

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

**Seventy-third Session
April 14, 2005**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:54 a.m. on Thursday, April 14, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Sandra J. Tiffany
Senator Joe Heck
Senator Michael Schneider
Senator Maggie Carlton
Senator John Lee

STAFF MEMBERS PRESENT:

Kevin Powers, Committee Counsel
Jeanine Wittenberg, Committee Secretary
Scott Young, Committee Policy Analyst
Jane Tetherton, Committee Secretary

OTHERS PRESENT:

Raymond L. Badger, Nevada Trial Lawyers Association
Robert A. Ostrovsky, Employers Insurance Company of Nevada, A Mutual Company
Steve G. Holloway, Associated General Contractors, Las Vegas Chapter
Renny Ashleman, Southern Nevada Home Builders Association
James Wadhams, Nevada Mortgage Bankers Association
Scott E. Bice, Commissioner, Division of Mortgage Lending, Department of Business and Industry
Shawn Spanier

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Cathie Jackson, Nevada Association of Mortgage Professionals

CHAIR TOWNSEND:

It is my intention, with regard to S.B. 455, to hold off on discussions on this particular bill, due to the fact that there are several issues involved and it is very complex. I have dealt with issues on this bill and would like the opportunity to participate in discussions. I would ask the proponents of this bill to discuss any issues with the Assembly and if an issue does come back to the Senate Committee on Commerce and Labor for further discussions, we can take those up at that time. Again, this is because of the complexity of the bill and any issues that come up should not be taken lightly. Therefore, any persons interested in S.B. 455 should be aware that this bill will not be in discussions for today or tomorrow.

[SENATE BILL 455](#): Revises provisions governing transactions between eligible customers and providers of new electric resources. (BDR 58-1317)

CHAIR TOWNSEND:

We will now hear discussions on S.B. 123. It is my understanding that this bill will need to go to the Senate Committee on Finance because it does impact the budget. There was a subcommittee report on this bill and would the Chair of that subcommittee, Senator Hardy, please bring the full Committee up to date?

[SENATE BILL 123](#): Revises provisions governing energy assistance.
(BDR 58 -238)

SENATOR HARDY:

I first want to thank Mr. Burdette and the Office of the Governor for their input on this bill. Based on the discussions in our subcommittee relating to S.B. 123, we have come up with some recommendations for amendments to this bill ([Exhibit C](#)) from which I will now read: "Weatherization funds should not be expended on clients in mobile homes"

SENATOR SCHNEIDER:

I have a question regarding your recommendation in relation to stick-built homes. Are cinder-block homes included in the recommendations? My understanding is that cinder-block homes are not very energy efficient; however, there may be a way to make them more efficient.

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SENATOR HARDY:

The subcommittee used the term "stick-built," for lack of a better term, but certainly the intent of the subcommittee was that all homes be included. There was no intention to eliminate cinder-block homes.

SENATOR SCHNEIDER:

Would the furring out of cinder-block homes be classified under the weatherization portion of the recommendations in your handout?

SENATOR HARDY:

I believe that would be part of the weatherization process. If it was deemed the most efficient use of the funds for that purpose, I believe cinder-block homes would be included.

SENATOR CARLTON:

I have some concerns regarding numbers 1 and 2 of the subcommittee's recommendations in [Exhibit C](#). Number 1 is stating that weatherization funds should not be expended on clients in mobile homes. The solution to the problem may be solved by simple weatherization applications and then you would not have to expend any more monies. With regard to number 2, where it states: "Those needing help in mobile homes should receive cash assistance, exclusively." If it is a new mobile home and already energy efficient, and a person still needs cash assistance, then that avenue would have been eliminated because there is nothing left to be weatherized.

CHAIR TOWNSEND:

In response to your concerns regarding mobile homes and weatherization in number 1, the benefits on weatherizing mobile homes has not proven to be cost-effective. That is why the needy such as seniors are addressed in number 4 of the recommendations. The second concern regarding receiving cash assistance "exclusively" for weatherization on mobile homes, that recommendation will not affect any other assistance program such as the Low Income Home Energy Assistance Program (LIHEAP). The current weatherization program has not been an efficient program, and it has not met what the Committee feels the original sponsors of the bill had intended.

