MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-Seventh Session
April 30, 2013

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:07 a.m. on Tuesday, April 30, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 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 Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman Paul Aizley, Assembly District No. 41
Assemblyman John C. Ellison, Assembly District No. 33
Assemblywoman Michele Fiore, Assembly District No. 4

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Ilena Madraso, Committee Secretary

OTHERS PRESENT:

Wes Henderson, Executive Director, Nevada League of Cities and Municipalities
Angela K. Rock, Olympia Companies, Olympia Management Services; Southern Highlands Community Association
Kyle Davis, Nevada Conservation League

Kristina Swallow, City of Las Vegas
Jonathan Friedrich, Commission for Common-Interest Communities and Condominium Hotels
Robert Robey
Robert Frank
Norman McCullough
Donald Schaefer
Rana Goodman, Nevada Homeowner Alliance PAC
Pamela Scott, Howard Hughes Corporation
Tim Stebbins
Michael Randolf, Paradise Greens Homeowners' Association
Gary Lein, Commission for Common-Interest Communities and Condominium Hotels
Garrett D. Gordon, Olympia Companies, Olympia Management Services; Southern Highlands Community Association
Chuck Niggemeyer
Terry A. Care, Terra West
Sara Partida, SFR Investments Pool1, LLC
Diana S. Cline, Howard Kim and Associates
Michael L. Dayton, NAIOP
James Litchfield, Nevada State Apartment Association
John Radocha

Chair Segerblom:
I will open the Senate Judiciary Committee meeting, and we will hear Assembly Bill 44.

ASSEMBLY BILL 44 (1st Reprint): Revises provisions governing the storage of trash and recycling containers in certain planned communities. (BDR 10-262)

Wes Henderson (Executive Director, Nevada League of Cities and Municipalities):
Assembly Bill 44 was introduced on behalf of the League of Cities. This bill would require homeowners' association (HOA) communities with curbside garbage or recycling pickups to allow for outside storage of the containers. We ask that the Committee support this bill. I have submitted written testimony (Exhibit C) in support of this measure. I have also submitted a proposed amendment (Exhibit D).

Chair Segerblom:
Does A.B. 44 require HOAs to change or to permit their rules to allow this condition?

Mr. Henderson:
This bill prohibits them from banning this practice. If their current rules prohibit the outside storage of trash cans, the HOA must change their rules. If the HOA is silent on this measure, then any rules they adopt must allow for the outside storage of containers. The HOA can adopt rules that require the outside containers be screened.

Chair Segerblom:
A homeowner cannot just put large trash containers out in front of the garage; an enclosure or screen would have to be built?

Mr. Henderson:
If the HOA desired that, then yes. There would need to be some kind of screening material so the containers are hidden from view.

Senator Hutchison:
The problem is this bill requires the HOA to allow the storage of trash or recycle containers outside of the home, and the HOA will provide screening materials. I am sympathetic to the fact that if a homeowner does not have a side yard or backyard, those smelly containers have to be stored in the garage. Why not just limit these rules to those units that do not have side yards or backyards? My own opinion is that I do not want my neighbors storing their trash or recycle cans in their front yards, even with screening material. Screening material, over time, can look worn down and unsightly. If the issue involves not having people store their trash cans in their garages, is that just a problem for those homeowners who do not have side yards or backyards where the containers could otherwise be stored?

Mr. Henderson:
That could be a consideration, though there could be an issue with HOAs that require that trash containers be stored in the garage. This bill addresses that problem, too.

Senator Hutchison:
Would you consider amending this bill to include language that HOAs cannot forbid storage of containers in the front yard with screening materials so long as the unit does not have a side or backyard. For those units that do have side yards or backyards, an HOA can require that trash containers be stored in the side yards or backyards. Are you all right with that concept?

Mr. Henderson:
I am all right with that. I would need to check with the membership because this bill is from the League of Cities and Municipalities. That does sound reasonable.

Senator Hutchison:
That sounds like a solid public policy point; get to the problem, which is homeowners being required to store trash in their garages. If the option is available of a side or backyard, then HOAs should not be forced to allow the third option of storing trash containers in the front yard. Storing trash containers in the front is not a good option.

Chair Segerblom:
Senator Hutchison, will you draft the amendment to that effect?

Senator Hutchison:
Yes.

Chair Segerblom:
Mr. Henderson, can you get your membership to vote by tomorrow?

Mr. Henderson:
I will survey them shortly after this hearing.

Senator Ford:
Jonathan Friedrich has submitted a letter in which he points out the requirement that certain structures be built or maintained if trash containers have to be stored outside of the garage. He estimates it would cost $500 to build the structure. Have you read Mr. Friedrich's letter?

Mr. Henderson:
No, I have not.

Senator Ford:
Have you spoken to him? Do you know about this concern requiring a structure be built to hold and hide these containers? He mentions concerns about rodents.

Mr. Henderson:
The reason the bill allows each HOA to adopt a regulation is to meet the aesthetics and the needs of each neighborhood. Screening material can be arranged. There would be an expense involved for a homeowner who chooses to store trash containers outside. But storing the containers outside is an option. If homeowners did not want to spend the money, they can continue to store their containers in their garages.

Senator Ford:
In other words, passing this bill does not require a homeowner to store trash containers in the garage, but they could still be stored in the garage if desired.

Mr. Henderson:
That is correct.

Angela K. Rock (Olympia Companies, Olympia Management Services; Southern Highlands Community Association):
We support the League of Cities and Municipalities amendment.

Senator Hutchison:
What is the correct terminology for a side yard and a backyard?

Ms. Rock:
Governing documents that I have seen do refer to those areas as side yards and backyards. In the League of Cities amendment that allows HOAs to establish rules and regulations for screening, language could be added saying that side yard and backyard storage be utilized first when available.

Kyle Davis (Nevada Conservation League):
We support the bill. We believe this bill will make recycling in our communities easier.

Kristina Swallow (City of Las Vegas):
We support this bill.

Jonathan Friedrich (Commission for Common-Interest Communities and Condominium Hotels):
The Commission for Common-Interest Communities and Condominium Hotels (CCICCH) opposes A.B. 44. I have submitted a letter (Exhibit E) outlining our opposition.

Chair Segerblom:
What do you propose should be done with the trash canisters?

Mr. Friedrich:
The simple solution is to keep the cans stored on the side of the property. Some would say that would detract from the value of our homes. That has already happened. We all have garbage cans. Why are we trying to reinvent the wheel?

Chair Segerblom:
Right now, are there HOAs that require trash cans to be in front of the house where everyone can see them?

Mr. Friedrich:
No, not in front of the house; on the side of the house.

Chair Segerblom:
Do you like Senator Hutchison's proposal, then?

Mr. Friedrich:
I am not sure what the proposal was. I have not seen the final version—it has not been written.

Chair Segerblom:
Senator Hutchison, please explain your idea to Mr. Friedrich.

Senator Hutchison:
The problem seems to stem from condominiums where the only alternative for trash storage is the garage. The other option is an HOA can require the trash and recycling canisters be stored in the side yards or backyards. An HOA can prohibit storage only if there is no side yard or backyard in existence.

Mr. Friedrich:
Most condominiums have large, central trash collection locations with large containers already enclosed. This problems only exists from homeowners with individual, one-family homes. The most egregious change proposed in this bill is the language that states containers cannot be seen from adjacent properties.

