IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT M. DYKEMA, individually; and RONALD TURNER, individually, Appellants, vs. DEL WEBB COMMUNITIES, INC., an Arizona Corporation, Respondent.	CASE NO.: 69335 DISTRICT COURT CASE NO.: A-15-714632-D

RESPONDENT'S SUPPLEMENT TO

JOINT APPENDIX
(VOLUME 3)

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CHRONOLOGICAL INDEX TO JOINT APPENDIX

ALPHABETICAL INDEX TO JOINT APPENDIX

1983	**Relevant portions of legislative history of S.B. 236, 62nd Legislature (1983)**	**3**	**JA00335-JA00349**
1999	**Relevant portions of legislative history of S.B. 32, 70th Legislature (1999)**	**3**	**JA00350-JA00359**

NEVADA LEGISLATURE

SIXTY-SECOND SESSION

1983

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

between that child and its step-parents, visitation will be granted. Senator Wilson asked if a step-parent stood on different ground jurisdictionally than a natural grandparent Mr. Wiener said that absent a loco parentis situation, they did. Senator Wilson asked if loco parentis meant that the court would look to that factor in determining whether or not to award visitation rights and to what extent, or is loco parentis a threshhold jurisdictional question, the absence of which is preclusive of any exercise of discretion. Mr. Wiener answered that if there is a loco parentis situation, the court will find no jurisdictional bar. Senator Wilson asked if there was no loco parentis situation established, but the court wants to look at the step-parent because of all circumstances, and it appears that it is the best relationship because of the lack of others, is there jurisdiction. Mr. Wiener repeated that NRS 123.123 grants rights to grandparents. Senator Wilson repeated the question, "..what is the difference between the natural grandparent who does not have a loco parentis situation, and the step-grandparent who does not have a loco parentis situation. Why should not the judge have the discretion to determine visitation matters." Mr. Wiener said he could not argue that the court should have jurisdiction to do anything which is in the best interest of the child.

Mr. Weiner said the legislation should not grant greater rights to grandparents than it does to parents in the middle of a divorce action.

There was no further testimony on Senate Bill 234.

SENATE BILL 236

Senate Bill 236 is an act which repeals the special period of limitation for action for damages for injury caused by deficiency in improvement to real property.

Testimony of Bob Perry

Bob Perry appeared on behalf of Nevada Trial Lawyer's Association He stated that they favor the repeal of NRS 11.205, on the basis that people have a right to feel buildings are safe more than six years after their construction. Senator Wilson referred to the California statute, and Mr. Perry said he believes it states "...a certain period of time from when you knew or should have known the defect existed as a result of negligent construction." Mr, Wilson asked what he felt was better, an absolute repeal which means there is no termination of liability at all under

the statute of limitations, or something akin to the California action. Mr. Perry said he felt it would be better to have some period of limitation. He said if the section is absolutely repealed, you may open the door to claims on buildings that are many years old. He said the trier of fact should be able to determine whether an accident was caused by negligent construction or the length of years involved. He said he can see wisdom in legislation that would say that if there was reason to know to the injured person, that the time should run from the time the person had reason to know. He said there should be some provision to protect the unwary person from a latent danger. He said that by Nevada statute, all the persons killed and injured in the Hyatt Hotel disaster in Kansas City, if the accident occurred six years and one day after its construction, would have no remedy. He said you also need to provide reasonable protection for the contractors and builders. He said one of the arguments with respect to the MGM fire, was that the construction was done six years before the fire, but yet if that construction was done negligently in such a way that would cause the fire, the plaintiffs are going to have to prove that by a preponderance of the evidence. He said that it does not seem fair to set an arbitrary time limit for a latent danger. He said a "time bomb" starts ticking when the construction is done in an improper way, and if it takes six years for the effects of that improper construction to seriously injure an hurt people, it seems unfair to have an arbitrary time limit, but rather there should be a limit that is related to discovery. Senator Hernstadt pointed out that in the matter of the MGM, the building could have stood for 50 years, and the fire could have started in the air space, which had nothing to do with the age of the building, but with the specific design. Mr. Perry repeated that he feels there should either be no limit at all, or a limit that is related to discovery to a defect in construction.

There were no further questions, and Mr. Perry was excused.

Testimony of Patrick J. Murphy

Next to testify was attorney Pat Murphy, from Las Vegas, who testifies on behalf of himself. He said there are many problems with NRS 11.205. He said there should be a statute of limitations for the architects and contractors, but the problem with the statute as it exists, virtually eliminates an action for contribution or indemnity under NRS 17.225 et seq. He said the Nevada Supreme court in the case of Nevada Lakeshore vs. Diamond Electric (1973), held that NRS 11.205 as a more

specific statute of limitations, takes priority over the contribution and indemnity statute. He said that created a lot of problems. In essence, he said, NRS 11.205 says that if an injury occurs within the six year period, and your discovery is not done by the end of the time in which you are brought into the lawsuit, you are prevented from naming another party. This could be remedied simply by the inclusion of a sentence at the end of NRS 11.205, which says: "It is not the intent of this statute to affect any rights or remedies under NRS 17.225 et seq. He said if that were done, he would have no problems with the statute as it exists. Senator Wilson said that what the repealer is intended to do, is to in effect eliminate the provision of the law which says no action at tort shall be commenced against any person performing or furnishing the design, planning or supervision or oberservation of the construction, or the construction of an improvement to real property, if you bring the action after six years. Mr. Murphy said the constitutionality of NRS 11.205 is before the Supreme Court at this time. He said that the legislature will have to determine how long in the future a contractor could be held liable. He went on to say that he is solely addressing the issue of the problem in the statute as it exists with regard to a contractor or architect turning around and trying to bring an attorneyman or supplier into blame. Mr. Murphy said he does not have the name of the cases before the Supreme Court right now, but that the numbers are #13228 and #13443. These cases arose out of construction that was completed more than six years before the date of an injury.