SENATOR HARDY:

The concerns that Senator Carlton has are some of the same concerns the subcommittee came across when trying to address this bill. The solution we

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agreed on, with relation to dealing with weatherizing mobile homes, was to make the process simple to follow and with the least amount of negative impact.

SENATOR TIFFANY:

The testimony we heard in the subcommittee regarding weatherization of mobile homes is that the homes involved were older homes and that the older mobile homes were of no value. So, the recommendation was not to put the money into weatherizing a mobile home, but to make sure that there was cash assistance available to help pay for utility bills instead.

SENATOR HARDY:

The testimony that I recall, and I may not be exact, was that the average weatherization project took approximately 15 years to actually realize the benefit potential, and some of the homes involved had only four or five more years of structural life expectancy.

CHAIR TOWNSEND:

Committee, there is also a handout that was e-mailed from Ernie Nielsen of the Washoe County Senior Law Project ([Exhibit D](#)), which Mr. Nielsen would like to have made part of the record relating to S.B. 123.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 123 AND REREFER TO THE SENATE COMMITTEE ON FINANCE.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:

The hearing is now open for discussions on S.B. 225.

SENATE BILL 225: Making various changes relating to industrial insurance.
(BDR 53-975)

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RAYMOND L. BADGER (Nevada Trial Lawyers Association):

I would like to present a mock-up proposed amendment on S.B. 225 ([Exhibit E](#)) to the Committee. There is also an amendment to A.B. 364 on the back page of this same mock-up. I will discuss the proposed amendments relating to S.B. 225. The idea of an injured worker having the right to request a mandate for an individual medical evaluation has been dropped. The result of that was the deletion of section 2 in its entirety. Section 3 of the original bill deals with an issue that an injured worker would choose his own vocational counselor. We did not receive a consensus on that issue so that section has been deleted. Please be aware that part of the bill was a tax because it had an assessment from the Division of Industrial Relations (DIR) which also related to counselors. Therefore, there should no longer be a tax assessment issue in this bill. In section 4, the language was replaced to clarify the ethical obligation of a vocational rehabilitation counselor. Portions of sections 5, 6, and 7 have also been deleted. The next change in the bill is in section 8, subsection 4, where the new language states, "... have knowledge of the labor market within the geographical area where the injured employee resides." We feel that better expresses the intent than the original language. There were changes made in section 9, subsection 8 with regard to, "A written vocational rehabilitation assessment" Another change provides that a vocational assessment is no longer mandatory, but any injured employee or an insurer can request an assessment if they so choose. I believe we may want to delete section 11, because that refers to DIR's compiled list which is now deleted.

[ASSEMBLY BILL 364](#): Makes various changes relating to industrial insurance.
(BDR 53-249)

CHAIR TOWNSEND:
Are there any questions?

SENATOR CARLTON:
When you stated possibly eliminating section 11, is that the "enacting clause," or am I misunderstanding?

MR. BADGER:
Section 11 refers to the original section 3 of this bill. We had a proposal to that section that the DIR require counselors to pay a fee and then the injured worker would pick from that list. Section 3 was deleted entirely in this mock-up. That is

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why I think that since there is no longer a section 3, section 11 would not make sense to be in the bill.

SENATOR CARLTON:
When would the changes to S.B. 225 be enacted?

MR. BADGER:
Mr. Ostrovsky advised me that it would be July 1, if not otherwise stated.

KEVIN POWERS:
Mr. Chairman, I believe we need to clarify for the record. It is true that section 3 would be removed from the bill, but the entire section 11 would not be removed. We still need the effective-day clause, or it will be the default date of October 1, 2005.

SENATOR CARLTON:
I am just concerned about passing a bill without an enacting clause.

ROBERT A. OSTROVSKY (Employers Insurance Company of Nevada, A Mutual Company):
We just need a little time to check the certification of the counselors et cetera, to make sure they are qualified.

CHAIRMAN TOWNSEND:
Mr. Powers, can the enactment date of July 1, 2005, be put into a mock-up?

MR. POWERS:
"That is at the discretion of the Committee."

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 225.

SENATOR HARDY SECONDED THE MOTION

THE MOTION CARRIED. (SENATOR SCHNEIDER WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

The discussion is now open on S.B. 240.

