I agree with Mr. Horne. I have some serious reservations about how it is put together.

> ASSEMBLYWOMAN ANGLE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 194 WITH THE AMENDMENT AS OFFERED IN THE WORK SESSION DOCUMENT EXHIBIT D.

ASSEMBLYMAN MABEY SECONDED THE MOTION.

THE MOTION FAILED WITH MR. CONKLIN, MS. GERHARDT, MR. HORNE, MR. MANENDO, MS. OHRENSCHALL, AND CHAIRMAN ANDERSON VOTING NO. (Ms. Buckley and Mr. Oceguera were not present for the vote.)

The bill has failed.

[Meeting was adjourned at 10:45 a.m.]

RESPECTFULLY SUBMITTED:

_____
Carole Snider
Committee Attaché

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 14, 2005 **Time of Meeting: 8:40 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 241	B	Margi Grein, Executive Officer, State Contractors Board	Statement to Committee dated 4-13-05.
A.B. 390	C	Russell M. Rowe, Attorney at Law	Letter to Committee dated 4-12-05.
A.B. 194 A.B. 282 A.B. 290 A.B. 329 A.B. 465 A.B. 467 A.B. 469 A.B. 531	D	Allison Combs, Legislative Counsel Bureau	Work Session Document
A.B. 290	E	Allison Combs, Legislative Counsel Bureau	NRS 116.31123
A.B. 329	F	Mary Berkheiser, William S. Boyd School of Law, University of Nevada at Las Vegas	Memo to Chairman Anderson dated 4-9-05.
A.B. 329	G	Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office	Memo to Jonathan VanBoskerck dated 4-13-05