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SUPREME COURT COURT

STATE OF NEVADA

SATICOY BAY LLC SERIES 350 DURANGO 104, Appellant, vs. WELLS FARGO HOME MORTGAGE, Respondent.	No. 68630

JOINT APPENDIX 2

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MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
February 24, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:04 a.m. on Thursday, February 24, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Randolph Watkins, Executive Director and Vice President, Del Webb Community Management Company
Michael E. Buckley
John Leach
Mark Coolman, Western Risk Insurance
Pamela Scott
Garrett Gordon, Southern Highlands Community Association, Olympia Group
Angela Rock, President, Olympia Management Services
Donald Schaefer, Sun City Aliante
Jonathan Friedrich

Rana Goodman
Chris Ferrari, Concerned Homeowner Association Members Political Action Committee
Joseph Eaton, Concerned Homeowner Association Members Political Action Committee
Ellen Spiegel, Ex-Assemblywoman
Kay Dwyer
Jan Porter, Sage Creek Homeowners' Association
Gary Solomon, Professor, College of Southern Nevada
Tim Stebbins
Norman McCullough
Kevin Wallace, Community Association Managers Executive Organization, Inc.
Paul P. Terry, Jr., Community Associations Institute
Bill Uffelman, President and CEO, Nevada Bankers Association
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Rutt Premsrirut, Concerned Homeowner Association Members Political Action Committee

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 174.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

RANDOLPH WATKINS (Executive Director and Vice President, Del Webb Community Management Company):
I have presented you a handout entitled HOA 101 (Exhibit C) which explains how homeowners' associations (HOAs) originated. I will highlight benefits to forming an HOA. Municipalities benefit from forming HOAs because they maintain private roads, common areas, and parks and recreation areas that local cities and governments do not maintain.

Another benefit is rules are and should be enforced for all. The HOAs are for amenities such as pools, tennis courts, recreation centers and places where families can have sense of community. They invite clean, efficiently run, architecturally and aesthetically controlled neighborhoods. Resale value for homes in an HOA are higher because property is maintained.

Nevada has 2,956 HOAs, including approximately 477,000 units, and HOA homeowners equate to 17 percent or 18 percent of the state's population. If there are two people in every home, approximately 950,000 live in HOAs. There are three types of HOAs: planned unit development, condominium and hotels, and stock co-ops.

The responsibilities of living in an HOA are to abide by the governing documents; pay assessments on time; attend board meetings; and volunteer to serve as elected board members and committee members.

In order for an HOA to govern itself, it needs governing documents such as articles of incorporation; covenants, conditions and restrictions (CC&Rs); and election procedures. Chapter 116 of the *Nevada Revised Statutes* (NRS) governs HOAs. The CC&Rs, rules and regulations, and design guidelines are tools used by management companies to assist the board of directors.

Professional management companies manage approximately 2,500 of the HOAs in Nevada. The remaining 400 are self-managed or managed by boards of directors or licensed community managers.

There are also supporting professionals, i.e., lawyers, certified public accountants, and landscaping and architectural review companies. It is actually big business.

In December 2009, a Zogby survey showed 71 percent of the residents in HOAs were satisfied with their associations, 12 percent were dissatisfied and the remainder had issues which did not fit into those two categories. In addition, 70 percent are in favor of the rules; 82 percent are positive about the value received from the community association assessments; 87 percent oppose additional government regulation; and 37 percent favor mandatory licensing for community association managers.

ALLISON COPENING (Clark County Senatorial District No. 6):
I am here today to introduce S.B. 174. I will read from my testimony (Exhibit D).

I have provided a list of the S.B. 174 Working Group members (Exhibit E) and request it be entered into the record.

MICHAEL E. BUCKLEY:
The Common-Interest Ownership Uniform Act was the first consumer protection law enacted in the State.

I am a member of the State Bar of Nevada, Real Property Law Section. We have looked at S.B. 174 in another context because the Uniform Act has been amended. I am also a member of the Commission for Common-Interest Communities and Condominium Hotels (CICCH). A group of people met before Session to compile solutions. We had input from different groups and people. An explanation of the proposed changes, section by section of the bill, is in (Exhibit F).

Section 1, page 4, of S.B. 174 would allow an appeal to the CICCH from a ruling of the Real Estate Division (RED). The main issue with HOAs is to have an easy, inexpensive way to resolve disputes. The CICCH is comprised of seven members—three homeowner representatives, an accountant, an attorney, a developer and a manager. All of the meetings are public, and public comment is allowed. A homeowner can go to the CICCH with a complaint. There has been discussion that issues appealed to the CICCH need to be fine-tuned. Sections 2 through 7 are procedural issues. The substance is in section 1.

Section 2, page 4, proposes not permitting cumulative voting. Smaller associations are concerned cumulative voting would permit a small group to take over an association. Cumulative voting may benefit larger associations; you need to draw a line rather than eliminate all cumulative voting.

Section 3, page 6, became law in 2009. *Nevada Revised Statute* 116.310312 addresses the fact homes were abandoned, foreclosed upon and falling into disrepair. This section allows the association to maintain an abandoned or foreclosed property. The costs expended by the association are a superpriority lien against the property. The Uniform Common Interest Ownership Act was adopted wherein, if a first mortgage holder forecloses on a common-interest community (CIC) unit, the association can be paid six months of the dues owed, which is called superpriority. This was expanded to nine months, except for condominiums.

On page 6, section 3 addresses the removal or abatement of a public nuisance on the exterior of the unit which "adversely affects the use and enjoyment of any nearby unit."

On page 8, section 4 changes the mailing of ballots on an election to save the association money. A CIC can consist of three to thousands of units. This language clarifies if the people nominated are equal to or not more than the board spaces which are open, those people are elected. The proposed amendment in section 3, subsection 5, paragraph (a) states if this situation applied, the association could not have an election. We would change the words "must not" to "shall not be required to."

On page 9, section 5, paragraph (b), the change states that the nominees will become duly elected members at the next regular board meeting.

On page 11, section 3, subsection 10 is cumulative voting. That may need to be clarified by limiting it to certain-size associations.

On page 12, section 5 needs to be in conjunction with section 7; although chapter 116 is uniform law, it has been amended many times. Section 7 states how to call a special meeting of the homeowners. Section 5 removes provisions from section 7 and puts them into section 5. This gives the owners the ability to call for a removal election, not the board or the president. Section 5, subsection 1, paragraph (a) clarifies the number of votes. In the statute, if an HOA had 100 members, you only needed a majority of 35 and 18 people could remove a member of the board. The new language restores the provision that at least 35 percent of the membership must vote for removal.

On page 14, section 5, subsection 4 is moved to section 18 on the bottom of page 33 and the top of page 34. Section 6 amends NRS 116.31073. The concern was from municipalities where if a wall or security wall was boarding a street and an association, the city was not responsible. The CICCH had meetings to understand what a security wall is. There can be a wall between a street and the association, referred to as a perimeter wall; a wall between two homes; a wall around a common area inside the project; or a wall along the street inside a project. The person whose property contains the wall assumes responsibility, unless the government has accepted the responsibility, the wall has been damaged by a third party or the CC&Rs provide otherwise. Clark County suggests that where subsection 1 references "governmental entity has accepted responsibility," the agreement be in writing (Exhibit G).

On page 16, section 7, subsection 3, paragraph (a) is a change which appears throughout S.B. 174. The law states an owner should be provided copies of the

minutes in electronic format at no charge. Some owners want a compact disc (CD) or a copy of the audiotape of a meeting. The intent was if there is a cost to the association, there should be a cost to the owner. But the intent of electronic format was intended as e-mail and PDF attachments.

On page 17, section 7, subsection 6 is the same change, to clarify e-mail rather than a CD or other format.

On page 18, section 8 defines an executive session and also states that an executive session does not require notification to unit owners.

On page 19, section 4, subsection 5 allows the association to make deliveries by e-mail. Paragraph (a) changes electronic format to e-mail. Page 20 is the same change.

On page 21, section 9 describes what can be discussed in executive session and subsection 3, paragraph (b) adds the board be permitted to discuss the professional competence or misconduct of a vendor. The board cannot act on a failure or change the contract in executive session; that needs to be discussed in an open meeting. There is a suggestion to delete the reference to "or physical or mental health" from paragraph (b). Paragraphs (d) and (e) may be repetitive.

On page 23, section 10, subsection 1, paragraph (c) requires the association to provide crime insurance. Section 11, section 1 requires the association maintain its funds with an institution insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or the Securities Investor Protection Corporation.

On page 24, subsection 2 permits associations to have cash on hand.

On page 25, section 12, subsection 3 states assessments have to bear interest. The change is intended to say they "may" bear interest, not "have" to bear interest.

On page 26, section 12, subsection 6 may need to be rewritten. If a person in the community causes damage to the common elements, the person should be responsible. This would include not only the unit owner but the unit owner's tenants or guests. Subparagraph (b) states the person who created the harm is also responsible for legal fees and costs.

On page 27, section 13, subsection 1, paragraph (b), subparagraph (2), the word "necessary" is deleted. In subparagraph (3), "special" is replaced with "reserve." This clarifies it refers only to those reserves. Some associations refer to special assessments as an assessment for a violation. An association has the ability to fund its reserves or make an assessment against an owner without approval from the owner, but only for reserves.

On page 28, section 13, subsection 4, paragraph (a) clarifies the need to send owners the investment policy as well as the collection policy. Section 14 addresses how an association pays money and requires two signatures, but there are exceptions. If there is more than $10,000 to be paid to the State, you have to pay by wire transfer. This would permit the transfer. This also permits transfers to the United States Government for taxes and payment to certain vendors.

On page 29, section 14, subsection 3, paragraph (e), subparagraphs (1) through (3) are requirements designed to safeguard the electronic transfers. Section 15, subsection 1 defines anything the association charges a lien on the property. If the first mortgage forecloses, all association's liens are wiped out except the superpriority, which protects the association.

On page 30, section 15 would allow the collection costs to be part of the superpriority lien. In December 2010, the CICCH approved a proposed regulation that clarified what are reasonable collection costs, which is stalled because of the moratorium on new regulations. The CICCH determined what are reasonable fees and costs. In the comment to a change in 2008, the Uniform Law Commissioners stated the 2008 change was approved by the Foreclosure Prevention and Mortgage Assistance (Fannie Mae) program. I have been told that adding collection costs to the superpriority violates Fannie Mae, but when I looked at the Fannie Mae guidelines, that was not the case. Nevada has the concept of reasonable collection costs, which is another safeguard. Subsection 6 clarifies actions "against a unit's owner."

On page 31, section 16, subsection 1 makes the executive board, a member of the board or manager liable for retaliatory action against a unit owner. The intent of subsection 2 was to provide protection for board members against threats and retaliation by a unit's owners.

On page 32, section 17 is a technical correction to clarify reserve assessments, not special assessments.

On page 33, section 18 defines punitive damages.

On page 34, section 18, subsection 4, paragraph (d) should be deleted, as this would apply to the community manager and that was not the intent. It is intended to cover the volunteers who work for the HOA.

On page 35, section 19, subsection 7, paragraph (b), the reference to bond is removed.

On page 36, section 20 clarifies provisions regarding regulations on management contracts.

On page 37, section 20, subsection 1, paragraph (g) requires provisions for indemnity. Paragraph (k), subparagraph (1) defines it is not the manager's funds, but the association's funds. Subparagraphs (1) through (4) define insurance. Paragraph (l) is a technical correction to delete "include provisions for dispute resolution." It also conflicts with the provisions in subsection 2, paragraph (a) defining mandatory arbitration.

On page 38, section 20, subsection 2, paragraph (b) permits management to obtain contracts to provide indemnification for the manager. The reference to Title 7 of the NRS is to the corporate statutes, which say indemnification is not appropriate where the wrongdoer is negligent. Subsection 6 defines managers who only have electronic records. When there is a change in manager, the new manager can obtain and have access to those records without receiving a password from the previous manager.

On page 39, section 21 refers to NRS 116A, community managers (CMs).

On page 40, section 21, subsection 12 clarifies the board invests funds, although the CM can do things on behalf of board members who make those decisions.

On page 41, section 22 amends NRS 76.020 and defines "business." The business law tax was enacted to exempt nonprofits under NRS 82, under which

most associations are incorporated. This would also add NRS 81 because some associations are incorporated under that chapter.

On page 42, section 23 amends NRS 76.100 to further define business.

JOHN LEACH:
I am in favor of S.B. 174. I agree with Mr. Watkins, Senator Copening and Mr. Buckley. The comments Mr. Buckley made regarding Exhibit F breaks down into two categories, i.e., enhanced due process in section 1 giving the association owner the opportunity to come before the Commission, and the sections that provide cost-savings to HOAs and thereby the homeowners. Clarification in the statutes is also key.

CHAIR WIENER:
Mr. Buckley, when the Commission met with the Real Estate Division, were members going to address the safety issue for the unit owners and management?

MR. BUCKLEY:
We discussed if a crime is committed, it need not be added to NRS 116. But there needs to be protection of retaliation against board members.

MARK COOLMAN (Western Risk Insurance):
I am in favor of S.B. 174. Five major insurance markets provide coverage for HOAs, and all of them provide the endorsements free of charge. The way sections 10 and 20 are rewritten, the cost of insurance would be favorable. Homeowners' associations would have the largest amount of availability, and the cost would be less than both of them maintaining half the insurance coverage. First of all, you would disclose who does what, and second, you would go out to market and obtain the best available price and coverage.

Section 16 defines the need for protection of board members. In the last several years, I had four claims where a board member or president had cars, houses or other personal property destroyed, generally after board meetings or controversial activities within the association.

PAMELA SCOTT:
Section 15 talks about superpriority and reasonable collection costs. Banks are taking from 18 months to 24 months to complete the foreclosure process on

property, causing the superpriority liens and the need for collection costs. Homeowners have stopped paying their assessments prior to the bank's foreclosure action. If the homeowner stops paying the association, the association puts a lien on the property before the bank starts the foreclosure process. If the bank is not moving forward, it forces the association to move forward with the lien, which adds another step and fees. The association does not receive the funds and are writing off years of common assessment to bad debt. It is money which condominium and smaller associations need; they do not have the numbers to spread the debt around. It is important the associations receive their collection costs.

The key is the regulation, which has not been adopted because of the moratorium. Senator Copening has a bill that spells out reasonable collection costs. It is important to include reasonable collection costs for superpriority for HOAs.

GARRETT GORDON (Southern Highlands Community Association, Olympia Group):
Southern Highlands Community Association is a large association with over 7,000 rooftops, approximately 25,000 residents. Many of these issues are unique to large associations.

ANGELA ROCK (President, Olympia Management Services):
I am the president of Olympia Services, which manages Southern Highlands Community Association. We have submitted a list of clarifications (Exhibit H) on sections 1, 2, 4, 14 and 16. We have additional comments and questions on section 10 as it relates to insurance. Unique situations apply to smaller communities compared to large associations. Both have important issues and needs.

CHAIR WIENER:
Could you give us an idea of the budget and management challenges you have with a large association?

MS. ROCK:
When you have 25,000 homeowners and they disagree, a great number of groups are involved. This is a complex financial issue, with large amounts of money involved, and there needs to be protection, which S.B. 174 accomplishes. Homeowners volunteer their time to run a multimillion dollar corporation, which I point out in Exhibit H.

Last week, auditing issues were addressed in smaller associations. Cumulative voting can be an issue in a smaller association while in a larger community, it allows smaller subassociations to have a voice. We have some subassociations in our community with approximately 30 to 40 homes, compared to other subassociations that have 720 homes. It is a necessary tool for larger communities to allow smaller masses to have a voice. These are some issues which can be vetted through the process.

DONALD SCHAEFER (Sun City Aliante):
I am a homeowner in Sun City Aliante, an age-qualified community consisting of 2,028 homes. I am here today representing Sun City Aliante exclusively.

Homeowners own the association, which the board manages. Being transparent with disclosures—where money is invested, how it is invested, how collections are made and when someone is turned over to collections—makes board management clear to the homeowners.

On page 9, section 4, subsection 5, paragraphs (b) and (c) have not been addressed. In Sun City Summerlin, the process begins with nominations in January, as its fiscal year runs from July 1 through June 30. The homeowners have 30 days to nominate someone and the nominee to turn in a resume, etc. In another 30 days, the ballots are printed and sent to the homeowners. At the annual meeting in May, a candidate forum and open voting are held. At end of the board meeting, the winners are announced, the meeting is recessed and the board is reorganized. The board then has a meeting to elect the president, secretary, et cetera.

If S.B. 174 passes with no changes, the above section states: "the nominated candidates shall be deemed to be duly elected to the executive board." If this was the case, at the end of January if there were three people running for three positions, they would be elected to the board on the second Wednesday of February. You have shortened the term of the existing board and lengthened the term of the incoming board. It is not a major issue for those associations that have a two-year term, but for those associations that have a three-year term, the board would be in violation of the three-year maximum limit. That term would be exceeded by two to three months.

The Sun City Summerlin board suggests the language in paragraph (b) be changed to say elected board members would take their seats at the conclusion

of the current board term. This is consistent with how State officials are elected. They are elected in November and seated in January.

JONATHAN FRIEDRICH:
I will read from my testimony (Exhibit I).

When you buy a home in an HOA, you sign a contract. When the State changes the terms or supersedes the contract, there is no approval by one party—the homeowner. It is a contract.

Mr. Watkins stated 71 percent of the homeowners are satisfied; what about the other 29 percent? Based upon Mr. Watkins' numbers, he stated 950,000 people live in HOAs. If you multiply that times the 29 percent who are not happy, that makes 275,000 people in this State who are not happy with their HOA.

Mr. Buckley referenced the item on electronic format. I received a complaint from a homeowner whose CM wanted $25 for a CD. We need regulations.

On page 4, section 1, subsections 1 through 7 can be used as a tool by the HOA attorneys to charge high attorney fees, which the association will pay. Then, the association attempts to recoup those fees using NRS 116.3115, subsection 6, which forces the homeowner to pay the attorney fees. It can also be used by the homeowner who wants to appeal a RED decision to the CICCH. Either way, the Commission will become inundated with appeals. If these appeals are considered civil actions, NRS 116.31088 requires notice to all homeowners. This will prove costly to everybody.

The new law extends the removal of board members to 120 days, four months. If you have bad board members, you want them off the board as soon as possible.

I am in favor of criminal insurance, but the HOA should pick up the cost. That is a cost of doing business by the CM.

RANA GOODMAN:
I have previously submitted my comments (Exhibit J); I will not read them. However, I have additional comments regarding Mr. Watkins' statements about HOAs and how they are established. He is describing a utopia. When most of us buy a home in an HOA community, we buy it with the same idea; we want to

live in a nice community. In that respect, I agree with him. The problem is the people who govern the HOA. You are at the mercy of your board of directors. If you have a resident-friendly board, you have what you want. The problem is many HOAs are run by bully boards; it is a fact of life, and the complaints prove that.

In Southern Highlands Community Association and Sun City Anthem, there are 7,144 homes with 11,000-plus residents who are retired with no children. The biggest majority of those residents suffer from a bad case of apathy. They do not care—they want to play golf, live a fabulous retired life, and more power to them. I would argue that 71 percent are happy; a big portion are not happy, not with the association. The look of the association is beautiful, but the residents are not happy with those who govern the HOA.

I ask you to choose how you coin your words in S.B. 174. For example, on page 18, section 8, subsection 2, paragraph (b), you use the term, "if the association offers." It is too soft; I would suggest it be changed to "the board shall offer." When you say, "if the association offers to send notice by electronic mail" and you have a bad board, it can say, no, we are not going to do that. There is nothing a resident can do because the law gives the board an out.

On page 21, section 9, subsection 3, in paragraph (b), you use the term "misconduct." How do you define misconduct? Several years ago, a resident in my community physically assaulted someone by knocking that person down; that is misconduct. There are other cases where someone asks for documents and the board did not want to give them. Because the attorney deemed it misconduct, he fined the person, used the paragraph which deals with community expenses and charged the homeowner $8,000 in legal fees. That word needs to be changed and further defined; it is too loose. Misconduct is when my child mouths off to me. What we need from you, our Legislators, is a way the homeowners can hold their boards accountable. It is not the HOA per se, it is people governing the HOA. Our first line of governance is our board, but our line of reason is you. If we have ambiguous terms in the law, where do we go?

If residents are retaliated against by the board, they go to the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels and wait for at least three months. Then they take it to RED, and it goes

into mandatory arbitration. If this law passes as is, a resident is deemed to retaliate against board members by having an argument with them or whatever the board deems is retaliation against them. The board can do anything it wants. I quote my board president in testimony last week to you: "This board can do whatever we want."

CHRIS FERRARI (Concerned Homeowner Association Members Political Action Committee):
Concerned Homeowner Association Members Political Action Committee (CHAMP) is a broad-based coalition of homeowners, consumer credit counselors, labor union members, minority chambers of commerce, National Association for the Advancement of Colored People, legal aid organizations, real estate agents, builders and numerous others. For clarification, we are not anti-HOA. Our primary concern is to ensure when fees are assessed based on nonpayment of assessments, the money goes to fix the communities and keep them maintained for their residents.

I am not in opposition to S.B. 174 but have concerns in opposition to sections 12 and 15. Based on Mr. Buckley's comments in section 12, subsection 6 alleviates our concerns in section 12, so I will focus on section 15.

After a home is foreclosed upon, the Fannie Mae program will pay up to six months of back due HOA assessments for common expenses. That amount may include collection fees, but no more than that. This is a discrepancy that we have with the comments made by Mr. Buckley and is evidenced on page 1 of our handout (Exhibit K), in the bottom two right-hand boxes. We have also had conversations with Fannie Mae and Federal Home Loan Mortgage Corporation's (Freddie Mac) counsel to confirm this.

The HOAs have the ability to foreclose for past due assessments through Nevada's nonjudicial foreclosure process. Prior to foreclosure, an HOA resident who missed payments is turned over to an HOA's collection or management company in less than two months. This is referred to as "imaginary fees." We all know someone who has been impacted by these egregious fees.

Page 2 of Exhibit K shows a sample payoff demand from an HOA collector, who supports S.B. 174, for services purportedly rendered to collect past due assessments. While it contains many of the imaginary fees—it is not unique—it is the norm. In this particular example, page 3 shows the two past due

assessments are each in the amount of $39.12 for a total amount owed of $78.24. How much would the demand letter be based upon? $3,322.24. To be fair, in this example we will deduct the demand and transfer fees from the total, as these are relevant charges. The new total is just under $3,000. The past due amount is $78, and we are talking about almost $3,000; that is the core of our argument. That means 2.7 percent of the money demanded will find its way to the HOA, and 97.3 percent will go to the collector. Who is winning in this situation? The money is not going back to the HOA to fix the issues.

Page 4 of Exhibit K shows a demand issued via e-mail at 9:08 a.m. for payment by 1 p.m. that same day. I doubt whether any one of us who received such a demand this morning would be able to pay it by 1 p.m. Because the four-hour demand was not met, the fee went up $2,000, a $2,000 fee increase in four hours. The money is not going back to the HOA to fix the problem.

In Exhibit K, page 10, in contrast—Fannie Mae and Freddie Mac's nonjudicial foreclosure pays $600 for the same process and completes the foreclosure, unlike the previous examples.

One of the members of Senator Copening's Working Group testified in previous Legislative Sessions that from the thousands of files opened by an HOA collection company, only two homes were foreclosed upon. This seems fairly consistent in the process, but the question is: why are those notices sent?

In closing, S.B. 174, sections 12 and 15 make it harder for families in Nevada to buy or sell a home and easier for their HOA collection companies to do business as usual.

SENATOR BREEDEN:
Mr. Friedrich, you mentioned homeowners contact you. Are you an advocate, but not with an organization?

MR. FRIEDRICH:
Through personal disputes with my HOA and having been run through the mill, I have become an advocate for unhappy homeowners. I will be glad to share my binder with anyone who would like to see it. These are complaints e-mailed to me by unhappy homeowners that range from, "I have a jungle gym in my backyard, and they want me to take it down" to "the color of my driveway paint does not match the exact shade I submitted." There is no organization,

Just a group of people trying to fight for homeowners' rights and level the playing field.

SENATOR GUSTAVSON:
Mr. Ferrari, on the exorbitant fees people are being charged; if Fannie Mae or Freddie Mac will not pay these fees, who will?

MR. FERRARI:
That is a great question, one of which all of you are concerned. What typically happens is a superpriority lien, which is in section 15, incorporating more fees under superpriority. As many real estate agents or others can tell you, that lien is stuck on the house regardless of who owns it. When the next buyers purchase the home, they will not find out how much the fees are until the end of the process through a demand letter to the collection agency. We found in numerous examples, including the consumer credit counselors, when people buy homes, their federal loans are approved, but they cannot finance the lien amount. That is stopping real estate transactions throughout the State, making it a larger issue. Until we rid the excess inventory in the market, people cannot start building again and those homes will not transact.

SENATOR BREEDEN:
If this is a bank-owned home, why are buyers not responsible for paying those fees?

MR. FERRARI:
I will defer that question to Mr. Buckley, a real estate agent or attorney from CHAMP to answer the question.

SENATOR COPENING:
There is a collections bill which will mirror the CICCH's regulations not on hold. We wanted to codify it into law to ensure these egregious fees to a homeowner do not happen again. The fees would be capped at under $2,000 and only one letter will be sent. There would be limits on how much could be charged to write a letter, maybe $50 for the time it took to generate it.

Someone has to pay those collection costs when there is a foreclosure. Right now, in my bill and in the collections bill, superpriority will be given to collection costs because it is a cost of the association. In many cases, HOAs have paid those costs when contracted with a collections agency. In some situations, they

paid every month, and two years down the road, the home forecloses. There may be the maximum $2,000 collection fee. If the assessments were $100 for nine months, the association receives $900 and could also be owed those fees. It is my understanding CHAMP believes those costs should pass on to all homeowners of the association. In that case, one person's bad debt, or several in an association, would be passed on to all homeowners. If it is not passed on and the bank owns the unit, it would pay—or the investors would pay. Investors could recoup when they flip the home, or the debt would be paid by the new homeowner. If we remove superpriority, who should pay those collection costs?

MR. FERRARI:
This is an issue impacting folks; it is a unique issue because we agree with the cap. We will work with you and try to pass a bill we believe is reasonable and benefits all parties. When working with folks, i.e., legal aid centers all the way to bankers, there is a middle ground. It is not in the best interests of HOA residents to pay exorbitant fees without getting additional money. We look forward to working with you on the collections bill.

JOSEPH EATON (Concerned Homeowner Association Members Political Action Committee):
Superpriority fees are not paid by the purchaser who acquires the property from the bank if the bank is the successful bidder at a nonjudicial foreclosure sale. Those fees are paid by investors. Given the amendments proposed, those fees would be included in superpriority. The payment would be shifted from the community members to the general public as a whole. That is who will pick up those costs in the context of a foreclosure. Those fees have to be paid by the bank when the bank takes title to the property—or an investor when the investor takes title. This is not a case where a delinquent homeowner steps up and pays the fees. This is not a question of shifting the cost to someone who should have borne the cost. It is whether the people who could exercise restraint over the collectors and who enter into those contracts are going to be forced to bear the costs. When they do not, the costs shift to the public as a whole. Members of the community are in a much better position to exercise restraint over the collectors they retain.

SENATOR COPENING:
Collection costs are a part of the superpriority; you want that removed. We know it is happening because when investors or homeowners buy homes, they

are responsible for the superpriority. Those collection costs are paid to the collection companies.

MR. EATON:
There is litigation pending. This is not a settled question at this point.

SENATOR KIHUEN:
Mr. Friedrich, how long did it take you to accumulate the complaints in your binder? Are these from this January or the past few years?

MR. FRIEDRICH:
These have been forwarded to me by different people in less than a year. I will get the binder to each of you. It is broken down into three sections: the arbitration trap mandated under NRS 38 and 116, fines levied by associations against homeowners, and collection fees. In one case, a 78-year-old lady almost lost her home on two issues: Over $6,000 in fines for dead grass on her front lawn and delinquent association fees where she thought she was current and was not. I attribute this to her age and not being on top of the situation.

ELLEN SPIEGEL (Ex-Assemblywoman):
I will read from my written testimony (Exhibit L).

KAY DWYER:
I am a homeowner, resident and former board member of a large CIC. I am in support of S.B. 174.

There are many issues in sections of this bill, but I will limit my comments to section 16, subsection 3. This section addresses the issue of harassment and interference with the performance of duties of board members, managers and staff. You have received testimony where multiple complaints, 60 to 80, were filed in a large association at a cost of more than $38,000 to the association. None of these complaints resulted in fines or serious charges of wrongdoing. Most of the complaints resulted in either no action or were deemed unwarranted. Some complaints are still open and unresolved. These multiple and numerous complaints were filed by the same people over and over again. These complaints were made by fewer than a dozen people out of a population of 14,000 in a community of over 7,000 homes. There are probably 13,900 people who are happy with their association. Board members, managers, staff

and professional associates have been targeted by this very small, vocal group. This is not a unique situation as the recent negative publicity has shown.

Please support S.B. 174 and retain the authority of boards, managers and staff to perform their duties without harassment. This association is responsible for administering the business of the corporation, representing thousands of residents, and is accountable for millions of dollars in budget decisions, reserve issues, and maintenance and upkeep of many millions of resident dollars in assets. The association is responsible for over 250,000 square feet of recreational facilities that accommodate the lifestyle of the 14,000 residents. The HOA and other responsible, diligent volunteers, board members, managers and staff must be allowed to conduct the business of their communities. There are remedies in place for those associations and managers who violate their positions and duties.

JAN PORTER (Sage Creek Homeowners' Association):
I support S.B. 174. I am a homeowner and member of the board of the 230 homes in Sage Creek Homeowners' Association. I served as the homeowner representative on the Commission for Common-Interest Communities and Condominium Hotels. I serve as general manager for Peccole Ranch Association.

Our small association met last night and discussed a number of the different items in this bill. We need to ask how many of these complaints have gone before the CICCH. How many complaints has the Office of the Ombudsman received? What kind of validity do the complaints have, and have they followed the process? One of the most important things is education. Education helps the homeowners as well as the board members serve their communities better.

GARY SOLOMON (Professor, College of Southern Nevada):
I am a psychology professor at the College of Southern Nevada, am tenured, an expert witness, a published author and psychotherapist.

My concern is that HOAs are doing damage to their residents, a syndrome which I have identified as HOA Syndrome, somewhat similar to post-traumatic stress disorder. People living in HOAs are experiencing a wide range of psychiatric conditions. There are people who are becoming ill; people who are dying. I personally, at my own expense, placed a billboard on Boulder Highway warning people not to move into HOAs. It is so far out of hand that an HOA is

now mimicking a concentration camp, an actual neighborhood ghetto. People on the HOA boards have taken the roles as Capos, defined as individuals who hurt other individuals at no charge.

The master community is an absolute abomination. To refer to one as a "master" is an archaic term which was used against women and blacks. Now we are using it against homeowners.

At the top of the food chain come the collection companies. I refer to them collectively as a cartel. The HOA boards, the management companies and the collection companies operate as cartel consortiums. Unlike drug cartels, the HOAs supply nothing, no drugs, nothing, except harm and pain. As a health care professional, I am now putting the entire State on notice, you need to stop this now. Not only should this bill not be passed for health reasons, but what has been passed needs to be undone.

I have put individual board members and management companies on notice. I will continue to do so at my own expense until this stops. If we do not stop this now, you are going to see people killed and houses burned down because the owners feel powerless over their own situations.

TIM STEBBINS:
I will read from my written testimony (Exhibit M).

I urge the wording in section 8, subsection 5 be changed so it is not mandatory that the only way one can receive information about agendas, etc., is by e-mail. It should be optional. Maybe in another generation everybody will be up to speed on computers, but we are not there yet.

I support the comments made by Ms. Goodman earlier.

NORMAN MCCULLOUGH:
I agree with Mr. Stebbins' testimony. There are parts of S.B. 174 I am for, but there are parts I dislike, and dislike is a kind word. You need a third option such as, "disagree with parts." I have submitted a three-page statement with four exhibits (Exhibit N).

I will read from my written testimony (Exhibit O).

KEVIN WALLACE (Community Association Managers Executive Organization, Inc.):
I represent the Community Association Managers Executive Officers (CAMEO), which collectively manages 250,000 doors in the State. I was also the president of RMI Management and received hundreds of e-mails regarding the issues we are talking about today; most of them are in favor of S.B. 174. CAMEO supports this bill with the changes noted by the sponsors.

We want to clarify a few issues. Section 15 is a policy issue. There will be collection costs accrued to collect a homeowner's debt, but the issue is who should pay the costs. Is it going to be the homeowner who pays the costs, or under CHAMP's suggestion, the guilty party or delinquent party? We support the bill regarding collections and reasonable fees.

We are a Fannie Mae representative in this State. Fannie Mae and banks pay liens. Fannie Mae has offered to pay more than legally required. The agency's concerns are that associations in this State are financially strapped. If the troubled associations need help, it has offered to lend a hand.

PAUL P. TERRY, JR. (Community Associations Institute):
I am a member of the board of the Community Associations Institute (CAI) and a member of the CAI Legislative Action Committee. In the interest of full disclosure, I am also a practicing attorney in the HOA area and my law firm, Angius & Terry, operates a licensed collection agency.

I am here on behalf of CAI, which is in full support of S.B. 174. Unlike the bills in past years based largely on anecdotal information, this is the first bill where all stakeholders have been brought together in a thoughtful and collaborative approach. We understand there needs to be language change, but overall, the bill is the way the legislative process should work.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
The Association supports S.B. 174. The concerns we have are sections 12 and 15, the collection cost issues. There is a companion bill coming forward, and the more closely we can link the bills together, the better. Perhaps we need to ensure the collections bill reflects the discussions we had over the interim. Everything is tied together, so everyone knows the rules, the rights of the HOAs and the obligations of the purchaser at foreclosure sales. Be it known, I am also the neighborhood representative for Chardonnay Hills in Summerlin.

SENATOR MCGINNESS:
Are these collection fees unique to Nevada, or are they across the United States?

MR. UFFELMAN:
Collection fees are common. I was president of my HOA when I lived in Virginia. We had a little ...

SENATOR MCGINNESS:
I am referring to the collection fees in the case of the unpaid assessments for $39.12 for two months, but the total came to $3,000.

MR. UFFELMAN:
I cannot speak to the amounts, but the concept, yes.

MR. TERRY:
I operate a collection agency in both Nevada and California. The amounts are consistent between the two states. The issue is not the amount of collection costs because whatever the costs are, they are fixed. They are fixed regardless of whether the assessment owed is $10 or $1,000. The steps you go through to comply with the statutory process are always the same.

SENATOR MCGINNESS:
There was an exhibit presented today where the notice was sent out at 9 a.m. to be paid by 1 p.m.

MR. TERRY:
That situation is not common. Circumstances arise where homeowners ignore the collection process until the foreclosure sale is scheduled to take place. They call our office at 9 a.m. and say we do not want the foreclosure sale to go forward. We may send them a communication which says you have a very short period of time to produce the money. It is not because they received the notice for the first time at 9 a.m. before the foreclosure sale; it is because they ignored the entire collection process until 9 a.m. before the foreclosure sale.

CHAIR WIENER:
We have a stand-alone bill on collections where we go into more depth on this issue.

SENATOR MCGINNESS:
I hope we do not lose this because it is in a separate bill.

CHAIR WIENER:
We will make sure everything is covered. That is why we are waiting on this bill until the end.

SENATOR MCGINNESS:
I hope we do not leave it to "reasonable" because it does not seem "reasonable" is getting it accomplished.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):
I will address section 1, where it states "any person who is aggrieved," then it lists a number of items, i.e., letter of instruction, advisory opinion, declaratory order or any other written decision which the person has received. The Real Estate Division issues many written documents, closing letters, responses to constituents and attorneys, and delinquency notices regarding delinquent registrations. If this section means to propose any written document issued by the Division under this program is subject to appeal by a recipient or possibly someone affected by it, it is going to create an arduous process for anything to be done and finalized. That letter could be presented as an appeal to the Commission, and then it comes to what?

Under the law, an investigative file is confidential. This poses some legal and procedural issues to be considered for a closing of an unsubstantiated case of complaint for nonjurisdiction. A complainant receives a closing letter on a complaint filed and investigated by the Division and then presents this closing letter in appeal to the Commission. The party who comes before the Commission says, here is my letter and I am aggrieved by it, but there is not much the Division can do. We have conducted an investigation under NRS 233B, which is notification of an opening letter, an opportunity to respond, and a request to provide us with an answer that might take care of the issue. The contents of that investigation are confidential. Outside the process of NRS 233B, I do not see how the Division could defend an appeal made to the Commission on the basis of our investigation.

Under NRS 233B, a notice of complaint and hearing has to be offered. The production of documents used in the State's prosecution and presentation of

evidence to support an alleged violation of law are all part of that process. I strongly oppose this procedure being offered to a licensee under the jurisdiction of RED. This provision is in NRS 116, not NRS 116A.

It is a conflict for the Commission to act as an investigative body and a judicial body on the same matter. I do not see how it would work in an appeal process.

Since a complaint and notice of hearing is a document issued by RED and the Office of the Attorney General, does the formal notice become an appealable written document someone could bring to the Commission and say, I do not like this notice of hearing and I would like to tell you why?

One suggestion is to address the needs for mediation or resolution and issues to be considered. If there are questions of substantive law a party wants considered by the Commission before a complaint has been filed, it would be argued before the Commission for determination of facts specific to an association's issues. Those are many of the complaints filed. Homeowners say this is going on and we do not think it is right, or they are doing it this way —they being the board.

The Division, and therefore the Commission, does not have jurisdiction over governing document disputes. I look forward to working on section 16, but I have jurisdictional concerns.

RUTT PRIEMSRIRUT (Concerned Homeowner Association Members Political Action Committee):
I am a director of CHAMPS. I would like to answer Senator Copening's question of who is paying the majority of these liens. It is the U.S. taxpayers. You may see Bank of America on the title, but the bank is the servicer. The bills are being paid by Freddie Mac, Fannie Mae and the U.S. Department of Housing and Urban Development (HUD). I have liens provided by Freddie Mac's in-house counsel of $3,000 (Exhibit P), $4,000 (Exhibit Q) and $7,000 (Exhibit R).

In section 15, amending the superpriority lien is nothing but a scheme to raid the U.S. Treasury. This is a 20-year-old statute being amended that takes advantage of the foreclosure situation. This amendment distorts the original intent of six or nine months. When you add collection fees on top, it becomes $5,000 or $10,000, which is five to ten years of assessments. If you are a lender, i.e., Fannie Mae or Freddie Mac, and you want to continue lending in

Nevada, you have to mitigate these risks, which means pass the costs off to the consumer. That means higher down payments, higher mortgage insurance premiums and higher interest rates.

I would like to ask the Senators, homeowners and HOA boards—when the Inspector Generals of HUD, Fannie Mae and Freddie Mac come to recover their millions of dollars in damages, similar to what Bank of America is doing now in federal court, who is going to be liable and holding the bag? I have confirmed this legal position with Regina Shaw, in-house counsel to Freddie Mac; Lisa O'Donald, Associate General Counsel of Fannie Mae; and Donna Ely, legal in-house counsel to the Federal Housing Finance Agency.

Clark County Republic Services, Clark County Water Reclamation District and special improvement districts all have superpriority liens. You do not see any of these entities hiring a third-party collector charging $3,000, $4,000 or $5,000 in collection fees, often four to ten times the original principal of the debt to collect their back due assessments. This amendment's intent is to unjustly enrich a small handful of collectors.

MR. EATON:
I will clarify what happens in the context of a nonjudicial foreclosure. Previous comments indicated that through this process, the superpriority lien is putting the burden of these delinquent assessments on the homeowners who failed to pay those assessments. That is not the case. When we speak about the superpriority statute, the portion at issue is what happens after there is a foreclosure under a first deed of trust. Under those circumstances, a delinquent homeowner does not show up and offer to pay the past due assessment and thus avoid the bank; U.S. taxpayers or an investor does not have to pay those expenses.

When the bank owns the property and has to clear those liens, it passes along those costs. We, the taxpayers, have to bail the banks out and pick up those costs. It is not the people in the community who did not pay those costs, it is the taxpayers who do not live in the community and who have no ability to exercise any oversight other than through their elected representatives such as yourselves. The collectors have contracts with associations to provide these services. When the members of the association can rest assured the taxpayers are going to pick up those burdens and the association will not have to bear

them, the board members have little incentive to exercise oversight over the collectors.

The vast majority of lien amounts I have seen as an investor are due to collection costs. A small amount of those monies the collectors seek are passed on to the association to help them out. Those monies line their own pockets.

A prior comment was made regarding the collection process that takes place on behalf of the HOA. One comment is because the banks are taking so long to foreclose, the HOAs have to go forward with their foreclosure process. In fact, they do not go forward with the process; they threaten to go forward but do not complete the process. There is a good reason why. If the HOAs were to go forward with that process, they would own the property. When they own the property, they would not have the lien against it and their lien would be lost. If their lien is lost, they are subject to the bank's foreclosure and they are not going to get paid at all. Lacking a present intention to go forward violates federal law—the Fair Debt Collection Practices Act, which is intended to protect consumers and shield them from threats. To say these people are going to get their legal fees and collection costs and be included in the superpriority is to stretch this to include improper costs the collectors seek to impose for their own benefit, not that of the community. This is an ill-advised policy.

With respect to common assessments, we are not confused to the extent the common assessments are composed of expenditures by the association. Our objection is the inclusion of collection fees and costs within common assessments that can be imposed exclusively against a particular unit and made

to survive the nonjudicial foreclosure under a bank.

CHAIR WIENER:
The meeting is adjourned at 10:54 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE:_____

EXHIBITS

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 174	C	Randolph Watkins	Welcome to HOA 101
S.B. 174	D	Senator Allison Copening	Written Testimony
S.B. 174	E	Senator Allison Copening	S.B. 174 Working Group
S.B. 174	F	Michael E. Buckley	SB 174 -Explanation /Section Summary
S.B. 174	G	Senator Allison Copening	Clark County Proposed Amendment
S.B. 174	H	Angela Rock	Written Testimony
S.B. 174	I	Jonathan Friedrich	Written Testimony
S.B. 174	J	Rana Goodman	Written Testimony
S.B. 174	K	Chris Ferrari	Priority of Common Expense Assessments
S.B. 174	L	Ellen Spiegel	Written Testimony
S.B. 174	M	Tim Stebbins	Written Testimony
S.B. 174	N	Norman McCullough	Written Testimony
S.B. 174	O	Norman McCullough	Statement regarding S.B. 174
S.B. 174	P	Rutt Premsrirut	Lien by Freddie Mac $3,140
S.B. 174	Q	Rutt Premsrirut	Lien by Freddie Mac $3,962

S.B. 174	R	Rutt Premsrirut	Lien by Freddie Mac $6,788

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Sixth Session
May 17, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 4:58 p.m. on Tuesday, May 17, 2011, 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/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Tick Segerblom, Clark County District No. 9
Senator Allison Copening, Clark County Senatorial District No. 6

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Nancy Davis, Committee Secretary
Michael Smith, Committee Assistant

Minutes ID: 1240

CM1248

OTHERS PRESENT:

Gary Lein, representing the Commission for Common-Interest Communities and Condominium Hotels
Garrett Gordon, representing Southern Highlands Homeowners Association
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels
Michael Randolph, representing Homeowner Association Services Inc., Las Vegas, Nevada
Alisa Neve, representing the Nevada Justice Association
Eleissa Lavelle, Private Citizen, Las Vegas, Nevada
Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry
Michael Joe, representing Legal Aid Center of Southern Nevada

Chairman Ohrenschall:
[Roll taken.] Tonight we will attempt to finish our work session on the two remaining bills. When we adjourned our last meeting, we were working on Senate Bill 204 (1st Reprint). We will begin where we left off.