Chair Segerblom:
I understand your point. You want to keep the regulation as it currently is wherein the canisters can be kept alongside a house?

Mr. Friedrich:
Yes, without an enclosure.

Chair Segerblom:
Did you hear Senator Hutchison say that this is also his proposal? Listen to what Senator Hutchison says: if there is a side yard or a backyard, then the canisters may be stored there. Nothing needs to be built.

Mr. Friedrich:
Fine. No problem.

Chair Segerblom:
That idea solves your problem, right?

Mr. Friedrich:
We do not want the added expense for maintenance or a hotel for roaches or rodents.

Chair Segerblom:
We understand. Is there anything else you would like to bring up about A.B. 44?

Mr. Friedrich:
Not on this bill.

Chair Segerblom:
I have a letter submitted by Jay Bloom in opposition to A.B. 44 (Exhibit F). Is there anyone else who would like to speak in opposition?

Robert Robey:
I opposed this bill in the last Legislative Session because Reno, Las Vegas and Henderson all have city ordinances not permitting trash canisters to be seen from the street or sidewalk. That is the ordinance in every city.

Chair Segerblom:
But does that ordinance apply to HOAs?

Mr. Robey:
I do not have the authority to clarify that question. Does an HOA have the right to abrogate State law or city ordinances? I do not believe so.

Assembly Bill 44 requires or allows an HOA to screen garbage cans. For the last 20 years in my HOA, we have all used garbage bags; therefore, I have never had to store a garbage can. Suddenly the rules have changed. My wife and I are both crippled; we have to now handle two large garbage cans. Where do those two cans go in my side yard? I do not want them in my garage. I have two cars. The only part of this bill that I object to is the language that requires the cans to be hidden from all adjacent properties.

Chair Segerblom:
Did you hear the previous conversation where we have taken care of that issue?

Mr. Robey:
Yes, I did. I still heard the word screen. The proposed idea was to put the cans in the side yard and screen them.

Chair Segerblom:
No. That was not the discussion. The proposed idea was to put the cans in the side yard. If the cans can be placed in the side yard, they do not have to be screened.

Mr. Robey:
If that is the proposal, then I am happy with it.

Robert Frank:
I wonder if this bill is really necessary. In the long run, the HOAs with their covenants, conditions and restrictions (CC&Rs) will have to deal with this issue

no matter what. I believe the HOAs have to deal with the ordinances. I see no reason for this bill. This is a waste of time.

I am a member of one of the commissions that will have to figure out implementation for this plan. I am offended that those who promote this idea have not come up with a feasible implementation plan to make my job easier.

Norman McCullough:
I live in a villa. A villa consists of two units separated by a common wall. My deeded property is a square surrounded by a common area belonging to the HOA. Grass in front of my house is not my own because it is common area. There is no common area on the side of my house. On one side is my neighbor, on the other side is an open side belonging to the HOA. I have a backyard that also belongs to the HOA. My problem is twofold: Unwieldy garbage cans needing to be stored in the garage are too heavy for me to carry, and I cannot put a larger garbage can in my garage for health reasons. I am going to be 80 years old next month. The only other option is to place the garbage in a screened area on the HOA property. I want you to know that this is my only other option.

Chair Segerblom:
If we provide that option, will you be amenable to it?

Mr. McCullough:
I see nothing wrong with the association building a screen on HOA property—in front, beside or behind my house. I have no room on my lot for garbage storage.

Donald Schaefer:
Our association has been on the weekly trash and recycling pickup for a year. Our association does require that the garbage cans are stored inside the small garages, but we have opted to use the smaller trash cans. We are an age-qualified community. The side yard is a V-shape with rocks for drainage purposes. If we need to store garbage cans in the side yard, the ground level would need to be built up to improve drainage and a cement pad be poured. If this was not done, many senior homeowners would have a difficulty with garbage can storage. Some homes have their main entrances on the sides of the houses. If a garbage can was stored on that side, the neighbor, whose main entrance mirrors mine, would see the garbage canister.

Chair Segerblom:
Do you like or not like the bill? Do you have any suggestions for changing it?

Mr. Schaefer:
The State should leave the bill alone and let the HOAs continue as they have: mandate that the garbage cans be stored in the garage, away from public view.

Rana Goodman (Nevada Homeowner Alliance PAC):
I have one major problem with the bill which the League of Cities and Municipalities has conveniently left out. Republic Services, the waste removal and recycling service, came to Sun City Anthem and gave a statement that a senior citizen or disabled person who had a problem wheeling trash canisters to the street and back could call Republic and one of the collection workers would wheel the canister from its location to the street and back again. Now the rules have changed. This group of unable individuals now must come with a doctor's excuse, and then a Republic Services employee would come to take care of the garbage can. Seniors who cannot manage these cans will not go to doctors to get notes of excuse. Just because someone is weak or frail does not mean he or she will visit the doctor and say I am too weak to wheel a garbage can. This requirement is not logical nor fair. Something must be done to help these people.

Chair Segerblom:
Do you want us to write into the law that these companies cannot require a doctor's note?

Ms. Goodman:
Yes. But if Republic Services mandates that note, these seniors must comply. Republic must keep its word.

Pamela Scott (Howard Hughes Corporation):
We have been supportive of the single-stream recycling. I would like to point out that there is no Howard Hughes amendment; no Howard Hughes amendment was adopted. The League of Cities and Municipalities was supportive of the language in the proposed, but never adopted, amendment.

Regarding the definition of a side yard: In our documents, a front yard is defined as anything forward of a closure wall.

I would like to reiterate Mr. Shaefer's concern—homes are plotted much differently on these smaller lots. While some may laugh at someone's unscreened garbage can in the side yard, that garbage can would be sitting 5 feet from someone else's front door. It is not a laughing matter to that neighbor.

Tim Stebbins:
I oppose this bill. At my home, when the trash was collected twice a week, a smaller garbage can fit well in my garage. Now the trash is collected once a week, requiring a larger container. There is no room in my garage for that.

Chair Segerblom:
How do you propose to solve the problem?

Mr. Stebbins:
If we adopt Senator Hutchison's proposition of putting the cans at the side of the house, I am happy with that solution.

Chair Segerblom:
Seeing no other opposition, Mr. Henderson, do you have any closing remarks?

Mr. Henderson:
I am more than happy to work with Senator Hutchison to come up with language for an amendment to address these concerns.

Chair Segerblom:
I will close the hearing for A.B. 44 and will open the hearing on A.B. 98.

ASSEMBLY BILL 98 (1st Reprint): Revises various provisions relating to common-interest communities. (BDR 10-488)

Assemblyman Paul Aizley (Assembly District No. 41):
Assembly Bill 98 concerns three items: Section 1 says candidates for an HOA board must be in good standing and must reveal any potential conflicts of interest; section 2 requires review and comparison of bids for programs costing more than $2,500 or 10 percent of total annual assessments of the HOA, allowing also a request for revised bids; section 3 in my original bill concerns the review of financial statements of associations with annual budgets of $150,000 or less by an independent certified public accountant (CPA) every

fiscal year unless a majority of voting members submit a written request for a complete audit.

The most frequent complaint I heard while campaigning was about HOAs and their management. This bill is in response to those complaints. I expect A.B. 98 should lead to boards that act more professionally. The bill defines good-standing members to be eligible for serving on the board if they are current with all association dues and assessments. A current board member cannot prevent a member in good standing from seeking election to the board by assessing a fine for a frivolous reason. I was amazed that so many people would or could do that. Assembly Bill 98 is a positive step in improving HOA boards.

