MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
May 8, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m., on Tuesday, May 8, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Senator Bob Beers, Clark County Senatorial District No. 6
Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Doreen Avila, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Randy Robison, representing the City of Mesquite
Cotter Conway, Deputy Public Defender, Washoe County
Joseph Turco, representing the American Civil Liberties Union of Nevada
Kathy Hardcastle, Chief District Judge, Eighth Judicial District Court
Laurel Turner, Coordinator, Serious Offender Program, Court Education Program, Clark County Courts Administration
Steve Grierson, Specialty Courts Manager, Clark County Courts Administration
Pedro Dominguez, Private Citizen, Las Vegas, Nevada
John Johansen, Program Manager, Office of Traffic Safety, Department of Public Safety
Karen Dennison, representing the American Resort Development Association; and Lake at Las Vegas Joint Venture
Bob Maddox, representing the Legislative Action Committee, Community Association Institute; and the Nevada Trial Lawyers Association
Michael Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Karen Brigg, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry

Chairman Anderson:
[Roll called.] I will open the hearing on Senate Bill 216 (1st Reprint).

Senate Bill 216 (1st Reprint): Allows certain convicted persons to make a monetary contribution in lieu of performing community service. (BDR 14-929)

Randy Robison, representing the City of Mesquite:
This bill was sponsored by Senator Mike McGinness on behalf of Judge Ron Dodd, who administers the court in Mesquite. Mesquite is a community that experiences a high volume of visitors. Occasionally, a visitor will commit an offense for which the penalty is mandatory community service. However, the individual will return to his residence, either out of the county or out of the State, and be unable to perform the community service there, or be unable to return to Mesquite to perform the community service. Judge Dodd contemplated how he might equitably administer justice for such an individual, as well as benefit the community, and proposed one option that could be used at his discretion—the ability to assess a mandatory contribution in lieu of all or part of the community service penalty. This contribution would be made by the individual and would go to benefit a local charitable organization in Mesquite. That way, the individual would be able to make restitution and pay back the community.

The Senate Judiciary Committee amended the bill by defining what it meant to be "incapable of performing community service." They added language saying that the convicted person had either a physical or mental impairment, or did not reside in that community; so, returning solely for the purpose of performing the community service would present an unreasonable burden upon that individual. The Senate also added language that would direct the court in making its determination about the required amount of the contribution. A wage survey was to be conducted of all buildings and grounds cleaning and maintenance occupations, according to the Department of Employment, Training and Rehabilitation. The purpose of the survey was to determine a mean statewide average hourly wage rate that would be multiplied by the number of hours to calculate the monetary contribution.

Finally, the Senate determined that, rather than having the contribution go to a local charity in the community, the money would be used to defray the cost associated with the administration of criminal justice in that community, which may, in fact, defray the cost of the courts. That was not the intent of either Judge Dodd or Senator McGinness when they sponsored the bill. We were looking for a way to address those very rare circumstances when an individual who either visits our community or is otherwise incapable of performing community service needs to make restitution so that justice may be served. To that end, we would like to propose an amendment to the bill (Exhibit C). The amendment would return the bill to its original intent of having a contribution be made to a local charity. Other justices affected by this bill felt it would be simpler to administer if a flat rate was designated in the legislation, and they proposed a rate of $10 an hour versus conducting a wage survey.

Assemblyman Horne:
Regarding the formula to determine what the fine will be, paragraph 6 of your amendment says, it will be "determined by multiplying the number of community service hours." That seems convoluted to me. Are you proposing a fine of $10 an hour and any additional money would go to a charity?

Randy Robison:
That is correct.

Chairman Anderson:
Do you think this amendment is going to cause problems with the original intent of the bill? I understand that Senator McGinness and you are the original sponsors of the bill, but do you feel that this change will put the bill into a conference committee, where it might die?

Randy Robison:
When the bill was originally proposed, it did not set any parameters on the wage rate or how that might be determined, although Senator McGinness and the Chairman of the Senate Judiciary Committee always talked about a flat rate in our discussions. The Chairman felt that a wage survey gave some sort of parameter and would relieve the judges of one burden. When discussing a flat rate, the Senator did not indicate which one he preferred. This rate is the one that ended up in the bill. In response to your question, I do not know if it will automatically involve us in a conference committee, but it certainly is a possibility.

Chairman Anderson:
Your amendment to subsection 7 states:

> ... deposited in an account created, maintained, and administered by the local governing body of the jurisdiction of the court and must only be used by the local governing body to benefit local charitable organizations that render service to the community or its residents.

