MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
March 30, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 7:02 a.m. on Friday, March 30, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

GUEST LEGISLATORS PRESENT:

Senator Bob Beers, Clark County Senatorial District No 6

STAFF MEMBERS PRESENT:

Lynn Hendricks, Committee Secretary
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Lori Johnson, Committee Secretary

OTHERS PRESENT:

Bryce C. Alstead, American Resort Development Association
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry
Joan C. Wright, Resorts West
Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation

Michael Buckley, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Marilyn Brainard, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Robert W. Hall
Carole MacDonald
Mary Caraza-Lyons
Charles O'Donnell
Charles Goodwin
David Steinman
Frank Beers
Edward Walterscheid
Harold Bloch
Leslie Ortega
Bob Sidell

CHAIR TOWNSEND:
Let us open the hearing with Senator Beers and his bill, Senate Bill (S.B.) 235.

SENATE BILL 235: Revises certain provisions pertaining to voting by units' owners in a homeowners' association. (BDR 10-681)

SENATOR BOB BEERS (Clark County Senatorial District No. 6):
In the U.S. House of Representatives, we apportion seats according to population; the more populated the state, the more seats you are given. We elect our representation to express the will of the people. On the other hand, in the U.S. Senate, every state gets two senators to represent them in Washington, D.C., regardless of the population. So every state has equal weight. In the U.S. House, the state of California has much greater authority than Nevada because of their larger population.

Homeowner associations (HOAs) use a plan of casting ballots by delegates. Under that type of plan, each political subdivision elects one person and they carry the amount of votes that elected them. It is a hybrid of the U.S. Senate and the House. For example, the homeowners elect Shelley Berkley and she goes to Washington, D.C., to vote all three of our votes, or Dean Heller goes to Washington, D.C., to represent all three of Nevada's votes. That kind of voting produces a startlingly degree of unanimity in voting and decision making. Those of us who are public-schooled graduates of civics class learned that each person

has a right to vote their own conscience. I believe delegate voting to be an alien concept which leads to alienation, confusion and misunderstanding among residents of HOAs, and in the end, disenfranchisement from the HOA governance process.

This type of governance may make a great deal of sense during the time in which the HOA is in the active development phase. During that time, the HOA is really the developer's baby and there is concern about getting everything right. It is after that time, when the governance transfers to the hands of residents, that the developer's covenants, conditions and restrictions (CC&Rs) become problematic. This bill seeks to stop the method known as delegate voting in HOAs after the developer has left. I have had discussions with the Summerlin North HOA executive director and their government-affairs board. In concept, they agree with this proposal, although they believe that this system has worked well in the past. They can see some potential for disenfranchisement in mature HOAs. Within the bill, we will create language of legislative intent that mandates the voting-by-delegate plan be phased out in a timely fashion after build-out, transitioning to one-unit, and one-vote.

Interestingly enough, the Summerlin South HOAs declaration is written in such a way that when the developer leaves the scene, it transitions to the much more understandable system of resident apportionment. They have a council based on the number of homes and each seat represents the same number of homes. If this is agreeable to the Committee, I would like to steer this out of any formal subcommittee process and get permission to talk to the interested parties to finalize.

CHAIR TOWNSEND:
Yes, feel free to do that and get back to us with proposed language in an amendment. We will close the hearing on S.B. 235 and open the hearing on S.B. 477.

SENATE BILL 477: Makes various changes relating to the licensing and regulation of time-share sales agents. (BDR 10-1327)

BRYCE C. ALSTEAD (American Resort Development Association):
I am here today to speak about provisional licensing of time-share agents and why it is important to this industry. The time-share industry has had a big impact on Nevada. In 2005, the time-share industry represented $2.8 billion of

direct or indirect impact on this State. It has grown by 40 percent since 2002 and with that, tax revenue of $360 million in 2006. The time-share industry has added 15,000 jobs to the State and we have a total of 7,600 time-share units. Companies like Marriott Vacation Club International and Hilton Worldwide Resorts have major projects under way, creating a burgeoning industry. One of the reasons we need to pass this bill is the lack of people who can meet the requirements to be a licensed time-share agent. The licensing process takes a minimum of eight weeks. The prospective agent comes out of the education process and the project broker wants to hire you, but you have to wait two months until you receive your license. These people cannot afford to wait that long until they start making an income. With the kind of growth we are seeing in this industry, we need to supply workers to support this industry.

I would like to turn your attention to S.B. 477 and section 4. In this section, we have included protections for the State by placing limitations on a provisional licensee. A provisional licensee does not have access to personal information from a prospective client nor can they access a time-share lockbox or enter a time-share unit. The project broker is responsible to run a background check from a source that is acceptable to the Real Estate Division, Department of Business and Industry, see section 2, paragraph (b) subparagraph (1). If a discrepancy is discovered by the Real Estate Division that would deny the agent a permanent license, the provisional license is revoked automatically.

SENATOR HECK:
Do you know the exact number of people the industry is short? Eight weeks is not a long period of time for a professional license to be issued. Is there an immediate need?

MR. ALSTEAD:
I do not have the exact figures, but people affiliated with this industry tell me they cannot fill the slots fast enough. I believe there is an immediate need. This type of a license is not a license such as one needed to practice law; this is not a high-level position. The education process is not lengthy. In this type of entry-level sales position, the person cannot wait to start making an income and therefore might take another more readily accessible sales job.

GAIL J. ANDERSON (Administrator, Real Estate Division, Division of Business and Industry):
The Real Estate Division is in support of S.B. 477. Our Division has been working with the time-share industry for the last two years to try to accommodate their need for additional workers. There is a very high turnover and nonrenewal rate of this type of licensee. It appears that people do not stay in these positions for a long period of time.

I would like to request consideration on a technical change in section 2, subsection 3, in regard to the $20 fee for the reissuance of a permanent license. The list of fees for this program are in NRS 119A.360. Currently, a $20 fee is charged for each change of name or address. I would ask for a change of license status to be added to that list. This change would eliminate section 2, subsection 3 within the bill and add two words to the NRS 119A.360. In doing so, all the fees will be together to keep it simple. Other than that technicality, we are supportive of this bill.

CHAIR TOWNSEND:
Mr. Keane, this proposed change is to fit the traditional fee structure normally within the statute. Is there a reason this was drafted this way instead of the way Ms. Anderson is proposing?

WIL KEANE:
Ms. Anderson did speak with me before the meeting and the change seems very reasonable. It was placed here because that was how it was originally requested. The change does not pose any problem.

JOAN C. WRIGHT (Resorts West):
I am representing Resorts West, Resorts Realty LLC, a broker of time-share units. We are in support of S.B. 477 and in support of the Division's change on the fee structure. This bill is needed by this industry. They are experiencing trouble getting and retaining people with the current delay in receiving a permanent license.

CHAIR TOWNSEND:
Ms. Anderson, do you know how many time-share units we have in the State?