I have proposed an amendment (Exhibit G). This amendment is in response to concern about whether the HOA can divulge what it sees as a potential conflict of interest on behalf of the candidate. The amendment changes the bill so the candidate must give permission to divulge a conflict of interest.

Michael Randolf (Paradise Greens Homeowners' Association):
I am the treasurer of my association, and I am in favor of sections 1 and 2 of A.B. 98. In the past, we have had individuals wanting to run for the board who did not pay their assessment fees. It is ludicrous to allow someone on the board making financial decisions for the HOA who fails to pay his or her own assessments. I am glad to see the language that removes fines from the board requirements.

Senator Hutchison:
Are you in support of section 3, subsection 3, including paragraphs (a) and (b) that add the requirement that the financial statements of an association be either audited or reviewed? There is a big difference between auditing and reviewing. Are you in favor of that? Does having financial reports reviewed or audited have a material impact in terms of the costs of HOAs?

Mr. Randolf:
By having statements reviewed, as opposed to audited, we will save a lot of money. Having an audit is expensive. My association's limited budget cannot be increased without a vote from the membership. Anytime expenses can be kept down is good. Once an audit is completed, a review should be sufficient for the next few years to keep finances in check and save money.

Senator Hutchison:
My question regards the additional language in accordance with generally accepted accounting principles (GAAP). Under statute, there is the option to either review or audit. This bill adds GAAP requirements to either the audit or the review. Does that concern you? Will that increase your expenses? Are you amenable to that as the treasurer of your association?

Mr. Randolf:
In my own business, we have to do our financial accounting by GAAP; therefore, I do not have any problem with that. Generally accepted accounting principles work.

Senator Hutchison:
Everyone likes GAAP, but my question is: Are you okay with a potential additional expense upon your association given an additional requirement under GAAP principles?

Mr. Randolf:
I am okay with that because we already utilize GAAP.

Ms. Scott:
We are generally in support of this bill. I have one concern relating to the previous discussion about audits. I think the intent of this bill was to make audits not as egregious for smaller associations. But with the total budget numbers in the amendments, these changes would take audit requirements away from about half of the associations in Nevada. Commissioner Gary Lein of the CCICCH opposes the bill but suggests new language on this account which we would support. That new language would help alleviate expenses of the smaller associations to ensure accountability.

Chair Segerblom:
Assembly Bill 98 still requires a financial statement review.

Ms. Scott:
Yes, but I would want Commissioner Lein to address that from a CPA standpoint. We would be supportive of the amendment that Assemblyman Aizley referred to, which may be discussed later.

Mr. Schaefer:
I am generally in favor of this bill, but I have concerns about the cost of the audit versus a review. For our association of over 2,000 homes, expenses for a complete audit are less than $4,500 per year. I think it extremely important that every association have a review. We are dealing with public money. To ignore that review would be ridiculous.

I have a small concern in section 2, subsection 2 regarding the bids. I do not agree that revised bids should not be sealed. That language needs to be cleaned up.

Mr. Friedrich:
I am speaking for the Commission for Common-Interest Communities and Condominium Hotels. I have sent a letter opposing the bill (Exhibit H). I will address sections 1 and 2. It has been related to me by investigators at the Real Estate Division that in the past, people who have attempted to run for HOA boards had their monthly or quarterly assessments withheld so they would not be in good standing, keeping them off the board.

By a vote of 6 to 1 the Commissioners do not believe the language of the statute should be changed.

Concerning section 2, the bids lead to unfairness because once all bids are opened, all bidders are aware of the prices and can now rebid. Favored bidders can lower their prices in order to receive the contract. For these reasons, we oppose the bid-rigging language of section 2.

Senator Jones:
With regard to the good-standing provision, why is the added provision in section 1, subsection 8, paragraph (b) insufficient? It allows the candidate not deemed to be in good standing to pay all unpaid dues and therefore run for the board.

Mr. Friedrich:
If a board does not want a certain candidate to run, the board can take the monthly assessment and not deposit it.

Senator Jones:
I understand. The specific provision in the bill states that:

> If a candidate who is not deemed to be in good standing pursuant to this paragraph satisfies all such unpaid and past due assessments or construction penalties before the closing of the prescribed period for nominations for membership … he or she shall be deemed to be in good standing.

Why is that not sufficient?

Mr. Friedrich:
Because if they have paid their assessments …

Senator Jones:
Forget that. If the candidate did pay and someone put it in a desk drawer, the candidate can show up to the board meeting and hand the HOA a check. Are you suggesting that someone on the board at the meeting may tear up that check and not allow that candidate to run?

Mr. Friedrich:
The former chief investigator at the Nevada Real Estate Division relayed that information to me 4 or 5 years ago. Whether the candidate pays at the board meeting is unknown to me. I do know that I have paid my assessments through the mail for the last 10 years; I assume most people pay through the mail. Some HOAs require the assessment to go to the management company. All sorts of devious activities go on inside these HOAs.

Senator Jones:
I understand you have a general proposition that all HOAs are evil, but most of them attempt to do the right thing every day.

Mr. Friedrich:
No, that is not true. But as a Commissioner, I do see quite a few evil people, as you say, come before the CCICCH. The investigative section at the Real Estate Division has over 300 active cases.

Chair Segerblom:
Conversely, why should someone who has not paid assessments be allowed to run for the board?

Mr. Friedrich:
If they are in good standing, they can run for the board.

Chair Segerblom:
But that is the whole point. If they are not in good standing, should they be allowed to run for the board?

Mr. Friedrich:
Yes, depending on the circumstances. Look at the testimony of Senator Maggie Carlton and Senator Michael A. Schneider on April 11, 2005, concerning this matter. Someone's good standing can be used as a tool.

Chair Segerblom:
This is 2013.

Mr. Friedrich:
We still have problems in the area.

Chair Segerblom:
We do not have problems. We are addressing a specific issue: Should people who have not paid their assessments be allowed to run for the association board?

Mr. Friedrich:
No.

Gary Lein (Commission for Common-Interest Communities and Condominium Hotels):
I am a CPA in Nevada who lives in a community with a budget less than $75,000, and I also serve as a member of CCICCH.

Chair Segerblom:
What does an audit of your community cost?

Mr. Lein:
My association does not have an audit. As Hilburn and Lein, CPA's, we have several HOAs as clients, and the audits can range from around $2,000 per year up to $30,000 per year, depending on the size and complexity of the community.

Chair Segerblom:
You do not have an audit because your community's budget is less than $75,000 per year?

Mr. Lein:
Yes, that is correct. Our actual annual budget is $42,000 per year. Under statute, our association is not obligated to an audit or financial statement review.

Chair Segerblom:
Do you object to raising the budget threshold for annual review to $150,000?

Mr. Lein:
My objection pertains to cost and availability of services to small communities in outlying areas of the State. It is my understanding that in 2011 Senator Mike McGinness proposed changes through S.B. No. 89 of the 76th Session—the genesis of associations that could either not locate CPA firms to review their statements or not absorb the prohibitive costs of having CPAs do their reviews.

Chair Segerblom:
This bill does not require that review. Assembly Bill 98 raises the threshold from $75,000 to $150,000.