SENATE BILL 240: Requires health insurers to provide policies of health insurance which have high deductibles with health savings account. (BDR 57-47)

SENATOR HECK:

The recommendations to S.B. 240 would be in sections 3, page 1, line 9; section 12, page 4, line 40; and section 15, page 5, line 9. The word "shall" would be changed to the word "may."

CHAIR TOWNSEND:

Are there any further questions?

SENATOR CARLTON:

I am not able to support S.B. 240. The health savings accounts in this bill do not address the primary issues that I look at with relation to the uninsured.

SENATOR HARDY MOVED TO AMEND AND DO PASS S.B. 240.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARLTON VOTED NO.)

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CHAIR TOWNSEND:

We will now open discussions on S.B. 276. In reference to the mock-up proposed amendment to this bill (Exhibit F, original on file at the Research Library), was the subcommittee able to come up with some consistency in this bill with relation to the procedures a board should follow?

SENATE BILL 276: Establishes uniform disciplinary process for certain regulatory bodies which administer occupational licensing. (BDR 54-98)

SENATOR CARLTON:

Yes, Mr. Chairman. We have decided not to use the term "opt out" anymore, because no one is allowed to "opt out" of the laws in this State. You are either

included in a provision, or you are excluded in a provision. Senate Bill 276 will be directed at smaller boards in dealing with disciplinary problems that may arise in the future.

SENATOR HECK:

As a member of the subcommittee on this bill, I am in favor of it, but I do have some concerns relating to the initial bill brought forward. This bill was going to subject every board to a uniform complaint, investigative and hearing process. It is now down to just the uniform-hearing process and boards are still allowed to "opt out" of the process. I received a lot of complaints from the larger boards that felt they were being treated unfairly because they felt it was similar to an inquisition process. Since the Office of the Attorney General winds up defending or prosecuting some of these cases, all boards, in my opinion, should have a uniform-hearing process. We hope at some point in time we will be able to get all boards under this same process.

SENATOR TIFFANY:

I was also on the same subcommittee. There are some boards with very complicated issues, but they have their own history of being successful with the procedures that they follow in relation to their own unique industry. Their choice to "opt out" is appropriate in some cases.

CHAIR TOWNSEND:

Consistency by all boards to a specific set of policies and procedures should be the goal here. Are there any further questions?

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 276.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR TOWNSEND:

Discussions are now open on S.B. 434.

SENATE BILL 434: Revises provisions governing regulation of contractors.
(BDR 52-1103)

SENATOR LEE:

Please reference the mock-up proposed amendment to S.B. 434 ([Exhibit G](#)). Section 1.3 has been added to state, "A person shall not, directly or indirectly, perform or offer to perform, for a fee, any work ...," without being a licensed contractor or subcontractor. Also, section 1.5 has been added to state, "The Board shall adopt regulations to provide for classifications that authorize" This includes plumbing and gas lines. A license will be required by the end of June 2006. From that point forward a contractor will be required to provide a permit to perform services relating to plumbing and/or gas lines relating to pools or spas. Section 3, subsection 1 has been changed back to the original down payment or deposit amount of \$1,000. In section 10, subsection 9, it states, "After a contractor ... , the Board may relieve the contractor ... ," from having to post a performance bond.

SENATOR CARLTON:

Can we discuss the new job classification? How much does it cost to become certified? Does the amendment allow people to specialize in a specific field?

SENATOR LEE:

This amendment gives the option for someone to obtain a specialty license for pool and/or spa plumbers and in turn helps the industry in monitoring the legality of the services rendered.

SENATOR TIFFANY:

Is plumbing a significant part of the construction of a pool?

SENATOR LEE:

Yes, it is a very important part. In the plumbing portion of construction, the lines need to be pressure tested. Gas line installation is also an important part of the construction.

SENATOR TIFFANY:

Does a general contractor usually subcontract to a plumber?

SENATOR LEE:

Yes. Are there any other questions?

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SENATOR LEE MOVED TO AMEND AND DO PASS S.B. 434.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
The hearing is now open for discussions on S.B. 300.

