

**MINUTES OF THE SUBCOMMITTEE OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR**

**Seventy-third Session
April 11, 2005**

The subcommittee of the Senate Committee on Commerce and Labor was called to order by Chair Michael A. Schneider at 8:10 a.m. on Monday, April 11, 2005, 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 at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Michael A. Schneider, Chair
Senator Maggie Carlton
Senator John Lee

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jane Tetherton, Committee Secretary
Scott Young, Committee Policy Analyst
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Michael Buckley, Commission for Common-Interest Communities
Andy Belanger, Southern Nevada Water Authority; Las Vegas Valley Water District
James F. Nadeau, Nevada Association of Realtors
Mark Kaplinsky
Judy Farrah, Community Associations Institute
Marilyn Brainard, President, Wingfield Springs Community Association
Shari O'Donnell, Commission for Common-Interest Communities
Renny Ashleman, Las Vegas Country Club Master Association
Pamela Scott, Howard Hughes Corporation
Ronald L. Lynn, Nevada Organization of Building Officials
Karen D. Dennison, Lake at Las Vegas Joint Venture
Michael S. Trudell, Caughlin Ranch Homeowners Association

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Tami DeVries, Legal Administrative Officer, Real Estate Division, Department of
Business and Industry
Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry
Donna Erwin, Las Vegas Country Club Management Association
Robert L. Crowell, Nevada Trial Lawyers Association
Jim Flippen, Caughlin Ranch Homeowners Association

CHAIR SCHNEIDER:
I will open the hearing on Senate Bill (S.B.) 325.

SENATE BILL 325: Makes various changes concerning common-interest
communities. (BDR 10-20)

MICHAEL BUCKLEY (Commission for Common-Interest Communities):
I will review the amendments to the bill (Exhibit C, original is on file at the
Research Library) proposed by the Commission for Common-Interest
Communities.

There are no changes to sections 1 and 2.

Section 3 deals with drought-tolerant landscaping. We propose deleting the
preamble, subsection 1 of section 3, to avoid unintended consequences of the
language. The word "xeriscaping" has been replaced with the phrase
"drought-tolerant landscaping" throughout as the more accurate and appropriate
term. The new subsection 1 of section 3 includes language indicating
drought-tolerant landscaping must be in accordance with the governing
documents of the community and be compatible with its style.

CHAIR SCHNEIDER:
Was this language given to you by the Las Vegas Valley Water District?

MR. BUCKLEY:
Yes. They also gave us the language for the new subsection 2 of section 3. As
originally written, it required 70 percent of the common elements of the
community to be drought tolerant by 2008. Because there are many factors that
need to be taken into consideration, it was felt this provision would be too
cumbersome. It was replaced with a provision stating the common-interest
community can change common elements to drought-tolerant landscaping

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without changing use such that it would require approval of the unit owners. This does not apply to parks, open play space or golf courses.

The new subsection 3 of section 3 is a definition of drought-tolerant landscaping. It has been reworded to be more general than the original language.

SENATOR CARLTON:

This section now reads, "... 'Drought-tolerant landscaping' means landscaping which conserves water, protects the environment and is adaptable to local conditions." How does that "and" affect the definition?

MR. BUCKLEY:

Landscaping must meet all three criteria to meet the definition. The last criterion is intended to recognize the difference between drought-tolerant landscaping best suited to southern Nevada and that best suited to northern Nevada.

SENATOR CARLTON:

This seems confusing. How are homeowners to figure out what to put in their yards?

MR. BUCKLEY:

The new language is less cumbersome and confusing than previously. The original language had seven requirements that had to be met; the new language has only three.

CHAIR SCHNEIDER:

Does the definition allow for artificial turf or rock?

MR. BUCKLEY:

Yes, as long as it meets the requirements of subsection 1.

SCOTT YOUNG (Committee Policy Analyst):

This has been an issue in southern Nevada. It would probably be better to make it clear whether these ground coverings are included in the definition or not.

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ANDY BELANGER (Southern Nevada Water Authority; Las Vegas Valley Water District):

We consider both rock and artificial turf to be mulch. Under the terms of our program, we require 50 percent to be either canopy coverage or some sort of barrier. Artificial turf and rock are barriers rather than canopy coverage.

KEVIN POWERS (Committee Counsel):

Just so we're clear for the record, this may be the standard that the water district uses for their program in southern Nevada. However, what drought-tolerant landscaping means in this statute is a different issue. If the subcommittee wants to make it clear that drought-tolerant landscaping includes these types of elements — artificial turf, rock and similar elements — it would be advisable to specifically state that in the statute.

CHAIR SCHNEIDER:
We will add that.

MR. BUCKLEY:

Section 4 states homeowners need not have the homeowners' association's approval to rent or lease their units, unless the association's Conditions, Covenants and Restrictions (CC&Rs) prevent it. This is a separate issue from approval of the tenant. The specific language in this section comes from the discussion in the Assembly Committee on Judiciary on Assembly Bill (A.B.) 290.

[ASSEMBLY BILL 290](#): Makes various changes to provisions relating to common-interest communities. (BDR 10-951)

JAMES F. NADEAU (Nevada Association of Realtors):

We have worked on this language with a variety of groups. We are comfortable with the language. The bottom line for us was the association's right to approve the suitability of tenants.

MR. BUCKLEY:

Sections 5 and 6 deal with how associations are to be audited. Auditing is to be done depending on the budget of the homeowners association. Associations with budgets under \$75,000 annually are to be audited every four years; those with budgets between \$75,000 and \$150,000 are to be reviewed annually and audited every four years; associations with budgets over \$150,000 are to be

audited annually. In addition, an audit can be required for any year by written request of 15 percent of the unit owners.

SENATOR LEE:

I notice section 6, subsection 1, paragraph (c) does not include a requirement that the audit be completed by an independent certified public accountant (CPA), as the other paragraphs do.

MR. BUCKLEY:

This is an error. The language should be the same throughout. There was a suggestion by Mark Kaplinsky to add extensive language about the independence of the person doing the audit. The Commission chose to use the standard of "independence" used by the field of accounting.

CHAIR SCHNEIDER:

Does this mean an association may not use the CPA who usually prepares its books to do the audit?

MR. BUCKLEY:

I do not think it means that. It does mean the audit could not be done by a board member.

Section 7 prevents associations from blocking traffic on public streets. The original language prohibited associations from maintenance of public streets; however, this was deleted since in northern Nevada associations often do snow removal on public streets.

Sections 8, 9 and 10 have minor technical and conforming changes only.

Section 11 deals with exempt associations such as lawn-maintenance associations, facilities for flood control and rural agricultural-residential common-interest communities. These are associations established for the purpose of meeting city or local ordinances. They oversee common elements and have no jurisdiction over unit owners' use of their property. Section 11 designates such associations as limited-purpose associations and exempts them from certain sections of the *Nevada Revised Statutes* (NRS) 116. They must still comply with NRS 116.31038, 116.31083, 116.31152 and 116.4101 to 116.412, inclusive.

MR. YOUNG:

Rural agricultural-residential common-interest communities are subject to the Open Meeting Law and impose restrictions on use of units by unit owners. Does that not remove them from the definition of limited-purpose associations?

MR. BUCKLEY:

Yes. I do not know whether they impose such restrictions. The Commission focused more on landscape-maintenance associations. It would seem onerous to subject these associations to the Open Meeting Law.

MR. POWERS:

That issue is separate and apart from the definition of the limited-purpose common-interest community. Whether or not you make rural agricultural common-interest communities subject to the Open Meeting Law is different from whether or not you make them subject to all of chapter 116 of NRS. My suggestion is if we are attempting to not make all rural agricultural-residential common-interest communities subject to chapter 116 of NRS, that on page 6 [of [Exhibit C](#)], lines 36 and 37, subparagraph (5), we tag onto the end of the sentence, "Not enforce any restrictions concerning the use of units by units' owners, *unless the limited-purpose association is a rural agricultural-residential common-interest community*" — and then make a similar change [to section 11, subsection 6, paragraph (b)].