Mr. Lein:
Statute says that if an association's annual budget is less than $45,000, it is not required to have any outside services at all. If the budgeted revenue is $45,000 but less than $75,000, that association is required to have a reviewed financial statement the year preceding the year the study of the reserves occurs, which under *Nevada Revised Statutes* 116.31152 means every 5 years. The basis for that is if the reserve study update happens in 2014, the reviewed financial statement should be done in 2013. The association would use reviewed financial statements as the beginning point for the reserve study

contracted for completion in 2014. A reviewed statement is to be done every 5 years. Assembly Bill 98 now requires all associations below $150,000 to have annual reviewed statements. All associations are under a tiered system: Annual budgets of less than $45,000 do not require outside services by CPAs; annual budgets of $45,000 but less than $75,000 require reviewed statements every 5 years; and annual budgets with $75,000 but less than $150,000 are required to have reviewed statements every year.

This bill requires that all associations below the $150,000 annual budget threshold would have annual reviewed financial statements. The concern is small associations—those with 10 unit owners and only $5,000 to $10,000 per year—that go through the process for the reviewed statements bid of $1,200 or $2,000 incur large annual expenses.

Chair Segerblom:
Assemblyman Aizley, why did you eliminate that $45,000 threshold?

Assemblyman Aizley:
One of the reasons for inserting the audit and review possibility is that some litigious situations requiring audits become very expensive if associations have not had previous reviews on the books. The cost for an auditor to do a review over the past 3 to 5 years is much more than a review for an association on a current review and audit schedule.

Chair Segerblom:
Mr. Lein, what do you think about that?

Mr. Lein:
Under statute, the associations with an annual budget of $150,000 or more are required to have annual audited financial statements. Anything less than $150,000 would have a review rather than an audit. The cost is the issue.

My main concern is the total number of voting members raises from 15 percent to 51 percent when requesting an audit. The key is that unit owners still have a mechanism in place to have an audit conducted by a CPA. Raising the percentage from 15 percent to 51 percent in favor of the audit is almost impossible. If unit owners identify errors or issues, statute triggers the annual audit and the cost would be incurred. I do not agree with increasing the percentage to 51 percent.

The other issue is construction defect funds. An association that has an annual budget of $50,000 a year may have $5 million in the construction defect fund. Those associations should have an annual audit.

Chair Segerblom:
Do you want to add that to the bill?

Mr. Lein:
Absolutely, in section 3.

Chair Segerblom:
Do you have proposed language or is that just an oral statement?

Mr. Lein:
That is item 3 in Exhibit H on page 2. These things are very important: dropping back to 15 percent and keeping the existing audit and review provisions of NRS 116.31144 in place. A self-managed association should have some oversight to include a reviewed financial statement prepared on an annual basis. If the association is professionally managed, monthly accounting is required by State regulations. Those financials need to be prepared on the accrual basis, using fund accounting.

Chair Segerblom:
Assemblyman Aizley, why did you move the percentage up from 15 percent to 51 percent?

Assemblyman Aizley:
Most of this was done in consultation with people who work with HOAs. These are not ideas that I came up with. I have been advised that these changes are changes that most people want. What I am learning is that the variety of HOAs is vast and there are many experts on HOAs—many of whom do not agree on what is supposed to happen. I am willing to consider all of the issues raised in amendments if asked to do so. I will listen to the consensus of what should be.

Mr. Lein:
Forty-five percent of associations fall below the $150,000 annual budget threshold; that is almost half of the associations in Nevada. A lot of associations will be impacted by this bill; of approximately 2,992 associations in Nevada, 1,351 associations have an annual budgeted revenue less than $150,000.

Senator Hutchison:
What is the best policy? With A.B. 98, the threshold is raised to $150,000, and everyone under that threshold must have the financials reviewed; anyone above that must be audited. In exchange for that, the threshold for an audit increases from 15 percent to 51 percent. It is now harder for a smaller association to require an audit, not only because of the voting percentage increase but also because of the required financial reviews. Under statute, it is easier to trigger these smaller associations to initiate an expensive audit with a much lower 15 percent threshold—the reason being that in the past, smaller associations have been excluded from their financials even being reviewed. The policy debate concerns money paid up front with the reviews or costly full audits later. That is the policy debate, correct? You fall on one side of that debate, right?

Mr. Lein:
Yes. This is a stimulus package for CPAs. By requiring all associations to have outside services, as a CPA myself, I should be advocating for this. But I am very sensitive to the small associations and the costs involved.

Senator Hutchison:
That is my point. Under statute, the small associations have to go through an expensive audit process if only 15 percent of the membership votes for that, right?

Mr. Lein:
I have never seen that happen. That is the important issue. A trigger point is in place so if the homeowners sense something is terribly wrong with association finances, NRS 116.31144 may trigger an audit as opposed to mandating the use of a reviewed statement on an annual basis. The limited reviewed statement may not detect fraud.

Senator Hutchison:
Based on your experience, you have not seen a situation where the lower threshold of 15 percent has triggered these expensive audits? And as a result of you not seeing it, you believe it is not happening. If this bill is passed, every HOA budget under $150,000 will have to undergo the expense of a review. And because you have not seen the audits triggered that often, you believe it will be expensive for smaller associations?

Mr. Lein:
Yes, the ones below the $75,000 budget. Right now, those associations between a $75,000 and a $150,000 budget are required to have annual reviewed financial statements. Those HOAs between $45,000 and $75,000 are required to have reviewed financial statements every 5 years, and those below the $45,000 budget are not required to ever have one. To move that threshold of votes from 15 percent to 51 percent, the mechanism of protection is taken away. The amendments to this bill are meant to enhance, but changing the voting threshold hurts those HOAs. A reviewed statement is not the same as an audit. If a problem arises, the members desire to avail themselves of the higher level of financial reporting—an audit.

As I have pointed out in Exhibit H, if an association has a budgeted revenue of less than $45,000, under statute, it is not required to do anything; but if the governing documents require an annual audit, it should be audited per the governing documents. To clarify section 3, the subsection 1 introduction should say: unless the governing documents impose a more stringent standard.

Mr. Robey:
Section 1, subsection 10, paragraph (a) says that the association board may reject the candidate's nomination. It is interesting to me that the membership of the association will vote on the election. The board shall reject nominations to the board. Think about that. It is not the association that rejects the nomination, the association membership rejects the candidate by the vote when the ballots are counted. The board is allowed to deny which candidates run for the board. The Real Estate Division has already issued an opinion that states the board may not interfere with candidates' statements. There is no need for this amendment.

Mr. Stebbins:
I am opposed to section 2, subsection 3, paragraph (b). This has to do with the requirements for bidding on projects. This is ridiculous. In larger associations, this bill says that bids do not need to be made for projects less than $2,500 or 10 percent of the association's total annual assessment. Sun City Summerlin has an assessment of $14 million; 10 percent of that is $1.4 million. Any contract under $1.4 million would not require bids. Ninety-nine percent of its contracts are under $1.4 million. My association's annual budget is $9 million; 10 percent of that is $900,000. I am sure that 99 percent of our contracts are under $900,000 each. Therefore, there is no bidding at all.

If the language were changed to, "involves a cost of $2,500 or more than 10 percent of the total association assessment, whichever is lower," that language would be all right with me.

Mr. McCullough:
I would like to address a few issues that Mr. Lein left out. My association has several budgets. Of over 700,000 homes in our community, only 162 are villas whose owners have their own reserve studies. If the villa owners suspected a discrepancy in the finances, we should have leverage to call for an audit.