MS. ANDERSON:
I do not have that information, but I can get it from our project section. I will obtain that information and submit it to you.

CHAIR TOWNSEND:
It would be very helpful if we could get some people from this industry before the Committee, when time allows. I think it would be a good idea for someone to walk us through the details of this industry, who they partner with and what they see for the future. We will close the hearing on S.B. 477. Senator Schneider, please proceed with S.B. 362.

In the interest of full disclosure, please make note on the record that my wife is in the real estate profession as a broker and as a licensed property manager.

SENATE BILL 362: Makes various changes to the provisions governing common-interest communities. (BDR 10-110)

SENATOR SCHNEIDER:
Well Senator, for the last 12 years we have worked together trying to solve the reoccurring issues of the HOAs. Senate Bill 362 is a result of my request to address homeowners' complaints regarding different issues. I want to be sure that everyone is aware that these issues are ones that homeowners have asked me to address for them. Each issue is one on which we have received multiple complaints. I had my staff keep track of all the complaints and consolidated them into this piece of legislation. I firmly believe that every citizen of Nevada has the right to access the Legislature. I know some people will not agree with everything in the bill, but S.B. 362 reflects the express will of our citizens.

In yesterday's Las Vegas newspaper, there was a column by Jane Morrison regarding this Committee's meeting today. As a result, we have been inundated with emails and phone calls. My assistant, Paula Saponaro, could not keep up with all the phone calls, some of which have been fairly rough. She was on a break when she received a phone call which was recorded and I would like to play that phone message for you as evidence of the rancor we are dealing with. The man who left the message is a delegate from the Summerlin HOA. We have deleted his name and phone number (Exhibit C, original is on file in the Research Library). As you can tell, the homeowners get very upset when talking about this issue. In some areas we have had meetings in which people have had heart

attacks, and there have also been shootings during a homeowner's association meeting.

There is a professional association called the Community Associations Institute (CAI) which advocates for the promotion of responsible homeowner associations. I have spoken with the CAI and they inform me that they are aware of some "problem" groups and they are looking for ways to exercise some control over these groups. This opening statement is to lay the groundwork for why we are here again; the abuse continues, and this is a forum to let those people come forward. I have put together a synopsis of S.B. 362 that I offer (Exhibit D).

One major concern we have is that the common-interest communities (CIC) do not allow any commercial vehicles that have a company name to be parked in front of your house. I would like to have Debra Jacobsen from Southwest Gas Corporation speak about the danger of gas leaks and why they require their employees to take their company vehicles home with them at the end of the day.

DEBRA JACOBSON (Director, Government and State Regulatory Affairs, Southwest Gas Corporation):
We approached Senator Schneider with a problem that is becoming more prevalent in all three states that we serve: Nevada, Arizona and California. As part of our term of employment within several job classifications, the employees are either on call for 24-hour shifts or they are requested to take their vehicles home to be available in the case of emergency. The commercial vehicles that our people need to take home with them are very limited in size, no more than 26,000 pounds, and our handout (Exhibit E) shows pictures of those vehicles. We did try to address the HOAs' concerns about size of the vehicle and the equipment contained on it. Our vehicles do have the company logo on the truck. We are not asking to bring in large boom trucks or heavy equipment-type trucks. Southwest Gas feels that it is beneficial to have these trucks in various areas to be able to respond quickly in the event of a gas leak call.

In the case of a gas leak, even if the fire department is called, they will wait for a Southwest Gas employee to show up before doing anything. Many of our employees cannot live in some communities because of the HOA's restriction against bringing these vehicles home with them. Sometimes the HOA will allow them if Southwest Gas writes a letter stating that it is a condition of their

employment. We need to clarify the language in section 28 to read public utilities or public safety agencies' vehicles. The language "utility service vehicle" may be too broad.

SENATOR SCHNEIDER:
I would like to bring your attention to the preamble we inserted, although this has been used previously in statutes dating back to 1999. I felt the need to remind people again that HOAs are basically small governments with legislative, executive and quasi-judicial powers. We want to reiterate and endorse the intent of making these associations follow the basic principles of democracy and to keep in mind the right of homeowners to live without interference. I know we have seen this same issue again and again, but I want to reinforce what we are trying to accomplish.

MICHAEL BUCKLEY (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
The Commission board met last week to go over S.B. 362. I think the first issue we need to keep in mind is that associations come in all shapes and sizes. There are huge master associations, such as Summerlin and Anthem in the south. There are also many planned communities that are subdivisions with common elements. Planned communities can be very different from a HOA, even though they have the same legal system under which they operate. Additionally there are condominiums, small developments and high-rise apartment complexes. This bill contains good ideas that may apply to certain situations but to try to apply the same law in the same manner to all different communities would be difficult. We are concerned with many parts of this bill. Also of concern were how to address all of the different types of participants. Do we treat owners the same as board members? What about other professionals involved in the day-to day operations of these communities? What about lending institutions, real estate individuals and property managers?

One of the board's specific concerns with the bill is the possible elimination of arbitration. If you remember, in 1993, a law was passed under the NRS chapter 38 which says, if you have a dispute with regard to the CC&Rs, you cannot go to court unless you first try arbitration. In eliminating arbitration, my concern is everyone would be back in court, which could be an expensive proposition. Alternate Dispute Resolution (ADR) is not perfect, but we do have 13 arbitrators who know the law. We also have five administrative law judges and a special court system designed to address the many issues of CIC. It

would seem to me that before the Legislature proposes to eliminate ADR, they should hear from the arbitrators. At our Commission meeting, we were given some statistics on ADR. There were a total of 66 closed claims for fiscal year 2007, 14 of which were settled and 7 were dismissed by the arbitrator. Ten claims were dismissed by the Division because they did not comply with the procedures and ten were withdrawn by the claimants. Of the remaining claims that continued on to arbitration, there was an award. This demonstrates that this process works and it shows that we are able to dismiss many claims as being without merit.

MR. BUCKLEY:
As far as intervention, the Ombudsman for Owners in Common-Interest Communities' office under the Real Estate Division does accept claims by homeowners who have problems. Homeowners can call that office to go through a formal procedure. Of those types of claims, as of the fiscal year ending February 28, 2007, just in the south, there were 31 unsubstantiated allegations and 6 letters of instruction. Of the remaining claims, 6 went to the Real Estate Division for processing through the Attorney General's office and 15 where the claimant requested closure of the case. A majority of those claims were not significant, there may have been a problem, but when it came down to pursuing the claim it was not as significant as they thought.

Another issue is that S.B. 362 in section 16 proposes to have the Commission set up different standards for accountants required for auditing purposes by making an exception for smaller communities that do not have an accountant to perform the audit. The Commission believes that for the protection of all homeowners, only accountants should be able to perform audits, regardless of the size or cost to the HOA.

