MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
May 16, 2005

The Committee on Judiciary was called to order at 8:29 a.m., on Monday, May 16, 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
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mr. John Oceguera (excused)

GUEST LEGISLATORS PRESENT:

Senator Michael Schneider, Clark County Senatorial District No. 11

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst

Carole Snider, Committee Attaché

OTHERS PRESENT:

Judge Barbara K. Finley, Justice of the Peace, Reno Justice Court, Reno, Nevada
John Berkich, Assistant County Manager, Washoe County, Nevada
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada
Michael E. Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry, State of Nevada
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry, State of Nevada
Robert Maddox, Legislative Advocate, representing the Nevada Trial Lawyers Association and Community Associations Institute
Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association and the City of Henderson, Nevada
Pamela Scott, General Manager, Community Association Management, The Howard Hughes Corporation, Las Vegas, Nevada
Karen D. Dennison, Legislative Advocate, representing Lake at Las Vegas Joint Venture
Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada
David Stone, President, Nevada Association Services, Las Vegas, Nevada
Michael Trudell, Legislative Advocate, representing the Caughlin Ranch Homeowners Association
Marilyn Brainard, President, Wingfield Springs Community Association, Sparks, Nevada

Chairman Anderson:
[Called the meeting to order. Roll was called.] We're going to start with S.C.R. 21 this morning, in deference to Judge Finley.

Senate Concurrent Resolution 21: Urges Washoe County and City of Reno to study feasibility of colocating or unifying Justices' and Municipal Courts. (BDR R-1426)

Judge Barbara K. Finley, Justice of the Peace, Reno Justice Court, Reno, Nevada:
I'm here to testify on behalf of S.C.R. 21. I'm a member of the committee that was organized about a year ago to study the possibility and benefits that might be created by unifying, to some degree, the Municipal and Justice Courts in Reno.

This resolution we're requesting is to encourage that study. There's no foregone conclusion. We do have in process right now the colocation of those two courts with the Mills B. Lane Justice Center being created, which will have a joint entrance with the Reno Justice Court. The study is mainly to see what other benefits can be derived from further mingling and merging of services that might benefit the population of the area.

I do have a statement that was presented for all the members (Exhibit B). I don't want to read that, but it gives a brief history of what we're trying to do with this study.

John Berkich, Assistant County Manager, Washoe County, Nevada:
As the Judge said, we are here to present the resolution seeking your support to study and work with our working committee. As opportunities present themselves, we would return in 2007 with enabling legislation to further unify the court, if that's the desire of the Committee.

Chairman Anderson:
One of the issues that always concerns me with this particular question is the potential loss of identity for smaller communities, like the Verdi Justice Court's disappearance. That will mean that township no longer has a county elected official, other than a county commissioner.

John Berkich:
That's correct, Mr. Chairman. The Verdi court will be closing at the end of this month, effective June 1. The Verdi court will be incorporated as part of the Reno Justice Court, so that is underway.

Chairman Anderson:
Has there been a historical study relative to the loss of these JPs [justices of the peace]? It's the first one I can think of in more recent times. Historically, there must have been other justice courts that had to be evolved into the county. Where will those folks go?

John Berkich:
In the case of Verdi, anyone having any continuing cases with them would transition to the Reno Justice Court. I remind you that Gerlach was incorporated with Wadsworth; that happened in 2004, and again, you see the consolidation within the court system to provide, hopefully, a better level of service to the community.

Chairman Anderson:
That was done by the county commission by changing the township size?

John Berkich:
Correct, sir.

Chairman Anderson:
Which is the usual way that it's accomplished?

John Berkich:
Correct.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada:
I am here asking for your support of this resolution, to allow us to proceed at a local level to look at the feasibility of consolidation. The City of Reno has been working with its neighboring jurisdictions for a number of years in looking at consolidation from a functional, as well as a complete, level. This was one that received quite a bit of interest, not only from the elected officials, the city councils, and the county commission, but also from the elected judges. We've been directed by them to proceed if this Body chooses to allow us to do that.

The City of Sparks is not represented here today. However, they have indicated that they would reserve the right to participate at a future time if they believed this would be something that would benefit their residents. They have expressed an interest in colocation—not exactly unification, but they did express their right to monitor the study to see how it goes along. We certainly are not here to speak on their behalf, but to indicate what they've expressed their level of interest in the past as being.

Chairman Anderson:
They've been talking about having the same physical location for the Sparks Justice Court and the Sparks Municipal Court since before I began running for the Legislature 16 years ago. I was under the impression that they were going to do that. That was the reason the county freed up the building

where the old court was and moved it to the shopping center, with the hope that they were going to relocate. Is that still in the works?

John Berkich:
Currently, the county is working with the City of Sparks on property along Pyramid Highway. We're very hopeful there will be adequate property owned by the BLM [U.S. Bureau of Land Management] that can be acquired by the county, which would not only provide space for a new Justice Court for the City of Sparks, but also future land for the possibility of relocating the Municipal Court at some time in the future.

Chairman Anderson:
They've given up the idea of the 17th Street location?

John Berkich:
Yes, they have, with the different master plans for the city.

Chairman Anderson:
Are there any questions from the Committee? Is there anyone else wishing to speak on S.C.R. 21? We'll close the hearing on S.C.R. 21.

> ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO ADOPT S.C.R. 21.
>
> ASSEMBLYWOMAN ANGLE SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Buckley, Assemblyman Carpenter, Assemblyman Horne, and Assemblyman Oceguera were not present for the vote.)

Chairman Anderson:
Let's open the hearing on S.B. 325, and we'll proceed.

Senate Bill 325 (1st Reprint): Makes various changes concerning common-interest communities. (BDR 10-20)

Michael E. Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry, State of Nevada:
[Exhibit C and Exhibit D were distributed by staff.] Our Commission was created by S.B. 100 of the 72nd Legislative Session. There are five commissioners, and we were appointed at the end of 2003. There's a homeowner representative, Jan Porter from Clark County; a developer representative, Shari O'Donnell from Signature Homes in Las Vegas; an accountant, Diane Radunz from Las Vegas; a manager, Karen Brigg from Washoe County; and myself, the attorney representative.

We're funded by the $3 per door that every unit in this state pays that is registered with the Real Estate Division. Our main functions are:

- We provide for the licensing and standards of practice for community association managers, the people who run associations.
- We investigate through the Real Estate Division and take action for people who violate NRS [*Nevada Revised Statutes*] Chapter 116.
- We maintain information about associations, recommend guidelines, and approve education requirements for common-interest communities and for association managers.

In 2004, we held about 20 meetings, basically 2 days a month. Those were all public hearings. Most of them were televised, and all but one were in Las Vegas. We did have a meeting for 2 days in Carson City. All were televised and open to the public. Presently a manager must be either licensed by the Common-Interest Community Commission under Chapter 116 or by the Real Estate Commission under Chapter 645. We held a joint meeting with the Real Estate Commission and, as a result, determined that a manager should be licensed under Chapter 116.

One of the things we spent the most time on was regulations. We started from scratch. We had a lot of input on standards of practice for managers regarding what must be a management contract and what reserve studies should be about. We had to create hearing rules. We submitted our regulations in June; we didn't finally get them until December. We had two workshops—one in Carson City, and one in Las Vegas. We finally had our regulations approved, and tomorrow in Las Vegas will be our first hearing on a disciplinary matter before the Commission.

In the course of these proceedings, we came up with legislative proposals that were proposed to the Commission. We're still a working body. We're going into

our hearings, and it's going to be interesting to see what happens and to see the effectiveness of the Commission.

Chairman Anderson:
The testimony on the outside from other participants was such that they had good participation at most of your meetings?

Michael Buckley:
Mr. Chairman, we had excellent participation. We have a core group of homeowners who show up at the meetings. We have had managers appear. We've had people who conduct reserve studies. One of the proposals that we have deals with auditing. We had a CPA [certified public accountant] who does, apparently, most of the audits in Las Vegas. I felt we had very good participation.

Chairman Anderson:
And from residents of the common-interest communities, did they have access and seem to utilize it?

Michael Buckley:
They do, Mr. Chairman. At the end of our hearings, we have a period for public comment. I think most comments from people who attended have been very favorable toward the Commission as a body who can hear them and go forward with proposals.

Chairman Anderson:
You have no adjudication responsibilities? You don't solve homeowners' problems in those common-interest communities?

Michael Buckley:
There are two main areas we deal with. One is a licensing area, where a person who manages common-interest communities must be licensed. One of the main areas of the Commission is to set standards of practice and discipline people who are unlicensed.

The other thing is what we call an intervention process. When you believe that your association is violating the law—and it could be a developer, it could be a board member, it could be the association itself, it could be a manager, or anybody who violates Chapter 116—you would file a complaint with the Real Estate Division. The Real Estate Division would investigate that, and if they believed there was a violation, they are empowered to bring a complaint before the Commission against the violator.

