MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
March 31, 2005

The Committee on Judiciary was called to order at 8:18 a.m., on Thursday, March 31, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman David Parks, Assembly District No. 41, Clark County (part)
Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County (part)
Assemblyman Mark Manendo, Assembly District No. 18, Clark County (part)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Judy Maddock, Committee Manager

OTHERS PRESENT:

Gary Peck, Executive Director, American Civil Liberties Union of Nevada
Peter Anderson, State Forester, Division of Forestry, Nevada Department of Conservation and Natural Resources
Bob Roshak, Sergeant, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; and Nevada Sheriffs' and Chiefs' Association
Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and Nevada Sheriffs' and Chiefs' Association
Bjorn Selinder, Legislative Advocate, representing Churchill and Eureka Counties
Kim Spoon, Master Guardian, Guardianship Services of Nevada
Sally Ramm, Elder Rights Attorney, Division for Aging Services, Nevada Department of Human Resources
John Sande, Legislative Advocate, representing Nevada Bankers Association
Lora Myles, Attorney, representing Carson RSVP [Retired and Senior Volunteer Program]; and Rural Elder Law Project
Susan Swenson, Public Guardian, Carson City Public Guardian's Office, Nevada
Dara Goldsmith, Private Attorney, Clark County, Nevada
Kathleen Buchanan, Public Guardian, Clark County, Nevada
Jim Nadeau, Government Affairs Director, Nevada Association of Realtors
Buffy Dreiling, Legal Counsel, Nevada Association of Realtors
Renny Ashleman, Legislative Advocate, representing Southern Nevada Home Builders; and Las Vegas Country Club Management Association
Karen Dennison, Legislative Advocate, representing Lake at Las Vegas Joint Venture
Jim Flippen, Legislative Advocate, representing Caughlin Ranch Homeowners' Association; and Community Association Institute Legislative Action Committee
M. J. Harvey, Private Citizen
Donna Erwin, General Manager, Las Vegas Country Club Estates Master Association, Nevada
Gary Hayes, Private Citizen
Judi Burns, Private Citizen

Kathryn Pauley, President, Silver State Trustee Services, LLC; and Legislative Advocate, representing Community Associations Institute

Chairman Anderson:
[Called the meeting to order. Roll called.]

Chairman Anderson:
We'll start with A.B. 272.

Assembly Bill 272: Restricts persons who may hold position within correctional prison, institution or facility with direct contact with female offenders. (BDR 16-203)

Assemblywoman Genie Ohrenschall, Assembly District No. 12, Clark County (part):
I'm the primary sponsor of A.B. 272. It restricts male employees within a correctional prison, institution, or facility from any direct contact with female offenders, unless there is a female employee also present. I am aware that the bill does not have that last statement in it; it was sent back to have that added. Somehow it came back without it. It was an amendment suggested by Assemblywoman Gerhardt. She explained that, frequently, what happens in prisons is that teams of two deal with inmates. It seemed to me that, under those circumstances, a team of two, one being a male and one being a female, would also take care of the problem.

What brings about the bill is that sexual conduct between prison guards and female inmates has been increasing, not only in Nevada, but also across the country. This has led to several lawsuits. In Nevada we have had two, and there's a third one pending. There have been several in neighboring states that have brought back awards over $1 million. It's a bill that will help protect the women inmates. It will also help to protect the prison system from lawsuits that cost huge amounts of money, and from frivolous lawsuits that may begin to come from actual facts that did happen in certain cases, but that don't happen frequently. They may lead to accusations being made, when the accusations are not always founded.

Female inmates reportedly, across the country, say that they feel helpless and unable to resist sexual demands of prison guards, due to the inherent power and control prison guards have over them in the prison environment. Even more disturbing, female inmates fear retaliatory abuse if they report the sexual abuse. Assembly Bill 272 protects female inmates by providing that only female

officers, employees, independent contractors—and according to the amendment that was not put in, but perhaps the Committee could put in now—or a team of two which would include one female in the team. The [female officer] may perform duties that require direct physical contact with female offenders in the correctional facility.

[Assemblywoman Ohrenschall, continued.] Before I close my remarks, I'd like to leave you with more developments that have happened. DNA testing in Nevada has confirmed that a former prison guard at the Southern Nevada Women's Correctional Facility is the father of an inmate's baby. The inmate alleged that she was forced to have sex with the guard. The sex acts reportedly continued for months, and according to the inmate's attorney, she was afraid to speak out. Subsequently, a Clark County grand jury indicted two male prison guards for engaging in voluntary sexual conduct with an inmate.

We have another inmate who was being transported in a truck that included one male driver, who was also the guard. According to accusations, which have been substantiated, he pulled off in Coaldale Junction, which is now abandoned, and forced her to have sex with him. As he was finishing, and dragging her back to the truck, he removed his condom and dropped a glove. When she was delivered, she told the prison people there. The local sheriff's office went out to Coaldale Junction and did, indeed, find both the condom and the glove. The DNA matched the driver, and that case is still in litigation.

A third one has been filed not too long ago with similar accusations. I have an example of four different cases, two of which occurred in Nevada, that were reported in the news, and I've given copies to our Committee for everyone to look at. As I said, the intent of the bill is both to protect the women, and also to protect the correctional facility against possible bogus charges by other women who may not have been victimized. I think it serves a good purpose. That's basically a summary of the bill.

Chairman Anderson:
Those are documented in [Exhibit B] and you wish that they be entered into the record for this day?

Assemblywoman Ohrenschall:
That's correct. There are four of them, and two have actually happened in Nevada. There have been many charges that have been floating since then, and one charge is now pending. I believe it surfaced sometime before the Legislature went into session.

Chairman Anderson:
Is that part of this packet?

Assemblywoman Ohrenschall:
No, I'm sorry, that one is not part of the package. I have the four that have become public, and those are the two in Nevada and the two in Carswell, Texas. The other one has been mentioned.

Chairman Anderson:
I'm trying to make sure our record is straight.

Assemblywoman Ohrenschall:
The last one is not at the point where it includes names and dates. It's been on radio and television. It's not yet been documented.

Chairman Anderson:
Let's make sure these documents are made part of the official record.

Assemblyman Horne:
I understand that you said there is going to be an amendment saying they also have to be.... I was curious if you've spoken with the Department of Corrections on the ratio of women guards to men in the women's facilities. My concern with your amendment to have a female officer present at all times is whether there would be a sufficient number of women to supply that need 24 hours a day. I have a criminal justice degree and have toured most of the facilities in the state. I toured Southern Nevada Women's Correctional Facility when it was new. I was actually told by the warden that sexual misconduct doesn't happen there. I was stunned. It's a women's prison; I saw three women on staff there. I don't know if those ratios have changed, but I was curious if you've asked.

Assemblywoman Ohrenschall:
I have not checked on those ratios, but the bill itself is meant to provide that there should be no unsupervised male contact, physical contact, with the female prisoner, when alone and separate. It would not require that a woman's prison have nothing but women employees working there. It would be just the employees who come into direct physical contact with the woman prisoner, where there would not be any other people around, or any supervision provided.

Assemblyman Horne:
I would like to have information on staffing at the women's prisons before moving this bill.

Chairman Anderson:
We have a long way to go on that particular issue. Along the same line, I note there is a problem relative to recruiting personnel for corrections, generally. In looking at the Department of Personnel's February 7, 2005 recruiting documents, I see that in addition to the regular requirements, it states, "Incumbents are required to work exclusively with female offenders. Only female applicants will be accepted for the position." Apparently, they're trying to recruit in this particular area. Finding qualified women to fill these positions is particularly difficult. How would the Department, in your opinion, overcome this? Would they hire people with lesser qualifications in order to meet the requirement?

Assemblywoman Ohrenschall:
I think what they will have to do is reassign personnel from one prison to another until the ratio of hiring catches up. One thing was brought to my attention this morning, I had not thought of myself. Assemblywoman Gerhardt, who has experience dealing with correctional facilities and working there, pointed out to me today that this might present a problem to women employees. If they first have to deal with women's prisons and only women inmates, it might have a chilling effect on their ability to be promoted within the system.

It does seem to be a valid issue to be considered. If you back it up with the amendment to the bill, which provides for teams of two, a woman could be there to be the chaperone. There will be problems in getting the personnel, but I don't think the answer is for us not to look at the problems. We have now, in neighboring states, multi-million-dollar judgments. We have two in Nevada that are just waiting to be quantified, and more seem to be coming.

Chairman Anderson:
I note that this also includes independent contractors. One of the stories that you submitted to us, relative to independent contractors, deals with a particular prison that is entirely 100 percent operated by an independent contractor. The transportation issue is, therefore, a part of that. There are other kinds of independent contractors who are brought into the prison from time to time, to teach welding, or a shop course. Would they, then, be precluded from having an opportunity to do that, and thus cut down the pool of people who might be able to bring expertise to change the behavior side of the prison system, not the supervision side.