MR. BUCKLEY:

The Commission would have no objection to that.

Section 12 adds limited-liability companies to the type of entity an association can be. This section also lists other names these associations may have, including "common-interest community," "community association," "master association," "homeowners' association" or "unit-owners' association." This may need input from the Secretary of State.

Section 13, subsection 3, was deleted and moved to section 20, subsection 3, and the date for the summary was set at 60 days rather than 30 days.

Section 14 deals with the election of officers to the association's executive board.

MARK KAPLINSKY:

I submitted a proposal ([Exhibit D](#)) to the Commission on March 30, 2005, suggesting the statute requiring a signature on ballot envelopes. This would reduce tampering and allegations of tampering. This in turn would increase participation in ballots by unit owners by assuring them their votes would be fairly counted. It also allows the votes to be recounted if it is ever required, something which is impossible with the current arrangement. The Ombudsman for Owners in Common-Interest Communities recommended this procedure be adopted. The Commission was not receptive to the suggestion, however.

MR. BUCKLEY:

The objection was based on the practical consideration of the difficulties a signature would impose. Also, section 14, subsection 8, paragraph (e) requires that the secret ballots be opened and counted at a meeting of the association. This counters allegations of fraud. The Commission has no strong preference as to the process. However, if this proposal is adopted, it needs to be stated clearly to avoid confusion.

SENATOR LEE:

A signature on an envelope shows only that someone signed it; it does not in itself prove the authenticity of the ballot inside. Are you proposing that the signatures be cross-checked and verified to prove the identity of the signer? That seems to assume all members of homeowners' associations are dishonest.

MR. KAPLINSKY:

It was not my intention to imply that, nor to require signatures be verified under normal circumstances. However, if the vote is challenged after the fact, there would be a way to verify ballots. Currently, if a candidate suspects tampering, there is no way to check the ballots.

SENATOR LEE:

Is that same protection not afforded by the provision requiring votes be counted in an open meeting?

MR. KAPLINSKY:

Tampering can be done before the ballots are counted in the open meeting, by a mailroom clerk or someone else. You would not trust the results of any election in which your opponent's campaign manager was the one counting the votes.

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MR. BUCKLEY:

Section 14, subsection 5, paragraph (b) requires candidates for the board to disclose whether they are members in good standing of the association. "Good standing" is defined as not having any unpaid assessments, fines or construction penalties. These disclosures will be distributed with the ballots to the members of the association.

SENATOR CARLTON:

If the issues are resolved, is the person considered to then be in good standing?

MR. BUCKLEY:

Yes. If the issues are resolved, the disclosure would not be included with the ballot.

CHAIR SCHNEIDER:

This provision could be used to keep someone out of the running by imposing a fine at short notice so there would be no time to pay it.

MR. BUCKLEY:

The provision does not consider fines to require disclosure until there has been a hearing. A notice of violation by itself does not need to be disclosed. Also, the provision does not prevent someone from running if they have overdue fines; it simply requires them to disclose them.

SENATOR CARLTON:

But if I chose to run, I would have to tell all my neighbors about my personal situation. I have concerns about someone being hit with spurious fines in an attempt to pressure them not to run.

JUDY FARRAH (Community Associations Institute):

I have recommended amendments ([Exhibit E](#)). We recommend the insertion of a provision stating the candidate's name will be removed from the ballot if the candidate fails to provide written disclosure of financial conflict of interest as required in section 14, subsection 5, paragraph (a).

MR. BUCKLEY:

I have no problem with that, but the onus of disclosure is on the candidate. I do not envision the information being verified or overseen by the executive board of the association.

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SENATOR CARLTON:

What is the definition of a "good-faith effort"?

MR. BUCKLEY:

It is personal honesty.

SENATOR CARLTON:

The term is vague and open to different interpretation. We are giving more weight to good faith, and it will have a different scrutiny level.

MR. POWERS:

To follow up on what you're saying, right now under the law, if you look on page 9, [subsection] 4, there's a duty that "Each unit's owner who is qualified to serve as a member of the executive board may have his name placed on the ballot" Right now, when a unit owner who is qualified to serve on the executive board returns the candidacy information, they are required to be included on the ballot. They do have a duty to make the good-faith disclosure, but there is no ability for the executive board presently to take their name off the ballot if that good-faith effort is not made or is made in a manner that the board may find unacceptable. I think the idea under the current statute is, everyone has the right to be on the ballot if they're otherwise qualified, and they have this duty to make a good-faith disclosure. But it's left up to the electorate, once they have the candidate's name and that good-faith disclosure, to make the determination whether to vote for that candidate. The proposal, however, would give to the executive board discretion to exclude someone from the ballot – and that would be unreviewable discretion.

SENATOR CARLTON:

The board should not have the right to take anyone's name off the ballot. I see the potential for the board to manufacture or interpret the facts so as to remove the name of anyone they do not wish to be on the board.

MS. FARRAH:

The law already states you must declare any financial interests if you are going to run for the board. We want our members to have enough information to make an informed decision when they vote.

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SENATOR CARLTON:

I am still concerned about anyone having the discretion to pull someone's name off the ballot.

SENATOR LEE:

Section 14, subsection 5, paragraph (b) includes construction penalties. Construction penalties can be accrued for minor issues over which the homeowner has little control, such as a worker speeding as he leaves the job site.

MR. BUCKLEY:

That would be a fine. A construction penalty is a penalty for not finishing construction on your lot within the time specified in the governing documents. They are usually much greater than fines.

MARILYN BRAINARD (President, Wingfield Springs Community Association):

In a large association, the disclosure statements are an important way for the homeowners to learn about the candidates for the board. I recently scheduled a "meet the candidates" evening, and very few people came. I am concerned about candidates who run for office because they have fines they want to erase. Homeowners have the right to know the motivation of the candidates before they vote.

SENATOR CARLTON:

I agree everyone should have sufficient information when they cast their vote. I still have concerns about giving the board the right to take someone's name off the ballot. Disclosure is not necessarily a bad thing for the candidate, since others who have been fined may have sympathy.

MR. POWERS:

There are two drafting matters. If we proceed with paragraph (b) on page 10 [of [Exhibit C](#)] that we are discussing, I would suggest that after "unpaid" on line 11, we would say, "unpaid and past due assessments, fines or construction penalties" In addition, I would be curious why the beginning language in paragraph (b) doesn't track the beginning language in paragraph (a) as using the same, "Make a good faith effort to disclose" Paragraph (a), with regard to the conflict of interest – the existing language in the statute begins with "Make a good faith effort to disclose" We

don't use the same language in paragraph (b) at line 6. We just say, "Disclose" I believe the "good faith effort" language is to indicate that the homeowner should make the best effort available, but it may not be possible to have all of the information or to accurately disclose all the information. The homeowners aren't necessarily experts in understanding what their status is in the community or what a potential conflict of interest is. The idea is to give them direction to make the best effort to disclose all that they know, but to not hold them to such a high standard that they would be subject to review at a level that wouldn't be expected of the average reasonable person.

MR. BUCKLEY:

There is a distinction between the two categories. We would expect candidates for the board to have a higher standard of knowledge than the average homeowner.

SENATOR LEE:

I am satisfied that adding the phrase "past due" resolves my concerns on this provision. That basically means the person has gone through the process.

SENATOR CARLTON:

I had been assuming the association would make the disclosure about the candidate. Now I see it is the candidate who makes the disclosure.

MR. BUCKLEY:

I agree to adding the phrase "and past due." The phrase "in good faith" is perhaps too vague to be useful. I would also strike the word "fines" in line 11 of page 10 of [Exhibit C](#) and delete the phrase, "or has been deemed, after notice and hearing, to be in violation of the governing documents" from lines 12 through 14.