Not too many organizations offer community service involvement, but every charitable organization needs and wants money to run its programs. Will the local government decide what charitable organization will receive the contribution? I am concerned that this may become an easy way for offenders to get out of making restitution by claiming that they are from out of town and do not want to come back to do their community service. They should not have broken the law in the first place. One of the penalties is that the individual will

have to return to town for community service rather then going to jail. Is this another way for an offender to buy his way out of the box?

Randy Robison:
There was discussion regarding the way these funds might be administered and a number of different alternatives were discussed. We were comfortable with the contribution being paid into a government account. Mesquite has a process allowing it to administer funds to local charitable organizations on a grant-type basis. Organizations present their applications, make their cases, and then the city decides. If the Committee feels inclined to add additional parameters or guidelines and further restrict the use of those funds, that would be acceptable. The Senate had similar concerns and decided the funds should be deposited into a local law enforcement agency's fund. However, during the drafting of the bill, that was not specifically stated.

Chairman Anderson:
I thought the purpose of community service was to penalize the offender. Sometimes community service can be more of a penalty then a fine, because many people place a high value on their time and dignity. They do not want to be inconvenienced or embarrassed by having to wear a funny suit while picking up trash alongside the road; however, that is exactly where the public would like to see them. Why do we want to change that idea and allow people to buy their way out of the box?

Randy Robison:
That is the main purpose of a community service sentence; however, if the judge were here, he would give you the examples he gave during this bill's hearing in the Senate. Judge Dodd could explain that there are exceptions to the rule and he believes those situations need extra discretion. One example that he used in his testimony in the Senate was of a senior citizen who was on oxygen and could not physically perform the community service. This presented a great impediment from a physical standpoint. Another example he used was of an officer of the court from Colorado who visited our community. He returned home to complete his community service, but was unable to find a place in Colorado that would allow him to do that, so he called the court to ask what he should do. In those cases, the judge is simply asking for the discretion to address and administer justice in a way that keeps both the intent and the community whole.

Assemblyman Mortenson:
Will this be discretionary for every case? You mentioned discussions in the Senate about who is eligible to pay versus who will do community service. If Mr. Big Bucks is sentenced to community service, can he pay his way out?

Randy Robison:
That is certainly not our intent. The way the Senate Judiciary Committee amended the bill, the language on page 2, subsection 5 reads, "if a court makes a special finding based on the evidence satisfactory to them...." Then, in subsection 8 on page 3, the bill describes what that special finding means. The bill limits the special finding to:

> The convicted person has a physical or mental limitation that would prevent him from safely performing the community service, or would otherwise constitute an unreasonable burden upon the supervising authority; or the convicted person does not reside in the county where the offense was committed and requiring the convicted person to return to the county solely to perform the community service would result in an unreasonable burden upon the convicted person.

Assemblyman Mortenson:
That is a good answer. It is poor policy to allow the money to go back to an entity that profits from the fining or the arresting. I do not want to see the money go to a police fund or into an administrative account for the courts, or anything of that nature. I would rather see it go to charity, especially a trust fund that would administer grants.

Assemblywoman Allen:
In the case where a judge assessed community service in addition to a fine, how would that work?

Randy Robison:
I do not know. I apologize, but if the judge were here he could certainly address that question.

Cotter Conway, Deputy Public Defender, Washoe County:
The fine and community service would benefit two different places. The fine would still be collected, assessed, and distributed pursuant to the current standards of the court; whereas, the community service would be converted into a contribution that would benefit a charitable group. In that situation, the fine must still be paid, and that money would go to one place, while the monetary contribution in lieu of community service would be going into the fund created under the statute. So, a fine in addition to community service does not pose a problem.

Chairman Anderson:
Mr. Robison, if there was a minimum of five charitable organizations on a list, we need to stipulate that those organizations be rotated. We do not want the judge, or whoever placed that organization on the list, to favor one organization over the others. Would you have any objection with a rotating list?

Randy Robison:
We would be in favor of that. The Judge, the Senate Judiciary Committee, and I discussed how to ensure that a charitable organization did not become a favorite. That is what led us to a fund administered by the city for that purpose. We welcome any further guidelines that you propose.

Assemblyman Cobb:
If this law is not passed, what would happen to an individual who is mentally disabled? If the judge found that the city was unable to administer community service in a safe manner, that individual would be left without the option of performing community service. Would the only option be to put this mentally disabled person into a jail facility?

Randy Robison:
I am really not qualified to answer that question. I do not know what the remedy would be in that situation.

Assemblyman Cobb:
But certainly, the intent of this bill is to avoid a situation like that and to allow someone who is mentally disabled to simply pay a fine in lieu of a community service assignment that could be dangerous to them?

Randy Robison:
That is correct.

Chairman Anderson:
To reiterate, this bill is being brought before us because Mesquite is a community where a large percentage of the people being cited are from out of town or are traveling through, so the judge in Mesquite is looking for a convenient way to handle this situation.