SENATE BILL 300: Revises provisions governing regulation of contractors.
(BDR 54-1061)

STEVE G. HOLLOWAY (Associated General Contractors):
Senate Bill 300 was not only a consensus bill, but it was also a consolidation of several bills addressing the "prompt pay" provisions of chapter 624 of the *Nevada Revised Statutes* (NRS). Because of that, we were asked by your Committee to review Amendment No. 177 of this bill and make or recommend any needed corrections. We have reviewed the amended corrections with everyone who has testified on this bill. The Committee should have the handouts (Exhibit H, original is on file at the Research Library).

SENATOR CARLTON:
Are we amending the amendment of S.B. 300?

MR. HOLLOWAY:
Yes, because some of the corrections were not made in the previous amendment

MR. YOUNG:
I believe the procedure that the Committee will follow, if the Committee so chooses, is to vote to rescind the prior amend and do pass which resulted in the amendment you have in front of you. Then there needs to be a vote to amend and do pass with these new changes which will result in Mr. Powers doing a substitute amendment.

CHAIR TOWNSEND:
Thank you.

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SENATOR LEE:

I just want to clarify that everyone involved in the discussions of S.B. 300, including Richard L. Peel of the Southern Nevada Chapter of the National Electrical Contractors, regarding lower-tier contractors, are aware of and satisfied with the changes made in this amendment.

MR. HOLLOWAY:

Yes. Mr. Peel drafted the initial amendment which was not in the proper form and has since reviewed the amendment you have before you. Mr. Peel and the organizations he represents support the new amendment.

SENATOR LEE:

I support the new amendment as well.

RENNY ASHLEMAN (Southern Nevada Home Builders Association):

We are not withdrawing Amendment No. 177; we are just supplementing it.

CHAIR TOWNSEND:

I would like to clarify for the Committee that we will have to rescind the action we previously took on S.B. 300, in which the vote was amend and do pass. Then, we will need to reaccept a motion to amend and do pass with the changes in this latest amendment, thus creating a new amendment.

MR. ASHLEMAN:

I will briefly go over the changes on Amendment No. 177 of S.B. 300. Section 3, page 2, line 30 should be as it is in the bill. Are there any questions?

SENATOR HARDY MOVED TO RESCIND THE PREVIOUS ACTION TAKEN
ON S.B. 300.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR LEE WAS ABSENT FOR THE VOTE.)

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CHAIR TOWNSEND:

I will now accept a motion to amend and do pass S.B. 300 with the provisions of Amendment No. 177 as well as the additions provided by Mr. Ashleman and Mr. Holloway.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 300.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR LEE WAS ABSENT FOR THE VOTE.)

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MR. ASHLEMAN:

We will provide a definition on the impact of claims and provide a copy to the Committee.

CHAIR TOWNSEND:

The hearing is now open for discussions on S.B. 325. Senator Schneider, you headed the subcommittee on this bill relating to common-interest communities. Can you give a general overview of the issues?

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

SENATOR SCHNEIDER:

Mr. Ashleman represents the Las Vegas Country Club as well as the Southern Nevada Home Builders Association and has been helpful in reviewing the issues.

CHAIR TOWNSEND:

It looks like the contentious issues are highlighted on the right side of the pages of your proposed amendment (Exhibit I, original is on file at the Research Library). The changes start with page 10 where it states: "Change to a requirement that 35 percent of the all persons entitled to vote may remove any executive board member, as long as the number of ballots voted in favor of removal is greater than the number of ballots voted against removal."

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MR. ASHLEMAN:

I have reviewed that particular change and to the best of my knowledge that is what the working committee offered to your Committee.

CHAIR TOWNSEND:

On page 12, there is a substitution to the current language as follows: "Unit's owners calling for a special meeting must do so" The next major change is on page 14 and reads as follows: "Delete the new language in subsection 9." Was that eliminating the telecast issue, because many small homeowners associations are not able to do that?

MR. ASHLEMAN:

Yes, that is correct.

SENATOR HARDY:

Is that permissive? It does not state that a meeting is to be televised.

SENATOR CARLTON:

I brought up this issue previously with regard to who actually owns the telecast and who has the permission to telecast.

SENATOR SCHNEIDER:

There is new technology available using a laptop computer that has a built-in camera to televise live homeowner association meetings. An association can then use a secure password to view the meeting from their home or from elsewhere. We were trying to make this type of new technology available to homeowner associations for better communication purposes. Mr. Kaplinsky would be available to show the Committee how the technology works.