SENATOR LEE:

I disagree with taking out the word "fines."

SHARI O'DONNELL (Commission for Common-Interest Communities):

I would strongly support retaining the word "fines." According to the law, fines can only be levied after notice and hearing.

MS. BRAINARD:

I would resist removing the word "fines." We have people who have owed fines to the association for an inordinately long period of time. If they do not meet their obligations to the association, this should be disclosed.

CHAIR SCHNEIDER:

Does adding "past due" resolve this?

MR. POWERS:

They ... only have to indicate a fine which has been assessed after notice and hearing and is past due. ... What if they're challenging the fine, whether it be before the commission or in court? Do we put in that the association has a duty to disclose any information that the candidate provides with regard to a challenge to that unpaid fine, assessment or construction penalty?

MR. BUCKLEY:

Challenges should be disclosed, yes.

MR. KAPLINSKY:

If the board feels there has been an egregious violation of the disclosure requirement, the matter could be decided by the Commission.

MR. BUCKLEY:

If you add the "good faith" clause to paragraph (b), the Commission would be unable to decide the matter. "Good faith" is a subjective standard.

Mr. Powers:

The result [of removing the phrase] would be anyone who didn't make the disclosure could be subject to removal by the Commission, if I'm gathering what the chairman of the Commission is saying. You are creating a much higher standard here that could expose the person to some future action, removing them from that office.

And just as a follow-up ... if the goal was to simply provide disclosure and information to the homeowners through the ballot, then the good-faith effort language is an attempt to just try to get the homeowners to disclose to the best of their ability as a

reasonable average person would, but there would be no consequence for the failure to disclose. If we're trying to create a consequence for the failure to disclose, then I believe the straight duty to disclose language may create a consequence for the failure to disclose.

MR. BUCKLEY:

Section 15 deals with removal of a member of the executive board of an association. The amendment now allows removal with a majority of the total members of the association.

MR. POWERS:

For the assistance of the subcommittee, I think I can frame the issue. Presently, the current law, although somewhat unclear, has been interpreted to mean that in order to remove a member of the executive board, there has to be a vote of two-thirds of the number of ballots returned in the removal election so long as at least the number of ballots returned equals a quorum. To state it another way, if all the number of ballots returned is at least a quorum, if you have two-thirds of those ballots, there would be a removal of the executive board member. That's how the existing provision has been interpreted. The language in S.B. 325 as it stands now is an attempt to make that clearer, although I believe that the language submitted by Community Associations Institute (CAI) Nevada on that one handout [[Exhibit E](#)] – if you see under section 15 they show an amendment – I think that makes it as clear or much more clear than it is now. That language reads: "Notwithstanding any provision of the declaration or bylaws to the contrary, units' owners, by a two-thirds vote of all submitted written ballots, where the total number of ballots submitted as set forth herein equals or exceeds 20 percent of the total number of unit owners eligible to vote, can remove the member." Essentially it's what I said: if the total number of votes returned equals the quorum for the association, then if you have two-thirds of that total number of ballots returned, then you would have a removal of the member.

CHAIR SCHNEIDER:

In that case, if a quorum is 20 votes, two-thirds of that would be 14 votes.

MR. POWERS:

Correct. But if 40 are returned, you need two-thirds of 40. ... In order for the removal election to occur, you have to have at least a quorum. Once you have that quorum, you need two-thirds of the total ballots returned.

MR. BUCKLEY:

This language is much more clear than the original.

MR. POWERS:

"However, the language in the color mock-up [[Exhibit C](#)] is completely different. It's a majority of the total number of voting members of the association, which is a much greater number."

MR. BUCKLEY:

Correct. In the amendment suggested by CAI, if the association is 100 people with a quorum of 20 percent as in Senator Schneider's example, 14 votes could remove a board member. Many associations have defined a quorum as 20 percent.

Ms. O'DONNELL:

I support the amendment in [Exhibit C](#) rather than that in [Exhibit E](#). The old language allows a tiny minority to disrupt the business of the association by removing board members.

MR. BUCKLEY:

We could reword it to require two-thirds of all votes, if ballots were received from at least 50 percent of all members.

MR. POWERS:

"It could be two-thirds of the total number of ballots returned, as long as you get at least 50 percent of the homeowners returning ballots. If 100 percent of the homeowners return ballots, you're going to need two-thirds of 100 percent."

MR. KAPLINSKY:

Some CC&Rs establish a quorum at 20 percent. This will require you to override them. Recalling a board should be much harder than electing it. However, the

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amendment in [Exhibit C](#) would make it almost impossible. I support the amendment in [Exhibit E](#).

SENATOR CARLTON:

Would it resolve the difficulty if we required a quorum to be a majority of the number of members who voted in the last election? This is similar to the requirement in Nevada regarding initiatives and referendums.

CHAIR SCHNEIDER:

I would suggest we take the language from [Exhibit E](#) and increase the required quorum to 50 percent.

RENNY ASHLEMAN (Las Vegas Country Club Master Association):

[Exhibit E](#) is probably the best choice with the change to 50 percent. We have one faction that is 20 percent by itself and could dominate the entire association with its removal power.

MR. POWERS:

Just so we're clear for the record, we're taking the language from CAI Nevada on their separate proposed amendment [\[Exhibit E\]](#), and where it says "equals or exceeds twenty percent," we're changing that to read "equals or exceeds fifty percent."

CHAIR SCHNEIDER:

Correct.

MR. KAPLINSKY:

That is too high a threshold for a large organization. It essentially makes it impossible to recall a board member in a large organization.

MR. POWERS:

I agree with Mr. Kaplinsky. He's essentially saying in order to have a valid recall, ... at least 50 percent of the total number of units have to cast votes in the election. So if you have 15,000 units in your association, you need half of that number, which is 7,500, in order to even have an effective recall election; and then if you get the 7,500 who return ballots, you need two-thirds of that 7,500 to effect a removal. If you don't get the 7,500 under that scenario, the election is invalid and there's no removal.

SENATOR LEE:

It is the job of those who want to remove a board member to convince their neighbors the person should be recalled. It should be difficult to do.

MR. ASHLEMAN:

If 50 percent of the homeowners are not mad enough to vote, it may be that they are content with the board. We have no trouble getting a large turnout when homeowners have strong feelings about an issue. There are other ways of removing board members who are embezzling or committing other crimes; recall elections are usually triggered by political controversies. In addition, the terms are only two years. If homeowners do not like a specific member, they will often wait two years and vote the person out of office.

MR. KAPLINSKY:

The recall election rate in Nevada is less than one-half of one percent per year, and only a third of those are successful. This may not be that big of a problem.

SENATOR CARLTON:

Perhaps we could split the difference and require a return of 33 percent.

PAMELA SCOTT (Howard Hughes Corporation):

I recommend the statute require 30 percent of the total eligible members to recall. This avoids all questions of the number of ballots cast. The large associations can remove members through delegate voting.

SENATOR LEE:

Thirty percent seems low to me.

SENATOR CARLTON:

I recommend we require 35 percent of all members to recall.

MR. BUCKLEY:

Section 16 deals with the transition requirement, what the developer has to turn over to the association. The Commission recommended adding conforming language regarding financial audits of the association. They also recommended deleting the word "replacement" on line 26, page 13.

Section 17 deals with meetings of the association. There is added language regarding special meetings. A subsection 11 was added to say a quorum is not

needed to approve the minutes of the prior annual meeting. The changes to subsection 9 of section 17 allow meetings to be broadcast on the Internet, providing the broadcast is not edited in any way. Mr. Kaplinsky suggested the language.

CHAIR SCHNEIDER:

Mr. Kaplinsky has developed a program that allows association meetings to be recorded or broadcast live using a laptop computer with a Web camera.