Randy Robison:
I do not think Judge Dobb would characterize it as convenience as much as it is a way to deal with the very rare exceptions he experienced during his 25 years on the Bench. For one reason or another, occasionally an individual cannot perform community service, and the Judge is looking for an alternative that would allow the individual to make restitution.

Chairman Anderson:
Community service programs are expensive to operate for the governmental entities. There must be supervision for road crews. Ten dollars an hour is a pretty low threshold because offenders on road crews must be supervised, protected by barriers, and wear proper color vests. Is there a cost savings to the county by going this way?

Randy Robison:
The $10-per-hour amount was suggested after consultation with a couple of different justices. For our area, the wage survey, as indicated in the bill, showed wages for maintenance crews in the $14- to $17-per-hour range. Use of a flat fee was to simplify administration of the program. If the Committee believes a higher fee is warranted, I do not believe there would be opposition by the justices to that. The intent was not to save money, nor to create a windfall for either the local government entity or a local charity.

Assemblyman Carpenter:
If someone from out of state did not return to complete his community service, you could put out a warrant for them.

Chairman Anderson:
Is there anyone else in support of S.B. 216 (R1)? Is there anyone in opposition?

Joseph Turco, representing the American Civil Liberties Union of Nevada:
Community service was designed for the purpose of keeping certain people out of jail. It works well because it is imposed across-the-board and at the judge's discretion. We all know money talks in the criminal justice system, but do we need to make that an official policy of the State? For the American Civil Liberties Union (ACLU), it was a "no brainer" to oppose this measure. It is bad policy, it is saying we have one justice system for some people and yet another for those people. It injects classism into the criminal justice system in an inappropriate way.

Assemblyman Mabey:
In my opinion, it is harder and harder to perform community service because these organizations will not accept just anyone. There must be background checks. If you are the Boy Scouts, you do not want just anyone off the street to come in and work. I would guess that most organizations now are concerned about letting just anyone be thrust upon them to perform their community service, because their backgrounds are unknown. That is one reason community service does not work the way it used to. Do you have any thoughts about that?

Joseph Turco:
I had not given it much thought. There is only so much litter an individual wearing an orange jump suit can pick up, so where do we go from there? Mr. Cobb raised an exception that actually might be acceptable with regard to a situation where community service just does not apply.

This idea is going to be used for the rich and they will take advantage of it. The bill in its present state needs some work, and Dr. Mabey, you raised a really good question and I am going to look into it.

Chairman Anderson:
I am concerned about the question of whether only the rich are going to get to do this.

Assemblyman Horne:
I am confused. If there were a proposed bill saying if you violate a particular law or code, the fine is $200 or jail, you would be before us saying that there is no alternative for those less fortunate who cannot pay that fine. Now, you are saying this bill is a bill that enables the rich to get out of trouble and we will be filling our jails with the poor. When we add community service, these laws apply to everyone. Not everyone can pay their debt in the same manner, so we provide alternatives. Some pay their debt to society using community service, some pay using a combination of paying a fine and doing community service. Do you not agree that we should allow that option because not everyone is rich, but everyone has to pay for transgressions of our laws and ordinances? As a result, I do not understand your opposition to this bill. It would allow out-of-state persons who break our law and for whom it would be difficult to travel back and forth to do community service, to be able to pay.

Joseph Turco:
It is a conundrum. It is blatant: money talks. In a small town, the charities are going to have a vested interest in the commission of crime. It is too weird a situation; but you are right, I probably would say that. I know many people for whom paying money to a charity would not be a deterrence, but the threat of really being locked up in jail would be.

Assemblyman Horne:
Just for clarification, we are not talking about high-level crimes; we are talking about things like traffic violations and public intoxication. This is not a way to help the rich who find themselves in these predicaments.

Chairman Anderson:
Does anyone else wish to speak on the bill? [No response.] I will close the hearing on S.B. 216 (R1). What is the pleasure of the Committee? Ms. Allen, Mr. Carpenter, and several others want to send the bill to a work session with additional amendments as suggested.

I will open the hearing on Senate Bill 277 (1st Reprint).

Senate Bill 277 (1st Reprint): Authorizes the court to assign certain offenders to a program of treatment for certain offenses. (BDR 43-888)

Senator Valerie Wiener, Clark County Senatorial District No. 3:
In my capacity as a member of the Attorney General's Advisory Coalition on Impaired Driving, the two issues in the forefront of our meetings have been social hosting and this issue. Senate Bill 277 (1st Reprint) is language to codify a program that has been very successful in Clark County for about eight years. Our District Attorney indicated that the courts needed a statute to continue with this highly successful program and that is the bill before you. I also have presented an amendment (Exhibit D) that will create a more streamlined approach to the program and respond to concerns that recently arose. Several people will be coming forward to explain the program and what the bill will do to help move it forward. The program involves driving under the influence (DUI) alternative sentencing opportunities, and has a 12 percent recidivism rate.