Chair Segerblom:
What do you want us to do?

Mr. McCullough:
I want the Committee to consider the budgets of subassociations that do not reach the higher budgetary threshold which requires an annual audit.

Chair Segerblom:
Do you want to extend voting privileges to 15 percent of your villa members, the subassociation, in order to have an audit?

Mr. McCullough:
Yes, to mandate an audit.

Chair Segerblom:
Assemblyman Aizley, you have the option to keep this alive by communicating with the opposition factions, urging us to vote for the bill as is, or considering a return in 2 years.

Assemblyman Aizley:
Some issues do not seem solvable to appease all parties, but other issues have common areas of agreement in which I would be willing to make changes.

Chair Segerblom:
Before we segue into the proposed amendments on A.B. 98, I have a letter from Jay Bloom to submit to the record in opposition with a proposed amendment to section 2 (Exhibit I).

Two amendments on A.B. 98 are both complicated. We will hear the first amendment now.

Garrett D. Gordon (Olympia Companies, Olympia Management Services; Southern Highlands Community Association):
On behalf of my clients, Southern Highlands, Terra West Management Services, Associa, Camco and RMI Management LLC, I have submitted an amendment for consideration (Exhibit J). These five companies consist of and manage over 900 communities in Nevada—approximately 265,000 rooftops—and employ over 1,200 Nevadans. This a significant issue to my clients.

The issue is superpriority liens: a homeowner fails to pay his or her assessments and mortgage, and a foreclosure ensues.

Chair Segerblom:
A foreclosure by whom?

Mr. Gordon:
A foreclosure by the first lienholder.

Chair Segerblom:
Not by the HOA?

Mr. Gordon:
No. When there is a foreclosure by the first lienholder, who pays the collection costs incurred?

Chair Segerblom:
When you say collection costs, you are saying the HOAs attempt to recover the 9 months of assessments?

Mr. Gordon:
Correct. By regulation, a cap is on these collection costs. There are a series of steps: HOA volunteer board members have to hire a collection company to collect the past due assessments; if the assessments are not paid by the next 3 to 6 months, they lien the property and secure that lien for their own foreclosure. Particularly in this case, there is a foreclosure by the first lienholder to perfect that lien so they can be paid those 9 months' worth of assessments.

We ask to confirm and clarify that those costs of collection, currently capped by regulation, can be recouped by the association after the foreclosure.

Chair Segerblom:
What is the cap?

Mr. Gordon:
Under regulation, the cap is $1,950.

Chair Segerblom:
Does that include attorney's fees?

Mr. Gordon:
The provision in regulation says it does not include attorney's fees for those collection activities.

Chair Segerblom:
Does your amendment include attorney's fees?

Mr. Gordon:
There should not be attorney's fees for the cost of collection.

Chair Segerblom:
The cap is just $1,900?

Mr. Gordon:
The $1,950 cap also involves the third-party hard cost—a title review or publishing cost—that cannot be marked up per regulation. I am certainly willing to close that loophole with a certain dollar amount cap so that in perpetuity, there is a flat cost for both items.

Chair Segerblom:
But these are in regulations?

Mr. Gordon:
Yes.

Senator Hutchison:
Can you clarify? What costs do you seek? Enumerate them, please.

Ms. Rock:
I think your question is: What has clouded this issue for some many years? Here is a hypothetical: John Doe does not pay his assessments to the association for 24 months. During that period of time, the association does not know why John Doe is not paying, but it is likely that he has not paid his mortgage. Over at the bank, simultaneously, a foreclosure is happening. In this situation, the bank is entitled to a safe harbor and gets a reduction in the amount of assessments to pay back to the association after that foreclosure. Even if John Doe has not paid for 24 months, the bank has this 9-month safe harbor—it only has to pay 9 months. For the past 20 years, that has been defined and the pattern of practice has been the base assessments.

Nevada Revised Statutes 116.3116, section 1 defines assessments as penalties, fees, charges, late charges, fines and interest. The term "charges" is key. During those 24 months that John Doe was not paying, the association incurred charges in its attempt to collect the debt owed. The association had to go to an outside vendor, under the added pressure of the Fair Debt Collection Practices Act. This complicated situation needs to be accomplished correctly.

From the adoption of the Common-Interest Ownership Act right up through 2010 when the CCICCH issued an opinion on this uniform act, the associations were told those charges included the costs of collection. It was not until the last 2 years that the issue became unclear and now needs clarity.

We are talking about a bank foreclosing and paying for 9 months. We are asking for clarification of that definition already in statute that includes the term charges, and charges are costs of collection.

Chair Segerblom:
Senator Hutchison, we have already established that under statute, the total cost of the charges is $1,950, right? The bank pays 9 months of assessments.

Senator Hutchison:
It is capped at $1,950.

Chair Segerblom:
No, the assessments are different. The assessments are whatever they may be—$100 per month, $50 per month, etc.—for 9 months plus the $1,950,

covering the fines and penalties for not paying. In addition to the aforementioned, now this amendment desires the costs incurred for collecting.

Ms. Rock:
No, that is not correct.

Senator Hutchison:
Where do the attorney's fees come into this?

Ms. Rock:
That is another cloud of confusion. The $1,950 is in service fees to engage in the activity of collecting; there should be no attorney's fees. Attorney's fees are added only when somebody files bankruptcy and has to go to bankruptcy court. You then have to hire an attorney. Additionally, if someone files a restraining order to stop the foreclosure in district court, then there are attorney's fees. There should be no attorney's fees for engaging in the collection services.

Senator Hutchison:
Attorney's fees are available under those circumstance you just described?

Ms. Rock:
Correct.

Senator Hammond:
Are you asking for just the $1,950 fee, capped at $1,950? That is just for fees. Is that correct?

Ms. Rock:
Correct. I do want to clarify that the $1,950 represents service fees only; there are also hard costs.

Senator Hammond:
Assessments are different?

Ms. Rock:
Correct. I want to clarify, it is all part of the superpriority lien.

Chair Segerblom:
This amendment is asking for the 9 months of assessments, the $1,950 for service fees and the hard costs. Are you willing to limit it to that, and that would be the definition of a superpriority lien?

Ms. Rock:
Correct.

Chair Segerblom:
You have said you are willing to limit the hard costs. The hard costs are what?

Ms. Rock:
I believe the discussion has been $500. I do not know whether that was a finite discussion.

Senator Ford:
I am still confused. The $1,950 fee is what? The collection charges for collecting the past due HOA fees?

Ms. Rock:
It is the ultimate cap on the service fees. The $1,950 fee only comes into play if the HOA forecloses. As you go through the process, the fee can only diminish from $1,950. It is $1,950 for the services of collecting the hard costs, such as title reports—that part of the definition in NRS 116.3116 has always been collectable as part of the superpriority lien.

Senator Ford:
What has been happening the last couple of years? You have not been able to collect the $1,950?

Ms. Rock:
Associations have continued to engage in the practice for the last 20 years and listed the $1,950 on the escrow demand. There is suddenly a flood of litigation over this. Decisions from various arbitrators at the Real Estate Division confirm what former Chair Michael Buckley said at the Real Estate Commission in 2010: the $1,950 is collectable.

Senator Jones:
To clarify, the $1,950 is the cap? You do not automatically get $1,950 if you engage in the practice of collecting assessments?

Ms. Rock:
Yes, you are correct.