[Michael Buckley, continued.] I'm looking at a mockup proposed amendment to S.B. 325. I believe that's what the members distributed.

Chairman Anderson:
That's been distributed.

Michael Buckley:
That is Commissioner Radunz's (Exhibit D). It is a great six-page document about auditing and different kinds of financial statements. I won't go into that in detail.

I will tell you a brief history of this bill. This bill was introduced in the Senate. The first day it was heard there was a working group of interested people who participated. There were several hours of meetings outside the Senate, and then there were several hours of meetings with a Senate subcommittee. Involved in the preparation of this bill were property managers, realtors, trial lawyers, the Real Estate Division, Clark County, Southern Nevada Water Authority, and members of the Commission. We've talked to the Secretary of State and developers, so there's been a large group that has gone into this.

Chairman Anderson:
Let me mention to the members of the Committee that this is a bill we carried over from a previous hearing and rescheduled. At that time, we handed out to you a document that I believe broke up the bill into its multiple sections, so there was a section-by-section discussion of the bill as it originally came over. The mockup changes it a little bit, but not dramatically.

Michael Buckley:
I'll follow this mockup (Exhibit C); the first two sections are technical. Sections 3 through 12 are new definitions. On Sections 3 through 12, the Legislative Counsel Bureau has decided that there should be a separate chapter, perhaps Chapter 116A, that deals with people who perform functions—managers, basically. So, a lot of these sections are moving over.

Chairman Anderson:
I see the chief sponsor has arrived. Senator Schneider, did you want to join or did you wish to hang back? He has explained the Commission, its purpose, and that this is a product of the Commission, predominantly.

Senator Michael Schneider, Clark County Senatorial District No. 11:
I'll allow Mr. Buckley to do his presentation. Let me point out there are a couple of things we put in—for instance, artificial turf. A lot of associations in Las Vegas, even in the middle of this extended drought we're in, were denying

artificial turf to be put in. As of right now, Mr. [Steve] Wynn, who opened his new hotel, is using artificial turf along Twain Avenue and Las Vegas Boulevard. There is high-quality artificial turf; that's one thing we put in, and we had a lot of complaints about that over the interim.

[Senator Schneider, continued.] I will have an amendment that I'll bring forth later in the morning, if that's okay, Mr. Chairman.

Chairman Anderson:
Is it a conditional amendment?

Senator Schneider:
It's an amendment that's on another bill I have, S.B. 323, that is currently in another committee in the Assembly. It can stay in S.B. 323, but I wanted to show it to you so you're aware of it.

Michael Buckley:
As I said, Sections 3 through 12 are already in existing law. They are being moved over and copied into a new chapter. Sections 13 and 14 came from the Commission. The proposal is that a person who does reserve studies should hold a permit. The effective date of any licensing requirement is not going to be until 2007.

Section 15 is an existing section. It's administrative language for the Real Estate Division. It's the same with Section 16; it's an existing statute moved over into this new section. Section 17 is administrative for the Real Estate Division and would be also in Chapter 116. All of these sections are in this new chapter. Section 18 is copying over the procedure from existing Chapter 116 into this new Chapter 116A, the same with Sections 19, 20 and 21.

Chairman Anderson:
Did you say that was also true for Sections 16 and 17?

Michael Buckley:
Yes, Mr. Chairman.

Chairman Anderson:
And Section 15 was new?

Michael Buckley:
No, Section 15 is existing law. Section 15 is the same as NRS 116.615.

Chairman Anderson:
Sections 15, 16, 17, 18, 19, 20, and 21 are all existing law, then.

Michael Buckley:
Correct, and also Section 22 as well.

Section 23 is existing law. This is copied over in the new chapter, and it's the same as NRS 116.700. Section 24 is NRS 116.705, again, moving over to this new chapter. Sections 25 and 26 are new. These are the sections that would require reserve study specialists to be licensed. The proposal here would not be effective until 2007.

Assemblyman Conklin:
Is it your intention to take questions by sections since we're going through the bill, or would you prefer that we wait?

Chairman Anderson:
Mr. Buckley, do you have a preference? Are you using the document that we handed out when we were originally going to hear the bill, Mr. Conklin?

Assemblyman Conklin:
Mr. Chairman, I'm working off the mockup. I just had some questions.

Chairman Anderson:
I note that in the document we were working from, there are certain sections that move together. For example, permits for reserve study specialists are in Sections 25, 26, 27, 28, and 29. Is that where your questions are? Okay, let's stop here then. Community managers were Sections 23 and 24—and general commission administrative procedures—and Sections 13 and 14 were permits for conducting reserve studies. You can't very well talk about reserves without talking about those also. Mr. Conklin, do you have a question about Sections 25 or 26?

Assemblyman Conklin:
Mr. Chairman, my question is about reserve studies in general. After reviewing the amendment and the bill, I'm concerned that there's an area, with respect to reserve studies, that is not addressed. If you prefer, I can hold that question.

Chairman Anderson:
I think it is the same question you and I had a discussion about before, which is one of the issues to be developed before we move forward with the bill. Mr. Buckley, we'll let you continue on to get through the basis of the bill, then maybe come back to that.

Michael Buckley:
I think I was on Sections 27, 28, and 29, and they are existing law dealing with child support. Section 30 is existing law; it's the same as NRS 116.660. Section 31 was a change in the mockup from the first reprint. As I read it, it's the Legislative Counsel fine-tuning the language dealing with payment of witnesses who have to come before the Commission. Section 32 deals with hearing panels. That is the same as existing law under NRS 116.675.

Section 33 deals with audio and videoconference. Again, it already exists in Chapter 116, and it's being moved over to this new chapter. Section 34 is existing law under NRS 116.725; it's moved over into this new chapter. Section 35 is existing law moved over, and it's the same as NRS 116.795. Section 36 is just a technical section. This is where we stop the new chapter, and beginning at Section 36, these are changes to existing law. Everything before is this new chapter, dealing with managers and reserve study specialists.

Section 37 is a new definition of "major common area," a major component of the common elements, which is a term used in connection with reserve studies. Sections 38 and 39 of the first reprint have been deleted in this mockup, and this was as a result of a telephone conference and some suggestions from Clark County. After further discussion, they were taken out with the permission of Clark County.

Section 40 is a new section. This section came about as a result of this working group, where new ideas were solicited. This section says that if you have a declaration that requires more than a majority to amend, and you can get a majority to approve it, you can go to court and the court can approve the amendment if it's reasonable. There are very specific procedures. It's a way to help associations amend their declaration where a supermajority is required.

Section 41 is the section that Senator Schneider mentioned. This is dealing with drought-tolerant landscaping. The basic idea is that the drought-tolerant landscaping is to be permitted. It has to be done in an architecturally and aesthetically compatible area with the community. There are other sections in NRS 116 where specific types of improvements are required, and this is modeled after the same. It permits drought-tolerant landscaping to be installed. It also states that it is not a change of use for an association to change from turf to drought-tolerant landscaping, such as would require approval of the members, or an amendment of the declaration. It is intended to encourage drought-tolerant landscaping.

Section 42 deals with rentals. This is a new section. I believe this came through the working group, rather than the Commission. The idea here is that

associations don't approve tenants. On the other hand, the governing documents control rentals. Sections 43 and 44 come from the Commission. Section 43 is to give the Commission authority to prescribe financial statements and what needs to go in with them.

[Michael Buckley, continued.] Read Commissioner Radunz's comments; one of the things that the Commission learned was that the language in the NRS didn't reflect correct accounting terms. The Commission wants to do that. There is a guide for common-interest community associations prepared by the AICPA [American Institute of Certified Public Accountants]. That's the bible for accountants, and it's the Commission's intent to follow the terminology used by the accountants.

Section 44 comes from the Commission. The Commission recommended that all associations be audited. As a result of the working group, we split it into three different groups. If the budget is less than $75,000, the financial statement has to be audited once every four years. If the budget is between $75,000 and $150,000, the financial statement has to be reviewed every year and audited every four years. If the budget is $150,000, the association has to have its financials audited.

What Commissioner Radunz pointed out last week at our Commission hearing was—and she prefaced her remarks by saying that if she were to be audited, she would face some criticism—that she found $64 million of association budgets or fees, based on the records with the Real Estate Division. Those are fees that are being paid by homeowners. At the $150,000 level, that would capture 74 percent of all associations, and they would have to be audited. The Commission heartily supports auditing of associations.

Section 45 came from the working group. Apparently, some associations are attempting to regulate traffic on public streets through their neighborhoods, and this is an effort to stop that. Section 46 is to prohibit an association from stopping political signs during an election period. It's modeled after an existing statute in mobile home parks. Section 47 is a technical change, and for many years, those of us in the working group have tried to get this changed. Existing statute dealing with assessments also deals with lawsuits. We have wanted to have a separate section for assessments and a separate section for lawsuits, so everybody knows where to go. Section 47 moves existing law into a new statute. Mr. [Robert] Maddox has a clarification on this provision, which I can either give you now, or I can wait until Mr. Maddox brings it up.