Kathy Hardcastle, Chief District Judge, Eighth Judicial District Court:
I would like to express our sincere thanks to Senator Wiener and the Attorney General's Task Force on DUI for giving us the opportunity to bring this very important program before you. Senate Bill 277 (1st Reprint) allows Nevada's courts the ability to identify and treat felony DUI offenders who are severe public safety risks to our communities.

This program targets those who have a chronic alcohol and drug abuse problem and repeatedly make the decision to drive, which endangers our communities. In 1998, then-District Attorney and now-District Court Judge Stewart Bell was approached by his DUI team chief to discuss possible solutions to an ever-increasing revolving door of felony DUI offenders. It was their experience that DUI felony offenders were rapidly repeating their offenses, despite the prison terms and statewide release programs established for DUI felony offenders in 1993.

A pilot project was implemented to determine whether or not diverting felony DUI offenders into an intensive, therapeutic program before imprisonment would be of greater benefit to us. After initial success in 1999, Nevada's Office of

Traffic Safety recognized this potential and awarded Clark County a three-year grant to keep the project moving forward. The serious offender program has continued the success and has received national recognition from the National Commission Against Drunk Driving. In addition, the National Highway Traffic Safety Administration has identified the serious offender program as a national best-practice program and is currently completing research for publication.

Section 1 of the bill requires a treatment program that must be certified by the State's Health Division, which we believe provides appropriate consistency and accountability of treatment services. Second, the program must last three years. Originally, the program was started using one year of treatment, but it was determined that one year was not long enough to really change behavior, so it was increased to three years. Research has clearly indicated that the longer a person remains in treatment, the better the outcome.

The third part is that the offender pays for the cost of the program. Serious offender program costs are $5,924 in the first year; $3,244 in the second year; and $2,594 in the third year, for a total program cost to the offender of $11,762. The cost for treatment is about $2,600; the breath ignition interlock requirement costs about $871; the house arrest costs them about $1,830; and program management fees are $500.

Sections 2 and 3 allow for a mechanism for entry into the program of treatment. Section 4 concerns an individual who successfully completed the program. At that point, the violation is reduced from a felony third to a DUI second; so, after he has gone through this three-year treatment program, been on house arrest, and done all the other things he is required to do, he is able to avoid the felony conviction. But, for purposes of enhancement, this conviction still operates as an enhancement, so if he ever gets picked up again, he is still looking at another felony.

Section 5 follows the current admission procedures set forth between the courts and the treatment community. We would require our DUI court coordinators, who are licensed alcohol drug counselors, to provide screening and evaluation. Section 6 of this bill requires six months of house arrest. In Clark County, we use our local detention center and house arrest unit. This has proved to be extremely successful for us and the costs of the house arrest are covered by the clients. House arrest fees are on a sliding scale, so people are not turned away from the program if they are unable to pay. Section 6 also requires a breath ignition interlock be installed in a vehicle for at least 12 months and our program requires a breath ignition interlock installed for the entire term of the program. We require a breath ignition interlock on any other vehicle that person has access to, as well. They are also required to submit to

random drug and alcohol testing. In addition to the breath ignition interlock, if we suspect that the participant continues to drink, we install an in-home breath testing device. This device requires breath samples at a time determined by the coordinator or the court. A camera is located within the device and the results, plus the photo, are sent to the coordinator via the Web. The cost for this device is $2 a day.

Section 7 of the bill provides that participants can only use the provisions of the statute once. They get one shot at treatment; either they succeed, or they fail. If they fail, they cannot come back into the treatment program. It also prohibits use of the statute for those who have caused substantial bodily harm, death, or vehicular homicide.

We have distributed some of the statistics of this program on a one-page list (Exhibit E). Since the inception of this program, there have been 716 admissions. Currently, there are 171 active participants. We have had 356 people who have successfully graduated from this program. These are 356 people who would have spent time in prison but, instead of incurring the cost of being sent to prison, which is about $21,000 a year, they, instead, spent three years in the treatment program and paid for the cost of that program themselves.

We have only experienced a 12 percent recidivism rate; that compares with 6 reoffenders out of every 10 people who went to prison. I think that recidivism rate really establishes the success of this program.

Chairman Anderson:
This involves putting third-time DUI offenders into three-year programs instead of into prison where they may or may not receive treatment. You have an 88 percent success rate, which is 6 or 8 percent above the regular drug court's success rate over three years. How many years does your recidivism study span?

Laurel Turner, Coordinator, Serious Offender Program, Court Education Program, Clark County Courts Administration:
We looked at the 1998 clients and studied the three years before they came into the program, the three years during the program, and the three years after. We graduated our first class in 2001.