There were no further questions and the witness was dismissed.

Testimony of Irene Porter

Next to testify was Irene Porter, Executive Vice President of the Nevada Home Builders Association. With her was Max Christiansen, from the Southern Nevada Chapter of the Air Conditioning and Sheet Metal Contractors. She stated that this is a highly technical, legal issue. She indicated she had attempted to reach her attorney, but that he was unavailable. She stated that it does appear that the statute does need to be rewritten. She represents homebuilding contractors and subcontractors, and the statute addresses this group. She said there are contributing factors other than a fault than the construction of the building. She said the building inspectors often have contributed to the negligence. She also said there are things which happen after a building is completed. She said that contractors today are primarily general contractors in the sense that they administer a company and use subs for [illegible]ing.

They also have a problem with having a liability in perpetuity, for the reason that they cannot obtain insurance. She said the fair answer would be to take a look at the laws of other states to see how things are being handled in this regard. Senator Wilson pointed out that the last section of the bill says that when an action for damages for death or injury is brought to a person in possession or control, a subsequent buyer, tenant or lessee, the statute of limitations will provide him no protection. He said it is not a balanced statutory provision. Mrs. Porter said a homebuilder has not only a corporate or company liability, but every financing agency is making him sign a personal guarantee for every construction loan. He would have personal liability forever, for something he may not have any control over.

It was agreed that the Committee should study the California statute.

There was no further testimony on Senate bill 236.

SENATE BILL 242

Senate Bill 242 is an act which expands the list of aggravated circumstances for the imposition of the death penalty.

Testimony of Bob Perry

Bob Perry, representing the Nevada Trial Lawyer's Association was the first to speak. He said this legislation was designed to deter criminal activity and also to protect the elderly. Mr. Perry said that John Conner wished to relay to the Committee the problem in subsection 8, which involves the definition of torture. He said that the definition in this bill is so broad that he does not feel it will fit in the guidelines set out in Godfrey v. Georgia. Under this section, torture means the infliction of extreme physical pain regardless of the duration of the pain. He said you could make the argument that someone who kills someone with a shotgun has inflicted extreme physical pain, regardless of the duration of the pain. He said they would support a bill that adequately defines torture in such a way that it would stand a constitutional test. He said that this definition would not stand a constitutional test. He referred to the case as being 100 Supreme Court, and he indicated he would provide the citation to the Committee. He said the other problem with the bill is the section dealing with the murder of a person 65 years of age or older. He stated that this is a capital murder bill, and would impose the death penalty in any situation where one spouse killed another, if

only change he stated is the 400,000 and six.

Senator Hernstadt made a motion to amend and do pass.

Senator Ryan seconded the motion.

The motion passed unanimously.

SENATE BILL 219

The Chairman indicated the amendment would simply change line 8 and say "at least 500."

Senator Foley made a motion to amend and do pass.

Senator Wagner second the motion.

The motion passed unanimously.

SENATE BILL 236

The Chairman indicated he provided the Committee members with some material, discovery, and indicated they would discuss the same next week.

SENATE BILL 225

Senator Foley stated their was a loophole where they may not be able to use "priors." Senator Hernstadt asked why the Committee was making it unlawful. Senator Foley replied at the moment it is not against the law for them to escape and they only attach more time to their sentence.

The Chairman indicated there was still a problem on the availability of prior juvenile convictions as to the juvenile and whether it should be available for impeachment of a juvenile.

Bill MacDonald, representing the Washoe County District Attorneys' Association, stated in the predisposition report the probation officer checks out their own file and other departments and that is summarized in the report to the judge. He advised the Committee that the law as it stands now does not allow juvenile records to be used in court.

Senator Hickey made a motion to amend and do pass.

Senator Ryan made the motion to Amend and Do Pass Senate Bill 258.

Senator Foley seconded the motion.

The motion passed unanimously, Amend and Do Pass Senate Bill 258.

SENATE BILL 236

The Committee discussed various time limitations concerning patent deficiencies and latent deficiencies. Chairman Wilson said that the time limit concerning latent deficiencies which are not apparent by reasonable inspection does not apply to willful misconduct or fraudulent concealment. The Committee agreed that subsequent owners of the property should be provided protection from willful or concealed defects that the contractor was aware of but had concealed. They also agreed that there should be two limitations; one for the patent defect, another for latent, and possibly no time limit for bringing an action if willful or fraudulent and concealed.

Senator Ryan stated that an owner could cause problems by making his own repairs without any approval or inspection, thereby causing future problems for a new owner.