Senator Kihuen:
Assemblyman Aizley, you mentioned that this amendment was semifriendly; how do you feel about this amendment? Do you support it?

Assemblyman Aizley:
More and more, this is an important issue in foreclosures; in that sense, I do support it. If it was clouding my original amendment, I was not so pleased. I would be willing to put the amendment with mine if we can agree on how.

Chair Segerblom:
What if a homeowner who has been foreclosed on has missed an assessment fee or gets a fine? Is that part of the $1,950 cap?

Ms. Rock:
If you miss an assessment and get a late fee, historically yes. That is calculated as part of the assessment as defined in statute under "any penalties, fees, charges, late charges, fines and interest charged."

Chair Segerblom:
That is all under the $1,950 cap?

Ms. Rock:
No. That is part of the calculation of assessments. The $1,950 cap is referred to as the word "charges" in that NRS 116.3116 definition.

Chair Segerblom:
So the assessments can be more than 9 times the monthly amount; it could be 9 times the monthly amount plus $10 late fee, plus double-late fee, etc.?

Ms. Rock:
As defined in statute, yes.

Chair Segerblom:
You would be willing to cap the hard costs up to $500?

Mr. Gordon:
Yes.

Chair Segerblom:
You would be willing to define the hard costs in your amendment?

Mr. Gordon:
Yes, we could transpose a good definition in regulation into the amendment.

Mr. Randolf:
I have been a licensed collections agency manager in Nevada for over 20 years. I support this legislation. The $1,950 is for the collection agency or law firm that does collections for an association. That cap is allowed under *Nevada Administrative Code* (NAC) 116.470. The $1,950 includes specific line item costs for intent to lien, recording a lien, the cost of recording that lien, follow-up letters, notice of default and notice of sale. The hard costs previously discussed involve the $18 to record the lien, the $18 to record the release of lien when paid off and the title report. I pay a title company $290 for the title report. Hard costs also include postage because we must use first class and certified mail to every known address of the former homeowner and to the lenders. The mailings are a large portion of my costs. The $1,950 covers the fees I would charge for my work. The hard costs are the outside expenses to get that work done.

Chair Segerblom:
Going back to the question about attorney's fees, you are not including the attorney's rights for $350 when he or she asks a secretary to fill out the form that says you are in default?

Mr. Randolf:
No. If the law firm secretary performs any nonjudicial foreclosure steps as outlined in NAC 116.470, the attorney is capped at that $1,950 fee as well. Anyone doing the regulated steps outlined in NAC 116.470 is limited to those fees. Attorney's fees are allowed when a homeowner files bankruptcy, but that is another area of the law.

Ms. Scott:
The Howard Hughes Corporation is fully supportive of this amendment.

Chuck Niggemeyer:
I like this amendment as it exists now, and I fully support it.

Terry A. Care (Terra West):
I support this amendment.

Chair Segerblom:
Before we hear any opposition to this amendment, I have a letter to submit to the record from Associa in support of this amendment (Exhibit K).

Mr. Friedrich:
I am speaking as a homeowner and not as a Commissioner. This amendment was dropped from A.B. 98 on the Assembly side, and now it is reemerging. I have seen the $1,950 cap be ignored, getting as high as $3,000 to $4,000, with attorney's fees appearing to run rampant. In the last Session, I submitted a number of collection company documents showing the fees in excess of the $1,950 cap. I am sure those are in the record.

Mr. Stebbins:
I oppose this amendment to the bill. I do not think it has been worked out satisfactorily yet. I object to the semantics of charges and costs that confuse the issue. The Real Estate Division published an advisory opinion several months ago that directly analyzed what constitutes a cost and a charge; a cost cannot be part of the superpriority lien. That issue needs to be addressed more seriously. This amendment does not solve the problem. Therefore, I oppose this amendment.

Senator Ford:
Why was this amendment dropped in the Assembly, and why has it been revived here?

Mr. Gordon:
On the Assembly side, all HOA bills were sent to an HOA subcommittee consisting of five Legislators. This amendment was introduced and then went to the full committee at that time. I met with the chair; and he said that given the historical complexity of the issue, he preferred a full hearing on the Senate side.

Chair Segerblom:
I will close the hearing on this amendment and open the hearing on the Perkins-Partida amendment.

Sara Partida (SFR Investments Pool1, LLC):
I am here with The Perkins Company. The amendment I am presenting (Exhibit L) clarifies some issues of confusion regarding superpriority liens and how the courts interpret them. Advisory opinions from the Real Estate Division and the Legislative Counsel Bureau have attempted to clarify this issue. The courts are still interpreting the law in various ways. We seek to get the intent of the Legislature on the record as to how to interpret superpriority liens and how foreclosure sales should function.

With me today is Diana Cline with Howard Kim and Associates. She actually practices this type of law and is here to explain the amendment.

Diana S. Cline (Howard Kim and Associates):
This amendment does three things. First, it attempts to clarify what an HOA-held superpriority lien does if a common-interest home is foreclosed nonjudicially.

Chair Segerblom:
Foreclosed by the HOA, right?

Ms. Cline:
Yes. If the home is foreclosed by the HOA, then the first security interest is extinguished. The courts are issuing three different opinions on this statute. Although this statute was enacted 20 years ago, the HOAs have not really used foreclosure during that time. But recently they began foreclosing due to a limitation on the time an HOA has to enforce its lien. The limitation is 3 years. Because banks have not been foreclosing, the HOAs have been forced to do the foreclosures themselves.

The courts are split three ways regarding what happens to the title after the HOA forecloses: Some agree with the Real Estate Division opinion that a nonjudicial foreclosure will extinguish the first security interest if an HOA forecloses. Others say the HOA can foreclose but must do it judicially by filing a lawsuit to extinguish the first security interest. The last group says that an HOA does not have the ability to foreclose on a superpriority lien; it must

wait for the first security interest to foreclose if the HOA desires to collect the superpriority amounts.

Senator Ford:
Can you tell me the rationale for the court opinions? I believe I understand the first one which says the HOA has the superpriority lien and can foreclose as a matter of general law. But are the other two rationales issues of fairness?

Ms. Cline:
The sale prices at these HOA foreclosure sales have been artificially lowered. A market inefficiency exists because of no clarity in what type of title a purchaser gets after the foreclosure sale. The first opinion issued by a federal court did not have the benefit of the Real Estate Division's opinion that stated a first security interest can be extinguished and the foreclosure can be done nonjudicially. The federal court said it will follow the pattern in practice of the last 20 years because HOAs have not been foreclosing. The opinion also said that when an HOA does foreclose, it takes subject to the first security interest. The other court opinions cite NRS 116.3116 language that says an action is required to enforce the lien. They say that action must be a lawsuit. In order to enforce the lien rather than keep the lien at a bank foreclosure, a lawsuit must be filed.

Chair Segerblom:
Why not file a lawsuit?

Ms. Cline:
A lawsuit would increase costs for HOAs that would be required to hire attorneys and pay attorney's fees. The $1,950 cap would not take effect because those HOA-filed lawsuits would increase costs for homeowners. If homeowners want to come current, they would have to pay all those expenses because those fees can be included in the lien.

Senator Ford:
Regarding the artificially low prices on these HOA-foreclosed homes, a home possibly may sell for $20,000 when it is actually worth $400,000?