CHAIR TOWNSEND:

On page 23, it reads, "Delete section 25 and revert to the existing statutory language in NRS 116.4106."

MR. ASHLEMAN:

As to section 25, this puts us back to the original presentation at which time the Committee felt that it was a sufficient disclosure to handle the situation.

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CHAIR TOWNSEND:

Page 24 reads as follows: "Amend subsection 3 using the language submitted by Jim Nadeau as modified by Michael Buckley and further explained by committee counsel." Mr. Powers can you clarify this change?

MR. POWERS:

This is one of the issues that still needs to be worked out in drafting the amendment. After the Committee acts on this amendment, a lot of these issues will still need to be reviewed for the appropriate language usage. The committee counsel will be working with the Committee towards reaching that goal.

CHAIR TOWNSEND:

On page 25, on lines 24 thru 26 it reads, "You have five (5) days from the date of receipt of these documents to terminate the purchase agreement." Is this a situation where a person has the opportunity to read the Covenants, Conditions and Restrictions (CCRs) after they have made an initial purchase of a home, and then if they find them to be onerous they then have a right to rescind, is that correct?

MR. ASHLEMAN:

That is correct.

CHAIR TOWNSEND:

On page 43, this has to do with the change from permit to certification regarding property managers. Is it correct that a property manager only has to take a test to get a certification?

MR. ASHLEMAN:

Yes, it is similar to a grandfather clause.

SENATOR HARDY:

I would like to go back to page 34 for clarification. The language is being changed from "Commission" to "Division." Is that to clean up the language?

MR. POWERS:

That is correct, Senator Hardy. This is a technical correction. The initial consumer complaint is filed with the Real Estate Division, and they investigate it and determine whether to file a formal charging

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instrument with the Commission for Common-Interest
Communities.

CHAIR TOWNSEND:

On page 51, it reads: "Clarify that this provision allowing for a political sign is limited to one sign per unit."

MR. ASHLEMAN:

There is case law where that provision can be regulated.

SENATOR SCHNEIDER:

There were instances in which settlements occurred in southern Nevada with regard to abusing the political-sign issue and the homeowners' board would not notify the homeowners that they had received a money settlement.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS S.B. 325.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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SENATOR CARLTON:

I do support the bill; however, I still have serious concerns about assessments being used to foreclose on people's homes.

CHAIR TOWNSEND:

Out of respect to the sponsor, Senator Titus, who made a presentation on S.B. 51, it was my intention to have brought that up at the same time we processed S.B. 123. It was simply an oversight. The work that Senator Tiffany did on S.B. 123 is – and I am going to ask her – because I want to be sure we are not precluding the solar hot-water program. That, of course, is a \$1.5 million program out of the Universal Energy Charge (UEC) funds. I want to ask the subcommittee before we take it to the full committee, if we just leave that alone or do we make a specific reference in S.B. 123 that weatherization and conservation do not preclude solar hot-water heating systems.

SENATE BILL 51: Establishes pilot project to provide solar hot water heating systems for certain low-income households. (BDR 58-788)

SENATOR HARDY:

I voted to remove refrigerators because it was unclear what the savings were. I think it is a little more clear here, unless I am misunderstanding that there is some savings and this really is a worthwhile effort.

CHAIR TOWNSEND:

We might see S.B. 123 again after it has gone to the Assembly. Maybe, we will have to debate it at that time. I am willing to debate it now, but if the Committee is not comfortable because it is a last-minute item, I respect that.

SENATOR HARDY:

I do think there is some wisdom in considering the issues together.

CHAIR TOWNSEND:

Discussions are now open on S.B. 277.

SENATE BILL 277: Restricts and takes away authority of cities and counties to impose franchise fees and other similar fees upon certain public utilities. (BDR 58-366)

SENATOR CARLTON:

In a way, it is in the form of a hidden tax because it does get passed on to our constituents. I am concerned that if the franchise fees are eliminated that some of the contract negotiations between the municipalities and the counties, et cetera, may become more contentious than they have been in the past when dealing with these types of issues.