Senator Bilbray said that there should be some kind of limitation as some principals of a contracting firm might no longer be in existence and building inspectors no longer in the area.

Mr. Ashleman, Home Builders, suggested that a reasonable limitation would be ten years. Senator Wilson reiterated that a subsequent owner should have the same protection as the original owner.

Mr. Ashelman thought that ten years would be the longest practical time to use as statute of repose. Senator Hickey asked who would be responsible if a death occurred due to fraudulent or concealed defect in a building. Mr. Ashleman said that this could be very complicated and would depend on the specific defect. He added that a builder would probably be unable to insure against a statute of limitations with a longer time than ten years. Mr. Ashleman commented that personal injury as in a car accident is only two years.

SENATE BILL 176

Seante Wilson and the Committee read through the amendments and then heard testimony concerning Senate Bill 176 from Steve Hartman; Allison, Brunetti, et al. (The amendments are attached hereto as Exhibit C.) Mr. Hartman said that

BDR 41-1476

The Chairman asked for the Committee's approval of the introduction of BDR 41-1476, requested by the gaming industry, and which is an act which broadens immunity of gaming licensees for action against suspected cheater. There was no committee objection.

Harvey Whittemore requested that all of the gaming bills be heard jointly by the Senate and Assembly Judiciary Committees. The Committee determined that the hearings should be held separately, and gaming bills will be heard on Tuesday, Wednesday and Thursday, April 19, 20 and 21.

BDR 3-844

The Chairman asked for approval for introduction of BDR 3-844, a bill requested by the Nevada Trial Lawyer's Association, and which is an act which allows punitive damages to be imposed on defendant for certain acts of employee or agent. There was no objection to introduction.

SENATE BILL 180

The Committee discussed the amendments prepared to Senate Bill 180, and determined that they were incorrect, and would have to be returned to bill drafting.

SENATE BILL 236

The Committee referred to amendments received to Senate Bill 236, and reviewed the same. This bill will be re-referred to the Committee. Senator Wilson asked that the amendments be reviewed by the Nevada Trial Lawyer's Association, Irene Porter and Mr. Ashleman.

There being no further business to come before the Committee, the meeting was adjourned.

Respectfully submitted,

Marilyn Hofmann, Secretary

APPROVED:

Senator Thomas R.C. Wilson

BDR 7-1799

BDR 7-1799, is the new legislation regarding "organizations", requested by Senator Hernstadt, which imposes a fiduciary duty on those organizations. The Committee had no objection to its introduction.

SENATE BILL 236

The Committee discussed the amendments to Senate Bill 236. The secretary was asked to provide copies of the amendments to Renny Ashleman, Irene Porter and the Nevada Trial Lawyer's Association. Those representatives will be requested to report to the Committee the substantive difference between "substantial completion" and "certificate of occupancy", for purposes of determining when the statute would begin to run.

SENATE BILL 180

The committee discussed the amendments received to Senate Bill 180, the mobile home park bill. The Committee determined that the amendments were satisfactory.

BDR 41-1575

The Chairman asked for approval to introduce BDR 41-1575, requested by the gaming industry, which provides a procedure for registration of certain foreign corporations as publicly traded corporations. There was no Committee objection to introduction.

ASSEMBLY BILL 164

The Chairman handed out copies of the amendments to Assembly Bill 164, which the Committee approved.

Senator Hernstadt moved to Amend and Do Pass Assembly Bill 164.

Senator Ryan seconded the motion.

The motion passed unanimously, Amend and Do Pass, Assembly Bill 164.

SENATE BILL 311

The Committee took up the matter of Senate Bill 311, first heard on April 12, 1983. This bill strengthens requirements

in litigation. He said that in all the years he has been in the Attorney General's Office, he does not recall any case in the state court, in which the state or any political subdivision has ever been allowed any cost bill or attorney fee by a District Court judge. He said they routinely include the request in complaints and answers, but they are passed over by the judge. He added that this statute would make clear to the various judges that the state or political subdivisions would be given the same equity as other litigants. He said this legislation would discourage the filing of frivolous lawsuits against the state and its political subdivisions. He indicated that this legislation would also mean revenue for state and local governments would be returned to the treasuries. Mr. Isaeff said that the wording of the legislation states that if the state were the defendant, and the plaintiff seeks recovery in excess of $10,000.00, they would still be precluded from receiving an attorney's fee. They would only receive an attorney's fee if they seek less than $10,000.00.

Testimony of David Gamble

Next to testify was David Gamble, representing the Nevada Trial Lawyer's Association, who stated that he cannot see that this bill makes any change in the law whatsoever. The state presently has the same right as any plaintiff or defendant, to seek costs and fees. He stated that contrary to Mr. Isaeff's statement that all that need be done is to put into the complaint that the state wishes costs and fees, the present Rules of Civil Procedure require that within a certain number of days after trial, a cost bill be filed. He believes that if the cost bills are filed properly, they can be included as part of a judgment, whether the state has been victorious in obtaining money or have simply been victorious as a defendant. He added that the court normally does not award fees, and there are a limited number of circumstances in which fees are awarded. He said he would hate to have this Legislature put another section in the costs section of civil actions, which would appear to the Supreme Court as a mandate. There was a question by Senate Ryan regarding the law as being vague, and Mr. Gamble said he does not believe that it is.