Ms. Cline:
That is correct. When the price has been artificially lowered, you see cases of a property worth $200,000 with a $400,000 loan. Because of the lack of surety

and the misinformation surrounding the superpriority lien, people at an HOA sale either choose not to purchase or to purchase at a low amount. They do this knowing that they will buy lawsuits or property-related issues that are unrelated to the purchase prices.

Senator Ford:
How frequently does it happen that homes are sold at $15,000 to $20,000 at foreclosure sales?

Ms. Cline:
The prices have been fluctuating based on decisions from the courts. After the opinion from the Real Estate Division was issued—confirming the comments that the Common-Interest Ownership Act said a first security interest would be extinguished—the prices went up. The price fluctuation happens pretty consistently on HOA foreclosure sales.

Senator Ford:
I heard you say that by purchasing an HOA-foreclosed home, people feel they are buying lawsuits; but as a general matter, are these sales thought to be bought free and clear from the first lien?

Ms. Cline:
Yes. Purchasers may assume as much in reading NRS 116.3116; that includes the clear comments that a first security interest should step up and pay the superpriority lien amounts or lose its security interests. Conversations the Legislature had during the consideration of the abatement lien provision were strengthened within the superpriority lien. This shows the Legislature did intend to allow for a first security interest to be extinguished by the lien. Otherwise, a first security holder would have no incentive to pay HOA dues and take care of the community that houses its collateral.

Senator Ford:
What you just described is problematic. It justifies the need for us to address this issue. How frequently do homeowners purposefully stop paying HOA dues in the hopes that the HOA forecloses and they buy their own property back at a foreclosure sale for $20,000 when it carries a lien on the first mortgage for $300,000?

Ms. Cline:
I have not seen any instances of that happening. Even if homeowners could purchase at foreclosure sales, they would still remain personally liable for the loans on the properties, unless they filed for bankruptcy. They would still have to pay back the banks the money owed.

Senator Hutchison:
Anyone who thinks he or she could buy a $300,000 home for $20,000 without a problem should know that if it seems too good to be true, it probably is too good to be true. The problem is that banks have not been asserting their property rights in these foreclosures, right? Another problem is that a judicial foreclosure hurts the homeowners because of the potential of large attorney's fees. Your point is to bring clarity to the law via foreclosures in a nonjudicial avenue and provide full notice to the banks if they want to protect their property interests. The banks bid to sell, pay for the assessment fees and keep their property rights. That is what you would like to see happen, right? The law with all the differing court opinions is confusing. If banks want to protect their interests, you want the banks to come buy the liens and keep the property rights instead of people buying houses for $20,000 in an environment that is too good to be true. Is that correct?

Ms. Cline:
Yes, that is correct.

Chair Segerblom:
We have two more bills and no more time for A.B. 98. Before I close the hearing on this bill, I have three letters to submit to the record from Charles Schmidt (Exhibit M), Jay Bloom (Exhibit N) and members of the Common-Interest Committee from the Real Property Law Section of the State Bar of Nevada (Exhibit O). We will bring this bill back later. I will close the hearing on A.B. 98 and open the hearing on A.B. 194.

ASSEMBLY BILL 194: Clarifies that a person who holds a leasehold interest in the real property of another person may be criminally liable for the destruction or injury of that real property. (BDR 15-654)

Assemblyman John C. Ellison (Assembly District No. 33):
Assembly Bill 194 clarifies the law regarding malicious destruction of private property. This does not have to do with wear and tear on a property but

malicious destruction. This bill makes it clear that the fact the offender is a tenant of the property does not constitute a legal defense.

Let me direct your attention to the existing language in section 1, subsection 1. Notice that the destruction of property is a criminal offense only if the act is committed willfully or maliciously.

Chair Segerblom:
Last Session, we made it illegal for the owner of a property to damage his or her own property, right?

Assemblyman Ellison:
That is correct.

Chair Segerblom:
Your bill deals with whether that person is the holder of a leasehold?

Assemblyman Ellison:
Correct. This bill will go toward rental or commercial property.

Chair Segerblom:
For example, say I hold the lease to a property and while in residence, I knock down walls, tear out the fixtures and pour noxious substances down the sink. I am criminally liable, right?

Assemblyman Ellison:
Correct. Existing statute says much the same, but it is not being challenged because of the ineffectiveness of the language.

Chair Segerblom:
I understand this bill is a result of something that happened in Elko?

Assemblyman Ellison:
Yes, in Elko. Also, we just looked at a property in Sparks that was completely destroyed. The authorities decided to press charges civilly instead of criminally. However, they were unable to pursue civil charges because they had no law to aid them. This bill clarifies that things like spilt wine on the carpet, a broken window or dented door are not malicious destruction. But walls torn down,

sinks ripped out and a unit utterly destroyed are malicious destruction. We want the perpetrators to be held accountable for that.

Senator Ford:
Why do we need the additional language? Why does section 1, subsection 1 not already cover what you have just described?

Assemblyman Ellison:
The problem is that most of the district attorneys (DA) believe it is not clarified enough and lacks an amount in the law. Therefore, we are going back to clean up the law. It can be handled in either district or justice court.

Senator Ford:
Has someone put up the defense that as a renter I cannot be held personally liable for my willful or malicious destruction or injury to real property of someone else?

Assemblyman Ellison:
Yes. I personally saw this a year ago with someone who put 250 holes in the wall by throwing knives, resulting in $8,000 in damage. We tried to charge that person in criminal court under the original part of this statute, but the charge was denied. We were told to take it to civil court. By then that person was long gone. To me, that should have been malicious destruction.

Recently, the justice court had given an eviction notice and specifically told the renter not to tear up the house. When inspected, not a single window nor any sinks remained, all of the toilets were broken and doors were kicked in. That was about $12,000 of damage. These people should be held accountable for that damage. We intend to clarify this law so those who own the property are protected.

Michael L. Dayton (NAIOP):
The Commercial Real Estate Development Association of Southern Nevada appreciates and supports this bill.

James Litchfield (Nevada State Apartment Association):
We support this legislation, and I have submitted testimony in support of this bill (Exhibit P).

Mr. Friedrich:
I am representing myself, and I support this bill.

John Radocha:
I have a clarification. Say your doorbell was ripped out, your irrigation system was shut down and your plants died or the water was turned on while you were not home, the water police were called and you find glass in your driveway when you come home. Does Assembly Bill 194 also take this into consideration? Or does it really have to be malicious?

Chair Segerblom:
To be a crime, it has to be outrageous. So I would say no.

Seeing no opposition, I will close the hearing on A.B. 194 and open the bill on Assembly Bill 395.

ASSEMBLY BILL 395 (1st Reprint): Revises provisions regarding common-interest communities. (BDR 10-1013)

Assemblywoman Michele Fiore (Assembly District No. 4):
This is a simple bill with two sections. Section 1 makes it a misdemeanor for an employee, agent or officer of the HOA to threaten or harass a member of the HOA. It is also a misdemeanor for a board member of the HOA to threaten or harass another member of the HOA or an employee, agent or officer of the HOA. Section 2 adds the language to the existing statute, "and section 1 of this act," in subsection 3.

The problems of HOAs are legendary, and I hope this bill will go a long way to solving the problems between HOA managers and members. This bill will allow members and/or HOA management relief if they feel they have been threatened or harassed. Currently, the only relief available for any of the parties is through the Real Estate Division. With this bill, a DA or attorney general can investigate a complaint of harassment and make a nonbiased decision.