MR. BUCKLEY:

Mr. Kaplinsky's original proposal included the possibility of allowing votes to be taken via the Internet. I would like the Commission to hold hearings before enacting this, with input from service providers.

CHAIR SCHNEIDER:

After you hold hearings, you might consider setting up a pilot project with a few associations to see how it works in practice.

MR. BUCKLEY:

I would also like to consider broadcasting the Commission's quarterly meetings. This would be particularly useful in issues that require input, such as the proposal to do away with delegate voting.

MR. POWERS:

I think we are talking about two different concepts. The first concept mentioned by Mr. Buckley is for the Commission during the interim to hold hearings on proposals for revisions to chapter 116 of NRS. They certainly have the power now to hold those hearings, take input, and then use the Department of Administration and get an Executive Branch bill draft request, or through one of the individual Legislators, or this Committee, get a bill draft request to carry forth those legislative changes. The other issue that's being discussed is giving the board regulatory power to adopt regulations dealing with certain aspects of common-interest community management and operation. That's a different issue. That would require some enabling statutes in certain circumstances, because the purview of the Commission now does have limitations. They do have regulatory power, but they have regulatory power to carry out those provisions of this chapter that

they're directed in administering, which is not necessarily administering the overall management and internal affairs of common-interest communities. That's what the legislation does. It controls and regulates the internal affairs and operations of common-interest communities.

CHAIR SCHNEIDER:

Does the Commission have the power to do a pilot study?

MR. POWERS:

Certainly, if the homeowners association was willing to work with the Commission and allow them to ... go to the homeowners association and conduct [a test of] Webcast technology. That certainly would be permissible. If you want to require the Commission to adopt regulations for how homeowners associations must carry out the Webcast statutory provisions, that's also permissible as well. But that would be requiring the homeowners associations to use the Webcast or permit the Webcast, and then having the Commission implement that through regulations. Again, two different approaches.

MR. KAPLINSKY:

Under current law, a board can tell a homeowner he may not broadcast a meeting on the Internet. The intent of the language was to permit Webcasting.

MR. POWERS:

Right now, any homeowners association executive board may permit anyone to do video recording or Webcasting, if they want. However, the law gives a unit owner the right to use audio technology only. If the executive board were to exclude some sort of video technology like Webcasts, they have the right to do that under existing law. They couldn't exclude the unit owner from using the audio technology. These changes in the mock-up here would give the unit owner the right to use video technology to televise the meeting using the Webcast technology.

MR. BUCKLEY:

I feel strongly that we should not allow the recording of the meeting to be edited. The wording on this may need to be adjusted. I do not want to forbid

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the broadcasting of recordings missing a portion because the person recording the meeting arrived late, for example.

SENATOR CARLTON:

It should also be decided who owns the recording, the association or the person recording it.

MR. KAPLINSKY:

The meeting is public domain, but the actual media used belong to the recorder. It would be the same rules that currently apply to audio recordings.

CHAIR SCHNEIDER:

We must yield the room to another committee. I will recess this meeting at 10:08 a.m.

The meeting is reconvened at 3:32 p.m.

MR. YOUNG:

I have an amendment ([Exhibit F](#)) offered by Ronald Lynn with a definition of the word "townhouse" as differentiated from a "condominium."

MS. O'DONNELL:

I have concerns about this definition. The amendment also excludes townhouses from the definition of the term, "physically identical development," and the reasons for this are unclear.

MR. BUCKLEY:

This bill might not be the best place for this provision. There is no other reference in the bill to townhouses.

MR. POWERS:

When the person representing Clark County first proposed this, I let them know that I don't believe what this language does takes care of the issue they're trying to address. This is not the manner in which I believe this issue should be taken care of. It seems to me that the issue is one of a developer of a common-interest community who is representing it to be something other than a common-interest community, and apparently these developers are actually recording the declaration and the plat, the development

map, for the common-interest community under the guise of a townhouse. We need probably to hear from Mr. Lynn to make sure we know what the problem is that we're trying to solve, and then we can better craft language to address that issue. I don't believe this definition of "townhouse" inserted into this section of chapter 116 of NRS accomplishes what the requesters are trying to achieve.

MR. ASHLEMAN:

The language was crafted to address a situation in Clark County in which developers are building condominiums and advertising them as townhouses. In a condominium, things that affect your property may actually be in another building. If the property is governed by a common-interest community, they can deal with problems. For example, your water heater may be located in another location, or there might be a leak in the unit above yours.

MR. POWERS:

"Merely having a definition in the law is not going to accomplish anything unless the law provides some substantive use for that definition. That's where I'm unclear."

RONALD L. LYNN (Nevada Organization of Building Officials):

The situation the language was intended to correct was a developer who built condominiums and then remapped them and sold them as townhouses. The Office of the Attorney General told us chapter 116 of the NRS precluded us from prohibiting the remapping. There are major differences between condominiums and townhouses.

MR. POWERS:

I understand that problem. The thing is this section is intended to protect common-interest communities from discriminatory code treatment by local governments. It's not intended to prevent local governments from regulating townhouses that are in fact [condominiums]. All this does is protect common-interest communities from discriminatory treatment. ... I have concerns that if we put it here, it's not going to accomplish what Clark County intends. If they feel comfortable with it, though, they can let it ride. ... I'm willing to find a place for it, but I think this has more to do with the power of the county to regulate townhouses and make

it clear they do have that power to define what a townhouse is. But I'm not so sure – this section is not taking away any power but is making sure the county treats common-interest communities the same as it treats other types of developments, so they're not discriminating or prohibiting common-interest communities in a manner that's unfavorable to them versus other types of developments. We can proceed with this in an amendment. The final issue will be where exactly it goes in the law. It can still be part of this bill; it relates to developments and common-interest communities in a certain sense, and I believe that we can put it in this bill. Or maybe it can be a stand-alone section in chapter 116 [of the NRS]. This is not necessarily the place that it goes. However, the idea was to get on the record what the exact problem was; with that on the record, we can craft the proper legislation and proceed from there.

CHAIR SCHNEIDER:
We will do that.

MR. BUCKLEY:
I have an amendment ([Exhibit G](#)) from Mr. Kaplinsky regarding section 15 of the bill. This would allow removal of a board member with 35 percent of the voting members, as long as the number of ballots in favor of removal is greater than the number of ballots against removal. [Exhibit G](#) also amends section 17 to specifically allow the Commission to set up pilot programs to assess new technologies.

MR. POWERS:
"... I'd like to know exactly the intent here of what the language [regarding section 15] is trying to achieve."

MR. KAPLINSKY:
The language the subcommittee agreed on earlier would allow someone to be removed from the board with a vote of 35 percent for removal and 65 percent against. This removes the problem.

The amendment on section 17 gives the Commission the authority to evaluate any sort of new technology that comes along.

MR. BUCKLEY:

The intent was to leave section 17, subsection 9 as currently written in the law. I believe the Commission already has the authority in Mr. Kaplinsky's proposal.

MR. POWERS:

I would agree that the Commission would have the authority to carry out unfunded demonstration projects with volunteer participants. There really is no barrier on the Commission participating in the community and developing these matters. But if the Committee so desires, we certainly can put this in the law as well. I would favor probably putting it in a section at the end of the bill, which would be an uncodified section in the Statutes of Nevada, instead of making it a permanent part of the NRS. But it would still be the law of the state.

MS. FARRAH:

In section 17, we have added a sentence to the end of subsection 1 regarding the timing of a special meeting to remove a board member. The purpose of this was to force the board to act on a petition to hold such a meeting or send out recall ballots as required.

MR. BUCKLEY:

Section 18 has to do with executive board meetings of an association. Most of the changes to this section were proposed by the Commission's accountant member. We also made a slight change to subsection 12, paragraph (b), to include the word "residents."