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Dave Ziegler, Committee Policy Analyst:
When we adjourned our last work session, we were on S.B. 204 (R1), section 45. Perhaps we should forge through to the end and then, if necessary, review a few sections that were discussed earlier.

Section 45 requires a homeowners' association (HOA) to maintain property, liability, and crime insurance subject to reasonable deductibles.

[Continued to read from work session document (Exhibit C).]

Chairman Ohrenschall:
Were there any other amendments?

Dave Ziegler:
No.

Chairman Ohrenschall:
I believe the Committee members received an email from Senator Copening about the crime insurance issue.

Assemblyman Carrillo:
I received a copy also.

Senator Allison Copening, Clark County Senatorial District No. 6:
I did not post the email to Nevada Electronic Legislative Information System (NELIS). It was information that backs up the need for HOAs to carry crime insurance as it is the association's money that needs to be protected. I do not think it stops an independent community association manager (CAM) from carrying whatever insurance he or she would like to carry, but because it is the responsibility of the association to protect its funds, it is a recommendation in the Uniform Common-Interest Ownership Act that crime insurance be carried. I believe there was a supplemental email from Mark Coolman to discuss the fees, which are considered to be very nominal for the type of coverage.

Chairman Ohrenschall:
Do you have any comments on the amendment proposed by Mr. Friedrich?

Senator Copening:
I would need to defer to Michael Buckley on that. I do not have the amendment here. I think it stated the manager should carry the insurance and not the association.

Gary Lein, representing the Commission for Common-Interest Communities and Condominium Hotels:
I feel that insurance is a coverage that should remain at the association level. It is those funds that need to be protected and we need to make sure the insurance is there. We also need to ensure the crime insurance has the appropriate endorsements extending to the employees of the association, its agents, directors, volunteers, and community manager. For coverage up to $5 million of crime insurance with the appropriate endorsements, the cost would be approximately $3,200 per year for an association. That is $6.40 per $10,000. For a very small association with $250,000 of protection, the annual cost would be $582 per year, or $23.28 per $10,000. We feel that is a reasonable price to pay to know that the funds of the association are protected. As it relates to the cap, we had proposed this language so that it would be in sequence with the mortgage guidelines from Fannie Mae and Freddie Mac, in that there is currently no cap in those federal mortgage guidelines.

As a Commission, we had heard a case in Las Vegas this year where a board member got onto the association's executive board and within a few months started embezzling. In that particular case, that person embezzled about $64,000 over several months. This association is out those funds and had no coverage. Had the association had this coverage in place, it would have received that money back from the insurance company.

Another provision in this section is dealing with a no conviction requirement. We know that the Las Vegas Metropolitan Police Department is stretched in resources and in some cases the district attorney's office is as well, so it is important not to have a conviction requirement on the crime policy. I would support no cap, or at minimum a cap at $5 million.

Chairman Ohrenschall:
Mr. Ziegler, the cap Mr. Friedrich proposed was how much?

Dave Ziegler:
$500,000.

Chairman Ohrenschall:
Mr. Lein, you would propose a cap no lower than $5 million, correct?

Gary Lein:
That is correct. You must realize there are some associations that have reserve funds up to $10 million. I do not believe $500,000 is adequate. The cost of $3,200 for $5 million in coverage, when you are dealing with an association with $5 million to $10 million in reserves, is a minimal fee. They have a multimillion dollar budget and to protect those funds, I believe, is absolutely worthwhile.

Chairman Ohrenschall:
Any questions?

Assemblyman McArthur:
Is this where we decided to go with the $500,000 or the three months? There are some very small HOAs, if we kept it at $500,000 or three months' revenue, whichever is less, which would cover the larger HOAs that have a large amount of money coming in and the smaller HOAs would only have to go to $500,000.

Chairman Ohrenschall:
The text of the original bill states, "Such insurance may not contain a conviction requirement, and the minimum amount of the policy must be not less than an

amount equal to 3 months of aggregate assessments on all units plus reserve funds." There is no mention of $5 million.

Assemblyman McArthur:
I am not sure what three months of aggregate assessments is for some of the larger HOAs, but I believe it is a pretty substantial amount.

Garrett Gordon, representing Southern Highlands Homeowners Association:
In the case of Southern Highlands, there is $4 million to $5 million in reserves. Per month assessments for three months is another $2 million to $3 million. That is why our concern is when you start adding up reserve funds and three months of aggregated assessments, the premiums on those amounts would be quite substantial. If it got too high, we would have to increase the assessments of the homeowners. On behalf of Southern Highlands, we would ask that a reasonable amount would be three months of assessments or $500,000, whichever is less. There would be a cap of $500,000 and three months assessments for smaller associations.

Chairman Ohrenschall:
Would that be less than the $5 million that Mr. Lein proposed?

Garrett Gordon:
Yes, it is significantly less. I think Mr. Lein is proposing $5 million; Southern Highlands is proposing $500,000 or three months of assessments, whichever is less.

Assemblyman McArthur:
Approximately what are those three months worth?

Garrett Gordon:
Around $2 million worth of assessments for three months.

Assemblyman McArthur:
So that is still under the $5 million mark?

Garrett Gordon:
Correct. However, with the language I am recommending, "whichever is lower," then it would go to the $500,000 cap.

Assemblyman McArthur:
I am talking about the larger HOAs.

Chairman Ohrenschall:
Would you be comfortable with the three months aggregate assessments or $500,000?

Gary Lein:
I think that is too little for the larger HOAs. I think for an association that has $10 million in reserves and monthly expenses of approximately $700,000 per month, overall, $5 million at a cost of $3,200 per year, with all the proper endorsements is a very small price to pay to have that type of insurance and that type of protection. I think $500,000 for larger HOAs is just too small, especially with the incremental value to obtain the greater coverage. I show that for a policy for $1 million, the annual premium would be $1,160.

Assemblyman McArthur:
Basically we are talking about roughly $1,100 per $1 million?

Gary Lein:
Yes, at $25,000 worth of coverage, the annual premium would be $145. For $250,000 worth of coverage, the cost would be $582; $1 million costs $1,160; and the price for $5 million is $3,200. Again, I think the important thing is to be in line with the guidelines of Fannie Mae and Freddie Mac.

Assemblyman McArthur:
You said for $5 million the annual premium is $3,200?

Gary Lein:
Correct.

Assemblyman McArthur:
Initially I think you said it was around $1,100 for $1 million. So the premium drops as the coverage goes up?

Gary Lein:
Correct. The price per $10,000 of coverage on a $1 million policy is $11.60. The price per $10,000 of coverage on a $5 million policy is $6.40. So, for the smaller HOA that is trying to cover $250,000, it is $23.28 per $10,000.

Chairman Ohrenschall:
Do we want to decide on this section now, or wait until we go through the rest of the sections?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
The way the law is written, this is a two-step process. I have never objected to the three months of the aggregate assessment. I have been told that Sun City Summerlin, which has 7,781 homes, receives monthly dues of approximately $30,000. My concern was that all the reserves be covered under the crime insurance policy. I believe Sun City Summerlin has about $13 million in its reserve fund. Before someone could embezzle that huge amount of money, I would think that flares would be going up, but they could take $10,000 to $50,000. That is why I came up with the $500,000. Most of the HOAs in the state are small and have nowhere near what Sun City Summerlin or Sun City Anthem have. Also, why should the HOA be forced to pay for the crime insurance that the CAM should pay? It is a cost of doing business on behalf of the CAM, just as they pay their own workers' compensation, rent, and office supplies. The HOA should not have to pay for a business expense.

Gary Lein:
I do not want to rebut Mr. Friedrich, but the problem is that not all HOAs are professionally managed. There are a number of self-managed HOAs. The CAM would have to have coverage, but that coverage is not going to cover the executive board, the volunteers, or the directors. The CAM cannot have an endorsement to cover the executive board for fraud or embezzlement. We feel that the coverage has to be at the level of the HOA protecting and insuring the executive board, the employees, the directors, the agents, the management company, and the CAM.

Assemblyman McArthur:
I might offer a compromise here. If we keep the wording as it currently is, three months of aggregate assessments plus reserve funds up to a maximum of $5 million. That way all the smaller HOAs can use the three months aggregate assessments and the larger HOAs will not have to go higher than $5 million.

Gary Lein:
I would not have an objection to that compromise.

Assemblyman McArthur:
As far as covering everyone else, I think most of these policies actually cover everyone including the managers. I do not think that is a problem.

Chairman Ohrenschall:
I have gotten a nod from both Mr. Gordon and Mr. Friedrich on this compromise.

Dave Ziegler:
Section 48 amends provisions relating to common expenses benefitting fewer than all of the units or caused by a unit owner, a tenant, or an invitee.

Chairman Ohrenschall:
There is an exception for when someone has a delivery; if the delivery driver hits a common area, the person receiving the delivery is not liable.

Assemblyman McArthur:
I have no problem with section 48.

Assemblyman Carrillo:
I am good with this one also.

Assemblyman McArthur:
I did not know what the intent of this was. But, it is a benefit, so I agree with it.

Chairman Ohrenschall:
I believe the intent was to exempt the unit owner from liability for willful misconduct or gross negligence of the invitee, the driver.

Dave Ziegler:
Section 49 provides that reasonable attorney's fees and costs and sums due to an HOA under the declaration, *Nevada Revised Statutes* (NRS) Chapter 116, or as a result of an administrative, arbitration, mediation, or judicial decision are enforceable in the same manner as unpaid assessments.

[Continued to read from work session document (Exhibit C).]

Chairman Ohrenschall:
Ms. Schuman's amendment seems reasonable to me.

Jonathan Friedrich:
I have a copy of the amendment, it is five pages long.

Chairman Ohrenschall:
Thank you. We have it up here.

Dave Ziegler:
This amendment is in your packet.

Chairman Ohrenschall:
Page 4, line 20 of the amendment states: "Following the trustee's sale or foreclosure sale of a security interest described in paragraph (b) of subsection 2 of NRS 116.3116, upon payment to the association of the amounts described in subsection 3, any unpaid amounts of the lien accruing before such sale remain the personal obligation of the owner of the unit as of the time the amount became due, but no longer constitute a lien upon the unit." That is quite a change from current law.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
I was involved in writing that amendment. The idea we were addressing is at the bottom of page 3. We think this would have a positive effect, and that is the way the law is currently written. The HOA's super priority lien dates from when the HOA starts the foreclosure. There is a statutory reason for an HOA to start the foreclosure. This amendment will measure the super priority lien, not just from the HOA starting the foreclosure, but also from the first mortgagee's foreclosure sale. In that respect there is not an incentive for the HOA to start the foreclosure if it knows it will get its super priority lien when the first lender forecloses. We took that language from the Colorado Uniform Common Interest Ownership Act. The language that you read on page 4 of the amendment was intended to address the idea that when there is a foreclosure sale and the super priority lien is paid off, there is no more lien. It remains of record because liens remain of record, but the HOA no longer has a lien for any unpaid amounts. Once the foreclosure of the first mortgage has occurred, someone cannot try to enforce the HOA lien for the old owner, who is gone. The amount that a homeowner owes when he buys a unit is not only a lien, it is a personal obligation, so the fact that there has been a foreclosure does not wipe out the fact that the money is owed. We have never heard of an HOA suing anyone, but it is like a utility bill; there may be a lien, but there is also a personal obligation. The intent of the law is if there is a foreclosure of the first mortgage, the HOA receives a super priority payment. Once that super priority payment is made, the lien is gone, and the unit is free from any lien from the prior owner.

Chairman Ohrenschall:
Currently, are HOAs going after the prior owners?

Michael Buckley:
We have heard of instances where an HOA files a lien for $5,000 and the super priority lien is $1,000. When the foreclosure of the first mortgage occurs, $1,000 is all that gets paid. There is a $5,000 lien of record. We have heard of situations where a collection agency or an HOA might try and assert a lien

against the new owner for $4,000. This amendment is to ensure that the lien is removed from the property. A lien by definition is an interest against property.

Chairman Ohrenschall:
Do you think this will make HOAs more or less whole in terms of their ability to recover these amounts owed to them?

Michael Buckley:
When a mortgage is foreclosed, it wipes out all junior liens. That is the law. If you are in the title industry, you know that when you foreclose a senior lien it wipes out all the junior liens. Since it does not say that in NRS Chapter 116, you do have a lien of record that says the HOA is owed money, but once the foreclosure occurs, the lien is gone once the super priority lien has been paid. This amendment is not intended to change the law. It is intended to ensure that it is clear that once the super priority lien is paid, the lien the HOA has for the past due assessments against the unit is gone.

Chairman Ohrenschall:
Any questions? [There were none.]

Michael Randolph, representing Homeowner Association Services Inc., Las Vegas, Nevada:
Mr. Buckley was referring to the recording of the priority of liens which is over in NRS Chapter 107. Since NRS 116.311 originally came from NRS Chapter 107, that is where it is. The idea behind removing the leftover amounts due from the property is to give clear title to the succeeding purchaser, whether it be an investor at the auction or a bank who resells it. I have heard of events where the super priority lien portion and collection fees were paid, yet the person attempting to collect was still attempting to collect amounts far greater than leftover amounts due from the prior homeowner, which were not in the super priority lien. They were trying to collect it from the new homeowner, which is a total aberration. When the lien is stripped off the property once the super priority lien portion has been paid, it protects the future homeowners.

Chairman Ohrenschall:
The part of the amendment on page 4, lines 18 through 25, is that in another Senate bill also?

Michael Buckley:
Yes, that is the language that we put in Senate Bill 174. Just to clarify, this is a State Bar Real Property section bill and the language in section 2 of the proposed amendment on page 3 is about Fannie Mae regulations. I would mention that currently the Fannie Mae regulations are referred to for the length

of the super priority lien. When Nevada went from six to nine months, that language was put in because in condominiums, Fannie Mae regulations are limited to six months. This proposal would add not only the time portion of the super priority lien, but the amounts of fees and collection costs would be limited by Fannie Mae guidelines. The other thing I would like to point out is that I have had this debate about what exactly Fannie Mae says about these fees. Some would argue that Fannie Mae prohibits the payment of collection costs and only permits the payment of assessments. I have found language that states that the collection costs can be paid in addition to the assessments. I think that if we adopt this language which now refers back to Fannie Mae regulations for collection costs, we will be injecting much more uncertainty into what must be paid at foreclosure, which I do not think is a good idea. It seems that the idea of a law is to make things more certain than less certain. That is why it was limited in the past to just the time and not the costs.

Chairman Ohrenschall:
So you are seeing that there would be a conflict between the six months that Fannie Mae allows for condominiums and the nine-month super priority lien?

Michael Buckley:
No. The way the law is currently written, there is no conflict because Fannie Mae limits condominiums to six months and our statute says nine months unless Fannie Mae says six months. I think the proposed amendment language would make things uncertain because I am not convinced that Fannie Mae regulations address this. For example, when Fannie Mae approves a project, there are regulations that address whether the project is approved for Fannie Mae financing. The other part of the process that Fannie Mae deals with is when there has actually been a loan that was sold to Fannie Mae because it was an approved project, and now Fannie Mae holds the mortgage. There is a different set of regulations that deal with what Fannie Mae will pay if it is foreclosing. There is also the lender who made the loan and sold the loan to Fannie Mae. There are different regulations that apply there also. I think this language, which would refer to Fannie Mae guidelines on how much collection costs you pay, is creating uncertainty.

Chairman Ohrenschall:
So you have concerns with the first part of the amendment, but you are all right with the section that comes from S.B. 174?

Michael Buckley:
That is correct.

months about timing of collections, costs of collections, and as this body knows, we have been in discussions about coming up with a reasonable compromise. This language was introduced by the investors in order to make this a collection bill. I would object to putting this language into a State Bar Real Property Section bill. We are trying to go through the uniform changes and not make this a controversial collection bill. Secondly, Senator Copening handed out an amendment to this section which adds three words, "Chapter 116 regulations" (Exhibit D). I just wanted to ensure that is on the record.

Chairman Ohrenschall:
Senator Copening's amendment has been posted on NELIS.

Assemblyman McArthur:
I guess there is a difference between the statutes and regulations in NRS Chapter 116.

Chairman Ohrenschall:
This amendment states, ". . . any other sums due to the association under the declaration, this chapter, Chapter 116 regulations, or as a result of an administrative, arbitration, mediation or judicial decision are enforceable in the same manner as unpaid assessments . . . ." Are we broadening the scope of fines that could be due?

Garrett Gordon:
I believe the intent was not to broaden the scope, but as we all know, NRS is the umbrella. Underneath it are regulations approved by the Commission on Common-Interest Communities and Condominium Hotels (CICCH). The Commission has delegated authority to cap, limit, and create costs and fines. I believe this would tighten this section up for the purpose of regulations that the NRS delegates to the Commission.

Chairman Ohrenschall:
So you do see any broadening of things that people may be liable for in terms of fines?

Garrett Gordon:
This is from Senator Copening, and I do not know whether it broadens it or not. There are regulations that deal with fines, costs, and charges. I think Senator Copening's intent was to encourage those regulations to be called out here in this Chapter and with the declaration. One could interpret this as broadening and one could interpret this as narrowing.

Chairman Ohrenschall:
Any other questions? [There were none.] Mr. Friedrich, would you like to address that amendment?

Jonathan Friedrich:
Only 15 percent of the homes that are sold in foreclosure are sold to investors. Those investors are risking their capital. They are paying cash. They are making the associations viable in that they are restoring the homes, paying the fees to the association, paying taxes, and giving employment to the contractors who are restoring these homes. They are allowing brokers to make a commission on the resale of the property. I see it as a win-win situation.

Regarding the amendment, I was concerned with the wording on section 49, page 47, lines 27 to 33. It would hold a unit owner responsible for all the attorney's fees and costs. "Other fees and charges" is very vague. It puts a unit owner at a disadvantage by making him susceptible to huge attorney fees. You gentlemen have seen some of the documentation that I supplied earlier where the attorney's fees and costs are hurled at homeowners. If you are chasing after the homeowner for anything beyond the nine-month super priority lien, the homeowner would be forced to file bankruptcy. In that case the association gets nothing; the attorney would be the winner. The other issue is on page 49, lines 19 to 28, which talks about a receiver. I have heard some horror stories about how much receivers charge for their services. I would suggest some sort of a percentage of the costs that are involved for the receivers. In essence, there should be a cap on the fees for the receivers' services.

Chairman Ohrenschall:
Your comment about the bankruptcy and the association not getting anything, can you go over that again?

Jonathan Friedrich:
It is section 49, page 47, lines 27 to 33. If someone is walking away from his property and is being foreclosed on, I read this that the individual would then be subject to all of the additional costs. Line 33 states ". . . in the same manner as unpaid assessments . . . ." Mr. Buckley advised me that the amendment by Ms. Schulman would remove that burden on a foreclosed homeowner.

Michael Buckley:
Just to remind you where this all started, which was a Uniform Act proposal. The comment from the Uniform Law Commission on subsection 1 states: "Subsection 1 is amended to add the cost of the association's reasonable attorney's fees and court costs to the total value of the association's existing

super lien. The increased amount of the association's lien has been approved by Fannie Mae and local lenders and has become a significant tool in the successful collection efforts enjoyed by associations in that state." That was referring to Connecticut. I think it goes back to Mr. Carrillo's point that associations need the ability to recover the costs incurred to collect unpaid assessments. If the association cannot recover these costs from the defaulting owner, it will be forced to pass those expenses on to the paying owners. To put it into perspective, our proposal was just to add the language which was adopted by the Uniform Law Commission.

Chairman Ohrenschall:
We definitely have some concerns with this section and the amendments. We will come back to them later. Mr. Ziegler, can we backtrack to Mr. Segerblom's amendment?

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
When I was here last week, I was seeking to remove a phrase that said "except for . . . ." Mr. Anthony convinced me that I did not need to remove it. In retrospect, I think it would be wise if we could remove that phrase.

Chairman Ohrenschall:
I think we have a mock-up of your proposed amendment.

Dave Ziegler:
That is correct. There is a mock-up prepared by the Legal Division, dated May 9, 2011. It is part of your packet. Section 34 shows what Mr. Segerblom is referring to on lines 32 and 33. What Mr. Segerblom is proposing is also the same that others are proposing. This is one case where all those who seek an amendment in this section are saying the same thing.

Chairman Ohrenschall:
Mr. Segerblom's proposal amends sections 21, 30, and 34 of the bill.

Assemblyman Segerblom:
The Committee agreed to support sections 21 and 30 amendments. Section 34 is the only one left.

Chairman Ohrenschall:
Any feelings from the Committee?

Assemblyman Segerblom:
My amendment to section 34 deals with not allowing the board to amend the declaration, and that it must be done at the vote of the members.

Michael Buckley:
I would just like to note for the record that we have no objection to this amendment.

Assemblyman McArthur:
I am okay with this amendment.

Assemblyman Carrillo:
I am okay with the amendment as written.

Chairman Ohrenschall:
So as a recommendation for the full Committee, we are all in agreement with the proposed amendment by Mr. Segerblom.

Dave Ziegler:
It is my understanding that you will take section 49 under advisement and move on to section 50?

Chairman Ohrenschall:
Correct. I think we need a little more time to reach a comfort level.

Dave Ziegler:
Section 50 provides that a judgment for money against an HOA is a lien on real property of the association. To expand further, this is a lien on property of the association, in addition to the common elements. The idea is that the HOA may have real property that is not part of the common elements.

Chairman Ohrenschall:
As I recall this could be a lien on real property not within the association. Mr. Buckley, is this language from the Uniform Law Commissioners?

Michael Buckley:
Yes, that language is from the Uniform Act. Earlier in the bill there is language that makes it clear that an association could own other real property, such as a parking lot or a golf course. Obviously if the association owes money, the lien is on that property as well.

Chairman Ohrenschall:
So this exempts all common elements within the association, but other real property both within the state or outside the state could be subject to that judgment lien.

Michael Buckley:
That is correct.

Chairman Ohrenschall:
I am all right with this section. I do not recall any testimony against this. Currently, without this change, the judgment lienholder may still be able to go against real property if it is outside the association, correct?

Michael Buckley:
I think that is correct, and this is more of a clarification.

Chairman Ohrenschall:
I agree this is more of a clarification. If someone has a judgment against you, he or she could put a lien on your real property, regardless of where it is.

Assemblyman McArthur:
I do not know whether this is just clarification, but I can go with it and move on.

Chairman Ohrenschall:
I assume this is language from the Uniform Act to just clarify things. Mr. Carrillo are you okay with this? Let the record show that Mr. Carrillo nodded his head that he is okay with section 50.

Dave Ziegler:
Sections 51 and 60 contain provisions that are virtually identical to sections 2 and 3 of Senate Bill 30 (1st Reprint), which this subcommittee approved at the last work session and which the full Assembly Committee on Judiciary approved in the work session yesterday. That point may be moot. We could either amend this out of the bill, or leave it in and ensure it conforms with S.B. 30 (R1). I would make the same comment on the proposed amendment from Yvonne Schuman because I think we covered that in the amendment for S.B. 30 (R1). The only thing that would remain on the table is a proposed amendment from Mr. Friedrich to add a $25 per day penalty if the HOA does not produce books and records within 14 days.

Chairman Ohrenschall:
So we could delete sections 51 and 60 or keep them in because they are identical to sections 2 and 3 of S.B. 30 (R1). The amendment that Yvonne Schuman has proposed seems identical to something we proposed earlier.

Dave Ziegler:
It is identical to the action we took on S.B. 30 (R1).

Chairman Ohrenschall:
Mr. Friedrich's amendment is new, having a penalty to the HOA for not producing books and records after 14 days.

Jonathan Friedrich:
There have been many instances where boards and their management companies refused to turn over the books and records even though it is already in statute. The statute calls for 14 days. This gives that part of the statute some teeth to ensure these books and records, when requested, are turned over to the individual.

Chairman Ohrenschall:
I would like to remind Mr. Friedrich and Mr. Buckley that we are in a work session, and while we appreciate everyone's knowledge and input, please leave it to us to call on you when we need information.

We have other provisions like this currently, correct? If an HOA is not complying, there are different kinds of fines or penalties that can be imposed. This is not something out of the ordinary for the amendment to go forward.

Michael Buckley:
I do not believe there is a specific penalty. I think the process is that if the request is not honored, the requester would go to the Ombudsman who would then request the information. If the HOA failed to comply, the Commission has the authority to impose a penalty or a fine on an HOA, or anyone who violates NRS Chapter 116. It is in the process, but there is no dollar amount. It would have to go through the Real Estate Division in the Department of Business and Industry.

Chairman Ohrenschall:
So, an aggrieved homeowner who did not receive the records that he requested could go through the process with the Ombudsman and potentially get a fine against the HOA right now.

Michael Buckley:
I think that is correct. The Commission focuses more on getting the documents rather than on fining, since if there is a fine, all the owners have to pay.

Jonathan Friedrich:
The process that Mr. Buckley just mentioned can take upwards of one to two years. In the meantime, the homeowner has been deprived of those records. It is a very costly process for the Office of the Ombudsman for Owners in

Common-Interest Communities and Condominium Hotels and for the Commission.

Chairman Ohrenschall:
So you envision this amendment to be swiftly enforced?

Jonathan Friedrich:
That is correct. This gives the existing statute some teeth that are currently missing.

Chairman Ohrenschall:
I see the intent, but I am thinking it may not actually work. The fines may not be imposed for some time, and a determination may need to be made whether there is some type of willful desire to withhold those records.

Garrett Gordon:
I concur with your comments, Mr. Chairman. It would be very difficult to enforce. As Mr. Buckley indicated, if you start assessing arbitrary fines, who pays that? All the other homeowners would have to pay that cost. I would submit to you that there is already a process, as indicated, for a remedy for an aggrieved homeowner.

Chairman Ohrenschall:
Any questions regarding the proposed amendment?

Assemblyman Carrillo:
I am okay with the amendment.

Chairman Ohrenschall:
Mr. McArthur?

Assemblyman McArthur:
I have the same concern; once you start charging these fees, the other homeowners are paying for it.

Chairman Ohrenschall:
Perhaps there is a way to draft this so it can be at the discretion . . .

Assemblyman McArthur:
I think $25 per day is a little steep, also.

Chairman Ohrenschall:
Perhaps it can be at the discretion of the Ombudsman?

Assemblyman McArthur:
I think we already have that process. We need to either put teeth in it with some money or leave it like it is without the amendment.

Chairman Ohrenschall:
Mr. Carrillo, are you okay with the $25 per day for not releasing the documents in 14 days? Is this a problem you see often that HOAs are not releasing the requested documents?

Assemblyman Carrillo:
Personally, in the dealings I have had with HOAs, they seem to be pretty compliant. I am not saying other experiences are not valid, but it may be on a case-by-case basis. Anytime you hit someone in the pocketbook, regardless whether it is an HOA or anyone else, they will respond to it.

Assemblyman McArthur:
I think $25 is a big hit.

Chairman Ohrenschall:
Although the HOA would have had 14 days to comply, but then if it went another 10 days, that would be $250. For a small association, that is a big hit. I recall in another bill we gave homeowners three weeks to remedy a situation.

Assemblyman McArthur:
Would this penalty be enough to sting an association? As a compromise, we could keep the penalty at $25 per day, but give the HOA four weeks to produce the records.

Assemblyman Carrillo:
I am okay with the three weeks.

Chairman Ohrenschall:
That would be consistent with our other bill where we gave the homeowner three weeks to comply.

Chairman Ohrenschall:
I would propose for us to report to the full Committee that we will accept sections 51 and 60. They are duplicative of sections 2 and 3 of S.B. 30 (R1). We will accept Yvonne Schuman's amendment and we will accept Mr. Friedrich's amendment. However, we will amend it to 21 days instead of 14 days.

Dave Ziegler:
Section 52 exempts the disposition of a unit restricted to nonresidential purposes from the requirement to provide a public offering statement or certificate of resale. It also deletes a provision applicable to small HOAs that is covered in NRS 116.1203.

[Chairman Ohrenschall left the room. Assemblyman Carrillo assumed the Chair.]

Acting Chairman Carrillo:
Mr. McArthur, do you have any concerns with section 52?

Dave Ziegler:
I think that there can be nonresidential common-interest communities and nonresidential components within residential common-interest communities.

Acting Chairman Carrillo:
This appears to be adding to the disposition of a unit restricted to nonresidential purposes; it struck out planned communities.

Assemblyman McArthur:
I am okay with this section.

Acting Chairman Carrillo:
Mr. Ziegler, we are okay with section 52.

Dave Ziegler:
Section 53 amends the information required to be included in the public offering statement provided to an initial purchaser of a unit, including any restraints or alienation on the common-interest community (CIC) and the HOA's budget information.

Assemblyman McArthur:
Does this exempt the nonresidential use? I am okay with this section.

Acting Chairman Carrillo:
Okay. Mr. Ziegler,

Dave Ziegler:
Section 55 requires an HOA to charge a unit owner not more than 10 cents per page after the first 10 pages for the cost of copying documents furnished in a resale package. It also provides that the purchaser, rather than the seller, is not liable for a delinquent assessment if the HOA fails to furnish documents required in a resale package within the 10 days allowed by this section. There is a

proposed amendment from Yvonne Schuman to provide that if the documents exist in electronic format, they must be provided, upon request, by email and at no charge.

Acting Chairman Carrillo:
Mr. McArthur?

Assemblyman McArthur:
I may have missed something. Were there three points to this section?

Dave Ziegler:
There is the cost per page, the substitution of purchaser for seller, and a proposed amendment from Yvonne Schuman regarding if the documents exist in an electronic format, they must be provided by email upon request at no charge.

Assemblyman McArthur:
I am okay with this.

Acting Chairman Carrillo:
I am okay with the proposed amendment. At that point the homeowner can provide an email address and it can be sent free.

Assemblyman McArthur:
I agree.

[Chairman Ohrenschall reassumed the Chair.]

Assemblyman Carrillo:
We are discussing the proposed amendment from Yvonne Schuman on section 55.

Chairman Ohrenschall:
I am okay with that also.

Dave Ziegler:
Section 56 addresses warranties made to a purchaser of a unit and provides that such warranties are made by a declarant, rather than any seller. There is a proposed amendment from the Nevada Justice Association to retain the language of the existing statute.

Assemblyman McArthur:
Does that mean we are putting seller back in instead of taking it out, and we have to do that by amendment?

Chairman Ohrenschall:
I believe so. I believe Ms. Dennison had no problem with that.

Dave Ziegler:
I do not recall. The proposal from the Nevada Justice Association is to retain the existing statute.

Alisa Nave, representing the Nevada Justice Association:
Regarding section 56, we are asking for a return to the original language, replacing "declarant" with "seller." The declarant is a master plan developer, and typically is responsible for the larger development of the parks, roads, amenities, a country club, and those things that go with a larger community. The builders will then build out the individual units, and sell them to the buyer. The warranties with regard to the specific unit should be placed on the seller and not the declarant. We think that makes more sense within the context of this section.

Chairman Ohrenschall:
Is my recollection correct that Ms. Dennison had no problem with this?

Alisa Nave:
That is correct.

Chairman Ohrenschall:
This is something I am supportive of. Mr. McArthur?

Assemblyman McArthur:
Yes, I am okay with it.

Chairman Ohrenschall:
I think we can proceed.

Dave Ziegler:
Section 58 authorizes an HOA board to create an independent committee of the board to evaluate, enforce, and compromise warranty claims, and provides rules for such a committee. There is a proposed amendment by Mr. Friedrich to delete the word "compromise" at page 60, line 21.

Chairman Ohrenschall:
Mr. Carrillo, while you stepped out of the room, we reviewed section 56 and the proposed amendment. Are you okay with that?

Assemblyman Carrillo:
I am okay with section 56.

Chairman Ohrenschall:
We are now reviewing section 58 and the proposed amendment.

Assemblyman McArthur:
Perhaps as a compromise, we could use the word "address" in place of "compromise."

Chairman Ohrenschall:
I think you and Nick Anthony are legal geniuses. I am surprised that was not caught earlier. I support that. Mr. Carillo?

Assemblyman Carrillo:
I am fine with that.

Chairman Ohrenschall:
Mr. Friedrich, are you okay with changing "compromise" to "address"?

Jonathan Friedrich:
I am ecstatic.

Chairman Ohrenschall:
We are all in agreement and propose to accept the amendment, but instead of deleting "compromise," we will replace it with the word "address."

Dave Ziegler:
I would like to point out that what I am about to say is current law. Section 59 provides that members of an HOA board are not personally liable to victims of crimes occurring on the property, and provides that punitive damages may not be awarded against an HOA or its board or officers under certain circumstances. Those two things are in current law. The new provision is that the CICCH is not prohibited from taking disciplinary action against a member of an HOA board.

Assemblyman McArthur:
I am okay with this section.

Chairman Ohrenschall:
This section is duplicative of everything except for subsection 8 on page 61. Subsection 8 states, "The provisions of this section do not prohibit the

Commission from taking any disciplinary action against a member of an executive board pursuant to NRS 116.745 to 116.795, inclusive."

Assemblyman McArthur:
I do not have a problem with that.

Assemblyman Carrillo:
I am fine with subsection 8 of section 59.

Chairman Ohrenschall:
All three of us are fine with subsection 8 of section 59, and the rest of it is duplicative.

Dave Ziegler:
Section 59.5 deletes the requirement that a community manager must post a bond.

Chairman Ohrenschall:
I am trying to remember what the testimony was in support of removing the requirement for a manager posting a bond.

Michael Buckley:
This is the flip side of requiring the HOA to have crime insurance. This was passed in 2009 with the thought that this was the best way to protect the HOA. When the Commission held hearings on this issue, the Commission heard testimony from the insurance experts that crime insurance was the best way to provide security. It also found that to require a manager—and a manager is the individual, not the company—to post the bond would be mostly cost prohibitive to that individual. An example was given of a young person starting out who did not have a super credit rating. The cost for the bond would be very expensive. The bond would also be very low and would not protect the HOA. The Commission feels that the best way to protect the HOA is through crime insurance, not the bonds for the managers.

Chairman Ohrenschall:
Currently, do the managers have to be bonded?

Michael Buckley:
The statute required the Commission to come up with regulations on what these bonds would look like. Frankly, we were unable to find anyone who could tell us what these bonds were. They are required to have a bond, but there is really no such thing that is available.

Assemblyman McArthur:
Basically I think we are covered by the other part of this bill with the crime insurance.

Assemblyman Carrillo:
I am fine with this.

Chairman Ohrenschall:
We are all in agreement with deleting the requirement of bonding the managers.

Dave Ziegler:
That concludes the printed portion of the bill. There are a few things still on the table. There are three amendments that have been proposed that would be added to the bill. We also have said at the outset that we need to go back and review a couple of sections. The first additional amendment was proposed by Jonathan Friedrich. It would add a new section. It is copied in the work session document. It begins with, "The fee for a mediator or arbitrator selected or appointed pursuant to this section must not exceed $1,000, unless a greater fee is authorized for good cause shown."

Chairman Ohrenschall:
Is this new language being proposed? This is duplicative language that was also in Assembly Bill 448.

Assemblyman McArthur:
It appears as though this would put a cap of $1,000 and each party will split the fees.

Chairman Ohrenschall:
As I recall, this was to be in line with the Nevada Supreme Court Rule 24, which caps arbitrator fees at $1,000 with exceptions for good cause.

Jonathan Friedrich:
The reason for this amendment is that even though A.B. 448 passed through the Assembly 42 to 0, someone added a fiscal note to the bill. It has been sent to die over in the Senate Committee on Finance. If that happens, then this provision, which was approved in A.B. 448, would not be included.

Chairman Ohrenschall:
We are all hopeful that your prognosis is premature; while the patient is on life support, it will pull through and walk out of that hospital, and receive a clean bill of health. I have a "probably okay" from Mr. McArthur. Mr. Carrillo?

Michael Buckley:
For clarification, this is a bill dealing with the Uniform Common-Interest Ownership Act. The next bill on your agenda deals with arbitration and alternative dispute resolution, and that is probably the best place for this amendment.

Chairman Ohrenschall:
I think that is a valid point and perhaps we should consider adding this to Senate Bill 254 (1st Reprint).

Dave Ziegler:
The next proposed additional amendment was from Trudy Lytle. It would amend NRS 116.12065, which is entitled, "Notice of changes to governing documents," to make it applicable to small planned communities also.

Chairman Ohrenschall:
I believe this was covered by Mr. Segerblom's amendment. We have already approved this. It is in Mr. Segerblom's mock-up.

Dave Ziegler:
The next proposed new amendment was submitted by Garrett Gordon. It would amend NRS 116.310305, relating to construction penalties. A copy of this amendment is in your packet.

Garrett Gordon:
This amendment is to clarify NRS 116.310305, which gives the power to the executive board to impose penalties for failure of a unit's owner to adhere to certain schedules relating to design, construction, occupancy, or use of an improvement. The intent behind this section was to mitigate inconvenience to other unit owners, for instance, noise, dust, and construction traffic, giving the board the ability to impose penalties. This amendment will clarify the 2003 legislation regarding where the maximum amount of the penalty should be set forth. In brief, the new language is, "The right to assess and collect a construction penalty is set forth in: (1) The declaration; (2) another document . . . ." Again, where "the maximum allowable penalty" set forth should be made available in a notice and "as part of the resale package that is required under NRS 116.4109 (a)." In summary, this amendment clarifies exactly where the maximum amount of the penalty needs to be, given the declarations that existed prior to 2003. We are adding a provision that this notice of a schedule and notice of what construction penalties may be imposed are, in fact, part of the resale package so all buyers, which includes custom and speculation home builders, are aware of what remedy is available to the HOA.

Again, the intent of this section is to mitigate inconvenience to neighbors regarding noise, dust, construction traffic, et cetera.

Chairman Ohrenschall:
Are there any questions?

Assemblyman McArthur:
For clarification, when you talk about construction penalty, I think about some sort of building, but what we really are talking about is the scheduling. Is this wording clear enough?

Garrett Gordon:
Yes, this does deal with the schedule. You will see the amendment discusses completion and commencement to mitigate any impact on the neighbors. The term construction penalty is used in this section, so I think it is clear that it does deal with a schedule.

Assemblyman McArthur:
In that case, I am fine with this amendment.

Chairman Ohrenschall:
Mr. Gordon can you elaborate on what the confusion was after the passage of the statute in 2003? Has there been litigation with these penalties?

Garrett Gordon:
In 2003, this legislative body added this language regarding that the maximum amount of the penalty must be set forth in the declaration, in a recorded document, or in a contract between the unit owner and the HOA. There has been confusion and questions in the industry regarding declarations existing prior to 2003. It is clear that in order to collect and assess a construction penalty, it must be set forth in the declaration. Regarding the maximum amount of the penalty, from my understanding, in many HOAs, this information is in the rules and regulations, or another document approved by the board, which can be amended very easily by the board. This amendment would say the right to assess and collect a construction penalty must be codified in the declaration. To ensure all buyers are on notice of what this penalty could be, it must be in the resale package.

Chairman Ohrenschall:
So the confusion is within the industry. Has there been litigation?

Garrett Gordon:
To my knowledge there has been no litigation. This has been dealt with through arbitration or mediation. I have heard there is some question regarding declarations prior to 2003. My understanding is the intent was not to affect those declarations, but make this provision prospective in 2003. I hope this clarifies that the declaration must give the right to assess a construction penalty, but that the maximum allowed penalty could be set forth in another document approved by the board.

Chairman Ohrenschall:
Any questions or concerns? [There were none.] I do not remember any testimony in opposition. Was there any, Mr. Ziegler?

Dave Ziegler:
This is a new amendment.

Chairman Ohrenschall:
Right.

Garrett Gordon:
I have spoken with Ms. Dennison and Senator Copening. Neither of them were opposed to this amendment.

Jonathan Friedrich:
In A.B. 448 there was an exclusion for delays and penalties beyond the control of the owner. For example, if bank financing had fallen through and was retracted, or if the contractor went broke, that would be beyond the control of the owner.

Chairman Ohrenschall:
I do recall that. This is not contrary to A.B. 448, if it passes.

Jonathan Friedrich:
If A.B. 448 does not pass, then I would like to see the language from A.B. 448 included in this amendment.

Chairman Ohrenschall:
Mr. Friedrich, there does not seem to be much appetite for that, but thank you for your comments. We will accept this amendment.

Dave Ziegler:
There are a couple of things that we agreed we would revisit. One has to do with section 7. At the last work session, I read from my abstract that the

definitions in NRS Chapter 116 do not apply to the bylaws and declarations of HOAs. After the work session, Ms. Dennison and I discussed that. It was her concern that the intent was exactly the opposite; that the wish was that the definitions in NRS Chapter 116 actually do control. If there are contrary definitions in bylaws and declarations, the definition in NRS Chapter 116 would be the dominant definition. There is a conceptual amendment to satisfy those concerns. Section 7 would be amended to read, "As used in this chapter and in the declarations and bylaws of an association, the words and terms defined in NRS 116.005 to 116.095, inclusive, have the meanings ascribed to them in those sections."

Assemblyman McArthur:
It appears that we are taking one part out and putting another part back in, is that correct?

Dave Ziegler:
One way to describe this is that it takes section 7 and flips it. The way that section 7 is now, it says that NRS Chapter 116 does not control the bylaws and declarations. The intent was that it would control.

Michael Buckley:
The intent of the bill was just as Mr. Ziegler states. The statutory definitions would always trump what the parties provided in the documents.

Chairman Ohrenschall:
I am inclined to support this amendment. It provides uniformity throughout the state. One way to get that uniformity is if the definitions in NRS Chapter 116 are the definitions, and we will not have different definitions with different HOAs.

Assemblyman Carrillo:
This appears to be putting it back to what it was intended to be. I am okay with it.

Chairman Ohrenschall:
We are all in agreement to support this amendment.

Dave Ziegler:
Section 33 has to do with the idea that an HOA board has discretion whether to take enforcement action for a violation of the bylaws, declarations, or rules and provides that a board does not have a duty to take enforcement action in certain circumstances. Yvonne Schuman had suggested an amendment that persons in similar situations must be treated similarly. In other words, there should be a

fairness doctrine attached to this. I do not think we reached closure on that during the last work session.

Michael Buckley:
For clarification, NRS 116.31036, section 3, already requires that the association uniformly enforce the rules and regulations.

Assemblyman McArthur:
Did Mr. Friedrich have an amendment in there? I recall he wanted everything to be fair.

Chairman Ohrenschall:
Mr. Friedrich, did you have an amendment to this section?

Jonathan Friedrich:
I do not see anything.

Michael Buckley:
My previous reference should be NRS 116.31065, subsection 5, which states: the rules ". . . must be uniformly enforced under the same or similar circumstances against all units' owners. Any rule that is not so uniformly enforced may not be enforced against any unit's owner."

Assemblyman McArthur:
There are a couple of other places in statute that address this also.

Chairman Ohrenschall:
Are you all right with this, Mr. Carrillo? All right, we can proceed.

Dave Ziegler:
I do not have anything else on S.B. 204 (R1).

Chairman Ohrenschall:
Is there anyone else who would like to express themselves on this bill?

Jonathan Friedrich:
I believe there are still a couple of sections that have not been resolved.

Chairman Ohrenschall:
Do you know what sections those are?

Jonathan Friedrich:
Section 49. I believe section 45 has been done.

Dave Ziegler:
We have that in our notes. It is the same wording as in the bill, up to a maximum of $5 million.