In the mockup (Exhibit C), there are two new sections: Sections 47.3 and 47.6. These are basically the same as what appeared earlier. They're dealing with

witnesses who appear before the Commission and the public or confidential records of the Commission. Section 48 is a technical change referring to statute. Section 49 is also a technical change to pick up new language. Section 50 incorporates the concept that the Commission has the authority to prepare regulations dealing with financial statements.

[Michael Buckley, continued.] Section 51 is really a technical amendment. The main thought in Section 51 is that, because an association can be of various kinds of entities, there's different terminology for its articles or its certificate of limited partnership and different things. That's really a technical change. Section 52 is the Clark County provision dealing with townhomes to make it clear that, within Chapter 116, building codes can discriminate against different kinds of products.

Section 53 is a technical change. Section 54 comes from the Commission. The Commission heard testimony from people who live in exempt associations. Mostly, these are called "landscape maintenance associations," where the city or the county requires block walls or something similar. The Commission believes that if you live in an exempt association, your house can still be foreclosed on, because you still have reserves and budgets. Those associations do use the ombudsman, so they should also be subject to NRS 116 in a limited way, and there are three sections we believe should apply. Those dealt with reserves, when the declarant turns over to the association, and how the budget is prepared.

Section 55 is a technical change. Section 56 is also a technical change, recognizing the different types of entities that an association can be. Section 57 came from some of the managers who were concerned—at the top of page 18—that somebody could have their car towed without proper notice. The intent was to give proper notice.

Section 58 shows a deletion, but this deleted part was moved into Section 67, so all the budget sections were in one section. Section 59 deals with an omission a couple of years ago in the legislation with different kinds of fines. The intent here was to pick up fines that affect health, safety, and welfare, as well as other types of fines. Section 60 has two clarifications that came through the working group and also the Senate subcommittee. One is that, unless the governing documents otherwise provide, members of the board don't have to be owners. Also, there is language dealing with what is the definition of "good standing." Usually associations don't allow you to vote if you're not in good standing, and that's usually in the governing documents.

[Michael Buckley, continued.] Section 61 started out as a technical change through the Commission. It wasn't quite clear about the percentage to remove a board member. Through the working group, it was finally determined that 35 percent of the total voting members could remove a board member, provided that more people voted to remove than to retain. Section 62 comes from the Common-Interest Community Commission and deals with a turnover buy. When the board becomes run by the owners, the Commission wanted to require an audited financial statement when the developer turns things over.

Section 63 started out as a technical change with the Commission. The whole intent with this language is to clarify when you call a special meeting and what happens. The statutes were vague on that. Subsection 11 of Section 63 also makes it clear that at the annual meeting, there doesn't have to be a quorum to approve the minutes.

Section 64 came from the Commission. It is attempting to have the language of what the board has to look at every 90 days be consistent with proper accounting terminology. Section 65 deals with the right of a person who is fined to request an open meeting. Section 66 is the provision I mentioned above, where the language on lawsuits is taken out of this section and put into a new section. Then there are some technical changes.

Section 67 is the language I mentioned above. We moved subsection 3 from another statute into this section, so all the budget language is in one place. Section 68 deals with reserve studies and the board's obligations. One of the new provisions in the mockup (Exhibit C) is an attempt to address how the association is to fund these reserves. The reserve study will come up with an amount, and Section 68 deals with how you fund that. The thought is that the board can come up with a funding plan that may be over a period of years, rather than immediate.

Section 69 came primarily through the Real Estate Division. They had asked that, with the Commission's support, if there's a master association, that the master association be responsible for paying the ombudsman's fees for all of its subassociations. Regarding Section 70, we've had a lot of discussions about foreclosure. The problem we see at the Commission is not having enough information on foreclosures, but also always thinking of ways to give greater protection for foreclosures. In this statute, we strengthened the warnings in the hope that would bring home the fact that if you have a foreclosure notice, it's a very serious thing you have to address.

Section 71 is a technical change. Section 72 deals with foreclosures. We've added another idea here. In addition to mailing the notice to the owner and also

to the unit, we're now going to suggest that notice be posted on the property. The language originally came from how you evict somebody, to make sure that whoever is living there knows that something serious is happening. Again, we've strengthened the warnings.

[Michael Buckley, continued.] Section 73 is to make sure that the ombudsman gets a copy of the deed if there ever is a foreclosure. Section 74, you'll notice in the mockup (Exhibit C), has no change. Section 75 deals with the public offering statement, again picking up accounting terminology. There was a lot of discussion on Section 76. We had a lot of input from the realtors on this, and there's been a lot of give-and-take. The intent in Section 76 is to clarify how, when you—as an owner—sell your home in an association, you are responsible for giving information to the purchaser. There were associations who were concerned that the buyers weren't getting the whole package the association was preparing. There was concern from the realtors that there were overcharges, so the attempt is to come up with a better procedure for putting together a resale package.

Section 77 is the statutory warning; when you buy into a common-interest community, there is a description of things that can happen to you. There are assessments, there is majority rule, there are restrictions on your property, and so forth. It's cleanup language to mention some of the changes being made by this law. Section 78 is a technical change. Section 79 is a Real Estate Division technical administrative change. Section 79.5 is a technical language change or reference. Section 80 deals with the ability of the ombudsman to investigate people who prepare reserve studies; that's consistent with the ombudsman's duties for managers.

Section 81 came from the Commission. When the intervention process was originally put into statute, there was a requirement for two notices, with the hopes that people would try and work things out before they came to the Commission. The Division staff has found that sometimes homeowners get caught up, and it becomes very technical. We're saying you have to have one notice before you're able to go to the Division for the intervention process.

Section 82 deals with remedies that the Commission can order. There's a new remedy ordered, and that is permitted. The Commission would have the power to go to the court and obtain a receiver. The new language on Section 44 is modeled after similar language in Chapter 78, dealing with a receiver for a corporation. Section 82.5 is Legislative Counsel language clarifying the remedies and what happens if the Commission goes to court.

[Michael Buckley, continued.] Sections 83 through 98 all deal with corporate limited partnerships and limited liability companies, statutes that are administered by the Secretary of State. Under the old law, your name had to be a unit owner's association or a homeowners' association. We've added that you can call yourself a community association, a master association, or a common-interest community, so we have a number of sections that deal with what an association calls itself.

Section 99 repeals sections in NRS 116 that are going into the new chapter. Section 100 is the transition section. We had a meeting with the Real Estate Commission, and it was determined that the Common-Interest Community Commission is the best place to license and supervise community association managers, so Section 100 is going to deal with how you transition if you are a permit holder under Chapter 645. It provides for you to take a test into Chapter 116. Section 101 is the effective dates.

Assemblyman Conklin:
Mr. Buckley, several people have come to me over the past couple of weeks, concerned about condo conversions, reserve studies, and reserves left in condo conversions. Let's say that you take a 20-year-old apartment complex and turn it into a condo. If the reserve study is not done adequately or, for whatever reason, the builder does not leave an appropriate amount of reserves in the account, after a person buys what they believe will be an affordable home, something falls apart. Remember that some of the buildings are 20 years old, so they're stuck with an association fee increase to cover the cost of what may need to be done now.

It's my understanding that this has actually happened in a couple of cases, and I'm curious what it is that the board is doing, or is there work that needs to be done in this particular area? It has nothing to do with reserves in large common-interest communities where people have townhomes and such. It's specific to condo conversions.

Michael Buckley:
Mr. Conklin, the statute requires a reserve study for every association. If it's going to be a condominium, it must have a reserve study. There's also a requirement in the law, in the case of a condominium conversion, that there be a study by a registered architect or engineer on the status of the property.

From the Commission's point of view and the Division, neither of us reviews reserve studies. I think that was the Commission's idea. We can have a regulation about what has to be in a reserve study, but one thing missing is that we thought if we approve the people who prepare reserve studies, we can do

that because our job is to be a place for people who violate the law. We don't look at reserve studies, per se; we would only look at it if there was a violation. I think our hope is that, by having licensed people prepare reserve studies, there would be proper reserve studies.

Assemblyman Conklin:
It's my understanding that a reserve study is basically a study of wear-down over time. If you have a new home or new community, you are amortizing how long you expect until things break down. The builder funds to a certain level—and I'm going to use the term "relatively small" in this case—because most everything is new. If something breaks down, it's usually from faulty design or build. You wouldn't expect the roads, the sidewalks, or the roofs to wear down early in the community, once all of the units are sold and people are funding the reserves on their own.

In the condo situation, you would expect that initial reserve to be much larger, because you have a much older structure. Is that correct?

Michael Buckley:
I should preface this by saying that the fact that I'm appearing here does not mean that I'm the expert. I'm the lawyer member, and there are people who know a lot more about this than I do. I would add that if you had a conversion, you would have things that are old and are probably going to wear out sooner.