Assemblywoman Ohrenschall:
I understand your concern. It is a very valid one. I believe, since the bill is intended to deal with situations of physical contact where there are not

numbers around who would provide automatic supervision, that a class situation would, by its very nature, have a number of other inmates there. It would not be a sole one-to-one between an inmate and somebody who is not an inmate. I don't think that would fall within the bill's intent.

Chairman Anderson:
Of course, we all recognize that sexual contact between prisoners and guards is strictly forbidden already. We have very strict rules about that, whether it's male to male, or female to female, and behavior such as that, unfortunately, is not going to be taken care of by this bill one way or the other.

Assemblywoman Ohrenschall:
Here is a case documented where a woman was out alone with a man. That's why we need a bill: To make sure that the employers look carefully, and make sure those things don't happen.

Chairman Anderson:
Of course, they were in violation of their own policy.

Assemblywoman Ohrenschall:
Absolutely, they were.

Gary Peck, Executive Director, American Civil Liberties Union of Nevada:
I am here to testify, not only as Executive Director of the ACLU of Nevada, but as a former professor of law and public policy, both in law school, and in social science departments. I want to emphasize the magnitude of the problem, and the fact that it is well documented, not just here in Nevada, but nationwide. I also want to emphasize that what we are talking about is the deployment of staff. I don't believe that the burdens people are talking about are unreasonable expectations when serious human and civil rights issues are at stake here.

Most importantly, we already have, in the Ninth Circuit Court, a law that says any time a woman is going to be patted down by a guard, that pat-down needs to be conducted by a female officer. Implicit in that case law is the suggestion that there needs to be adequate staffing levels that include an ample number of women to be present whenever there is supervision or contact with female inmates. I think this is just common sense. It is a good bill; it is one we cannot overstate the extent of our support for. Assemblywoman Ohrenschall offered amending language so that we're talking about the presence of a female guard; not that every single guard in a women's facility, or where women are housed, needs to be a woman.

Chairman Anderson:
Nevada is faced with unique problems in trying to recruit for correctional officials as a whole. You're of the opinion that this bill would not keep a woman from being employed in one of the male facilities?

Gary Peck:
Absolutely not. I don't believe so.

Chairman Anderson:
This kind of event might take place in situations which we can document in Nevada, even though it's against the rules?

Gary Peck:
That's correct; that is our view.

Peter Anderson, State Forester, Division of Forestry, Nevada Department of Conservation and Natural Resources:
We have two female inmate camps in our state; those are the Jean Conservation Camp and the Silver Springs Conservation Camp. I fully understand the basis for A.B. 272. I think the issue needs to be addressed from a variety of ways. The Division of Forestry is opposed to A.B. 272 as written. We do operate, in conjunction with the Department of Corrections, two female conservation camps. They are two of the highest revenue-producing conservation camps in our program.

Recruitment and retention of crew supervisors is as equal a challenge for our agency as it is for the Department of Corrections. Over fiscal year 2004, those two camps alone generated $750,000 in revenue. We have targets of $2.5 million in revenue over the coming biennium annually, and they play a key role in generation of that revenue.

The position of a Crew Supervisor is extremely challenging, both physically and mentally. Training requirements are extensive, and can take over a year to become fully qualified, both in natural resource management activities and in wildland fire suppression. Approximately half of our 84 conservation camp crews in the system are fire and emergency-response qualified, and they serve a critical function for the state of Nevada.

Silver Springs Conservation Camp currently has eight crews, and Jean has ten. Our female crews are our very best crews in the system. They have a commitment to quality, and they have a commitment that sees projects to the end that many male crews do not. We are very proud of our female fire crews, and they do a fantastic job in the initial attack across the state.

[Peter Anderson, continued.] There has only been one substantiated incident between a male crew supervisor and a female inmate on the job in the 30-plus years of our operations. All of our crew supervisors receive sexual harassment training and EOC [Equal Opportunity Commission] training on an annual basis, and they are closely supervised. Our crew supervisors do take inmates into the field in urban settings, where there are very constricted, confined areas. They also operate independently, sometimes 40-50 miles from anyone else in the field, doing natural resource programs, or fighting wildland fires.

The Division struggles with crew supervisor recruitment on a statewide basis, for a variety of reasons: the rigors of the job, the entry pay level, and sometimes the extreme distances from our communities to the camp itself. I believe this bill would increase the difficulties we have in hiring crew supervisors. Supervising 12 convicted felons in a variety of settings, urban or rural, on a daily basis, is a unique challenge, and is a sometimes exciting career. Assembly Bill 272 has the potential to impact our ability to field inmate crews for wildland fire and emergency responses, and our ability to generate revenue.

Chairman Anderson:
Chief Anderson, when any of the crews, either women or male crews, are out helping you with these fires, they earn good-time credit in addition to revenue for their own use. We pay them money that they can put into their restitution funds and into other things they have to pay, so they become moneymakers for the crews themselves. It's not like we get these folks for nothing, right?

Peter Anderson:
That's correct, sir. They do contribute to their cost of confinement, and they do receive good-time credits, one for one, through their work in the field.

Chairman Anderson:
The ability to utilize women crews could conceivably go down if we were to pass this piece of legislation, is that what you're trying to say, because you'd have to move to more male crews?

Peter Anderson:
My concern is to be able to recruit and retain qualified female crew supervisors. That's an ongoing challenge, whether they're male or female.

Assemblyman Mabey:
When you go out in the field as a crew supervisor, are there always at least two crew supervisors there, or would there be an instance where there would be just one of you supervising?

Peter Anderson:
It varies significantly. Most of our conservation projects for the bulk of the year have a single crew supervisor with 12 men or women in their vehicle on a project site. They would be working independently. Sometimes that can be in a community urban setting, and sometimes that can be in the field. On a wildland fire, typically we send 2 crews, or squads, together, so you would have 2 crew supervisors and 24 inmates traveling as a unit to respond to a wildland fire.

Assemblyman Mabey:
Would you ever have just one crew supervisor and one prisoner?

Peter Anderson:
Not unless there was a medical emergency or some other factor that influenced it. We have had situations where inmates have actually treated an injured crew supervisor, and vice versa, but the policy and our operational constraints avoid that as a primary goal.

Chairman Anderson:
You're out there planting trees; you're not fighting fires, but you're out there doing restoration work, where a fire may have been, or other kinds of cleanup. That's where you're using the smaller crews?

Peter Anderson:
Yes, we do a wide variety of work, from highway work to culvert work and fence construction. We rebuilt the Elko County courthouse, for example. A crew was in there for many months; one crew, with a supervisor.

Assemblyman Horne:
Chief Anderson, did you say how many crew supervisors you have, and how many of those are men or women?

Peter Anderson:
In the total program, we have 84 positions authorized through 10 camps. Of those, we only have 3 female crew supervisors and 81 males.

Assemblyman Carpenter:
Assemblyman Horne answered my question. We don't have any women crews in our area. Some communities in rural Nevada absolutely depend on them for building projects and cleanup. This year, when we had the large record snowfall, they were out there helping the elderly and disabled. They do a great job everywhere they are.

Chairman Anderson:
Chief Anderson, we appreciate the hard work of the Nevada Division of Forestry.

Sergeant Bob Roshak, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department; and Nevada Sheriffs' and Chiefs' Association:
We remain fairly neutral on this. Some of the concerns that we have, you have already addressed. Our main issue is clarification that this legislation deals with the state prison system.

Chairman Anderson:
I think that our concerns, in terms of the safety of the women being utilized in these kinds of programs, extend both to the county level and to the state level. I would gather from the comments made by the Director of the ACLU (American Civil Liberties Union), who made reference to the Ninth Circuit Court, that the position is that women are supposed to be supervised by women whenever possible. I presume Clark County tries to follow that rule.

Sergeant Roshak:
Yes, sir, we do.

Michelle Youngs, Sergeant, Washoe County Sheriff's Office; Nevada Sheriffs' and Chiefs' Association:
I wanted to be sure that this bill did address the state's corrections and would not have an effect on us at the local level for our detention.

Chairman Anderson:
We want it to have an effect upon you, if we're going to move with the bill.

Michelle Youngs:
Then I would have to change that [neutral position] to "in opposition."

Chairman Anderson:
Are you telling me that Washoe County does not make a good faith effort to make sure that the women in your facility are being supervised by two people, or at least one female supervisor, wherever possible?

Michelle Youngs:
Absolutely not, sir; we do have a number of policies in place regarding females that are brought into the facility for search, for transport, and within the housing units. It could be difficult for us, operationally, depending on how this bill is finally worded. As was discussed, the number of women that are in either

law enforcement or corrections is relatively low. Ours for the Sheriff's Office, is about, I believe, 16 percent right now.