Garrett Gordon:
I appreciate the compromise, and we are fine with this section. I got a clarification in my amendment regarding the construction penalties. For the record, when I added the language regarding the maximum allowable penalty and schedule as part of the resale package, it should also include the language "or part of the public offering statement." Obviously, we want full notice and disclosure to new buyers and to subsequent buyers. This would provide another layer of transparency.

Chairman Ohrenschall:
So your proposal is to change your amendment to read, "The association has made available a notice of the maximum allowable penalty and schedule as part of the resale package or part of the public offering statement." Is that correct?

Garrett Gordon:
I would suggest that sentence read, "The association has made available a notice of the maximum allowable penalty and schedule as part of the public offering statement or resale package that is required under NRS 116.4109 (a)." I think that is broader and provides more notice to prospective buyers.

Dave Ziegler:
To recap section 49, it provides reasonable attorney's fees and costs and sums due to an HOA under the declaration, or as a result of an administrative, arbitration, mediation, or judicial decision, are enforceable in the same manner as unpaid assessments. This section also authorizes a court to appoint a receiver to collect all rents or other income from a unit owner in an action to collect assessments or foreclose a lien. There are two amendments proposed. One is by Yvonne Schuman, which is attached to the work session document (Exhibit C). Another is proposed by Jonathan Friedrich to delete the language regarding items that are enforceable in the same manner as unpaid assessments. He also suggests that all fees should be capped and that a cap should be placed on the amount a receiver may charge for his or her services.

Chairman Ohrenschall:
There was an amendment having to do with the fines adopted by NRS Chapter 116. That was to which section?

Garrett Gordon:
It was section 49.

Chairman Ohrenschall:
Section 49, subsection 1, on page 47 of the bill, is this duplicative language from another bill?

Michael Buckley:
Yes, I believe it is in S.B. 174, dealing with collections. It came on a parallel track because this is the uniform language.

Chairman Ohrenschall:
One concern I have with that section is that we are working on several of these collection issues, and attempting to come to an agreement prior to the end of session, using one or perhaps both of those bills as a vehicle. I believe the proper venue for this is through those negotiations and attempts to compromise. I do not believe we should process section 49, subsection . . .

Michael Buckley:
Just to point out, I think that you are right. This is all about collections and liens. If you are going to deal with that elsewhere, we do not have any objection to putting that in another bill. We would hope that the language on receivers, which came from the Uniform Act, would go in there as well.

Chairman Ohrenschall:
I agree, I think section 49, subsection 11, should stay in there. There was an example of the Paradise Spa in Las Vegas, correct?

Michael Buckley:
That is correct.

Chairman Ohrenschall:
Mr. Friedrich proposed an amendment regarding charges by receivers. I was thinking perhaps we could pass subsection 11, but mandate that the CICCH promulgate regulations establishing a cap for receivers and what they may charge.

Michael Buckley:
For clarification, the bill proposes to allow receivers to be appointed by the court. I do not think that the CICCH could tell a judge what the receiver would be paid. There may be some confusion about this kind of receiver. The example of Paradise Spa is that there were tenants who were paying their rent to the unit owner. The unit owner was not paying his dues and the association was owed money. There was income to pay the receiver's fee, which is more like a property manager, and would be according to market rates. That needs to be distinguished from appointing a receiver for an association that is being

poorly run, which would be very expensive. I think the Commission does have some authority there because the Real Estate Division is the "person" who would seek the receiver, rather than here where it is the association that is trying to collect and get some money to pay the assessments that the owner is not paying. I do not think the Commission could tell a court what do to.

Chairman Ohrenschall:
So the examples that Mr. Friedrich pointed out about receivers charging egregious fees, you do not think that would happen because the judges would try to ensure the fees are reasonable.

Michael Buckley:
A receiver is an officer of the court. The receiver has to report back to the judge. The judge has to approve the receiver's fees and his accounting. It does not have anything to do with common-interest communities per se. This is just allowing the association to have a remedy that most mortgage lenders have.

Chairman Ohrenschall:
I would propose on section 49 that we do not accept any of the amendments and that we do not process section 49, subsections 1 through 10, and process subsection 11.

Assemblyman Carrillo:
I am not sure I feel comfortable with deleting all of those subsections. Earlier, we were looking at a simple amendment.

Chairman Ohrenschall:
I see your point. However, as Mr. Buckley testified, this section is also in S.B. 174. I do not think it would be wise to have this move forward here, when the issue is part of an overall attempt at a compromise.

Assemblyman McArthur:
We are taking out a lot of language if we delete all of those subsections, correct?

Chairman Ohrenschall:
No. I am not proposing we delete any current language in the NRS. I am just proposing that section 49 would now only have subsection 11. The rest of it would just go away. We would not be deleting any existing language from the NRS, but we would be adding subsection 11.

Assemblyman Carrillo:
If you are going on the assumption that another bill will pass or not, or that both will pass or not, I think we should keep this bill whole.

Chairman Ohrenschall:
Remember the amendment Mr. Friedrich proposed dealing with the construction penalties, and he was concerned that even though it was duplicative of A.B. 448, he wanted it in here because he was afraid A.B. 448 would not get out of the Senate Finance Committee. He wanted a second bite at the apple by having it in this bill. We turned that down for substantially the same reason that I do not think this should be approved. This is not only two bites at the same apple, but more importantly, this is part of the negotiations on the collections issue between both houses.

Assemblyman Carrillo:
This is a bill in itself. This is not taking a second bite at the apple because it is already in the bill. For clarification, how is your example the same as having two bills with the same language? How are we looking at amending it when it is already there? We are not talking about putting section 49 in this bill, because we are not adding to it, that is part of the bill as it is proposed.

Michael Buckley:
I am aware that when S.B. 174 was drafted, we did give them the uniform language. I believe the language in S.B. 174 incorporates the changes that we made. I am not sure about the receiver section, but I know that the language on the attorney's fees and the technical changes are the same as in S.B. 174.

Assemblyman McArthur:
Is there room for compromise in this?

Chairman Ohrenschall:
I think there is room for compromise, and that compromise is going to come out of the negotiations between both houses on S.B. 174 and A.B. 448. Hopefully, we can come out with something that will protect homeowners and protect the HOAs. I do not believe this is a proper place for this issue.

Assemblyman McArthur:
I am not concerned with a compromise having to do with a couple of completely different bills. I am not sure that is helping us with this bill. I am wondering whether maybe we should do what we want to do here and not worry so much about what is being done with two other bills. My question was, can we compromise on this bill? I think we are in agreement on subsection 11.

Chairman Ohrenschall:
We are going to take a brief recess.

[The Committee recessed at 8 p.m. and reconvened at 8:43 p.m.]

Before the break, we were discussing S.B. 204 (R1). We are going to delay any further action on this bill until we reconvene. We will now begin the review of Senate Bill 254 (1st Reprint).

Senate Bill 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 254 (R1) is sponsored by Senator Copening and was heard in this Subcommittee on May 6, 2011. It revises the procedures for alternative dispute resolution of civil actions concerning governing documents or the covenants, conditions, or restrictions (CCRs) applicable to residential property. It also revises administrative proceedings concerning a violation of existing law governing common-interest communities and condominium hotels.

[Read from work session document (Exhibit E).]

I would like to point out that Senator Copening's amendment dated May 13, 2011, does include the suggestions of Mr. Stebbins.

Chairman Ohrenschall:
Is the amendment proposed by Mr. Friedrich the arbitration cap that was proposed for Senate Bill 204 (R1)?

Dave Ziegler:
No, the proposed amendment by Mr. Friedrich would replace the bill with new provisions, which are attached to the work session document.

[Read amendment.]

Chairman Ohrenschall:
Regarding the prior amendment that Mr. Friedrich had proposed for S.B. 204 (R1), we will consider that in this bill with the cap on arbitration fees. Are there any concerns with adopting the cap on arbitrator's fees?

Eleissa Lavelle, Private Citizen, Las Vegas, Nevada:
I have been involved as an arbitrator and as an advocate on behalf of both associations and individuals. The concern is to ensure that the arbitrators

hearing these cases are as qualified as possible. We have seen the complexity of *Nevada Revised Statutes* (NRS) Chapter 116 and the way these rules operate. In order for this process to work, you must ensure that you have qualified people who are hearing these matters. While I agree there should be some limitation on these costs, because I do agree with many of the people who have spoken, that there are in many cases an excessive amount of bills that are being promulgated by these arbitrators. I think the method to handle this is partly by what has been proposed by Senator Copening's conceptual amendment. I am also aware that Gail Anderson is in the process of addressing these issues. In addition to limiting the dollar amount, perhaps incorporating something along the lines of budgets and establishing the kinds of things that arbitrators do would limit the total cost of these arbitrations.

Chairman Ohrenschall:
Why would the $1,000 cap work under the Supreme Court rule but not work here?

Eleissa Lavelle:
The $1,000 cap has been implemented in the mandatory arbitration process in the district court. Those kinds of cases under NRS Chapter 38 are very limited in their scope. They deal with matters where under $50,000 is at stake. But the statutes exclude a number of kinds of disputes, notably, matters relating to title to real estate, matters dealing with equitable claims, matters dealing with appeals from courts of limited jurisdiction, and actions for declaratory relief. Basically those types of cases limit the scope and complexity of what arbitrators are hearing. That is not the case with these kinds of arbitrations. Here you have very complex issues, and in many cases, arbitrators are given packets of documents of all the board minutes, all the correspondence, perhaps plans and specifications, and architectural guidelines. It takes a great amount of time for arbitrators to do a decent job of understanding the issues and giving adequate opportunity for these people to be heard. At $1,000, you are going to be requiring people to volunteer their time, and I do not know whether you will find quality arbitrators to do this for $1,000.

Chairman Ohrenschall:
When you talked about the district court cases under arbitration being limited to less than $50,000, does that mean you anticipate that most of these disputes would be more than that?

Eleissa Lavelle:
In many cases with homeowners' associations (HOAs), the dollar amount is not significant with respect to each individual case. More particularly, this is an enforcement issue. It could have a dollar figure, but more often it may deal

with interpretations of declarations or interpretations of other governing documents, where a dollar amount really is not the significant part of it. There may be fines imposed, but the most significant part is not only how that declaration or other governing document is enforced with respect to a single homeowner, but the impact it may have on an entire community. Consistency of enforcement is really what is critical with all of these. We want to ensure that these enforcements are being fairly and evenly applied. Whereas, one person may not consider a fine to be a huge amount of money, the impact across the board to the way that community operates and the value of the homes that this enforcement proceeding might have can be very significant.

Chairman Ohrenschall:
Any questions? [There were none.]

Assemblyman McArthur:
Are we going to review the bill, starting with page 1?

Chairman Ohrenschall:
Regarding the arbitrator's fees, if you do not think the $1,000 cap would work, do you think some other cap would work, and is that something that should be put in statute?

Eleissa Lavelle:
There are provisions in the bill that would provide a fast-track type of arbitration where the Real Estate Division Administrator in the Department of Business and Industry would develop regulations that would limit the scope of what these arbitrations would require. It is provided that is what the Administrator would be doing. I think that it may best be handled by the Administrator with clear direction within the statute. That is the goal. The reason for that is if this statute is to last for as long as we all would like it to last, we want it to be responsive to changing events in the community and changing needs and requirements of the people that are utilizing the statute. The Administrator may be in a better position to find out what is going on and develop in a very quick manner the kinds of regulations that would implement a limitation on these fees.

Chairman Ohrenschall:
What is the reason the bill only provides for capping the fast-track arbitration fees as opposed to all arbitration fees?

Eleissa Lavelle:
I believe the proposal is that all fees would be reviewed and limited. The fast-track is a special form of arbitration that could be utilized where the issues are not complex and would require very limited or no discovery and very short

arbitrations. Some of these arbitrations can go days at a time. Others, where the issues are fairly limited, can be limited by regulation to one or two hours. That alone will limit the cost for everybody. All of those are included within the concept this bill encompasses.

Chairman Ohrenschall:
Where within the bill are the arbitrator fees?

Eleissa Lavelle:
They are on page 21, line 19, which deals with rules for speedy arbitration. I may also have been thinking of the proposal that Senator Copening has made to attempt to lift all fees across the board. Not just for fast-track, but for other types of arbitration.

Chairman Ohrenschall:
That is in her amendment, correct?

Eleissa Lavelle:
Correct.

Chairman Ohrenschall:
If Senator Copening's amendment is approved, how long would it take to adopt those regulations?

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
I actually have a regulation file started. I had a workshop proposing a number of things concerning the arbitrators and mediators under NRS Chapter 38, which is under the Real Estate Division Administrator's jurisdiction. This is very doable. I have spoken with Senator Copening regarding this. I will have to request that I be allowed to proceed with the regulation, but this is an important public policy that I am fairly certain we can get approval for. There would be some changes; I had some good input from the workshop. I do need to review and incorporate the referenced speedy arbitration fast-track process.

Chairman Ohrenschall:
Your caps would apply to all arbitrators under Senator Copening's amendment, correct?

Gail Anderson:
That is correct. My proposed regulation is concerning all arbitrations.

Chairman Ohrenschall:
Any questions? [There were none.] Ms. Lavelle, would you mind walking us through this bill?

Elelssa Lavelle:
Section 1 deals with the mediation portion of this bill and provides that no later than five days after receipt of the written response—the complaint process is initiated through the Division; when a written response is prepared and received, within 5 days after that—the Division is required to provide a copy of the response to the claimant so that everyone knows what the claims are, what the defenses are, and to provide a list of the mediators that is maintained by the Division. The mediators are to be selected, approved, and trained by the Administrator so that it is clear that they have adequate training in mediation process and an adequate understanding of NRS Chapter 116 and general HOA law. That is the purpose of having the panel of mediators maintained by the Administrator.

The mediator is required to provide an informational statement as set forth in subsection 3, within a very short time period. The mediation is supposed to take place within 60 days after the selection and appointment of the mediator. The purpose is to assure that this process does not unduly delay ultimate decision making if the case cannot be settled.

Subsection 5 states that if the parties reach an agreement, that agreement is to be reduced to writing. This is absolutely standard mediation practice and is something that Mr. Friedrich had proposed as well. The idea is that once the parties have agreed to a settlement, it becomes a binding contract between the parties. It will not be sent out to everyone; the agreement is going to be confidential, and it will not be published unless it will be enforced in some way.

There is a provision for the payment of fees of mediation. The plan is that there would be funds available to some extent through the account referenced in subsection 6. The Account for Common-Interest Communities and Condominium Hotels (CICCH) created in NRS 116.630 had funds set aside for the mediation process. The idea was that this money would be available for payment of these mediators. It is true that the statute does not state that it will be free mediation. It is calculated that given the anticipated number of mediations, if the cost per hour was limited, there would be adequate funds from which these mediators would be paid, not requiring any additional funding by the individuals.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
We did have, at the Commission, $150,000 for several years that was available to subsidize arbitration that was never used. Finally the amount was taken out of the budget. The fund for CICCH has a surplus in the budget that is not being used. There are funds available through that which could be allocated to provide for the free mediation.

Elelssa Lavelle:
The bill provides that the Commission will have the ability to regulate the fees and charges that would be assessed in section 1, subsection 5. It states, "The Commission shall adopt regulations governing the maximum amount that may be charged for fees and costs of mediation and the manner in which such fees and costs of mediation are paid." We are cognizant of the fact that this should not be a more expensive process, but in fact a tool to perhaps limit the ultimate costs that are going to be incurred in resolving these disputes.

Section 1, subsection 7, provides that if either party fails to participate in the mediation, or if the parties are unable, with the assistance of the mediator, to resolve the issues, then the mediator would, within five days, certify to the Ombudsman that the mediation was unsuccessful and recommend that the claim be referred either to arbitration pursuant to NRS 38.330, if the claim relates to any governing documents, or to the Division for proceedings pursuant to NRS 116.745 through 116.795 if the claim relates to an alleged violation of a provision of NRS Chapter 116.

In order for the mediations to be successful, the communications that take place are required to be confidential. The next provision of that section says the mediator may not provide any other information relating to the mediation to the Division. The Division, the Commission, and a hearing panel may not request from the mediator any other information relating to the mediation. This is a very important part of this statute because it ensures that the people will be able to freely and frankly discuss their positions without fear of having their words come back to them if the case does not settle. That is also included within subsection 8, essentially the same language.

Subsection 9 is a definitional subsection, dealing with where the mediators are going to be taken from and where the mediations will be conducted.

Assemblyman McArthur:
You mentioned a time limit of five days after receipt, is that enough time?

Eleissa Lavelle:
That is a very legitimate concern. We certainly do not want to create any problems in getting this information out. The intent was to ensure the process moved along quickly. I would defer to Gail Anderson as to whether or not that is a sufficient response time.

Assemblyman McArthur:
I am not trying to fix it or change it; I am just wondering whether it is doable.

Gail Anderson:
The five days is the time the Division has once we have received the written response. That is certainly doable; it would be helpful to make it five business days.

Assemblyman McArthur:
The bill states that the Ombudsman must be available within the geographic area. Is that possible in some of the rural areas? We might want to change that to "should be available" instead of "must be available."

Eleissa Lavelle:
That is a very legitimate concern and I think any modification that would make that easier to accommodate is fine. I think within the large metropolitan areas it should be very simple to find someone within the geographical area.

Assemblyman McArthur:
Also, it states in section 1, subsection 2, "Upon appointing a mediator, the Ombudsman shall provide the name of the mediator to the parties." There is not a time frame for that. Do we need one?

Eleissa Lavelle:
I think the time frame for providing the mediators is within five days of the date of the response. We can take a look at that.

Assemblyman McArthur:
I think we need to tighten up who pays and how much they pay. It does not state what funds will be used.

Chairman Ohrenschall:
Any other questions? [There were none.]

Eleissa Lavelle:
Section 4, page 5, is the confidentiality provisions that have already been addressed. Section 5, subsection 5, deals with bad faith filings and states, "If

the Commission finds that an appeal from a final order of a hearing panel is filed in bad faith or without reasonable cause for the purpose of delay or harassment, the Commission may impose any of the sanctions set forth . . . ."

Michael Buckley:
This is a Commission process rather than an arbitration process. This is where there is a hearing panel, which is a subset of the Commissioners that would hear a complaint that the Real Estate Division brought against someone. It is not the typical homeowner dispute.

Chairman Ohrenschall:
Would this be after the mediation has run its course, or independent of any mediation?

Michael Buckley:
This is completely independent. This is after mediation, after it has been directed to the Division, after the Division has filed a complaint, after a hearing panel has held a hearing, then someone can file an appeal to the Commission.

Chairman Ohrenschall:
Is there a sense that many appeals are filed in bad faith, or for the purpose of delay?

Michael Buckley:
Currently we do not have hearing panels. This section will add a little more weight to what the hearing panel can do.

Chairman Ohrenschall:
Any questions on section 5? [There were none.]

Eloissa Lavelle:
I will skip over some of the sections; they are essentially cleanup sections and language modifications. Section 9, subsection 2, allows for the Division to disclose a claim and response filed with the Division and other documents to the mediator and to the arbitrator. This is a procedural process so that the parties will have an idea of what the claims are about and what the defenses are as they are preparing to either conduct a mediation or an arbitration.

Chairman Ohrenschall:
These are claims filed with the Division prior to the mediation process going forward, correct?

Eleissa Lavelle:
Correct.

Assemblyman McArthur:
It states the Division "may" disclose. Is there a reason for "may"?

Michael Buckley:
The reason this is necessary is because all the records of the Division, at the initial start of the claim, are confidential. It was not intended to say they should not disclose. They do need to disclose to the parties what the problem is; so there may need to be some language clarification.

Eleissa Lavelle:
The intent of section 10 is to consolidate all of the claims that a party has to the extent that they are aware of them within one proceeding. When any given claim is made, everything that the individual or HOA knows about that claim needs to be included so that we are not hitting homeowners with multiple claims on multiple occasions and the homeowners do not have to continue to defend themselves claim after claim. Similarly, if a homeowner has a claim against the association, those are consolidated to the best of their knowledge; so the association is not defending claim after claim. This effort is an attempt to limit the cost that homeowners and associations are paying to go through the arbitration process. It does provide that if these claims are not addressed, if known, that they may be limited and there may not be any ability to proceed with the claims. This is very similar to a statute of limitation that you will find in normal adjudicative law in a district court.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 10, subsection 3, provides and details what needs to be included within the claims. This is essentially a due process provision. Due process requires that the person be told what the claim is about and have an adequate opportunity to be heard. This provision sets forth what will be required in the claim: a statement of whether all administrative procedures have been satisfied and a statement of the nature of the claim and the facts supporting it. Section 10, subsection 3, paragraph (e), states that all claims of which the claimant is aware or reasonably should be aware, including any claims that relate to a violation of the governing documents, need to be included within the complaint that is being filed.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 10, subsection 4, says, "Upon the filing of a claim that satisfies the requirements of this section, the Division shall serve a copy of the claim on the respondent by certified mail, return receipt requested, to his or her last known address." Again, this is a due process provision, so that the respondent knows exactly what the claim is and has all of the information available to him to be able to adequately respond.

Subsection 5 requires that a written response be made by the respondent and sets forth the content of what that response is going to be.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 10, subsection 6, provides that the claims may be consolidated. Subsection 7 states that by filing a claim or response, the claim or response is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of proceedings and that the claims have evidentiary support. The purpose of this is so that people are not filing false or fraudulent claims. There is a substantial amount of support for this in other provisions of the law. Rule 11, under the Nevada Rules of Civil Procedure, requires that if an attorney files a claim on behalf of a party, or if a party signs a pleading, the attorney has to do so with knowledge that there is evidentiary support and that the claim is not filed for improper purposes. There are sanctions applicable if that rule is violated. There are similar provisions within mechanics' lien law and general litigation.

Chairman Ohrenschall:
So will most of the homeowners who are filing these claims be doing it on their own without representation?

Eleissa Lavelle:
An attorney is not required to file these claims. Sometimes attorneys are there, and sometimes they are not. The homeowners who are filing individual claims would be reminded that they must file these claims with a legitimate and good faith purpose for doing so.

Chairman Ohrenschall:
Is there a penalty if they are found not to have met that standard?

Eleissa Lavelle:
There is. In section 18, subsection 9, it says that if a person files a frivolous claim with the Division pursuant to this section or NRS 38.320, the Commission may issue an order directing the person who filed the frivolous claim to pay the costs incurred by the Division as a result of that filing. This cost may be assessed not only against homeowners but also against HOAs. It has equal applicability. Nobody is entitled to file a false, fraudulent, or frivolous claim. There is a penalty involved, but it is a discretionary provision.

Chairman Ohrenschall:
If someone is found to have filed a false or fraudulent claim, can he or she appeal to a court if he or she feels the Commission is wrong?

Eleissa Lavelle:
Under normal administrative law, if a party is aggrieved by an administrative proceeding, there are limited rights of review by a district court. Those rights of review are based on whether the Commission has acted in an arbitrary or capricious manner.

Chairman Ohrenschall:
That provision, allowing an appeal to a district court and ultimately the Supreme Court, comes through the State Administrative Procedures Act as applicable to the Nevada Real Estate Division?

Eleissa Lavelle:
That is correct.

The balance of section 11 deals with false and fraudulent claims and the manner in which these are going to be handled. Subsection 1, page 12, commencing at line 2, states:

> "If, after investigating the alleged violation, the Division determines that the allegations in the claim are not frivolous, false, or fraudulent and that good cause exists to proceed with a hearing on the alleged violation, the Administrator shall:
>
> (a) File a formal complaint with the Commission, with the Division as complainant, and schedule a hearing . . . ."

I believe this is essentially the intervention process that currently exists. We have the analysis period to determine whether or not it is a false or fraudulent filing.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 11, subsection 4, states, "No admission, representation or statement made in the course of the Ombudsman's efforts to assist the parties . . . is admissible as evidence . . . ." There are provisions in NRS Chapter 116 that give the Ombudsman an additional attempt to resolve these disputes. This simply clarifies the confidentiality of those conversations.

Chairman Ohrenschall:
Does this protection currently exist when someone speaks with the Ombudsman, or is this reclarifying?

Eleissa Lavelle:
I have never heard of a situation where an Ombudsman has ever revealed anything inappropriately. I am aware that there is some feeling among people who participate in this process that they want to have this very clear so that when they speak to the Ombudsman, because he is part of the process, that whatever is said is confidential. It is really a clarification.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
The balance of page 13 is clarification. Section 15 basically mirrors earlier parts of this bill. This section provides that not later than five days after receipt of the response, the claimant gets a copy and the parties get a list of the mediators. The changes we have discussed in terms of business days for the five-day time frame would be appropriate here as well.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Continuing on, page 15 is also a mirror image of what we have discussed with respect to the method by which mediators and arbitrators are selected.

Assemblyman McArthur:
Also, section 15, subsection 6, paragraphs (a) and (b), discuss the payment of fees. This area also needs to be tightened up.

Chairman Ohrenschall:
What line is that on?

Assemblyman McArthur:
Page 15, line 18; "The Division may provide for the payment of the fees . . . ."

Chairman Ohrenschall:
I thought the "may" had to do with the fact that there was enough funding right now and no one will be charged for awhile.

Assemblyman McArthur:
I do not think so; a little lower it says "The Commission approves the payment; and . . . ," so there are a lot of questions about who pays and for how long.

Chairman Ohrenschall:
Maybe we can ask Legal to look at that tomorrow. Do you think there is some conflict in the language?

Assemblyman McArthur:
No, I just think it needs to be tightened up regarding whether or not the Division is going to pay, whether there are funds available, or will we need to get funds somewhere else if those funds get used up?

Chairman Ohrenschall:
Ms. Lavelle, do you think there is a problem in that language?

Eleissa Lavelle:
It is the same issue that was raised earlier; the question is, how do you limit the costs of these arbitrations? How do you set fees? Perhaps put parameters around the kinds of things that arbitrators might be doing that exceed the reasonable costs. I agree there are issues with respect to how much arbitrators are charging and what these costs should be. I think the very same issues and concerns that were expressed in the earlier part of this bill apply equally here.

Chairman Ohrenschall:
Thank you. Please proceed.

Eleissa Lavelle:
Regarding section 16, line 21, the term "assessment" had been included within NRS 38.300 regarding the types of things that need to be defined. Instead of the word "assessment," the word "charges" is used. Essentially, this provides a definitional section for use in the statute. It does not impose any additional charges or fees; it is purely definitional.

Chairman Ohrenschall:
I know that Mr. Friedrich had some concerns with that definition. I have talked it over with our legal counsel, and we do not feel that his concerns are correct. I am okay with this section now.

Eleissa Lavelle:
Subsection 3 is also part of the definitional section. It simply adds and clarifies what kinds of things are going to be included and excluded within the arbitration provisions, and also defines more carefully what "irreparable harm" means. These are more clarifications rather than changing anything substantive.

Subsection 4 defines "Commission" so that we know what we are talking about in the course of this statute.

Subsection 6 is a clarification that links the definition of "governing documents" to the meaning that is already defined in the statute.

Chairman Ohrenschall:
On page 16, lines 38 through 41, is the definition of "irreparable harm." Is that from somewhere else in the revised statutes, or did it come from the Uniform Law Commissioners?

Eleissa Lavelle:
Under normal injunctive relief within the NRS and the Rules of Civil Procedure, whenever you have a potential for an immediate risk of irreparable harm, you have a right for injunctive relief. In drafting this statute, the intent was to preserve that right so that if someone has an immediate issue or concern that there is a huge risk, that has to be addressed immediately, and that if you do not go through the arbitration process or the mediation process, you can go straight to court and get a judge to issue an injunction. The question is what does "irreparable harm" mean? This provision is an attempt to define that more carefully by meaning a harm or injury for which the remedy of damages or monetary compensation is inadequate and does not exist solely because a claim involves real estate. It is really a clarification of this. Under normal real estate law, or injunctive relief law, a change to the way in which real estate is held is normally sufficient grounds for getting into court. This is clarification that I believe comports with other provisions of Nevada law.

Chairman Ohrenschall:
If this passes, will it be harder for someone to get injunctive relief for something involving real estate?

Eleissa Lavelle:
I think this will give the court some guidance as to what kinds of cases they can hear and should be hearing for injunctive relief as opposed to what kinds of cases go through the arbitration process. The idea is not to limit either an HOA or a homeowner's right to get immediate access to injunctive relief. It is simply to define that right as carefully as possible.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 17 is cleanup language. Section 18, page 17, provides that a claim may not be filed if a claimant has previously filed a claim with the Division and at the time the claimant filed the previous claim the claimant was aware or reasonably should have been aware of the facts and circumstances underlying the current claim. This is similar to the earlier provisions that I discussed that talk about a requirement that a claimant cannot keep filing the same claim over and over again, or if he or she has facts that he or she knows justify bringing a claim at a certain point in time, he or she has to consolidate those claims at the same time. This creates a more streamlined and less costly approach to dispute resolution.

Assemblyman McArthur:
For clarification, on page 17, line 36, it says "The claimant previously filed a claim . . . ." Should there be something about the same claim again?

Eleissa Lavelle:
If a claimant files a claim, and at the time he filed the claim, he knew of facts that gave rise to a second claim, that second claim will be barred.

Assemblyman McArthur:
I understand that. I am just not sure about the wording. I do not believe the intent is clear.

Eleissa Lavelle:
Both portions of that statute have to be satisfied. So paragraph (a) and paragraph (b) are both necessary. It is both that the claimant filed previously, and at the time the claimant filed, the claimant was aware or should have been aware of facts and circumstances underlying the current claim.

Chairman Ohrenschall:
So there is no requirement that this latter claim arose out of the same nucleus. It could be something unrelated; there just has to be knowledge of it?

Eleissa Lavelle:
That is the way it is currently drafted. It could be the HOA or the claimant.

Chairman Ohrenschall:
It is not like the civil procedure rule, requiring the same transaction or occurrence. In this situation, knowledge would be enough to bar a second claim?

Eleissa Lavelle:
Actually, there is a provision within the doctrine of *res judicata* that if you file a complaint against someone, and at the time you file that complaint you had actual knowledge of other claims that could be filed, even unrelated, you may be barred.

Chairman Ohrenschall:
Any questions? [There were none.] Thank you, please proceed.

Eleissa Lavelle:
Section 18, subsection 2, paragraph (a) is a due process provision, which says that the claimant must provide the respondent by certified mail, with written notice of the claim which specifies in reasonable detail the nature of the claim. These are provisions that ensure that everybody against whom a claim has been filed has full understanding of what the claim is about. Paragraph (b) provides that "If the claim concerns real estate within a common-interest community subject to the provisions of Chapter 116 of NRS . . . all administrative procedures specified in the governing documents . . ." must be exhausted. It requires that each of these parties, before filing a claim, has exhausted whatever hearing processes exist, and they have to certify that has occurred before they can file a claim with the Division. The rest of this section is procedural. It talks about what the claim forms will include and again, a reasonable detail of the violations. The rest of the section deals with the requirements to be included in the claim so that when these claims come before the Division, it will be clear that the parties have thought through all of their claims and supporting information and the fact that they have tried to resolve this through their administrative processes. If they do not do this, there is no penalty, but it is a requirement in the way the forms are set up.

Chairman Ohrenschall:
Any questions? [There were none.] Please proceed.

Eleissa Lavelle:
Page 19 deals with the consolidation of claims and the way the answers are prepared. Section 18, subsection 8, certifies that the claim is being filed with a

reasonable belief formed after reasonable inquiry that the claim is adequately supported and is not being filed for improper purposes. Subsection 9 provides that if a person files a claim which he or she knows to be false or fraudulent, the Commission or a hearing panel may impose penalties.

Chairman Ohrenschall:
Normally, if someone were to appeal from a hearing panel, he or she goes to the Commission?

Michael Buckley:
That is correct. From a hearing panel you would appeal to the Commission.

Chairman Ohrenschall:
Here either one would have the power to impose a penalty. If it is the Commission that imposes the penalty, the only avenue of appeal would be to district court through the State Administrative Procedure Act?

Michael Buckley:
This is referring to a claim and the fact that if a claim filed with the Real Estate Division turns out to be false or fraudulent, then the Commission and hearing panel can impose a penalty. I believe this is existing law.

Chairman Ohrenschall:
Is that something that has never happened in terms of the Commission or hearing panel imposing a penalty for a false or fraudulent claim in bad faith or without reasonable cause?

Gail Anderson:
There is a provision in law although it is not this exact language, where if the Division believes there is evidence to substantiate a knowing, willful filing of false and fraudulent claims that the state would bring a complaint to the Commission against the person who filed it. The Commission has the ability to impose a penalty. The Division has not done that as yet. We continue to try to work this program on getting things resolved, but we have the ability to do that and we may be doing that. Part of the clarifications in the proposed legislation will help define more clearly what things are appropriate and inappropriate that we could bring forth. We have not brought a claim against someone who has filed something at this point to the Commission. We have closed claims as unsubstantiated, but have not brought forth the case as being willful and fraudulent.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 19 sets forth the procedure with clarification based on what has happened with the mediation. If the mediation is unsuccessful, the mediator refers the matter to arbitration. This provides that the Division will maintain a list of qualified arbitrators, and that not later than ten days from the receipt of the referral to arbitration, an arbitrator will be identified. The parties will be notified who the arbitrator will be. This is a slight clarification of statute that already exists in order to accommodate the mediation process.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 19, subsection 3, provides that arbitrations conducted are nonbinding unless the parties agree in writing to binding arbitration. This is so that if the arbitrator gets it wrong, the parties have a right to go to court and see whether they can get it right. We do not want this to be binding arbitration unless the parties want it that way.

Subsection 5 states unless all the parties to the arbitration otherwise agree, the arbitration will be conducted in accordance with rules of the American Arbitration Association or other comparable rules for speedy arbitration approved by the Commission or the Division. The intent is that speedy, fast-track arbitration rules will be established for cases. The default will be a speedy arbitration unless the parties want to take it out of the speedy arbitration if the issues are more complex.

Chairman Ohrenschall:
So if the issues are more complex, that will take it out of the speedy arbitration?

Eleissa Lavelle:
Correct, the parties can agree to that.

Chairman Ohrenschall:
Any questions? [There were none.] Please proceed.

Eleissa Lavelle:
Section 19, subsection 6, states that once the arbitration decision award has been issued, the Division receives a copy of that award. It will also provide that the arbitration awards will be indexed and maintained by the Division. The intent is that there needs to be some consistency in these rulings. One way of doing that is for these arbitration decisions to be maintained by the Division.

Chairman Ohrenschall:
This does not specify how long they will be maintained.

Eleissa Lavelle:
That would be determined by regulation.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
I jumped ahead to that because the Division is going to be getting copies of these arbitration decisions and it will maintain them. The arbitrator provides a copy of the arbitration award. Except as otherwise provided and subject to regulations adopted by the Commission, the parties are responsible for payment of all fees and costs of arbitration in the manner provided by the arbitrator. This is the way the statute was originally drafted. I understand that we are in the process, through the earlier testimony and proposed amendment - by Senator Copening, of tightening this up so that you have clear and more concise and limited fees for these arbitrations.

Chairman Ohrenschall:
Any questions? [There were none.]

Eleissa Lavelle:
Section 20, subsection 2, provides that upon request of a party to a mediation or arbitration, the Division will provide a statement to the party indicating the amount of the fees the selected mediator or arbitrator would charge. This will be revised through either amendment or regulation as discussed earlier.

Chairman Ohrenschall:
Thank you very much for taking the time to walk us through this bill and answer our questions.

Assemblyman McArthur:
If someone has a complaint, does it automatically go to mediation?

Eleissa Lavelle:
The point is to get people talking to each other quickly. As the statutes currently exist, they either go immediately to arbitration or to the Division for investigation or hearing. There are dispute resolution processes that are adversarial. This statute proposes that before any of those disputes go to an adversarial proceeding, the parties are required to sit down and attempt to mediate and resolve the dispute.

Michael Buckley:
Also, the mediation and arbitration ties in to making a formal complaint. If you call the Ombudsman and ask for some help, he does not have to refer you to arbitration. He can give you help without going through the process of mediation.

Assemblyman McArthur:
If you do file, it is required to go to mediation first.

Chairman Ohrenschall:
We will now recess and reconvene tomorrow upon adjournment of the Assembly Committee of the Judiciary hearing, at approximately 10 a.m.

[Meeting recessed at 10:08 p.m. on May 17, 2011, and reconvened at 10:30 a.m. on May 18, 2011.]

Chairman Ohrenschall:
We had a late night last night, but I think we made a lot of progress on these bills. We will come back to Senate Bill 204 (1st Reprint).

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

We were held up on section 49. We agreed we did not want to consider any of the amendments that were proposed. We agreed that we supported subsection 11. The impasse was on subsections 1 through 10, that I believe are part of the overall negotiations on the collection and super priority lien issue. We have Senator Copening here to discuss section 49.

Senator Allison Copening, Clark County Senatorial District No. 6:
Regarding section 49, the Chair and I are in discussions about how to strengthen the regulations that are currently in place for collection costs. We are going to remove the new language in section 49, lines 22 through 33, leaving existing language that is currently in law and continue to work on the collection proposal.

Chairman Ohrenschall:
Thank you very much. I would like to clarify with Legal, if we were to not amend that part of *Nevada Revised Statutes* (NRS) 116.3116, we also would not have the subsequent small amendments to subsection 2 through 10. Basically that would leave us with subsection 11, correct?

Nick Anthony, Committee Counsel:
Yes, that is correct.

Assemblyman McArthur:
For clarification, lines 22 through 33, and the new language in subsections 1 through 10, correct?

Chairman Ohrenschall:
Correct, we will not change the existing statute at all. We will keep subsection 11 which deals with receivers.

Assemblyman Carrillo:
I agree with the way section 49 is.

Chairman Ohrenschall:
So we will recommend to the Assembly Committee on the Judiciary that section 49, subsection 11, be kept. All the recommendations we made last night will be included. Mr. Ziegler, is there any point in recapping this bill?

Dave Ziegler:
I think you rehashed it to death last night.

Chairman Ohrenschall:
Then I would be willing to hear a motion that we recommend to the full Committee S.B. 204 (R1) with all the amendments we liked and without all the amendments that we did not like, with section 49, subsection 11, surviving, but subsections 1 through 10 not being recommended.

ASSEMBLYMAN MCARTHUR RECOMMENDED AMEND AND DO PASS SENATE BILL 204 (1st REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.

THE RECOMMENDATION PASSED UNANIMOUSLY.

Chairman Ohrenschall:
We will now review Senate Bill 254 (1st Reprint).

Senate Bill 254 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-264)

I have a few questions on this bill. Last night we discussed Supreme Court Rule 24 that established a $1,000 cap for arbitrators. I believe Ms. Lavelle answered

that these arbitrations are much more complicated and are often at a value higher than the $50,000 set in the Supreme Court Rule. Even with the proposed cap, how high do you think arbitrator's fees might go, assuming that is promulgated through regulation. My fear is that arbitrator's fees might be too high.

Eleissa Lavelle, Private Citizen, Las Vegas, Nevada:
The issue has to do with the complexity of some of these issues. I understand that there is a lot of frustration. There is frustration on everybody's part, those of us who have these cases before arbitrators and some of us that are arbitrating, and I understand your concern. The difference has to do with what these cases are about. While sometimes the cases can be very simple, they deal with whether there has been a violation, either it happens or it does not happen, or either it is established or it is not established. Those are easy, and I agree that those fees should be minimal. I absolutely share the concern with this. Every case that comes before a court or an arbitrator does not necessarily have a dollar amount that is the most significant part of it. Sometimes the most significant part may be dealing with an interpretation of one of the governing documents, or how the documents work together. As an example, I had a matter as an arbitrator recently where the community documents were very complicated. They set up various neighborhoods and there were some gaps in those documents with respect to the way certain communities were going to be separately assessed, or certain individuals were going to be separately assessed. In order to reach a decision on that case, it was necessary to take testimony from a number of people and to do a very detailed interrelationship between the declaration and statutory intentions. That being said, the dollar amount is not significant, but the ramifications were huge. It was not necessary to do a site visit, and it was not necessary to take days and days of testimony.

The way that you might consider limiting these is not only a cap on the dollar amount of hourly fees that are charged, but some parameters around the kinds of activities that arbitrators should engage in. That way you can control what might be considered padding of bills, or inappropriate, unnecessary work that is sometimes done. I am not saying that arbitrators are doing that, but sometimes I think there might be a feeling that they are.

Another way would be to have an oversight mechanism, by regulation, so that the Commission for Common-Interest Communities and Condominium Hotels, the Real Estate Division of the Department of Business and Industry, or the Real Estate Administrator would have the ability to review an arbitrator's bill if someone thought it was too high and determine whether it exceeded what were reasonable parameters. There are models for this within the state bar. There is

a fee dispute committee. If an aggrieved client feels an attorney's fees are too high, he or she can go before the committee and claim the fees are inappropriate. There are different ways of controlling these costs. An absolute cap is not going to solve the problem. I know some of these arbitrators charge as little as $115 per hour, but their fees are enormous because of what they are doing.

Chairman Ohrenschall:
So with the Supreme Court Rule, which has a cap of $1,000, is there a loophole where the court may award additional damages, or is it the fact that these disputes are under $50,000? I am still having trouble with the fact that under Supreme Court Rule 24, the $1,000 cap works for all of those arbitrations, yet you feel it is not adequate here.

Eleissa Lavelle:
When you are dealing with the arbitration provisions that are conducted through the court systems, a big component of these issues has to do with discovery and perhaps pretrial motions. There is a court-appointed discovery commissioner where parties can go to have those issues briefed and heard. Those are outside the $1,000 cap. They are heard by someone else and the costs incurred by that are not included within the arbitration. The issues are there, the problems are dealt with, but they are not dealt with within the scope of the arbitration. Those costs can be huge. If you look at what those Supreme Court rules and the mandatory arbitration provisions deal with, they limit the scope of what is considered within those cases. It is not just a dollar amount of a claim that is limited; it is also the character and nature of the disputes that are heard. Complicated disputes dealing with title to real property, declaratory relief actions, et cetera, are excluded from those mandatory arbitrations. The reason for that is it is understood that those matters may be more complicated and cannot be simply divided up based upon a dollar amount. Because there is more involved, you cannot stick them with a $1,000 cap.

Chairman Ohrenschall:
Thank you. Do you feel comfortable that if this passes with Senator Copening's amendment, that these caps that will be in regulation will be adequate to ensure that there are not any outrageous or egregious arbitrator fees?

Eleissa Lavelle:
I think there needs to be a combination of things. I think that the limitation in Senator Copening's amendment is a significant part of this. In addition to that, the testimony that you heard last night from Gail Anderson and the regulations that she would propose for adoption are another significant part. You cannot deal with this issue with one bullet. There needs to be a number of different

approaches taken. Together, a limitation on the dollar amount of fees and other types of structures that are imposed, and other oversights that are imposed, are going to be the control. One other idea, the market, to some extent, controls who gets selected. If someone is outrageous in the fees and is constantly overbilling, and there is a pool of good arbitrators, that arbitrator is not going to be doing much work. That is something that is within the structural control of the Administrator.

Chairman Ohrenschall:
Thank you. Any questions?

Assemblyman McArthur:
I just want to clarify that we are looking at the amendment where there is a maximum of $225 per hour, and not the $1,000 hard cap?

Chairman Ohrenschall:
If we process conceptual amendment one by Senator Copening, there would be a conflict with what we passed in Assembly Bill 448, which was a $1,000 cap on arbitration fees.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
Regarding the $225 per hour, is this per side, which would then be $450? I have seen a lot of arbitrators' resumes and they normally put between $100 and $200 per hour, which is for each side. It is very unclear whether this $225 is in total or split each side? As far as oversight is concerned, I am looking at *Nevada Revised Statutes* (NRS) 38.360, which says "The Division shall administer the provisions of NRS 38.300 to 38.360 . . . ." There is no administration. I have written documentation from Mr. Gordon Milden who says that the Real Estate Division only facilitates the process. So as far as oversight is concerned, currently the Division is supposed to be administering this program and it is not. Regarding the statement that if one arbitrator is charging much more than another, how would a homeowner who has never gone through this process know that? There are still a lot of holes in this bill. I am concerned where it says that the Division "may" pay "if" there are funds available and "if" the Commission approves it. If not, then the homeowner is stuck with these outrageous fees.