Assemblyman Conklin:
Let me back up. From what you said earlier, you would hope that people are following the law. That leads me to believe that there's an opportunity for those who might not be. The attorneys are contacting me saying, "We're in for a lot of civil litigation here, because there are no reserves, and people in the second month are being asked to pay an additional $1,000." This is very problematic, something this Legislature needs to address.

Michael Buckley:
In California, when you have an association, you have to have your documents and finances approved by the Real Estate Division. We don't do that in Nevada, and that would be a whole level of bureaucracy and cost that our system is not set up to do. Unless somebody from the Real Estate Division approved it or looked it over, I don't know how you would catch that. You would need to fund people to do that.

Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry, State of Nevada:
The Real Estate Division does have a project section that requires review and registration for projects. I will do more research, follow up, and get back through the Chairman to you on what our requirements are for what you're addressing. I can do that within a day or two; preferably, I'll try and do that today.

Chairman Anderson:
Mr. Buckley and Ms. Anderson, let's make sure we all understand what our concern is here. We've not empowered anybody—either the Commission or the Real Estate Division—to follow up on the amount of money that's in the reserve and the common-interest communities that's sufficient enough to cover the actual costs of replacing pieces that you know are going to wear out, such as the roof, the shingling, the carpeting in common areas, even the asphalt, which has to be resurfaced on a regular basis. That kind of wear and tear on an older structure that is converted from an apartment complex and now becomes a common-interest community, when it sells, what kind of liability comes to the common-interest community that should have been taken care of by the original owner, but was not? That becomes now the responsibility of the common-interest group. How large the reserve is may make a huge difference in terms of the cost, if there was adequate assessment placed on the units in the first place. Maybe that's the reason they're selling it, because they can't afford to do the upgrades to bring it back up to code. Is that what we're trying to get at, Mr. Conklin?

Assemblyman Conklin:
Mr. Chairman, I believe that you understand it as well as I do. That sounds close to my interpretation. I would add one thing that makes it most disturbing to me. Condo conversions are the only affordable housing being offered in southern Nevada right now. It's not quite so affordable if you move in today and you can afford the payment, and you get slapped a month later with a substantial charge for something that should have been covered in reserves. That's my concern.

Michael Buckley:
I would say that the Commission would be after the fact there, and I think it would probably need to go through some aspect of the sales procedure, through the Real Estate Division.

Chairman Anderson:
Ms. Anderson, do you see where we're coming from? We have red-flagged the financial readiness and the need for the financial investigation as to impound

balances, because on the other hand, we don't want people to be overassessed. I don't think you can anticipate the increased cost of goods in the future. You don't want to leave them holding the sack here, having bought a poor thing. Does the Real Estate Division have a plan about this? It's a difficult spot for the Real Estate Division, a new area.

Gail Anderson:
It is a new area, but I will excuse myself while you continue your discussion and make a phone call to see if I can get information from my projects chief. I know we're dealing with the new condominium developments, but I'm not sure if the conversions come through our section or not. I would like to find that out, to see what kind of a hole we may have here.

Assemblyman Carpenter:
I notice in the repeal section that there's one to do with the meetings of rural, agricultural, residential common-interest communities, in compliance with the Open Meeting Law. Was that put back in somewhere?

Michael Buckley:
Mr. Carpenter, the provisions dealing with that are in the limited exemption section, which I think is Section 54 where it's identified. I think the Commission would defer to Assemblyman Carpenter's knowledge of rural agricultural associations. We haven't seen one at the Commission. We thought all associations that charge fees should be registered and should comply with the budgeting. They're not complying with the Open Meeting Law; that is not in there. I don't think the Commission would have an objection if you wanted to put that back in. If they're subject to Chapter 116, there are a lot of notice requirements, but not to the extent of the Open Meeting Law.

Chairman Anderson:
Let me make sure I understand. The Open Meeting Law does not have to be followed by common-interest communities?

Michael Buckley:
Present law, Mr. Chairman, is that there are extensive notice requirements for associations that are similar to, but not the same as, the Open Meeting Law. The one exception is that rural agricultural associations do have to comply with the Open Meeting Law.

Assemblyman Carpenter:
If you remember all the problems we had to finally get that in, it absolutely has to be in. If not, they're not going to comply with the Open Meeting Law. It has to be there, so they're required to comply with the Open Meeting Law.

Chairman Anderson:
The other parts of the repealed sections will appear somewhere else. Payment of child support, statements, and applications are in NRS 116.710?

Michael Buckley:
Those are moved to the new Chapter 116A.

Chairman Anderson:
Everything else is moved to some other section except for the one dealing with the agricultural?

Michael Buckley:
That's correct. The Open Meeting Law did not go back in, but as I said, we have no problem with that.

Chairman Anderson:
If we're going to move the bill, we'll make sure that's back in.

Assemblyman Manendo:
My question is in regard to Section 46, on political signs. For clarification, some common-interest communities have condos and townhomes. Would this permit somebody to put a sign in their window, instead of their front yard, because they don't have one? I just want to make sure, because we hear this all the time. "I don't have a yard to put in a sign, and my association won't let me put a sign in the window." I want to make sure that this permits the condo or someone in a townhome who does not have their own yard, if they're in a housing development in a common-interest community, to be able to post a political sign.

Michael Buckley:
As I read that, it says "in a physical portion," and that's your unit.

Chairman Anderson:
I note that the size of the sign is 24 by 36, so you don't get to put up one of your big road signs.

Assemblyman Manendo:
I was wondering how they came up with 15 days prior to the early voting, where that time frame came in. Why is it 15 days?

Michael Buckley:
I believe that was some association who did it that way. We were sitting in a group of 20 people, and someone suggested it, and that seemed to make sense to everybody.

Assemblyman Manendo:
I just wondered, because in districts that have a lot of gated communities, trying to put up all your signs—I have a few, so I'm not speaking just for me—I know would be difficult. I don't know how the constitutionality part would play into that, if you're allowed to put up signs once you file for office. I think we need to review that section more.

I know somebody who got a notice for having a sign in their window, and the association said that you're only allowed to have one sign. What they did was put a bumper sticker on the sign. They were promoting a ballot question and a candidate, so they got a notice saying they had to take it down or remove the bumper sticker from the sign. I wanted to see if you had any comments on that.

Michael Buckley:
This was not a Commission section; they came with the working group, and I think those of us on the Commission didn't have a problem with it.

Chairman Anderson:
I guess we see the problem during the presidential campaigns and United States Senate campaigns, State Senator and State Assemblyman, and four or five property issues; you could clearly cover every window in the building. On the other hand, how do you limit somebody's opportunity to speak? It is a freedom of expression issue.

Assemblyman Carpenter:
On page 15 of the mockup (Exhibit C), I need an explanation of exactly how it applies to these rural agricultural residential communities.

Michael Buckley:
Right now, the listed landscape maintenance association, flood control districts, and rural residential agricultural associations are completely exempt from Chapter 116, with the exception of the Open Meeting Law for rural residential associations. The Commission believes that if you are in a common-interest community or an association where the association can put a lien on your property, they should have to follow the procedures dealing with associations. Those include preparing the budget, having reserves, and how you notify homeowners if you sell your property. The idea here is to bring them into Chapter 116 in a limited way because of these things.

Assemblyman Carpenter:
Would they be allowed to have input as these regulations are being adopted?

Michael Buckley:
Yes, Assemblyman Carpenter. Anytime that the Commission has a hearing, we welcome input. The problem is that we don't get into the rural areas very much. We did have meetings here in Carson City. We certainly would welcome comment from anybody, if it could be done by video.

Assemblyman Carpenter:
I think the main thing is that they're notified if you're going to consider regulations that would pertain to them or have an effect on them.

Michael Buckley:
As I said, we haven't had any input from rural residential agricultural associations, so our aim hasn't been to affect them other than our general idea that if an association can foreclose, they ought to be subject to subprovisions in Chapter 116.

Assemblyman Carpenter:
I think I agree with that. We need to make sure that's part of the process.

Chairman Anderson:
If I look at Section 41, where they talk about drought-tolerant landscaping, it says that it shall not be deemed changed for use unless it has been installed in the common areas, such as a park, open space, or a golf course. I can envision that here you are, you choose this common-interest community to move into out of several choices, because of the amenities. Among them, it may be a walking path and other kinds of areas; because of continuing drought, that amenity is no longer going to be present. You'd want to know, because one of the reasons for the value of the property you purchased was that it was based upon the amenities that were there. You want to make sure that it doesn't change its style.

When I think about a rug, I think of landscaping all these patches of grass. Obviously, it's not like the rug that would go on the top of my head to cover my baldness. But seeing ones that have gone into some of these places, I'm not too sure there is much difference. They're pretty patchy looking. I'm concerned that people will be upset when you take out what was quality landscaping because those have to be replaced; I imagine that, in the southern Nevada climate with that heavy heat, things have to be replaced on a relatively regular basis. Does Section 41 give the homeowners' association carte blanche to do whatever it wants with drought-tolerant landscaping without public notice?