Of greater concern are sections 7, 8 and 20 in S.B. 362. Those sections involve giving the Commission the right to approve foreclosures due to construction penalties, foreclosures of $5,000 or more in penalties, and foreclosures of assessments. The Commission is not in favor of this idea. I am not even sure what we would be approving. Would we be approving documents or whether the notices went out? Speaking as a representative of Nevada, I do not think we want Nevada involved as the actual person doing the foreclosing. You could argue that the State is the one foreclosing, and I just do not think we want to be in that business.

MR. BUCKLEY:
Senate Bill 362, section 21, provides the right of redemption after foreclosure. If you foreclose through a mortgage, you are already provided a year to induce the right of redemption. There is no recourse if you foreclose on a deed of trust. There needs to be more detail; how long would the redemption period be, are we buying the foreclosure of an assessment lien and then paying insurance and property taxes while waiting for that person to possibly buy it back from us?

The suggestion to require community association managers be bonded is a good idea but how do we figure out what amount the bonds should be? Does a small community manager pay the same bond amount as that of the manager of a high-rise condominium, who is obviously managing a lot more money in rents? The bill as proposed would involve a tremendous increase of work to the Commission. As volunteers, we would be increasing our workload as well as the staff of the Real Estate Division which travels with us to our meetings. The costs to the Division would also increase.

The Commission supports the right of political free speech. Is the idea of being able to audiotape meetings the way to address that? This might lead to more formal meetings. Is that what you want? What exactly are we trying to accomplish, expose particularly bad associations?

SENATOR SCHNEIDER:
As you highlight those issues, I am reminded of the particular situations that were brought to our attention. In fact, there are actual names and details within certain sections of this bill to provide illustration.

First, let us address the legal issues of section 7 which addresses construction and improvements to the property. In some custom home areas this is a touchy issue and has come up several times in last eight years. For example, a resident gets an agreement to build and they agree to a time limit in which to finish the project. Then the person gets ill and they have to put off the project. The fines then start to build and the fines become so expensive that I have seen fines for as much as $100,000, and that precludes them from continuing the project. Developers do not want those lots to continue to be vacant.

SENATOR SCHNEIDER:
In my explanation of section 8 of S.B. 362, Exhibit D, we address the issue of radar guns being used to monitor traffic within the community. This bothers me

greatly. When was the last time any of those communities calibrated the radar guns? Does this have to be a gotcha-experience with a big fine? Can they not just pull the speeder over and warn them? I have an example. Steve Sisolak, who is on the Board of Regents, Nevada System of Higher Education, has a couple of teenagers who ordered a pizza and the pizza delivery guy got a speeding ticket in the park, and then Steve is also fined $100. Mr. Sisolak was fined even though the pizza company is most likely delivering other pizzas on the same trip. I just do not think the HOA should be acting as a police force by giving tickets out. I get calls from citizens who live in the communities of Canyon Gate, Spanish Trail and the Las Vegas Country Club, who complain regularly about these types of situations.

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MR. BUCKLEY:
The commission is concerned about the assertion on page 11, section 8, subsection 2, that the HOA would be acting as a property manager for the owner and really, it should be the owner who is responsible. The association should not get involved in the owner-tenant relationship. If you wanted to outlaw radar guns that would be simple, but the first time someone is run over we might wish we had kept that in. These are very difficult decisions.

SENATOR SCHNEIDER:
Referring to page 11, section 8, subsection 2, I have a problem with guests that makes bad decisions and the owner gets fined. For example, I come to visit Chair Townsend who lives in a HOA, and I make a turn and run over some pansies and the Chair gets a $100 fine. You are responsible for my behavior. Is that right?

CHAIR TOWNSEND:
Mr. Buckley, do you as a commissioner think the law separates a violation of an owner versus a guest or a violation of a tenant?

MR. BUCKLEY:
What the Commission is set up to address are violations in procedural law, such as a resident who is not allowed a hearing in regards to a violation. I think what you are asking refers to a violation of the CC&Rs. Those applications of rules and regulations would rarely ever get to us.

SENATOR SCHNEIDER:
I think that we as a Committee need to make decisions. Should tenants be involved or it is just the owner's problem? We need to make sure that the owner is always notified of fines, not just the tenant. The tenant is just throwing them away and not paying them or notifying the owner.

MR. BUCKLEY:
Perhaps we could have a comment from Marilyn Brainard who is the homeowner representative on the Commission. Shari O'Donnell is also here as a member of the Commission. I do not know if we would be in violation of the open meeting law if we all get together to testify.

MR. KEANE:
The open meeting does not apply even if you have a quorum because you are not deliberating or making a Commission decision.

MR. BUCKLEY:
The homeowner has the responsibility, when you rent out your unit you agree to those rules, as Senator Schneider reiterated by using the preamble again in this bill.

MARILYN BRAINARD (Commissioner, Commission for Common Interest Communities, Real Estate Division, Division of Business and Industry):
We discussed many sections of this bill in detail Wednesday. I cannot speak for every type of association but the one I am familiar with.

CHAIR TOWNSEND:
Could I interrupt and let Senator Titus speak with regard to the amendment she would like to add to S.B. 362.

SENATOR DINA TITUS (Clark County Senatorial District No. 7):
I would like to ask you to please consider the proposed amendment (Exhibit F, original is on file in the Research Library that contains written testimony from Maria Dziedziniewicz. As you know we have a State policy that allows people to install solar energy systems without unreasonable restriction which was established by S.B. No. 504 of the 68th Session. I have written testimony to explain my position (Exhibit G). This issue came about because this resident was being asked to paint their solar panels black, see page 2 of her testimony (Exhibit F).

CHAIR TOWNSEND:
We will take a look at this proposed amendment which pertains to section 4 of S.B. 362. This is an important issue with regard to energy, yet we want to respect the rights of the CIC, and protect the value of their homes. I think that they are compatible issues.

MS. BRAINARD:
We were discussing whether the homeowners were properly notified of the violations of their tenants. In most of the associations that I am familiar with, and I cannot speak for the vast majority as I have not seen their CC&Rs, the homeowner is always noticed first on any violation. HOAs believe that the owner has the greatest interest and investment in the property. In my particular association, Wingfield Estates, we also notice the tenant but the owner is responsible. We have run into some absentee owners who perhaps hired a property management firm. We have had problems with incompetent property managers that really do impact the community and we do notify those owners. It speaks to the fact that when someone wishes to lease their property, they should be sure they have very careful guidelines in their rental or lease agreements. I know that in the *Reno Gazette-Journal*, in the real estate section, they have frequent articles about language to use in those agreements.

SENATOR SCHNEIDER:
We need to make sure the law states that the owners and/or their agents are promptly notified. I am forever receiving calls from owners that they have not been notified.

MS. BRAINARD:
I have to say that I am surprised that this is not happening. We have managers who take continuing education courses and we could make sure that this subject is covered.

CHAIR TOWNSEND:
I believe the law already exists to make sure that the unit owner is to be notified of violations.