Chairman Ohrenschall:
What section are you referring to? I found it, section 15, subsection 6, lines 18 through 23, states:

The Division may provide for the payment of the fees for a mediator selected or appointed pursuant to this section from the Account for Common-Interest Communities and Condominium Hotels created by NRS 116.630, to the extent that:

(a) The Commission approves the payment; and
(b) There is money available in the Account for this purpose.

Jonathan Friedrich:
It is also mentioned earlier in the bill.

Chairman Ohrenschall:
Your question about whether both sides would have to pay, is a question I had not thought of.

Assemblyman McArthur:
I think the intent was $225 per hour total.

Eleissa Lavelle:
That is correct. The hourly rate is the maximum rate, normally to be split between the parties. There have been instances where an arbitrator will award fees to one side or another, but the $225 is the total hourly rate that the arbitrator would charge.

Chairman Ohrenschall:
Is that approximately the fair rate that arbitrators are being paid now?

Eleissa Lavelle:
I think the hourly rates range between $150 to $400 per hour. It depends on what the arbitrator is doing. The parties are entitled to not select an arbitrator if they choose to. The rates have been published, and within the resumes that are submitted to the parties, the hourly rates of the arbitrators are provided so they know ahead of time.

Chairman Ohrenschall:
If this bill passes, would both sides have to agree on the mediator, or would the Division pick the mediator.

Eleissa Lavelle:
I would like to make a distinction between mediators and arbitrators with respect to both of these professionals. The parties would be provided a list from which they could jointly select a mediator or an arbitrator. That list is maintained by the Division. If they could not reach a decision, then the Division

would make the appointment. That is consistent with the way that the district courts handle and administer the arbitration program and it is also consistent with the way other organizations, such as the American Arbitration Association, conduct their selection process.

Chairman Ohrenschall:
Thank you. In looking at the conceptual amendment presented by Senator Copening, it says to mandate the Administrator of the Nevada Division of Real Estate to adopt regulations by August 1, 2011, capping the fees that may be charged for arbitration under NRS 38.300 through 38.360, and put in statute that these charges may not exceed $225 per hour. Was this meant to be a cap on mediator's fees or solely to cap arbitrator's fees?

Eleissa Lavelle:
I cannot speak for Senator Copening, but I believe the idea is that there would be a cap on both arbitrator's fees and mediator's fees.

Chairman Ohrenschall:
Senator Copening, can you address that?

Senator Copening:
Only because I do not know the difference between mediation and arbitration, I had a recommendation and I think that one of the amendments that came through from one of the testifiers mentioned just arbitration, and that is why I had proposed that. I certainly would not object to having both in there. Generally, if a mediator charges less than an arbitrator, then perhaps we should make the cap for the mediator less than the cap for the arbitrator.

Chairman Ohrenschall:
So you would be amenable if we were to also propose a reasonable cap on mediator's fees?

Senator Copening:
I certainly would. I would want the people who work in that industry to speak to what the appropriate cap would be.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:
I think the idea would be that the Real Estate Division would contract with mediators for a flat fee of $500 per mediation. Certainly the idea of a cap on mediation is the intent, and we would not object to putting a cap on it. The Real Estate Division would get resumes and put mediators under contract, and they would agree to mediate these particular problems for a set fee. It would

be much less, and not necessarily on an hourly fee, but it would be a cap per mediation.

Eleissa Lavelle:
I agree with that. I think that is certainly something that can be accomplished for a flat fee. Normally, these mediations are going to go, perhaps, a half a day or a day at the very most. There could be some reasonable way of accommodating a flat number, so that everyone knows what he or she is getting into.

Chairman Ohrenschall:
Would you be averse to our amending Senator Copening's conceptual amendment number one to mandate that the Administrator at the Nevada Division of Real Estate establish a flat fee cap for every mediation?

Eleissa Lavelle:
I do not think that is unreasonable.

Chairman Ohrenschall:
Gail Anderson, would you be okay with that? She is nodding her head yes. Ms. Lavelle, do you do think it would be appropriate to place the cap in statute the way we might with the $225 cap proposed for arbitrators? .

Eleissa Lavelle:
I think it is appropriate to do $225 cap for an hourly rate for arbitrators, along with additional regulations governing the structure and the way these arbitrations are going to be conducted, and an oversight by the Division as to fees. You cannot really limit the total number for the arbitration fees because each arbitration is going to be different. The costs will be different based upon the complexity of the issue. With respect to mediations, I believe that a flat fee cap is entirely appropriate.

Assemblyman McArthur:
Are we going to come up with a number for the flat mediation fee?

Chairman Ohrenschall:
That would be up to this subcommittee.

Assemblyman McArthur:
If we set a cap for arbitration, we should set it for mediation also.

Chairman Ohrenschall:
Setting a cap that may not exceed $500 for mediation. Does that seem reasonable?

Eleissa Lavelle:
I think that is a fair number. I also think that is consistent with what the Supreme Court has authorized for its mediation program; so I think there is precedent for that. I also believe that if you do cap it at $500, you will be more likely to be able to accommodate the money that has been set aside for this purpose so that it will not have to come out of the parties' pockets.

Chairman Ohrenschall:
As I read through the bill, there are different provisions for someone who does not show up and participate having to pay all the fees. If both sides participate, then do both sides divide the fee for the mediation, after the available funds have been exhausted?

Eleissa Lavelle:
That is the way it is normally handled, unless through the mediation settlement, occasionally, as a way of settling the case, one side will offer to pay the other side's fees. That can be flexible, but under normal situations, the costs would be split.

Chairman Ohrenschall:
That is in conceptual amendment number three to change section 1, subsection 5, of the bill to state that the parties shall evenly split the costs of mediation should there be a charge. That seems like a good clarification to me.

Assemblyman McArthur:
It looks like we covered number three, so I would be in favor of conceptual amendments one, two, and three.

Chairman Ohrenschall:
You are in favor of conceptual amendments one, two, and three proposed by Senator Copening, including in conceptual amendment one, a direction to the Administrator to promulgate regulations establishing a flat fee for mediation at no more than $500 total? Mr. Carrillo, are you all right with the additional cap on mediation fees?

Assemblyman Carrillo:
Yes, I am good with that.

Chairman Ohrenschall:
I still have some reservations about the $225 versus the $1,000 to cap, although it seems that Ms. Lavelle has expressed the need for this. There was an issue brought up about class action suits and not requiring them to go to mediation. How would this bill affect a potential class action?

Eleissa Lavelle:
Typically, these cases are not heard as a class action, but they can affect a group of people. You may have factions in an association. That is certainly something that happens and is the thorniest of problems to deal with. They are not typically characterized as class-actions, and are not certified. I do not see any reason why those types of disputes would not go to mediation. In fact, it seems that those types of disputes are exactly why mediation should be effectuated.

Chairman Ohrenschall:
If they were not happy with the mediation, they could then file a class action, or would they have to go to arbitration under this bill?

Eleissa Lavelle:
If the mediation did not settle, and if they could not reach an accord and resolve their disputes, the mediator would make the recommendation that the case goes to the Division for investigation and go before the Commission. For example, one group of homeowners believes that the board has acted inappropriately and has violated NRS Chapter 116. There may be 50 people in a community who are aggrieved about this. If they cannot reach an agreement, it may go to the Division for investigation and go through that process. That is already in place. If it needs to go to arbitration, the mediator would send it to arbitration instead. The mediator would have the understanding of what the dispute is and be able to direct it in one direction or the other.

Chairman Ohrenschall:
Under S.B. 254 (R1), the mediator determines whether it should go to arbitration or to the Division. There is no opt out for either party, correct?

Eleissa Lavelle:
The mediator makes the recommendation to go either one way or the other. Ultimately, if the parties still do not get satisfaction, if the arbitrator gets it wrong, or they feel the Commission's decision is inappropriate, they can then go to court as an ultimate way of getting another bite at the apple. Presumably, if the mediator sent something to arbitration and the arbitrator felt that it should not be with him, he is not prevented from kicking it back. Similarly, if the Division gets the case, it can also refer it to arbitration.

Chairman Ohrenschall:
If one of the parties in mediation did not want to go to arbitration, would there be anything else he or she could do?

Eleissa Lavelle:
The mediator would recommend where the dispute would be heard because the mediator would have a greater insight as to what these disputes are. Typically, the way the statute exists now, the party files a complaint and the Division makes the decision as to whether it will go to arbitration or to the intervention process. It is somewhat the same. The party can file, but if the Division does not believe it is being conducted where the party wants it to be conducted, the Division can move it to the other process.

Chairman Ohrenschall:
So one of the parties would not have to go the arbitration route if he or she had misgivings about arbitration. We have heard Mr. Friedrich talk about the experiences he has had where the fees are very exorbitant. For clarification, under S.B. 254 (R1), if one of the parties had a fear of arbitration, he or she could choose to go an alternative route. Is that correct?

Eleissa Lavelle:
No, that is not quite accurate. The ultimate objective is to have the dispute decided. The question is who is going to decide it? What this statute does is establish jurisdiction over the dispute, much in the same way as the Nevada statutes establish jurisdiction of justice courts, district courts, and the Supreme Court. This statute establishes jurisdiction between the arbitration process and the intervention process based upon the nature of the dispute. It has to do with how the case is going to be decided, based upon what is being requested to be decided. It is almost a jurisdictional type of allocation.

Gail Anderson, Administrator, Real Estate Division, Department of Business and Industry:
I would like to clarify the jurisdiction. The Real Estate Division investigative compliance arm only has jurisdiction, and the Commission over violations of the law. If someone's dispute does not concern a violation of the law, it is not an option. The Real Estate Division compliance section can look at it and make sure, but if it is a governing documents dispute, the Real Estate Division and the Commission will not be able to deal with it, as there is no jurisdiction there. The only option then is arbitration, if a ruling is required. The other dimension here is if someone wants to sue civilly, he or she has to go through arbitration or mediation under NRS Chapter 38. If the ultimate goal is some kind of civil litigation, he or she will have to go to arbitration or mediation. While there is some discretion, it really is a jurisdictional question of who can deal with what

the substance of the problem is. Sometimes there is a combination with some potential violations of the law that the Real Estate Division can deal with, but cannot touch the governing document side of it. Jurisdiction is the bottom line and the Division would be involved in determining and closing a case.

Chairman Ohrenschall:
Currently, no one is forced into arbitration; it is a choice, correct?

Gail Anderson:
That is correct; no one is forced into it, but the party is told that if there is not a violation of law, the Real Estate Division does not have jurisdiction. The other option is to go through arbitration or mediation.

Chairman Ohrenschall:
Eventually, even after arbitration, someone could get to court if he or she wanted to, but he or she would first have to go through the Division, then mediation and arbitration, or am I misunderstanding.

Gail Anderson:
If someone's ultimate goal is to go to court, he or she will do the filing of affidavit, go through mediation, and if not resolve in mediation, then must file for arbitration, administered by the Real Estate Division to get to court.

Chairman Ohrenschall:
Thank you. Any questions? [There were none.]

Eleissa Lavelle:
I was reminded of another issue regarding setting the cap on mediation fees. While a $500 cap is appropriate in most cases, I want to ensure that parties could opt out of the cap if for some reason the matter were more complex and required more time. For example, if there is a complex mediation, the parties may choose to go forward and continue to mediate beyond what is normally expected.

Chairman Ohrenschall:
Would you want that same opt out opportunity on the arbitration cap?

Eleissa Lavelle:
I think if the parties wanted to select an arbitrator that charged at a higher rate, and that arbitrator was acceptable to the Division, if both parties agree to the rate, they should be allowed to select that arbitrator. I would suggest the parties be given the right to make their own decision if it is a greater amount.

Chairman Ohrenschall:
This would be at their own expense, if they chose to waive the cap, correct?

Eleissa Lavelle:
Correct. Either both parties agree, or if one party agrees to pick up the difference, that party should be given the opportunity to do so.

Chairman Ohrenschall:
Thank you. Any questions?

Assemblyman McArthur:
Do we really need to add that into statute? They can do that on their own and pay it out of their own pocket.

Chairman Ohrenschall:
I think we might if we are directing the Administrator of the Real Estate Division to establish a cap for mediators and arbitrators.

Assemblyman McArthur:
That is a cap that is put on the mediators and arbitrators. After that, it is the decision of the parties.

Chairman Ohrenschall:
We may need to check with Legal about that. One concern that was expressed to me last night in an email was that if someone gets behind in paying these mediation or arbitration fees, it could end up as a lien on his property that could be foreclosed upon. Is that a valid concern?

Eleissa Lavelle:
Normally, the declarations will include a provision for an award of attorney's fees to the prevailing party. Attorney's fees and court costs can be awarded by the arbitrator against one side in an arbitration. That becomes part of the arbitration award. It is not a fine; it is a separate issue and I do not know that there is anything in this statute that makes those attorney's fees lienable, except to the extent that there is a judgment ultimately entered on that award. So attorney's fees and arbitrator's fees alone are not a lienable assessment for which a nonjudicial foreclosure can take place. The point of the arbitration awards is that, for example, someone has not landscaped his or her property. The arbitrator may say the association has the right, if not fixed within 30 days, to make repairs to the landscaping at $1,000. That is reduced to a judgment through the district court or the justice court depending on jurisdiction. Now there is a judgment against the individual that is recorded against the property. If the person does not pay the money and any attorney's fees and costs, yes,

through the normal judgment process, he or she could ultimately execute for that. That is no different than any other judgment in court. This arbitration process does not change that. If the parties went directly to court to get that enforced, the right would be the same.

Michael Buckley:
I agree with Ms. Lavelle. Whether or not the association could foreclose for these fees goes to the section we were discussing before, which is NRS 116.3116. That states that the association can have a lien for fines, construction penalties, and assessments. I think that this is not a fine, it is not a construction penalty, and it is not an annual assessment. I suspect that you could make an argument that the association might be able to make a special assessment against someone based on the language in the covenants, conditions, and restrictions (CCRs), but I do not think it is clear one way or the other. This bill does not address that. It goes back to the collection issue in NRS 116.3116. My own preference is that the way these should be enforced would be through the normal judgment process unless, for example, the arbitration award determines that what the person did violated the CCRs, and therefore fits under the normal basis to make a special assessment. There is a provision that says that if an owner ran into the guard gate, it must be fixed. The owner says I did not do it. If you caused the damage to the association, you should be liable as a special assessment. There is a fine line, but this bill does not address that issue.

Chairman Ohrenschall:
Would either of you be averse to some language in the bill that would clarify that arbitrator's fees and mediator's fees could never be considered assessments for foreclosure purposes?

Eleissa Lavelle:
I do not have a problem with saying they are not lienable in the sense that they would be subject to a nonjudicial foreclosure. To the extent that they would be included in a judgment issued by a court, they would be subject to a judicial foreclosure, which carries with it a right of redemption. The assessments in NRS Chapter 116 are nonjudicial. They happen without any right of redemption. I think there needs to be a mechanism for the association to collect these fees. This is money that everybody in the community will have to pay because one person has done something that has been found to be inappropriate.

Chairman Ohrenschall:
So we need some clarifying language saying that the arbitrator's fees and mediator's fees are not lienable to the extent that it is a nonjudicial foreclosure.

I agree, they should be collectable; I just do not want them to be considered part of the arrears for foreclosure.

Eleissa Lavelle:
I agree with that.

Assemblyman McArthur:
I am not comfortable with that. It is muddying the waters and I am not sure it belongs in this particular bill. We have problems whether it is judicial or nonjudicial.

Chairman Ohrenschall:
I think we are trying to clarify this, not muddy the waters. We are trying to say that these fees for mediators and arbitrators would never be one of those categories under NRS Chapter 116 where the HOA is allowed to pursue foreclosure, which are arrears assessments, and the two exceptions for fines or penalties having to do with construction penalties, and with the health hazard penalty. This would clarify that these fees are definitely not something for which an HOA can foreclose on your home.

Assemblyman McArthur:
Are you saying that the addition of these fees may put them in foreclosure because they cannot pay for them?

Chairman Ohrenschall:
I want to clarify that the addition of these fees would not be part of that nonjudicial foreclosure provided for under NRS Chapter 116. The mediator and arbitrator could still go to court and get a judgment, and potentially put a lien on the property.

Eleissa Lavelle:
Anytime you have a judgment against an individual, regardless of whether it is a breach of contract, hit someone in the face, or whatever, if you get a judgment in court, you can record that judgment and it becomes a lien on all properties. That is standard Nevada law and it has to do with every single kind of judgment you can get. This would fall into that category. If an association or a homeowner were to get a judgment against the adverse party and record it, it becomes a lien against that party's property. Because it is a lien, that judgment can be executed on. There are homestead exemptions that apply to this kind of judgment. So the likelihood of foreclosing a judgment lien based upon a violation of someone's CCRs diminishes because it is a judgment lien. This is a significant protection to homeowners but may still provide a way for an association to be paid. For example, if the home sells, it will be paid through

escrow. It is a middle ground and is a way of providing a mechanism by which the prevailing party can get paid upon the sale of a property, but it does not allow for an immediate nonjudicial foreclosure.

Michael Buckley:
I think these are not really clear issues, and as Ms. Lavelle has pointed out, this is very complex. For example, NRS 116.310312, which deals with an abandoned or vacated unit and the association has the ability to clean up a unit, there could be charges. I do not know whether that would be subject to an arbitration if someone objected, but there was an express finding of that by the Legislature last session that these costs should be enforceable as a lien. In fact, it is given a super priority lien. I think we need to be very careful in how to frame the language. We forget sometimes how complex NRS Chapter 116 is, and if you tweak something one place, it may end up making something else not work.

Assemblyman McArthur:
That is my concern. I am not sure this is necessary because we could cause other problems.

Chairman Ohrenschall:
Mr. Buckley, do you think that adding the language we discussed earlier would cause problems elsewhere in NRS Chapter 116?

Michael Buckley:
I think it can be done if it is carefully worded. The basic idea that you are suggesting is that the attorney's fees and costs, and the arbitrator's fees and costs would not be part of the lien under NRS 116.3116 as long as it was clear that it was unless expressly provided for elsewhere. Also, let us go into this again, because the arbitration deals with the amount of the assessment. If someone is not paying his or her assessment, I do not know whether the association would arbitrate an assessment but certainly if the arbitration involves the collection of an assessment, the association is entitled to collect its fees. As mentioned, the assessments are the lifeblood of the association, and it is clear that the association has the right to collect. There is really no defense to not paying your assessments. If the association incurs costs in collecting assessments, they should be included. In concept, it is the subject matter of the arbitration that makes it complicated. If the subject matter deals with something that gives the association the ability to lien, then it may not work.

Assemblyman McArthur:
My main concern is that it would have to be drafted very carefully. If you are comfortable that this can be drafted, I do not have a real problem.

Chairman Ohrenschall:
I am all right with it. Mr. Carrillo, are you okay with the clarification that fees from mediation and arbitration could never be part of a nonjudicial foreclosure provided for in NRS Chapter 116?

Assemblyman Carrillo:
Yes, I am good with that.

Chairman Ohrenschall:
Thank you. Next we will review Senator Copening's amendment number four, which is to include in section 5 the requirement that penalties be imposed for the responder of the claim filing in bad faith, false, fraudulent, or frivolous response to a claim. I believe that is from Mr. Stebbins' amendment. He was concerned that section 5 of the bill would not work both ways.

Michael Buckley:
On page 11, line 9, you see that the original intent was that if you file a claim or a response, a person is certifying that to the best of the person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, and it applies to not just the person who files the claim, but the respondent also.

Chairman Ohrenschall:
Thank you. Any questions? [There were none.]

Michael Buckley:
On page 19 is the same issue. Line 28 refers to a claim or response; on line 40 it just refers to the claim. It should also refer to the claim or response.

Assemblyman McArthur:
So for amendment number four we will be adding the word "respondent" or "response."

Chairman Ohrenschall:
Yes, this is just a cleanup. Mr. Carrillo, are you okay with conceptual amendment number four?

Assemblyman Carrillo:
Yes, I am good with that.

Chairman Ohrenschall:
Conceptual amendment number five was proposed by Mr. Segerblom, which we processed yesterday, as a mock-up.

Dave Ziegler:
I checked that mock-up against this bill, and I did not see any overlap between that mock-up and this bill.

Chairman Ohrenschall:
So this is a new amendment?

Dave Ziegler:
No. Amendment number five in Senator Copening's document that states she is in favor of the friendly amendment, number 6818, that applies to Senate Bill 204 (R1). I checked it and I do not see how it overlaps with this bill.

Chairman Ohrenschall:
Okay, and we already accepted that amendment, so we do not need it here.

Conceptual amendment number 6 presented by Senator Copening states, "Add language in Sec. 1 that states that if a party fails to participate in the mediation, that party shall be responsible for any and all costs of that mediation." I believe this will hold parties accountable for resolving their differences.

Michael Buckley:
I would propose that I think this is a good amendment and we need to incorporate the idea of good faith. I think that is in the foreclosure statutes. You would not want someone going through the motions; they need to participate in good faith.

Chairman Ohrenschall:
So we will change that to read "fails to participate in good faith in the mediation . . . ." That is quite a departure from what Mr. Stebbins had proposed.

Michael Buckley:
I do not think so. When people say "participate," we think they will participate in the process, and as lawyers we think how will this work in practice. The practice might be that you could read that literally by saying I will go, but I am not going to get involved. I think the idea of participate, good faith is inherent with what Mr. Stebbins suggested.

Chairman Ohrenschall:
Mr. McArthur and Mr. Carrillo, are you both okay with this amendment, including the addition of the words "good faith" as proposed by Mr. Buckley?

Assemblyman McArthur:
Yes.

Assemblyman Carrillo:
I am good.

Chairman Ohrenschall:
Conceptual amendment number seven reads, "Add language in Sec. 10 that if the person whom a copy of the claim was served refuses or fails to file a written response with the division not later than 30 days after the date of service, the allegations of the claim are deemed substantiated." My only concern is what if there is a bona fide reason that the person could not participate? Should we put in an exception? I would hate for all the allegations to be considered true against him or her if there was a bona fide excuse.

Assemblyman Carrillo:
I think you need to ensure that things are in order if you are going to be away for a period of time. Putting your head in the sand does not resolve anything. If you are going to be away, you need to make sure your business is taken care of before you leave. Obviously, we cannot know whether we will be in the hospital for six months, but a power of attorney would assist getting around this issue. In fact, if you are in the service, you have to give a power of attorney; so that cannot be used as an excuse. You need to ensure your house is in order.

Chairman Ohrenschall:
In an ideal universe that is how it would be. But there could be unforeseen problems.

Assemblyman McArthur:
I agree with Mr. Carrillo. Unless there is a medical emergency that extended the time period, I think in most of the other cases you should be able to take care of your own situation.

Michael Buckley:
I think this could be solved with the word "may" be deemed substantiated. We see this in the Commission, in a complaint where someone did not respond, and you see it in the judicial system. You do take the default, but it is not an automatic that you win. The person would need to prove that the respondent was actually served. I think you would leave that up to the arbitrator. I think that is a customary legal process.

Eleissa Lavelle:
I think something perhaps as a hybrid so that there may be some requirement that the case be proved perhaps by affidavit so there does not have to be a full-blown hearing if the party does not show up, but it could be an abbreviated hearing to keep the costs low.

Chairman Ohrenschall:
That would be in addition to this amendment?

Eleissa Lavelle:
Actually I think the word "may" does it, but I think you may want to say that it is not an absolute that the party still needs to establish by affidavit or some abbreviated mechanism that the arbitrator designates to establish the service has been proper and that the claim is appropriate.

Chairman Ohrenschall:
That gives me a lot more comfort. Mr. McArthur and Mr. Carrillo, would you be all right with amendment number seven if we changed it from "the allegations of the claim are deemed substantiated" to "the allegations of the claim may be deemed substantiated" and include proof of service and perhaps affidavits that prove the allegations?

Assemblyman McArthur:
I would be okay if we can come up with a good conceptual amendment along those lines.

Assemblyman Carrillo:
I am okay.

Chairman Ohrenschall:
Thank you.

Michael Joe, representing Legal Aid Center of Southern Nevada:
I want to comment about what the foreclosure mediation program is doing in terms of people who have a reason for not attending a mediation. The Supreme Court explained to me that they have ruled a lot about the phrase "good cause." Under the mediation program they allow a homeowner or a lender to say they cannot attend for good cause. This has to be a request in writing. The foreclosure mediation program has it addressed specifically by rule. We do see it come up quite often.

Chairman Ohrenschall:
Do you know what the foreclosure mediation program charges to conduct a mediation?

Michael Joe:
They charge a flat fee of $400. In terms of what that works out to per hour, it varies. The program allows for four hours. Some mediations take less and some will go longer. For the $400, the mediator guarantees four hours of mediation plus the mediator does the scheduling work and documentation work up-front. The mediator easily puts in the four hours of work. They have 215 mediators and most of them are happy to do this work. I am okay with a cap on fees, as well.

Chairman Ohrenschall:
Thank you. Regarding the proposed clarifying language that we want to add to ensure that mediator's fees do not become something foreclosable under NRS Chapter 116, do you have an opinion on that?

Michael Joe:
I specialize in doing foreclosures and I deal with people with homeowners' associations (HOAs). We believe that the foreclosure under that statute should only be limited to those situations where it is a violation of paying the association dues and assessments. We do believe that an association plans its budget on those and therefore should be able to collect on it. The most serious remedy we give them of foreclosure should be limited to that and should not be applied to other things. If there is a foreclosure for some other reason, that is okay. It could be a judicial foreclosure, which I have never seen. You cannot foreclose nonjudicially in Nevada; you have to foreclose judicially; so as a practical matter, they just do not bother foreclosing.

Chairman Ohrenschall:
I received an email, and I am not sure this would be an amendment the Subcommittee would consider. What if during the mediation, the fines froze until the mediator made his decision? Is that something that you think would be reasonable?

Michael Joe:
I am sorry, I do not understand.

Chairman Ohrenschall:
After the parties enter the mediation, what if the fines, fees, and any potential foreclosure were frozen until the mediator made the decision?

Michael Joe:
I think there are some real issues of due process for the homeowner. Can you foreclose on someone while he is still appealing something? I think there should be a stay on foreclosure and also maybe on some of the fees. There are different situations where it might be okay, but in general, if you have the mediator's intent to be quick, I think you can resolve an issue, and during that period, through the pendency of that hearing, maybe it should be stayed. In the mediation program, we essentially stay the foreclosure until the mediation is completed.

Chairman Ohrenschall:
So it is possible that this mediation program for problems with HOAs could take a lot of lessons from how the foreclosure mediation program is working under the auspices of the Nevada Supreme Court. It seems that it is working well in terms of how it administers the program.

Michael Joe:
The foreclosure mediation program has had a lot of effort put into it, and therefore, it is a pretty decent program. It gives homeowners one way to appeal and it is appealed pretty quickly and efficiently. If everybody does their jobs, the foreclosure mediation program runs within that 90- to 111-day period that it takes to foreclose. In addition, I know the neighborhood justice center does mediations on a routine basis. I know there are a lot of trained mediators in Clark County and across the state. There is a pool of mediators who are available to do this, and you could craft a program that works pretty well. Currently, there is a $50 fee for the notice of default that goes to fund the program and the administration of it. I am not sure whether that would be available for this program.

Michael Buckley:
There is a difference between assessments and other fees. I am not sure there is anything the association can do if it is in mediation as far as collecting the penalties or fines. It is different as far as assessments go. If someone is not paying his or her assessments, I do not think the assessments should stop or that the association should be stopped from enforcing its liens for the assessments. Those assessments are the lifeblood of the association. They are based on a budget and there are not too many arguments you can make about not paying your assessment. There are lots of arguments as far as fines or interpretation of the documents or construction penalties, et cetera. I would distinguish between those.

Chairman Ohrenschall:
You would be all right with freezing any move toward collections, fines, or potential foreclosure if it dealt with construction penalties as long as it did not deal with arrears assessments. Is that correct?

Michael Buckley:
I think I would be okay with that.

Eleissa Lavelle:
When you see these arbitrations or intervention matters, if someone has violated the governing documents, for example, he or she has not landscaped his or her property, or he or she left his garbage cans out, or there may be some other dispute that has absolutely nothing to do with construction penalties or with the payment of the assessments. I personally think it is inappropriate to penalize the association for enforcing a rule or regulation that has nothing to do with those assessments and then not allowing them to collect the assessments. If there is a homeowner who is absolutely violating rules and regulations on something that has nothing to do with payment of assessments or construction penalties, there is no reason that you stop the payment of assessments because he or she has not taken his or her garbage cans in or left playground equipment out. One has nothing to do with the other.

Chairman Ohrenschall:
Perhaps I am not expressing myself clearly. I was thinking that only fines, collection costs, or interest should be suspended during the pendency of any mediation or arbitration, because that could be part of the arbitrator's award. I was not referring to the assessments.

Eleissa Lavelle:
I wanted to ensure that was the case because I was hearing different things and I wanted to clear it up. If a homeowner is being assessed $10 per month for a violation and the arbitration process goes for 4 months, does that mean that during the time there will be no retroactive assessment of those fines? Do they stop completely, or simply stop the collection process during that time?

Chairman Ohrenschall:
The way I was envisioning this is that any action by a collection agency would be stopped until resolution. I also believe that any interest accrual would stop.

Michael Buckley:
Under NRS there was no interest on fines by statute, but that was changed in 2009. I believe that the fine is not foreclosable, except for the two exceptions you mentioned. I am not aware of collection agencies enforcing fines.

Eleissa Lavelle:
The distinction needs to be if we are talking about the accrual of the fine as opposed to the collection of the fine.

Chairman Ohrenschall:
What would be the adverse impact to having both frozen until the mediator or arbitrator makes his decision?

Eleissa Lavelle:
I have no problem with freezing them both, provided that the arbitrator is entitled to do a retroactive award of those accrued fines if it is determined that the homeowner has violated the governing documents.

Chairman Ohrenschall:
Do you feel that would need to be spelled out in statute?

Eleissa Lavelle:
I think it is happening that way now. I would not want to see the provision be authored in such a way that the association's ability to retroactively collect those accrued fines be diminished if in fact it is determined that the homeowner has violated.

Chairman Ohrenschall:
In those two exceptions on fines where someone could lose his or her home for construction penalties or for a health hazard issue, assuming that got resolved, it might prevent a foreclosure if the mediator or arbitrator is able to reach a successful agreement.

Eleissa Lavelle:
That would be absolutely appropriate.

Assemblyman McArthur:
I am not comfortable with this at all. This new language for this new amendment, we are going to have to add too much technical wording for a conceptual amendment.

Chairman Ohrenschall:
I think our Legal division is pretty topnotch.

Assemblyman McArthur:
I understand that, but we have a lot of topnotch stuff we are adding to this bill already.

Chairman Ohrenschall:
We do want it to be right.

Assemblyman McArthur:
Well, if you want to bring it back to another work session later this week so we can see those conceptual amendments.

Chairman Ohrenschall:
We could always propose the amendment to the full Committee. I could make my recommendation and you can certainly express your opinions against it. Mr. Carrillo, what are your feelings?

Assemblyman Carrillo:
I concur with that, Chairman.

Chairman Ohrenschall:
Mr. Joe, is there anything else here in S.B. 254 (R1) that causes you any concern for your clients?

Michael Joe:
I see arbitration clauses all the time, and for those of us who went to law school, it seemed like they were good things. I have no problem with arbitration as long as it is reined in and accomplishes what it is supposed to. I think arbitration was intended to be an alternative to the judicial process; it is supposed to be cheaper, and to the extent that it does not turn out to be easier, or cheaper, or faster, what is the point? If you are saying that you want to have an arbitration and mediation process that has reasonable costs, I am okay with that. Sometimes arbitration can run amuck, then they ought to be in district court and they should not be barred from doing that. If the reason an arbitrator wants to charge $10,000 to $20,000 is because it is so complicated, then maybe it should be in district court. Having a cap on it will drive those cases that should be in the district court and this will give them an opportunity to get there. I am in favor of a cap for both the arbitration and mediation.

Chairman Ohrenschall:
I suppose as a compromise, we could go ahead with the $500 flat fee for mediation and with the $225-per-hour fee that Senator Copening recommended, maybe have a maximum of $2,500, and give the party the option to go to district court if the fees will be higher than that.

Michael Buckley:
The Real Estate Division has a group of experienced arbitrators who know NRS Chapter 116. As we all know, NRS Chapter 116 is complex, it is

complicated, and, of course, CCRs are usually 80 pages long. Even in A.B. 448, while there is a $1,000 cap, it says "unless for good cause." I am not sure you can legislatively solve this by giving a cap. You will always need to have an out. If we add "for good cause," that will be the next issue to discuss; what is "good cause"? Ms. Lavelle mentioned earlier to allow the Administrator or the Commission to have the ability to review the fees of an arbitration. She mentioned that the State Bar has the fee dispute committee, where they can see whether the fees are reasonable.

Chairman Ohrenschall:
Thank you. You are correct. Assembly Bill 448 does have that safety hatch of a good cause showing allowing higher fees. We could put that good cause in this bill also, or we could go with Senator Copening's proposal of $225 an hour with no absolute cap. These are complex issues that could require a lot of time. I do think Mr. Joe brought up a good point that when it gets over $1,000, should the people go to court?

Elelssa Lavelle:
I would like to go back to the beginning and why arbitration is important. It works. Are there problems? Yes, sometimes there are problems. I think that Senator Copening's suggestion addresses those issues with the additional suggestions we have been talking about today. My concern is that, because these issues are complex, there will be cases not being heard by arbitrators who are qualified to do the work and are spending the time to do the work. This program has been enormously successful. While I recognize that there are many people who are in very serious financial straights, understand that there are communities with all kinds of people, with all kinds of property values, with all kinds of issues. By saying that there will be an absolute dollar cap on these arbitrations, effectively what you are saying is that these arbitrations are not going to be doing what they were initially designed to do. I gave a seminar on NRS Chapter 116 with Mr. Buckley in Reno. It was interesting to hear from the people up there how successful this program has been and how very few of these cases actually get to district court because people are satisfied that they are getting an adequate opportunity to be heard and getting fair and reasonable arbitration awards. They may not always win, but if they feel like they have been heard and understood and there is a good reason for the decision, they are not going to go anywhere else.

Michael Joe:
The question of whether it is working or not is depending on which side you are looking at it from. If you are saying that the purpose is to keep it out of district court, I am not sure that it is working for homeowners and association members. Maybe it is working for the Real Estate Division, maybe it is working

for the district court, maybe it is working for attorneys and collection companies, but I do not think it is working for homeowners. I think that it is not fair to say that it is working if you do not look at all parties involved. The question is who is it that you are representing and who is it that you are trying to protect in this. I think there are plenty of protections for the collection companies and the management companies and the associations, but there are very few protections for the homeowners. This arbitration and mediation process and court litigation is a process to help the homeowner protect himself. I wonder whether it is not slanted to protect the other parties: the management companies, the associations, and the attorneys.

Chairman Ohrenschall:
Thank you, Mr. Joe. We did adopt that $1,000, and it is not an absolute cap. It does have exceptions for good cause. When higher fees are needed, they could be granted. We thought it was good policy six weeks ago in A.B. 448, and I am not really sure we should backtrack from it. It was a unanimous vote when we adopted that $1,000 cap to match the Supreme Court Rule 24, but it also had the exception for circumstances that required it. I would propose that we accept all the amendments with the changes proposed by Senator Copening, with the changes we recommended, which for conceptual amendment number one included instructing the Administrator of the Division of Real Estate to adopt a flat fee cap for mediation fees of $500. However, I think we should stick with the cap we adopted in A.B. 448, which is not an absolute cap. I am sure when there is a complex case involving a lot of money, an exception will be granted for the Administrator to charge an hourly rate going over the cap of $1,000. We all agreed on amendments two and three. Regarding amendments four, five, and six, we were all fine. Actually we decided not to adopt number five because it is in S.B. 204 (R1). Conceptual amendment number seven, we will change the word "are" to "may be" and "proof of service of affidavits proving the claim" should be there to substantiate the other party was served if the other party does not show up. Mr. Joe has a good potential amendment to the conceptual amendment coming from the mediation program that our Supreme Court administers that good cause be required if the person cannot show up for the mediation. Perhaps we could model that on the rule the Supreme Court has adopted for the foreclosure mediation program. We also have Mr. Stebbins' amendment which has been incorporated into Senator Copening's amendments.

Assemblyman McArthur:
If we are going to take a vote, I am not going to go with the recommendation at this point until I see the conceptual amendments.

Chairman Ohrenschall:
Do you mean a mock-up?

Assemblyman McArthur:
Yes, I want to see those mock-ups of conceptual amendments.

Assemblyman Carrillo:
I agree with Mr. McArthur's statement.

Chairman Ohrenschall:
We have gone over Senator Copening's amendments and we agree on most of the language. There is a little debate on conceptual amendment one on whether we should adopt the arbitrator fee cap we had adopted in A.B. 448. Mr. McArthur brought up some cleanup in the original bill he is interested in. I think we should process all the recommendations that we all agree on that will be in the mock-up we present to the full Committee, which basically are conceptual amendments two through seven, without amendment five and with the additions proposed in conceptual amendment number seven. The part we disagree on is in conceptual amendment number one. We can propose to the full Committee on Friday. Does either of you have any appetite for Mr. Friedrich's amendment?

Assemblyman Carrillo:
I do not.

Chairman Ohrenschall:
Mr. McArthur is shaking his head no.

Michael Buckley:
For clarification, I did not hear that the Subcommittee had an issue with the mediation set fee, only the arbitration fees, correct?

Chairman Ohrenschall:
That is correct. We would go ahead with recommending that the Administrator of the Real Estate Division propose a regulation that has a maximum total cost of $500 flat fee for mediation. We are in dispute about whether to keep the arbitrator cap we had adopted in A.B. 448, which is $1,000 with exceptions, or to go ahead with Senator Copening's suggestion. Is there anything else that I am missing? Are we all in favor of that recommendation?

There is another point we do not agree on, which is those fines for construction penalties and the health hazard. These are the fines that are not for assessments that can lead to foreclosure in a common-interest community.

Should they be put on hold during the pendency of the mediation or the arbitration? I feel they should, if they are the issue of the arbitration or mediation. Mr. McArthur has some concerns with that. Maybe we can have an option A and an option B in the mock-up on that issue when we present to the full Committee.

Assemblyman McArthur:
There are some other cleanup things we want to get in there also.

Chairman Ohrenschall:
One is dealing with the geographical area of the Ombudsman.

Assemblyman McArthur:
We have noted it.

Chairman Ohrenschall:
Are we all on board with the recommendation for the full Committee that we agree on most of these recommendations, and there are two points where we are presenting an option A and option B? We are all unanimous on this recommendation and hopefully we will have a mock-up by Friday to present to the full Committee. Could I get a motion?

ASSEMBLYMAN MCARTHUR RECOMMENDED AMEND AND DO PASS SENATE BILL 254 (1st REPRINT).

ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.

THE RECOMMENDATION PASSED UNANIMOUSLY.

We will forward this recommendation to the full Committee. There will be a few decisions that will need to be made on Friday during the work session. I appreciate everyone being here. Meeting is adjourned [at 12:20 p.m.].

RESPECTFULLY SUBMITTED:

Nancy Davis
Committee Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 17, 2011 **Time of Meeting:** 4:58 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 204 (R1)	C	Dave Ziegler	Work Session Document
S.B. 204 (R1)	D	Senator Copening	Proposed Amendment
S.B. 254 (R1)	E	Dave Ziegler	Work Session Document

MINUTES OF THE
SENATE COMMITTEE ON FINANCE

Seventy-sixth Session
June 4, 2011

The Senate Committee on Finance was called to order by Chair Steven A. Horsford at 8:24 a.m. on Saturday, June 4, 2011, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412; 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Steven A. Horsford, Chair
Senator Sheila Leslie, Vice Chair
Senator David R. Parks
Senator Moises (Mo) Denis
Senator Dean A. Rhoads
Senator Barbara K. Cegavske
Senator Ben Kieckhefer

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Senator Michael A. Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Rex Goodman, Principal Deputy Fiscal Analyst
Eric King, Program Analyst
Mark Krmpotic, Senate Fiscal Analyst
Wade Beavers, Committee Secretary

OTHERS PRESENT:

William Uffelman, Nevada Bankers Association
Garrett Gordon, Southern Highlands Homeowners Association
Bryan Gresh, Community Association Management Executive Officers, Inc.
Renny Ashleman, City of Henderson

Chris Ferrari, Concerned Homeowners Association Members Political Action Committee
Judy Stokey, NV Energy
Steve Wiel, Nevada Representative, Southwest Energy Efficiency Project
Stacey Crowley, Director, Office of Energy, Office of the Governor; Acting Nevada Energy Commissioner
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Mike Draper, General Motors Company
David Goldwater, Google Inc.
Todd R. Campbell, Director of Public Policy, Clean Energy Fuels
Kyle Davis, Nevada Conservation League
Susan Fisher, City of Reno
Lesley Pittman, United Way of Southern Nevada
Dolores Hauck, United Way of Southern Nevada
Mendy Elliott, United Way of Northern Nevada and the Sierra
Dr. Michael Thompson, Child Care Association of Nevada
Carol Levins, Creative Kids Learning Center
David Walton, Regional Director, Challenger Schools
Maureen Avery, Creative Kids Learning Center
Jack Woodcock
James R. Wells, Executive Officer, Public Employees' Benefits Program

CHAIR HORSFORD:
I will open the hearing on Senate Bill (S.B.) 428.

SENATE BILL 428: Makes an appropriation to the State Gaming Control Board to replace computer and technology hardware. (BDR S-1243)

This bill has been discussed several times and the Committee is prepared to make a decision.

MARK KRMPOTIC (Senate Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
Senate Bill 428 allows for an appropriation from the General Fund to the Gaming Control Board for replacement computer and technology hardware in the amount of $1,256,104. Staff is providing a worksheet (Exhibit C) which outlines these costs.

Based on testimony which was provided by representatives of the Gaming Control Board, there are several options available to the Committee in reducing the appropriation. This would be based on two scenarios. In the first, as described on page 1 of Exhibit C, all items purchased before or during fiscal year (FY) 2006-2007 would be replaced. Staff has worked with the Board to compile this information. By adjusting the replacement time frame, the appropriation needed for the Board would be a total of $784,758. In comparison to the original figure, this would amount to a reduction of $471,346 to the overall appropriation.

The second option, as described on page 2 of Exhibit C, would provide for the replacement of items which fall into the first or second priority groups, as determined by the Board. These items would have been purchased before or during FY 2006-2007, with the exception of one switch which was purchased in FY 2007-2008. This would amount to a cost of $719,957. In comparison to the original figure, this would amount to a General Fund reduction of $536,147.

CHAIR HORSFORD:
Based upon this review, and in light of the need for the identified equipment, I would accept a motion to approve the second option as an amendment to S.B. 428.

SENATOR PARKS MOVED TO AMEND AND DO PASS S.B. 428.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on S.B. 425.

SENATE BILL 425: Makes an appropriation to the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1264)

MR. KRMPOTIC:
Staff has provided Amendment 810 to S.B. 425 (Exhibit D). There were originally 15 or 16 separate bills which identified one-time appropriations for the Department of Motor Vehicles (DMV) from the State Highway Fund. At the request of Chair Horsford, Legal Division Staff have combined each of those individual bills and appropriations into S.B. 425. These are now listed in various sections of the bill. The collective amounts identified in S.B. 425 now total approximately $3.6 million in State Highway Fund money. This is equivalent to what has been included in the Governor's recommended budget for one-time appropriations to DMV.