Michael Buckley:
If it were to be decided by the board, the board would have to take action at a board meeting, and those meetings are noticed to the homeowners. I think the discussion we're having now highlights something that the Commission has seen. I think we're all aware, but forget from time to time, that homeowners' associations are so different—not just in size, but in location. This section came from Clark County, and I think the working group tried to work hard on the thought that Clark County can't be a model for everywhere, because there are different feels in different parts of the state. This says you can have drought-tolerant landscaping if it's in compliance with the architectural guidelines, and the board has the power to change, which the board probably already had. We're not changing the law. We're just recognizing that this is something important nowadays.

Chairman Anderson:
Let me move to my second question, which deals with Section 42, prohibiting requiring unit owners to obtain association permission to rent the unit. However, an association may enforce provisions regarding rental and governing document under existing law. One of the questions that has come before us, Mr. Buckley, is, how will that operate? I think there are some golf course properties in southern Nevada where people have come in for a short period of time—shorter than two or three months—and wanted to take residence. The CC&Rs [covenants, conditions, and restrictions] for those properties have precluded anything less than a month or a couple of weeks, so they're not into day-to-day, or even weekly, rental. That's going to uphold this? Section 42 doesn't say that they can't be there for a lesser time than three months.

Michael Buckley:
I think the basic thing that courts have upheld in associations is that if something is in the declaration, that's a document that's recorded. It's almost like it's written in stone. You have knowledge of that restriction when you buy in, and that's what the rule is.

Chairman Anderson:
Then we come to the association budgeting under $75,000. How were the numbers $75,000 and $150,000 reached?

Michael Buckley:
If you'll recall, the original proposal from the Commission was that every association ought to be audited. When we went into our working group, these were suggestions that everyone seemed to agree with. I believe that some of these numbers came from California.

Assemblywoman Gerhardt:
This is off the drought issue, but I'm concerned about conflict of interest. I have knowledge of a homeowners' association where several of the board members joined together and started a management company. They, with the matter of a vote, were the management company that then represented the homeowners' association. Obviously, there's self-interest there. Are we addressing, in this bill, situations like this?

Michael Buckley:
I believe that is already in the law. I'll see if I can find it for you. Remember that board members are subject to a statutory duty, a fiduciary duty, to their association. We have adopted regulations that deal with what we think fiduciary duty means. I'll see if I can find it.

Assemblywoman Gerhardt:
If it's an existing law, and you want to get back to me on it, that would be okay, rather than to take time now.

Michael Buckley:
Okay, I will. It's in Chapter 116 already. It was from last session.

Assemblywoman Gerhardt:
My question is, there's nothing new that we're doing to address this?

Michael Buckley:
Not in this law. In our regulations that we adopted, we have addressed this. Again, there is a fiduciary duty. If there is a violation of the fiduciary duty, someone can file a complaint, and the Real Estate Division would investigate that.

Robert Maddox, Legislative Advocate, representing Nevada Trial Lawyers Association and Community Associations Institute:
I don't have the section in front of me, Assemblywoman Gerhardt, but last session, there was a provision enacted that has an absolute prohibition against any contract between a member of a governing board and the association. There's another part of that section that says a member of a governing board cannot receive any benefits or anything of value in relationship to some activity between that person or a company owned by that person and the association.

Chairman Anderson:
Mr. Maddox, quite a few members are not familiar with your history in this particular area of law, so tell them who you are, where you come from, and why you've been following this particular issue.

Robert Maddox:
I'm a member of the Nevada Trial Lawyers Association, and I've been involved in legislation on behalf of that entity. I'm appearing here today on behalf of the Nevada Trial Lawyers Association. In addition, I'm a member of the Community Associations Institute Legislative Action Committee, and in that capacity, I've been working on this legislation. As an attorney, I represent homeowners' associations on a broad array of issues, including this particular topic.

Michael Buckley:
Mr. Chairman, the reference is NRS 116.31034, subsection 6(b). That says a person may not be a member of the executive board of a master association, or an officer, if the person, his spouse, his parent, or child performs the duties of a community manager for the master association.

Assemblywoman Gerhardt:
Obviously, there are violations that are going on.

Chairman Anderson:
Maybe the question is that of a master association, as compared to a smaller association. Is there a differentiation?

Michael Buckley:
Not in the law.

Assemblywoman Gerhardt:
When these violations occur, it would be appropriate to take them to the Commission?

Michael Buckley:
You would file a complaint with the ombudsman. The ombudsman's office would investigate that, and if they found a violation, they would file a complaint with the Commission.

Assemblywoman Gerhardt:
Okay, thank you.

Chairman Anderson:
Let me go back to Section 44. An email from one individual was concerned if you raised it to $180,000. I can't understand why the number $180,000, but what is the magic number by moving it forward from $75,000 to $150,000? How many associations are caught in that group?

Michael Buckley:
I'm not quite sure; I don't have those statistics in front of me. One of the things I found instructive in Commissioner Radunz's testimony (Exhibit D) is that you always hear about the cost of an audit. We had testimony before the Commission from Gary Lien, and he charges between $1,200 and $1,300 for an audit. On page 6, she said: "Based on statistics provided to the Commission by the ombudsman's office, registered associations here in Nevada range from an extreme low of 3 units to an extreme high of 8,000 units, but a simple average is approximately 223 units per association. Based on a $1,500 audit fee, the incremental cost to the unit owner would be $7 annually per unit, or 56 cents per unit, per month."

The Commission believes that the incremental cost to every owner, versus the wrongs that can go by without an audit, certainly justify that. If the Committee feels more comfortable with $180,000, that's fine. We really believe in audits.

Chairman Anderson:
Ms. Gerhardt asked my question relative to disclosure of fraud in Section 59. Regarding the commencement of civil action in Section 66, how does that change the standing where there is a major defect in new construction or a remodel?

Michael Buckley:
Mr. Chairman, Section 66, as amended by this bill, deletes all references to lawsuits. Lawsuits are now found in Section 47 on page 12. There are two amendments to Section 47 from existing law with Mr. Maddox's change, which we support. There's a new section for dealing with lawsuits that says you have to disclose the terms of settlement to your association. Also there's a new exception to sue—I believe it is subsection (c)—to enforce a contract with a vendor. Other than that, we're basically moving the law from one section to another section.

Chairman Anderson:
Mr. Buckley, did you have an opportunity to review a bill that already came through our Committee, A.B. 290, which deals with, in part, sole disclosure of the purchasing right to cancel under Section 76?

Michael Buckley:
I took a look at it, and I know that we had, in our working group, extensive discussions dealing with the resale package. It was my understanding that some of the language in Section 76 came from A.B. 290, but where we ended up was the language in Section 76.

Chairman Anderson:
I'm concerned about that, because I thought we worked out some pretty good language, particularly where condemnation proceedings had gone forward and then somebody had purchased. They're trying to clear up some of the ambiguities.

Gail Anderson:
I recently, as of last week, reviewed and approved a change to a couple of forms that are required to be provided. The Real Estate Division does require that conversion projects go through our Projects Section of the Real Estate Division. We provide criteria; many of these conversions are done not as fully registered projects or as new developments, but as exemptions, which are allowed in NRS 119. Those exemptions are for an owner/developer or for a contractor. However, even with exemptions, there are still requirements and information that is filed with the Real Estate Division and reviewed.

What we recently have amended is to add a section specifically asking, "Is this subdivision a conversion of an existing project of any kind?" And then some additional requested information: "If this is a conversion, is the developer improving, refurbishing, or renovating the property in any manner? If so, describe these improvements and the funding for such improvements in detail. If no improvements are planned, please attach a copy of what disclaimer you will be providing to the prospective purchasers."

For example, a reserve study or a similar analysis of project components would inform the prospective purchaser that the property they are buying, and the project that the property is within, will not be improved, as well as how the developer will be structuring the association budget to provide for property improvements in the future that may need to be made prior to the adequate buildup of reserves for such improvements. For example, a capital improvement or special assessment contribution might be made at the time of purchase. If the developer has not provided for this issue, please explain how the developer will be explaining to this prospective purchaser, so they will be aware of the increased possibility of special assessments in an existing and possibly aged and underimproved project.

Again, this is very new. I just reviewed this last week to begin implementing this immediately. This basically asks for disclosure to be provided in regard to what is happening. There is no inspection performed by the State as to the components or the study.

Assemblyman Conklin:
I'm aware that NRS 116.4106 provides for public statement or disclosure, even on converted buildings or common-interest communities containing converted buildings. I'll share with you an email; I won't disclose who it's from. It says, "Reserve funding needs to be clarified. In new developments, the declarant has to fund his portion to date at the time of turnover. At what point does the declarant in a conversion need to fund, based on a 20-year-old project? It is not clear. These conversions are new to Nevada."