Chairman Anderson:
I'm going to close the hearing on A.B. 272, and we will bring it back to the Committee. It's my understanding, Ms. Ohrenschall, that you are going to prepare additional information relative to this. I would be remiss not to tell you that there are some problems with the bill, from what we've heard. I don't think any of us want to stop the ability of the Forestry Department from doing what they need to do, and if we can find an adequate protection, we will do so.

Assemblywoman Ohrenschall:
I'd be very happy to delve in, if you could give me a little more guidance. I think that a properly worded redraft may take care of a lot of the issues that have been brought up in addition to getting the statistical information that Mr. Horne wanted.

Chairman Anderson:
I'm not holding out much hope for it right at this second, and I don't want you to be pushing at it.

Assemblywoman Gerhardt:
I was going to offer to assist her in any way that I can.

Chairman Anderson:
If you could, that would be most helpful.

Assemblyman Carpenter:
If this does apply to all institutions throughout the state, you need to get more information. I know that, in Elko, when they have to transport a woman prisoner, they have a woman there. It can't happen all the time, you know.

Chairman Anderson:
We might want to restrict the bill to the movement of prisoners only, to make sure they're with two or more officers, one of which should be a female officer, but not required. Leave out the other parts, and put in a caveat so that, if there's a safety issue that arises, the Department of Forestry would be able to do what they need to do with their particular program. I'm surprised that no one is here from the Department of Corrections to talk about their impact on their agency. I wouldn't spend a lot of time with it, Ms. Ohrenschall. Those might be some areas that you want to explore.

Assemblywoman Ohrenschall:
Thank you, Mr. Chairman. Even if it were restricted to the transportation area—which does seem to have caused the greater number of problems—it certainly would be a step in the right direction, both towards protecting inmates, and towards protecting the system itself from possibly bogus claims.

Chairman Anderson:
I see that the prison system is actively trying to find correctional officers in this area.

We'll open the hearing on A.B. 282.

Assembly Bill 282: Makes various changes concerning guardianship. (BDR 13-266)

Assemblywoman Chris Giunchigliani, Assembly District No. 9, Clark County (part):
I've handed out to you a newspaper article from the *Las Vegas Sun*, which piqued my interest enough to cause me to request this legislation and proposed amendments (Exhibit C). After working with the local guardians, as well as other individuals, language got put in here that I don't remember ever requesting.

There was a new GAO [Government Accountability Office] report done in July of 2004, if I might read briefly from that (Exhibit D, page 5). "Over time, some elderly adults may become physically or mentally incapable of making or communicating important decisions, such as those required to handle finances or secure their possessions. In addition, while some incapacitated adults may have family members who can assume responsibility for their decision-making, many elderly incapacitated people do not. The Census Bureau predicts that in the future the elderly population will be more likely to live alone and less likely to have family caregivers. In situations such as these, additional measures may be necessary to ensure that incapacitated people are protected from abuse and neglect."

The intent of A.B. 282 was to tighten up what we have currently going. It's an extremely difficult job to be a public guardian. We have wonderful ad litem's out there; they are not impacted by this legislation through the amendments that have been handed out to you. We need to do planning. We need to make sure that the people who are taking on this job are qualified, and we have some background checks done on them.

[Assemblywoman Giunchigliani, continued.] There's another bill in the Legislature where they just changed the name to "private professional" so I am suggesting that we model that through Section 1 and Section 2. In addition, I am suggesting that subsections 2 through 4 in Section 4 be deleted. I did not request that language. We don't need to bring in trusts, living wills, banks, and that type of thing. That was not the intent of the legislation.

Chairman Anderson:
You do not want Section 2?

Assemblywoman Chris Giunchigliani:
Section 4, subsections 2 through 6, lines 27 through 41, and then lines 1 and 2. Also on page 3, lines 1 and 2. In addition to that, in Section 5, I was probably not clear to the drafters. I'm suggesting deleting the language in subsection 5 of Section 5 on line 19, and inserting, "The courts shall review guardian reports as required in NRS [*Nevada Revised Statutes*] 159.085, no less than once a year, and take action if a problem is found." That will have to be made into "legalese".

Both the GAO report and what was pointed out in the article show the courts have an obligation to review, but they aren't doing that. They're not looking especially at the financial side of it. I wanted language to nudge them to make sure they do that when they appoint a court guardian. The guardian needs to review the finances to make sure that nothing wrong has been done with those dollars that belong to that individual.

I'm also recommending deleting Section 6. I was looking at a fee schedule, but it may not be necessary. I think the best approach is that the local government makes sure that the money, which was already collected for this program, is actually spent on the program.

Chairman Anderson:
I presume that's down to 35 so that we pick up the number in question.

Assemblywoman Chris Giunchigliani:
Correct.

Assemblywoman Chris Giunchigliani:
In Section 9, delete all of it and insert, "A public guardian of a county may conduct public training programs for guardians, as it relates to the duties and responsibilities outlined in NRS 159." Clark County has taken this on. I didn't want to make it into a cumbersome process, because it's open to anybody that wants to attend. I was originally thinking that we should have the ad litem's

certified, but they made a good argument that they had a tough enough job. That was not really a problem area, so I didn't want to over-regulate in a case that was not necessary. That was a suggestion from the Clark County Public Guardian to reword it in that manner.

[Assemblywoman Giunchigliani, continued.] In Section 10, she worked with me and said that, for the purposes of being certified as a public guardian, it should be "upon completion of their probationary employment or two years from their employment, as determined by the administrator". That gives some time to go into the program and make sure they get certified. She argued, quite appropriately, that there's a large learning curve for public administrators. I want them to become either registered guardians or master guardians, but you need to have a time period to allow them to be able to make that.

In Section 11, I would suggest deleting what's there and inserting that the Board of County Commissioners must establish a budget from the money collected from the filing fees received by the clerk under [NRS] Chapter 19. These fees can be used for guardianship training or anything else, in order to carry out the intent and enforcement of NRS 159. Sometimes money gets lost in those general funds, even though someone is paying a fee. It was an attempt to make sure some of it is dedicated to the program.

Finally, in Section 14, delete "shall" and insert "may." We don't have public guardians in every single county, so there was no sense in mandating that. I'm suggesting we go back to the current language that exists in statute. I think it's time that we are proactive. We're going to have more individuals in our state, unfortunately, qualifying for guardianship. I wanted protections there for those who are entrusting their estates to individuals, and I hope that this legislation or some form of it will tighten up those strings and make sure that we have safeguards for our senior citizens.

Chairman Anderson:
Could we go back to Section 9 that you're deleting? Section 9, page 5, lines 24 through 34; actually, the meat of this is where you outline the course and touch on the essential elements. You're going to leave it open, rather than specify what the course requirements should be?

Assemblywoman Giunchigliani:
I believe NRS 159 does spell out the types of information or background that a guardian is required to have. Clark County actually is the only one, to my understanding, that offers a public training; it's really more of a session or availability, so the people who are interested can get that training. I didn't want it to become a negative situation; I wanted it to stay in a positive means.

Nevada Revised Statutes 159 does outline what is spelled out in Section 9. I felt we should be generic on it.

Assemblyman Carpenter:
In Section 3, the way that I read it, unless it's waived by the court, the guardian, before entering on his duties, must have completed the training program. I think, in Section 9, we should not make it mandatory. We have to correct that. I do believe it should be a "may."

Assemblywoman Giunchigliani:
Mr. Carpenter, you're correct. I didn't catch that. They also reference Section 9 in that part.

Chairman Anderson:
Maybe a better solution would be "as required in that particular county," thus making the reference back to county control, so that the option would be there, rather than a "may." We would look for the bill drafter to fix those inconsistencies in the bill, because the intent is clearly that you're not requiring they be mandated, other than the way they are currently mandated.

Assemblywoman Giunchigliani:
Correct, Mr. Chairman, except for the private, professional guardian.

Chairman Anderson:
Which could come up in S.B. 353?

Assemblywoman Giunchigliani:
Correct.

Chairman Anderson:
Basically, what are you trying to tell us?

Assemblywoman Giunchigliani:
It's time we take our professional guardians and make sure they have background checks and have taken the course work necessary to certify them as registered guardians or master guardians. I did not want to interfere with the ad litems, who generally take the voluntary classes. This will focus on those who are the professional guardians, to make sure they are properly qualified and have had fingerprinting done.

Chairman Anderson:
So, this is not going to require, but it's going to be permissive? It's a "may," not a "shall?"

Assemblywoman Giunchigliani:
It will be a "shall" for those employed by the public guardian or the professional guardian. The public guardian part in Section 10 would be "upon completion of their employment or their probationary period," as requested by the public guardians and public administrator.

Chairman Anderson:
So you're going to continue to show proof to a court that he has satisfied certain standards, national standards, training, and competency. He has completed the training program, if that particular county requires such a program to be in place. A criminal background check is going to be required in most circumstances, even in every county.

Assemblywoman Giunchigliani:
Correct.