Chairman Anderson:
Judge Hardcastle, we distributed a mock-up of the bill, which is an amendment (Exhibit D), because I understand there may be clarification needed?

Kathy Hardcastle:
Yes, the proposed amendment helps clarify and clean up some of the language in the bill. There was one question from the criminal repository regarding what they needed to do, and that has been cleared up with the amended language.

Chairman Anderson:
If you successfully complete the treatment program, at the end of the three years your felony DUI is set aside and the penalty is reduced to a second-offense violation, which is a misdemeanor. If, during the ensuing seven years, you have another event, do you go to a fourth DUI?

Kathy Hardcastle:
Should you pick up another DUI, even after completion of the program, the change is automatically enhanced to a felony.

Chairman Anderson:
So it is for a lifetime?

Kathy Hardcastle:
Right.

Chairman Anderson:
Let us say I picked up my first two DUIs when I was 22 and 23 years of age and went into your program from age 25 until age 28. Now, I am 70 years of age, I drive down the road and get picked up for DUI. Am I going to go to prison?

Kathy Hardcastle:
That is my understanding of the language added in the proposed amendment. If you have this conviction on your record, it would automatically be an enhancement for any subsequent DUI.

Chairman Anderson:
Does the interlocking device have to continue in the car after the end of your program?

Kathy Hardcastle:
No, because the program is over, you have graduated, and supervision by the court would stop. You have to complete the three-year program and the three-year program cannot be extended. Under the bill, we can suspend the sentence and follow participants for as long as five years.

Assemblyman Carpenter:
How many people have to go to an institution or home? Are most confined to house arrest?

Laurel Turner:
That would depend on the home environment. If that environment is inappropriate, we will place them in a supportive living situation. There are situations when patients are coming out of custody and have no place to go. That is when we will temporarily place them until they can get back on their feet financially. If we determine they need inpatient treatment, we refer them from outpatient to inpatient treatment; however, that is a very small percentage. Usually, we go from outpatient to supportive living.

Chairman Anderson:
Now being distributed to Committee members is a handout from the Department of Public Safety concerning a national DUI-sentencing summit (Exhibit F). Judge Hardcastle, as I understand, this program is only available in Clark County, is that correct?

Kathy Hardcastle:
Yes, it is currently only available in Clark County because it is a pilot program. Passage of this bill would allow the program to become available throughout the State.

Chairman Anderson:
If this program were to be implemented on a statewide basis, might we find district court judges willing to participate?

Kathy Hardcastle:
Yes, in fact, our program coordinator, Mr. Grierson, has volunteered to work with any other counties that wish to implement a similar program.

Steve Grierson, Specialty Courts Manager, Clark County Courts Administration:
I am available to provide guidance and feedback to anyone who needs it.

Chairman Anderson:
Does anyone else wish to testify in support of S.B. 277 (R1)?

Pedro Dominguez, Private Citizen, Las Vegas, Nevada:
Does this program apply for a felony DUI with substantial bodily harm?

Chairman Anderson:
No, even if it is your first DUI offense.

Kathy Hardcastle:
That is correct. If you pick up a felony DUI as a result of substantial bodily harm, homicide, or death, you do not qualify for this program, even if it is your first arrest.

John Johansen, Program Manager, Office of Traffic Safety, Department of Public Safety:
You have already received my handout (Exhibit F). We did work with the District Court on this program by providing grant money to help with their start-up costs. The program has also expanded into other courts in Clark County. The Clark County Justice Court has a program for second offenders based on the Eighth Judicial District Court's model. With the help and working relationship we have with the District Eight program people, we are continuing to work and identify courts that would be suitable candidates for start-up funding. One of the nice things about this program is the extremely low recidivism rate. Successful programs have a tendency to become almost entirely self-sustaining, costing very little for their local jurisdictions, the cities or the counties.

If you will look at the handout, the extent of the problem is best shown by the graphs on the last three pages, especially the first one, "Active Participant Arrest Profile." Prior to entering the program, the average participant out of the current 171 participants had 11 arrests—4 DUIs and approximately 7 additional charges. To give you an idea why law enforcement, the courts, and everyone else is overworked and overcrowded, prior to entering the program, those 171 people accounted for almost 2,000 arrests.

Chairman Anderson:
Are there any questions or would anyone else like to speak either for or against S.B. 277 (R1)? [No response.] I will close the hearing on S.B. 277 (R1). It would appear that we will need a motion to Amend and Do Pass on the bill.

> ASSEMBLYMAN COBB MOVED TO AMEND AND DO PASS SENATE BILL 277 1st REPRINT WITH THE MOCK-UP PROPOSED AMENDMENT 3941.
>
> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN HORNE AND OCEGUERA WERE ABSENT FOR THE VOTE.)