I read this from somebody who is very well educated on these facts—who happens to be a manager of a homeowners' association who is dealing between developer and buyer—and is looking around, saying, "I don't have enough reserves." Who decides how much reserves a developer sets in these conversion projects? Is there a stated amount for a new project? If so, why don't we have a stated amount for conversion projects? Is there a formula available?

I appreciate the attempt. I understand where you're going, and certainly, more disclosure is better than none. I'm concerned that this is a matter of dollars. This is a matter of a consumer buying something and having the belief that what they are buying is sound, and they're not going to have a special assessment in the first few months of ownership. That's what I've heard so far, that it's relatively unregulated and it's up to the developer. As a consumer, I don't believe it's acceptable.

Michael Buckley:
I'll point out that the reserve study is the key. NRS 116.31151, subsection 1(b)(3), requires, in the reserve budget, a statement as to whether the executive board has determined, or anticipates, that the levy of one or more special assessments will be required to repair, replace, restore, or to provide adequate reserves. So it's in the law that has to be, and I guess if that reserve study budget is filed with the Real Estate Division, there would be a way to catch that to see whether that statement was there or not.

Renny Ashleman, Legislative Advocate, representing the Southern Nevada Home Builders Association and the City of Henderson, Nevada:
I helped prepare the original legislation that brought the declarants in the first place on the reserves. The way it works now is that the declarant, before he turns over, should have a reserve study. At that point, he should have paid whatever would have been his lot share of it from the day of the first sale. Nobody has to fund a reserve study up until the first sale, but at that point, he has to start paying. Originally, out of a 300-lot enrollment, he's going to have

299, and it will diminish. He pays along as if he were a homeowner to fund them. That works very well in the initial projects.

[Renny Ashleman, continued.] I would not like to have the record reflect that the present law does not require a converter to fund, because that might affect existing situations. In my view, there is a reasonable interpretation that a converter would be subject to that law, because he would become a declarant. You have to create a homeowners' association for these to take place, and then he would have those obligations. However, because those are new and because it's an area that may be subject to some uncertainty, from the standpoint of the Southern Nevada Home Builders Association, we would urge you to make the law clear that converters are covered by this act, and they need to fund a reasonable amount of the reserves.

I don't know that I've thought through all of what a reasonable amount is at this point, but it really should be at a level playing field with all other declarants, and you have to protect that consumer. It's possible today to have one of these conversions that does not even bring the properties to code in all cases. They know they're not getting a new property. It's going to be very clear that they're conversions, and they're going to have these declarations. That's not the same thing as having funding. I would point out that if they fund, they'll adjust the price, and it's a lot easier to use your federal financing and other mortgage mechanisms, which are very liberal these days, to finance those improvements by having to declare them, put the money up, and finance an additional purchase price. It doesn't come from the cash out of your pocket.

I think that all of those things militate in favor of making sure that the law is clear on this area and doing as we did when we adopted this earlier, when we made the transition—to make it clear that the declarant had to do some funding. We allowed some grace periods and had some transition language, and you may want to consider that. I hope that might help you in consideration of the matter.

Assemblyman Conklin:
I appreciate Mr. Ashleman's comments, because there's a gentleman in the back here who I spoke with last week, and we discussed this very same thing. It was his opinion that it is covered. The problem is that it needs to be clarified, because there's a distinct possibility that it's not being followed. The distinct possibility that it's not being followed and covered leads me to believe that if we don't do something about it now, we could be looking at it similarly to construction defect, a place where we're going to have a tremendous amount of litigation and a lot of unhappy homeowners. They weren't made aware.

[Assemblyman Conklin, continued.] I am concerned that nobody is regulating this, that we're leaving it up to somebody to decide what the right amount is. It's not as if it's a new home. This is an older structure, which we would anticipate would have a significant amount in reserves at the start, as opposed to less on a new building. Any corner you can cut to save a cost, to lower the price—but at what real price down the road? Mr. Ashleman had some suggestions on how to clarify that, and I'm certainly open to suggestion.

Chairman Anderson:
I think Mr. Ashleman brings forth the question that we anticipate these new conversions are going to have sufficient reserves to carry those kinds of things, like sewer problems. Those things would be very obvious to a long-term apartment owner who, all of a sudden, determines to change his properties from apartments to condominiums or into common-interest communities, so that he may even go in and do some structural change on the interior of the building. If he doesn't get at some of the base problems, there may be an economic advantage for him, but I think the homeowner wants to get in there as cheaply as he can.

Of course, roofs are going to have problems in the future; we get snow loads, and you don't, generally. Each part of the state has its own unique characteristics. I appreciate the problems that are here. I clearly think we have to do something about the potential of common-interest communities and these conversions, and we hope the Real Estate Division is mindful of that. It sounds as if they are moving in the right direction based upon existing law, but we don't want to back away from existing law. If we can clarify it and strengthen it at the same time, I think that's important.

Michael Buckley:
So everyone can give Ms. Anderson the right reference, a public offering statement, which is NRS 116.4103, subsection 1(e), must have the current financial statement and the projected budget. If you recall the previous statute I mentioned, the budget has to include the reserve budget. Maybe those sections need to be clarified, but as I read the existing law, the reserve has to be disclosed to the buyer.

Senator Schneider:
You'll recall that in current law, the developer may subsidize the homeowners' association monthly fee during his sales promotion of the units. He could charge $65 in dues per month, even though the reserve studies to maintain that unit may be $150 per month. He has to subsidize that, and he has to declare it to the new buyers. Actually, that helps them qualify, but when he turns over the association to the homeowners after 75 percent have been sold, he has to fund

the reserve account at the level of that $150 fee, not at $65. I think we'd have to do something similar in the conversions.

[Senator Schneider, continued.] A pool in an apartment complex looks good today, but 5 years from now, it has to be redone. In a brand new homeowners' association, maybe you can go 15 years. I think they would have to reserve and impound enough money from that converter to take care of that in the future and to repair the streets. That reserve would have to be front-end loaded quite heavily, because those streets may not last 20 years; they may be just 8-year streets.

Assemblyman Conklin:
It's not clear in the NRS that developers who are converting must also act like any other developer. If we can clarify that in the NRS and also clarify in the NRS that if you're a conversion developer, you must take into consideration the age of the property when funding your reserve account, we might be able to provide something that can be regulated better.

Michael Buckley:
NRS 116.4106 specifically deals with what is required when you have a conversion, if you wanted a section that addressed this or clarified it. I think it's clear that a developer of converted buildings is a developer subject to all of NRS 116, but the capital assessment shortly down the road is probably not spelled out.

Assemblyman Conklin:
I looked at NRS 116.4106, which I referred to earlier, and it references NRS 116.4103 and NRS 116.41035. Having not read either one of those, this particular section does not mention the reserve study. It only mentions the disclosure of information. We need to require the reserve study and require the other things that standard developers do. It may be that those references do that; we need to say it, point blank, in that section.

Michael Buckley:
NRS 116.4103 does require a copy of the reserve budget. I'm not clear that it requires a copy of the reserve study. Maybe that's what we need to look at.

Robert Maddox:
On this issue that was raised by Assemblyman Conklin this morning, regarding reserves for condominium conversions, I agree that is a potentially enormous problem. There are disclaimers made to buyers of condominiums in a conversion—as you indicated, Assemblyman Conklin—for entry-level housing. You're talking about first-time homebuyers who are going to be mystified by the

language in the disclaimers. I don't think disclaimers in this situation are at all adequate to address that concern.

[Robert Maddox, continued.] I think it's important that the legislative history of this bill here reflect that existing law, as Mr. Ashleman indicated, does require developers to conduct a reserve study to fund "adequate reserves." What is adequate? That's a problem across the board, whether it deals with conversions or not. I believe that a contract that would try to pass along to a homebuyer an obligation of the developer might not be deemed enforceable under the existing language of Chapter 116. None of this suggests that there shouldn't be something done. I believe there should be, but in case something isn't passed here, I wouldn't want it to be later interpreted that it meant the Legislature rejected the idea of adequate funding of reserves in condominium conversion projects.

Let me get to one point that I wish to bring to the Committee's attention. Section 47, as Mr. Buckley indicated, is the provision that is being moved out of NRS 116.3115, which is combined capital improvement assessments and lawsuits. It's being moved into its own section dealing with lawsuits. There's an unintended change in the process here. I'm proposing that the language in the third line of Section 47, line 44 on page 12 of the mockup (Exhibit C), where it reads, "...or action is to be taken regarding a civil action," be stricken. That's not in existing law. It could have an implication that is unintended and would make things very awkward for an association.

Here's the situation. Existing law says that you have to notice a meeting at least 21 days in advance before the board is considering commencing a civil action. There's no reason to say that every time, the board—in executive session—is going to be discussing the civil action, but there has to be a 21-day notice to the members. This current language regarding a civil action could have that implication. I've discussed it with Mr. Ashleman on behalf of the Southern Nevada Home Builders, and I think he agrees that's not in existing law. The purpose was not to change existing law.