Chairman Anderson:
We will continue authorizing the county commissioner to establish the offer in the bill. The county commissioner will not be required; he "may" do this. It authorizes to manage ward's property; we're going to take out the management of those ward responsibilities. File a verified account of ward's property in guardianship proceedings; is that part of the requirements that you're going to remove?

Assemblywoman Giunchigliani:
No, I was not suggesting removing the financial review.

Chairman Anderson:
You're going to mandate the creation of the fund and carry out the powers and duties ….

Assemblywoman Giunchigliani:
My suggestion is that the Board of County Commissioners must at least establish a budget for the monies that they currently collect for the enforcement of NRS 159.

Chairman Anderson:
The law library of the county may not use more than $30 for that?

Assemblywoman Giunchigliani:
I took out all the fee changes.

Chairman Anderson:
Good for you. I would indicate an opportunity to read through the amendments so that we might understand those for an upcoming work session, if we're going to move the bill.

Assemblyman Carpenter:
I don't have a problem with getting the background check, but as I understand it, sometimes a guardian has to be appointed quickly. If you send this into the FBI, I'm hearing it takes three or four months to get those fingerprints back. If that needed to happen in a hurry, maybe the court could waive that requirement, or say you can act until you get them.

Chairman Anderson:
Ms. Giunchigliani, is it my understanding this is going to apply to professional guardians or meeting national requirements? I believe the court has an opportunity to appoint temporary guardians in those kinds of emergencies.

Assemblywoman Giunchigliani:
That's my understanding; that would not stop a court from being able to make emergency or temporary appointments. I also envision that, as this rolls out, we may want to look at the effective date. I have no problem with giving them time to get in. You begin to build a registry that the court has to pull from, those individuals who have had their fingerprints taken. This was not intended to impact emergency situations.

Chairman Anderson:
Are you suggesting that we may need a date later than the October 1 effective date for the bill?

Assemblywoman Giunchigliani:
We may. I'd be willing to work with the counties and find out what they think, time-wise. No one raised that issue with me. I don't want to create a cumbersome process, but I do want to make sure that we are protecting our seniors. If the effective date needs to be July or January, or something along those lines, I'm more than open to that. I'd be happy to talk to them.

Chairman Anderson:
I think that probably would raise some people's comfort levels. Are there other questions for members of the Committee relative to Ms. Giunchigliani's bill changing or raising the standards for professional guardians and private professional guardians who offer themselves in this regard?

[Chairman Anderson, continued.] Ms. Giunchigliani, I would point out to you that we have another bill dealing with guardians that we had earlier scheduled, and it had to be rescheduled, so we may be waiting to see its outcome before we move with the bill. I would not say this is likely to move along quickly.

Assemblywoman Giunchigliani:
I do appreciate your attention today. If the Body does choose to move this or any other one, because the fees are removed from it, we ask that, in drafting, they make sure they remove the two-thirds issue; sometimes that gets lost.

Bjorn Selinder, Legislative Advocate, representing Churchill and Eureka Counties:
I wanted to express support for A.B. 282 as proposed for amendment by Assemblywoman Giunchigliani, with the measure added by Mr. Carpenter, which was a good observation. That concludes my testimony, thank you.

Chairman Anderson:
Have you had an opportunity to review the amendments which were suggested by Ms. Giunchigliani to the bill?

Bjorn Selinder:
Not in writing, sir, only as she orally presented them this morning. They did take care of some of the concerns. Incidentally, I should indicate that I represent Churchill and Eureka counties, and it would certainly take care of some of the issues with regard to the "may" proviso as opposed to the "shall" proviso for the absolute creation of a position.

Kim Spoon, Master Guardian, Guardianship Services of Nevada:
I work out of the Reno/Sparks area. I have been doing guardianship work, including working with the public guardian's office, for almost 13 years. I think everything that has been an issue with this bill has been dealt with, and I'm very pleased to see that means some communication is happening. Senate Bill 353 is a much more comprehensive bill regarding private guardians, and I'm looking forward to that coming to the Committee. This touches what the other bill is asking for, so I think the more comprehensive bill is something that I would appreciate when it gets to the Assembly. We'll be looking at it more closely.

I'm very glad this was brought up. In Section 4, "The guardian shall, before entering upon his duties as guardian," that they need to do their background check. There is a problem with the temporary guardianships, as you had mentioned before. Do you want to change the language to "general guardianship" and not allow temporaries to be involved with this? I am

concerned that, if there's any delay, it would harm the ward if these checks take a great deal of time. As far as the private, professional guardianships, we should all have background checks; that shouldn't be an issue, because it would be on a record.

[Kim Spoon, continued.] I am concerned about the family guardians, the neighbors, and the friends who have to do this. That would be a great burden for them. Otherwise, most of my issues have been dealt with this morning.

Chairman Anderson:
I presume you're particularly concerned about the guardians for juveniles and younger individuals. How about for guardians who have to be appointed for older individuals?

Kim Spoon:
Any guardian who is not a professional or public guardian, if you're talking about adults, is doing this usually for their parents or a friend, or is someone who has seen exploitation and is stepping up to do this. It's a very difficult job for anybody, let alone to put this type of burden on somebody. Many times when you go into guardianship, things have to happen very quickly. To have that burden of waiting is not a good idea.

Assemblyman Horne:
Miss Spoon, what about those situations that you hear about? It may be a neighbor. On the surface, they're looking after the best interests of the elderly or sick neighbor, but in actuality, they want to be guardians because they want to get their hands on the property, and control the assets. With your provision excluding them from these criminal background checks, we may miss somebody who has done this before, because they're not private professionals.

Kim Spoon:
I'm not saying to exclude them. I'm saying that, if exploitation is an issue in the guardianship, a petition will tell the court what the issue is about regarding the guardianship at the time they are petitioning. If there is a situation that needs to be dealt with in a very quick manner, like the freezing of assets, I think we need to be careful that we don't extend the duties of the guardian, when it may harm the ward by doing so. Definitely, within a certain amount of time those background checks need to be done. I have no problem with that for anyone.

Chairman Anderson:
I would point out that we have a major piece of legislation dealing in this area on April 12.

Sally Ramm, Elder Rights Attorney, Division for Aging Services, Nevada Department of Human Resources:
I hadn't planned on testifying today. I have a number of concerns with the bill. My primary concern is the fact that public guardianship is an extraordinarily complicated area of the law. It's an area in Nevada where we have some great gaps in service. My feeling here is that the problems with public guardianship in Nevada aren't going to be solved easily on a piecemeal basis. I feel strongly that we need to bring everyone involved in public guardianship—which would be the counties, the private guardians, the public guardians, the county administrators, and some experts on guardianship—all together to find out how we can solve some of the problems.

One of the primary problems is that, in the rural areas where the population is aging fastest, we have no public guardianship services. It isn't financially feasible for the small counties to hire a public guardian for the few guardianships that they need during the year. Those people need the public guardianship services and they're not getting it. We need to find ways of solving all of those problems.

I also am very concerned about some of the provisions in this bill for the fingerprinting of family members who are becoming guardians. Those are usually people who have been married to the person who needs a guardian for a number of years, or a parent of a child that needs a guardian. Fingerprinting them can be a logistical nightmare.

John Sande, Legislative Advocate, representing Nevada Bankers Association:
The provisions in the bill that we were looking at have been removed, so we have no problem with that. In Section 4, the way I read that, it doesn't say that you have to complete the review by the FBI; it says that before you start, a guardian shall submit the fingerprints and also the authorization for the checkout by the federal authorities. I don't take a position as to who should do that, but it seems to me that you would submit your fingerprints and the authorization, and you wouldn't have to wait until it was checked out by the FBI.

Lora Myles, Attorney, representing Carson RSVP [Retired and Senior Volunteer Program]; and Rural Elder Law Project:
My clients are all seniors in the rural counties. I have provided a written statement (Exhibit E) which addresses my concerns with this bill. Many of these issues seem to be covered by the amendments; however, I strongly support Sally Ramm's idea of the creation of an interim committee to work with public guardians, the Division of Aging Services, various county agencies, and attorneys who deal in guardianships to rewrite NRS 253 governing public guardians, for presentation in the 2007 Legislative Session. We have been

working towards that; we have been putting in a great deal of time, especially in the rural counties, attempting to get a consensus to rewrite NRS [253], governing all public guardians and all of the counties.

Chairman Anderson:
Let me make sure I understand what you're requesting the Committee to do. Rather than move with this bill, or any of the other guardian bills, you recommend that one of the three studies we would be doing between sessions be dedicated to those particular issues? You'd rather go into the pool with the other competing studies?

Lora Myles:
I'm not recommending how that interim committee would be formed, Mr. Chairman. It can be somebody who is interested from the Legislature that would be part of that, whether it was an official interim committee from the Legislature or not.

Chairman Anderson:
Who would pay for it, if not the Legislature?