I will briefly describe various sections in the amendment. In section 1, there is a provision for the appropriation of $102,584 for computer hardware, software and printers. This would be made to the Director's Office of DMV, B/A 201-4744.

PUBLIC SAFETY

MOTOR VEHICLES

DMV – Director's Office — Budget Page DMV-1 (Volume III)
Budget Account 201-4744

This was the provision which was originally included in S.B. 425. The identification of the Director's Office as the recipient of these funds has been added in the amendment to provide greater clarity about the destination and the purpose of the appropriation.

Section 2 provides for an appropriation to the Automation account, B/A 201-4715, totaling $905,210 for replacement of computer hardware, software and printers.

DMV – Automation — Budget Page DMV-15 (Volume III)
Budget Account 201-4715

This section previously represented the appropriation which was included in S.B. 425.

Section 3 is on page 3 of Exhibit D. This is a provision for the appropriation of $49,323 to the Central Services Division, B/A 201-4741.

DMV – Central Services – Budget Page DMV-40 (Volume III)
Budget Account 201-4741

This appropriation was previously included in S.B. 454 in the same amount. However, the receiving Division has now been specifically identified.

SENATE BILL 454: Makes an appropriation to the Department of Motor Vehicles for the replacement of office equipment. (BDR S-1260)

Section 4 would make a $23,670 appropriation for replacement office equipment in the Motor Carrier Division, B/A 201-4717.

DMV – Motor Carrier — Budget Page DMV-63 (Volume III)
Budget Account 201-4717

This was previously included in S.B. 455.

SENATE BILL 455: Makes an appropriation to the Motor Carrier Division of the Department of Motor Vehicles for the replacement of a vehicle and office equipment. (BDR S-1252)

The $23,670 is a reduced amount from the original request of $41,613, as outlined in section 4 of Exhibit D. The reduction occurred because the appropriation which was originally included in the bill included a replacement vehicle. An amendment, in addition to testimony, has been provided by DMV indicating that they are requesting to make the appropriation for the vehicles to the State Motor Pool. The State Motor Pool would administer the vehicles and DMV would pay them for the use.

This pertains to section 17 of S.B. 425, as amended, which includes the appropriation to the Motor Pool Division for the vehicles.

Section 5 pertains to an appropriation to the Compliance Enforcement Division, B/A 201-4740, totaling $174,651 for computer hardware, software and printers.

DMV – Compliance Enforcement — Budget Page DMV-27 (Volume III)
Budget Account 201-4740

This appropriation was previously included in S.B. 456.

SENATE BILL 456: Makes an appropriation to the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1259)

Section 6 identifies an appropriation of $16,516 to the Compliance Enforcement Division for training equipment, office equipment and protective equipment. This appropriation was previously included in S.B. 457.

SENATE BILL 457: Makes an appropriation to the Department of Motor Vehicles for the replacement of vehicles and other equipment. (BDR S-1258)

In this provision, the amount requested has been reduced from a previous total of $91,837. This is based on the appropriation of vehicles which will now be appropriated from the Motor Pool Division, as described in section 17.

Section 7 would make an appropriation to the Hearings office, B/A 201-4732, in the amount of $43,041.

DMV – Hearings — Budget Page DMV-11 (Volume III)
Budget Account 201-4732

This appropriation was previously included in S.B. 458.

SENATE BILL 458: Makes an appropriation to the Department of Motor Vehicles for computers and other associated equipment. (BDR S-1255)

Section 8 would make an appropriation to the Field Services Division, B/A 201-4735, in the amount of $1,123,927 for replacement computer hardware, software and printers.

DMV – Field Services — Budget Page DMV-56 (Volume III)
Budget Account 201-4735

This provision was previously included in S.B. 459.

SENATE BILL 459: Makes an appropriation to the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1257)

Section 9 of the bill would make another appropriation to the Field Services Division. This appropriation would total $164,348 for office equipment. This provision was previously included in S.B. 460.

SENATE BILL 460: Makes an appropriation to the Department of Motor Vehicles for the replacement of office equipment and a vehicle. (BDR S-1256)

This amount has been reduced from the previous request of $188,366. This is, again, a result of the decision to appropriate the required vehicle from the Motor Pool Division, as is described in section 17.

Section 10 would appropriate $113,680 to the Administrative Services Division, B/A 201-4745, for a replacement vehicle, forklift, mail scanners, telephones and headsets.

DMV – Administrative Services — Budget Page DMV-21 (Volume III)
Budget Account 201-4745

This provision was previously included in S.B. 461.

SENATE BILL 461: Makes an appropriation to the Department of Motor Vehicles for the replacement of a forklift, mail scanners, telephones, headsets and office equipment. (BDR S-1265)

The vehicle has not been removed from this eppropriation because it is a heavy-duty specialty vehicle. It is a special pick-up truck to haul license plates to various offices throughout the State. This would not be a standard Motor Pool vehicle which could be incorporated into a leasing agreement.

Section 11 of the bill would appropriate $156,145 to the Motor Carrier Division. This provision was previously included in S.B. 462.

SENATE BILL 462: Makes an appropriation to the Motor Carrier Division of the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1253)

Section 12 would appropriate $192,285 to the Administrative Services Division. This provision was previously included in S.B. 463.

SENATE BILL 463: Makes an appropriation to the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1266)

Section 13 would appropriate $2,121 to the Hearings Division. This provision was previously included in S.B. 464.

SENATE BILL 464: Makes an appropriation to the Department of Motor Vehicles for the replacement of office equipment. (BDR S-1254)

Section 14 would appropriate $4,242 to the Director's Office. This provision was previously included in S.B. 465.

SENATE BILL 465: Makes an appropriation to the Department of Motor Vehicles for the replacement of office equipment. (BDR S-1263)

Section 15 would appropriate $41,589 for computer hardware, software and printers. This provision was previously included in S.B. 466.

SENATE BILL 466: Makes an appropriation to the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1262)

Section 16 would appropriate $345,083 to the Central Services Division for computer hardware, software and printers. This provision was previously included in S.B. 467.

SENATE BILL 467: Makes an appropriation to the Department of Motor Vehicles for the replacement of computers and other associated equipment. (BDR S-1261)

In addition to combining a number of bills into one, Amendment 810 identifies the specific divisions within DMV to which the funds will be appropriated.

CHAIR HORSFORD:
The Committee will recall hearing these various bills in their original forms. I will accept a motion to pass the recommendations as they are now included in S.B. 425.

SENATOR DENIS MOVED TO AMEND AND DO PASS S.B. 425 WITH AMENDMENT 810.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on S.B. 473.

SENATE BILL 473: Revises provisions governing consumer affairs. (BDR 18-1190)

SENATOR DENIS:
This bill pertains to the Consumer Affairs Division in the Department of Business and Industry. B/A 101-3811.

COMMERCE AND INDUSTRY

BUSINESS AND INDUSTRY

B&I – Consumer Affairs — Budget Page B&I-22 (Volume II)
Budget Account 101-3811

We are examining the possibility of eliminating the Division or suspending that action for two years. We will be keeping the position of the Ombudsman of Consumer Affairs for Minorities.

MR. KRMPOTIC:
The Senate Committee on Finance and the Assembly Committee on Ways and Means have voted to retain the Ombudsman for Minority Affairs position. The Consumer Affairs Division has not been retained through the budget process.

The Ombudsman for Minority Affairs position has been included in the Director's Office for the Department of Business and Industry, B/A 101-4681.

B&I – Business and Industry Administration — Budget Page B&I-1 (Volume II)
Budget Account 101-4681

The Department has recommended one amendment to S.B. 473. This change would delete section 3, subsection 1, which had been included to repeal the statutory provisions providing for the Ombudsman for Minority Affairs position.

SENATOR DENIS:
I would propose that we approve that change. Rather than eliminate the Consumer Affairs Division, I would propose adding language which would, instead, simply leave the Division unfunded for two years, as has been done previously. In this way, we will be able to return to the issue in the future. Consumer affairs problems are something we will need to continue to address when we have more funding available.

CHAIR HORSFORD:
In other words, the Consumer Affairs Division would be suspended for two years and the decision to restore it would be made by the next Legislature.

SENATOR DENIS:
That is correct.

SENATOR DENIS MOVED TO AMEND AND DO PASS S.B. 473.

SENATOR LESLIE SECONDED THE MOTION.

SENATOR CEGAVSKE:
What would be the fiscal impact of retaining the Ombudsman for Minority Affairs position?

CHAIR HORSFORD:
We have already closed this budget in accordance with this measure. There would be no additional fiscal impact as the budget already accounts for the position's retention. This was included in a budget amendment from the Governor's Office.

MR. KRMPOTIC:
Staff would like to clarify the motion. Does the Committee wish to retain the functions of the Consumer Affairs Division while suspending those functions for two years?

SENATOR DENIS:
It is my intent to do something similar with this Division to what has been done with it over the past two years. It should be "mothballed" for two years.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on S.B. 485.

SENATE BILL 485: Revises provisions governing the payment of certain expenses for the provision of care pursuant to the State Plan for Medicaid. (BDR 38-1196)

MR. KRMPOTIC:
This bill would implement a previously approved budget decision which would require the counties to pay an additional portion under the State Plan for Medicaid county-match program.

This bill was heard several weeks ago. Since that time, on May 24, 2011, the Committees have revised their initial action with regard to this provision resulting in a General Fund reduction totaling $6 million in FY 2011-2012 and $8.5 million in FY 2012-2013.

At the original hearing, the Committee was interested in identifying, in statute, the percentages which would implement the budget reductions as has been previously noted.

Staff has received information from the Division of Health Care Financing and Policy which identifies those percentages for each fiscal year based on the budgetary actions taken by the Senate Committee on Finance and the Assembly Committee on Ways and Means. These figures included 142 percent in FY 2011-2012 and 132 percent in FY 2012-2013. Those are the federal

benefit rate percentages for the county match expansion as it is currently proposed.

No other specific issues have been identified by the Committee on this bill. If the Committee wishes to identify those percentages in the bill, they would be included and the bill would serve to implement the budgetary decisions which have already been made.

SENATOR LESLIE MOVED TO DO PASS S.B. 485.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on Assembly Bill (A.B.) 486.

ASSEMBLY BILL 486: Makes an appropriation to the Division of Forestry of the State Department of Conservation and Natural Resources for the replacement of critical equipment. (BDR S-1246)

MR. KRMPOTIC:
This bill is an appropriation to the Division of Forestry for replacement of equipment. The appropriation, as recommended by the Governor, would come from the General Fund and would total $677,344. Certain equipment has been identified by the Division as "critical." This included a vehicle exhaust system at the Mt. Charleston fire station; a heavy-duty, tool-equipped truck, costing $97,527; diagnostic scan tools; the purchase and equipping of two, type-3 wildland fire engines, costing $517,492; and a multi-use tractor, costing $35,125. This information was received from the Division at a presentation several weeks ago.

Staff has no recommended adjustments or amendments to this bill.

SENATOR RHOADS MOVED TO DO PASS S.B. 486.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on A.B. 490.

ASSEMBLY BILL 490: Makes an appropriation to the Legislative Fund for major computer projects for the Legislative Counsel Bureau. (BDR S-1240)

MR. KRMPOTIC:
This bill would make an appropriation to the Legislative Fund. This bill has been submitted by the Legislative Counsel Bureau (LCB).

The appropriation would total $734,000. It would fund one-time expenditures for information technology purchases, including switches and hardware, totaling $599,000; new accounting system software, totaling $125,000; and Granicus hardware and software, totaling $10,000. These requested appropriations were presented by Mr. Lorne J. Malkiewich several weeks ago. He also provided testimony pertaining to the switches which were being contemplated for purchase.

Staff has no suggested adjustments or amendments for this bill.

SENATOR KIECKHEFER MOVED TO DO PASS A.B. 490.

SENATOR PARKS SECONDED THE MOTION.

SENATOR DENIS:
I asked a question pertaining to the switches at the original hearing on this bill. That information has been provided to me and I am satisfied with the proposed purchases. I will support this motion.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on A.B. 491.

ASSEMBLY BILL 491: Makes an appropriation to the Division of Forestry of the State Department of Conservation and Natural Resources for major repair and renovation work on certain crew carriers. (BDR S-1248)

MR. KRMPOTIC:
This bill would appropriate $278,050 to the Division of Forestry. This money would provide for the repair and renovation of 25 crew carriers, each of which have exceeded their use by 100,000 miles.

At the original hearing on this bill, the Division provided information indicating that the crew carriers range in age from 13 to 15 years. The mileage on the crew carriers ranges between 100,000 to 200,000 miles. The Division indicated that the repairs and renovations would allow the vehicles to be kept on the road for an additional three to four years.

Staff has no recommended adjustments or amendments to this appropriation.

SENATOR RHOADS MOVED TO DO PASS A.B. 191.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on A.B. 492.

ASSEMBLY BILL 492: Makes appropriations to the Legislative Fund for dues to national organizations. (BDR S-1239)

MR. KRMPOTIC:
This bill would make appropriations to the Legislative Fund for dues to national organizations. This item was submitted by LCB. The appropriation would total $349,446.

When Mr. Malkiewich presented this bill to the Committee, he provided supplemental information on the organizations which will be included in the payments. They include the National Conference of State Legislatures, the

Council of State Governments, the American Legislative Exchange Council, the National Conference of Commissioners on Uniform State Laws, the Education Commission of the States and the Interstate Commission on Educational Opportunities for Military Children.

There is an additional appropriation, as included in section 2 of the bill, of $711,066, which would provide $355,083 in FY 2011-2012 and $355,983 in FY 2012-2013 for dues to the aforementioned organizations.

Staff has no recommended amendments or adjustments to this appropriation.

SENATOR RHOADS MOVED TO DO PASS A.B. 492.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIR HORSFORD:
I will open the hearing on A.B. 493.

ASSEMBLY BILL 493: Provides a temporary waiver from certain minimum expenditure requirements for school districts, charter schools and university schools for profoundly gifted pupils. (BDR S-1179)

MR. KRMPOTIC:
This is a budget implementation bill. It would provide a temporary waiver from certain minimum expenditures for school districts, charter schools and university schools for profoundly gifted pupils. The waiver would apply throughout the upcoming biennium.

Under section 1 of the bill, each school district is not required to comply with the provisions governing the minimum amount of money that must be expended during each school year of the biennium for library books, computer software and instruction-related equipment as prescribed pursuant to *Nevada Revised Statute* (NRS) 387.207.

The waiver from the purchase of textbooks was granted for the current fiscal year during the Twenty-sixth Special Session of the Legislature to allow the school districts to address the budgetary reductions that were being implemented.

Staff has no additional information or suggested modifications to this legislation.

SENATOR LESLIE MOVED TO DO PASS A.B. 493.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HORSFORD:
I will open the hearing on A.B. 495.

ASSEMBLY BILL 495: Makes an appropriation to the Division of Forestry of the State Department of Conservation and Natural Resources for necessary services and equipment to transition the State's Very High Frequency radio system from wideband to narrowband in accordance with the Federal Communications Commission mandate. (BDR S-1247)

MR. KRMPOTIC:
This bill is the third, and last, appropriation bill for the Division of Forestry. It would appropriate $162,267 for services and equipment necessary to the transfer of the State's high-frequency radio system from wideband to narrowband. This will allow the Division to meet mandates put forward by the Federal Communications Commission.

The bill includes $5,400 for programming costs, $53,918 for 9 new mountaintop repeaters and $102,949 for 26 new radio consoles which will replace those in stations and at the Elko Dispatch Center which cannot be upgraded to meet the new requirement.

Staff has no recommended adjustments or amendments to this bill.

SENATOR RHOADS MOVED TO DO PASS A.B. 495.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HORSFORD:
I will open the hearing on S.B. 265.

SENATE BILL 265 (1st Reprint): Revises provisions governing sentencing of criminal offenders and determining eligibility of prisoners for parole. (BDR 14-311)

SENATOR DAVID R. PARKS (Clark County Senatorial District No. 7):
Senate Bill 265 provides for the aggregation of consecutive sentences for inmates. Under current processes, an inmate may be eligible for a parole hearing on a lesser charge shortly after entering prison, even though they would not be eligible for release for decades to come. The current process places a burden on the Board of Parole Commissioners and, especially, the victims of crime. By aggregating consecutive sentences, an inmate will not receive his or her first parole hearing until he or she has served the minimum time from the total of all consecutive sentences.

In Nevada's prison system, between 10 and 20 percent of inmates are serving consecutive sentences. An example would be an inmate who serves one year in a county jail prior to being found guilty of three charges of burglary, assault and second-degree murder. The burglary charge would elicit a one-year to five-year sentence. Therefore, the inmate would become eligible for a parole hearing on the burglary charge immediately after entering prison. Senate Bill 265 would add the minimum of all three sentences. The first parole hearing would take place only after a total minimum time had been served.

This bill will have several easily identifiable effects. The first would be that victims would not become revictimized by being forced to attend a parole hearing within several years of the crime.

Second, there is often confusion among inmates in trying to understand how to proceed toward parole hearings. This will streamline the process. Inmates will

know, upon entry into prison, what the minimum amount of time for all charges will be before they can receive a parole hearing.

This legislation would become effective after July 1, 2012.

In our previous hearing on this bill, the Department of Corrections indicated that they would have to revamp their NOTIS system for parole hearings. They estimated the cost of this to be approximately $100,000. I do not know whether they have refined that estimate. It was indicated that they would work with a consultant to revise that figure.

There are no further amendments proposed for this bill.

CHAIR HORSFORD:
With the bill explanation, there is no reason for us to hold this bill. I will accept a motion to do pass S.B. 265 as amended.

SENATOR LESLIE MOVED TO DO PASS S.B. 265 AS AMENDED.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND KIECKHEFER VOTED NO.)

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CHAIR HORSFORD:
There is no one here from the Attorney General's Office to testify on S.B. 72. I have not been informed of the final outcome of the negotiations on the fiscal impact of that bill. I will not hear that bill today unless someone wishes to testify on that issue.

SENATE BILL 72 (1st Reprint): Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)

I will open the hearing on S.B. 174.

SENATE BILL 174 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-105)

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
I will present S.B. 174. An outline of my testimony has been submitted to Staff (Exhibit E). A copy of proposed Amendment No. 7336 has also been included (Exhibit F). This bill is an omnibus homeowners' association (HOA) bill which has been vetted by two different working groups. The second of these was led by Assemblyman William Horne with participation by Assemblyman James Ohrenschall.

Stakeholder positions considered at the meeting included HOA industry professionals, including those from the Howard Hughes Corporation in the Southern Highlands Golf Club and Community, legal aid centers from northern and southern Nevada, realtors, investors, bankers and homeowners.

The goal of S.B. 174 is primarily to put a collection policy in place whereby hard caps will be enforced on the amount of fees which can be charged to homeowners who stop paying their assessments. Regulations are currently in place, but this collection policy would be more restrictive of collection costs than is provided in current regulations.

The collection policy can be found in section 3.5, page 11 of the proposed amendment. An overview handout has been provided to Staff (Exhibit G) outlining the difference between the proposals and current regulation.

The bill provides a $1,500 cap on collection services. Current regulations allow a cap of $1,950. This legislation would create a $1,000 cap on third-party hard costs charged to a unit owner. The current regulation has no cap. This legislation has a $600 cap on collection services related to a fine. Current law has no cap.

This bill also includes a cap on collection services, not including attorney fees, which might be incurred by an association because a unit owner has filed for bankruptcy or when an action has been filed pertaining to the related enforcement of a past-due obligation when attorney fees are authorized by the governing documents of the association. Current law has no cap in this area.

This bill provides a nine-month super-priority for collection costs and reasonable attorney fees on past-due obligations. Current law provides for an exemption of Fannie Mae and Freddie Mac in this particular situation.

This bill also requires mandatory payment plans for homeowners in default. This is an important issue. This was an important provision for the representatives of the legal aid centers. They wanted to make sure that homeowners in default are offered payment plans before liens are applied to their homes.

This policy is important because some collection companies have been charging substantial fees to collect on the delinquent accounts of HOA unit owners. This negatively affects the person who might buy the foreclosed home. It makes it more difficult for realtors to sell homes. It negatively affects the profits of investors who buy the home to resell.

It also affects those homeowners in default who may be trying to make their accounts current before foreclosure.

The policy also clarifies that an HOA will be the first to be paid back when a foreclosure occurs on a home. This is otherwise known as a "super-priority lien." This includes up to nine months of back-assessments and costs incurred by HOAs for attempting to collect the delinquent assessment. This has been the practice of the banking industry for years, but the current language in statute is not sufficiently specific and it has been challenged. Despite the challenges, judges in three separate district court cases have concluded that collection costs and reasonable attorney fees for unpaid HOA assessments are included in super-priority liens. The language in S.B. 174 clarifies this.

The bill also includes elements of A.B. 448, per an agreement made with the Chair of the Assembly Committee on Judiciary, Assemblyman William Horne. Assembly Bill 448 did not make it to the Senate before the second house passage deadline, but it had some homeowner protections which we believe should be included in S.B. 174.

ASSEMBLY BILL 448 (1st Reprint): Revises provisions relating to real property. (BDR 10-513)

I have received notification from representatives of certain HOAs who have continuing issues with certain sections of the bill. We will work with them to resolve those problems.

The bill includes provisions for a study to be performed by LCB on HOA-related bills to determine whether an interim Legislative committee should be

established to vet HOA issues and bring forward committee bills. Some legislators feel that too much time is spent vetting conflicting HOA bills, requiring an excessive expenditure of staffing hours. One staff member, in particular, has told me that he spends 50 percent of his time in the interim working on nothing but HOA bills. This represents a significant cost to the State. The study will allow us to determine the necessity of a statutory interim committee.

The collection policy in this bill is designed to help homeowners, but it is also designed to help keep HOAs solvent. I am aware of two HOAs which have gone bankrupt resulting from a high number of homeowners who do not pay their assessments. Almost all of the HOAs are suffering from the results of foreclosures, and many of them are in dire financial straits. Some HOAs are borrowing money against the reserve funds in order to continue operation. This may quickly become a serious problem. According to guidelines established by Fannie Mae and the U.S. Department of Housing and Urban Development (HUD), it is a requirement that the reserves of an HOA be adequately funded. To the extent that the HOAs are borrowing against these reserves, they may already be out of compliance with those guidelines. The housing data in Nevada indicates that 49 percent of all homes purchased in the month of March were financed through the Federal Housing Administration. Future loans are at risk if we do not ensure that these HOAs stay solvent.

Currently, other HOAs are raising monthly assessments or levying special assessments in order to pay their bills. We must find a way to keep these HOAs financially sound.

The HOAs are currently made whole when the home is foreclosed upon and lending institutions have paid collection costs and other fees as the first lien holder, otherwise known as super-priority. Recently, there has been some misinformation disseminated by an investor group called the Concerned Homeowner Association Members Political Action Committee (CHAMP). They have stated that S.B. 174 may negatively affect Fannie Mae and Freddie Mac financing for our State if the HOA is paid in the super-priority lien category. This is false. Fannie Mae and Freddie Mac have absolutely nothing to do with this bill and this fact has been confirmed by Mr. Bill Uffelman of the Nevada Bankers Association. Mr. Uffelman has confirmed that Fannie Mae and Freddie Mac have always reimbursed the first security lien holder up to six months of assessments only, per federal regulations, even though current Nevada statute allows for an

association to collect up to nine months of back-assessments. This pay schedule will remain the same under this bill, as Fannie Mae and Freddie Mac have a specific carveout in our current statutes. This carveout language can be found on page 36 of Amendment 7336, lines 37 through 45 and it continues on page 37, lines 1 through 4.

When a bank forecloses, the super-priority letter from an HOA, asking for up to nine months of the assessments and collection costs for the association, goes to the first security lien holder. The lender complies and then pays the association. The lender then turns to Fannie Mae and Freddie Mac and requests reimbursement for the six months of assessments and collection costs. This is allowable per federal regulations. Fannie Mae and Freddie Mac have always paid these claims. The lender pays for the other three months of assessments and collection costs. The association never deals directly with Fannie Mae and Freddie Mac, and, under S.B. 174, nothing about this process will change. Federal law always trumps State and local law. Mr. Uffelman has confirmed that Fannie Mae and Freddie Mac would continue to pay only the six months of assessment and collection costs, and this bill would not affect the process.

It bears repeating, however, that if HOAs are forced to dip into reserves to make up for delinquent accounts and they are not the first to be made whole at foreclosure, we will most certainly see an issue arise from loans being denied by HUD.

Senate Bill 174 helps many different demographics and entities, including homeowners who are delinquent in paying their HOA assessments, realtors who are trying to sell foreclosed homes to clients, investors who are buying foreclosed homes, first-time home buyers, the banking industry, clients of legal aid who are struggling financially, HOAs which are struggling financially and homeowners who must contribute financially to keep the HOAs solvent.

I would like to refer to an article (Exhibit H) by Hubble Smith in the *Las Vegas Review-Journal*. It was published yesterday. It shows the favorability of S.B. 174. It is important to note that the author interviewed real estate agent Rutt Premsrirut, who is a leader in CHAMP. Mr. Premsrirut feels lawmakers should limit the abilities of HOAs to foreclose upon property owners because of unpaid dues and assessments. We have done that with this bill. The legislation would require the offering of mandatory payment plans for homeowners in default.

Mr. Premsrirut went on to say that a measure which was passed in North Carolina would require dues or assessments to remain unpaid for 90 days before an association could begin foreclosure action against a property owner. In this bill, we have actually made that requirement stronger and proposed that the time frame be 120 days.

Mr. Premsrirut declares that the North Carolina statute would require the HOAs' executive board to vote to begin any foreclosure proceedings against an owner. This has also been included in S.B. 174. The HOA executive boards in Nevada would also be required to meet before taking any action on a foreclosure.

We have addressed all of the issues which have been raised by investors. We have also addressed an issue which was raised by the City of Henderson. The members have received an e-mail from Renny Ashleman, a representative of the City of Henderson, expressing concerns about language in section 6 requiring that a government agency which owned a security wall would be responsible for its repair. We have agreed to remove the term "government entity" in section 6 of the bill. This should satisfy the concerns of the representative from Henderson.

CHAIR HORSFORD:
We have received letters from the Federal Housing Finance Agency (Exhibit I) and the Howerd Hughes Corporation (Exhibit J) and Robert A. Massi (Exhibit K) which will become part of the public record.

WILLIAM UFFELMAN (Nevada Bankers Association):
I will verify Senator Copening's statements on my behalf. She has truly stated what is, to my understanding, the position of the federal home loan agencies relative to the payment of six months of back-assessment of HOA fees.

The aim of the banks, throughout the drafting of this bill, has been to control costs. During the 2009 Legislative Session, the process we thought to implement was derailed. This bill, with the limitations and caps that it has included, will be an important factor in the banks' calculations relative to foreclosures. The caps on attorney fees, relative to the limitations on the fees on which attorney fees can be claimed and awarded, will also push down some of theses costs.

Banks finance the HOAs. In 2009, I discovered that one of my members was doing this, and they were supportive of a bill that the rest of the industry was opposed to. We have been hurt by the foreclosures because of the problems associated with bad loans. We have been hurt by the costs associated with delinquency. We are hurt when the HOAs who bank with us do not have the ability to do their job. If we could get these problems resolved, it would be a step forward for the State of Nevada.

GARRETT GORDON (Southern Highlands Homeowners Association):
I will speak as a representative of the Southern Highlands Homeowners Association, Southern Highlands Management Company and Olympia Companies LLC in support of this bill.

I would like to stress three important points. The first is that this bill represents a compromise. I have worked on approximately 20 HOA bills during the 2011 Session. In each instance, we have pulled out the collection aspect, as it has proven to be highly controversial. Since February 2011, we have spent a significant amount of time with members of the affected industry in developing a compromise. Last Friday, the Chair of the Assembly Committee on Judiciary, Assemblyman William Horne, and Assemblyman James Ohrenschall met with Jon Sasser from the Legal Aid Center of Southern Nevada, myself and several other industry representatives in order to develop a fair compromise which benefits, not only industry, but homeowners and the State.

Second, this proposal offers benefits over existing law. Current law caps collection fees at $1,950. There is no cap on hard costs or attorney fees. This law would cap collection costs relative to past due assessments at $1,500. It would place a hard cap on costs at $1,000. It would also significantly limit attorney fees.

Third, I would like to stress the importance of the super-priority provision. In the nine month-priority, it will include attorney fees and collection costs. We compromised by agreeing to this so long as the hard caps are in place.

This bill will have an impact on each of the stakeholder groups. Many HOAs are bordering on bankruptcy and are considering raising assessments for all members who are able to pay the assessments on time in response to delinquencies on the part of other unit holders. This bill will provide certainty for

the industry pertaining to what collection costs can be incurred. This will also prevent increases in assessment rates for the dues-paying owners.

Collection companies have sometimes been known to charge egregious fees. This will cap those rates. In current law, only service fees are capped. This bill will cap hard costs and attorney fees.

We work closely with Jon Sasser from the Legal Aid Center of Southern Nevada. His interest was in attempting to delay some of these actions and implement payment plans. We have pushed back the ability of HOAs to file liens. We are trying to work with the homeowners to allow them to get back on their feet. The payment plan provision will be mandatory. The HOA must accept the payment plan in order to work out the problem with the Legal Aid Center.

BRYAN GRESH (Community Association Management Executive Officers, Inc.):
I will speak as a representative of Community Association Management Executive Officers, Inc. We represent approximately 450,000 homes throughout northern and southern Nevada.

This bill is not perfect, but it is a great step from where we have been.

RENNY ASHLEMAN (City of Henderson):
I am speaking as a representative of the City of Henderson. The City of Henderson, contrary to the testimony of Senator Copening, did not agree to be satisfied by the removal of the term "government entity" from section 6 of the bill. It is our position that section 6 should be removed entirely. This provision would change existing law. Under current statute, HOAs are responsible for the exterior walls of a community. These can pose a danger. Sometimes the exteriors crumble and could cause harm. They are a problem in combating urban blight. It is difficult to get these fixed when each homeowner must be assessed for the damages. Nearly 25 percent of the homeowners are in foreclosure. We much prefer keeping existing law and have HOAs be responsible for repairs of the exterior walls.

I have had conversations with representatives of the industry. Representatives of the Southern Highlands Homeowners Association agree to the elimination of section 6. I would respectfully propose that an amendment be made to that effect.

CHAIR HORSFORD:
This issue is over the maintenance of exterior community walls. If an HOA is unable, due to a lack of reserves, to maintain the wall, does the government entity not have responsibility for maintaining it, under other local ordinances?

MR. ASHLEMAN:
We do not have any legal responsibility to that effect. In some instances, we have assisted to ensure that the safety issues were taken care of. This has been done voluntarily. We believe it is far more likely that an HOA will be able to handle the situation than an individual homeowner. Section 6 recommends transferring the responsibility for the maintenance to the individual homeowners.

MR. GORDON:
If this bill is able to move forward, we would be willing to pull more parts out of section 6. We will continue to work to make Mr. Ashleman and his clients more comfortable.

MR. ASHLEMAN:
I would far prefer to have section 6 taken out entirely. I continue to ask that the Committee remove that section.

CHRIS FERRARI (Concerned Homeowners Association Members Political Action Committee):
I am speaking as a representative of CHAMP.

No matter what is allowed through statute, an HOA will never receive more than nine months of past-due assessments. If a lien is $6,000 to $8,000, and the HOA assessment is $50 a month, the most that the HOA will ever receive is $450.

In our view, this bill is not a compromise in any way. On the Assembly side, we were not invited to participate in any meetings on this bill in any capacity. I would also note that several other parties were excluded, including homeowners themselves.

The current practice of collection is under great scrutiny as it pertains to HOAs. This bill would create an approximate $3,600 cap. I will not debate the merit of the cap, but I would like to address the overall policy of the bill.

This bill will charge people $100 to enter into a repayment plan. If they are not able to pay the dues, this will likely present an issue. Additionally, section 15.3 sets a very low standard for initiating foreclosure processes which are either six months or $500 overdue. An executive board, usually consisting of two or three people, can make that ultimate decision on whether or not someone will go into foreclosure.

I would like to reference Exhibit I. There are proponents of this bill here today from the collection and management side. There are also opponents and third-parties. The impact of this bill is much larger then any one stakeholder. There will be a significant impact on our State as it pertains to financing. The letter contained in Exhibit I was sent to the Governor's legal counsel from the Federal Housing Finance Agency which is the overseeing agency for Fannie Mae and Freddie Mac. The letter was composed by the Agency's general legal counsel, Mr. Alfred M. Pollard. He provides assistance in matters relating to the Agency's relations with states, other government agencies and the White House. He is highly credentialed.

In Exhibit I, he states his concerns about S.B. 174. I would ask the Committee to consider those concerns and how S.B. 174 might negatively impact lending in our State. Prior to passing this legislation, I would suggest that approval be sought from the federal government to ensure that the bill does not have a negative impact on the real estate market in Nevada.

CHAIR HORSFORD:
Does anyone have a copy of the federal codes pertaining to these provisions? Federal law always trumps state and local law. The provisions of the bill are meaningless if they will be contradicted by federal law. I would like copies of the federal codes which pertain to this issue.

MR. FERRARI:
I will be happy to get that information for the Committee. Our concern is broader in that we do not want to jeopardize lending in the State.

CHAIR HORSFORD:
If federal law says that it cannot, then it will not.

I will close the hearing on S.B. 174 and hold the bill. I would like to get an answer to my question before we take action.

I will open the hearing on S.B. 313.

SENATE BILL 313 (1st Reprint): Revises certain provisions relating to energy. (BDR 58-236)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):
An agreement has been reached on this bill with NV Energy and the Southwest Energy Efficiency Project (SWEEP). This bill is ready to proceed.

JUDY STOKEY (NV Energy):
I will speak as a representative of NV Energy. I will only address one part of S.B. 313.

We are neutral on the bill, but we are very concerned with the language in section 3, subsection 5, in which the language reads that the Nevada Energy Commission shall give preference to measures and sources of supply. We are concerned that this might lead to higher customer rates in giving preference to what might be a more expensive option. The new language proposed would indicate that the Commission shall consider all practical measures and sources of supply, eliminating the requirement that the Commission give any kind of preference.

STEVE WIEL (Nevada Representative, Southwest Energy Efficiency Project):
I will speak as the Nevada representative of SWEEP.

In discussions with Ms. Stokey, we have agreed on the language as it has been proposed. The purpose is to change the term "may" to "shall" in section 3, subsection 5. The language which has subsequently been proposed by Ms. Stokey captures the essence of what we seek to accomplish. We simply want all of the practical economic and environmental options to be available to the State.

Section 1 of the bill establishes regulations for appliance standards. These regulations will essentially stimulate the market and then allow the free market to find ways to make various appliances more efficient. These would only be the appliances which are not already regulated by the federal government. The federal government extensively regulates certain appliances, but not all of them, and many states have found it beneficial to provide additional standards.

The fiscal note shows that there will be an investment of $60,000 a year for the regulations. That investment will result in tens of millions of dollars of benefit to the Nevada economy.

The fiscal note from the Public Utilities Commission on the later portions of the bill goes away with the deletions that have been made. Also, section 3 has no fiscal impact.

SENATOR KIECKHEFER:
Do we have a copy of an amendment available?

CHAIR HORSFORD:
It has been described by Ms. Stokey.

STACY CROWLEY (Director, Office of Energy, Office of the Governor; Acting Nevada Energy Commissioner):
We submitted a fiscal note on this bill. That estimate is probably higher than what the actual cost will be. We will be able to draw resources from other states. It will take some money and time to implement this legislation, but we do not know how much.

SENATOR SCHNEIDER:
States like California already have these types of standards, and we can adopt most of the language and testing from them. For this reason, the fiscal note should end up being reduced substantially.

CHAIR HORSFORD:
I would like someone to repeat the proposed amendment.

MR. WIEL:
In section 3, subsection 5 of the bill, the language would substitute the words "consider all practical" for the words "give preference to the."

SENATOR CEGAVSKE:
How will this legislation affect the consumers? Will the costs be passed on to them?

MR. WIEL:
There are two aspects to the costs. The cost of the regulations come out of the General Fund. When the standards are put in place, they will only be adopted if they are cost effective for the consumer. The consumer may have to pay an increased cost for the purchase price, but they would more than recover that additional cost in energy savings over time. In the experience gleaned from use of the federal standards, these types of standards sometimes result in increased costs and other times they do not. It depends on the type of appliance.

SENATOR SCHNEIDER:
The greatest savings to Nevada will come in another form. There are companies in California and other states who have enacted these standards. When one of these companies, Sears or Costco, for example, handles appliances, they will dump their less efficient appliances in a state like Nevada. Our consumers are then purchasing highly energy-inefficient products. We will sit as an easy market for out-of-date equipment. As a developer, I frequently see this problem with air conditioning units.

SENATOR LESLIE MOVED TO AMEND AND DO PASS S.B. 313.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS CEGAVSKE AND KIECKHEFER VOTED NO.)

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CHAIR HORSFORD:
I will open the hearing on S.B. 336.

SENATE BILL 336: Revises certain provisions relating to prescription drugs. (BDR 40-234)

SENATOR SCHNEIDER:
This bill is on the topic of medical marijuana. A copy of proposed Amendment 7212 has been provided (Exhibit L).

I have also provided a copy of an Associated Press article discussing recent findings which suggest that the global war on drugs has failed (Exhibit M).

Former United Nations Secretary General Kofi Annan headed up a committee including former White House Cabinet Secretary George P. Schultz. That committee issued a statement concerning the global problem with drugs. Their findings pertain to the issues addressed in S.B. 336.

To paraphrase the article, the commission was especially critical of the United States, saying that we must change our antidrug policies from being guided by anticrime approaches to strategies rooted in health care and human rights. The commission went on to say that they hope the United States can at least consider alternatives.

In Las Vegas, we have billboards advertising the "Doctor Reefer" enterprise. We have 67 "head shops" operating in Las Vegas selling some version of marijuana. Most of them are breaking numerous laws.

Since the availability of medical marijuana has been provided for in *The Constitution of the State of Nevada*, we should upgrade the system. I am suggesting that we develop a pilot project which would eliminate all of those head shops. We could designate a compounding, licensed pharmacy in Nevada to oversee all marijuana sales. That entity would be in charge of a warehouse where the marijuana would be grown under the supervision of the Nevada Department of Agriculture. The State Board of Pharmacy would oversee the entire operation and would develop regulations for the program.

I have brought forward an amendment to S.B. 336, Exhibit L. Currently, in our law, there is a $100 tax on a gram of marijuana. If a person gets caught selling marijuana, law enforcement can place a $100 tax on the volume in possession and, basically, take that person's property and house. In this new amendment, I am proposing a $1 per-gram tax from the warehouse to the pharmacy. Currently, when people buy prescription drugs, we do not tax them.

The pharmacy will only be able to sell the drugs in carrying out the pilot program. Doctors will be required to take a class on marijuana just as they would have to take a class on oxycodone or any other prescription drug. They will have to know about marijuana and its safety concerns and the different uses for it. The Board of Medical Examiners, which oversees doctors in the State, will write the regulations, and the doctors will write the prescriptions. Marijuana will be established as a Schedule III drug.

Every step of the process will be tracked on the computer. We will eliminate these unsavory, underground entities which currently distribute marijuana.

I have had conversations with Daniel Bogden, United States Attorney for Nevada. He is interested in this measure and believes that it could be beneficial for the State.

The pharmacy who is selected to be the authorized distributor will have to provide the money up front to cover the cost of the program. This measure will, in actuality, save the State a significant amount of money. We are spending a great deal of resources having Las Vegas police officers bust entities like "Dr. Reefer" every week for violation of drug laws. This legislation will enable us to save a great deal of money and provide the medication to patients for whom it is necessary.

We need to monitor situations in which doctors are writing hundreds of prescriptions for marijuana every week. This would be revealed through computer records and the proper authorities would be alerted and would be able to investigate. This can all be tracked.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
I will speak as a representative of the American Civil Liberties Union (ACLU) of Nevada.

The ACLU of Nevada has conflicting feelings about S.B. 336. The State has neglected its constitutional responsibilities for providing access to medical marijuana. We understand the complicated policy implications pertaining to this issue here and throughout the Nation. Nonetheless, some states have been proactive in moving the programs forward, and it is time that the State of Nevada does the same.

There are serious fiscal concerns with leaving the law as it is currently written. Patients are currently unable to purchase their medication. They cannot pay a caregiver to grow the medication for them. As a result, we are seeing underground "grow houses" spring up around the State because patients have no other options. The existence of these operations, and those like "Dr. Reefer" in Las Vegas, is a result of the neglect of the State to provide adequate planning on this issue. Money is being wasted for law enforcement efforts. There is also

a constitutional issue in the way the State currently shares patients' private medical information with other governmental entities.

These are not the only issues, but we believe that it is time for the State to take responsibility for its lack of responsiveness to this constitutional mandate which was supported by voters ten years ago. We should be ready to move forward with a program which can help provide better access for patients and address the fiscal problems associated with the holes in current statute.

SENATOR SCHNEIDER:
I want to follow up Ms. Gasca's point about the inability of patients to acquire their medication. I have a friend who has severe migraine headaches. He tried everything that was available to ease the pain. He asked his doctor about the possibility of treating the pain with marijuana. His doctor said that it might help, but he could not write a prescription.

My friend's wife was forced to go out on the streets of Las Vegas to get him some marijuana. She risked being charged with a felony so that her husband could try a new type of treatment.

CHAIR HORSFORD:
I will close the hearing on S.B. 336 and bring forward S.B. 371.

SENATE BILL 371: Makes various changes concerning the protection of children. (BDR 38-3)

Amendment 7369 (Exhibit N) has been provided for S.B. 371. I will accept a motion to pass the bill with the recommended amendment.

SENATOR CEGAVSKE MOVED TO AMEND AND DO PASS S.B. 371 WITH AMENDMENT 7369.

SENATOR LESLIE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HORSFORD:
I will open the hearing on A.B. 511.

ASSEMBLY BILL 511 (2nd Reprint): Revises certain provisions governing transportation. (BDR 43-1109)

MIKE DRAPER (General Motors Company):
I will speak as a representative of the General Motors Company.

This bill is an advanced technology bill which will help place Nevada at the forefront of modern "green" vehicle technologies.

The bill can be separated into two distinct parts. I am here today to discuss section 6 and section 7, along with the proposed amendment (Exhibit O).

Both at a local and State level, Nevada has made a strong commitment to being a worldwide leader in both the development and production of the newest technology promoting "green" energy and alternative fuels. It is imperative that we continue to encourage and promote the adoption of newer and cleaner technology sources wherever possible. In this year's State of the Union Address, President Barack Obama called for one million electric vehicles to be on the road by 2015. This is an ambitious, but worthwhile, goal.

Sharing similar visions, local, State and federal agencies around the Nation are working hard to lay a foundation for cleaner vehicle technologies. Assembly Bill 511 aims to begin that process. It is designed to encourage and promote the use of electric vehicles in Nevada.

Currently, all but two states, Hawaii and Alaska, have, or are working on, incentives, programs, rebates and services designed to promote the use of electric vehicles. Plug-in vehicles and alternative fuel vehicles can immediately impact our dependence on foreign oil, and would have a significant impact on air pollution. In order to fully realize this potential, it will take a coordinated and comprehensive strategy to lay the foundation for these new, advanced vehicle technologies.