Senator Schneider indicated that he had a proposed amendment coming out of S.B. 323, which had been referred to Chairman Parks' Committee on Government Affairs. I wrote a letter in opposition to that provision, and I was hoping that had been provided to this Committee. I'll save my comments on Senator Schneider's proposed amendment until he's presented that to this Committee.

On behalf of the Community Associations Institute, our Legislative Action Committee has been actively involved in some of the provisions of S.B. 325, as

Mr. Buckley indicated. A number of people participated in this working group, and some of the provisions were initiated by us. We want to see this bill pass.

[Robert Maddox, continued.] We do have some proposed amendments (Exhibit E). The first one is in Section 76. If we're all working from the mockup (Exhibit C), it would be on page 38, lines 15 to 18. We propose striking that sentence that says, "The Commission shall adopt regulations establishing the maximum amount of the fee an association may charge for preparing this certificate." There's adequate protection in other language here that the charge must be reasonable. We do not believe that particular provision is necessary.

The other amendment would address Section 100, on page 55 of the mockup (Exhibit C). People who currently serve as association managers by way of their real estate broker's license have a permit to act as an association manager. This bill would take that away and require that they get certification, just as other people who act as association managers. We're proposing that the deadlines be extended an additional year, so there would be more time for them to deal with that.

[Chairman Anderson yielded the gavel to Acting Chairman Manendo.]

Acting Chairman Manendo:
Are there any questions regarding the amendment? I have a question—not on the amendment, but Section 47, page 12. This is new language in Section 47?

Robert Maddox:
The new language is in green. I think the bill drafter, trying to take out language that dealt with assessments and leaving only language dealing with associations to make the sentence work, added the words, "regarding a civil action." That potentially changes the meaning. I suggest that we strike "or action is to be taken regarding a civil action" from Section 47.

Acting Chairman Manendo:
My question would be with the 21-day calendar notice. If there is going to be civil action, it would be required that all of the unit owners are aware of it. In a hypothetical situation, a community owners' association goes into civil action in a construction defect case, and they hire the attorney. Now they're going to fire that attorney and hire a new attorney. Do they have to require another 21-day notice to the units?

Robert Maddox:
I don't think this section would require that. If the decision had already been made to file a lawsuit, that's what this section addresses. You still have the

21-day notice for commencing a civil action. What shouldn't be there is the language that you have to give this 21-day notice for any meeting where action is to be taken regarding the civil action. That could mean an attorney meeting with the executive board in executive session. It doesn't make any sense to require that.

Gail Anderson:
The Real Estate Division is in complete support of S.B. 325. I, Division staff—particularly the staff from the Office of the Ombudsman—and the legal administrative staff of the Real Estate Division have worked with the Commission and been involved in their meetings regarding their proposed legislative changes. I wanted to make the Chairman and the Committee aware that the Attorney General's Office has placed a fiscal note on S.B. 325 since the time that the bill was heard in the Senate Commerce and Labor Committee. The Real Estate Division does support this fiscal note for additional Attorney General staff support for this program.

Acting Chairman Manendo:
What would that be?

Gail Anderson:
The position is for a half-time Senior Deputy Attorney General and a legal secretary. The fiscal year 2006 amount is $86,307, and the fiscal year 2007 amount is $95,506. This would be funded through the common-interest community account.

Acting Chairman Manendo:
Was this addressed in the Senate?

Gail Anderson:
No, it was not. The fiscal note has been put on since the Senate hearing.

Acting Chairman Manendo:
Who requested the fiscal note?

Gail Anderson:
The Attorney General's Office.

Acting Chairman Manendo:
They just missed this?

Gail Anderson:
I don't know.

Acting Chairman Manendo:
Does the sponsor of the bill know there's a fiscal note to the bill?

Gail Anderson:
I mentioned to him, in a meeting two weeks ago, that there was an unsolicited fiscal note on the bill.

Assemblyman Carpenter:
On page 8, where it talks about a violation of the regulations, it says that you can file this in Nevada, which I understand, but then you can also file something out of state. What kind of a situation would that be where you can file something from outside the state to make a person comply?

Michael Buckley:
In answering Assemblyman Carpenter's question, this was a general section, trying to think of what possibly could happen. I'm told, for example, that a lot of reserve study preparers are out of state. If you had somebody who was doing bad reserve studies, you could sue them in the state where they are located. I can't imagine that would happen, but it's to give the Commission as much freedom as possible.

Assemblyman Carpenter:
If you can't do it, why have it? I don't know how the Commission would file a suit out of state...

Michael Buckley:
For example, if we had a developer—someone who is doing a condominium conversion in Las Vegas was a developer from California—and his assets and things were in California, and he violated the law, we would want to, if we could, go after him. You can't really imagine all the things that can happen. This is allowing the Commission the authority—who's to say what could happen—to do that.

Pamela Scott, General Manager, Community Association Management, The Howard Hughes Corporation, Las Vegas, Nevada:
I am in support, and I have put many hours in with other persons on this bill. I have one amendment (Exhibit F) that deals with drought-tolerant landscape. I am highly supportive of drought-tolerant landscape, and I think that anybody who is familiar with Summerlin knows that all of our streetscapes since the second village are drought-tolerant. However, there is something in the definition of "drought-tolerant landscaping" that does trouble me. Senator Schneider and I disagree on this issue, and he has a copy of the amendment I intend to offer.

[Pamela Scott, continued.] I am concerned that, in subsection 3, we have included two materials in the definition of drought-tolerant landscape. Those two materials are decorative rock and artificial turf. Chairman Anderson was alluding earlier to artificial turf as a rug on somebody's bald head in some of the turf conversions.

I think it's very important that architectural committees have the ability to control what goes in, plant-wise and rock-wise. Many associations ban certain colors of rocks. White rock is highly reflective and doesn't look well in a front yard. I understand there are some associations that have an outright ban on artificial turf, but I'm not sure who they are. Summerlin does not ban it in the backyard, but we don't like to see it in the front yard. It's difficult to write a specification for it, because there's everything out there—from what you can buy off the roll at Home Depot, to the nice stuff that looks pretty well.

We said in our definition of drought-tolerant landscape that it is landscaping that conserves water, protects the environment, and is adaptable to local conditions. That lets northern Nevada deal with their issues and southern Nevada deal with theirs. I'm concerned that we're limiting it by describing two materials. There are hundreds of plants and materials that can be used adequately in drought-tolerant landscaping. I don't know why we would list two particular materials in state statute.

Both Clark County and Las Vegas have had ordinances for many years dealing with drought-tolerant landscape, and the Southern Nevada Water District also has excellent definitions of what they will consider drought-tolerant landscape. They all want organic plant coverage. It's my suggestion that we eliminate the last sentence of subsection 3 that says the term "includes, without limitation, the use of mulches, such as decorative rock and artificial turf." Artificial turf is not environmentally friendly. It's a rougher, polyethylene product made of recycled tires that are not even allowed to go into landfills. As Chairman Anderson indicated earlier, this material does have a definite life and eventually has to be thrown away someplace.

Senator Schneider:
Several of the old-time members of this Committee may remember that years ago I had a bill that said cities and counties have to approve alternative construction materials. The cities and counties wouldn't look at all construction materials as alternative. I put right in the law that straw bales had to be considered as alternative construction materials, because sometimes you have to send a message to the cities and counties. There have been straw bale houses built in this state because of that.

[Senator Schneider, continued.] Ms. Scott and I disagree, because if you take this out, that gives them a reason not to approve the turf. Steve Wynn has put artificial turf as part of his landscaping on his $2.7 billion hotel, and if he could find turf adequate enough for a destination resort, that's significant. The same homeowners' associations will give you violations if they think your front yard has a brown spot. That's a judgment call. If you have what they perceive as too many weeds in your front yard—again, as a judgment call—they can give you a violation.

On this artificial turf, if it's looking a little too shabby or is not the right color, they can give you a violation. Again, that's a judgment call. It's quite easy see what type of turf Steve Wynn put in and draw your regulations according to that turf. I've heard some associations say they'll be sued because that doesn't allow all turfs in. We buy police cruisers in Las Vegas, and they happen to be Crown Victorias. Little Hondas and Toyotas are exempt from bidding on police cruisers because they're too small and too underpowered. If they chose to build police cruisers, they can build a bigger car with more power.

It's the same with artificial turf. If you want to bid the Summerlin Association, build a higher-quality turf. We should put this in so that some associations couldn't leave it as a way to not approve it.