SENATOR SCHNEIDER:

I just feel we are putting the cities and counties in a precarious position without a lot of discussion. I would oppose S.B. 277 at this particular time. If the measure does pass, I would recommend that the cities immediately take action and adjust their budgets accordingly.

SENATOR TIFFANY:

I am caught on both sides of S.B. 277. In one instance, I feel the way to control government spending is through a bill like the Taxpayers' Bill of Rights (TABOR),

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or what we already have right now which is the 6-percent cap. Personally, I would like to see the TABOR enacted and that would then modify the expenditures. In the other instance, I do understand the franchise fees and taxes which get passed on to the public. I also think that the local government's collective bargaining with regard to their salaries is out of control.

SENATOR HARDY MOVED TO DO PASS S.B. 277.

SENATOR HECK SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS TIFFANY, SCHNEIDER, CARLTON AND LEE VOTED NO).

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CHAIR TOWNSEND:

The hearing is now open for discussion on S.B. 323.

SENATE BILL 323: Requires governing body of city or county to provide for certain sales and leases of real property. (BDR 22-778)

SENATOR SCHNEIDER:

I brought to the Committee today some language that Ronald Lynn of the Nevada Organization of Building Officials put together ([Exhibit J](#)). This bill relates to high-rise buildings and how there can be occupancy in a high-rise building before the building has been completed. According to Mr. Lynn, as long as the life-safety systems are in place, a certificate of occupancy can be issued to a resident.

SENATOR LEE:

I do not see any negative impacts with regard to this bill.

SENATOR HARDY:

I discussed the safety and health-code issues with Mr. Lynn previously, and with what Mr. Lynn has put together here, I feel it will help in the needs of southern Nevada construction issues.

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SENATOR SCHNEIDER:

We have not heard back from the city of Las Vegas and what they would do. This just applies to the county. If the city would like to add to this, they can do so, once the bill goes over to the Assembly.

MR. YOUNG:

Just a reminder, there is also a second provision that deals with proxy votes in common-interest communities.

CHAIR TOWNSEND:

Is that going to stay in, Senator Schneider, or are you going to take that out?

SENATOR SCHNEIDER:

There are proxies just for high-rise buildings. In Las Vegas, there are buyers from out of state and out of the country. It has been suggested that a manager of the high-rise building would handle the proxies so they can provide any needed services to residents of the buildings. The proxy issue would only be for the high-rise condo-type buildings.

SENATOR CARLTON:

In addition, everyone who moves into that type of building will be aware of this.

SENATOR SCHNEIDER:

Mr. Young had indicated to me that it would be easier to put this provision into S.B. 325 than to pass it forward in S.B. 323.

MR. YOUNG:

It is the Committee's option. At the time Senator Schneider and I had that discussion, we were not sure of what we were going to do with S.B. 325. It certainly could be placed into S.B. 325 if the Committee so desires.

SENATOR CARLTON MOVED TO AMEND AND DO PASS S.B. 323.

SENATOR SCHNEIDER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR HARDY WAS ABSENT FOR THE VOTE.)

MR. YOUNG:

Just for clarification, it would also include the amendment that Senator Schneider suggested about limiting to the proxy issue.

CHAIR TOWNSEND:

The hearing is now open for discussion on S.B. 433.

SENATE BILL 433: Makes various changes relating to mortgage lending.
(BDR 54-380)

MR. POWERS:

... I am working off ... a document ([Exhibit K](#), original is on file at the Research Library) that was originally prepared by Scott Bice, the commissioner of the Division of Mortgage Lending and it was presented at the first hearing. Mr. Bice then met with industry individuals and they worked on some amendments and then presented it to the subcommittee. The subcommittee made additional changes to the document. I will try to encapsulate some of the major issues that were addressed. The biggest issue was whether or not to license mortgage agents who were employees or independent contractors of mortgage bankers that are regulated pursuant to chapter 645E of the NRS. The subcommittee decided not to regulate those mortgage agents under 645E. With regard to mortgage agents who are currently licensed under NRS ... 645B and who are employees or interdependent contractors or mortgage brokers, the subcommittee made some adjustments to the proposed amendment that Mr. Bice presented at the first Committee meeting. One of the major changes was to narrow the focus of the information that was going to be required of principles, partners, officers, directors, stockholders, et cetera who were part of the underlying application. That was supposed to be limited so that there was a nexus between the operations in this State and those individuals, in addition to the information being required with regard to such civil or criminal proceeding or written complaints filed with the state or federal regulators. That was narrowed as well, so that the information had to be relevant to the type of investigation being conducted.