Sections 6 and 7 of A.B. 511 essentially establish an electric vehicle parking program which would allow participating drivers of qualified electric vehicles to park for free in publically owned, pay-for-parking facilities such as meters,

garages and surface lots. It is imperative that we begin to implement a statewide policy which will embrace and encourage these types of fuels and technologies. The concept for this parking program was originally to be administered through DMV, and would have granted free parking at all applicable facilities throughout the State.

With the help and input of DMV and several municipalities throughout the State, it was determined that the program would be better administered and less disruptive if it was administered at the local level, where local municipalities would have the freedom to structure it as they see fit based on the original criteria outlined in this bill. The municipalities would be allowed the option of charging an administrative fee to participants of up to, but no more than, $10 annually to cover costs associated with administering and marketing the program. If a municipality decided to charge an administrative fee for participation, it would be essentially like purchasing a parking pass for electric vehicles. The municipalities would not be required to charge that administrative fee, and if they did, the measure would need to be voted on and approved by the relevant county commissioner or city council.

The program would sunset after six years. Participating vehicles would have to adhere to all standard rules and procedures currently governing paid parking areas, including time limits and overnight parking rules.

Further designated special event parking would also be exempt from this provision. The program would not apply to airport parking areas, and it is not intended to supersede any current contracts which the municipalities might already have in place.

Similar versions of this program are used across the country, including major metropolitan areas including Cincinnati, Los Angeles and Salt Lake City. Information on the program in Salt Lake City (Exhibit P) and Cincinnati (Exhibit Q) has been submitted.

Assembly Bill 511 provides a purchase incentive from 2012 to 2018 for electric vehicles. Early adoption of this new technology would be rewarded with free parking in our more congested urban areas. Programs like this can help make the jump from niche market to mass market for these vehicles. The program could also be used as a marketing and promotional tool in supporting our State's commitment to being "green." This is one more step for us to take toward being

a worldwide leader in the use and development of renewable and alternative energy services.

I would like to propose a brief amendment to the bill. In our work with other stakeholders, we have decided to include vehicles other than electric vehicles in section 6. This would include certain alternative fuels, such as compressed natural gas, hydrogen and propane. This amendment was vetted through all of the local municipalities which originally signed off on the bill, and it has their support. This would still only apply to vehicles which run on clean energy. In both sections 6 and 7, we replaced every instance of the term "plug-in electric vehicle," with the term "qualified alternative-fuel vehicle." The vehicles must meet the U.S. Environmental Protection Agency's tier 2, bin 2, exhaust emission standards. This is one of the strictest standards in the Nation.

We believe that this is a comprehensive program which could be a building block for the future as we begin to move toward this type of technology.

DAVID GOLDWATER (Google, Inc.):
I will speak as a representative of Google, Inc.

There are several sections of A.B. 511 which are related to the operation of autonomous vehicles. This would be enabling legislation which would allow DMV to establish an endorsement of Nevada driver's licenses after the vehicles have been vetted for safety. A brief outline of the provisions has been provided (Exhibit R).

The vehicle, which has been developed by Google Inc., is a self-driving car which uses artificial intelligence, global positioning system, radar, lasers, cameras and internal sensors to create a three-dimensional view of the road. It can operate, virtually, on its own, without any human presence. We should all be able to imagine some of the potential for this kind of technology.

This would not be a specially manufactured car. Technology could be put into a Toyota Prius or an Audi TT. There are currently three Priuses and one Audi outfitted with the system.

We are unique, as a State, in proposing this legislation. It is extremely forward-looking. Most of the time, technology outpaces the law. In some rare

instances, however, some states are able to get the laws in place ahead of the technology. This is what we are trying to do with A.B. 511.

The DMV would certify the safety and efficacy of this kind of technology. Having created an environment in Nevada in which this type of technology can be engineered, manufactured and developed, we will see tremendous opportunities open up. We have both the geographic and political ability in this State to be able to attract new business of this kind.

We are not asking for money, grants or tax breaks. We simply wish to allow DMV to develop regulations for this type of technology. The DMV testified in policy hearings for this bill that they are in full support. We are currently in discussions with the Director of DMV about the possibility of being highlighted in his presentation to his national convention.

In looking at pictures of the vehicle in Exhibit R the committee will notice that the only apparent unique element is the apparatus on top of the roof. This device creates a radar which generates a three-dimensional view of the road.

This is a law which will place Nevada at the forefront of developing technology. It will not be a burden or an expense for the State. The DMV will ensure the public safety of the program.

SENATOR KIECKHEFER:
There are already vehicles which have technology to autonomously parallel park. Would DMV be creating regulations and requiring additional certifications for drivers of those vehicles as well?

MR. GOLDWATER:
That would not be the case. If those vehicles were allowed on public roads today, there would be no further certification required or envisioned under this bill.

SENATOR KIECKHEFER:
Where are those vehicles excluded in the language?

MR. GOLDWATER:
Those vehicles are not autonomous vehicles, by definition. The DMV would develop a definition of the autonomous vehicle.

SENATOR KIECKHEFER:
The language in the bill stipulates that DMV would create regulations for a motor vehicle which uses artificial intelligence, sensors and global positioning system coordinates to drive itself without the active intervention of a human operator. Is that not what happens when you push the button and the car parks itself?

MR. GOLDWATER:
That function would require the use of sensors but not all of those other criteria. I do not envision it being the Committee's intent, with this bill, to require special certification for those types of vehicles.

SENATOR KIECKHEFER:
That is certainly not the case.

TODD R. CAMPBELL (Director of Public Policy, Clean Energy Fuels):
I will speak as a representative of Clean Energy Fuels. We distribute natural gas and transportation fuel. We also have a subsidiary, BAF Technologies, which I am also representing. This subsidiary is a qualified volume modifier for Ford Motor Company.

We are in strong support of A.B. 511 and the amendments which have been proposed. Our company recently opened our seventh natural gas station in Clark County last week. Representatives of the Governor's Office and the office of U.S. Senator Harry Reid were present at the opening. Our company plans to extend this network through the northern part of Clark County through Pilot Travel Centers LLC, with whom we contract. We see a significant opportunity for us to increase investment in this State.

Nevada business, including Bell Trans, Henderson Taxi, MGM, Whittlesea Blue Cab and even public agencies such as the Regional Transportation Commission of Southern Nevada all use natural gas to power their vehicles. By doing so, they save between $1 and $2 a gallon over using gasoline or diesel fuel.

This use would also displace dependence on foreign oil, on which Americans are currently spending approximately $1 billion per day. This money goes to countries which may not be aligned with our interests.

Use of natural gas improves regional air quality. Natural gas vehicles are some of the cleanest vehicles on the road today. The Honda Civic GX has been singled out as the cleanest car on the road for the last eight years in a row. It runs on compressed natural gas.

We also support local jobs. We have personally invested $14 million of our capital in the State of Nevada over the past three years.

Assembly Bill 511 does not necessarily apply to these fleets, as incentives are limited to compressed natural gas vehicles which weigh less than 8,500 pounds. However, the bill does encourage Nevada residents and small businesses to purchase compressed natural gas vehicles, adding further support to existing and continued growth of the natural gas fueling infrastructure.

It should be noted that only 7,000 compressed natural gas vehicles nationwide would qualify for the provisions in A.B. 511. There should not be a significant impact from this legislation on municipal parking situations. Furthermore, the amended language would require that manufacturers of the qualified vehicles would be original equipment manufacturers or qualified volume modifiers who are granted permission to produce those vehicles by original equipment manufacturers. Therefore, we would see warrantees and safety-minded consumer protections added through this language.

We ask for the Committee's strong support of A.B. 511 and the accompanying amendments.

KYLE DAVIS (Nevada Conservation League):
I am speaking as a representative of the Nevada Conservation League.

We support A.B. 511 and the proposed amendments. The environmental benefits generated by these types of technologies have been well-outlined here today. Encouraging the use of these types of vehicles will generate a significant positive effect on air quality in this State. We urge the passage of this legislation.

SUSAN FISHER (City of Reno):
I will speak as a representative of the City of Reno.

The City of Reno supports A.B. 511 and the proposed amendment. We have not submitted a fiscal note on this measure because we do not foresee any significant costs to the City.

It is consistent with City Council action to encourage the use of electric vehicles. We have been looking into providing parking and electrical charging stations in some of our public parking garages. We would be enacting an ordinance to cover the exemption for these vehicles.

On a personal level, I support the amendment to include compressed natural gas vehicles as the owner and crew chief for the world's fastest compressed natural gas vehicle. We must currently go out of State to get fuel. I look forward to having some fueling stations in northern Nevada.

CHAIR HORSFORD:
Two letters from the president of Whittlesea Blue Cab (Exhibit S) and Henderson Taxi (Exhibit T) have been submitted in support of this bill as well.

I support this concept. I had an opportunity to travel to Berlin, Germany several years ago with the Senate Presidents' Forum. The conference was on renewable energy. A great deal of focus was placed on the emerging sector of alternative fuel. The United States is far behind other countries in this regard. Cities such as Austin, Texas and San Diego, California, in particular, have initiated pilot programs to promote this type of use. Those cities have diversified their economies and moved toward the implementation of theses types of initiatives. Nevada should be positioned to take advantage of these opportunities to grow and diversify.

I will accept a motion to amend and do pass A.B. 511, with the amendments as proposed.

SENATOR LESLIE MOVED TO AMEND AND DO PASS S.B. 511.

SENATOR PARKS SECONDED THE MOTION.

SENATOR CEGAVSKE:
I want to verify that there is no fiscal note for this bill.

MR. DRAPER:
Initially, DMV had submitted a fiscal note on this bill. That note was removed through amendment in the Assembly Committee on Ways and Means two weeks ago.

CHAIR HORSFORD:
I would like to receive confirmation from DMV verifying that condition.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HORSFORD:
I will open the hearing on A.B. 546.

ASSEMBLY BILL 546 (2nd Reprint): Makes various changes to provisions governing early childhood care and education. (BDR 38-739)

LESLEY PITTMAN (United Way of Southern Nevada):
I will speak on behalf of the United Way of Southern Nevada which represents 2,400 business and community leaders. We are in full support of A.B. 546. We want to increase the standards and quality of early childhood education throughout the State. Our children are at the prime age for learning. We want to ensure that, when our children reach kindergarten, they will be ready to learn.

Assembly Bill 546 extends the life of the Early Childhood Advisory Council. This is comprised of business representatives and early childhood education experts. We want the existence of the Council to be placed in statute and under the jurisdiction of the Department of Health and Human Services. The bill provides the responsibilities of the Council which include strengthening coordination among, and identifying barriers to, early childhood programs in the State. The language would allow them to conduct periodic statewide needs-assessments on the quality and availability of early childhood care in Nevada. They would be charged with developing recommendations for increasing participation in existing federal, State and local programs. They would work toward a statewide professional development system for early childhood teachers and assess the existing capacity and effectiveness of higher education programs in developing teachers in the field of early childhood education.

The bill also provides that the Council will work with the Department of Education to establish prekindergarten content standards and training goals for those employed in early child care. They will assist Nevada agencies in developing qualifications required of persons who conduct training in the prekindergarten content standards. They will be charged with creating or adopting a model for highly effective teachers which can be used as a statewide resource for teachers and caregivers. They will study and develop recommendations for appropriate group sizes in child care settings.

The bill requires the Department of Education to develop a training module. To the extent that money is available, that training should be made available at no cost, or reduced cost, to licensed child care facility employees. The Board for Child Care would be required to establish new regulations on training course requirements for child care facility employees. Each employee of a licensed facility would be obligated to receive 24 hours of annual training. At least 16 of those hours would be tied to Nevada's prekindergarten standards.

We believe that it is important to extend the life of the Early Childhood Advisory Council. It is a useful body which provides inclusivity among business and private operators who, together with early childhood experts, can work together to increase the quality of early childhood education.

We also believe that it is important to align the training for our early childhood educators with the existing prekindergarten standards. We should not have prekindergarten standards in Nevada unless we are providing training to them.

It is our understanding that the cost of existing training programs ranges from free online classes to an average of $12 an hour. Similar to what was provided by S.B. No. 317 of the 75th Session, there are free training programs available online. That previous legislation pertained to financial literacy.

Several private child care operators will testify today with objections to this bill. Our repeated efforts to reach out to them to address their concerns have, unfortunately, been unsuccessful. I will say, however, that we had a positive and productive meeting yesterday with representatives of the Early Care and Education Office of the State Division of Welfare, the Nevada Registry, Teach Nevada and the Nevada Association for the Education for Young Children. In that meeting, we were able to address their concerns with the bill. We have pledged to work together throughout the regulatory process to ensure

that the training program's design and implementation is effective and successful for all parties.

I would like to submit a letter for the record (Exhibit U) which attests to our collaboration.

As in many other categories, Nevada ranks well below nearly every other state in the requirements and training standards of our early childhood educators. I appreciate the consideration of the Committee in enhancing those standards through this legislation.

SENATOR LESLIE:
Are the other organizations with whom you met yesterday now in support of this bill?

MS. PITTMAN:
Teach Early Childhood Nevada, Nevada Pre-K Standards, the Nevada Registry and the Nevada Association for the Education of Young Children are now in support of the bill. Their principal concerns were with a statutory component of the bill. We impressed upon them they will be a part of the regulatory process.

SENATOR KIECKHEFER:
In section 12 of the bill, training requirements are described. What is currently in the regulations pertaining to training in this area?

MS. PITTMAN:
My understanding is that the only current requirements for early childhood educators, at this time, is 15 hours of annual training. It is not tied to any mandated subject areas.

SENATOR KIECKHEFER:
Is it correct that this bill would increase that number to 24 hours, 16 of which would have to be in early childhood development?

MS. PITTMAN:
Sixteen of those hours would need to be tied to the State's established prekindergarten standards.

SENATOR KIECKHEFER:
It appears that the remainder of the bill relates primarily to advisory issues. Would the Council have any regulatory control or power other than helping, assisting and advising?

MS. PITTMAN:
My understanding is that they serve as volunteers and their role is restricted to advisory council.

SENATOR KIECKHEFER:
It appears that the only direct requirement being placed on child care providers in the bill is the training requirement.

MS. PITTMAN:
That is correct.

DOLORES HAUCK (United Way of Southern Nevada):
We have made efforts to remove the fiscal note for this bill so that we can move forward. We have been able to build consensus among the entities and key stakeholders who will be affected. A great deal of misinformation has been corrected. We look forward to working with all entities involved.

We will attempt to address the challenges in rural Nevada by going online to find Internet-based training opportunities.

To Senator Kieckhefer's question pertaining to current training regulations, I would report that currently, 15 hours are required through the approval of the Nevada Registry. They can be linked to the core knowledge areas, but they can include anything from CPR to basket-weaving to more serious types of training which could actually help the child care provider.

MENDY ELLIOT (United Way of Northern Nevada and the Sierra):
I am speaking as a representative of the United Way of Northern Nevada and the Sierra. Our chapter supports the United Way of Southern Nevada in their efforts to develop consistency with respect to training for prekindergarten providers and caregivers in our State. The alignment of this training will support those who are providing education to our most precious asset, our children. We recognize that there are concerns with this measure. We want to assure the

Committee that there will be an opportunity, through the regulatory process, to work through those issues.

We support an inclusive regulatory process. Ms. Pittman has worked with Assemblyman Bobzien in reaching out to those individuals who will be impacted by A.B. 546. Assemblyman Bobzien and Ms. Pittman have worked with Dr. Keith Rheault, the Superintendant of Public Instruction, to ensure that the Department of Education is supportive of these efforts.

SENATOR CEGAVSKE:
I have spoken with former Senator Ann O'Connell, who sits on a Governor's advisory board which examines the possibility of eliminating some of the councils or committees that have been formed. They recently proposed the cessation of the Nevada Early Childhood Advisory Council which was created in 2009. She wanted me to ask what the reason would be for retaining an identical council to the one which is proposed to be eliminated.

Also, concerns have been brought to me from private businesses who are concerned about the proposed additional costs to their child care centers. I have received information indicating that it now costs $169 per year for the 15 hours of training which are now required. Under this measure, that cost could go up to $340. On page 4, the following language is included: "To the extent that money is available to pay for the training, the Department of Education shall arrange to have the training provided at no or reduced costs to the employees." Is that language part of the proposed amendment?

MS. PITTMAN:
I will begin by addressing Senator Cegavske's first question. The Early Childhood Advisory Council, which was established by Governor Jim Gibbons, was due to expire in July. This provision would put the Council's existence into statute. I cannot speak for Governor Sandoval's administration, but I have had several conversations with representatives of his Office who have indicated that they would accept this legislation.

In answering the question about the cost of training hours, I would like to defer to Ms. Hauck.

MS. HAUCK:
As of last night, a study was published by the Nevada Registry on these training costs for child care providers. According to this study, there can be an average cost of less than $12 per hour for the 15 total training hours over the course of the year. Studies indicate that the majority of the monthly classes are at no cost. As a provider, one can choose to take a class with or without cost. It is up to the provider to select where, when and how the training will occur.

Money for training from the Department of Education and from the National Head Start Association would be pooled, along with any other private dollars, to leverage and absolve any costs so that we can avoid passing them on to the community. The goal is to educate child care providers and raise the standards, not to create financial hardships.

SENATOR CEGAVSKE:
Is federal money being supplied to United Way for this purpose?

MS. HAUCK:
No federal money is being used in developing these measures. All of the money has come from private sources and foundations.

SENATOR CEGAVSKE:
Will any federal money be available for the training?

MS. HAUCK:
No federal money will come through United Way of Southern Nevada, but the money that will be made available for training through the National Head Start Association will come from federal sources.

SENATOR CEGAVSKE:
There will continue to be concern about the costs to the centers, particularly with the economy in its present condition. These operators have expressed concerns that they may not be able to afford these additional costs. Many of these child care providers earn minimum wage.

CHAIR HORSFORD:
What is the average cost to keep a child in day care?

MS. HAUCK:
The cost reimbursed by the State in southern Nevada is $115 a week for day care. This equates to $23 a day for a three- to five-year-old child. Over the course of the year, the day care scholarship program of United Way contributes $2,990. The parent would provide a copay on that amount.

CHAIR HORSFORD:
I want to address this concern that somehow the fee, if there is one, of $100 for 15 hours of training will jeopardize these child care centers when a parent typically pays, on average, $500 to $700 per month for one child to be enrolled. The training costs do not equate to an onerous request.

We are talking about training which costs $169 for one year. I pay $610 per month for my daughter to go to day care. This is not a significant burden on these providers.

DR. MICHAEL THOMPSON (Child Care Association of Nevada):
I am speaking as a representative of the Child Care Association of Nevada. We would like to voice our strong opposition to this bill. The discussion so far has not captured the arguments that we have against this legislation.

Our opposition is not based on the training requirement. We have been strong supporters of teacher and staff development and training for many years. There are other issues at hand.

We represent small, family-run day care centers; private, small business child care centers; and corporate child care centers in schools. We represent all of these organizations in that we represent staff who care for infants as young as eight weeks old. These people teach potty training to toddlers.

We represent working parents, single mothers and fathers and grandparents who raise and care for children. These people depend on child care every day. There is universal opposition to this bill from most of the entities who have historically regulated child care. These are the entities who create staff training within the State. There is opposition from those who develop professional development tracks for child care staff. There is even opposition from higher education professors who teach early childhood development.

This bill makes no sense, and I will explain why. I need to describe the issues at hand because they are not easily understood from reading the language in the bill.

It makes no sense to give regulatory authority to a committee which is due to expire on July 31, 2011. It makes no sense to allow a government takeover of child care by an unaligned Department of Education. While we have been highly regulated throughout our existence in this State, we have never been regulated by the Department of Education. The Department of Education will now be able to regulate private industry. This is a slippery slope.

It makes no sense to require 16 continuing education credits a year in prekindergarten standards for those who love and nurture infants and do not need to know prekindergarten standards. At least two out of every three staff members at our centers do not even work with prekindergarteners. These people are teaching children how to go to the bathroom. They do not need to learn prekindergarten standards.

I question the true motives of the sponsors of this bill.

CAROL LEVINS (Creative Kids Learning Center):
I operate the largest private chain of child care centers in Nevada, serving over 1,500 students and employing about 200 caregivers. I have been operating this business for the past 31 years.

Preschool education is not mandatory in this State. Parents have a choice as to if, and where, they place their child.

I believe in the necessity of regulations that protect the health and safety of our children. The State has done a satisfactory job in this regard. I am opposed to A.B. 546, however, because it appears to be a regulation of curriculum. The individuality of each program, as it exceeds licensing standards, should be at the discretion of the individual proprietor.

Section 5, subsection 3, paragraph (b) of the bill indicates that there should be developed a statewide, unified system for collecting data relating to early childhood programs. This language indicates reporting responsibilities of private child care organizations regarding their status and the performance of their students. We are not part of the public school system. We should not be

required to furnish feedback on the academic achievements of three year-old and four year-old children. These children may only attend for one month or two months before their parent loses their job and they can no longer attend. The data would be askew.

I respectfully ask that the Committee not pass A.B. 546 as it will have a negative impact on our industry.

DAVID WALTON (Regional Director, Challenger Schools):
I am speaking as a representative of Challenger Schools in Las Vegas. We have three campuses in Las Vegas. We are a private, preschool through eighth grade institution.

I would like to voice opposition to this bill. This would have a negative impact on private providers. The provisions of this bill have not been discussed with private providers.

MAUREEN AVERY (Creative Kids Learning Center):
I will speak as a representative of Creative Kids Learning Center. I have worked for Creative Kids Learning Center, with eight centers located throughout the Las Vegas area, for 30 years.

I am in opposition to A.B. 546. It is not necessary to make various changes to provisions governing early childhood care and education outside of the already-established State licensing process. In the last ten years, the field of early childhood care has made tremendous strides in the State of Nevada. The Early Care and Education Office of the Division of Welfare and Supportive Services and the State licensing requirements have been beneficial. We have also seen benefits from the work of the Teacher Education Assistance for College and Higher Education Grant Program, the Nevada Registry, the Children's Cabinet and the Southern Nevada Health District. These entities have established a cooperative atmosphere among early childhood professionals. The nonprofit and for-profit entities have recently joined forces to revamp licensing requirements and regulations and health district regulations and have worked toward positive change and improvement. I am distressed because, after all of this cooperative effort, we are faced with additional requirements and oversight within this bill which was formulated and submitted with no input from those of us who work every day in the early child care profession.

We work under 286 pages of regulations. We work with the State licensing agency to maintain the required standards and we feel that change and improvement, which have always been an integral part of our profession, are necessary. We ask that we be allowed to be a part of the decision making process, and we urge the Committee to vote against this bill at this time.

MS. PITTMAN:
I want to emphasize that we have reached agreement with other entities who play major roles in early child care. They understand that there is an inclusive process associated with the council and the regulatory process. This should help address the infant and toddler questions which have been raised.

JACK WOODCOCK:
I am speaking as an owner of a child care facility in Las Vegas.

Some of the commentary regarding the input of child care providers is disingenuous, at best. There has been little attempt, during the drafting of this bill, to get the consideration of those who are actively involved in early child care.

We represent child care facilities which provide a level of care exceeding every standard. We teach the basic things that children need before going to kindergarten. This curriculum is exemplary. We teach manners and the types of human relationship skills which will allow these children to get along with teachers. We adhere to the highest standards in all of these services.

I ask the Committee to vote against A.B. 546 because it goes far beyond the original intent of the bill.

MS. ELLIOTT:
I want to assure the Committee that, through the actions of the advisory council, people, such as Mr. Woodcock and Ms. Levins will be included in the regulatory process. We want to ensure that everyone's voice is heard. We want to have representatives of the child care industry on the council. We want to achieve consistency with the educational approach. Those facilities who already have exemplary programs in place should be included at the table because we want to hear from all of the experts in the field.

CHAIR HORSFORD:
With the structure change in allowing the Governor to appoint the State Superintendant of Public Instruction and with the Board of Education being appointed by members of the Executive Branch and the Legislative Branch, this will provide a level of assurance, going forward, that these issues will be handled in a way that ensures all voices and constituencies will be heard.

I am hearing concern that, in leading up to the development of the provisions of this bill, people feel they were not included. The policy of the bill, however, sets up a process which includes regulatory hearings. In those hearings, each individual stakeholder would be able to voice their opinions. This would include child care providers, parents and community leaders.

I feel strongly that this is a measure which should move forward.

SENATOR LESLIE MOVED TO DO PASS A.B. 546.

SENATOR PARKS SECONDED THE MOTION.

SENATOR DENIS:
I agree that early child care education is important. I will vote for the bill.

I would like to note, however, that I am the Chair of the Senate Committee on Education and this is the first time I have seen this bill. No one has approached me about this legislation. I will vote for the bill to keep it moving forward, but I reserve my right to change my vote on the floor once I have more time to review the provisions.

SENATOR CEGAVSKE:
I will not support the bill unless something changes before it is brought forward for a floor vote. I am concerned about the costs to the child care providers. The additional costs could go up to $400 a year. This will be a burden on day care centers and the private sector. I support the mission of United Way, but I will not be supporting this bill.

THE MOTION CARRIED. (SENATORS RHOADS, CEGAVSKE AND KIECKHEFER VOTED NO.)

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CHAIR HORSFORD:
I will open the hearing on A.B. 563.

ASSEMBLY BILL 563 (1st Reprint): Establishes for the next biennium the amount to be paid to the Public Employees' Benefits Program for insurance for certain active and retired public officers and employees. (BDR S-1223)

JAMES R. WELLS (Executive Officer, Public Employees' Benefits Program):
I provided all of my testimony on this issue at the hearing yesterday. I am available for questions.

MR. KRMPOTIC:
This bill implements the State subsidies for Public Employees' Benefits Program (PEBP) participants and retirees. This bill is required to implement the budget. Information has been provided by Mr. Martin Bibb of the Retired Public Employees of Nevada on the impact to Medicare retirees in conjunction with the policy measures which have been provided this Session for PEBP.

Staff would indicate that this is a matter which could possibly be discussed during the Interim with the Interim Retirement and Benefits Committee. This could be held earlier than the scheduled meeting in December 2011. Staff keeps a close watch on these issues and this issue could be brought back subsequent to the enrollment period as more information is provided on the impact to retirees.

CHAIR HORSFORD:
With the motion on this bill we should include a letter of intent requesting that PEBP provide that information to Fiscal Staff. They would also be directed to provide twice-yearly reports to IFC.

SENATOR CEGAVSKE MOVED TO DO PASS A.B. 563; AND TO ISSUE A LETTER OF INTENT REQUIRING PEBP TO PROVIDE ADDITIONAL INFORMATION ON THE IMPACT OF THIS LEGISLATION ON RETIREES, AND TO MAKE TWICE-YEARLY REPORTS TO IFC ON THIS MEASURE.

SENATOR KIECKHEFER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HORSFORD:
I will now open the hearing on the budget-related bills which are proposed to be introduced.

MR. KRMPOTIC:
The first proposed bill will implement the capital improvement program (CIP) for the upcoming biennium, as approved by the Senate Committee on Finance and the Assembly Committee on Ways and Means.

ERIC KING (Program Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
I will provide a summary of the various sections of Bill Draft Request (BDR) S-1316 (Exhibit V).

BDR S-1316: Authorizes and provides funding for certain projects of capital improvement. (Later Introduced as S.B. 504.)

Section 1 approves approximately $27.1 million in general obligation bonds for projects which are enumerated under the same section.

Section 2 provides a reversion date of June 30, 2015, for all of those projects enumerated in section 1.

Section 3 specifies that the State Board of Finance will issue the bonds for the 2011 Capital Improvement Projects (CIPs) when it is deemed appropriate. Section 3, subsection 2, allows the State Controller to advance General Fund money if bonds have not been sold to finance the projects approved in the 2011 CIP plan.

Section 4 approves approximately $2.4 million in State Highway Fund dollars for projects enumerated in section 4 for the 2011 CIP.

Section 5 provides a reversion date of June 30, 2015, for the State Highway Fund money which was approved for projects in the 2011 CIP.

Section 6 provides for reimbursements on projects funded from the Highway Fund once information has been provided which substantiates the costs for those projects.

Section 7 pertains to the reallocation of about $11.6 million from CIP Project 09-CO2a. This was the 36-bed hospital and adolescent care facility for Southern Nevada Child and Adolescent Services. That money will be reallocated to projects which are identified in section 7, subsection 2.

Section 8 pertains to the reallocation of money from the 2007 CIP Project 07-M48 to the 2011 CIP in order to put cameras and recording devices in Ely State Prison.

Section 9 provides the reversion date of June 30, 2015, for those two projects which were reallocated from the 2007 CIP and 2009 CIP to the 2011 CIP.

Section 10 approves approximately $4.3 million in federal and agency money. The federal money would total approximately $2.6 million. The agency funding would total approximately $1.8 million. The majority of that agency funding would be for Project 11-S09, which is described as "Building Official Projects." This is authority which agencies send to the State Public Works Board for the review of their plan checks. Section 10 enumerates all of those projects which will be receiving money from sources other than the General Fund or the State Highway Fund.

Sections 11 and 12 indicate that the State Public Works Board will use only qualified personnel to execute the 2011 CIP. Section 12 indicates that agencies will cooperate with the State Public Works Board in carrying out the provisions of the CIP.

Section 13 approves $490,000 for a cultural affairs bond program.

Section 14 approves ad valorem taxes for the Question 1 (Q1) bond program and CIP. For the CIP, 15.55 cents on every $100 of assessed valuation will be used to support the bonds that are sold for CIP. For the Q1 program, 1.45 cents on every $100 of assessed valuation will be used to support the bonds that are sold for the Q1 program. These are the same rates as are allowed in the current biennium.

On page 12 of Exhibit V, section 15 indicates that the State Treasurer will make an estimation of sufficient funding and determine whether that amount exists in the Consolidated Bond Interest and Redemption Fund to pay the principal and interest on past CIP issuances as well as current issuances. If there is not enough money in the Consolidated Bond Interest and Redemption Account, they can make a request to the State Controller to reserve money in the General Fund to pay those debts.

Section 16 authorizes the State Board of Finance to pay expenses related to the issuance of general obligation bonds.

Section 17 authorizes money to pay for bonds in the Consolidated Bond Issuance and Redemption Account. This would amount to $157,663,910 in FY 2011-2012 and $167,264,898 in FY 2012-2013.

Section 18 indicates that, with IFC approval, the State Public Works Division of the Department of Administration and the Nevada System of Higher Education (NSHE) can transfer money from one project within the same agency to another.

Section 19 approves $5 million from the Special Capital Construction Fund for Higher Education for deferred maintenance.

Section 20 provides a reversion date of June 30, 2015, for that money from the Special Capital Construction Fund for Higher Education.

Section 21 through section 25 extends 16 prior-year CIP projects. The first is an extension of a 2001 CIP project, section 22 extends 2005 CIP projects, section 23 extends a 2005 CIP project and sections 24 and 25 approve 13 projects from the 2007 CIP.

Section 26 provides that this bill will become effective upon passage and approval.

CHAIR HORSFORD:
I will take a motion to introduce BDR S-1316.

SENATOR LESLIE MOVED TO INTRODUCE BDR S-1316.

SENATOR DENIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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MR. KRMPOTIC:
I will now cover the proposed bill that provides for the salaries of State employees, BDR S-1317 (Exhibit W).

BDR S-1317: Provides for compensation of state employees. (Later introduced as S.B. 505.)

Section 1 encompasses the salary levels and the titles for each of the unclassified positions for the upcoming biennium as identified for each State budget account. The salary levels have been approved by the Senate Committee on Finance and the Assembly Committee on Ways and Means and include a 2.5 percent pay reduction. This list does not include classified positions or nonclassified positions which are primarily found in the Governor's Office.

Section 2 begins on page 25 of Exhibit W. This section pertains to any unclassified position which may be found to have been inadvertently omitted from this act. The language allows the Department of Human Resource Management to examine the duties and responsibilities of the position and submit to IFC a recommended salary to be established for that position in the unclassified pay system. Section 2, subsection 2, provides language which allows for the correction of typographical errors by Fiscal Staff. Section 2, subsection 3, indicates that an employee occupying a position which is currently in the classified service but will be moved to the unclassified service, will have the option to remain in classified service until the incumbent leaves that position.

Section 3 provides for the 2.5 percent pay reduction which was approved by the Senate Committee on Finance and the Assembly Committee on Ways and Means. This will apply to all employees.

SENATOR KIECKHEFER:
Is the 2.5 percent decrease incorporated into all of the salary levels in section 1, even though it is provided for in section 3?

MR. KRMPOTIC:
That is correct.

In section 3, subsection 3, it states that, except as otherwise provided in section 3 and section 4, the provisions of section 3, subsection 1, apply to all departments of State government and include the NSHE and Public Employees' Retirement System (PERS). Section 3, subsection 3, also indicates that the Board of Regents shall determine and implement the method by which the professional employees of NSHE will participate in the requirements of section 3, subsection 1. Section 3, subsection 4, exempts employees of the Department of Tourism and Cultural Affairs from the 2.5 percent pay reduction if their standard workweek is 32 hours long. Last Session, reductions were implemented for the Department of Cultural Affairs to reduce the operating hours of the museums. Therefore, the number of hours in the workweek for employees at those museums has been reduced, and they would not be exempt from this reduction.

Section 4 implements the six required days of furlough in each year for all employees in State government. The furlough reduction equates to an approximate 2.3 percent decrease in pay which, combined with a 2.5 percent pay decrease, totals an approximate 4.8 percent reduction. Section 4, subsection 2, allows the employees to continue to accumulate sick and annual leave and calculate hours toward a pay progression date or continuity of service date despite the furlough day provision.

SENATOR KIECKHEFER:
Section 4, subsection 2, seems to indicate that furlough leave can be taken in the same manner as other types of leave. Does this mean that furlough leave could be taken in seven minute increments?

MR. KRMPOTIC:
From a practical standpoint, furlough leave is granted on a scheduled basis which works with the needs of the employer. When I have seen this applied, it is typically used in no less than hourly increments.

SENATOR KIECKHEFER:
Will it be ultimately left up to the departments or agencies to determine an internal policy for furlough leave?

MR. KRMPOTIC:
I do not believe that each agency sets up an internal policy. Whether the leave is taken as vacation or sick, the employees determine when they want to take that leave and it is subject to approval by the employer. In certain cases, such as with the Department of Corrections, where staffing is critical, those requests must be balanced with the desires of other employees.

SENATOR DENIS:
Will employees be able to take their furlough all at one time? In the past, it was limited to being used once a month.

MR. KRMPOTIC:
This language would require that the 48 hours of furlough leave be take each fiscal year. The bill is not specific as to when and how it is taken. In theory, if an employee wanted to take six consecutive days of furlough in a single month, they would be allowed to do so as long as it was agreeable to the employer from a scheduling standpoint. Nothing in the bill precludes that from happening.

SENATOR DENIS:
Some people have talked about the furlough leave as a problem in the past. This could be a good thing for employers, if they have a slow period in the workload, they could allow employees to take care of their furlough requirements in larger or smaller groups, depending on demand.

MR. KRMPOTIC:
I should draw the attention of the Committee to a piece of language which is included in the current pay bill, but not this pay bill. A distinction was drawn between classified and unclassified employees. Unclassified employees had to take furlough leave in full-day increments. Classified employees, however, had the option of taking leave in various hourly increments which added up to 96 hours per year. Legal Counsel has examined the language in the pay bill for the 2011-2013 biennium and it has been determined that both classified and unclassified employees can take the furlough leave in hourly increments, rather than having a distinction incorporated into back-language as has been done previously.

Section 4, subsection 4, indicates that the furlough leave does not apply to employees of the Department of Cultural Affairs and Tourism whose standard workweek is only 32 hours.

Section 5 indicates that it is the intent of the Legislature to establish a program whereby employees of the State and other participating employers who take furlough leave due to extreme fiscal need will be held harmless in the accumulation of retirement service credit. That is consistent with the way the furlough leave policy has been applied in the current biennium.

Section 6 begins on page 31 of Exhibit W. This section indicates that it is the intent of the Legislature to limit exceptions to the requirement of furlough leave for employees of the State, as identified in section 4 of this act, to identified areas of critical need. This language is similar to what was provided in the current biennium. If an employer, including the State, participating in the furlough program determines that a position cannot be subject to furlough leave because of the necessity of that position in providing services appropriate to the protection of the public, the governing body of the agency must put those findings in record. Any exemptions to furlough leave are subject to the approval of the Board of Examiners where it applies to the Executive Branch. This language is found in section 6, subsection 2, paragraph (a). The Board of Regents is indicated to be the governing body for NSHE, and the Public Employees Retirement Board is the governing body for PERS. The Supreme Court and the Legislative Commission are indicated to be the governing bodies of the Judicial Branch and the Legislative Branch of State government, respectively.

SENATOR KIECKHEFER:
In section 6, subsection 4, the language indicates that if people are exempted from the furlough, they will still have a 2.3 percent reduction in salary. Is that 2.3 percent reflected in the calculations of PERS?

MR. KRMPOTIC:
That 2.3 percent pay reduction would be the equivalent to six days of unpaid furlough a year. It appears that, if an employee were to take the 2.3 percent reduction, they would not be held harmless with respect to PERS contributions and accumulation of service credits.

Section 7 of the bill appropriates approximately $5.9 million from the General Fund in the first year of the biennium and $6 million in the second year of the biennium to provide for the difference between the 5 percent reduction which was recommended by the Governor for Executive Branch employees and the 4.8 percent reduction which was approved by the Legislature. The amounts appropriated under this section also provide funding for PERS to hold harmless the time taken off for furlough days.

Section 8 makes a similar appropriation from the State Highway Fund for the employees in DMV, Department of Public Safety, mainly the State Highway Patrol and the Nevada Transportation Authority.

The amounts appropriated to the Board of Examiners under sections 7 and 8 are allocated to the agencies based on need. The agencies normally must approach the Board of Examiners to demonstrate that there is a shortfall in their budget with respect to payroll before they will be granted an allocation. This will work the same way as in the past when cost of living adjustments were approved. That money was similarly appropriated to the Board of Examiners and then allocated on an as-needed basis.

Sections 9 and 10 contain language which is similar to what was included in the 2009 Unclassified Pay Bill. Section 9 provides that certain employees of the Department of Corrections and Department of Health and Human Services, including senior psychiatrists, senior physicians and pharmacists, are to perform on-call responsibilities to ensure 24-hour coverage. Payments of up to $60 will be made for specified periods on weeknights, and up to $100 will be paid for specified periods on weekends.

Section 10 allows the Gaming Control Board to adopt a plan authorizing additional payments of up to $5,000 annually for unclassified employees who possess certain certificates from the State of Nevada, such as certified public accountants and attorneys, or other qualifying positions, such as electronic laboratory engineers.

Section 11 pertains to the reversion language of the appropriations that were made earlier in this act.

Section 12 places maximum amounts on the money which is to be distributed by the Board of Examiners. Appropriations established for an account within the

department, agency or commission at issue must not be distributed to another account within the agency if that action results in the distribution of money beyond the maximum salary need as determined by the account.

Section 13 indicates that this act would become effective on July 1, 2011.

SENATOR KIECKHEFER:
In section 9, the language allows the Department of Health and Human Services and the Department of Corrections to adopt plans for additional payment for weekend and nighttime responsibilities. Is this an issue which has a total dollar amount which would be appropriated from somewhere else, or would they have to handle those amounts within their current appropriations?

MR. KRMPOTIC:
I have not reviewed those accounts in detail to determine how that money might be included. The amounts appropriated in this act are not intended to cover the payments under section 9 or section 10. For the appropriation to the Gaming Control Board described in section 10, those amounts are brought into the Board's budget.

In section 9, if the $60 or $100 payments were made in FY 2009-2010, those amounts would most likely have been carried forward in the Base Budget and would therefore be included in the appropriations in the operating budgets for the Division of Mental Health and Developmental Services and the Department of Corrections.

SENATOR KIECKHEFER:
Is this language common to most Unclassified Pay Bills as they are brought forth in each biennium?

MR. KRMPOTIC:
This language was included in the Unclassified Pay Bill for the 2009-2011 biennium. Having worked on that bill directly, I recall that this item was included at the urging of the Director of the Department of Health and Human Services.

SENATOR KIECKHEFER:
Would it be reasonable to assume that this money is included in those departmental Base Budgets and would be accounted for?

MR. KRMPOTIC:
That would seem likely. I would qualify that by saying I have not closely examined the Base Budgets of those agencies. Typically, if an item was paid in 2010, it would have been carried forward in the Base Budget and would therefore be funded into the upcoming biennium.

SENATOR DENIS MOVED TO INTRODUCE BDR S-1317.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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MR. KRMPOTIC:
The next proposal is for the Authorized Expenditures Act. This will cover funding from all other sources outside of the General Fund and the State Highway Fund. It includes federal funding sources, fee-based budgets and self-supporting State budgets within the State government.

Traditionally, the State Highway Funds which are received by the Department of Transportation are included in the Authorized Expenditures Act rather than the General Appropriations Act. This is a long-standing tradition. Another exception is that the Gaming Control Board and the Gaming Commission are funded from General Fund authorizations and not appropriations. This is included in the Authorized Expenditures Act, as well. This is based on statutory language which will be covered in the presentation.

REX GOODMAN (Principal Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau):
I will be presenting BDR S-1315 (Exhibit X).

BDR S-1315: Authorizes expenditures by agencies of the State Government. (Later introduced as S.B. 503.)

This bill will cover all other funding sources other than General Fund and State Highway Fund appropriations, with the exception of the Gaming Control Board and the Nevada Department of Transportation, as has been described.

Pages 1 through 21 of Exhibit X outline each account and the authorized expenditures for the 2011-2013 biennium.

Section 2, which begins on page 21 of Exhibit X, contains language describing the uses of tobacco settlement fund money. This includes the approved amounts in the budgets for the Attorney General's Office, the Aging and Disability Services Division, the Community-Based Services programs and other programs within the Director's Office of the Department of Health and Human Services. This would also include the Family Preservation Program within the Mental Health and Developmental Services account as well. The allocations from tobacco settlement funds are outlined in section 2, subsections 2, 3 and 4.

Section 2, subsection 5, outlines the percentages by which additional tobacco settlement funds would be distributed. Forty percent would go to the Millennium Scholarship Trust Fund and 60 percent would go to the Fund for a Healthy Nevada. The Committee will recall that the other 10 percent which has previously been provided to the Trust Fund for Public Health has been eliminated and combined into the Fund for a Healthy Nevada.

Section 3 provides the General Fund appropriations for the State Gaming Control Board. Statute dictates that these funds must be authorized for use by the Board.

Section 4, on page 24 of Exhibit X, is the authorization for the Gaming Commission. This is also a General Fund appropriation.

Section 5 provides the authorization for funds to be adjusted, not including funding for the Legislative Fund and judicial agencies. This money can be transferred for salary allotments and travel allotments in accordance with NRS 353 which provides for work program adjustments approved by IFC.

Section 6 pertains to augmentations to these amounts. The amounts authorized in this bill may be augmented by the Chief of the Budget Division of the Department of Administration if additional outside revenue, federal or local government funding, becomes available for these same purposes, pursuant to NRS 353. Section 6, subsection 2, provides the same authority for the Director of the Legislative Counsel Bureau, with approval from the Legislative Commission.

Section 7 requires that whenever an account receives additional funding which is not included in the budget, to the extent that General Fund allocations can be offset, that General Fund or State Highway Fund money is required to be reverted to the State. There are some exceptions to this provision. Generally, however, if an account receives General Fund or State Highway Fund money, and then receives additional money from some other source, that State money must be reduced by the same amount and reverted.

Section 8 outlines the amount of fee and tuition revenues that can be collected by a facility of NSHE. Those amounts are listed on pages 26 and 27 of Exhibit X.