I bring this to you because there's been a lot of controversy in Las Vegas over drought-tolerant landscaping in the last two years. The head of the Las Vegas Valley Water District has said that if associations don't start to convert to desert landscaping, she will turn their water off. We are in a dramatic drought. It's raining up here today in northern Nevada, but it's 96 degrees in Las Vegas. We've worked with the Water District on some of this language. It's imperative that we send a message to Las Vegas that you have to convert. The Water District shut off some decorative fountains last year in homeowners' associations. They've been taking big steps down there, and I think this sends a good message that we are sensitive to the drought.

[Acting Chairman Manendo yielded the gavel to Chairman Anderson.]

Chairman Anderson:
By dropping the term "mulch, such as decorative rock or artificial turf," it sounds to me like you still get to do it, but not necessarily specify. It sounds like a drought-tolerant landscape is up to each homeowners' association.

Senator Schneider:
That's correct, Mr. Chairman. Sometimes we have to put these things into law, so that the board members can't try to dodge out.

Pamela Scott:
I don't think the issue is natural grass versus artificial grass. All of us are in agreement that you cannot and should not require grass or traditional turf to be in anybody's front yard. I think the real issue here is which materials you will allow to replace the grass. We all agree that drought-tolerant definitely needs to be there. I did speak to the Southern Nevada Water District last night, and they are in complete agreement that the association has to be able to have strict criteria. I believe Senator Schneider just referenced the strict criteria.

If that's the case, then I think in Section 41, subsection 1(b), where it says "the drought-tolerant landscaping must be selected or designed to the maximum extent practicable to be compatible with the style of the common-interest community," we probably should delete the words "to the maximum extent practicable." You're going to have homeowners go to Home Depot because it's a lot less expensive, and that's the maximum step they wish to take. I know that Sun City has strict requirements for artificial turf. I'm not sure if we will be able to uphold that strict requirement in the language as written in this section, based on subsection 1(b).

Senator Schneider:
Mr. Chairman, while you were out of the room, I did bring up this amendment (Exhibit G).

Chairman Anderson:
Is this amendment essential to the bill?

Senator Schneider:
It is essential to what is happening in Clark County at this time. I placed it in another bill [S.B. 323], which is in Chairman Parks' committee. It's being heard this afternoon, and it has to do with high-rise buildings. The bill states that high-rise buildings are subdivisions which are vertical. It goes into the process of how you can move residents into a high-rise building before construction is completed. In there, we've put another portion of the bill that had to do with proxy voting. That falls under NRS 116, and I wanted to bring this and show you. Several sessions ago, when I first brought the homeowners' association issue to you, I was adamant that a homeowner or a board member could not have a bundle of proxies in their back pocket and become a dictator of an association. With your help we changed that, so that a proxy was only good for one day, on one issue.

What is happening in Las Vegas is that they are building high-rise buildings, and many of them are condo-hotels. The people buy these units, and they put them in the rental pool. These are very expensive units, starting at half a million

dollars and going up. These are sophisticated investors. They'll use their unit one, two, or three times per year. At that point in time, it comes out of the rental pool. They use their unit, and then they put it back in. They participate in the cash flow of the building with their unit. They get the depreciation and all the tax benefits of having income property. The buyers of these units look at these as passive investments, and these buyers are coming from all over the world.

[Senator Schneider, continued.] One condo high-rise sitting on Las Vegas Boulevard and Sahara, where the Holy Cow Café now sits, will be the tallest residential in the United States—it will be 77 or 78 stories high. This will be a condo-hotel facility, and it is being trademarked the Ivana Trump Tower. Investors will come from Australia, from China—as a matter of fact, the company that is developing these has offices in Melbourne, in Hong Kong, Beverly Hills, and Las Vegas. These are very sophisticated investors, and they don't want to be bothered on a daily basis with the operation of the hotel of this high-rise condo. They can choose to put their proxy—not for a board of directors, but for the maintenance of the building—with one individual. That would be with the management company who runs the building. A lot of these investors you can't find on a daily basis. They're off around the world on business, in China or wherever. If an elevator breaks down, it costs a couple of hundred thousand and you can't find those people. That's why I bring this before you.

Chairman Anderson:
The bill had a hearing in another committee on May 5?

Senator Schneider:
It was scheduled, and we rolled the bill.

Chairman Anderson:
Ms. Dennison, is there information that you need to get into the record?

Karen D. Dennison, Legislative Advocate, representing Lake at Las Vegas Joint Venture:
I was involved in the working group. I am in support of the bill and, in particular, Summerlin's amendment to the bill to delete the enumeration of drought-tolerant landscaping materials, which I think is unnecessary. I am also in support of Mr. Maddox's written amendments to the bill.

Jim Nadeau, Government Affairs Director, Nevada Association of Realtors, Reno, Nevada:
We support the bill. We worked very hard with the working group on this. We oppose Mr. Maddox's amendment to Section 76. As we mentioned in the past, resale document fees range anywhere from $50 to $300 or more. There needs to be uniformity on the cost of these documents. We feel that this language, which was worked on in the working group and was agreed in that place, is adequate language. We support the language as it is now. As far as the other amendment extending the deadline, we have several members who are property managers, who would be required to get the community association management permit. We support extending that another year, to 2007.

Chairman Anderson:
Mr. Maddox, is there any additional information you need to get on the record?

Robert Maddox:
Both on behalf of the Nevada Trial Lawyers Association and the Community Associations Institute, we are opposed to Senator Schneider's amendment (Exhibit G) dealing with proxies in high-rise communities. It's an extremely anti-democratic provision that would enable a developer to require, in the governing documents, that any purchaser of a condominium would be deemed to have provided to the developer an irrevocable proxy for all matters. That is totally inappropriate.

David Stone, President, Nevada Association Services, Las Vegas, Nevada:
I am in favor of this bill with the amendments offered by Mr. Maddox.

Michael Trudell, Legislative Advocate, representing the Caughlin Ranch Homeowners Association:
We strongly support the bill. In regard to the amendment from Howard Hughes Corporation (Exhibit F), we are one of the homeowners' associations in northern Nevada that does not currently allow artificial turf, and we are looking at ways to set up regulations for it. Due to the snow, it will look very artificial during the winter months, so we're concerned about that. We had worked on Section 76, and we had worked with Mr. Nadeau on those amendments. I'm not sure why the LAC [Legislative Action Committee] is supporting a deletion of that, but I would hold to whatever amendments we had worked on before.

As far as the condo conversion issue goes, I don't understand. As a former city planner, how can you convert a building, record a plan, and not be a declarant who has recorded a set of CC&Rs and is required to provide a reserve study and a reserve for your proportionate share of the building under the current statute?

There's probably a loophole somewhere, and any changes that could close that loophole would probably be beneficial.

Chairman Anderson:
I think there are people who stretch the law to a different degree than is expected. I would suggest you drive by the Sparks Marina. There's an apartment complex adjacent to it. They recently took out all the turf and put in sod, and they have weighted it down with buckshot or something. It does look strange in the middle of a snowstorm to see that bright green sticking through the bottom.

Michael Trudell:
When that lawn was being torn out, I was watching. I couldn't wait to see how the kids were going to tear it apart, how the cigarette butts crushed into it were going to create severe damage, and what the long-term maintenance responsibilities of that community would be.

Marilyn Brainard, President, Wingfield Springs Community Association, Sparks, Nevada:
I wanted to strongly state I am in support of S.B. 325, and I hope your Committee will pass it to the Floor. I think it's very important. Not only am I on the board for the Wingfield Springs Community Association in Sparks, but I am on the State Board of the Community Associations Institute (CAI), representing homeowners that live in common-interest communities within our state. We have 128 associations that are members of CAI.

Chairman Anderson:
Is there anybody else that needs to get on the record or has a written document? We'll hold this over for work session and see if we can get to it Thursday, since we didn't get to any of our work session today. We're adjourned [at 11:02 a.m.].

RESPECTFULLY SUBMITTED:

Carole Snider
Recording Attaché

RESPECTFULLY SUBMITTED:

Victoria Thompson
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 16, 2005 Time of Meeting: 8:29 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.C.R. 21	B	Judge Barbara K. Finley, Justice of the Peace, Reno Justice Court, Reno, Nevada	Testimony of Judge Barbara K. Finley
S.B. 325	C	Senator Mike Schneider, Senate District No. 11, Clark County, Nevada	Mockup of Proposed Amendment to Senate Bill No. 325, First Reprint
S.B. 325	D	Diane Radunz, Nevada Commission for Common Interest Communities	Statement of Testimony of Diane S. Radunz
S.B. 325	E	Robert Maddox, Attorney, representing Nevada Trial Lawyers Association and Community Association Action Committee	Proposed Amendments to S.B. 325
S.B. 325	F	Pamela Scott, General Manager, Community Association Management, The Howard Hughes Corporation, Las Vegas, Nevada	Letter to Assembly Judiciary Committee from Pamela Scott, dated 5-16-05, regarding proposed amendment to S.B. 325
S.B. 325	G	Senator Mike Schneider, Senate District No. 11, Clark County, Nevada	Proposed Amendment to S.B. 325, First Reprint