Lora Myles:
The people who have been working on this so far have been pro bono. There have been no fees paid to them for the work they've been doing on this matter, and that includes county commissioners, various attorneys, public guardians, et cetera. I do recommend that [NRS] 253 be totally addressed and looked at as an entire rewrite of the legislation for public guardians.

Susan Swenson, Carson City Public Guardian:
I wish to address you on Section 4. I work with Alan Glover, who is also the Court Clerk in our county. He looked into the fact that the court clerk in Section 4 is to forward the fingerprints to the Central Repository of Nevada or to the FBI. In looking into that, he said it's going to cost at least $45 for every fingerprint that is to be submitted. He's wondering if the clerks are going to pay this fee, and where the money is going to come from. He also said that, if the clerks are responsible to actually do the fingerprinting, it has to be done through computers. Those systems usually cost about $40,000. They don't accept fingerprints on paper anymore; it's done electronically. Other than that, I agree with Ms. Myles about getting together and rewriting the public guardian statute in the future. I do appreciate the changes to this bill.

Chairman Anderson:
I would point your attention to the face of A.B. 282, at the top. You'll note that it requires a two-thirds majority vote. That is a result of the fact that this has a

fiscal impact relative to the county. I think the bill drafter recognizes the potential for that, and thus the notice to the members of the additional voting requirement for this particular bill to move forward.

Susan Swenson:
I just remembered one other thing that has not been said. That is on the master guardianship requirements and the registered guardian requirements. I understand, even to be a registered guardian, you have to work in the field for a year.

Chairman Anderson:
That's currently a part of the program.

Assemblyman Mortenson:
You mentioned that some apparatus cost $40,000. Was this the fingerprinting device?

Susan Swenson:
It's the fingerprinting device, the computer that actually generates the electronic fingerprints.

Assemblyman Mortenson:
Do these devices take a regular fingerprint and scan it? Or does it really scan the actual finger?

Susan Swenson:
When I was hired in the police department here in Carson City, they have such equipment. You roll your finger on a screen that reads it electronically and digitizes it into an electronic form.

Assemblyman Mortenson:
That seems excessive.

Chairman Anderson:
It's the newest thing here. You currently have such a device in the sheriff's department? Would you be able to utilize that one?

Susan Swenson:
Correct.

Chairman Anderson:
So you wouldn't need to purchase one?

Susan Swenson:
Correct. It just needs to be made clear who is responsible for those fingerprints, and who is going to pay the fees.

Dara Goldsmith, Private Attorney, Clark County, Nevada:
I testified before you in the last session as one of the two primary drafters involved in the first major overhaul in guardianship laws in over 30 years, along with Commissioner Jennifer Henry. Those changes were enacted into law. There are a few things that I believe should be addressed at this time. First, I'd like to applaud Assemblywoman Giunchigliani with regard to the changes that were made. I'm very pleased, and feel those addressed my major issues. I think it's important to point out that the comments regarding a guardian ad litem were probably referring to a family or friend guardian. A guardian ad litem is actually an individual who is appointed by the court to investigate and to report in the best interests of the ward.

I think it's important to point out that I don't necessarily believe private guardians, or a family guardian, should be permanently exempt from having to comply with the fingerprints. I've handled over 500 guardianship cases in the last 14 years, and I've only dealt with 1 case where an issue of exploitation was raised with the public guardian, and 1 case where an issue of exploitation was raised with a professional guardian; yet, I've dealt with at least 15 to 20 that dealt with exploitation of family and friends. I believe that is a very large issue that we need to be aware of.

I also suggest that, with regard to requiring and reviewing of the accountings by the courts, it may be nice for the courts to look at what is now being implemented in Clark County. Clark County has appointed and has hired an individual who is going to be reviewing the guardianship accountings on an annual basis. That is something we had worked through a task force here in Clark County that has been successful. One of the concerns for the rural counties would be a source of funding. That had been a concern, and it remains a concern, in both Clark County and Washoe County.

Regarding one thing that has been removed—the mandatory language of training—I believe there should be mandatory training for both private and professional guardians. This should be similar to what's utilized in the family courts with regard to the COPE [Children Cope with Divorce] program that trains parents how to deal with their children and explains issues and divorce to the children. I don't believe it's appropriate for the public guardian to do that, because the public guardians are not licensed attorneys, nor are they accountants. They don't have that specific training. If a program of that nature

could be developed in our state, I think that would be very helpful to prevent exploitation in the future.

[Dara Goldsmith, continued.] I think this legislation as amended should proceed. It's possible there will be a major overhaul of guardianships and of NRS 253 in the future. These are issues that probably are necessary and should be addressed in this session, rather than not protecting our children and our seniors adequately until the next legislative session.

Chairman Anderson:
I notice that you are against the legislation as it was drafted by the way you signed in. With the amendments, you think that it may be worthwhile. Might we draw that conclusion?

Dara Goldsmith:
Yes.

Chairman Anderson:
Okay. Regarding the funding question, I know that model behavior in Clark County sometimes cannot be replicated in some of the smaller counties in the state. That presents a difficult task for a statewide service or groups who have to provide those things when they cannot be provided in the rural areas of the state. Sometimes the best practices in Clark County are only the best practices in Clark County.

Dara Goldsmith:
I'm aware of that. Clark County is having a county employee doing that function. Maybe it would be possible for the state to have an individual that services the rural counties to review the accountings, rather than have each county be responsible. Having a conglomeration of the rural counties would help because the rural counties don't have the funding that Washoe and Clark Counties have. I think that would accommodate that issue.

Chairman Anderson:
Ms. Goldsmith, I was pointing out to you that there's a difficulty. Ms. Buchanan? We have a fax from you that arrived this morning (Exhibit F), which lists your concerns with the legislation as presented.

Kathleen Buchanan, Public Guardian, Clark County, Nevada:
I have been a Clark County Public Guardian for five years. I came with great trepidation this morning, but it appears that everything has worked out. I'm very pleased with the Committee and the amended changes. I have no concerns. It is

wonderful working with a body of people who truly want to make a difference in law, and who are open-minded enough to make those necessary changes.

Chairman Anderson:
I presume you shared this fax with Ms. Giunchigliani, prior to your testimony, since many of her recommendations are similar to the concerns that you raised in your mailing.

Kathleen Buchanan:
She and I have been working together for a few days, so yes. She does not have a copy of that particular fax that I gave you. That is a condensed version of several emails.

Chairman Anderson:
[Closed the hearing on A.B. 282 and requested a short recess.]

[Called the meeting back to order at 10:01 a.m.] I see the Chairman of Government Affairs has arrived.

Assemblyman Parks, Assembly District No. 41, Clark County (part):
Today I come before you with A.B. 290.

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

Assemblyman Parks:
Assembly Bill 290 makes changes to status relating to common-interest communities. Assembly Bill 290 does five things (see Exhibit G):

- It requires board members of an association, who stand to personally benefit or profit from a matter before the board, to disclose and abstain from voting.
- It prohibits common-interest community homeowners from being required to gain the association's approval in order to rent or lease their property.
- It requires that, if associations solicit sealed bids for projects, the bids are to be unsealed at an open meeting of the executive board.
- It also includes common-interest communities. It makes them maintain reserves adequate to the nature and extent of the liability and the responsibility of that association's exposure.
- Finally, it requires a potential purchaser to have five days to cancel an offer of a contract to purchase without penalty or loss of any deposits.

[Assemblyman Parks, continued.] There are a number of persons to testify in favor of A.B. 290, including representatives of the Nevada Association of Realtors and some common-interest community homeowners. I'd be happy to answer any questions.

Chairman Anderson:
Mr. Parks, it would be helpful for the Committee to understand what problem brought this to your attention, so that we understand the motivation behind what we're trying to solve.

Assemblyman Parks:
As I explained, there are five issues in this bill. I had been approached with regard to several common-interest communities where there were homeowners who felt they had an issue with members of the executive board taking action that was beneficial to themselves. They felt stronger language needed to be placed in statute for someone who assumes the responsibility of an executive board member. Other areas dealt with clearing up and making more specific the issue related to an individual having time to review the CC&Rs [Covenants, Codes and Restrictions] of a common-interest community, and being able to back out of the deal should they decide that this was not the place for them.

Another area dealt with the fact that common-interest communities spend a fair amount of money maintaining their properties, and do require the need to solicit bids for work to be done at the association. Consequently it's felt that, similar to the government programs, any bids solicited should be opened at a committee meeting that is open to all homeowners. They can then see who the best bid may be from.

I'm not saying that it is going on, but certainly the potential is that it goes on. You get three or four bids and find out that the lowest of the four bids might be $8,000. Someone calls their friend and says, "I got a bid for $8,000. If you want to bid on this job, submit me a bid in the next 15 minutes for less than the low bid number, and you'll get the work."

We want to keep this all above-board so that individuals who are members of a common-interest community know that their association is acting in the best interest of all members of the association. I believe the other one deals with the issue that someone who is a homeowner in an association is not required to gain the association's approval in order to rent or lease their property. Some years ago I had a condo, and I was informed by the association that if my current tenant—I bought it complete with tenant—were to move out, I would not be allowed to re-rent it. For that reason, I would suggest that language be in place.