Essentially, that information would involve financial transactions, fiduciary relationships and crimes involving money, essentially, that is just a paraphrase. With regard to change in licensure for mortgage brokers and mortgage agents, in NRS ... 645B, currently, they renew their license annually, but the subcommittee decided that for the initial application, that is, a new applicant, their first year they would have to renew their license after a 12-month period and then after that it would be a 2-year renewal period. Existing licensees would shift to a 2-year renewal period for their licenses.

Several sections that dealt with escrow agents and liens on real property were removed. They are currently in the bill in the proposed amendment but they will be removed from both the bill and the proposed amendment. With regard to the issue of mortgage brokers and mortgage bankers who operated out of their homes, the subcommittee voted to allow those mortgage brokers and bankers to continue to operate out of their homes but prohibited them having any employees. If they had any employees, they would have to find a business address to operate from. ... There were corrections made to the transitory provisions, giving current licensees additional time to comply with the new requirements that would be set forth in the bill.

SENATOR LEE:

Mr. Powers, could you go over the \$10,000-fine issue. I just want to verify that it is on the record. If a mortgage agent performs an inappropriate act and a qualified employee had no knowledge of the act, that they not suffer the same \$10,000 fine. You mentioned that the language was stricken, what section is that in?

MR. POWERS:

In the proposed amendment, [Exhibit K](#), on page 14, the proposal was to amend NRS 654E.670, the disciplinary section for mortgage bankers. Because we are not licensing mortgage agents under NRS chapter 645E, this provision would no longer be in the proposed amendment or the bill. The issue you raised would not be included anymore in the bill so it would be addressed by the fact that the provision would be removed.

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CHAIR TOWNSEND:

Committee, I have a document provided by James Wadhams entitled: "Chapter 645B – Mortgage Brokers and Mortgage Agents" ([Exhibit L](#), original on file at the Research Library). Is this related to issues regarding S.B. 433?

MR. POWERS:

... As I understand it, Mr. Wadhams' presentation is to create an additional chapter of NRS for a certain type of lender. To break them out of NRS 645B and create a new chapter; and these changes would reflect the new chapter. ... 645B would remain the same and this would be a new chapter that regulates a portion of the people who fall under 645B, who would therefore be removed from 645B and placed in this new chapter.

CHAIR TOWNSEND:

There has been substantial debate regarding persons participating in mortgage banking and whether in fact they should be licensed under these provisions. A determination was made that they should be. Are we now going to change that? Is that the intention?

JAMES WADHAMS (Nevada Mortgage Bankers Association):

[Exhibit L](#) was not presented to the subcommittee. That document was created for consideration because of the internal conflicts that exist in the existing statutes. It had nothing to do with what the subcommittee did this morning.

CHAIR TOWNSEND:

Subcommittee, are we changing what this Committee did, either two or four years ago, regarding those who participate under another section of the law from being licensed? Maybe, Mr. Bice can answer that.

SCOTT E. BICE (Commissioner, Division of Mortgage Lending, Department of Business and Industry):

No, we are not changing that. This document was not introduced in the subcommittee. What we were discussing in the subcommittee was the Division of Mortgage Lending's bill and the amendments and the additional requirements the Division was attempting to impose was those agents of the mortgage bankers. We were trying to expand that provision and that did not happen.

CHAIR TOWNSEND:

Mr. Bice, since we worked from [Exhibit K](#), are you satisfied that you accomplished what was in your proposal?

MR. BICE:

We did not accomplish what the Division wanted to accomplish, but we did address all the issues.

CHAIR TOWNSEND:

Based on the recommendations in the subcommittee, are you still going to license those agents or are they still separate?

MR. BICE:

There is no difference to what was done before. We were trying to expand upon it but that was not what occurred as far as what the Division was looking for.

CHAIR TOWNSEND:

Was the subcommittee recommending that we change that position?

MR. BICE:

No, the subcommittee was not addressing or recommending a change to that position.