MR. BUCKLEY:
It is the law. One thing we forget is that the best thing we can do to avoid these issues is to provide education. We should get the Real Estate Division into the loop. They should be receiving those calls that Senator Schneider and

Scott Young are fielding. The Division has the responsibility for education and we just approved a request for proposal to be able to offer nine classes throughout the State at no charge. Of course, attendance is not mandated.

MS. BRAINARD:
Our administrator has informed us that any real estate agent who is acting as a property manager must have a permit or license to act as such.

CHAIR TOWNSEND:
The people who are contacting Senator Schneider have to understand that the legislature can only do three things: create new law, amend existing law or repeal a law. Since this issue is already in the law, I am not sure how much more we can do. If the owner thinks there has been a violation, then he should file a complaint. Probably 95 percent of these issues would resolve themselves if everyone could be respectful, logical, and use common sense. We can listen but we hear these same issues over and over again. We cannot fix anyone's particular issue with their HOA here today.

SENATOR SCHNEIDER:
Can we talk about recording a meeting and bringing guests to the meeting? People call me from all over the Las Vegas Valley, asking me to come to their meetings. I personally have been locked out of meetings. A couple of Assemblymen have also tried to go to some HOA meetings and they were not allowed to attend. I think it is a sunshine issue, although it is a private meeting.

MR. BUCKLEY:
The Commission did discuss the audio recording of a meeting. That would allow easier investigation by the Real Estate Division. On the other hand, if everyone is required to do so, the associations would all have to purchase recording equipment.

MS. BRAINARD:
Then there is the possibility that a recording could be altered.

CHAIR TOWNSEND:
I believe there is already a law that requires minutes to be typed up, signed by someone on the board and then distributed by newsletter. Is there a mechanism that if people do not agree on the minutes, they can ask for an appeal?

MS. BRAINARD:
Minutes are not taken down verbatim in most situations. According to *Robert's Rules of Order*, minutes should reflect motions and decisions that are voted on, plus any important actions of the board. In my association, we passed a policy resolution that states: the community manger takes the minutes, a secretary then reviews the minutes and they are posted on our website within 30 days. If a major discrepancy was brought to the attention of the board, then we would surely discuss and make a correction if needed.

CHAIR TOWNSEND:
The issue Senator Schneider has brought forward is an important one, but as Mr. Buckley pointed out, that would require each association to purchase recording equipment. Of all the complaints that come to your Commission or to the Ombudsman, do you have a percentage breakout of the number of small, medium and large HOAs? The purpose of my question is that, as we work through these issues and try to write the law efficiently, knowing where most of the problems lie, we can address our resources, which are limited. We only have 120 days to address the problem. On the flip side of that, we have to write law that addresses the needs of the entire State. In addition, we need to try to be consistent with all HOAs. We need a baseline. We need to do what Senator Carlton has done in organizing all the professional licensing boards which were put together originally in a patchwork fashion. She has addressed issues and achieved consistency in each board. She has done an outstanding job of pulling together regulations that include the number of board members, rules for their meetings and how much the board members get paid. She has done this even though the boards are all different. We need to make sure we keep the big picture in mind and strive for consistency.

MS. ANDERSON:
I do not have a statistical breakout available, but anecdotally, I have heard the Ombudsman speak to this issue. A significant number of the complaints come from self-managed associations whose boards either do not understand their responsibilities and how to conduct business or choose not to follow the law. The Ombudsman has done a significant amount of education via the conferencing program in regard to educating the associations on how they must conduct business according to the law. That is an anecdotal comment, not meant to be exclusive. This is an educational and accountability situation that involves making sure the managers know the laws and cooperate by making sure their boards act accordingly.

CHAIR TOWNSEND:
I thought I asked for that information two years ago. I think that it is important to know the statistical breakdown regarding the number of associations and their sizes.

MS. ANDERSON:
I do want to clarify that when I was telling you that the problems seem to lie with the self-managed boards, I was referring specifically to your questions in regard to the meetings and operations of the boards.

SENATOR SCHNEIDER:
I would like to remind you and Ms. Anderson that her Division asked for a long-distance-learning computer program last session and the proposal was turned down. Perhaps we could remind the fiscal committee how important it is to get the appropriation for that program.

ROBERT W. HALL:
I am a resident of Sun City Summerlin Community Association, Incorporated (SCSCAI). The discussion this morning between Mr. Buckley and Senator Schneider is very interesting. What I see is quasi-judicial government officials deciding the issues we have as HOAs. I beg the question. "What kind of rights do we have?" Is the Summerlin HOA a city or not? We are either judicial or we are not. So, we have to look to the Constitution to decide the issues. The Nevada Constitution includes a provision which states "no law impairing the obligations of contracts shall ever be passed." I mention this as evidence that the State cannot require compliance with NRS 116 which was passed ex post facto. I have faxed a copy of my testimony to be entered into the record (Exhibit H).

A lot of these CIC contracts were in existence long before NRS 116 ever came into the picture. All of sudden, those of us who signed our contract with SCSCAI and agreed to abide by it are now in a quandary as to whether the contract we signed is valid. How does the contract interact with NRS 116 and what happens if there is a conflict between our common-interest community contract and NRS 116? With this bill you seem to be creating two layers of government. If I had seen NRS 116 and the amendments you are proposing to add to that statute with S.B. 362, I would never have signed my contract with SCSCAI. I would have gotten back on an airplane and gone back home. This is so outrageous. Now we have two levels of government and you have stripped

us of our civil rights. I am in a position to speak about that, because I am before the Ninth Circuit Court of Appeals on that very issue, the right of due process.

I am particularly concerned with the proposed ability to add special assessments without a vote. We want to know what happened to our contract. Did the Legislature even look at the Nevada Constitution? Does not the judiciary control the law and the enforcement of it? How is S.B. 362 supposed to work?

When we signed our closing home documents, we paid $100 for a package that includes our governing documents. No one has ever told these poor people that the documents are worthless. According to old English common law, imposing a law after the fact is unfair. There is a string of cases that cite the fact that retroactively imposing a law, cannot be done lawfully.

MR. HALL:
Where does the CIC contract start and where does it stop? That is a very important issue and nobody can answer that question. In regard to the issue before us today, our CC&Rs are a civil contract and some of these issues being addressed in S.B. 362 are simple civil disputes. The one thing that the Legislature can do for us is to provide a place in the judicial process where we can go for declaratory judgments. A place we can go to ask questions about living in these CICs, without hocking our home to pay lawyers. Because I had the temerity to take the CIC to court, I have been sanctioned and fined $80,000.

Are the real estate brokers telling their clients who are purchasing homes in Sun City that the CC&Rs, which are part of the attraction of Sun City but can be overridden by NRS 116, are much like a shell game?