There was no further testimony on Senate Bill 320, and the hearing was closed to that matter.

SENATE BILL 236

Senator Wilson had asked Mr. Bob Perry of the Nevada Trial

Lawyer's Association to comment on the statute of limitations matter with respect to Senate Bill 236, an act which repeals the special period of limitation for action for damages for injury caused by deficiency in improvement to property.

Testimony of Bob Perry

Mr. Perry stated that he went to the Supreme Court and picked up a copy of State Farm v. All Electric, Inc., that was construing the statute before. He also reviewed the proposed amendments. He said he does not believe the proposed amendments would get around the constitutional infirmity of the statute itself. He said that the Court seems to see as the central issue with regard to the constitutionality of that statute, the fact that certain classes of defendants are granted immunity under certain conditions. By changing the period of time involved, there is still the problem of classification of defendants. He said he does not believe you can write a statute that is going to survive the opinion of the Supreme Court. He added that it will single out a particular type of defendant, i.e, people who design or build homes, or improvements to real property. Senator Wilson asked what classifications he thought raised the equal protection question. Mr. Perry read: "The statute excludes from its protection those similarly situation, such as owners, material suppliers...the question then is whether there is a reasonable basis for treating architects and contractors engaged in the improvement of real property as a distinct and separate class from granting immunity from suit." Senator Wilson said he believed in the amendment they had taken out the exclusion of the owner or operator, who is in the worst position of all. He then asked Mr. Perry, with respect to the exclusion from the protection of the statute of manufacturors who may build machinery or equipment which is installed, as opposed to fabrication, construction, creation on site, whether they had an equal protection question with respect to that classification which is not within the protection of the statute of repose. Mr. Perry answered that they might, although he knows of no cases that say this. Senator Wilson asked that Mr. Perry examine the amendment to ascertain if it was correct.

There was no further discussion with respect to Senate Bill 236.

SENATE BILL 333

The next matter was a discussion of Senate Bill 333, an act which requires payment of prejudgment interest on future as well as past damages.

bills to be put into evidence on the same basis. He said the only substantive change in the bill is that it includes medical expense ledgers, bills and statements and other accounts. He reiterated that the only purpose of the legislation is to simplify the admission of medical bills as well as medical records.

There was no further testimony on Senate Bill 334.

Senator Hernstadt moved Do Pass Senate Bill 334.

Senator Ryan seconded the motion.

The motion passed unanimously.

SENATE BILL 333

Senator Hernstadt moved to Indefinitely Postpone action on Senate Bill 333.

Senator Ryan seconded the motion.

The motion passed by majority vote; Senator Hickey voted "no", and Senator Wilson was away from the Committee.

SENATE BILL 236

Renny Ashleman asked to discuss the matter of a certificate of occupancy, as requested by Senator Wilson earlier. The question posed was: "What is the difference between 'substantial completon' and 'certificate of occpuancy'. " He said 'substantial completion' is when a building is very nearly finished; that a 'certificate of occupancy' comes later in the process. There can be only very minor things left to do. He suggested that the statute of limitations question, with respect to a contractor, would run from 'substantial completion'.

The hearing was temporarily interrupted for a small party in celebration of Senator Wilson's birthday. The Chairman was presented with a badge, one side of which said "I am Listening", and the other side of which said "I am Not Listening." A birthday poem was read by the secretary:

"When a 'simple country lawyer' has a birthday,
We must asked this 'policy question'...
Is this really 'germane' to the matter,
Of the occasion I'm here to mention.

"I guess what I'm asking is this...
Do we really have 'time to share'...
I'm not trying to 'beg the question',
So happy birthday to Spike, Mr. Chair"

Senator Wilson was presented a gift by Senator Wagner, and was given a card signed by the Committee.

The Committee returned to a discussion of Senate Bill 236, and testimony of Renny Ashleman. Senator Wagner asked if there was always a 'certificate of occupancy'. He said in all of the major counties, but he does not know if it would be true in every case in every jurisdiction. He said in the big projects, using the 'substantial completion' as a finishing point could pose some problems. Senator Wilson suggested the language, "notice of completion or certificate of occupancy, whichever last occurred." Renny Ashleman said the amendment did not reflect the earlier discussions, and that he understood that the owners, etc., would be put into the language, but that they did not want to destroy the separate catagory of liability that exists under the innkeeper's statute. Dave Gamble spoke to the Committee, and indicated that if you include materialmen, you may be including those suppliers of component parts. The Chairman said this bill was to protect builders, designers, and architects from having an endless tail of liabilities for a product which is designed to stand for a century. Mr. Gamble asked, "...if it was designed to last for a century, and after 99 years if proves defective, why shouldn't there be liability?" Senator Hernstadt said they could take the broad approach that was taken by the U.S. Supreme Court. Mr. Ashleman said that the U.S. Supreme Court did not review another state court decision on a statute almost identical with Nevada's, which upheld the constitutionality, and did not challenge the equal protection grounds.

There was no further discussion on the amendments to Senate Bill 236.

SENATE BILL 176

The Committee discussed some of the technical points of the recent amendment to Senate Bill 176, the time share legislation with Steve Hartman, Renny Ashleman and Harvey Whittemore.