This bill mimics the provisions of NRS 118B.210 which governs relationships between mobile home owners and mobile home parks with their landlords. This is a carryover to implement HOAs in this manner as well. As the representative of Assembly District No. 4, I offer my constituents and those outside my district

the proposition of my attending some of their HOA meetings to actually see the abuses so I may be of aid to them.

Senator Ford:
I will reiterate what I believe you have said about this bill for clarity's sake. In its essentials, if you are an HOA board member, you cannot harass, intimidate or otherwise assault a homeowner and vice versa, is that right?

Assemblywoman Fiore:
Yes, that is correct. My intent was that the harassing relationships could be in either direction.

Senator Ford:
Why does assault not already cover this issue? We have laws that deal with issues putting someone in reasonable apprehension of harm or serious emotional distress; why do we not rely on those laws?

Assemblywoman Fiore:
I concur with you regarding that; however, the issues of HOA contracts with the homeowners stipulate that a problem within the association must go through the Real Estate Division. I want to allow those disputes to proceed through the laws that deal with assault.

Senator Ford:
The contractual relationship between homeowner's and board members is similar to arbitration where they cannot go to court; they must go to the Real Estate Division to wage any argument of dispute. Is that correct?

Assemblywoman Fiore:
Yes, sir.

Senator Ford:
That is why we need this?

Assemblywoman Fiore:
Yes.

Senator Jones:
What defines "threaten, harass or otherwise engage in a course of conduct against any other person"? My concern is for someone who may not pay homeowner association dues, and the HOA, as per NRS 116, sends repeated notices that some people might consider threatening or harassing. But the HOA is supposed to do that when someone does not pay his or her assessments.

Assemblywoman Fiore:
With the implementation of this law, the term harass can be deferred to the law of the land. If police were called, harassment would be defined as in statute. This bill means to address the kinds of issues like reports that I have heard of former Mafia members carrying firearms to intimidate others.

Senator Jones:
The section 1, subsection 2 reference to a public nuisance is creative. Where did that come from?

Assemblywoman Fiore:
This bill was a blending of many ideas and viewpoints in the Assembly subcommittee. Together, with the help of Mr. Gordon and Mr. Friedrich, we commingled language to make this bill work for everyone.

Chair Segerblom:
You also said the language was taken from NRS 118B.210, right?

Assemblywoman Fiore:
Yes.

Senator Jones:
Harassing someone else is a public nuisance?

Assemblywoman Fiore:
For example, if I am yelling at you in public, I would say that is a nuisance in addition to disorderly conduct. I find that people yelling at each other on a public street is a public nuisance.

Senator Jones:
I understand. That just seems far afoot of the pig farm example in my first-year real property class in law school.

Senator Hutchison:
This is helpful; I will support the bill. I do think, along with my colleagues, that this issue may already be covered by other laws in existence. One thing that you may want to consider: if a good lawyer is defending his or her client accused of harassing someone within the community and an assault charge is brought, that lawyer will say all of these offenses are now defined simply as public nuisances. Subsequently, the only thing that client can be charged with is public nuisance. This may be an unintended consequence that limits the remedies available to those in these communities. Do you want to think about that?

Assemblywoman Fiore:
That is a great point. However, I do not want this bill sent to a conference committee and die there. I am open to the options.

Senator Hutchison:
To fix that potential problem, you need to have language stating that none of the provisions are meant to limit any other remedies under law.

Assemblywoman Fiore:
Chair Segerblom, can we add that provision right now?

Chair Segerblom:
Let me ask Mr. Anthony if that is implied or if such words must be included?

Nick Anthony (Counsel):
Though implied, that certainly can be looked at for purposes of work session.

Mr. Friedrich:
On behalf of the CCICCH, we do support this bill. I have submitted testimony and a proposed amendment to A.B. 395 (Exhibit Q).

In reference to Senator Jones' comment about living in an HOA without many problems, he is very lucky. There are reports of people being called convicted child molesters and Peeping Toms at board meetings.

Chair Segerblom:
Have you talked to the sponsor about this amendment?

Mr. Friedrich:
I sent a copy to her and spoke to her briefly on Friday night. This is a friendly amendment, and it is about time that homeowners do get some protection.

Mr. Frank:
I have submitted testimony and a proposed amendment for consideration (Exhibit R).

After research, I have not found a single example of board member or contractor harassment by homeowners. The power of the boards and HOA corporations is so compelling that I find little evidence that the HOA corporation members need protection. Rather, the members need protection from the powerful. That is why I am recommending my friendly amendment. The bill would be more acceptable to the public and to the vast number of people who live in HOAs if they saw the bill was in fact focused on protecting them from the powerful corporations.

Mr. Radocha:
I have submitted an example of a letter I received from the Astoria Trails North HOA and my campaign poster (Exhibit S) that I affixed in the neighborhood. Please consider these as examples of why this bill is needed. I will not be bullied, harassed or intimidated by the board members.

Mr. McCullough:
This bill needs to be changed. There are bully boards in existence. I have been bullied. I am in favor of considering these proposed amendments. I want to support Robert Frank and Jonathan Friedrich's amendments.

Mr. Robey:
This bill is a good attempt to do what needs to be done. Unfortunately, Chair Segerblom, do city ordinances or state laws override CC&Rs? If our State law applied uniformly, everyone would be fine.

Chair Segerblom:
Criminal laws apply statewide, zoning laws do not.

I will close the hearing on A.B. 395. Is there any public comment?

Mr. Radocha:
I would like to see an amendment added to A.B. 44 regarding people who leave for over 6 months. The language should say that if a person leaves for over 6 months, no payment shall be required if the electricity or gas is turned off.

Chair Segerblom:
The Senate Committee on Judiciary hearing is now closed at 11:06 a.m.

RESPECTFULLY SUBMITTED:

_____
Ilena Madraso,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS				
Bill	**Exhibit**		**Witness / Agency**	**Description**
	A	1		Agenda
	B	8		Attendance Roster
A.B. 44	C	2	Wes Henderson	NLC&M Testimony for AB44
A.B. 44	D	1	Wes Henderson	NLC&M Proposed Amendment AB44
A.B. 44	E	1	CCICCH	Testimony
A.B. 44	F	2	Jay Bloom	Testimony
A.B. 98	G	6	Assemblyman Paul Aizley	Proposed Amendment 8706
A.B. 98	H	2	CCICCH	Testimony
A.B. 98	I	2	Jay Bloom	Testimony with Proposed Amendment
A.B. 98	J	3	Angela Rock and Garrett D. Gordon	Proposed Amendment to AB98
A.B. 98	K	1	Associa	Letter in Support of Proposed Amendment
A.B. 98	L	6	Diana S. Kline; Richard Perkins; Sara Partida	Assembly Bill 98 Proposed Amendment
A.B. 98	M	4	Charles Schmidt	Testimony with Proposed Amendment
A.B. 98	N	2	Jay Bloom	Testimony with Proposed Amendment
A.B. 98	O	11	Members of the Common-Interest Committee of the State Bar of Nevada, Real Property Law Section	Testimony with Proposed Amendment
A.B. 194	P	1	Nevada State Apartment Association	Testimony AB194
A.B. 395	Q	1	Jonathan Friedrich	Proposed Amendment to Assembly Bill 395
A.B. 395	R	4	Robert Frank	Assembly Bill 395 Support by CICCH

				Commission with Proposed Amendment
A.B. 395	S	2	John Radocha	Letter and Poster