The thing that we have to remember is in a regular corporation you are at risk for whatever equity you put up, such as stock. As a homeowner, confronted with all this conflicting law, we risk losing our homes and property. For example, our HOA assigned a special assessment of $700 on short notice. It really hurt some people who are living on a fixed social security income. Some of these people had to sell their home or go bankrupt. It is critical that we have a vote. Being able to vote is the one chance we have to ask what the charges and assessments are really for and why they need it.

In SCSCAI we are being held hostage to the residents who golf that comprise less than 9 percent of the total population. Please see my examples in Exhibit H. Most of us were happy with the original CC&Rs as the developer wrote them. The Legislative Counsel Bureau attorney could not tell me why no one has asked any questions about NRS 116 and this proposed bill's legality. This bill is outrageous; no one is crazy enough to go before the Commission. The Commission does not understand what is going on.

My message today is let us go back to basics. Forget all these outrageous amendments you want to force upon us. I think someone needs to step up and admit that we tore up your CC&Rs, but we forgot to tell you.

SENATOR SCHNEIDER:
Mr. Hall, there have been several instances where a CIC and their lawyers have argued successfully that Nevada cannot enact legislation that supersedes their governing documents. The reasoning has been that those documents are contracts and the State cannot impose law over contracts already in existence. However, there is a case pending in Washoe County District Court that puts forth the idea that the State does have the authority, in certain instances, to supersede those contracts. In section 3, subsection 1, paragraph (b) of S.B. 362, we attempted to clarify the issue. We did this to eliminate such arguments and avoid unnecessary litigation in the future.

MR. HALL:
My concern is the federal side; I do not think that this will pass in a federal court. The U.S. Supreme Court has been consistent.

WIL KEANE (Committee Counsel):

> With regard to actions based upon the contracts clause of the federal constitution, the initial consideration is whether or not the state is one of the parties to the contract. Certainly, when the state is one of the contracting parties, the state's ability to interfere in the contract is more limited. However, when the state is not a party to the contract, as would be the case in most HOA situations, the state has broad authority to enact laws of general application even if those laws interfere with prior contracts such as those of HOAs. The courts, of course, will use a balancing test when reviewing those laws, and will consider both the state's interest in enacting the law and the reasonableness of the law.

> However, when it comes to exercising police power for the protection of the health and safety of its citizens, the state has broad powers. With regard to HOA contracts, it is well established that the state can enact laws of general application that apply to all HOAs even if those laws, in effect, modify the existing terms of an existing HOA contract.
>
> With regard to the question you asked earlier, about the confusion concerning whether the HOA governing documents or NRS chapter 116 controls when the two conflict, the answer is that chapter 116 controls. In other words, if you have HOA documents that deal with a broad range of topics and chapter 116 deals with some of those topics, chapter 116 will supersede the HOA documents to the extent both cover the same topic in conflicting manners. However, on topics regarding that which chapter 116 is silent, then the HOA governing rules will govern.

MR. HALL:
New Jersey, is doing exactly the opposite and they clearly lead the nation on this issue. We are not talking about general-application law. We are talking about minute control of human beings within a CIC. What this is about is Title 42, section 1983, of the *United States Code*. We had a problem during the Civil War where states were doing nutty things like this. If a person, under color of state law, deprives you of rights or property without due process, you are entitled to file an action. I am currently in the Ninth Circuit Court of Appeals on that case law. I am being challenged on standing, which I hope they lose. The way the state works, nobody has any rights at all or any standing to go to court. One thing the Del Webb Corporation did correctly was to hold the title to a property as trustor, not a trustee, and that does give you rights to go to court. There are exceptions to any laws.

MR. KEANE:

> To clarify what I mean by laws of general application, I mean those laws that are written to apply to anyone that comes within the terms of the law. Obviously, many laws that are written by the legislature may end up only applying to a narrow group of people, possibly even one person. There are a number of statutes on the books which by their terms only apply to counties that have a population in excess of 400,000. I believe that only one county in

> Nevada meets this criteria. Nonetheless, the Nevada Supreme Court has consistently upheld those laws as laws of general application, even though they apply to only one county. When I say a law is a law of general application, I simply mean that the law will apply to anyone who comes within the terms of the law. As for Title 42, *United States Code*, 1983 lawsuits, certainly people have every right to bring them, and I did not say that you could not, but whether or not you can win such a lawsuit is another matter. Certainly, if you feel that your constitutional rights have been violated you can bring such an action in the courts.

MR. HALL:
You are talking about anything that happens from this day forward. What I am talking about is a specific problem of going back retroactively and tearing up existing contracts and causing mass confusion. The U.S. Supreme Court has said that applying a new law retroactively is unfair and their opinions originate in old English common law of land grants and detail why they do not favor that idea.

SENATOR SCHNEIDER:
I have asked Scott Young, an attorney and our staff policy analyst on this committee, to elaborate on the minority clause.

SCOTT YOUNG (Committee Policy Analyst):

> I certainly support what Mr. Keane has stated. I might be able to give one example of the type of situation where the government is allowed to change an existing contract. In the 1950s and the 1960s, before many of the planned-unit developments were really begun, there used to be CC&Rs that included the restriction which prohibited people of certain races or certain religions from buying into certain developments. Subsequently, even though these developments had contracts that were considered to be enforceable at some point in time, the courts determined that they violated fundamental civil rights. Even though these restrictions were written into the original governing documents of these planned communities, the courts determined that they were illegal. It is an extreme example but it is also indicative of the right of state, under the authority of police powers, to accomplish certain things even when there are existing contracts.

MR. HALL:
I agree with you in that extreme example. I am talking about the issue of due process. This proposed bill is going to wipe out our ability to have a vote on a special assessment. My point is that no one in their right mind would ever sign a contract if they knew that NRS 116 would supersede the contract and it was explained to them at the time of purchase.

CHAIR TOWNSEND:
I know that you are in litigation, so I want to be careful of your position in a pending lawsuit. In your prepared testimony, third paragraph from the bottom of page 2, Exhibit H, "In 2003 ... threat of a sixteen percent penalty ... " and then you go on to suggest that the basis for this assessment was imposed by NRS 116. In this particular case, I have two areas of concern. The HOA board does have the ability to raise certain fees. The HOA is allowed to do so statutorily with a vote of the homeowners. Then there is a question of reserves, which are mandated under law to be adequate, and there is ambiguity in the law on whether this type of assessment requires a homeowner vote. This situation is new to me since I do not live on a golf course. I want to clarify with you, was that $700 assessment to replenish the reserves of the golf course and is that separate from your homeowners association?

MR. HALL:
It is a pocket within it. We have common elements which are a regular part of our CC&Rs, but the golf courses and restaurants are out in left field. Those entities were presented to us by Del Webb as self-sufficient operations, and then one day they became not so self-sufficient, when the price of water went sky-high. When that happened to CICs in Arizona, they mothballed their courses, sold them off or leased them out to a separate entity. Not our board; they spread the expense out to all of our residents, even those in the smaller homes were assessed the same amount.