Chairman Anderson:
I note that several people who signed in today indicated they are in support of the bill with amendments. Have amendments been suggested to you, and shared with you as the author of the bill?

Assemblyman Parks:
I have received amendments from the Nevada Association of Realtors (Exhibit H), as well as Ms. Karen Dennison, with regard to the issue that I last mentioned requiring association's approval for renting or leasing.

Assemblyman Carpenter:
This may be more of a question to Legal. It says you have five days to cancel the contract, by hand-delivery or by mailing a notice prepaid in the mail. I'm wondering, when you send it, does that then become the official document, or is it when that person receives the mail?

Chairman Anderson:
What page of the bill are you on?

Assemblyman Carpenter:
Page 6 on lines 30 to 38, where it talks about mailing it. That's my only concern.

René Yeckley, Committee Counsel:
We could look into it to confirm, but I believe it would be when you send it.

Chairman Anderson:
I think it's the date of receipt. The purchaser may cancel from the fifth day of the date of receipt of the document, in Section 1. I presume it comes by registered mail, so it would have to be postmarked by midnight of the fifth day, right?

René Yeckley:
The language that you're referring to on line 32—the date of receipt of the documents set forth in subsection 1—that's within five days of receiving the documents from the potential seller.

Assemblyman Carpenter:
I think it's important when a notice of cancellation of the contract is actually received, and when it becomes effective.

Jim Nadeau, Government Affairs Director, Nevada Association of Realtors:
Thank you for the opportunity to make this presentation. We asked Mr. Parks to come forward with some language, particularly in Section 3. If it's the amendment we were shown, it's the one we agree with.

Chairman Anderson:
So there are other amendments coming forth you also agree to and that are going to be part of the record?

Jim Nadeau:
The amendment brought forth by Ms. Dennison is the amendment that we agreed with, in reference to Section 3. We had language that we wanted to deal with on page 6, where we wanted to amend Section 9. We also brought forth language which I'll let Ms. Dreiling, our attorney, handle, because there are conflicts and we want to square them.

Buffy Dreiling, Legal Counsel, Nevada Association of Realtors:
Mr. Chairman, with respect to Section 9, our proposed amended language is to take out from Section 9, subsection 1. The language provides for a timing in which the unit owner is to furnish the documents. The effect would be that, from whatever time he furnishes the documents, the purchaser then has 5 days after that time period to cancel the contract. The unit owner would be encouraged, obviously, to provide those up front at the beginning of the transaction. The reason for that is twofold.

First of all, to indicate that he has 5 days to furnish the documents conflicts with the association having 10 days from the time those documents are requested to provide them to the unit owner. We've seen a conflict with that issue from time to time. The second reason is the language: it says he has 5 days before the offer to purchase becomes binding on the purchaser. This has caused different interpretation problems, particularly from justice courts.

Some justice courts are indicating that the documents have to be provided before a seller can make an acceptance of an offer, even though that offer is contingent on those documents. We've had other justice courts indicate that, by the seller signing the offer and the buyer proceeding with the transaction, the buyer has now waived the 5-day requirement. To clean up that language, our suggestion is to remove the timing. From whenever he provides it, the buyer would have a minimum of 5 days to terminate that agreement.

Our intent is that the parties could extend the time in which a buyer has to review the documents and terminate the agreement. It's usually done by contract, and the 5 days would be a minimum. There are certainly

circumstances where they would need additional time if the buyer happens to be in another state, or out of town. In our requested amendment, I do include language that the document terminating the agreement would be based on providing it or mailing it to the unit owner or to their agent. In reality, the buyer and the seller in most transactions don't ever deal directly with each other. It's all handled through their agents, and it's very common that the timing would be triggered by the notice being provided to the agent.

Chairman Anderson:
If we're to move with your amendment, we would have to do some cleanup language in subsection 2 of Section 9, where there's the cross-reference to Section 1. We wouldn't keep the time, and the calendar itself would still remain, relative to the questions and problems that Mr. Carpenter brought forth.

Buffy Dreiling:
The way I read this, we would take out the 5 calendar days in the beginning, so then a purchaser has 5 days ....

Chairman Anderson:
The first sentence of subsection 2 is gone, lines 30 through 33?

Buffy Dreiling:
No. The reason I am suggesting taking out that language in subsection 1 is it conflicts with subsection 2. It would take care of our problem if we took out the 5 calendar days in subsection 1. We'd leave the 5 calendar days in subsection 2, because that's the minimum time frame during which the purchaser can review and cancel.

Renny Ashleman, Legislative Advocate, representing Southern Nevada Home Builders; and Las Vegas Country Club Management Association:
I'm here in a standby position.

Karen Dennison, Legislative Advocate, representing Lake at Las Vegas Joint Venture:
I am in support of this bill, with at least one exception and one clarification. I've handed out a proposed amendment (Exhibit I) to Section 3. This is the amendment Mr. Nadeau was referring to, and that the Nevada Association of Realtors is in support of. The purpose of the amendment is to clarify that. If the CC&Rs, any provision of Chapter 116, or any other law or ordinance should have restrictions on renting, such as a lease must be 6 months, those restrictions would be preserved. It's to clarify where it says the Association may not approve any lease agreement. It will not affect what's in the written declaration or any provision of law.

Chairman Anderson:
This amendment was shared with the author of the bill?

Karen Dennison:
Yes, it was.

Chairman Anderson:
In other words, you're telling us as long as it's in the CC&Rs, you would not be able to rent for a week, or two weeks, or three weeks. It would have to be a minimum. As long as that's clearly stated in your CC&Rs, then you would avoid the potential problem and a concern that several people have raised relative to the bill.

Karen Dennison:
That's correct, Mr. Chairman.

Assemblyman Horne:
Ms. Dennison, can you give me examples of restrictions that may exist in a CC&R on rents and leases, other than requiring a 6-month rent or lease?

Karen Dennison:
There are restrictions on transient lodging to which the Chair was referring, and restrictions on time sharing, although that's not a rental use. Some associations do require that, if you're going to rent, you have to rent for at least 6 months. I believe that is the situation with Lake Las Vegas, although I would have to check their CC&Rs.

Assemblyman Horne:
But are there prohibitions to rentals or leases, complete prohibitions?

Karen Dennison:
I am not aware of any in the CC&Rs for the client I represent. I can't speak for all CC&Rs. There may be another bill where that issue has come up.

Assemblyman Horne:
I see someone out there nodding his head yes. My concern with this proposed amendment is if in your CC&Rs it stated that you couldn't rent at all, then you couldn't rent. This provision is to provide that an owner would be able to rent without seeking permission under the CC&Rs.

Renny Ashleman:
I don't know of any absolute prohibitions, but I can't tell you there aren't any, because there are thousands of these associations. The distinction would be

whether or not it was in the CC&Rs to begin with, or in law. An absolute prohibition wouldn't be in law anywhere that I know of. If it's in the CC&Rs, that's a contract entered into when you buy the property, and you should know that. I think Mr. Parks and others who are interested in this bill are concerned that there would be an after-the-fact adoption of some rule that would be the prohibition. I think that's the area we're trying to reach, if I may make that distinction.

Jim Nadeau:
Our biggest interest in bringing this forth was that we did not feel that HOAs [homeowners' association] or CICs [common-interest communities] should have the ability to choose the suitability of the renter or the leaser. CICs or the CC&Rs may call for a complete prohibition of a rental. That's up front, and people that purchase are aware of the requirements of the CC&Rs. Our concern was that they would not be able to choose the suitability of a renter, which opens up a whole spectrum of issues dealing with fair housing and other things we felt were inappropriate for the HOAs to be involved in. There are a vast variety of restrictions that are within CC&Rs and have been held to be legally binding.

Assemblyman Horne:
Mr. Nadeau, have you seen this proposed amendment?

Jim Nadeau:
We have. We feel it covers the perspective we were concerned with where the CC&Rs allow rentals, but come in afterwards and prohibit them. And that would require a change of the CC&Rs. In other words, it would require a major change of the association rules.

Assemblyman Horne:
If you currently have CC&Rs that have suitability requirements, do you feel that this provision in this bill would address that? They would have to undo that. This proposed amendment by Ms. Dennison would not affect that?

Jim Nadeau:
I'd let my legal counsel approach that. I think there's a whole array of laws out there that protect those aspects. In our experience it would be fairly uncommon to see that in a CC&R. We're just concerned about reviewing leases to see if the tenant is appropriate. I think that was our issue.

Chairman Anderson:
Ms. Dennison, I cut you off before you got to the second part of your proposed amendment. I note that you also are suggesting this amendment to Section 7 of the bill.