Mr. Conklin will defend this bill when it comes to the Floor. I am taking a five-minute break [at 9:21 a.m.].

This meeting will come back to order [at 9:36 a.m.].

[Chairman Anderson left the hearing, and as Vice Chairman Horne was absent, Assemblyman Oceguera was asked to preside at 9:40 a.m.]

Acting Vice Chairman Oceguera:
We will open the hearing on Senate Bill 235 (1st Reprint) and hear from the proponents of the bill.

Senate Bill 235 (1st Reprint): Makes various changes concerning homeowners' associations. (BDR 10-681)

Karen Dennison, representing the American Resort Development Association; and Lake at Las Vegas Joint Venture:
The American Resort Development Association is the national trade association for the time-share industry. This issue concerns delegate voting and time-share projects. Language in the amended bill concerns time-share projects that are part of a larger planned community, and would allow the time-share project to vote using delegates to the master association. That language is found in Section 7, subsection 7(a) at the end of the bill on page 8. Subsection 7(a) covers a situation at Lake Las Vegas where there is a planned time-share community being constructed that will cast its votes to the master association through delegates. Time-share owners are, by definition, absentee owners and, given the limitations on proxies which are contained in *Nevada Revised Statutes* (NRS) 116, you either have to be a resident of the project or a relative to accept a proxy, but neither of those applies to time shares. Time shares vote through delegates. The elected board casts its votes to the master association, which is covered in language in subsection 7(a).

I am proposing an amendment because of language that did not get included in the first reprint (Exhibit G). That language covers a second situation in which a condominium project has both time shares and wholly-owned condominiums with a master condominium association that the time shares must vote. This amendment adds two words, "or condominium," after the words "planned community" on line 16, page 8, and would allow time-share owners, when part of a master condominium association, to cast their votes by delegates.

Acting Vice Chairman Oceguera:
Are there any questions? [No response.]

Bob Maddox, representing the Legislative Action Committee, Community Association Institute; and the Nevada Trial Lawyers Association:
Both organizations I represent take the same position on this bill, which is basically in support because it promotes democracy within homeowners' associations. It provides that the developer can set up representative voting and district voting in large associations of 1,000 units or more. It creates districts within the community, and homeowners within that district can then elect the members of the governing board of that homeowners' association. In that sense, it is a very good bill.

It has some problems, however, and I sent you a letter about my concerns (Exhibit H). The first problem relates to the associations that currently use delegate voting systems in which the members in a neighborhood elect a delegate. The delegates as a group then elect a board of directors. It is not particularly democratic, but it is the system in place in several very large associations currently in Las Vegas. The bill does not make clear what those homeowners' associations are supposed to do now because the bill says delegate voting can only apply, other than in time shares, during developer control of the association or for a period two years thereafter. Associations beyond that two-year period would have to convert to some sort of system other than delegate voting under this bill, but the bill does not say what to do. That is what I spell out in my letter. Some language should address that issue. Are the homeowners' associations supposed to amend their documents? What if they cannot get a supermajority of votes to amend? Is there a default provision? Do they automatically go to direct election of the board of directors without districts, or do they go to district voting? Those issues must all be worked out.

One option might be to refer the matter to the Commission for Common-Interest Communities for a solution. At least new associations would not set up delegate structures, but could either have direct election of the board of directors or could have district elections.

Another issue that should be addressed in this bill is, if you have district election of directors, you should also provide for recall of a director elected by the district so that the recall election only takes place among the voters in that district.

Those are the two problems that should be addressed to make this bill work better, but the basic concept is a good one.

Acting Vice Chairman Oceguera:
Are there any questions for Mr. Maddox?

Assemblywoman Allen:
The Assembly Judiciary Committee has already moved a bill that spoke to delegate voting. It is my understanding that the two bills are potentially in conflict with one another. Have you read the other bill?

Bob Maddox:
I have. Could they be worked together? I think so, but the Assembly bill would eliminate delegate voting, I understand.

Assemblywoman Allen:
It would be only in instances of election of board members.

Bob Maddox:
That is what I meant, and that is what we are talking about here—election of board members. Something in this bill must be changed to make it clear how to make the conversion to a different system. Does the Assembly bill provide for direct election of the board of directors by all members in the community? That is one way to do it. Senate Bill 235 (1st Reprint) provides for districts, which is not necessarily a bad idea. A direct election of a member of the board of directors by the voters within that district eliminates the intermediate process of having a delegate; but if you tried to merge the two bills, you would essentially be eliminating the concept of district voting, I think. Your Assembly bill does not allow for representative voting.

Assemblywoman Allen:
Is there any reason for the 1,000-unit minimum?