CHAIR TOWNSEND:
I still need to get an answer to the question of the $700 assessment. Is the $700 charge part of your HOA's reserve or was it a case that they needed the money due to operational costs being so negative?

MR. HALL:
It was a reserve assessment and our HOA dues were legally raised within the framework.

CHAIR TOWNSEND:
You are very well versed in the federal statutory framework, which is crucial to this dialog. Is it your contention that NRS 116 should address areas only when your CC&Rs are silent?

MR. HALL:
The answer is, according to New Jersey precedent, that CC&Rs have first authority if there is a conflict.

CHAIR TOWNSEND:
Your governing documents are a contract that you entered into when you purchased your home. However, there are many issues that most CC&Rs do not address.

MR. HALL:
I hear you; when there is no conflict, you are right. The State, in NRS 116, has the right to step in to assert control when the CC&Rs do not address the issue. In my case our CC&Rs are very tightly written.

CHAIR TOWNSEND:
This debate started 12 years ago before there were any rules. Issues of serious proportions arose that were not addressed in the governing CC&Rs and the homeowner's only recourse was district court.

MR. HALL:
You are attempting to remedy all types of issues with a one-size-fits-all solution which will never work.

CHAIR TOWNSEND:
If we were to change the law and remove anything that is conflict with the CIC contract entered into by the homeowner and leave NRS 116 to address any issues not governed by the CC&Rs, would that meet your idea of constitutionally mandated law?

MR. HALL:
In that situation, I would have no objections. Some of these issues tangentially come in and you have to be careful. The real issue is due process. The way to achieve this would be to provide easier access to a judicial process that makes it simple to receive a declaratory judgment.

CAROLE MACDONALD:
This is an important issue to me. I drove 60 miles, over the hump from Pahrump. I am with the Cottonwood Creeks Homeowners Association. I have faxed a copy of my written testimony to you (Exhibit I). I also attached the comments from Barbara Holland that I mentioned in my testimony (Exhibit J).

Chair Townsend:
I would like to ask you the same question I asked Mr. Hall. Do you think that removing parts of NRS 116 which conflict or override your HOA contract would be helpful? Should we make the statute applicable only on issues that your HOA contract is silent on?

MS. MACDONALD:
Yes, that would be helpful.

MARY CARAZA-LYONS:
I am the community association manager for the Artesia Owners Association in Pahrump. I have submitted a copy of my testimony (Exhibit K). I also agree with Barbara Holland's e-mail.

CHAIR TOWNSEND:
I want to make sure that everyone on the Committee received a copy of Barbara Holland's e-mail regarding several of the bills, Exhibit J. Mr. Buckley, if we were to get rid of everything in NRS 116 except for what issues the HOA contracts do not address, how would you perceive that?

MR. BUCKLEY:
In general, I would agree with your premise except that we still need the basic protections and guidance that NRS 116 provides. On issues like voting to make boards meetings more open and guidelines on how we proceed with foreclosures, NRS 116 limits us and keeps us within certain confines.

MS. BRAINARD:
I need to give a disclaimer, I do not have a law degree and I would not want to put myself in a position that sounds like I do. I would love the Commission to be of service to the smaller communities by changing the requirements of the audit process. I also have a concern about the people who choose their residence and HOA based on the original governing documents who now find themselves in a

different situation because of NRS 116. Those people researched the fees and assessments and they knew what was expected of them beforehand. NRS 116 added requirements that impacted their fees. It is very hard to make it one-size-fits-all.

CHAIR TOWNSEND:
There seems to be some significant concern, rightly so, that we are trying to make one-size-fits all HOAs. In regard to the audit requirement process, once we added the audit requirement, it was amazing how the cost of an audit went up. We didn't quite think through that requirement in timing it to be finished at the same time as when federal income taxes are due. We need to change the date and redefine the idea of an audit. What we intended was to make the HOA boards accountable in regard to how the dues were spent. What occurred is that we imposed some fiscal hardships on some communities.

MS. BRAINARD:
One of the suggestions that was proposed was to have a member of the executive board audit the books. That would be a gross conflict; we could not require someone to audit their own books. Maybe the answer is to ask for financial review, rather than an audit. That is a personal observation on my part, not a statement from the Commission.

CHAIR TOWNSEND:
Your point is well-taken, as well as Ms. Anderson's anecdotal comments regarding complaints coming from self-managed associations. I do want to defend this Committee. The public came to us asking for remedies; I can assure you we did not go looking for more HOA issues. Sometimes we overreach. Now that the State has had enough experience with this issue, we need to get away from the one-size-fits all. We do respect the problems.

MS. BRAINARD:
I would like to respond to one of the complaints, that Nevada is one of the more heavily regulated states. In my opinion, I would rather live in a state that feels it necessary to maintain professional standards for managing and assisting our associations and homeowners. We could possibly make it a little easier for people moving into Nevada to become certified. Specifically, I know there is a move to bring in retired military personnel who are experienced.

CHAIR TOWNSEND:
I believe Senator Heck has an amendment for that issue to be addressed in another bill.

CHARLES O'DONNELL:
I am the president of board of directors at the Siena HOA that is in the southern tip of Summerlin. It is a gated community of 2,000 homes of the over-55 age group. Our dues are higher than a lot of CICs, because we take care of our own roads and security. I am new to this position, having moved here from Pittsburg five years ago. I read my governing documents and, being retired military, they fit in with my idea of a community where there are rules that require the other homeowners to keep their property from becoming an eyesore.

I would like to applaud Mr. Buckley and Chair Townsend for coming to the conclusion that the one-size-fits-all approach will not work. Section 4, subsections 3 and 5, of S.B. 362 state that homeowners may make alterations without prior approval from the HOA board. This is uncalled for; all alterations need to be compatible with the community.

Regarding the section that talks about tenants and absentee homeowners, we do send a letter to the owner as well as the tenant if rules are not being followed. Overall, I am worried about due process. NRS 116 required us to send a warning or notice letter for a possible violation of a rule. After the notice there would be a hearing panel and lastly, the resident could appeal and ask for ADR. This current bill wants to change that process and take the Ombudsman out of the arbitration process. I think that is wrong, and we should continue the process that is currently in place.

One issue I would like to point out to Chair Townsend is that we have some stupid rules that came from the original CC&Rs that we inherited when the developer left, after build-out. Our CC&Rs were originated by the developer and they still have language and rules that are no longer necessary. We can only change the CC&Rs if we have 75-percent agreement of the residents. We are not able to achieve that high of a percentage. I would ask the Legislature to change NRS 116 to language that indicates, once there is build-out, the CC&Rs can be changed by a resident vote of 55 percent and a majority of the board.