In section 19, we have changed subsection 4 to require the executive board to conduct hearings in open meeting, if the person being sanctioned requests it in writing. This does not apply to the deliberations, which will be done in private.

Section 21 deals with reserves. The Commission originally planned to require a reserve study every three years rather than every five years. However, since existing language says the study must be reviewed and adjusted every year, there seems to be no purpose served by having the study done every three years as well. Most of the remaining changes in section 21 are conforming changes.

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Section 22 deals with fees to be paid by the association. The Real Estate Division requested we add language requiring master associations to pay the fees owed by their subassociations.

KAREN D. DENNISON (Lake at Las Vegas Joint Venture):

I have an amendment ([Exhibit H](#)). It was intended to clarify the language regarding double payment, but it may need further adjustment. The language in [Exhibit H](#) can be read as saying fees must be paid by the master association and the subassociation will not have to pay fees at all.

MR. POWERS:

I believe the intent of the language is if an association is subject to the governing documents of a master association, the association shall pay its required fee to the master association, and then the master association shall pay those fees to the administrator of the Real Estate Division.

SENATOR LEE:

If they do not pay their fees, is a lien put on the common areas?

Ms. SCOTT:

The master associations have been paying these fees. No money actually changes hands between the master association and the subassociations; the funds are part of the fees paid by unit owners. There is no lien on subassociation property.

MR. BUCKLEY:

The common elements would never be subject to a lien. Perhaps we should have an exclusion for any fees that have not been received by the master association.

MR. POWERS:

We could modify the language ... to the effect that if, under the terms of the governing documents between the master association and the subassociation, the subassociation pays its fees to the master association, then the master association would pay those fees. If that's the arrangement between the master association and the subassociation, they can continue to pay the fees in that manner. We'll have to do the language better than that.

MR. BUCKLEY:

The other changes to subsection 4 of section 22 are technical clean-up language requested by the Real Estate Division. In addition, we have left the cap on fees. The intent is to provide for a penalty for past-due fees with interest.

Section 23 makes two changes to the notice of sale sent to the homeowner. The ombudsman asked the notice of default be sent to him by certified mail when it is recorded. Also, the wording of the notice of sale has been changed to emphasize that the association intends to foreclose on the unit-owner's home.

SENATOR CARLTON:

I have a longstanding philosophical disagreement with the underlying concept of this provision. I do not think an association should be able to take your home because you have not paid an assessment.

MR. BUCKLEY:

Section 24 defines the fines for which an association can seek foreclosure. Paragraph (e) of subsection 1 includes an accounting correction.

Section 25 has been deleted. This was a technical correction requested by the Real Estate Division. Currently, if you have a conversion of a condominium, you need to have an inspection by an independent registered architect or licensed engineer. Section 25 allowed the inspection to be done by a certified inspector of structures, which requires a lower level of expertise.

Section 26 lists documents concerning the association that must be furnished to a buyer before the sale of the property is completed. This section triggered a great deal of discussion. Subsection 1 lists documents to be provided by the homeowner to the buyer: governing documents, a statement of the assessments, the association's budget (including a summary of the reserves) and a statement of unsatisfied judgments. Subsection 2 gives the buyer the right to cancel the purchase for five days after receiving the documents listed in subsection 1.

MR. POWERS:

What if for some reason the purchaser does not receive the documents before the close of escrow? This all is tied to the receipt of the documents. ... I suspect there's many purchasers out

there who don't receive the documents in a timely fashion. Yet this right to cancel seems to be tied to the receipt of those documents.

MR. BUCKLEY:

Section 3 of NRS 116.4108 states: "... if the purchaser has accepted a conveyance of the unit, he is not entitled to rescission." Perhaps we need to include language like this.

SENATOR CARLTON:

Is it appropriate to dictate timelines on the packets to ensure they are delivered in a timely manner?

MR. POWERS:

... We are talking about two different issues. The first issue is having a final cut-off date, that once the purchase has been completed and escrow is closed, the right to cancel ceases at that point. As far as triggering the period by which the right to cancel would start to run, as it provides here in subsection 3, line 29 on page 27 [of [Exhibit C](#)], it says, "The association, within 10 days after receipt of a written request by the unit's owner or the units' owner's agent, shall furnish ..." all the documents that are required. It's the unit's owner, or the unit's owner's agent, that starts the clock running. Once they do that, they have ten days to provide the documents, which then would provide the person who received the documents five days in which to cancel. I would suspect that once a purchase agreement is signed, the unit's owner or the units' owner's agent would act quickly to get the process going, so that if they do have a short escrow period, all of this can be done within that period of time.

MR. BUCKLEY:

Subsection 3 instructs the association to provide the homeowner with the documents listed in subsection 1. It also states the homeowner is not liable if the association furnishes erroneous statements. Subsection 4 deals with the certificate to be provided by the association.

MR. NADEAU:

We have an amendment to offer ([Exhibit I](#)) regarding section 26, subsection 4 to include a requirement that the homeowner pass on all information provided by

the association to the buyer. This was added to address a concern that documents were being removed from the certificate.

MR. BUCKLEY:

I had originally included wording in subsection 3, paragraph (b), identifying the certificate as all material provided by the association to the homeowner.

MR. POWERS:

"I would have to say I think the Nevada Association of Realtors probably took a better approach in that regard. It seems odd to say a certificate contains copies of these documents."

MICHAEL S. TRUDELL (Caughlin Ranch Homeowners Association):

We have a number of improvement agreements stating that when a seller is selling the property, the purchaser is required to enter into a new improvement agreement with the homeowners association and replace the seller's security deposit. Occasionally, we have included the improvement agreement in the packet to the title company and had them remove it from the packet saying it is not their responsibility, so the information does not reach the purchaser. The new owner is then suddenly surprised by the obligation to complete landscaping or remove elements that he was not informed of before the sale.

MR. POWERS:

"We could define 'certificate' to mean the certificate and all documents supporting the certificate that must be disclosed."

MR. NADEAU:

The packet that goes to the buyer includes a cover page listing the documents contained in the packet, and the cover page is generally referred to as the certificate.

[Exhibit I](#) includes an amendment putting the provisions about fees for producing these documents into a separate subsection. What is now paragraph (a), subsection 4, would thus become subsection 5.

SENATOR CARLTON:

We previously heard [A.B. 71](#) on this same issue. I have concerns about how you define a "reasonable fee."

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ASSEMBLY BILL 71: Requires association of common-interest community to provide copy of declaration of covenants, conditions and restrictions to unit's owner upon request. (BDR 10-441)

MR. NADEAU:

We support A.B. 71. Fees charged by associations for producing these documents range from \$50 to almost \$400. This section seeks to stabilize those fees and gives the Commission the power to establish a cap on these fees by regulation. It restricts the fee to a copying charge of 25 cents per page, though extraordinary documents may require a higher fee.

SENATOR LEE:

I am concerned that people who only need a few pages will be required to purchase the entire certificate packet.

MR. NADEAU:

I believe this is covered in statute elsewhere.

SENATOR CARLTON:

What are extraordinary documents?

MR. TRUDELL:

We reproduce only the documents requested. Extraordinary documents can include inspection of the property and lengthy letters outlining existing deficiencies.

Ms. SCOTT:

We have no problem providing a few pages for 25 cents each. We are concerned about whether the seller is providing the purchaser with the entire certificate packet as required. The association is liable for the information provided to the buyer, and if the seller is allowed to select which documents are included in the packet, the buyer may not get the information to which he is entitled. If you are going to require us to copy only the documents the seller wishes, you need to remove the language stating the association is responsible for the information in the packet. I will not give a certificate with a packet unless the seller takes the entire packet.

SENATOR CARLTON:

I also note the language makes the cap permissive.

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MR. BUCKLEY:

We can change the language in paragraph (c) of subsection 4 to: "The Commission, by regulation, shall establish a maximum amount for the preparation of the certificate."