Karen Dennison:
Yes, Mr. Chairman. On reflection of this amendment, it was stricken in our version because of the possible ambiguities that it creates. In talking with Assemblyman Parks, he said there was a reason for this particular provision being inserted in subsection 2(b) of Section 7. That was the stricken language being given the nature and extent of the liability and responsibility of the association.

It seemed to me that the way this section reads already, "The association shall establish an adequate reserve, funded on a reasonable basis," takes care of the association's responsibility. This added language does nothing more than confuse the issue. Again, Assemblyman Parks said there was some specific reason why this was needed. I defer to whoever might want to testify on that before I make a decision as to whether I would propose this amendment.

Chairman Anderson:
For you then, it is a suggested amendment?

Karen Dennison:
Yes, Mr. Chairman.

Renny Ashleman:
I too had the opportunity to speak at length with Assemblyman Parks about this issue. Apparently, if I understood the concern, they were worried that they might be required to establish a reserve for something that was not the property of the association. I think the language clearly precludes that. The example the Assemblyman gave me was that the association only had the streets. The roofs and everything else belongs to the individual owners. If that is the concern, what I would suggest is that you not adopt "given the nature and extent of the liability and responsibility," but do adopt "of the association." Move that language down to line 11 on page 4, after the purpose of restoring roofs, roads, and sidewalks, and you could say "of the association."

I have to tell this Committee that I'm currently employed in major litigation as an expert witness on the reserve studies, being one of the people who proposed this. With that new language, I would be unable to offer an opinion, as liability in a number of cases could arise because of its vagueness. I'm very concerned

about that language. I hope that "of the association" would cure the perceived problem. I'd be happy to answer any questions.

Chairman Anderson:
Maybe the bill drafter will take a look at the suggested amendments and see what the change in movement of the language, from lines 5 and 6 on page 4, to a later place in that same subsection 2 of Section 7 does, and what its intended consequences might be.

Karen Dennison:
I would agree with Renny Ashleman's proposed change.

Jim Flippen, Legislative Advocate, representing Caughlin Ranch Homeowners' Association; and Community Association Institute Legislative Action Committee:
I distributed an anecdote (Exhibit J). I'm speaking specifically to Section 4 and Section 6, [subsection] 2 on page 2 of your amendment. I do not believe that this amendment benefits the association as it is intended to, because it restricts the board from managing their corporation as an efficient business and in an effective manner. It prohibits decision-making in a timely manner.

My anecdote illustrates a scenario where the board, in a judicious review of a bid or proposal, develops questions, needs questions answered, and does research in order to approve that proposal. What I'm showing is that it takes time. If a board is to open the bid at an initial board meeting, they have not had an opportunity to even review it. They have no basis to discuss it at that time. They would have to study the contents and compare it to the proposals. They would do research and come back at another board meeting 90 days later. It could be that it's a number of months before they make a decision.

Often the board needs to determine the best proposal and approve that. It could be a snow removal issue, or it could be a current service provider that they want to remove because of inadequate services. The law has many controls for the board's behavior with conflict of interest. Good business judgment rule decision-making and controls allow the board to do this. The board is elected to represent and do the business of the association, and they need the opportunity to do this in an efficient manner.

Chairman Anderson:
One of the concerns that I think represents itself is that the bids are really being presented to the board members so they do know what is in there. Even if it is a closed bidding process, those people on the executive committee of a board have knowledge of what's happening within their homeowners' association.

Apparently there are some practices, maybe not at Caughlin Ranch, but at some other associations that have not followed that example.

Jim Flippen:
I think the intent is good, but it overly restricts the ability of a good board that knows its duty and job to properly represent their association and get the job done.

Chairman Anderson:
Your concerns are relative to the timeline that's laid out?

Jim Flippen:
Absolutely. Boards meet on a quarterly basis. They need to get the job done, get information, and make decisions. That can be challenging. This would limit their ability to get together, gather information, and properly review the proposals. Certainly the decision can be made in an open board meeting.

Chairman Anderson:
Mr. Flippen, did you have an opportunity to share your concerns with Mr. Parks before you came to the Committee meeting?

Jim Flippen:
No, I haven't, but I would be glad to express that comment. There are controls written into the law that dictate board behavior. It would be an errant board member that would perform to the concerns of Mr. Parks' reasons for entering in this. There are regulatory avenues to address that after the fact, should it occur.

Chairman Anderson:
You would be surprised at the number of boards that don't follow the rules that we lay down. Judges come and tell us, after seven or eight years, they didn't know that was in the law. This Committee hears about things we put into statute and finds that nobody really believes it applies to them. This particular area of concern, with a larger percentage of the population living in gated and closed communities, has necessitated these kinds of revisits to what had been common practice before.

Jim Flippen:
I appreciate that. I would comment that, with the Common-Interest Community Commission and aspects of Senator Schneider's bill, there are avenues to address it. With an errant board, the Commission has the ability to require them to obtain proper management, in which case that board would get the proper advice.

Chairman Anderson:
Ms. Harvey, you wish to speak in support of the legislation and have information we have not yet heard?

M. J. Harvey, Private Citizen:
I have lived in a single-family housing development—it's a gated community—for 26 years, since 1979. I became very much concerned about a lot of matters in our association many years ago.

For many years, I have attended monthly board meetings. I do know a lot about what has happened in our particular area, and I can speak to several points in this bill. I speak in support of several points. In Section 2, it specifically says a member of the executive board who stands to gain any personal profit or compensation of any kind of matter before the executive board shall disclose and abstain.

There is a matter that I want to bring to your attention, and I have discussed this with Senator Mike Schneider and also with Assemblyman Parks at great length. About a year and a half ago, a board member in our association voted on a variance for his property, which would benefit him. It had nothing to do with pecuniary interest, it was a variance for something on his property which benefited him. It subsequently changed a lot of the rules put in place for many years about this kind of item. My request to these two previously mentioned gentlemen was to either change the language to say "benefit" for the words "profit and compensation", or to have this as an additional part of Section 2. The important thing is to change that a board member cannot vote on something that benefits his property, as separate and apart from profit and compensation. I strongly hope you will approve that part of the section.

I wholeheartedly support that bids for the association be opened at a meeting of the executive board, which is an open board meeting. This happened last fall in our association, once again. We were doing work that required a contract developer and a contract. It was presented at a board meeting almost as a fait accompli to this particular developer. Another resident happened to be in attendance at this board meeting and asked if this developer was registered in the state of Nevada. The answer was no. This caused delays and an increase in the cost of the work that was done, because they had to subcontract it to a Nevada contractor.

I strongly approve of presenting the bids initially in an open forum, which is the board meeting. Granted, it may not be acted on at that time because the description of the job to be done, and all the considerations that go into finalizing a bid contract and award would have to be discussed in the open, at a

future board meeting. The initial meeting enables people to ask questions concerning the bids that are presented. I wholeheartedly support the requirement that bids be opened at the meeting of the executive board, and that the name of the bidders be indicated.

[M. J. Harvey, continued.] There are a lot of things that our CC&Rs cover that are not in question with this particular bill. I feel we're protected quite well with our CC&Rs, having lived with them for many years. I do support wholeheartedly establishing an adequate reserve fund. I'm reading this from the front of the bill, "To establish an adequate reserve fund, given the nature and extent of the liability and responsibility of the association." The reason for that is that requirements vary from association to association. We live in a place where you buy a lot, you build a house, and you own that. The association has nothing to do with anything on your property. The requirements and responsibilities vary from situation to situation.

Chairman Anderson:
Ms. Erwin, in order for us to have this testimony as of part of the record, we try to get it here by 4:00 p.m. I will make an exception if you feel that it's necessary to get your writing into the record. Do you feel that it's absolutely essential that you have this in the record?

Donna Erwin, General Manager, Las Vegas Country Club Estates Master Association:
No, I do not.

Chairman Anderson:
Did you hear the nature of the amendments that are proposed already?

Donna Erwin:
I did. I just received those amendments down here. I did receive Ms. Dennison's amendment and I think it addresses our concerns. However, I want to make sure and clarify that the association will be allowed to require a copy of the lease to be submitted to the association. That's critical in determining if they do comply with the CC&Rs and applicable laws in the term of the lease, and the other provisions that an association may have, such as the prohibition of the transient rental issue.

Chairman Anderson:
We're going to make it part of the record (Exhibit K). I want to make sure that you're in agreement with the proposed amendments that have been suggested so far. You have addressed your concerns about rental, and you've expressed

your concerns about sealed bids that echo what other people had registered relative to the 90-day question.

Donna Erwin:
Yes, thank you, Mr. Chairman.

Chairman Anderson:
Let me close the hearing on A.B. 290. Let's turn our attention to the last bill on the agenda today, A.B. 383.