MEMBERS PRESENT:

	Mr. Jack Jeffrey, Chairman
	Mr. Charles Bourne, Vice Chairman
(Absent-Excused)	Mr. Kenneth Redelsperger
(Absent -Excused)	Mr. Roger Bremner
(Absent-Excused)	Mr. Lonie Chaney
(Absent-Excused)	Mr. Edward Kovacs
	Mrs. Shelly Berkley
	Mr. Bob Kerns
(Absent-Excused)	Mr. Bob Thomas
	Mr. James Stone
(Absent-Excused)	Mr. John Du Bois
	Mr. Bruce Bogaert
	Mr. Marvin Sedway

OTHER PRESENT: Mr. Renee Ashelman, Southern Nevada Home Builders

Chairman Jeffrey called the meeting to order at 4:25 P.M. He stated that the first bill to be considered by the committee today would be SB 236.

SB 236 Repeals special period of limitation for action for damages for injury caused by deficiency in improvement to real property.

Mr. Renee Ashelman, an attorney at law and registered lobbyist representing the Southern Nevada Home Builders. He stated that SB 236 is the statute of repose bill, the meaning of the term "Statute of Repose" refers to statutes which offer some protection after a point in time for those furnish, design, plan or supervise or observe the supervision or do the construction on real property improvements.

The State of Nevada has had such statutes for a long time. The Supreme Court declared the prior one invalid, in a case called State Farm and Casualty Company vs. Olive Electric, March 1983. The problem caused to the public and people of Nevada by not having a statute of repose is two fold: (1) It does cause a very impact upon the cost of potential problems of not carrying insurance in liability for this purpose. Most such insurance is a claims paid type of insurance. In other words, it does not cover the time period in which you bought the insurance for, you have to continue the insurance forever or when the claim arises you have a real problem. This makes it virtually impossible to have some sort of limitation for people to retire, end corporations etc. (2) Is it's impact on construction costs.

The Senate spent a great deal of time on this bill and they struggled with essentially two problems. (1) Can we draw on this constitutional we do believe that from reading the opinion, that it is constitutional because it does cover any person who perform, design or furnish design, plan, supervision, etc. The defect in the old bill is that is only covered engineers and architects and contractors, it didn't cover other people, and it didn't cover the owners or occupiers of the property. They should be on the same footing. The second thing the Senate some time on was trying to make sure that they did otherwise effect existing law, so there has been an exception made for the innkeeper liability situation.

Also they took steps to preserve the product liability law.

He said that the bill as now written takes up, first of all, patent deficiences. Patent deficiences are the kind that are apparent by reason of inspection. That definition is on page 3 line 40 and 41. Statute of limitations for that is 6 years and then there is two years after the discover to file for a total of eight years. If you go back to the first part of the bill latent deficiencies are discussed, the statute of limitations on those is eight years, plus two years for the processing and filing of the complaint. For know deficiencies, the statute on that is ten years and two years for discovery, processing and filing. Finally for any deficiencywhich is a result of willful misconduct or fraudlent concealment there would be no statute of limitations. That is the purpose of the bill, the exceptions to the bill and what the bill accomplishes. The proponents, contractors, subcontracto building owners, architects, engineers, etc. are please with the bill, and the opponents are no longer in opposition to this bill.

There being no further testimony on this bill the hearing on this matter was closed.

Assemblyman Bourne made a motion for a DO PASS on SB 236, the motion was seconded by Assemblyman Bogaert, the motion carried unanimously with Mr. Bremner, Mr. Chaney, Mr. Kovacs, Mr. Thomas, Mr. Du Bois, Mr. Redelsperger absent from the vote.

Chairman Jeffrey stated that SB 415 had gained significance in importance since the start of the session. He said that he had some problems with the language on line 11. He said that the committee would now consider this bill.

SB 415 Provides for limitation upon use of electric resistance as means of heating spaces in new buildings.

Mr. Jeffrey said that in some cases it is much cheaper to install electric heat, and not a great deal of difference in the rate depending on the part of the State you are from. He said they felt that people would be using electric in the future because nothing would be available.

He read some proposed language to the committee as follows: " The present and future availability of alternate sources must be considered .... " He went over some additional language to the bill regarding the use of incandescant lighting as an alternative form of lightening, there being no further testimony on this bill Mr. Jeffrey called for a motion.

Assemlbyman Sedway made a motion for an AMEND AND DO PASS on SB 415, Mr. Bogaert seconded the motion and the motion carried unanimously with Mr. Bremner, Mr. Chaney, Mr. Kovacs, Mr. Thomas, Mr. Du Bois, and Mr. Redelsperger absent from the vote.

BILL SUMMARY
70th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

SENATE BILL 32
(Enrolled)

Senate Bill 32 makes various changes to provisions governing recovery of losses resulting from certain constructional defects to residential real property. The bill provides that in complex cases, a claimant may commence an action in District Court. At the same time and in the same manner that service of the summons and complaint is made, a claimant must serve the contractor with a written notice specifying in reasonable detail for each residence or appurtenance, or unit in a multiunit residence, the defects and damage that form the basis of the lawsuit. The bill also requires the notice to be accompanied by the written opinion of an expert documenting the existence and extent of each defect, if such an opinion has been rendered. The opinion may be based upon valid and reliable representative sampling of residences and appurtenances, or a multiunit complex, as applicable.