We have received testimony ([Exhibit J](#)) from Jan Porter via fax. She suggests we add the phrase "or reviewed" to paragraph (e), subsection 1, section 24. I have no problem with that; it should also be included on page 31, line 5, for consistency. She also suggests we do not delete section 25. This seems to be a misunderstanding; we are deleting section 25 of the bill, not section 25 of the NRS. The statute as written provides better protection than section 25 of the bill would have.

MR. POWERS:

"I agree. The deletion of section 25 from the bill does not change existing law."

MR. BUCKLEY:

In section 27, subsection 1 has been deleted because NRS 116.1104 states none of the provisions of chapter 116 can be waived. This subsection is thus unnecessary.

MR. NADEAU:

In [Exhibit I](#), we recommend changing line 41 of page 28 of [Exhibit C](#) to delete the phrase "that should be provided for your review before making your purchase" and adding the sentence, "You have five (5) calendar days from the date of receipt of these documents to terminate the purchase agreement."

MR. BUCKLEY:

We have deleted lines 38 and 39 on page 30 of [Exhibit C](#) because the Commission is a state agency.

MR. YOUNG:

Shall we add a reference to the Commission to this section?

MR. POWERS:

"I believe the reference Scott may be looking for is already in the law on page 31, beginning on line 33 ... where it says, 'QUESTIONS?'"

TAMI DEVRIES (Legal Administrative Officer, Real Estate Division, Department of Business and Industry):

The Commission is not actually a state agency. It is the Division that has the ability to investigate and intervene. The Commission does the enforcement after the investigation and intervention. People having a problem should be directed to the Division, not the Commission.

MR. BUCKLEY:

In section 29, the only change is to alter subsection 1 to say the Division is overseen by the director of the Department of Business and Industry, not the Commission.

In section 30, we have deleted the reference in paragraph (c) of subsection 1 to a permit, since community managers must now be licensed by the Commission. Also, we have added language regarding who may do reserve studies.

Section 31 has changes consistent with those made in section 30.

Section 32 has to do with limited-liability company registration. This is consistent with having a limited-liability company act as an association. If this is accepted, the same change will need to be made in the chapters regarding private corporations and nonprofit chapters of the NRS.

MR. POWERS:

"I would ask whether the Secretary of State has been talked to about this change?"

MR. BUCKLEY:

We have not talked to his office, but are happy to do so if you can tell us whom to contact.

MR. POWERS:

"I'll leave that to Tami [DeVries], who's in the Executive Branch, who can contact another member of the Executive Branch and let them know the intent behind this bill."

MR. BUCKLEY:

We have added a new subsection 9 to section 32. This material is not really new, but rather is taken from existing law.

MR. POWERS:

These sections regulating community managers would be codified in Title 54 of NRS, which is businesses, professions and occupations. What this does, as you realize – and the Commission may want to consider this as well – it pulls the Commission into Title 54 ... Every time there's a change in Title 54 that could have an impact on other boards and agencies, the Commission would be subject to that change as well. That may be appropriate or that may not be appropriate, but that would be the impact. ... I believe the subcommittee should have a discussion on whether this is appropriate for this commission to be under the auspices of Title 54.

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):

The two permit license levels proposed here, the community association manager and the reserve studies specialist, are not under the overarching umbrella of chapter 622 of the NRS. They are overseen and can be called before the Commission for Common-Interest Communities.

SENATOR CARLTON:

There are many individuals licensed to do business in Nevada who are not overseen by any board. You may not want to take this on. Who will regulate them, the Commission?

MR. POWERS:

As a matter of existing law, the Commission for Common-Interest Communities does regulate community managers who hold either a permit under the Real Estate Division, NRS chapter 645, or a certificate under chapter 116. They are currently regulating the profession.

SENATOR CARLTON:

If it works, why do you want to change it? This will cause more problems than it solves.

MR. POWERS:

The interesting thing that would happen here ... I believe we're actually creating a bifurcation. In Title 54, when you have an

occupational licensing board, they have disciplinary proceedings and investigation of violations. They all fall under Title 54 and those provisions of chapter 622. In this case, the Commission will be regulating community managers under Title 54, but investigating complaints from common-interest communities under chapter 116. They're going to have a different set of procedures ...

MR. BUCKLEY:

The remaining sections of the bill are mainly technical and housekeeping changes. There are new provisions dealing with permitting reserve study specialists. In section 71, subsection 3, we changed the deadlines to July 1, 2007.

MR. YOUNG:

In section 51, subsection 2, you have changed the language to refer to documents filed with the Commission, rather than documents filed by the Commission. This might be in conflict with subsection 1 of this section, making the documents referred to public documents.

MR. BUCKLEY:

The documents in question are actually filed by the Division with the Commission.

MS. DEVRIES:

In subsection 1, it should say "Division" instead of "Commission." The initial complaint comes to the Division alleging violations. After the investigation, the Division will file a formal complaint for disciplinary action with the Commission.

MR. POWERS:

"This is consistent with a change that the Real Estate Division made in one of their bills this session as well, to create consistency of language."

MR. BUCKLEY:

I have just received a communication from Jan Porter asking why section 56 should not apply to an attorney, as provided in subsection 6, paragraph (b) of that section. This provision appears in many regulated professions, I believe.

MR. POWERS:

I would agree with Mr. Buckley. When an attorney provides legal advice to an association, that could be interpreted as helping guide and manage the association. But the attorney who is trained in the law should be able to provide that legal advice without being subject to a permitting or certificating requirement. The attorney is already licensed in the state to practice law, and they are supposed to be trained to provide that sort of information to an association. A community manager ... is not necessarily trained in the law. The final thing is that if an attorney was in fact acting as a community manager on a full-time basis, that attorney would have to have the required permit. In this case, it's just excluding an attorney who is practicing law and providing legal advice to a common-interest community association.

SENATOR CARLTON:

Section 57 gives the Commission the right to establish regulations regarding licensed community managers. Does this comply with other statutes regarding licensure?

MR. POWERS:

... The Commission for Common-Interest Communities is similar to the Real Estate Commission. It was developed based on those statutes ... This Commission is a little different than your typical occupational licensing board.

MR. BUCKLEY:

Section 73 is a new section proposed by CAI. Occasionally, an association's governing documents require a declaration to receive a super-majority to pass. If an amendment to a declaration receives a vote of 51 percent, the association or homeowners can petition the court for an order declaring the amendment approved.

Section 74 requires an association to give 24 hours' notice before towing illegally parked vehicles. This is generally done by posting a notice on the vehicle.

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DONNA ERWIN (Las Vegas Country Club Management Association):
There is currently no requirement in this state to give notice before you tow.
Some associations tow without notifying anyone.

SENATOR CARLTON:
They should be required to give 48 hours' notice.

MR. BUCKLEY:
Section 75 includes a provision inadvertently omitted from S.B. No. 100 of the
72nd Legislative Session.

MS. SCOTT:
The language originated in S.B. No. 421 of the 71st Legislative Session.

MR. BUCKLEY:
Section 76 includes language that a copy of the foreclosure deed be sent to the
ombudsman. This section also requires a copy of a notice rescinding the default
be sent to the ombudsman.

Section 77 provides that if the Commission determines a violation has occurred,
it may apply to a court to appoint a receiver for the association. Sections 78
and 79 lay out the powers of the receiver. The language is adapted from
chapter 78 of the NRS. I am not sure if section 79 is needed.

SENATOR CARLTON:
Mr. Powers, do you have an opinion on section 79? Will this language give them
the direction they need?

MR. POWERS:
This is really, I believe, directed for once the Commission takes the
action in the district court, how the action proceeds after that. It's
actually to provide direction to the district court and how the
district court must conduct its proceedings. If you didn't put this
language in, my guess is the district court would look to the
general corporations law where Mr. Buckley took this from. At the
beginning of chapter 116 [of NRS], it says the general law of
corporations applies. This codified here in chapter 116 would be
consistent with the way the district court would proceed otherwise

under the general corporations chapter. ... This is consistent with existing law.