SENATOR KIECKHEFER:
When the Committee discussed the NSHE budget, there was an initial proposal to increase tuition for two consecutive years. We closed the budget with only a first year increase. If the Board of Regents were to decide to try to offset some of the approved reduction in General Fund money by adding an additional tuition increase, would they have to come to the Legislature and get authorization to expend that increase?

MR. GOODMAN:
I assume they would be able to come to the Legislature and request authorization to receive and expend that additional revenue.

MR. KRMPOTIC:
That issue is covered in section 8, subsections 2 and 3, on page 27 of Exhibit X. This language provides that NSHE may expend additional registration fees collected from students for the purpose of meeting salaries and related benefits for incremental instructional faculty. The NSHE may also expend, with the approval of IFC, any additional registration fees and nonresident tuition fees resulting from the imposition of fee increases. If the expenditures are for instructional purposes, NSHE may come forward and augment its budget. If the money would be used for other purposes, NSHE would have to seek approval from IFC.

MR. GOODMAN:
Section 9 provides authority for the Department of Wildlife. This is language which has traditionally been included in this bill. If the Director of the Department of Wildlife projects that the Department will be short on

non-General Fund revenue, they may request a temporary transfer from the General Fund. This advance is not to exceed 50 percent of the Department's amount of federal money in each account. The advance would be repaid by the end of the fiscal year.

Section 10 outlines the amounts of revenue to be collected from the counties for State Public Defender services. The State Public Defender's office can, additionally, receive more funding from those counties to augment their services if the counties so choose.

Section 11 contains historically included language which requires the State Treasurer to allocate portions of the tax on motor vehicle fuel between the Department of Wildlife and the Division of State Parks. Both of these agencies are located within the Department of Conservation and Natural Resources.

Section 12 allows the Division of Forestry, within the Department of Conservation and Natural Resources, to use special reserves for the cost of operation and repair and maintenance of firefighting vehicles. These reserves are held in another account, but can be used for firefighting vehicles without forcing a reversion of General Fund money. This is an example of the exemptions provided in section 7 of this bill.

Section 13 requires the State Fire Marshall to use funding from the Contingency Account for Hazardous Materials to support their eligible training programs before using any State General Fund money for those programs. This language has traditionally been included in Authorized Expenditures Act throughout the years.

Section 14 allows the Division of Forestry to support its central reporting unit. If there is any funding remaining at the end of each fiscal year, it may be carried forward for that same purpose. This is another exemption from the reversion requirements described in section 7.

Section 15 pertains to the Commissioner of Insurance position. This account was approved. If it is found that there is insufficient revenue, the Agency may receive a temporary advance from the General Fund, contingent upon the approval of the Director of the Department of Administration and upon notification of the Senate and Assembly Fiscal Staff, who would then make a report to IFC. This amount is limited to one-sixth of the account's anticipated

operating expenditures for the year and must be repaid by the end of the fiscal year.

Section 16 contains similar language. It provides authority to make an advance from the General Fund for the Department of Health and Human Services for the Health Statistics and Planning account. This advance is limited to $600,000 per fiscal year. It would be available upon approval of the Director of the Department of Administration.

Section 17 allows the Western Interstate Commission for Higher Education Loan and Stipend Repayment account to balance forward its Health Care Access Program Loan Repayment slots and any loan, stipend and interest repayment revenues.

Section 18 requires the Department of Public Safety to transfer any remaining funding from the account for home disaster assistance to the General Fund. That account was a temporary account and is being eliminated.

Section 19 pertains to the identification of $1.5 million in excess reserves in the Radiological Health Account of the Health Division this Session. Those reserves are required to be transferred to the General Fund by June 30, 2011.

Section 20 allows the Director of the Office of Energy to request a temporary advance from the General Fund if revenues are projected to not exceed authorized expenditures. The advance must be repaid by the end of the fiscal year.

Section 21 places restrictions on money deposited in the Emergency Operations Center Account of the Office of the Military. This is to account for rent revenues received for the use of Office of the Military facilities and allows them to be carried forward for the next fiscal year.

Section 22 relates to the Division of Child and Family Services, Clark County and Washoe County. This language is a holdover from the previous Session. With the new block grant language which was approved in S.B. 447, this would allow the Division or the counties to use additional money, which may have been received after the closing of their respective budgets, for child welfare purposes without having to revert an identical amount to the General Fund. This is another exemption to section 7 of the bill.

SENATE BILL 447 (1st Reprint): Makes various changes concerning the administration of child welfare services. (BDR 38-1218)

Section 23 pertains to the Office of Veterans' Services. If the Director of that Office determines that revenues are insufficient to pay authorized expenditures, the account may receive a temporary advance from the General Fund. This advance is not to exceed $400,000 per fiscal year and must be repaid by the end of each fiscal year.

Section 24 pertains to the Commissioner of Insurance. This account was determined to have excess reserves. This language would freeze the assessments which are charged by the Commissioner of Insurance for the biennium, as those fees are no longer necessary to maintain the reserve over the next two years.

Section 25 contains language pursuant to the actions of the Committee in shifting revenues in DMV. This would include government services taxes which would be shifted to the General Fund. The DMV will be required to utilize State Highway Fund money for their operations instead. Approximately $20.9 million of government services taxes in each year of the biennium would be shifted to the General Fund. In section 25, subsection 2, approximately $4.7 million of other penalties and fees would be transferred to the General Fund as well.

Section 26 is necessary in increasing the administrative cap for State Highway Fund money used by DMV. In order to shift the government services taxes and fee revenue to the General Fund, the administrative cap for State Highway Fund money must be increased to 33 percent.

Section 27 contains language which would amend NRS 90.851. The Secretary of State's Office was approved to use revenues collected for investigations involving securities. The money could be used for any other purpose in the Office of the Secretary of State. This language will be permanently included in statute.

Section 28 pertains to a budget change which has been approved in the Office of Veterans' Affairs. The Office would no longer provide the Guardianship Assistance Program. There is no more money in this account for this program. There is no federal requirement that the Office provide this

service. This section would remove the language in statute which pertains to this program.

Section 29 formally repeals numerous sections of statute pertaining to the Office of Veterans' Services. They are listed at the bottom of page 38 of Exhibit X.

Section 30 specifies when specific sections of this bill will take effect. Sections 18, 19 and 27 will become effective upon passage and approval. The rest will become effective July 1, 2011.

SENATOR LESLIE MOVED TO INTRODUCE BDR S-1315.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR HORSFORD:
This meeting is adjourned at 12:01 p.m.

RESPECTFULLY SUBMITTED:

Wade Beavers,
Committee Secretary

APPROVED BY:

Senator Steven A. Horsford, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 428	C	Mark Krmpotic / LCB Fiscal	Prioritization Schedule for Technology Replacement
S.B. 425	D	Mark Krmpotic / LCB Fiscal	Proposed Amendment to S.B. 425
S.B. 174	E	Senator Allison Copening	Overview of S.B. 174
S.B. 174	F	Senator Allison Copening	Proposed Amendment to S.B. 174
S.B. 174	G	Senator Allison Copening	Policy Comparison for S.B. 174
S.B. 174	H	Senator Allison Copening	Las Vegas Review Journal Article
S.B. 174	I	Chris Ferrari / Concerned Homeowners Association Members Political Action Committee	Federal Housing Finance Agency Letter
S.B. 174	J	Tom Walsh / Howard Hughes Corporation	Letter of Support on S.B. 174
S.B. 174	K	Robert A. Massi	Letter on S.B. 174
S.B. 336	L	Senator Michael A. Schneider	Proposed Amendment to S.B. 336
S.B. 336	M	Senator Michael A. Schneider	Associated Press Article
S.B. 371	N	Legal Division / LCB	Proposed Amendment to S.B. 371
A.B. 511	O	Mike Draper / General Motors Company	Proposed Amendment to A.B. 511
A.B. 511	P	Mike Draper / General Motors Company	Salt Lake City Parking Program Outline
A.B. 511	Q	Mike Draper / General Motors Company	Cincinnati Parking Program Outline

EXHIBIT O

EXHIBIT O

EXHIBIT O

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
March 6, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:12 a.m. on Friday, March 6, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 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/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman Richard McArthur (excused)

Minutes ID: 391

60 days following a foreclosure sale. Mr. Sasser made reference to section 6 of A.B. 189, which is the notice to quit after a foreclosure sale. He said that he did not really care about that section, as it was a result of the enthusiasm on the part of the Legislative Counsel Bureau. I would suggest that section 6 needs to fall off of the bill.

Chairman Anderson:
So, the bankers would like us to remove section 6 as being unnecessary. Have you prepared an amendment?

Bill Uffelman:
I could prepare one very quickly, Mr. Anderson (Exhibit S).

Chairman Anderson:
Did you raise these concerns with the primary sponsor of the bill?

Bill Uffelman:
I have spoken with Mr. Sasser, who was acting as a representative of the sponsor of A.B. 189.

Chairman Anderson:
Thank you, sir. Does anybody have any amendments that need to be placed into the record? Ms. Rosalie M. Escobedo has submitted testimony, and that will be entered into the record (Exhibit T). We will close the hearing on A.B. 189.

[A three-minute recess was called.]

I will open the hearing on Assembly Bill 204.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Assemblywoman Ellen Spiegel, Clark County Assembly District 21:
Thank you for having me and for hearing this bill. As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. This bill will not affect me or my association any more than it would any other association in this state. My participation on the board gave me firsthand insight into this issue. That is what led me to introduce this legislation. I am here today to present A.B. 204, which can help stabilize Nevada's real estate market, preserve communities, and help protect our largest assets: our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, whether you live in an urban area or a rural area, the

outcome of this bill will have a direct impact on you and your constituents. Just as a summary, A.B. 204 extends the existing superpriority from six months to two years. There are no fiscal notes on this. In a nutshell, this bill makes it possible for common-interest communities to collect dues that are in arrears for up to two years at the time of foreclosure. This is necessary now because foreclosures are now taking up to two years. At the time the original law was written, they were taking about six months. So, as the time frames moved on, the need has moved up.

Since everyone who buys into a common-interest community clearly understands that there are dues, community budgets have historically been based upon the assumption that nearly all of the regular assessments will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because of all of the dues that are in arrears. Some other communities are reducing services, and then simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize that there are some concerns with this bill, and you will hear about those later this morning directly from those with concerns. I have been having discussions with several of the concerned parties, and I believe that we will be able to work something out to address many of their concerns. In the meantime, I would like to make sure that you have a clear understanding of this bill and what we are trying to achieve.

The objectives are, first and foremost, to help homeowners, banks, and investors maintain their property values; help common-interest communities mitigate the adverse effects of the mortgage/foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls due to fellow community members who did not pay required fees; and, prevent cost-shifting from common-interest communities to local governments.

This bill is vital because our constituents are hurting. Our current economic conditions are bleak, and we must take action to address our state's critical needs. I do not need to tell you that things are not good, but I will. If you look, I have provided you with a map that shows the State of Nevada and, by county, how foreclosures are going (Exhibit U). Clark, Washoe, and Nye Counties are extremely hard hit, with an average of 1 in every 63 housing units in foreclosure. People whose homes are being foreclosed on are not paying their association dues, and all of the rest of the neighbors are facing the effects of that. Clark County is being hit the hardest, and we will look at what is going on in Clark County in a little bit more depth just as an example.

In Clark County, between the second half of 2007 and the second half of 2008, property values declined in all zip codes, except for one really tiny one, which increased by 3 percent. Overall, everywhere else in Clark County, property values declined significantly. The smallest decline was 13 percent, and that was in my zip code. The largest decline was 64 percent. Could you imagine losing 64 percent of the equity of your home in one year? Property values have plummeted, and this sinkhole that we are getting into is being affected because there is increased inventory of housing stock on the market that is due to foreclosures, abandoned homes, and the economic recession. People cannot afford their homes; they are leaving; they are not maintaining them. It is flooding the market, and that is depressing prices. You sometimes have consumers who want to buy homes, but they cannot get mortgages. That keeps homes on the market. There is increased neighborhood blight and there is a decreased ability for communities to provide obligated services. For example, if you have a gated community that has a swimming pool in it (or a nongated community, for that matter), and your association cannot afford to maintain the pool, and someone is coming in and looking at a property in that community, they will say, "Let me get this straight: you want me to buy into this community because it has a pool, except the pool is closed because you cannot afford to maintain the pool; sorry, I am not buying here." That just keeps things on the market and keeps the prices going down, because they are not providing the services; therefore, how do you sell something when you are not delivering?

Unfortunately, we are hearing in the news that help is not on the way for most Nevadans. We have the highest percentage of underwater mortgage holders in the nation. Twenty-eight percent of all Nevadans owe more than 125 percent of their home's value. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes. This is really scary. Unfortunately, President Barack Obama's Homeowner Affordability and Stability Plan restricts financing aid to borrowers whose first mortgage does not exceed 105 percent of the current market values of their homes. There are also provisions that they be covered by Fannie Mae or Freddie Mac. Twenty-eight percent owe more than 125 percent, and cannot get help from the federal government. And for 60 percent of homeowners, the help is just not there. So, we need to be doing something.

What does this mean to the rest of the people who are struggling to hold onto their homes in common-interest communities? Their quality of life is being decreased because there are fewer services provided by the associations. There is increased vandalism and other crime. As I mentioned earlier, there is a potential for increased regular and special assessments to make up for revenue

shortfalls, and then there is the association liability exposure. Let me explain that.

If you have a community that has a pool, and you were selling it as a community with a pool, and all of a sudden you cannot provide the pool, the people who are living there and paying their dues have a legal expectation that they are living in a pool community, and they can sue their community association because the association is not providing the services that the homeowners bought into. That could then cause the communities to further destabilize as they have financial exposure with the possibility of lawsuits because they are not providing services since the dues are not paid.

That all leads to increased instability for communities and further declines in property values. I went to see for myself. What does this really mean? What are we talking about? Through a friend in my association who generously helped send out some surveys, we received responses to this survey from 75 common-interest community managers. Fifty-five of them were in Clark County, 20 of them were in Washoe County. Their answers represented over 77,000 doors in Nevada. That is over 77,000 households, and they all told me the same thing. First of all, not one person was opposed to the bill. They gave me some comments that were very enlightening. They are all having problems collecting money; they all do not want to raise their dues; they do not want to have special assessments; they are cutting back; they are scared.

I want to share some comments with you and enter them into the record. Here is the first one: "Dollars not collected directly impact future assessment rates to compensate for the loss of projected income. Also, there is less operating cash to fund reserves or maintain the common area." That represented 2,001 homes in Las Vegas. Another one: "Our cash reserves are severely underfunded and we have serious landscaping needs." This is 129 homes in Reno that are affected. This one just really scared me: "Increase in bad debt expense over $100,000 per year has frustrated the majority of the owners who are now having to pay for those who are not paying, including the lenders who have foreclosed." That is from the Red Rock Country Club HOA, over 1,100 homes in Las Vegas. This last one: "The impact is that the HOA is cutting all services that are not mandated: water, trash, and other utilities. The impact is that drug dealers are moving into the complex, and homicides are on the rise, and the place looks horrible. Special assessments will not work. Those that are paying will stop paying if they are increased. The current owners are so angry that they are footing the bill for the deadbeat investors that they no longer have any pride or care for their units. I support this bill 100 percent. The assessments are an obligation and should not be reduced." That is from someone who manages several properties in Las Vegas.

I mentioned an additional impact, and that I really believe that this bill will affect everybody in the state, even those who do not live in common-interest communities. Let me explain that. There could be cost shifting to local government. I gave you a couple of examples in the handout: graffiti removal, code enforcement, inspections, use of public pools and parks, and security patrols. Let me use graffiti as an example.

My HOA contracts with a firm to come out and take care of our graffiti problem. We do this, and we pay for this. Clark County also has a graffiti service for homeowners in Clark County. There are about 4,000 homes in our community, and our homeowners are told, "If you see graffiti, here is the number you call. It is the management company. They send out American Graffiti, who is the provider we use, and they have the graffiti cleaned up." If an association like mine all of a sudden says, Well, you know, we do not have the money to pay our bills and do other things. We could cut out the graffiti company and we could just say to our homeowners, 'You know what, the number has changed.' So instead of calling the management company, you now call Clark County. There is a cost shift. There is a limited number of resources available in Clark County, and that will have to be spread even thinner.

It goes on into other things too. You have the pools that are closed. The people are now going to send their kids to the public pools, again, taking up more of the county resources and spreading it out thinner and thinner. There are community associations that are now, because of their cash flow problems, having to pay their vendors late. Many of their vendors are small local businesses. They are being severely impacted because the reduced cash flow is having a ripple effect on their ability to employ people.

Chairman Anderson:
Let us go back to the graffiti removal question. I understand the use of pools and parks. Are you under the impression that the HOA and common-interest community would allow the city to go and do that?

Assemblywoman Spiegel:
It is my opinion, and from what I have heard from property managers, especially that big long quote that I read, that people are cutting back on everything and anything that they deem as nonessential.

Chairman Anderson:
That is not the question. The question deals specifically with graffiti removal and security. Patrols by the police officers are usually not acceptable in gated communities and other common-interest communities. This would be a rather

dramatic change, and it would probably change the city's view of their relationship with, or their tolerance of, some common-interest communities.

Assemblywoman Spiegel:
Mr. Chairman, one thing I can tell you is that my community, Green Valley Ranch, last year had our own private security company who would patrol our several miles of walking trails and paths. We have since externalized our costs and now the city of Henderson is patrolling those at night instead of our private service.

Chairman Anderson:
So, for your common-interest community, you have moved the burden over to the taxpayers and the city as a whole.

Assemblywoman Spiegel:
Yes, but our homeowners are also taxpayers of the city.

Chairman Anderson:
Of course, they choose to live in such a gated complex.

Assemblywoman Spiegel:
It is not gated. Parts of the community are, and some parts are not. Overall, the master association is not a gated area.

Chairman Anderson:
You allow the public to walk on those same paths?

Assemblywoman Spiegel:
Yes. They are open to all city residents, and non-city residents.

Chairman Anderson:
Okay. Are there any questions for Ms. Spiegel on the bill?

Assemblyman Segerblom:
Is it your experience that the lender will pay the association fees when the property is in default, or will they let it go to lien and then the association fees are paid when the property is sold?

Assemblywoman Spiegel:
My experience has been that, in many instances the fees are just not being paid. The lenders are not paying the fees. There may be some exceptions, but as a general rule they are not.

Alan Crandall, Senior Vice President, Community Association Bank, Bothell, Washington:

We have approximately 25,000 communities here in the State of Nevada. I am honored to speak today. I am a resident of Washington state. The area I want to specialize in my discussion is with loans for capital repair. We are the nation's leading provider of financing of community associations to make capital repairs such as roofs, decks, siding, retaining walls, and large items that the communities, for health and safety issues, have to maintain. Today, in Nevada, we are seeing associations with 25 to 35 percent delinquency rate. We are unable to make loans for these communities because we tie these loans to the cash flow of the association. If there is no cash flow coming in to support their operations, we cannot give them a loan. We do loans anywhere from $50,000, and we just approved one today for $17 million, so there are some communities out there with some severe problems that need assistance.

Now you may ask, why do we care about the loan? The loan is important in that it empowers the board to offer an option to the homeowners. Some of you may live in a community, and some of you may have children or parents who live in one. Because of a financial requirement for maintaining the property—the roof, the decks that may be collapsing, or a retaining wall that may be falling—they have to special assess because they do not have the money in their reserves. It was unforeseen, or they have not had the time to accumulate the money for whatever reason. These loans allow the association to provide the option to the homeowner to pay over time because, in effect, the board borrows the money from the bank, which is typically set up as a line of credit; they borrow the portion that they need for those members who do not have the ability to pay lump sum. So, whether that is $5,000, $10,000, $40,000, or $50,000, or my personal record which is $90,000 per unit, due in 60 days, it is a major financial hardship on homeowners. The typical association, based upon my experience of 18 years in this industry, is comprised of one-third of first time home buyers who may have had to borrow money from mom and dad to make the down payment, and who have small children for whom they are paying off their credit cards for next Christmas. Another one-third is comprised of retirees on a fixed income. Neither of those two groups, which typically make up two-thirds of an average community, are in a position to pay a large chunk of money in a very short period of time. The board cannot sign contracts in order to do the work unless they are 100 percent sure they can pay for the work when it is done. That is where the loan assists.

I urge your support of this bill. It will give us the abiilty to have some cash flow and guarantees that there will be some extended cash flows in these difficult times, and make it easier for those banks, like ours, who provide this special

type of financing that helps people keep their homes, to continue to do so. Thank you.

Bill DiBenedetto, Private Citizen, Las Vegas, Nevada:
I moved to Nevada in 1975 when I was 11 years old. The first time I was here was in 1982 as a delegate to Boys State. If you told me at that time that I would be testifying, I would have said, No way, you have got to know what you are talking about. Well, I was up here at an event honoring the veterans, and I saw this bill. I serve as the secretary-treasurer of my HOA, Tuscany, in Henderson, Nevada. The reason I became a board member was I revolted against the developer's interests in raising our dues. You see, we were founded in 2004, and we are at 700 homes out of 2,000, which means we are under direct control of our declarant, Rhodes Homes. We are at their mercy if they want to give us a special assessment or raise our dues. The reason I am here today is I also serve as secretary-treasurer. I am testifying as a homeowner, not as a member of the board. As of last year, our accounts receivable were over $200,000, which represented 13 percent of our annual revenue. Out of our 600 homeowners, 94 percent went to collections. Out of those, there were eight banks. When a bank takes over a home, they turn off the water; the landscaping dies; our values go down. We need these two years of back dues. Anything less, I believe, would be a bailout for the banks that took a risk, just like the homeowners. When it comes right down to it, out of the 700 homes that we have, we have to fund a $6.2 million reserve. Why? Because the developer continued to build a recreation center, greenways, and other amenities. So, our budget is $1.6 million. We have $200,000 in receivables. We receive 90-day notices from our utility companies. We can barely keep the lights and the water on. Our reserve fund, by law, is supposed to be funded, but we cannot because we have to pay the utility bills. I moved into that community because it was unique; We have rallied the 700 homes. We are not looking for a handout, but we are looking for what is right. When the bank took over the homes, they assumed the contracts that were made: to pay the dues, the $145 a month. I have banks that are 15 months past due, 10 months past due, 12 months past due. Thank you for listening to me.

Assemblyman Segerblom:
In regards to the banks owning these properties, at least under current law, what they owe for six months would be a super lien which you would collect when the property is sold. Have you been able to collect on those super liens?

Bill DiBenedetto:
Yes, we have.

Assemblyman Segerblom:
Is it your experience that the banks never pay without this super lien?

Bill DiBenedetto:
The banks never pay until the home is sold.

Assemblyman Segerblom:
Now, they are just paying for only six months?

Bill DiBenedetto:
They are paying for six months, and we are losing money that should be going into our reserve fund.

Chairman Anderson:
Does the bank not maintain an insurance policy on the property as the holder of the initial deed of trust?

Bill DiBenedetto:
I do not know. I would assume they would have to have some kind of liability insurance with the property.

Assemblyman Cobb:
When the banks foreclose, do they not take the position of the owner in terms of the covenants?

Bill DiBenedetto:
They do.

Assemblyman Cobb:
Do they have to start paying dues?

Bill DiBenedetto:
They have to start paying dues, and they have to abide by the covenants, which includes keeping their landscaping living.

Assemblyman Cobb:
How are they turning off the water and destroying the property?

Bill DiBenedetto:
They just shut off the water at the property.

Assemblyman Cobb:
And you do not do anything to try to force them to abide by the covenants?

Bill DiBenedetto:
There is nothing that we can do, unless we want to absorb legal costs by taking them to court. We cannot afford that. We have called them; we have begged them; there is just no response.

Assemblyman Cobb:
You cannot recover those legal costs if you do take them to court?

Bill DiBenedetto:
I have not pursued that any further with my board or the attorneys. Thank you.

Chairman Anderson:
Thank you, sir.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada:
I have emailed a prepared statement to members of the Committee (Exhibit V). I do not want to belabor the point. There is a statutory obligation of HOAs to maintain their common areas and to maintain the reserve accounts for their HOAs. I also believe that there is a direct impact on homeowners when there is only a six month ability for the HOA to collect because we have to be much more aggressive in our collection process. If that time frame was to be increased, we would be more willing to work with homeowners. Recently, our board at Caughlin Ranch changed our collection policy to be much more aggressive and to start the lien process much more quickly than we had in the past, which eventually leads to a foreclosure process. I think that has a direct impact upon our homeowners.

Chairman Anderson:
Mr. Trudell, you have been associated with this as long as I can recall, and you have been appearing in front of the Judiciary Committee. In dealings with the banks, have there been these kinds of problems in the past with your properties and others that you have been with?

Michael Trudell:
Yes, sir. Mr. Chairman, in the past, banks were much more receptive in working with us to pay the assessments and to get a realtor involved in the property to represent the property for sale.

Chairman Anderson:
Since the HOA traditionally looks out to make sure that everyone is doing the right thing, when there is a vacant property there, you probably become a little bit more mindful of it than you would in a normal community. Do you think that

this is the phenomenon right now because of the current economic situation? By extending this time period, are we going to be establishing an unusual burden, or changing the responsibility of the burden in some unusual way? In other words, should it have originally been this longer period of time? Why should there be any limit to it at all?

Michael Trudell:
From the association's standpoint, no limit would be better for the HOA, because each property is given its pro rata share of the annual budget. When we are unable to collect those assessments, then the burden falls on the other members of the HOA. As far as the current condition, banks in many instances are not taking possession of the property, so the property sits in limbo. There is a foreclosure, and then there is no property owner, at least in the situations that I have dealt with in Caughlin Ranch. We have had much fewer incidences of foreclosure than most HOAs.

Chairman Anderson:
Thank you very much. Let us turn to the folks in the south.

Lisa Kim, representing the Nevada Association of Realtors, Las Vegas, Nevada:
The Nevada Association of Realtors (NVAR) stands in support of A.B. 204. Property owners within common-interest community associations are suffering increases in association dues to cover unpaid assessments that are uncollectable because they are outside of the 6-month superpriority lien period. Many times, these property owners are hanging on by a thread in making their mortgage payment and association dues payment. I talk to people everyday that are nearing default on their obligations. By increasing the more-easily collectable assessments amount, the community associations are going to be able to keep costs down for the remaining residents. Thank you.

Chairman Anderson:
Thank you.

John Radocha, Private Citizen, Las Vegas, Nevada:
I cannot find anywhere in this bill, or in NRS Chapter 116, where a person, who has an assessment against him or her, has the right to go to the management company and obtain documents to prove retaliation and selective enforcement that was used to initiate an assessment. If they come by and accuse me of having four-inch weeds, and my next door neighbor has weeds even taller, and they are dead, that is selective enforcement. I think something should be put into this bill where I, as an individual, have the right to go to the management company and demand documentation. That way, when a case comes up, a person can be prepared. This should be in the bill someplace.

Chairman Anderson:
We will take a look and see if that is in another section of the NRS. It may well be covered in some other spot, sir.

John Radocha:
On section 1, number 5, I was wondering, could not that be changed to "a lien for unpaid assessments or assessments is extinguished unless proceedings to enforce the lien or assessments instituted within 3 years after the full amount of the assessments becomes due"?

Chairman Anderson:
The use of the words "and" and "or" are usually reserved to the staff in the legal division. They make sure the little words do not have any unintended consequences. But, we will take your comments under suggestion.

Michael Buckley, Commissioner, Las Vegas, Commission for Common-Interest Communities Commission, Real Estate Division, Department of Business and Industry; Real Property Division, State Bar of Nevada:
We are neutral on the policy, but we wanted to point out that one of the requirements for Fannie Mae on condominiums is that the superpriority not be more than six months. Just for your education, the six month priority came from the Uniform Common-Interest Ownership Act back in 1982. It was a novel idea at the time. It was met with some resistance by lenders who make loans to homeowners to buy units. It was generally accepted. We are pointing out that we would want to make sure that this bill would not affect the ability of homeowners to be able to buy units because lenders did not think that our statutory scheme complied with Fannie Mae requirements.

My second point is that there was an amendment to the Uniform Common-Interest Ownership Act in 2008. It does add to the priority of the association's cost of collection and attorney's fees. We did think that this would be a good idea. There is some question now whether the association can recover its costs and attorney's fees as part of the six-month priority. We think this amendment would allow that and it would allow additional monies to come to the association.

Chairman Anderson:
Are there any questions for Mr. Buckley who works in this area on a regular basis?

Assemblyman Segerblom:
I was not clear on what you were saying. Are you saying that this law would be helpful for providing attorney's fees to collect the period after six months?

Michael Buckley:
What I am saying is that, with the existing law, there is a difference of opinion whether the six-months priority can include the association's costs. The proposal that we sent to the sponsor and that was adopted by the 2008 uniform commissioners would clarify that the association can recover, as part of the priority, their costs in attorney's fees. Right now, there is a question whether they can or not.

Assemblyman Segerblom:
So, you are saying we should put that amendment in this bill?

Michael Buckley:
Yes, sir. This was part of a written letter provided by Karen Dennison on behalf of our section.

Chairman Anderson:
We will make sure it is entered into the record (Exhibit W).

Assemblywoman Spiegel:
I have received the Holland & Hart materials on March 4, 2009 at 2:05 p.m. They were hand delivered to my office. I am happy to work with Mr. Buckley and Ms. Dennison on amendments, especially writing out the condominium association so that they are not impacted by the Fannie Mae/Freddie Mac provisions.

David Stone, President, Nevada Association Services, Las Vegas, Nevada:
All of my collection work is for community associations throughout the state, so I am extremely familiar with this issue. Last week, I had the pleasure of meeting with Assemblywoman Spiegel in Carson City to discuss her bill and her concerns about the prolonged unpaid assessments (Exhibit X).

Chairman Anderson:
Sir, we have been called to the floor by the Speaker, and I do not want them to send the guards up to get us. I have your writing, which will be submitted for the record. Is there anything you need to quickly get into the record?

David Stone:
The handout is a requirement for a collection policy, which I think would affect and help minimize the problem that Assemblywoman Spiegel is having. I submitted a friendly amendment to cut down on that. I see that associations with collection policies have lower delinquent assessment rates over the prolonged period, and I think that would be an effective way to solve this problem. Thank you.

Chairman Anderson:
Neither Robert's Rules of Order, nor Mason's Manual, which is the document we use, recognizes any kind of amendment as friendly. They are always an impediment. Thank you, sir, for your writing. If there are any other written documents that have not yet been given to the secretary, please do so now.

Wayne M. Pressel, Private Citizen, Minden, Nevada:
Myself and two witnesses would like to speak against A.B. 204. I realize that this may not be the opportunity to do so, I just want to make sure that we are on the record that we do have some opposition, and we would like to articulate that opposition at some later time to the Judiciary Committee.

Chairman Anderson:
There will probably not be another hearing on the bill, given the restraints of the 120-day session. The next time we will see this bill is if it gets to a work session, at which time there is no public testimony. I would suggest that you put your comments in writing, and we will leave the record open so that you can have them submitted as such. With that, we are adjourned.

[Meeting adjourned at 11:20 a.m.]

RESPECTFULLY SUBMITTED:

_____
Robert Gonzalez
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 6, 2009 Time of Meeting: 8:12 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 182	C	Jennifer Chisel, Committee Policy Analyst	Federal Register, list of explosive materials
A.B. 207	D	Assemblyman John C. Carpenter	Prepared testimony introducing A.B. 207.
A.B. 207	E	Assemblyman Carpenter	Suggested amendment to A.B. 207.
A.B. 207	F	Robert Robey	Suggested amendment to A.B. 207.
A.B. 189	G	Assemblyman Joseph Hogan	Prepared testimony introducing A.B. 189.
A.B. 189	H	Assemblyman Joseph Hogan	Chart comparing the various eviction processes of various states.
A.B. 189	I	Assemblyman Joseph Hogan	Flow chart of the California eviction process.
A.B. 189	J	Jon L. Sasser	Prepared testimony supporting A.B. 189.
A.B. 189	K	Rhea Gerkten	Prepared testimony supporting A.B. 189.
A.B. 189	L	James T. Endres	Suggested amendment to A.B. 189.
A.B. 189	M	Charles "Tony" Chinnici	Prepared testimony against A.B. 189.
A.B. 189	N	Jennifer Chandler	Prepared testimony against A.B. 189.
A.B. 189	O	Jeffery G. Chandler	Prepared testimony against A.B. 189.
A.B. 189	P	Kellie Fox	Prepared testimony opposing the change in section 2 of A.B. 189.
A.B. 189	Q	Bret Holmes	Prepared testimony against A.B. 189.
A.B. 189	R	Charles Kitchen	Prepared testimony against A.B. 189.

Nick Anthony, Committee Counsel:
His bill limited the fees and the amount of interest that could be collected. This bill limits the extra costs that may be incurred in collecting a past-due obligation.

Assemblywoman Spiegel:
For example, if a common-interest community association charges a fine, it is not paid, and there is a collection effort to go after the fine, in addition to seeking to collect the penalty for the violation, there would be interest and a collection fee. This amendment would limit the collection fee. My understanding is that Assemblyman Munford's bill limited what the penalty itself could be and the interest rate.

This bill also encompasses regular assessments, what are called HOA dues. They are the general assessments that are due periodically to maintain the operating accounts and balances of the associations and to fund their reserve accounts.

Chair Segerblom:
After the last hearing on this bill, there were questions about whether your extension of the look-back for homeowners' association (HOA) liens to two years would violate Federal Housing Administration (FHA) or Fannie Mae or Freddie Mac regulations. Did you look into that?

Assemblywoman Spiegel:
I believe the bill said to the extent it was not an issue with federal law. If that is not the case, I will put in another amendment if necessary.

Chair Segerblom:
Mr. Uffelman is here, so he will probably give us some language on that.

Assemblywoman Spiegel:
This is something that will help preserve communities.

Chair Segerblom:
I think the intent is fantastic.

Assemblyman Kihuen:
I want to commend you for bringing this bill. Some of these issues came up on the first bill, so I am glad to see this bill.

Chair Segerblom:
Is there anyone here in support?

Neena Laxalt, Elko, Nevada, representing Nevada Association Services, Inc., Las Vegas, Nevada:
David Stone, the president of Nevada Association Services, and I have worked with Assemblywoman Spiegel, and we came up with a friendly amendment that we proposed in the original hearing (Exhibit O). It puts in place a policy for collections for homeowners' associations. We believe that if homeowners' associations actually have policies in place, then perhaps these collections would not take beyond six months.

Chair Segerblom:
So you are adding a subsection (c)? Would that impact the amendment submitted by Speaker Buckley? It seems like it is a different issue.

Assemblywoman Spiegel:
Ms. Laxalt's amendment requires common-interest communities to develop a collections policy and to provide that disclosure to the homeowners. By doing that, it makes it more fair and transparent for everyone and offers additional consumer protection because the homeowners know what their obligations are and they understand the ramifications of their actions. Conversely, it also helps the associations by clearly delineating in the policy the time frames of what would happen and when, which could accelerate the collection process and not have as large of a fiscal impact on the homeowners or the associations.

Neena Laxalt:
We just had a quick look at Speaker Buckley's amendment, and I am sure that my client would have some concerns. We would be happy to speak with the Speaker about our concerns.

Chair Segerblom:
We will not be taking any action today on this bill.

Michael Schulman, Las Vegas, Nevada, representing various homeowners' associations throughout Nevada:
I support this bill because I think it is a good bill. Also the Assemblywoman sits on one of my boards in Henderson, and this will be very beneficial. I have two comments. The amendment that has been offered by Speaker Buckley may conflict or may need to be resolved with NRS 116.31031, which already limits the collection cost in regard to fines.

Chair Segerblom:
The amendment deletes that section and replaces it.

Michael Schulman:
Okay.

I think Michael Buckley, the Chairman of the Commission, wrote to you to state that the FHA does not have rules against this particular type of statute. They have concerns about it because it will affect them, but I do not think their loans are precluded because of it.

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:
One of the things that is good about extending the time frame from six months to two years would be that it would allow an association to slow the collections process down. If a homeowner gets behind in his assessments and the association knows it has a two-year comfort level, it will allow the association to not race out and hire a lawyer and start the collection process.

Assemblywoman Spiegel:
I just needed to disclose that I am on the board of the Green Valley Ranch Community Association in Henderson, Nevada. This bill will not affect my association any more or less than any other.

Chair Segerblom:
Is there anyone who would like to speak against the bill?

Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas, Nevada:
When the bill was first heard in Committee, I submitted a document from the Summerlin North Homeowner Association (Exhibit P), which was amended to change the forbearance time from six months to three months. I think that an aggressive collections policy by an association is the answer to the problem the Assemblywoman is trying to solve.

The policy provides that the association can pursue on a contract theory as well as the normal course of foreclosure. The policy also provides that the association can work out with the homeowner their failure to pay in a timely fashion. It is the collections policy that makes these things work.

I am supportive of the amendment offered by Ms. Laxalt. I would point out that while Assemblywoman Buckley's amendment strikes existing law and moves it to a new section, it increases the lowest level of cost to $50 and the second level to $75, whereas existing law provides for $20 and $50 in those two categories. I am not sure where the reduction is, unless it is an overall reduction in cost.

The letter submitted (Exhibit Q) provided the policy of Fannie Mae, which will not buy a mortgage on a condominium with more than six months of past due assessments. We took a small survey. Other lenders, while they do not have established policies, said the bill if passed will have a negative impact on lending in Nevada. Again, on behalf of the bankers, the answer to the problem the Assemblywoman is trying to address is an aggressive collection policy by the homeowners' association.

Chair Segerblom:
Will Assemblywoman Spiegel's two-year provision prevent some federal mortgages or not?

Bill Uffelman:
It would certainly run afoul of Fannie Mae with regard to condominiums or attached dwellings. They have specifically said they will not buy those kinds of mortgages for the secondary market.

Chair Segerblom:
Do you have any proposed language which would carve out Fannie Mae?

Bill Uffelman:
My proposed amendment would be to eliminate that section of the bill and change the two years back to six months. I had understood that the Assemblywoman was going to exclude condominiums and attached dwellings from these provisions, which would be the kind of amendment you would want to include.

Chair Segerblom:
What percentage of mortgages are Fannie Mae? Pretty high? Would it also include Veterans Administration (VA) loans?

Bill Uffelman:
Yes, it is pretty high. I did not ask a VA lender. So you understand, the latter pages of the letter (Exhibit P) are the guidelines that that lender is publishing for the benefit of mortgage brokers and anyone who is making loans.

Chair Segerblom:
What percentage of homeowners' associations are condominiums?

Bill Uffelman:
In Nevada, I do not know.

Assemblyman Hambrick:
Not only do condominiums have their own HOAs, I also live in Summerlin North and there are condominiums within an HOA. They can be members of other groups.

Bill Uffelman:
A condominium by its very nature would have to have a homeowners' association because of the common areas within it. So yes, there are a lot of condominium associations that are sub-associations of Summerlin, for example. There are a lot of properties in Summerlin that would be affected by this provision.

Assemblywoman Spiegel:
Condominiums represent about 20 percent of associations. I am willing to go through any language or any proposed amendment from Mr. Uffelman.

Chair Segerblom:
It sounds like it would be worth it. Would you be willing to do that Mr. Uffelman?

Bill Uffelman:
I would be happy to give her language on that, but we would still be opposed to the bill.

Erin McMullen, representing Bank of America, Las Vegas, Nevada:
We just want to go on record in opposition to this bill because we believe that it penalizes banks for trying to work with individuals and not foreclosing sooner.

Assemblywoman Spiegel:
I think this would be an important bill in terms of what it means for our values and our state's real estate values and what it means to our homeowners and our communities. I would like to see our communities being kept strong. I am willing to work with everyone because I think this bill is important.

Chair Segerblom:
I will close the hearing on A.B. 204. We will take a short recess.

I will open the hearing on Assembly Bill 207.

Assembly Bill 207: Makes various changes concerning common-interest communities. (BDR 10-694)

Assemblyman Segerblom:
Yes, I thought that was a valid point. Since insurance cannot be purchased for punitive damages, and because, for the most part, these are volunteer boards, I think it is inappropriate at this time to have a director subject to punitive damages.

Chairman Anderson:
There were also issues brought forth by Mr. Gordon, representing the Olympia Group. I would suggest that, if he wants, he can raise them again in the Senate. We will probably see this bill again in conference.

I would entertain a motion to amend and do pass Assembly Bill 350 with the amendments suggested in mock-up number 3895, which Legal carefully reviewed yesterday and the deletion of the provision for punitive damages.

> ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 350 AS STATED.
>
> ASSEMBLYMAN KIHUEN SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

We will not have to consider Assembly Bill 108. [The bill was incorporated into Assembly Bill 350.]

Assemblyman Segerblom:
Assembly Bill 204, Assembly Bill 207, Assembly Bill 251, Assembly Bill 311, and Assembly Bill 361 were all unanimously approved as amended by the Subcommittee.

Chairman Anderson:
Do they each have an amendment?

Assemblyman Segerblom:
Yes.

Chairman Anderson:
We will take up Assembly Bill 204. We were briefed on all of these yesterday.

Assembly Bill 204: Revises provisions relating to the priority of certain liens against units in common-interest communities. (BDR 10-920)

Nicolas Anthony, Committee Counsel:
Assembly Bill 204 has two amendments attached. One is to address a potential conflict with Fannie Mae lending provisions and the other is about collection policies [pages 48-49 of Exhibit E].

Chairman Anderson:
I will entertain an amend and do pass motion on the recommendation of the Subcommittee.

ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 204.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman Cobb:
I think that two years is an extraordinary amount of time to have a look-back, especially when we are trying to clear these houses out of inventory and drop as many barriers as possible to getting them into the hands of new owners. What concerned me about some of the testimony we heard on this bill was that some homeowners' associations said that they cannot extract any kind of dues, fines, fees, or assessments from banks; they cannot even get them to mow the lawns.

We heard testimony on a separate bill that the bank is in the same position as any other owner. There is a process to move against them to collect, so there does not need to be all the lawyers' fees and everything else that will be piled on. One of my constituents said he was trying to buy homes to reduce the inventory and get the economy going again, and he was handed an invoice for $4,000 from a homeowners' association with $16-a-month dues. So it was not the dues, it was the attorney's fees and everything else that was added on. I think six months should be enough.

Chairman Anderson:
Homeowners' associations have been dealing with the problem for some time, and they would like to abrogate it so that the expenses they have been carrying are passed to the new owner as part of closing.

Assemblyman Segerblom:
Another issue was that this bill was supposed to put a fire under the banks' feet because, right now, they just let the property go knowing that after six months they are no longer obligated for these fees. This will hopefully encourage the banks to get the properties up and running and try to sell them.

Assemblyman McArthur:
I do think 24 months is far too long, but I will vote yes to get this bill out of Committee. I reserve my right to change my vote later.

THE MOTION PASSED. (ASSEMBLYMAN COBB VOTED NO. ASSEMBLYMAN McARTHUR RESERVED THE RIGHT TO CHANGE HIS VOTE ON THE FLOOR.)

Let us turn to Assembly Bill 207, Assemblyman Carpenter's bill. The recommendation from the subcommittee was an amend and do pass.

Assembly Bill 207: **Makes various changes concerning common-interest communities. (BDR 10-694)**

ASSEMBLYMAN MANENDO MOVED TO AMEND AND DO PASS ASSEMBLY BILL 207.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Let us turn to Assembly Bill 251. Again, the Subcommittee voted unanimously to recommend an amend and do pass to the full Committee.

Assembly Bill 251: **Revises provisions relating to common-interest communities. (BDR 10-555)**

Nicolas Anthony, Committee Counsel:
There is a mock-up prepared [page 52 of Exhibit E], which clarifies that if an election is held and there is a member running without opposition, then the board does not have to send out ballots. It can just elect the person.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 251.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Let us turn to Assembly Bill 311, Assemblyman Settelmeyer's bill.