The measure also requires the contractor to file an answer to the complaint, and within 30 days of serving the answer, the contractor, the claimant, or their representative must meet and confer to establish:

1. A schedule for exchanging reports and other information;

2. A schedule for the contractor and other parties to independently inspect the subject property;

3. A schedule for tests reasonably necessary to determine the nature, cause, and extent of any defects and the repairs needed to remedy them;
4. A schedule for adding additional parties;

5. Whether to schedule mediation; and

6. Whether or not to seek the appointment of a special master.

In addition, S.B. 32 requires a second conference within 60 days after the deadline for filing all third party civil actions. The second conference is to allow all parties to meet and confer on the

topics discussed in the first conference. Further, the bill requires a claimant to diligently pursue a claim under a homeowner's warranty if one covers the affected residence or appurtenance.

The bill also requires the parties to exchange responses concerning a claim within specified time frames. If the claimant is a representative of a homeowners' association, the claimant must provide each member of the association with a written copy of any response by the contractor within 30 days after the response is received. Further, S.B. 32 places certain limits on discovery in a civil action until mediation is either completed or waived by the parties. Moreover, any applicable statute of limitations in a noncomplex case is tolled until 30 days after mediation is completed or waived.

The measure also provides that a contractor who receives notice of a defect on an individual residence in a matter that does not involve a housing complex within one year of close of escrow shall make repairs within 45 days if reasonably possible. However, the parties may agree to extend the time. Failure to comply in a timely manner is grounds for discipline by the State Contractors' Board.

Moreover, the bill prohibits filing a civil action against a developer of a planned community for defects in any appurtenance to the extent the construction was performed by a licensed general contractor, unless the claimant has not made full recovery against the contractor or the developer fails to provide the claimant with the name, address, and telephone number of each contractor hired to construct the appurtenance within 30 days of receiving a request for the information. All applicable statutes of limitations or repose are tolled against the developer until one year after a court determines that full recovery cannot be made against the contractor or the claimant receives notice that the contractor is bankrupt or dissolved, whichever comes first. However, these provisions do not apply in the case of a constructional defect in a residence if the developer was responsible for the construction of the residence. Further, this bill provides that a person other than the claimant is not prohibited from filing a civil action against a developer to enforce his rights.

Senate Bill 32 requires a claimant to make certain written disclosures to a prospective purchaser if the property has been the subject of a claim governed by *Nevada Revised Statutes* 40.600 to 40.695. Not less than 30 days before close of escrow, the seller must provide all expert opinions the seller obtained regarding constructional defects, the terms of any settlement offer or judgment, and a detailed report of all repairs made as a result of constructional defects.

The bill expands the definition of "appurtenance" to encompass an improvement that benefits one or more residences, including common elements of common interest communities. The measure also provides that in cases that do not involve a housing complex, a claimant must give at least 60 days' notice to the contractor before commencing an action for a constructional defect. In addition, the claimant must describe the location of such defects within each residence, to the extent known.

The bill specifies how to determine when substantial completion of an improvement to real property occurs. The measure also provides that certain statutes of limitation which commence with substantial completion of an improvement do not apply to claims for indemnity or contribution.

Moreover, the first seller of a residence built by a licensed contractor, but not lived in by the contractor for more than 120 days, shall make certain disclosures to a purchaser, including reports regarding soil conditions. The seller must provide copies of soil reports within five days if the purchaser requests them. The prospective purchaser has 20 days after receipt of the soil reports to cancel the purchase.

Finally, S.B. 32 authorizes an insurer who issues policies for home protection, other than casualty insurance, to invest as much as 35 percent of its assets in tangible personal property for use in fulfilling its obligations under such policies. Such a policy must specify the insured's copayment and provide that the insurer will commence an investigation of a claim based upon a telephone request from the insured without requiring that a claims form be filed. In addition, the home protection policy must specify that work must begin not later than 24 hours after the report of an emergency, including, without limitation, the loss of heating, cooling, plumbing, or electrical service.

The bill is effective on July 1, 1999, but only applies to claims initiated pursuant to NRS 40.600 to 40.695 on or after that date.

MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventieth Session
April 16, 1999

The Senate Committee on Commerce and Labor was called to order by Chairman Randolph J. Townsend, at 8:05 a.m., on Friday, April 16, 1999, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chairman
Senator Ann O'Connell, Vice Chairman
Senator Mark Amodei
Senator Dean A. Rhoads
Senator Raymond C. Shaffer
Senator Michael A. (Mike) Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Scott Young, Committee Policy Analyst
Crystal Suess, Committee Secretary

OTHERS PRESENT:

Scott M. Craigie, Lobbyist, Liberty Mutual Insurance Group; Alliance of American Insurers, and Sprint
Harvey Whittemore, Lobbyist, Nevada Resort Association
Robert A. Ostrovsky, Lobbyist, Nevada Resort Association
Michael A. Pitlock, Commissioner, Public Utilities Commission of Nevada
Douglas R. Ponn, Lobbyist, Sierra Pacific Power Company
Frederick J. Schmidt, Chief Deputy Attorney General, Bureau of Consumer Protection, Office of the Attorney General
Larry W. Bennett, Lobbyist, Utility Shareholders Association
Robert Crowell, Lobbyist, Nevada Power Company
Dan Reaser, Lobbyist, Nevada Bell
Ron L. Lynn, Lobbyist, Assistant Director, Inspections Department, Clark County Building Department

SENATOR O'CONNELL MOVED TO RETAIN PARAGRAPH (b) IN THE AMENDMENT TO S.B. 440.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Mr. Reaser asked for a point of clarification. He asked whether staff would be in agreement that the motion simply requires that section 28 be eliminated.