MR. BUCKLEY:

Section 80 was proposed by Senator Schneider. The language was adapted from NRS 118B.145 and establishes limits placed by an association on the size, number and duration of political signs that may be exhibited on a private lot. The provision allows the association to limit each homeowner to a single political sign 24 by 36 inches placed 15 days before and 7 days after an election. I have no position on this amendment.

MR. KAPLINSKY:

Does this apply to early voting?

Ms. SCOTT:

We interpret this as including early voting as part of the general election. Signs may be placed 15 days before early voting begins.

MR. POWERS:

If that's what we wanted to capture, we probably should modify the language. Although those individuals may interpret their association documents that way, it doesn't guarantee the court would interpret it that way or another association would interpret it that way. We can make it 15 days before ... the first day of voting, and that could include early voting. I would say for the record if the intent was to limit it to a single political sign, we probably need to put that in the section. Typically in NRS, use of the singular includes the plural. ... As presently written, it would probably interpret it the singular includes the plural, so you could have more than one political sign as presently written. If you want to limit it to a single political sign, I would modify it with the term "single" or "one" or "not more than one."

CHAIR SCHNEIDER:

Recently there was an incident in which a legislator was escorted off a property because he was campaigning door to door. Is that a major problem?

MR. BUCKLEY:

If the gates are closed, the community is private property.

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MR. YOUNG:

In this specific incident, the community was not gated.

CHAIR SCHNEIDER:

Perhaps we could handle the issue by changing the language in section 7 to prevent associations from regulating streets at all.

MR. BUCKLEY:

That section refers to public streets. The planning commission in Las Vegas considers a community's streets private even if the community is not gated.

MR. YOUNG:

We may also be getting into the realm of freedom of speech with this matter. If we insert language allowing elected officials in the community to campaign, we must also allow people seeking signatures for initiative petitions to go door to door.

MR. POWERS:

I agree. Because we are dealing with protected speech under the First Amendment [to the U.S. Constitution], there is a danger in allowing certain protections to one form of protected speech and not to another form of protected speech. It's viewpoint discrimination, and generally it's subject to strict scrutiny under the First Amendment and ... to being struck down as being unconstitutional.

MR. BUCKLEY:

Sections 81 and 82 were intended to take provisions regarding lawsuits out of NRS 116.3115, which deals with assessments, and place them in a new stand-alone section. All the deleted material from section 81 of the bill is now in section 82 of the bill. I am informed there is one small change. Section 82, subsection 1, paragraph (c) has been added to specify the association does not need unit owners' approval to enforce a contract with a vendor.

MR. POWERS:

I agree with Mr. Buckley's assessment as far as the codification of these provisions, and it is a laudable goal to have a new section dealing just separately with the civil-action issue. However, every time we do this through a bill, when you show it as new language,

it appears like it's making a change in the law. I would just advise those who are in favor of the bill to make the public aware of the fact that there's only one small substantive change in the section, and the rest of it is recodifying existing law.

ROBERT L. CROWELL (Nevada Trial Lawyers Association):

I have reviewed the amendment, and I do not believe it does any injustice to any of the rest of the issues in the bill. As long as we do not go outside those parameters, we are fine with the amendment.

CHAIR SCHNEIDER:

The phrase "health, safety and welfare" in paragraph (e), subsection 1, section 82 covers an extremely broad range; essentially, it can be used to justify anything. Including this phrase will allow anyone to sue for anything.

MR. CROWELL:

My reading of the statute suggests those proceeding under this section must give 90 days' notice in any case.

MR. BUCKLEY:

Section 83 gives a copy of the notice of sale to the ombudsman. This section also includes a requirement, in paragraph (d) of subsection 2, that notice of the foreclosure sale be served on the occupant. The wording of the warning has also been strengthened to make sure the occupant is aware of the gravity of the situation. This is separate from the notice to the owner and is included to make sure the person actually living on the property is aware of the situation. This section is modeled after NRS 40.280 regarding service of property.

SENATOR CARLTON:

That section comes from the eviction laws. Are you talking about eviction of tenants?

MR. BUCKLEY:

Any eviction would have to be done after the foreclosure under the eviction statutes. The intent of this section is simply to make sure the tenant knows of the foreclosure.

SENATOR CARLTON:

How many times has an association foreclosed on a home?

MR. BUCKLEY:

I am not sure we have accurate statistics on that. The provisions in this bill requiring notice of foreclosure be given to the ombudsman will correct that.

MS. SCOTT:

In my 23 years in this business, I have never been involved in an association foreclosure. The Office of the Ombudsman should have that information for the last year at least.

MS. DEVRIES:

We will compile the information from last year.

MS. BRAINARD:

In the nine years our association has existed, there has been only one foreclosure in that time, and that person was given more than adequate notice and chance to pay the overdue assessments.

SENATOR CARLTON:

How much was the debt?

MS. BRAINARD:

I do not know. I will get that information for you.

JIM FLIPPEN (Caughlin Ranch Homeowners Association):

In general, the amount due is quite low relative to the value of the house. Delinquent homeowners are given ample time to pay their assessments.

MR. POWERS:

"I don't believe we resolved the issue from this morning dealing with disclosures on the candidates' ballot. I don't believe the subcommittee came to a final resolution on that issue."

SENATOR CARLTON:

I would like to make sure candidates know when they put their names on the ballot that they will need to disclose their unpaid and past-due assessments or construction penalties, but omitting fines. I do not want them to have to include anything that is in the process because it may be repealed.

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Ms. SCOTT:
I support this language.

SENATOR CARLTON:
I also recommend we omit the phrase "make a good faith effort" from paragraph (a), subsection 5, section 14.

Ms. O'DONNELL:
By definition, you cannot impose a fine unless the person has been through due process and a hearing. Saying a person has a fine says it is unpaid and past due.

SENATOR CARLTON:
Is there an appeal mechanism?

Ms. O'DONNELL:
Yes.

SENATOR CARLTON:
Does a homeowner have to pay the fine while going through the appeal process?

Ms. O'DONNELL:
I am not sure. I have never been through a process that was appealed.

SENATOR CARLTON:
My concern is that fees might be levied as a form of harassment to keep someone from running for office. Assessments and construction penalties are serious things; fines can be levied on trivial matters. My experience of the last six years suggests if you want to fine someone, you can.

MR. FLIPPEN:
An association will sometimes take an action against a violator in lieu of a fine. In such a case, the person could be in violation without a fine being levied. Homeowners should be aware if a candidate has chosen not to abide by the governing documents before voting.

SENATOR CARLTON:
I recommend the provision include only assessments and construction penalties.

CHAIR SCHNEIDER:

We had considered a provision specifically stating that a person who is not a member of the association may serve on the board as an officer. We have had a legal opinion from the Legislative Counsel Bureau (LCB) that nonmembers can serve on the executive board.

MR. BUCKLEY:

There is nothing in the law to prohibit this. We did not feel it was necessary to add the provision.

MR. YOUNG:

The subject arose because we received inquiries from several people who could not tell from reading the statute whether a nonmember could serve or not. The issue was to make the language explicit so the average person would not have to get a legal opinion to know this.

MR. BUCKLEY:

Subsection 7 of NRS 116.31034 states:

An officer, employee, agent or director of a corporate owner of a unit, a trustee or designated beneficiary of a trust that owns a unit, a partner of a partnership that owns a unit, a member or manager of a limited-liability company that owns a unit, and a fiduciary of an estate that owns a unit may be an officer of the association or a member of the executive board.

In the opinion of the Commission, this was sufficient language.