Assembly Bill 383: Creates right of redemption for owner of property in common-interest community in certain instances of nonjudicial foreclosure. (BDR 10-1242)

Assemblyman Mark Manendo, Assembly District No. 18, Clark County (part):
In the interest of time, I have another constituent here on this bill, Gary Hayes, who brought forth this proposed amendment. If it's okay with the Chairman, Gary Hayes and Judi Burns could come to the table in Carson City. I know they signed in before 8:00 a.m. this morning, and I know we have floor session.

Gary Hayes, Private Citizen:
I appreciate Mr. Manendo for proposing this legislation. I'm a practicing attorney, although I'm not representing anyone in this particular matter. I had several situations come up over the last several years that I felt were very unfortunate.

I've had several cases over the last several years where owners had their property foreclosed for assessments that were due by their condominium associations or their homeowner associations. They were for relatively small amounts; I had one several years ago for a few thousand dollars. There was a family in the home and, ultimately, a purchaser came in at auction and bought the home. The people failed to make their assessments so their parents stepped in, mostly out of concern for the grandchildren as they were ready to lose their home.

As the attorneys got involved, even as we got in before the judge, we were unaware that Nevada did not have a right of redemption. That is the situation where, after there is a nonjudicial foreclosure, a person can step in and make the purchase of the home whole by paying the assessments and liens that may be charged against the home. This legislation allows that 180 days after the sale the owner of the home can come back to repurchase the home by paying

the purchaser what they paid plus 5 percent. I would suggest that the 5 percent in the bill could probably be a little higher to benefit that purchaser and then make up any other fees and costs during that 180-day period. It would right a serious injustice. It would allow people to preserve their homes and still make everyone whole who participates in the foreclosure process. I know you're short of time, but this is good legislation.

Chairman Anderson:
Let me indicate that this bill provides a rider, redemption for the owners of the unit and its successors and interests. If the unit is foreclosed, the owner of the unit sold or foreclosed can redeem within 180 days from the foreclosure sale. He pays the purchase price and 5 percent interest, plus applicable assessments, taxes, and liens which may be outstanding before the sale, to the appropriate government entities, lienholders or creditors.

He then serves notice upon the association and the purchasers of a "Notice of Redemption" in the proof of payment. On the title, the purchaser may execute and deliver the certificate of redemption. If he fails to execute such a document, and the owner at the time of foreclosure attempts to redeem, then it's the 180-day question that may need to be addressed. It appears to be a fairly good piece of legislation, I agree.

Judi Burns, Private Citizen:
I guess I'm the face of this bill. I bought a home in Las Vegas in 1994 and I paid $130,000 for it. Within the first three months, I had about 80 percent of it paid for. To make a very long story short, I got into disputes with my homeowners association for fines they charged against me for vehicles that were not mine. A boat illegally parked was not mine, trucks weren't mine, et cetera. They were nonresponsive to my needs as was the management company. Finally, after years of back-and-forth, I attempted to get their attention by stopping payment of my dues. Unfortunately, I wasn't aware that my home could be sold for that.

However, I did after some time get a notice from a lien company that my house could be "redeemed", but if there was a dispute of amount, I could dispute it. Their amount was something like $16,000 or $18,000. My dues were $25 per month. We're talking about less than $500 or $600. At any rate, I did fax the lien company twice and made phone calls to the management company. Again, nobody responded to my phone calls nor to any of my messages. I became aware that my house had been sold when a man knocked on my door. He told me he had bought my house the previous day.

This house, which was then worth about $250,000 and which I had paid off, was purchased by him for $10,100. This house was sold for less than $1,200

in illegal fines and the dues that I did owe. I've spent more than $25,000 in legal fees and I've gone to court. It's lost in District Court. I did make an attempt to buy my home back from this man, who obviously didn't want to sell it back to me. He had already made a tremendous profit. Had this bill been in place, I could have spent less getting my home back than I've paid in legal fees. I'm now without a home or my retirement, because I had to withdraw it early for legal fees. I urgently support passage of this bill, and I thank you for your time.

Chairman Anderson:
Thank you, Ms. Burns, for sticking around and taking yourself back through this traumatic point in time. This clearly demonstrates the need for the bill, and why we are probably going to be doing something in this area.

Kathryn Pauley, President, Silver State Trustee Services, LLC; and Legislative Advocate representing Community Associations Institute:
We do feel for those individuals such as Ms. Burns. That's a rare case. When she purchased her property in 1994, there were no laws within NRS 116 that would have helped her out in this situation. First and foremost, there is now something that you sign when you buy a house. It's a disclosure that says you are buying into a homeowners' association. They can take your home if you don't pay your assessments, et cetera. Right now, as it stands, I'm representing well over 40,000 homeowners between my company and Community Associations Institute. This legislation would harm associations to the point where it would cripple them financially.

We have been waiting for the numbers to come from the ombudsman of how often a home is taken from a homeowners' association. As far as we can guess right now, it's less than one percent of delinquent owners. Right now, by statute, it's 120 to 140 days before a delinquent owner's home is sold once it goes through the foreclosure process. It doesn't get to that process until a minimum of three months' delinquencies. Usually it's even longer than that, mostly a year.

I do own a foreclosure company. I can tell you that, in the last three years, I have not taken one property to actual sale. There are opportunities for homeowners to make a payment arrangement, or to pay in full, all the way up to that time. In most cases, we're talking about over 210 days, which is over 7 months. There are other avenues for us to take, as opposed to this Right of Redemption. In the passage that I have given to all of you (Exhibit L), there are issues with this right of redemption. The length of it is way too long. It would freeze the association's ability if a first were to come in and foreclose. Instead of 6 months out of a 10-or 12-month delinquency, now they're looking at

6 months out of an 18-month delinquency. There's no way to recoup those fees, except to bill them back to the rest of the homeowners. Now, in order to pay your bills and get those funds generated, you're going to have to get them from somewhere other than that black hole.

[Kathryn Pauley, continued.] You will see there are three or four different issues that have not been addressed in this bill. There are other avenues to help or assist delinquent homeowners, if that's what the intent of this law is. For instance, require an "Intent to Lien" letter. It's now required, so require an "Intent to Lien" letter with a certain amount of days. Every association must now send a lien warning letter to a homeowner who is delinquent to tell them that this process is about to take place. That would add to the time.

The other is to require the property be posted. Right now the legal requirement is that if you do a Notice of Default or a Notice of Sale, it's posted in 3 public places. I don't know about any of you, but I don't make a habit of walking around the libraries to see if my house is posted. Make it a requirement to have that document posted on the front door. If the mail system somehow failed this homeowner and they didn't get their certified letters the 3 times they're sent, or their regular mailings, at least it's posted on their front door that they know this process is happening.

That would be a much more effective way to assist the homeowner as well as assisting the HOA without penalizing that HOA by having another 6 months of having no assessments come in. [That would take care of the HOA] not being able to pay their bills because of that lack of assessments.

Chairman Anderson:
Part of the problem that the bill raises, however, is the one that the witness just testified to. That is relative to the question of what happens when there's a disagreement with the homeowner's association as to the responsibility of cars and other kinds of problems. The bad practices of one HOA are often what ends up putting legislation in place.

Kathryn Pauley:
Since this has happened to this homeowner, NRS has put a section in that a home cannot be foreclosed for fines. It is only for assessments that a home can be foreclosed.

Chairman Anderson:
So we've already closed that loophole.

Kathryn Pauley:

We've already closed off that one avenue.

Chairman Anderson:
Let me close the hearing on A.B. 383. Let me indicate to the members of the Committee that, if we're to be moving on this particular piece, we'll take Ms. Pauley's suggestions into consideration. Did you share these considerations with Mr. Manendo before we began?

Kathryn Pauley:
No. Unfortunately I was apprised of the bill yesterday. I'd be more than happy to discuss it with him.

Assemblyman Horne:
Because of the shortness of this particular hearing on this bill, when this goes to work session, could these individuals come forth so we can ask questions that we didn't have time to ask now? Not testimony, just questions to clear it.

Chairman Anderson:
I can't guarantee that.

Kathryn Pauley:
I will make myself available.

Chairman Anderson:
We're adjourned [at 11:06 a.m.].

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

RESPECTFULLY SUBMITTED:

Victoria Thompson
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 31, 2005 Time of Meeting: 8:18 a.m.

Bill	Exhibit	Witness / Agency	Description
	A	Legislature	Agenda
AB 272	B	Assemblywoman Ohrenschall	News reports
AB 282	C	Assemblywoman Giunchigliani	Proposed amendments
AB 282	D	Assemblywoman Giunchigliani	GAO Report July 2004 on Guardianships
AB 282	E	Lora E. Myles, Esq.	Testimony
AB 282	F	Kathleen Buchanan	Concerns
AB 290	G	Assemblyman Parks	Testimony
AB 290	H	Nevada Assoc. of Realtors	Proposed amendment
AB 290	I	Karen D. Dennison, Esq.	Proposed amendments
AB 290	J	Jim Flippen	Scenarios
AB 290	K	Donna J. Erwin	Concerns
AB 383	L	Kathryn Pauley	Opposition comments