Assembly Bill 311: **Revises provisions governing the financial statements of common-interest communities. (BDR 10-389)**

GARY E. MILLIKEN (Community Associations Institute):
I agree with everything Ms. Gallo and Ms. Stokey said. The bottom of page 2 of the bill, the very last sentence says, "... owns the vehicle for the purpose of responding to requests for public utility services ... ." Do we need to add the words "first responder" or "emergency" in that situation?

CHAIR CARE:
I will close the hearing on A.B. 129 and open the hearing on A.B. 204.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. My participation on the Board gave me insight into this issue. I learned about some of these issues as I was going door-to-door speaking with constituents, and I did more research.

I am here to present A.B. 204, which can help stabilize Nevada's real estate market, preserve our communities and help protect our largest assets—our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, and whether you live in an urban or rural area, the outcome of this bill will have an impact on you and your constituents.

In a nutshell, this bill does two things. First, it requires common-interest communities to implement and publicize their collection policies. This will increase the likelihood that associations will be able to collect their assessments or dues prior to foreclosures. Second, it makes it possible for common-interest communities to collect dues in arrears for up to two years at the time of foreclosure. This is necessary because foreclosures are now taking up to two years.

Everyone who buys into a common-interest community understands there are dues. Community budgets have historically been based on the assumption that nearly all of the regular assessments or dues will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because they are not receiving the revenues owed to them. Others

are reducing their services and maybe simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize there are some who are opposed to this bill, and you will hear from them later this morning. The objectives of the bill are to help homeowners, banks and investors maintain their property values; help common-interest communities mitigate the adverse effect of the mortgage foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls because fellow community members did not pay their required fees; and prevent cost shifting from common-interest communities to local governments. This bill is vital because our constituents are hurting. Our economic condition is bleak, and we must take action to address our State's critical needs.

Statewide, our individual property values continue to decline. Our urban areas are being hit the hardest. Everywhere in Nevada, we are having foreclosure problems. Clark County is the hardest hit. Between the second half of 2007 and the second half of 2008, property values declined in all zip codes in the Las Vegas Valley, except for one. The smallest decline was 13 percent, and the largest decline was 64 percent.

Our property values are being depressed because of a few factors. The increased inventory of housing due to foreclosures, abandoned homes and economic recession bring the pricing down. Consumer inability to acquire mortgages, increased neighborhood blight and the decreased ability of communities to provide obligated services also bring prices down. No one wants to buy into a blighted community unless it is at a bargain-basement price.

We all hoped the stimulus package would help, but help is not on the way for most Nevadans. We have the highest percentage of underwater mortgages in the nation. Twenty-eight percent of Nevadans owe more than 125 percent of their mortgage value, so they are not qualified for federal help. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes.

What does this mean for homeowners in common-interest communities? There is decreased quality of life because there are fewer services provided by the associations. There is also increased vandalism and other crime. There is the potential for increased regular and special assessments to make up for revenue shortfalls. As a corollary to that, associations have liability exposure because, if

they say they are providing certain services, people may have bought in because of those services. If those services are not being provided, the association has liability for that. There is increased instability for communities and further declines in property values. Nevada Revised Statute 116.3107 requires associations to maintain, repair and replace the common elements. If the money is not there, it has to come from somewhere. Associations stop providing services or impose special assessments.

I conducted a survey and received responses from community association managers statewide. My responses covered 77,020 doors. Seventy-five common-interest communities responded—55 responded in Clark County and 20 in Washoe County. No one was opposed to the bill. I provided you with a summary of my testimony (Exhibit F, original is on file in the Research Library). The comments I received from the survey were enlightening, Exhibit F, pages 10 through 12.

Cost shifting is going on for some services. The costs are being shifted to local governments. For example, in my community, we have a company that does graffiti removal. Clark County also provides graffiti-removal services. If we needed to cut our budget for lack of funds, we could theoretically advise the homeowners to call Clark County, and they will come and take care of it. This cost would shift to the local government.

Code enforcement would be similar. If we have to cut back on inspections, local governments would have to take on those roles. The use of public pools and parks will increase because, if the communities are not able to maintain their pools, people will then go to the public pools and parks.

I was questioned about security patrols. My community experienced an increase in vandalism and problems along our walking paths. We could not afford to beef up our private security patrols. So, we turned to the City of Henderson. My community is open and ungated. The City of Henderson has increased patrols in my community. There is cost shifting going on because we cannot afford to hire the private companies we have traditionally relied on.

Another potential impact is when communities are having cash-flow issues and make late payments to local vendors—gardeners or small businesses that provide support services. This further contributes to the downfall of the area.

There are a few proposed amendments out there. You have received two of them by e-mail or regular mail. I put an amendment together that encapsulates one of the amendments and has some additional language (Exhibit G). My amendment does two things. The bill has excluded certain types of units because of Fannie Mae and Freddie Mac requirements. At the time, we thought the easiest way to do that would be to limit it to single-family homes. That excluded lots that have been purchased but not developed and other things that should be covered. We have made the language generic so those would be included where permissible.

There are some condominiums and attached townhomes on properties that were excluded in the version of the bill you have, and they do not fall under Fannie Mae and Freddie Mac requirements and provisions. Those should be included as well.

The other component of this amendment is that, if Fannie Mae and Freddie Mac requirements were to change so properties could be covered under them or the super priority could be extended under them, no additional legislation would be needed.

The Bankers Association has an amendment (Exhibit H). I do not support that amendment because it takes away from the intent of helping communities recover funds and make themselves whole so they can provide the services they need to provide.

I urge your support. Assembly Bill 204 supports Nevada communities and is vital for our recovery. It stabilizes communities; it will mitigate further declines in property values and local businesses; and it will help homeowners, families, banks and other investors.

CHAIR CARE:
We have two proposed amendments, one from Sandra Duncan (Exhibit I) and one from the Bankers Association, Exhibit H. Your mock-up, Exhibit G, would relate to all real property within the association, correct? Initially, it was the detached family dwelling.

ASSEMBLYWOMAN SPIEGEL:
Initially, it was all property. Then, we limited it to single-family dwellings in consideration of Fannie Mae and Freddie Mac because condominiums,

townhomes and other attached dwellings could not be included or they would not underwrite the mortgages. We thought that was acceptable because they underwrite approximately 80 percent of all mortgages. We did not want to create more problems for homeowners. However, we excluded lots such as Mrs. Duncan was concerned about.

CHAIR CARE:
The way your amendment, Exhibit G, is drafted, it says, "... unless the federal regulations ... ," Exhibit G, page 2, line 15. It goes on to say, "... If the federal regulations ... ." There are already federal regulations. Is this in anticipation of federal regulations being adopted?

ASSEMBLYWOMAN SPIEGEL:
I understand there are regulations or requirements that say for loans Fannie Mae and Freddie Mac underwrite, there is no more than a six-month super priority associated with that. The second part of the language says, if they were to change their regulations to whatever period they would designate, that would apply here as well.

CHAIR CARE:
Apparently, discussions like that are taking place in Washington, D.C.?

ASSEMBLYWOMAN SPIEGEL:
They are either taking place or are imminent.

CHAIR CARE:
If they were adopted, I do not know if we need the language.

SENATOR PARKS:
Detaching condominiums and townhouses is a problem for me and a number of my constituents. Something has to be in this bill addressing their issues. The existing language appears to include single-family, condominiums and townhouses, whereas the revised language appears to me to only include single-family detached dwellings.

ASSEMBLYWOMAN SPIEGEL:
The original version of the bill did include townhomes and condominiums. The amended version to address the Fannie Mae and Freddie Mac issue was limited to single-family homes. My amendment, Exhibit G, would extend it to

condominiums, townhomes and other types of property wherever possible because Fannie Mae and Freddie Mac's federal regulations take precedence over Nevada law.

CHAIR CARE:
Section 1 of the bill, page 3, line 24 through 27, says the executive board will make the policy established available to each unit's owner. Does that mean it is available upon request, or is there a requirement contemplated here that policy would be given to the unit owners as a matter of course?

ASSEMBLYWOMAN SPIEGEL:
Under NRS 116, the boards are required to mail the budget to each homeowner within their association for approval and ratification of the budget. This provision would require the collections policy to be included in that packet.

SANDRA DUNCAN (Airpark Estates Homeowners' Association):
I had submitted a proposed amendment, Exhibit I. However, the language in Assemblywoman Spiegel's amendment, Exhibit G, is better than what I had suggested. I am in favor of her bill. We have at least one homeowner who is seriously delinquent. The process of foreclosure is taking considerably longer than the six months. This extension of the super-priority lien would help avoid other homeowners having to make up for the amount of money we are losing. Even though we are small, our association has a collections policy. We mail that out annually to our homeowners. If you pass Assemblywoman Spiegel's amendment, Exhibit G, I will withdraw my amendment.

JOSH GRIFFIN (American Nevada Company):
We support this bill and Assemblywoman Spiegel's amendment. American Nevada Company has built and developed the two largest condominium projects in that section of Green Valley in Assembly District No. 21.

Ms. ROCK:
Olympia Group supports this bill. It is valuable. The lack of the ability to collect assessments puts a burden on government agencies. Southern Highlands, which is our largest master-planned community, is located in the southwest area of Las Vegas. The Las Vegas Metropolitan Police Department (Metro), Southwest Area Command services that area. On any shift, they generally have between 11 and 16 vehicles on the road. They cover 250,000 rooftops. That is approximately one Metro vehicle to 20,000 homes. We have 7,000 homes in

Southern Highlands and 4 security vehicles. That is 1 security vehicle for every 1,700 homes. On a daily basis, when calls come into Metro, they call our security force to be a first response for backup if there are vehicular accidents. Master-planned communities provide vital services that take the burden off law enforcement agencies. But it is a nonessential service and is something considered to be cut when there is a lack of funds.

MICHAEL TRUDELL (Caughlin Ranch Homeowners' Association):
We support this bill. I had some concerns about the amendment approved on the other side because, as a manager, we have to interpret these provisions, and we disagree with title companies or Realtors regarding our interpretation. This amendment, Exhibit G, clarifies the intent of the bill and the provisions that would exclude those houses from the two-year super-priority lien to the six-month in a way that satisfies our concerns.

MIKE RANDOLPH (Homeowner Association Services):
I am in favor of this bill. I am glad to see the requirement to send the collection policy annually. It should also be sent with all welcome packages and resale packages.

Condominium and townhouse associations have a high foreclosure rate. The costs not paid during the super-priority lien raises fees to other members who are struggling to stay in their homes. If we can include the condominiums, townhouses and mobile home communities, it would be great for Nevada and all homeowners.

BILL UFFELMAN (Nevada Bankers Association):
I am a representative to the Summerlin North Community Association. We modified our policy to specifically emphasize the ability of the association to do collections outside the lien process. They could bring an action.

The irony is that homeowners' associations, in many cases, are the first one to know a homeowner is in trouble. They have not missed their mortgage payment but miss their HOA payment. If the association stays on top of that and exercises its right under the law, there is self help there.

You processed a bill from Senator Parks talking about the foreclosure owner filing within 30 days; they are the new owner. The association will know who the new owner is. On May 5, you will hear a bill from

Assemblyman Richard McArthur, Assembly District No. 4, which talks about a homeowners' association entering properties in the association to do minimal maintenance so it is not an eyesore.

That lien, because it is an assessment, will survive and be part of the foreclosure and would be paid. The new owner of that property has an obligation to maintain the property at the HOA standards.

In foreclosures, a bank or the lender does not have any title or right to that property until the foreclosure sale. You have a 21-day notice that there is going to be a sale. You have to give a 90-day notice of default and the intent to exercise rights to sell. Typically, you do not get the 90-day notice until you have missed payments for 3 months. The reality is, in approximately 210 days, the lender may become the owner at the foreclosure sale, or a third party may purchase the property. That is where the six-month look back on homeowner assessments comes in.

Until you start missing payments, the lender has no idea what your situation is. The bill is retroactive. As the bill is written, prospectively, we can pick and choose among the dwellings this will apply to in a homeowners' association because it would apply if someone's loan is a Fannie Mae or Freddie Mac conforming loan. If Fannie Mae or Freddie Mac own the loan, their rules would apply. If it is another mortgage-backed security, you would have another set of rules if it forecloses another time.

The bill is disruptive of the lending process. Lenders, when a bundle of mortgages is offered, have to evaluate what they are buying. This is in part what got us where we are because the people who were supposed to do that evaluation were not paying attention to their job.

My amendment, Exhibit H, is to strike section 2. That will keep the law at the six-month look back on homeowners' association dues. It takes advantage of the provision, saying HOAs must get serious about managing their association. With Senator Parks' bill and Assemblyman McArthur's bill, you are attacking the core of the problem. In many ways, there is a reward for homeowners' associations where the association management has not exercised their right. The purchaser at the foreclosure is going to pay—the financial institution that is foreclosing or a third-party purchaser at the foreclosure sale.

The Nevada Bankers Association is opposed to section 2 of this bill and ask that you strike it from the bill.

CHAIR CARE:
Were you stating there are people who are making their mortgage payments but skipping the general assessments? The property manager or HOA is aware of that. I do not know the degree of tolerance for that.

MR. UFFELMAN:
My association tightened down its collection policy. Before that, you were allowed about six-months slippage before they attacked you. Now they attack more aggressively and quicker. They give you 30 days to cure, and if you do not cure, you no longer get the option of monthly payments; you have to pay a year ahead. They made it clear they have a right to sue in civil court under the contract. You have a contract with your homeowners' association and have a contractual obligation to pay the fees. You could get a judgment against you. That could all be triggered before you miss your first mortgage payment.

CHAIR CARE:
You gave us the 200-day scheme, which gave rise to the 6 months currently on the books. The testimony was that foreclosures are now taking up to two years.

MR. UFFELMAN:
I do not know whether they are taking two years. One of the ironies is that around Thanksgiving, Fannie Mae and Freddie Mac dictated a moratorium that they were not allowing any more foreclosures for about 90 days. So, we had a big spike in foreclosure filings in March. That was because Fannie Mae and Freddie Mac's foreclosure moratorium expired.

Those who service the mortgages—receive the payments and distribute them to paper holders, mortgage-backed securities or the bank—the system got bound up. We have worked through those things. There are lenders who have not pursued foreclosures. Once I have become the owner, I have an obligation under Nevada law, and as further emphasized by Assemblyman McArthur's bill and Senator Parks' bill, to maintain that property to the association's standards. That is going forward after the foreclosure. I have no control over what happens up to the time of the sale.

There is the situation where an investor purchases a home and intends to flip that home to make money. Perhaps he sat on it for a year and did no maintenance. Assemblyman McArthur's bill speaks to that situation. Senator Parks' bill speaks to the situation that, once it is sold, the association will know who the owner of the property is. Then the association would pursue the new owner to do what he is required by law to do. As lenders, we have no control of it until we own it.

GEORGE ROSS (Bank of America):
Bank of America opposes A.B. 204, at least section 2. The time of six months should not be extended to two years. Bank of America works with those with whom it has mortgages to try to keep them in their properties. Those people are beginning to exhibit signs that they may fall behind. If they do fall behind, miss payments or make late payments, Bank of America makes every effort to contact that person and find out what is happening. Bank of America tries to find out what it can do to adjust the mortgage, forgive payments for six months or redo their mortgage. Similarly, Bank of America is now in a nationwide program to redo hundreds of thousands of mortgages. Six thousand or more people work directly on this.

Sometimes, these efforts do not work, and the home is ultimately foreclosed. This can take time, up to two years. What we are seeing here is that because we worked with these people for a period of time to try to keep them in their home, we will be penalized for 18 more months of homeowner dues. If we work with these people and are then penalized with homeowner dues, that is not a good economic calculation.

You will get several bills from the Assembly having to do with helping renters in foreclosed situations and bills helping those who are getting mortgages. Assembly Bill 149 will set up a mediation process for those who are afraid to go to their lender. Those are progressive bills. But this bill sends the wrong message to a bank who may be trying to help people stay in their homes.

ASSEMBLY BILL 149 (1st Reprint): Revises provisions governing foreclosures on property. (BDR 9-824)

CHAIR CARE:
I will close the hearing on A.B. 204. We will go back to work session and address A.B. 59, Exhibit C, page 2.

ASSEMBLYMAN MCARTHUR:
That was changed in the amendment. I am not sure why, when the wording is technical. An HOA can include high-rise condominiums. If you go to common-interest communities, it refers to the single-family detached dwellings. That was probably added to coincide with the wording on page 1 where my original bill had HOAs, and they changed to common-interest communities. Those are common-interest communities; that is why the wording was changed.

CHAIR CARE:
We had A.B. 204, and I am looking at a note indicating the amendment was added to avoid conflict with federal laws. I recall some connection to the Federal National Mortgage Association (Fannie Mae).

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLYMAN MCARTHUR:
There were some Fannie Mae and lookback problems when you went further than the six-month lookback. That was part of complying with those laws.

SENATOR WIENER:
Mr. Chair, to respond to your question about subjective determination, on page 2, line 33, "adversely affects the use and enjoyment." An abandoned or vacant property does not always have to be sight, it could be odor or something deteriorating on the premises which would ... you might not see it, but you can smell its presence.

Assemblyman McArthur, on page 3, section 1, subsection 9, paragraph (c), it says "has failed to pay assessments for more than 30 days." When does the clock start ticking on the 30 days? Is it on the date due or within a 10-day grace period?

ASSEMBLYMAN MCARTHUR:
I would assume right at the beginning when it is due.

SENATOR PARKS:
I also saw 30 days and thought it seemed a fairly short period of time. A 60-day period would be more appropriate.

ASSEMBLYMAN MCARTHUR:
I agree with you, but that 30 days was not in my original bill. I would be happy to make it 60 days.

SENATOR PARKS:
Mr. Chair, I would say if we are looking at an amendment, we may want to address that.

CHAIR CARE:
That is fine. Thank you, Senator Parks. Any additional questions?

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
I am in support of the bill. In the fall, Assemblyman McArthur and I talked about the problem. I suggested the lender has no right of entry until after the foreclosure sale, at which time the lender, for better or worse, winds up being the winner. I suggested this remedy was perhaps the way to deal with these things. As he has noted, we do not want to view this as a license for the association to make it the most pristine house on the block.

The questions you had regarding what is blight or deterioration were good ones. I suspect when you see it, you will know it. Over the weekend, there was a story in the paper that relates to the concept of affecting the enjoyment. A colony of bees had moved onto a property. The next-door neighbor was allergic to bee stings, and the roses in her yard drew the bees. The neighbors, out of their own pockets, had the bees removed. Those situations hopefully will be remedied under this bill. Some members asked why we have to notify them that we have filed the notice of default with the election to sell when it is a public document. I have suggested they might want to go along to get along. There are technical issues, but everybody is going to have to roll with this to make it work.

You are correct in the reference to the single-family designation. If you are in a condominium, their obligation includes the maintenance of the exterior and the common grounds. All those things are supposed to be recovered from their fees, whereas this special assessment is relative to the single-family homes and would carry into the foreclosure and be an obligation to be paid, unlike A.B. 204, the extension and lookback. Extending the 30 days to 60 days makes sense.

RANDY ROBISON (Nevada Credit Union League):
We signed in opposed, but are in complete support of the bill. Assemblyman McArthur did meet with our group before the Session and talked about how to get a situation where lending institutions and HOAs were talking about the issue much sooner in the process. However, many of the Committee members have already spoken to some of our concerns with the way the bill has been crafted?

Our issue is not with maintenance, maintaining a property, the landscaping, that type of thing. It is to the HOA's benefit as well as to the eventual owner to have that done in terms of market value and appraisal. That is not our issue. We are concerned it is crafted too broadly, particularly when we are talking about who bears the responsibility for cost recovery and those issues. A few points other Committee members have spoken to in section 1, subsection 2, paragraph (b), subparagraphs (3) and (4), lines 31 through 33, are subjective, although we understand what they are trying to get at. That might be too broad for our comfort.

CHAIR CARE:
The testimony was this language may already exist elsewhere in statute or local ordinance in North Las Vegas.

ASSEMBLYMAN MCARTHUR:
Yes. That is what I remember. I am not sure that is in our statute.

CHAIR CARE:
Since Senator Parks proposed an amendment, rather than doing anything today, this goes on work session—if we can verify the language is elsewhere in law.

MR. ROBISON:
One of our other considerations is further clarifying the limit to the application of the authority the HOA has to maintain. Perhaps that might be done by a high-dollar cap on allowable expenditures. Another way to do that may be to require documentation that shows when the costs were incurred and what they were incurred for, so when you present an order for payment, the payee has a record of those expenses.

On page 3, section 1, subsection 9, is the definition of "vacant." We were concerned about the broadness and subjectivity of the definition in terms of

subsection 9, paragraph (a), "Which appears unoccupied." We also had the 30-day concern on paragraph (c). I will use a personal example. When I come to the Legislative Session, I bring my family with me, shut down the house, turn off the lights, and we are gone for four and one-half to five months. The way we are situated in our HOA, we have one neighbor. The other side is open space all around us. At night, if you are driving by on a regular basis, it could appear the house is vacant. However, we go home a few times a Session to pull weeds. We are paid up on our assessments, but there seems to be some wiggle room that may be tightened up.

Those are our concerns. We support the concept of the bill. Assembly members have mentioned the air play between this and A.B. 204. I apologize and thank Assemblyman McArthur; he did meet with us before this Session. We spent time with him last week on some of our concerns. Comments he made in his testimony helped in terms of clarifying the intent. We did want to get on the record with those further concerns.

CHAIR CARE:
You had the same discussion on the Assembly side?

MR. ROBISON:
Unfortunately, we did not. We came to this party a little late, and I will take full responsibility for not getting over to the other side.

CHAIR CARE:
You are here representing the Nevada Credit Union League, and I do not think of credit unions as home lenders or getting in the business of refinancing homes. What is the role of credit unions when it comes to HOAs and foreclosure?

MR. ROBISON:
A significant portion of our portfolios do home mortgages. With all of the mortgage and foreclosure discussions occurring the last several months, our position is we did not do some of the risky, questionable lending on the front end because our structure does not allow us to in terms of risk or portfolio assets. Our problem as the economy has further deteriorated is many members are now losing their jobs and having difficulty paying their mortgage. In credit union land, if you miss your mortgage payment, the first time you miss it you are likely to get a call from a kind customer service representative at one of our institutions who says, hey, we see you missed your payment, is everything

okay, is there something we can do to help, has your situation changed? If so, come in and talk about it—as opposed to other institutions that may take three months before it is even flagged, and then there is another lag time to address the situation.

We do not have a problem with the intent of the bill, as we typically do that already. We know much sooner than most when one of our members is in what is going to be financial trouble. If they have to walk away from a home and we go through the foreclosure process, we already go in and start to maintain the property and the landscape. We do not like to be in the lawn-cutting business, but we figure out a way to get it done.

To answer your question, Mr. Chair, there is limited application and impact to credit unions because of our size and structure. Sometimes, that is more magnified than in other, larger financial institutions.

SENATOR WASHINGTON:
You mentioned one of your concerns about the bill is either hard-copy documentation of the cost incurred or a cap. Which would your association prefer?

MR. ROBISON:
As the League was looking at the bill, the hard-dollar cap was what they saw first. As they discussed it more, it became clear that may not work in all situations because different HOAs have varied levels of assessments and requirements in the covenants, conditions and restrictions (CC&Rs). An alternative or perhaps a conjunctive measure would be reporting when that order for costs is presented. You could sit down and have a discussion about what was done to the lawn that died. Some of this other stuff may have been beyond the scope of what we were talking about.

SENATOR WASHINGTON:
Would you want that documentation of incurred costs before the services are rendered or after?

MR. ROBISON:
We are talking in terms of after the order is issued because we do not want to limit the association in maintaining the minimums according to the CC&Rs. But

trying to balance the interests of maintaining versus getting beyond the scope of minimum maintenance may help us trim some of that cost.

ASSEMBLYMAN MCARTHUR:
I will say that we are both the same on the intent of this bill to just maintain, not add anything on. The whole idea of this bill is to make sure we get the HOAs, the lending institutions and real estate people comfortable. It looks like most of our interests are covered, but if there is something they would like to see tightened up, I would be happy to do so if we amend it anyway.

CHAIR CARE:
Mr. Robison, if you have anything, please share it with Assemblyman McArthur.

SENATOR COPENING:
Assemblyman McArthur, regarding subsection 9 where you talk about the vacancy, is there a period when somebody walks away in which the HOA could enter the property, but the banking institution will not have known that person has walked away yet?

ASSEMBLYMAN MCARTHUR:
Usually the HOAs are the first to know if somebody has just walked away. They know that their assessments and dues have not been paid and the place is deteriorating. It may have been deteriorating several months before they walked away. The problem has always been the lending institutions do not know about it, and there has been no way for them to get together. Hopefully, this way the HOAs and lending institutions will get together and talk about it, even though the lending institutions have not started paperwork for the default process.

SENATOR COPENING:
If an HOA enters the home, perhaps because of a broken window and they need to enter the premises, or they need to deal with the landscape, who assumes liability should something happen to that property? For example, a fire starts in the house or a sprinkler system breaks. Who actually has the liability for that home during that time?

ASSEMBLYMAN MCARTHUR:
The unit owner still owns the property. All this bill does is let the HOAs go on the property and maintain the property. If there is some major damage, someone

still owns it. But the whole problem is they walk away, you cannot find them and the lending institutions may not be aware of it.

SENATOR COPENING:
If an injury happens on that premises, even though that person has walked away and the HOA has chosen to go onto that property, it is still the responsibility of the owner of that home, even though they did not give permission?

ASSEMBLYMAN MCARTHUR:
That is my understanding. They can go on the property to maintain it, not for anything else.

MR. UFFELMAN:
Normally, an insurance clause in your mortgage says you will maintain an insurance policy as the owner of the property. If you defaulted on the loan and defaulted on your insurance payments too, the mortgage company has a right to purchase insurance to insure the property even though they have not gone into default during the 90-day period. There is a presumption that somebody related to the property is maintaining insurance. Whether that is 912 percent of the time, we cannot guarantee that, but the property insurance requirement is built into a mortgage.

CHAIR CARE:
Let us go to Las Vegas. Mr. Radocha, you had wanted to say a few words about A.B. 361, and Mr. Buckley, you will follow Mr. Radocha.

JOHN RADOCHA:
I am a homeowner. I know you have heard enough about good and bad boards, and the most precious commodity of the homeowner is his home, but I want to reference page 3, section 2, subsection 1, paragraph (a) and line 42. I believe this has taken the homeowner's bill of rights from him. It is like giving these guys a blank check on a board. Yes, they let you speak at a board meeting if you have an association meeting, but it is like a kangaroo court. I have seen people speak and I have seen people going through papers not even paying attention. I would like to know if that provision could be stricken from this bill because it gives them the right to do whatever they want. Where do we get the vote? This is what is bothering me. It does not say put it on a ballot.

The association CC&Rs say there will be no campers or trailers seen above the walls. A guy comes in, he gets on the board and the next thing you know there are campers and trailers above the walls. There is a rule no diesel trucks, and all of a sudden a guy comes in, he gets on the board, and the next thing you know there it is, and they say, oh no, that has been changed, that has been amended.

We the people do not have a say. Everything is up to the board, and if they can get enough people at a meeting to go along with them, they say it passes. A lot of the time the president will say, I am in favor of this, anybody else? The board puts up their hands and, by golly, it passes. I do not think that is fair. I would like for homeowners to have more voting power. This bill says do any and all of the following: adopt and amend bylaws, rules and regulations. I think this should be stricken.

CHAIR CARE:
We had about a half dozen common-interest communities (CIC) or HOA bills, and we have an equal amount coming over from the Assembly. The passage you have cited in NRS 116.3102 is existing law; it is in here because it has to be. The proposal is to change a subsection to that section but not that particular language. I need you to understand that.

Your proposal would be, if the Committee had appetite, to strike from the statutes a provision you have cited, "adopt and amend bylaws, rules and regulations." Is that correct?

MR. RADOCHA:
That is correct. You could leave it in, but you need to give homeowners a provision to vote. Some boards take advantage of this. That is a big loophole. I cited some examples. Another example is they want to change something. The board people will knock on doors and say, we want you to do this, and if you do not do it, four or five days later you get a letter that says you have some three-inch weeds or you have a grease spot on your driveway. They can come up with any thing they want and you are powerless. Let the people vote on what they want to do. That is all I want to see.

CHAIR CARE:
Thank you. I am sorry you did not get to testify on A.B. 207.

MR. RADOCHA:
May I ask a question on A.B. 207? Is some of this stuff going to come up later?

CHAIR CARE:
There are other bills coming. Whatever Website you are consulting, keep watching; there will be others.

Mr. Buckley, you have heard the proposed amendment from Senator Parks as to the person holding the security interest providing the association—it would be 60 days as opposed to 30 days—and then the comments from Mr. Robison. You probably had prepared testimony, but you may want to comment anyway.

MICHAEL BUCKLEY (Chair, Commission for Common-Interest Communities and Condominium Hotels, Real Estate Division, Department of Business and Industry):
I have worked with Assemblyman McArthur on the language in the bill and did not have any prepared testimony, but I would make four points for the benefit of the Committee.

The first thing is—if you look at page 2, section 1, subsection 2, paragraph (b), line 25 and then subparagraph (4), line 32—to notice the word "and." All four of those things have to be present. It is not if you are blighted or if you adversely affect, it is all of those things. That is the way the bill is written.

You will also see on page 3, subsection 9, paragraph (b), line 35 the word "and." It is not only that it is unoccupied, but it is not maintained and the assessments are not paid. So it is all three of those things. That may address some concerns of the Senators and the people who spoke.

The other thing is in reference to Mr. Robison's concerns. The association would use the standards in the community to maintain the property. It would naturally defer to whatever standards, so it would not be something out of the ordinary. If it was provided, it would be in accordance with the standards. That is what the association would do anyway.

As far as records and what money is spent, the association has to maintain records of what it spends. Under NRS 116.31175 and NRS 116.31177, unit owners are entitled to look at those records. Concerns about seeing how much the association spends are already built into NRS 116.

For an explanation on page 6, section 3, subsection 2, paragraph (c), line 7 with regard to single-family detached dwelling, yes, the issue was that Fannie Mae and Federal Home Mortgage Corporation (Freddie Mac) guidelines prohibit a superpriority lien from going beyond six months. The thought was that a single-family detached home would not be a condominium. But A.B. 204 was changed to refer to the federal regulations instead. That would be a good change in section 1, subsection 6.

Lastly, this is more a question for perhaps Assemblyman McArthur. The intent in section 1, subsection 7 is even though people may say because you acquire property at a foreclosure sale, you take free and clear of the governing documents, that is not the case. Once the property is sold to an owner, the unit is subject to the governing documents until the governing documents are amended, the community terminated or whatever. Subsection 7 creates a problem because in one sense it states what is in the law, but then it says the person would maintain the unit in accordance with the governing documents. There are many other obligations under the governing documents. The question is whether the intent of subsection 7 was to state what is already the case—which probably makes it unnecessary—or to create a statutory duty, which would be a reason to keep it in and probably change it. The person is bound by the governing documents, and it cannot be removed except in accordance with the governing documents.

I suppose a related issue is the bill states the association has a lien. The question arises what is the remedy for that lien? Is it just a lien that the association would sue on, or is it something that could be foreclosed as an assessment lien? The beginning of the bill references following a procedure for fines and providing that an association cannot foreclose for a fine but can foreclose on an assessment. There should be some clarity in the bill as what is the remedy for the lien, whether it can be included as an assessment to be foreclosed or exactly what would happen.

Those were my comments. I passed some technical comments on to Assemblyman McArthur and the bill drafter.

CHAIR CARE:
You are working with Assemblyman McArthur, and we are not going to put this bill on for work session until next week. I note the amendment that came out of the Assembly made six changes. This is a work in progress; we want to get it

right. Mr. Buckley, if you continue discussions with Assemblyman McArthur, then we can get something for the work session detailing the concerns and possible resolutions.

MR. BUCKLEY:
Happy to do so.

ASSEMBLYMAN MCARTHUR:
Yes. I deferred a lot to Mr. Buckley in his technical changes. The changes we made before is clarifying language, and he made the bill technically and legally stronger.

FLORENCE JONES:
I wear many hats in this situation. I am on a board of directors in Utah, and my primary home is in two homeowners' associations in Las Vegas. I would like to thank the Senator from my district, Allison Copening. I appreciate the work you and Assemblyman McArthur are doing. Both of you represent the area of my primary home in Sun City Summerlin.

To the gentleman who is concerned about having homeowner rights, the bylaws and the CC&Rs give us an annual meeting where homeowners have a great deal to say. The board of directors meeting is for business. In the one I sit on, homeowners may submit in writing whatever they may want to have addressed and be given a time through this venue under the Open Meeting Law statute. However, at the homeowners' annual meeting, the homeowners have a time to transact the business of the homeowners' association. He needs to look back to his bylaws and find out when his annual meeting is, gather his neighbors together and get whatever he wants accomplished done.

The bill as it stands is a work in progress, and I concur with the 60-day amendment that Senator Parks has suggested. I am concerned that formal mail needs to be directed to the homeowner, such as a certified registered letter with a return receipt, so there has been proper notice by the association and we do not have people taking over.

I get to my primary residence once every six months, but I have a lighting system that comes on at dusk and goes off at dawn. My courtyard is covered with sprinklers and I have people who do my landscaping. I could see where this might be misused if there are not some tight controls.

There will be a workshop next. I want to relate to this Committee that one of the realtors who I participate with on my other board has asked me to put on the record that there is some issue going on right now with foreclosures in the Las Vegas area where we have attorneys who have created their own collection agencies. They are picking up the ball from the HOA and running with it. When a home is put on the block for foreclosure, in addition to assessments, huge fees running $5,000 to $10,000 are now added to the price of the foreclosed home the realtors are dealing with. They are trying to get people into these homes or back onto the market and homes that are a blight back into use. There is a great deal of concern among the realtors of the Las Vegas area. I do not know if this is going on in other areas. I am thankful we are having the workshop because I have alerted the folks in Las Vegas who are concerned. They are in the process of e-mailing Assemblyman McArthur.

This is a great step in getting the language and protection for our neighborhoods in this time of people being forced to move on. But those of us who are left behind want to be sure our absence is not misunderstood. Even though our bills are paid, we might not be there for long periods of time. Assemblyman McArthur spoke to that clearly; some of us have more than one residence in this wonderful time of retirement.

CHAIR CARE:
I remind everyone this is Assemblyman McArthur's bill and will remain so. We will close the hearing on A.B. 361.

Earlier, when Senators Copening, McGinness and I met as a Subcommittee, we asked Chair Dennis Neilander of the State Gaming Control Board about the amendment from the Assembly for Senate Bill (S.B.) 83.

SENATE BILL 83 (2nd Reprint): Makes various changes relating to the regulation of gaming. (BDR 41-311)

The three of us meeting as a Subcommittee recommended we concur with the Assembly amendment. The amendment was in section 19 of the bill: They had added the language in the bill saying an heir to an interest regulated by the Gaming authorities would have one year to submit the application for compliance to get a license. The Probate Section of the Nevada State Bar was concerned that under certain circumstances, one year may not be sufficient, so

EXHIBIT P

EXHIBIT P

EXHIBIT P

AFFIDAVIT OF CUSTODIAN OF RECORDS JOHNNELLE GOMEZ IN SUPPORT OF OPPOSITION TO APPLICATION FOR PRELIMINARY INJUNCTION

STATE OF CALIFORNIA)

)ss.

COUNTY OF ORANGE)

JOHNNELLE GOMEZ, being first duly sworn, deposes and says:

That Affiant is, and was on the day, and at all times mentioned was, citizen of the United States over the age of 18 years.

Affiant is an employee of MTC FINANCIAL INC. dba TRUSTEE CORPS ("TRUSTEE CORPS"), and as such am duly authorized Custodian of Records and/or or other qualified witness for the above-named entity. Affiant has the authority to certify copies of records as true and correct copies.

The subject of this Affidavit is the real property commonly known as 350 South Durango Road, Unit 104, Las Vegas, Nevada.

TRUSTEE CORPS is the current substituted Trustee under the Deed of Trust between Roy N. Senholtz and Shirley P. Senholtz and Wells Fargo Home Mortgage, Inc. A true and correct copy of that Deed of Trust, recorded August 11, 2003, is attached and incorporated as **Exhibit 1**.

On December 4, 2012, as Instrument No. 201212040000239, TRUSTEE CORPS was substituted in as Trustee under the Deed of Trust. A true and correct copy of that Substitution of Trustee is attached and incorporated as **Exhibit 2**.

A true and correct copy of TRUSTEE CORPS' Limited Power of Attorney from Wells Fargo Home Mortgage, Inc. is attached and incorporated as **Exhibit 3**.

A true and correct copy of the Notice of Breach and Default and of Election to Cause Sale of Real Property Under Deed of Trust, recorded April 4, 2013 as Instrument No. 201304040000193, is attached and incorporated as **Exhibit 4**.

A true and correct copy of the Notice of Trustee Sale recorded August 29, 2013 as Instrument No. 201308290004266, setting a sale date of October 4, 2013, is attached and incorporated as **Exhibit 5**.

TRUSTEE CORPS has had several cases filed against it in Nevada by Attorney Michael F. Bohn. TRUSTEE CORPS utilizes GKL as its agent for service of process in Nevada, it being a California corporation. TRUSTEE CORPS in this instance utilized Auction.com as its auctioneer. It did not use Nevada Legal News as an auctioneer. Nevada Legal News is also not an agent for TRUSTEE CORPS in connection with this case.

In this case, the sale was actually cried at 10:50 a.m., and reverted to the Beneficiary. Prior to that time, TRUSTEE CORPS had not received any signed Temporary Restraining Order or, for that matter, had any knowledge that there was a signed Temporary Restraining Order.

Dated this 11th day of October, 2013.

JOHNNELLE GOMEZ

STATE OF CALIFORNIA)

COUNTY OF ORANGE)

Subscribed and sworn to (or affirmed) before me on this 11 day of October, 2013, by JOHNNELLE GOMEZ, who proved to me on the basis of satisfactory evidence to be the person who appeared before me.

Signature: _____ (seal)

NOTARY PUBLIC in and for said County and State

DAVID MILLER
Commission # 1893688
Notary Public - California
Orange County
My Comm. Expires Jun 25, 2014

EXHIBIT Q

EXHIBIT Q

EXHIBIT Q

TRO
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Attorney for plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

SATICOY BAY LLC SERIES 350 DURANGO 104 Plaintiff, vs. WELLS FARGO HOME MORTGAGE A DIVISION OF WELLS FARGO BANK, N.A.; MTC FINANCIAL dba TRUSTEE CORPS; RON N. SENHOLTZ and SHIRLEY P. SENHOLTZ as trustees for the Senholtz Family Trust Defendants.	CASE NO.: A688410 DEPT NO.: XXVIII

TEMPORARY RESTRAINING ORDER

The ex parte motion for temporary restraining order having come before the court, and the court, having reviewed the motion, the court finds as follows.

1. Plaintiff is the owner of the real property commonly known as 350 South Durango Road Unit 104, Las Vegas, Nevada.

2. Plaintiff obtained title by way of foreclosure deed recorded on June 17, 2013.

3. The plaintiff's title stems from a foreclosure deed arising from a delinquency in assessments due from the former owner to the Angel Point Condominiums pursuant to NRS Chapter 116.

4. Defendant Wells Fargo is the beneficiary of a deed of trust which was recorded as an encumbrance to the subject property on August 11, 2003.

5. Defendant MTC Financial dba Trustee Corps is the trustee on the deed of trust.

6. Defendants Roy N. Senholtz and Shirley P. Senholtz as trustees of the Senholtz Family Trust are the former owner of the subject real property.

7. The plaintiff contends that interest of each of the defendants has been extinguished by reason of the foreclosure sale resulting from a delinquency in assessments due from the former owner, Roy N. Senholtz and Shirley P. Senholtz to the Angel Point Condominiums , pursuant to NRS Chapter 116.

8. If the foreclosure sale were to proceed, the plaintiff would suffer irreparable harm.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants, OneWest Bank and Meridian Foreclosure Services are prohibited from conducting a foreclosure sale on the property located at 7333 Savannah Falls Street, Las Vegas, Nevada until otherwise ordered by this Court.

IT IS FURTHER ORDERED that a hearing shall be conducted on the 8 day of OCT 2013, at the hour of 9 9 .m, in Department XXVIII on the plaintiff's application for a preliminary injunction.

IT IS FURTHER ORDERED that this temporary restraining order will expire by it's own terms in 15 days from the date of it's issuance, unless extended by order of the court.

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IT IS FURTHER ORDERED that the terms of this temporary restraining order shall become effective upon the plaintiff posting security in the sum of $ 500 with the Clerk of the Court.

DATED this ____ day of October, 2013

DISTRICT COURT JUDGE

Respectfully submitted by:

LAW OFFICES OF
MICHAEL F. BOHN, ESQ., LTD.

By: _____
MICHAEL F. BOHN, ESQ.
376 East Warm Springs Road, Ste. 125
Las Vegas, Nevada 89119
Attorney for plaintiffs

EXHIBIT R

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CLERK OF THE COURT

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MBBW File No. 13-L0013
Attorneys for:
US BANK, N.A.

DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, vs. US BANK, N.A., a national banking association as Trustee for the Certificate Holders of the Banc of America Mortgage Securities 2008-A Trust, Mortgage Pass-Through Certificates, Series 2008-A, CAL-WESTERN RECONVEYANCE CORPORATION, a California corporation, SAN SEVINO WEST AT SOUTHERN HIGHLANDS HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION, a Nevada non-profit corporation, GEORGE A. SHERWOOD, an individual, SHARON L. SHERWOOD, an individual, DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants,	Case No.: A-12-673671-C Dept. No.: XXVII **NOTICE OF ENTRY OF ORDER DENYING MOTION FOR INJUNCTION AND GRANTING COUNTER-MOTION TO DISMISS**

TO: ALL PARTIES:

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YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an **ORDER DENYING MOTION FOR PRELIMINARY INJUCTION AND GRANTING COUNTER-MOTION TO DISMISS** was entered in the above-referenced matter on the 22TH day of March, 2013, a copy of which is attached hereto.

DATED this 22nd day of March, 2013.

MILES, BAUER, BERGSTROM & WINTERS, LLP

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CERTIFICATE OF MAILING

IT IS HEREBY CERTIFIED that on the 22 day of March, 2013, a true and correct copy of the foregoing was mailed by placing in the United States Mail, postage pre-paid, to the parties addressed below:

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Diana S. Cline, Esq.
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DISTRICT COURT

CLARK COUNTY, NEVADA

SFR INVESTMENTS POOL 1, LLC a Nevada limited liability company, Plaintiff, vs. US BANK, N.A., a national banking association as Trustee for the Certificate Holders of the Banc of America Mortgage Securities 2008-A Trust, Mortgage Pass-Through Certificates, Series 2008-A, CAL-WESTERN RECONVEYANCE CORPORATION, a California corporation, SAN SEVINO WEST AT SOUTHERN HIGHLANDS HOMEOWNERS ASSOCIATION, a Nevada non-profit corporation, SOUTHERN HIGHLANDS COMMUNITY ASSOCIATION, a Nevada non-profit corporation, GEORGE A. SHERWOOD, an individual, SHARON L. SHERWOOD, an individual, DOES I through X; and ROE CORPORATIONS I through X, inclusive, Defendants.	Case No.: A-12-673671-C Dept. No.: XXVII **ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION AND GRANTING COUNTER-MOTION TO DISMISS**