Bob Maddox:
I do not know.

Acting Vice Chairman Oceguera:
Are there any further questions for Mr. Maddox? [No response.] Senator Beers, we started to hear your bill.

Senator Bob Beers, Clark County Senatorial District No. 6:
It sounds as though you are all familiar with the concept of delegate voting. We tried to remove that aspect of homeowners' association governance which leads to disenfranchisement and lack of participation. The bill, as it sits before you, was hammered out by a number of people. I know Karen Dennison has an amendment that I am fine with.

Mr. Maddox's concern can perhaps be addressed by amending Section 2 so that, rather than a district organization, you could have everyone serving

at-large for the community. I do not care one way or the other. The point is that delegate voting is different enough from the Electoral College that it is something alien to high school civics graduates, and I would like to see it go away.

The Howard Hughes Corporation is involved in Summerlin, the community that sparked this particular bill. At the north end of Summerlin, the homeowners' association has passed on to residents hands, but the south end of Summerlin has not. Delegate voting was initially created to ensure that a homeowners' association retained its characteristic as a marketing arm for the developer. Once the developer goes, I think it is a very unworkable form of governance for people.

Assemblywoman Allen:
Is there any reason for the 1,000-unit minimum?

Senator Beers:
It was requested by smaller associations that believe they do not have this problem. I am ambivalent as to whether it stays or goes. I suspect Summerlin is also ambivalent about the threshold, because they are the target of this bill and would be included.

Assemblywoman Allen:
I know one board member is an adamant proponent.

Senator Beers:
Yes, one of the board members has been in touch with me. He does not understand how, without delegate voting, they would ever achieve the two-thirds voting requirement to change their declaration so homeowners could actually cast votes. That is why delegate voting was created in the first place, so that you can have a 100-percent-turnout election, which would otherwise be impossible. That is really what delegate voting is all about. It creates a façade of unanimity for purposes of amending declarations. The other part of this bill addresses that somewhat by suggesting that, if you were to achieve a 35 percent turnout and you have a big issue, you could go to a judge and request that the judge amend your declarations even though your community did not actually hit that target of two-thirds unanimity on the issue. So, you would only need 35 percent unanimity on the issue to go to a judge. Eventually, that may be something the Legislature looks at as these communities evolve. Once you move away from delegate voting, you are faced with specifically designed-to-be-impossible levels of electoral success in order to change the fundamental document of the organization. The process was created to be impossible by developers who did not want any changes.

Now, those developers have left, and the people are left in charge with a founding document that essentially cannot be amended, save through the intervention of a judge. This process is certainly not how we all know the election process.

[Assemblyman Anderson returned and resumed Chairing the Committee.]

Chairman Anderson:
Senator, there was a proposed amendment from Karen Dennison and Sean Gamble?

Senator Beers:
I am in favor of that amendment as well as the one from Mr. Maddox. Mr. Maddox seeks more direction from the Legislature as to what should replace delegate voting and how an association would go about moving to end delegate voting. Mr. Maddox suggested the Legislature prescribe a one-time election using the simple standard that whichever issue, question, candidate, et cetera receives the most votes, wins. I am also open to expanding the forms of governance. It does not have to be a district system. If we allowed the option, there could be at-large board members as well. We have a mix of both in our municipal and county governments in the State.

Assemblywoman Allen:
Perhaps Risa Lang can clarify, but if we remove the "election districts" portion, would the Assembly and Senate bills relating to this issue be in concurrence?

Risa Lang, Committee Counsel:
I would have to look at the Assembly bill and compare it with S.B. 235 (R1), but I think that would probably take care of it.

Chairman Anderson:
Is there anyone else who wishes to testify on behalf of or in opposition to S.B. 235 (R1)? [No response.] I will close the hearing on S.B. 235 (R1) and open the hearing on Senate Bill 436 (1st Reprint).

Senate Bill 436 (1st Reprint): Makes various changes to the provisions governing common-interest communities. (BDR 10-234)

Michael Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry:
A number of provisions in the bill came out of the Commission for Common-Interest Communities, and the Commission is in support of S.B. 436 (R1), with some modifications that we would like to present (Exhibit I).

A minor change needs to be made to a number of provisions of the bill. In 2005, the law was changed to require that persons who prepare reserve studies have to be licensed. The Commission held hearings and, as a result of those hearings, believed that having those preparers register rather than be licensed would be adequate. As a result, a number of provisions in the bill change the certification, or permitting requirement, to simply a registration requirement.

There is another provision in the bill at Section 11 that deals with where deposits in escrow must be physically held. The Commission held a number of hearings on this issue, and Section 11 is identical with a temporary regulation that the Commission approved, but which will not be effective after July 1, 2007. As a result, if the bill is passed, I suggest that the effective date of the bill be July 1, 2007, rather than October 1, 2007.