Our community is currently involved in a lawsuit because of conflicting regulations in the CC&Rs. If we had been able to change the CC&Rs, we would

not be in this situation. Going back to Mr. Buckley's point about one-size-fits-all and in regard to meetings, I think they should look at the board meetings and the number of action items that are on the agenda. In our meetings, we generally have no more than ten items on which we have already solicited comments from residents prior to the meetings. We actually answer the questions or comments of the residents prior to the business part of the meeting. You might want to look at the number of actions or the size of the HOA, in regard to meetings.

One final item is section 37, subsection 2 of S.B. 362, "If an association ... by judicial authority." If this sees the light of day, you will bankrupt every HOA that I know of. You will get the ambulance chasers and lawyers lined up at the community center after the hearings. This is totally unnecessary, since we always take due process into consideration. We have an errors and omission policy that protects the board members from frivolous lawsuits. If you leave in this section, the HOA will probably not be able to get that insurance anymore.

SENATOR SCHNEIDER:
Sir, that section 37, subsection 2 has already been deleted from this proposed bill.

MR. O'DONNELL:
I agree with my predecessors that most of this bill should be eliminated. The one thing we could use some help on would be making changes to the CC&Rs as I stated earlier. I appreciate Senator Schneider trying to listen to the residents. We have radar guns in our community because the residents want them.

CHAIR TOWNSEND:
Mr. Buckley, have you had any problems or challenges with boards not allowing alterations to allow people with disabilities to be accommodated?

MR. BUCKLEY:
Nothing like that has come to our attention. The Real Estate Division would handle that type of complaints.

MR. O'DONNELL:
I will give you an example why we need to be able to revise our CC&Rs. One of the regulations states that view is not a consideration. Another section says

that the view is a consideration. If we could make these changes with 55 percent of the residents approving this by a vote, we could have saved some money fighting these lawsuits.

CHAIR TOWNSEND:
Why is the current requirement of 75 percent hard to achieve?

MR. O'DONNELL:
We have 2,000 homes in our community and we are lucky if we get several hundred ballots back in any election. I have talked with other large associations and they seem to have the same problem with getting ballots back; we are lucky to get a 50-percent return.

CHAIR TOWNSEND:
I hope you understand the dilemma we have here; the last six people have asked us to eliminate this proposed bill and get out of their lives, and you are asking us to fix your CC&Rs.

MR. BUCKLEY:
We passed existing language in NRS 116 in 2005 that allows an association that achieves a 50-percent majority to change the CC&Rs. All they have to do then is go to court and get the approval.

MR. O'DONNELL:
I know about that, but we would still have to spend money to go to court.

CHAIR TOWNSEND:
The exact citation for that is NRS 116.21175, "Procedure for seeking confirmation from district court of certain amendments to declaration."

MR. BUCKLEY:
I would point out that Senator Beers' bill, S.B. 235, would repeal that section of the NRS. The commission voted that we opposed that part of S.B. 235 as proposed.

SENATOR SCHNEIDER:
Regarding improvements to the outside of the structure, several sessions ago we passed the amendment to allow rolling shutters in an effort to save energy and add a safety benefit. Since then, the HOA boards have made those shutters

almost impossible for residents to get approved. One of the arguments made by the HOA attorneys are that these types of shutters will eventually leak. Therefore, you cannot put them on structures with common walls, such as a condominium. I would suggest that the shutters be installed by a licensed contractor so if they leak, the residents would have recourse with that contractor. One way or the other, the Committee needs to address this issue.

CHARLES GOODWIN:
I am the vice president of the Sun City MacDonald Ranch HOA in Henderson (Exhibit L). In addition, there is one thing I do want to say about the amendment 3316 proposed by Senator Heck (Exhibit M). We agree with this amendment.

DAVID STEINMAN:
I am a resident of Sun City Summerlin. We have nearly 8,000 units and 14,000 residents. I served as president of the Sun City Summerlin Community Association (SCSCA) in 2006. The residents asked me to remain as chairman of the architectural review committee, a position I have held for over five years. In addition, I am a commissioner on the Las Vegas Planning Commission. We deal with planned communities on a regular basis.

It has been my pleasure to maintain high-development standards for our HOA. The excellent appearance of our community is attractive to many senior citizens. We have always been a leader in permitting improvements that benefit our environment. Over 95 percent of our yards feature xeriscape materials. We were one of the first HOAs to permit artificial turf. We have permitted solar panels on rooftops for many years and we welcome Rolladen shades on many of the homes.

I would like to address page 7, lines 15 through 25 of S.B. 362 that refers to solar and wind energy. I understand that this section is taken from NRS 111.239. The development standards of the SCSCA require that rooftop solar panels must be of terra-cotta color, the primary reasoning being to keep the look similar to our tile roofs. It has also been our experience that black solar panels fade in the desert heat and sun faster than the terra-cotta panels. Keeping that in mind, we are aware of the cost and efficiency factors achieved with black panels versus terra-cotta panels. We believe the experts who determine efficiency are with the Florida Solar Energy Center. That Center is cited by most manufacturers as the expert. Based on their certifications, we believe that efficiency differential of 11 percent exists. We had one lawsuit in

regard to black panels, the case was settled out of court and the black panels were not installed.

MR. STEINMAN:
We believe that within that NRS statute the word "unreasonably restricts" needs to be further defined. I strongly recommend that you study the California law from Section 714(b) of the *California Civil Code* "restrictions on a solar energy systems are ... energy conservation benefits." Also in 714(d) of the California Code it states and defines unreasonable, as "an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar system by an amount exceeding 20 percent."

We should minimize the need for our court system to define vague words in S.B. 362.

Having spent 40 years in a career as an institutional real estate lender to companies such as Bank of America and Bank One, I feel qualified to speak on the matter of section 20, subsection 10 and section 21, subsection 3 in S.B. 362 as relates to foreclosure pursuant to NRS 116.31162, 116.31163 and 116.31164. Bringing another party into the decision to foreclose on a HOA unit makes very little sense and creates the impression that the HOA board of directors has little or no skills in credit analysis. It also creates the impression of micromanagement by the Commission and adds to the timeline of foreclosure. This proposed section must be eliminated. The proposed change to allow for a right of redemption after foreclosure is unnecessary. Nevada is a deed-of-trust state, which is the most used instrument to secure obligations on real estate. Mortgage companies generally prefer deeds of trusts, since it provides the mortgagor the right of redemption. Your proposed change in the law would provide an unlimited period for the right of redemption. The HOA owner may redeem or reacquire the property during an unlimited amount of time, just by paying all the costs plus interest. This sets up a situation that puts any buyer at risk. It also creates a problem if the HOA takes the property and then attempts to sell it with the open-ended redemption period.

FRANK BEERS:
I am a former director of the SCSCA. My problem with S.B. 362 is the word "adequate" to describe reserves. The word adequate should be further defined. As a retired, licensed mechanical engineer for Nevada, I would inform you that there is not a significant loss of efficiency between the colors of terra-cotta or

black solar panels. This issue was brought to the forefront because the contractor had only black panels. He installed them, knowing the CC&Rs restricted them and then decided to paint them. Painting over the original color did reduce their efficiency.