Mr. Young countered by asking whether all the earlier changes discussed about swapping the position of section 14 and section 28 would be ignored and simply eliminate section 28. Mr. Reaser replied that was correct.

Senator Townsend clarified that section 28 is to be eliminated, as is paragraph 3 of section 30.

Mr. Young agreed to have the changes made by Monday, April 19, 1999.

Senator Townsend moved on to the proposed amendment (Exhibit R) to Senate Bill (S.B.) 32.

SENATE BILL 32: Revises provisions concerning contractors. (BDR 54-22)

Senator Townsend questioned whether "complex matter" was a legal term. He was told that the definition of complex matter is contained in the NRS. Senator Townsend stated the proposal uses the term complex matter, NRS 40.613, which Senator Townsend read aloud. He clarified when the term complex matter is discussed, it is about multi-units and not complexity.

Senator Townsend referred to page 15, section 15, subsection 1 (Exhibit R). He explained that this provision came as a result of the debate between the two parties and is not a part of the legislative language. Senator Townsend asked for clarification of the language in the section.

Ron L. Lynn, Lobbyist, Assistant Director, Inspections Division, Clark County Building Department, said "substantial completion of an improvement" in

subsection 1 might refer to an improvement such as a room addition.

Senator Townsend asked whether "an improvement to real property" also meant an entire building. Mr. Lynn responded it could include an entire building, too.

Senator Townsend opined that section 15 appears to be getting away from quality, accountability and everything else. He asked for clarification from one of the sponsors of the amendment.

Bill Bradley, Lobbyist, Nevada Trial Lawyers' Association, stated the reason section 15 was included in the proposed amendment was there is typically substantial litigation dealing with the words, "when substantial completion occurred." He commented that both sides wanted a comprehensive definition to alleviate unnecessary litigation.

Senator Townsend stated the committee was more concerned with subsection 2. He asked why Nevada would allow anything to be built or improved upon without one of the three documents enumerated in paragraphs (a), (b) and (c).

Mr. Wadhams said maybe it should not allowed, but it can occur nevertheless. If it does occur, the rules of common law will determine when substantial completion occurred. He stressed the purpose of this section is to trigger the beginning of the accounting for the statute of repose and to have some certainty whenever possible.

Senator O'Connell asked where the consumer protection is in this section of the proposed amendment. Mr. Wadhams replied this particular section does not deal with consumer protection directly. He said there is a statutory period in which a claim may be instituted. Mr. Wadhams stated this section attempts to create a definition for all to understand. He stressed 99.9 percent of the circumstances will fall into one of the three paragraphs of subsection 1. Mr. Wadhams clarified that subsection 2 was added for the rare case where one of the three items enumerated in paragraphs (a), (b) and (c) does not occur for any number of reasons that cannot be anticipated. He said the section provides some certainty to the process where time and money might have had to be spent on lawyers litigating as to when the clock started, rather than finding a mutual solution.

Senator O'Connell asked what the rules of common law encompassed. Mr. Wadhams said the intent of section 15, the final building inspection, a notice of completion, or a certificate of occupancy is what government is set up to do. He said that is how the process is defined and the contracts between parties who build and parties who buy are negotiated. Mr. Wadhams asserted that the only purpose for inserting subsection 2 was as a catchall. If for any reason none of the three events listed occurred, then there still is a state policy definition to use common law in determining the date of completion.

Senator Townsend asked what the penalty would be for not completing one of the provisions provided in the three paragraphs.

David T. Pursiano, Lobbyist, Nevada Trial Lawyers' Association, said that typically a builder would file a notice of completion because that triggers the lien rights. He explained that if the notice of completion is not filed or filed late, it extends the lien-right period.

Mr. Lynn said that many times the lack of the proper notices, and even the lack of building permits is found when the owner wants to sell. He commented the informed buyer might note a permit was issued for a 2,000 square foot home, but the seller has advertised a 2,400 square foot home. The buyer wants to know where the extra 400 square feet came from and where the notice of completion is. Mr. Lynn claimed that is when the building department is called in to investigate. There are no punitive charges, but there are compensatory charges made by the building department for all the time spent investigating the matter.

Senator O'Connell asked whether this issue comes up very often in the rural areas. Mr. Lynn replied that there is a great deal of construction occurring in rural areas for which there is simply no accounting. He claimed that in rural areas of Clark County little settlements will appear and the building department cannot account for how, or when, they were erected.