SENATOR TIFFANY:

In the subcommittee, we also defined a "qualified employee" in statute which was not there before. This was brought to our attention by Senator Heck, and I believe it was unanimous in the subcommittee, not to expand on those issues at this time. I also recommended to Mr. Wadhams that if he was still interested in creating a new chapter of the NRS that the Assembly could review it. However, it was too late, it was too comprehensive and I felt we needed more time to address the issues.

SENATOR HARDY:

Regarding the definition of a "qualified employee," are we now creating liability or some exposure for the qualified employee that might be similar to what the exposure or liability of the owner might have?

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MR. BICE:

The definition of a "qualified employee" was set forth by regulations and not in statute. It was stricken from the language in the NRS 645E and that same language exists in the NRS 645B currently.

SENATOR HARDY:

Are we not creating new exposure?

MR. BICE:

No, we are not creating new exposure, but they have exposure in the NRS 645B currently.

SENATOR HARDY:

I am still not clear on what we are trying to accomplish in this bill.

SENATOR SCHNEIDER:

I had asked Mr. Wadhams in the subcommittee who were we licensing. And what about the people who do not fall under this proposal, such as credit unions, et cetera. According to Mr. Wadhams, these types of institutions are federally regulated, and they cannot be licensed. I am not sure what we are trying to accomplish. I am on the board of a credit union, and if we put someone on the street to sell loans, they cannot be licensed under this proposal.

SENATOR HARDY:

I would like to disclose that I am also on the board of a credit union.

SHAWN SPANIER:

I am an industry professional. Mr. Wadhams represents a group of individuals who do not own community banks and credit unions. They are wholesale lenders or mortgage bankers. The language that was stricken was the NRS 645E, but that same language of a "qualified employee" is still in the NRS 645B. I would have a tough time hiring a qualified employee, and if I did hire that employee, it would not be economically feasible to hire that individual.

CHAIR TOWNSEND:

Are you not satisfied with what was agreed upon?

SHAWN SPANIER:

That is correct.

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CHAIR TOWNSEND:

Mr. Bice, are you satisfied with the subcommittee's recommendations to the full Committee? The full Committee can work with you to help in continuing to regulate your industry in an appropriate manner.

MR. BICE:

The Division has broad authority over licensees and the companies. I am satisfied with those provisions that have been previously granted to the Division. The issue that we were trying to bring up on the licensing of those individuals is not unlike private lending cases where they are taking those individuals' monies and lending it out. What I was trying to accomplish in the subcommittee is that the biggest purchase an individual makes is generally their home. My point to the subcommittee was that the individual who is perpetrating a lot of fraudulent activity on the lending side is the individual agent. My recommendation was to try to create a mechanism for parity in the individual licensing between the mortgage brokers and the mortgage bankers. Basically, we want to allow the Division to debar those individuals who we believe have been fraudulent. That was the intent of the Division.

CHAIR TOWNSEND:

Based on what has been recommended, do you feel that has been accomplished?

MR. BICE:

No sir.

CATHIE JACKSON (Nevada Association of Mortgage Professionals):

The Nevada Association of Mortgage Professionals agreed to support Mr. Bice on this bill, and we agreed to exploring up-front education and then taking a test, with the idea to find out who else in the industry is following the same practices. I understand that when the amendment was made to exclude the loan officers under the NRS 654E that the Committee was trying to keep a level playing field for the mortgage bankers and the banks. The Association also understands the banks such as Bank of America are already exempt from licensing. The mortgage-broker industry is regulated far more than the mortgage-banking industry. Without encompassing those people who do the same things we do, I would like to withdraw the support of our Association from S.B. 433.

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SENATOR HARDY:

It seems to me that we did not accomplish what the bill was originally intended to do, so I will be voting against the motion.

MR. SPANIER:

I am neutral on this bill. The only issue in the bill was the possibility of some licensing of bankers' agents. I would like to table the bill and bring it back next Session.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS S.B. 433.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS TOWNSEND AND HARDY VOTED NO.)

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CHAIR TOWNSEND:

The meeting of the Senate Committee on Commerce on Labor is now adjourned
at 11:08 a.m.

RESPECTFULLY SUBMITTED:

Jane Tetherton,
Committee Secretary

APPROVED BY:

Senator Randolph J. Townsend, Chair

DATE: _____