The suggestion that our CC&Rs take precedence over portions of NRS 116 would cause much confusion. NRS 116 has been revised six times since the statute's inception. I can envision the situation where dates would have to be determined as to what revision applies versus the date the CC&Rs become effective.

My final remark has to do with Mr. Hall's court case and his appeal that is before the Ninth Circuit Court. I believe I can comment on this case since I am one of the defendants. The issue before the court is not the issue of whether or not NRS 116 overrides the CC&Rs, but the fact that his case was dismissed from the local district court.

EDWARD WALTERSCHEID:
I am a retired attorney and a member of the board of directors of SCSCAI and my comments are presented as an interested member of this community. We endorse the comments made by Mr. Goodwin.

I do think it is important to briefly comment on a couple of these issues. With regard to section 4, improvements and alterations without the approval of the board causes great concern to me. I object to the Legislature giving the right to a resident to change the look of a common element of the CIC if it adjoins his property, without the express approval of the HOA. This is effectively the taking of CIC property for the use of one unit owner and contrary to intent and purpose of the CIC. I do not believe a court of law would sustain it.

Regarding section 8, subsection 2, of S.B. 362, this makes violations unsustainable, except in the circumstances that would almost never exist. The concern of many HOAs is how to stop the violations of governing documents by tenants. In my HOA, there are hundreds of units rented out by absentee landlords. With the proposed language, an owner could almost always argue, that he had "not participated or authorized" the violation and thus could not be sanctioned. The sanctions or fines would be meaningless if the owner cannot be forced to accept responsibilities for the actions of their tenants.

In section 8 of S.B. 362, I do not understand the wording or the intent of subsection 6. It assumes that an association can impose a fine of more than $5,000 pursuant to paragraph (b), of subsection 1, when the violation does not involve the health, safety or welfare of residents of the CIC. When I read the current language in subsection 1, paragraph (b), the HOA is absolutely precluded from issuing such a fine. Such a fine could only be issued if it proposes an imminent threat to the health, safety or welfare of the CIC. The proposed amendment to this section should be eliminated.

The proposed amendment to subsection 7 is a classic example of the creation of an unintended consequence. The prior language stated that if the violation was not cured within 14 days it would be considered a continuing violation, subject to additional fines. The new proposed language would make that contingent upon the Commission first affirming that decision. This means that the violation could continue for months until the Commission gets around to affirming the violation.

Suppose the violator does nothing to correct the situation and the violation imposes an imminent threat to the health, safety and welfare of the residents. The board could do nothing to stop this violation until the Commission got around to affirming the violation which could take several months. This section should also be deleted from this bill.

Section 37, subsection 2 would literally require the HOA to go to court and prove that the violation was not frivolous or false before any attorney's fees would be paid.

HAROLD BLOCH:
I am the President of the Summerlin North Homeowners Community Association. We have approximately 1,500 homes and 14,000 residents. Could I make a correction in regard to Senator Schneider's comment about the volatile person who made the phone call we heard? I just want to correct on record, that person is not on the board of Summerlin.

This bill is purely and simply unsupportable. This may seem like a harsh statement but it seems to me that the process for formatting this bill was to compile a laundry list of disparate items that have come to Senator Schneider's attention. When we weed into this bill, we find contradictory issues and changes that are not defined.

LESLIE ORTEGA:
I am a board member of the Winterwood Village Mobile Home Association. We have 214 units and we were self-managed for 34 years. In January of this year, a community manager was hired.

My first request is that NRS 116 be written in layman's terms so that boards of directors can follow them. Our residents have filed four formal complaints with David Garrick, an investigator with the Ombudsman's office and they are just now starting to address the complaints. There does not seem to be any protection for the people who have filed these complaints and this community manager has targeted these people. This manager has told us that he has friends that are arbitrators in the Ombudsman's office and that he will make sure that all the complaints that have been filed will be dismissed as meritless. I called the Ombudsman's office to find out the process of protecting these complainants and I was told there is a process but it was never explained to me. I would like to respectfully ask that the complaints be addressed in a timely manner. There should also be a way to fast-track severe complaints such as fraud. Additionally, there should be a penalty for the breach of confidentiality that has occurred. The statute addresses breach of confidentiality, but there does not seem to be any repercussion when it happens.

As I speak to you now, there was a board election that was postponed for lack of a quorum. On March 27, we finally opened the ballots, but to this date, we have not chosen a president or a treasurer. We have a payroll that needs to be administered and we probably still have officers that lost the election still able to sign on our checking account. I think these issues need to be addressed.

CHAIR TOWNSEND:
In regard to frivolous or genuine complaints, is the process we have in place now to make those determinations adequate?

MR. BUCKLEY:
I think the process is adequate. We do dismiss a number of complaints as frivolous. One thing I would like to point out, which seems to be a theme running through this meeting, is that NRS 116 requires advance notice of the agenda of the board meeting, which may be why the election for this particular group had to be postponed.

MS. BRAINARD:
You actually need an agenda for the annual unit-owners meeting, and then you should have a separate agenda for the meeting for the board of directors who would meet right after the election is announced to elect their officers.

MS. ORTEGA:
This is exactly what we attempted to do. We did have a separate agenda and the community manager prevented us from meeting.

MS. BRAINARD:
If that was the situation, the Real Estate Division would be interested in discussing this with you to resolve that issue.

MR. BUCKLEY:
I would also point out that the Real Estate Division has more authority over licensed people than the board members.

BOB SIDELL:
I am here representing the Volunteer Associations for Leadership, Understanding and Education Alliance, which at this time represents at least 20,000 homes. There is something that has been overlooked in this three and one-half hour discussion. The last session of the Legislature has allowed a situation to be considered the norm. An "us-or-them" mentality has been created as it relates to HOAs; the "us" being the HOA, and the "them" being the boards. What we fail to remember is that the boards are made up of volunteers who are also homeowners living next to the general membership and residents.

Almost 90 percent of what we see in the Senator's bill is from the active minority of residents. The vast majority of residents are people who never say anything because they are happy with their community. This type of bill would be disastrous for that vast majority. In answer to your question about trying to solve the issues by making NRS 116 apply only to issues that are silent in our CC&Rs, my answer would be an emphatic yes. We would no longer be in conflict with the Legislature. We also support S.B. 235 which proposes to bring all CC&Rs current with conditions that exist now, instead of when the developer originally wrote them. I think you should pass S.B. 235 and back off trying to micromanage the operation of the HOAs.

CHAIR TOWNSEND:
All of you have to owe a great deal of latitude and gratitude to our Senior Policy Analyst Scott Young who has been involved with the issues of CICs from day one, and to Wil Keane our Committee Counsel. If there is no further testimony we will adjourn the Senate Committee on Commerce and Labor at 10:21 a.m.

RESPECTFULLY SUBMITTED:

_____

Lori Johnson,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____