MR. POWERS:

The issue was the individuals who wanted to be members of the executive board didn't fall into those categories. Those categories are still fairly limited; they have to be connected with the business entity that owns a unit. The interpretation involved subsection 7 of NRS 116.31034, but it also involved subsection 1 of NRS 116.31034. In that subsection, it states that after the period of the declarant's control has terminated, at least the majority of the members of the executive board must be unit owners. The interpretation was based on that language. If only the majority must be unit owners, that implies that there can be members of the

executive board who are not unit owners, as long as a majority of them are.

MR. BUCKLEY:

We were comfortable that was a natural interpretation. We have no objection to adding a provision making it explicit.

Ms. SCOTT:

Some associations have provisions in their governing documents saying only members may serve on the board. Would this override that?

MR. POWERS:

That would be a policy choice. Often in chapter 116 of NRS, we either say "notwithstanding the provisions of the governing document" or "unless the governing documents provide otherwise." The typical rule under the common law with regard to associations is that non-unit owners may be members of the executive board unless the governing documents provide otherwise. We could just simply codify that common-law rule in the statute.

Ms. SCOTT:

That would be my preference.

CHAIR SCHNEIDER:

We will go with that.

MR. POWERS:

Just to be clear, we'd also preserve the fact that after the declarant's control ... had terminated, at least the majority of the members of the executive board would still have to be unit owners. A non-unit owner may serve on the executive board at that time, unless the governing documents provide otherwise.

CHAIR SCHNEIDER:

I have several amendments to propose. The first would amend NRS 116.3115 to require the executive board to get authorization from unit owners for settlement of a legal dispute involving the association.

MR. YOUNG:

This was triggered by an incident in which a settlement of litigation was made to an association, and the executive board did not inform the members of the settlement. In this case, it was a settlement of several hundreds of thousands of dollars, and even some board members had difficulty determining what the nature of the settlement was and where the funds went. The request was that the board be required in certain major kinds of litigation to consider whether there should be a submission to the members of the community to decide if a settlement was acceptable.

MR. BUCKLEY:

We are working on making sure board members realize they are considered fiduciaries and exactly what that entails.

SENATOR CARLTON:

How would you go about gaining the authorization of the unit owners? We have been hearing all morning how difficult it is to get owners to vote.

CHAIR SCHNEIDER:

I would imagine the information could be posted and then presented at an open meeting.

MR. YOUNG:

The idea was to put some mechanism in statute whereby the association would first notify the residents of the settlement. That could be separate from ratification. The constituent who notified us of the incident mentioned above was primarily concerned that there was no notice given to the members that the suit had been settled.

MR. BUCKLEY:

This information would also be picked up by the financial audits required by this bill.

MR. TRUDELL:

We have been to court several times and been asked by an arbitrator to settle on the spot. This is not compatible with getting the membership together to approve the settlement.

MR. CROWELL:

I agree with Mr. Trudell. In addition, the Nevada Supreme Court recently declared communications with unit members are not covered by attorney-client privilege. If you are negotiating the settlement of a lawsuit, you need to be able to discuss the matter with your clients openly. If you have to worry about the other side knowing what you are telling your clients, that is a severe impediment to settling the case.

CHAIR SCHNEIDER:

There should be some sort of disclosure. I would ask the Commission to come up with regulations to require boards to disclose settlements to the community at a regular meeting and in the newsletter. It needs to be made public rather than buried.

The second amendment is under NRS 116.3115, subsection 9, paragraph (d). It needs to be clarified that the 90 days for ratification begin to run from the time the board authorizes an attorney to undertake representation of the association, not from the time the civil action is filed with the court. It was also suggested that we require the association to get the consent of the owners before incurring costs for investigations, expert witnesses and other pre-filing costs. Mr. Powers, do you have an opinion on the 90 days?

MR. POWERS:

As you know, subsection 9 of NRS 116.3115 uses the term "commencement." It's presumed when the Legislature uses a term that has a definite legal meaning and an established legal meaning, it intended to use the term with that established meaning. Under the Nevada Rules of Civil Procedure, commencing a civil action occurs on the date of filing the complaint. I would interpret this statute to mean that the 90-day period for ratification begins to run after the complaint is filed and therefore the lawsuit has commenced.

MR. YOUNG:

The concern expressed by the constituent who contacted you was that if there was a significant lapse of time between the attorney being authorized by the board to commence the suit and the actual filing of the suit, it might be months before the issue was brought up for ratification by the association. The concern was that if the issue under dispute was one threatening the health, safety or

welfare of the homeowners, the time before the matter could be resolved should not be extended.

MR. CROWELL:

If counsel is retained to file suit, you want them to do so relatively soon. However, there are many factors that might indicate a lapse of time. For example, we now have a right-to-repair timeline. There are many legitimate and necessary matters that can delay the filing of a lawsuit. Neither the client nor the attorney should be penalized for taking due care before filing a lawsuit. I have not seen the language of this amendment.

MR. YOUNG:

No language has been prepared. It is still a concept at this stage.

MR. CROWELL:

I would also like to comment on the cost of investigations and expert witnesses. There is nothing wrong with disclosing this information to owners, except it is not covered by attorney-client privilege. Doing this is arming your opponent. It is not a fair, level playing field for unit owners or common-interest communities.

CHAIR SCHNEIDER:

Staff, please draft language on this matter so we can discuss it more completely.

The third amendment would prohibit executive board members from voting on matters in which they have a direct interest.

MR. BUCKLEY:

There is a statute, NRS 116.31187, that prohibits board members from accepting "any commission, personal profit or compensation of any kind from the association for providing goods or services to the association."

MR. YOUNG:

The incident that led to this request involved several board members who voted not to divest the association of property in which they had a financial interest. However, A.B. 290 addresses this issue as well.

[ASSEMBLY BILL 290](#): Makes various changes to provisions relating to common-interest communities. (BDR 10-951)

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CHAIR SCHNEIDER:
We will leave this matter to A.B. 290.

MR. BUCKLEY:
The Commission has tried to deal with this matter in regulation.

CHAIR SCHNEIDER:
The next amendment prevents a master association from paying the salary of the member of a subassociation.

MR. YOUNG:
This was triggered by a concern there would be attempts to circumvent the statutes on interest by having the remuneration come through the master association.

MR. BUCKLEY:
This might be better handled through regulation by the Commission.

CHAIR SCHNEIDER:
We will let the Commission look at this.

My last amendment would require the board to open bids for association projects at a regular noticed meeting of the association.

MR. BUCKLEY:
We discussed all these issues at the Commission, and there were many objections to this proposal.

MR. YOUNG:
This matter is also covered by A.B. 290.

CHAIR SCHNEIDER:
I was asked to find out when the regulations adopted as an emergency measure are going to be presented to the Governor and put into effect.

MR. BUCKLEY:
We met with Keith Monroe, who is the attorney for the Governor, and were told to check with the LCB. We are hoping to see final regulations from the LCB by Wednesday; if not, we will do emergency regulations.

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I have written testimony regarding S.B. 258 from Ms. O'Donnell ([Exhibit K](#)) and regarding S.B. 325 from Ellen Rosenbaum ([Exhibit L](#)) for the record.

SENATE BILL 258: Makes various changes to provisions relating to common-interest communities. (BDR 10-12)

CHAIR SCHNEIDER:

We will close the hearing on S.B. 325 and open the hearing on S.B. 153.

SENATE BILL 153: Prohibits community manager who imposes fine against certain persons from soliciting or accepting any percentage of fine or any fee for collecting fine. (BDR 10-830)

MR. KAPLINSKY:

I have an amendment to offer ([Exhibit M](#)).

SENATOR CARLTON:

Has this been given to Senator Hardy?

MR. KAPLINSKY:

Yes.

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CHAIR SCHNEIDER:

We will defer discussion on this bill for the next meeting of the subcommittee.
This meeting is adjourned at 6:21 p.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Michael Schneider, Chair

DATE: _____