Mr. Wadhams clarified that section 15 should not be taken out of the context of the discussion that is going on with S.B. 32. He said what is being dealt with is the "last straw." Mr. Wadhams remarked that part of what is being

discussed here today is the front end of this process; when it comes to the last straw it is either fix it, or sue me. He stated this section is designed to give some finality to the determination of when the clock started to run.

Senator Townsend instructed the committee to turn to page 21, section 20 (Exhibit R). He asked if there was anyone who had a problem with the language. Senator Townsend asserted that this section is crucial to the problems faced by the senators from southern Nevada. He said buyers must have full disclosure regarding these issues. Senator Townsend commented that this language was intended to solve the problems occurring in southern Nevada. He added that this language will be contained in the "Sales Agreement" and it is important that everyone understands the language, as there will be penalties if there is any noncompliance with the terms of the agreement.

Mr. Lynn referred to subsection 1 where it refers to a licensed contractor. He asked whether the same rules of disclosure apply if the agreement is not negotiated with a licensed contractor.

Robert Barengo, Lobbyist, State Contractors' Board, responded to Mr. Lynn's question. He stated that neither the licensed nor unlicensed contractor is being asked for full disclosure; it is the salesperson.

Senator Townsend clarified that the Sales Agreement and the purchaser have nothing to do with who built the home.

Mr. Barengo suggested the salesperson could be required to disclose the builder's identity.

Senator Schneider said that in 1995 he had seven bills on disclosure and the realtors are already on the line for a tremendous amount of disclosure on a variety of items.

Senator Townsend said the wording could be that the salesperson must disclose the builder, if known. He opined if the home is 30 years old, the builder may not be known.

Several people from the audience and committee members voiced that the Sales Agreement referred to in the section was for a sale involving the initial

purchaser of residential property not occupied by the purchaser for more than 120 days after substantial completion. Mr. Lynn pointed out that if the building department completes a certificate of occupancy, department personnel lists the contractor and/or the owner builder, which obviates the need for such disclosure on the sales agreement.

Senator Townsend commented that the only thing up for consideration on page 21, section 20 is taking out the issue of removing "by a licensed contractor" in subsection 1. He also reminded the committee there would be some technical changes made by the coalition working with the bill drafter.

Mr. Barengo asked the committee to look at page 23, paragraph 6 (Exhibit R). He said this particular paragraph says that the contractors' board cannot take action against a licensed contractor for defects if said contractor is attempting to resolve the matter. He stated that the board had requested that this section be taken out because some homeowners had been involved in lawsuits and were not getting the necessary repairs done. Mr. Barengo pointed out that the language in paragraph 6 retains the language and refers back to another section, which may have tightened up the language somewhat, but it still needs to be discussed. He referred the committee to page 5, section 3 that says the contractors' board is not to take action during a 45-day period, for an initial purchase only.

Senator Townsend said that the language and the changes embodied in the language were, in essence, part of the coalition's efforts to come to an agreement. He pointed out the committee had discussed the contractors' board having the authority to go after an offending contractor at any time, under any circumstances, which the board personnel deems appropriate under board regulations and NRS. Senator Townsend insisted that the authority should not interfere with the right of buyers to litigate, negotiate or arbitrate.

Mr. Pursiano reported that the only reason the reference is made to section 3 is that it is the customers' service aspect of the Nevada Trial Lawyers' Association bill. He said the thinking was that during the 45-day period of the first year the contractor should be encouraged to fix the problem. If the contractor is fighting a disciplinary proceeding it might impair or impede the necessary corrective work.

Senator Townsend suggested that rather than interfere with this amendment,

the committee also has the amendment to S.B. 423, which also deals with that section of the law that could be changed. He expressed a desire for Mr. Barengo and Margi A. Grein, Lobbyist, Executive Officer, State Contractors' Board, and Mr. Pursiano to meet to agree on language beneficial to both of the individuals representing those people with construction defects, and the board in allowing it to go after an offending contractor at any time.

Margaret A. McMillan, Lobbyist, Sprint, asked to comment on the proposed amendment (Exhibit S) to Senate Bill (S.B.) 487.

SENATE BILL 487: Makes various changes relating to provision of telecommunication services. (BDR 58-300)

Ms. McMillan referred the committee to page 2, section 4, line 3, which says that the eligible provider is entitled to reimbursement from the fund. She pointed out that in the original language it said "eligible" rather than "entitled." Ms. McMillan voiced concern that a provider could be entitled and still not receive it. She commented the suggested change was "shall be reimbursed from the fund," and that Mr. Schmidt had agreed with the wording.

Mr. Young recalled that during the last discussion on this proposed amendment that the committee requested that the language Ms. McMillan suggested be included. He said that he discussed this change with the bill drafter who indicated the proposed amendment could not be drafted in that manner. He elucidated the reason it could not be drafted that way was because the fund has been established, but no money has been allocated, as of yet. Mr. Young repeated that the language "shall" could not be used so the bill drafters were forced to use other wording.

Senator Townsend expounded because there was no money in the fund, the word "shall" could not be used. He suggested that Mr. Schmidt and Ms. McMillan draft a statement that says when there is money in the fund, the provider will get it. He declared that the statement would be read into the record on Monday, April 19, 1999. He also asked her to make sure the PUCN was involved in preparing the draft. Ms. McMillan agreed and added that "entitled" is much better than "eligible."