In Section 1, subsection 8 on page 6, the language states that if a board member has not paid his or her dues, then that board member cannot vote at an executive board meeting. The Commission discussed the fact that there should be some reasonable period between receiving a bill and paying it, so the Commission suggested the bill would be overdue after 45 days. The declarant may have to pay dues to the association, but those are usually based on the closing date of the sale and there is usually a reconciliation at some point. So, we are providing language that would say the declarant-appointed board member would have to pay the amounts due following that reconciliation. It would not be an immediate, "You cannot vote," but would allow some time for the payment.

Section 1, subsection 10, provides that a homeowner can get a receipt showing that a fine has been paid in full. The Commission was made aware that most payments made by homeowners are made to lockboxes. The Commission suggested that this section be revised to read that the association must provide written confirmation of receipt for payment in full of a fine, within 30 days after a written request is made by someone wanting confirmation.

The next provision the Commission had an issue with is Section 2 on page 7. The existing law, passed in 2005, says that if a homeowner makes a payment the association will apply it to the assessments rather than to the fines. The procedure for that is changing, but not the concept. Since the payments are usually made to a lockbox, the Commission believes it is easier to have a default rule rather than operate with written requests. Our proposal is to delete Section 2 from the bill. It does not change how an association deals with homeowner payments, it just changes the procedures. The Commission believes that the attempt to rework the procedures does not work.

Associations must have reserve studies, but then the question of adequate funding for those reserves arises. At Section 8, subsection 1 on page 17, there is an attempt to define what adequate funding is. There are two alternative proposals: one being that reserve funding is as recommended by the reserve study; the second is that the amount of reserves must cover the next five years. The Commission believes that the second section, the five-year rule, creates a lot of problems. For example, if an association has a very large capital expense in 20 years, such as for streets in the subdivision or the roof of a building, rather than reserving funds for it over the 20-year period, this option would allow the association to reserve funds for it over the last 5 years, which does not make good sense. The Commission proposes to delete subsection 2(b)(2) and on line 5 would insert "as specified in the funding plan recommended by the reserve study." We are opposed to the concept that an association only needs to cover things that will have to be repaired within five years. The Commission would also support leaving the law as it is, which just requires that there be adequate funding and leave it on a case-by-case basis.

Commissioner Brainard would like to speak about two other provisions dealing with emergency vehicles.

In Section 15, there is a provision that would allow an association to hire a person who has some kind of management experience, but who is otherwise not licensed. The Commission has great concerns about permitting people without any homeowner association experience to work for associations, and Commissioner Brigg will address that. The position of the Commission is that we have spent a great deal of time establishing the educational and experience requirements for community managers. The Commission believes that Nevada is in the forefront of requiring managers to be competent and that, if this particular section is passed, it would allow a big hole through which people could avoid the educational requirements.

Other than the sections I have mentioned, the Commission is in support of the bill.

Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry:
At the end of February 2007, there were 2,868 community associations of varying sizes and types within Nevada containing 411,334 units. Assuming there are 2 people in each unit that means 822,668 residents of our State reside in neighborhoods with community associations. Of that number, 1,375 are single-family developments. Please keep those statistics in mind when deciding what is good for the many people who choose to live in Nevada.

I am proposing serious changes to Section 10 (Exhibit J). The Commission understands why it is important to have emergency response vehicles at the ready for a true emergency that could affect public health or safety. We fully support that; however, the way the bill was crafted, many vehicles were permitted that would not be considered to be emergency response vehicles by the average person, and that is why we have proposed this change to the language.

When an actual service is being performed during normal business hours, the utilities will send the vehicles as they are needed. There are a certain number of utility employees who do need to have that vehicle available. Our concern is the parking of very large vehicles. If you look at Section 4 on page 2 of my handout (Exhibit J), "commercial motor vehicle" has the meaning ascribed to it in "49 Code of Federal Regulations" (CFR). The types of vehicles included in that federal regulation raise real issues and can include vehicles designed or used to transport 16 or more passengers, including the driver. Regardless of weight, it can be used in the transportation of hazardous materials. Also, a "large" truck means a truck over 10,000 pounds gross vehicle weight rating, including single-unit trucks and truck tractors. In reading the language concerning what type of vehicle would be permitted in a residential community, I became quite alarmed that the bill was referencing this particular federal regulation.

The Commission shares the concern of most of you here about public safety and children. Our residential areas include many children, and very large vehicles can be a hazard. On the last page of my handout, I have included some perspectives on the impact of having these large vehicles parked on our residential streets. They block vision for drivers, and children darting out into the streets chasing a ball or their pets could be hit. Those large vehicles should be maintained in a service yard by the utility and not brought home by the workers.

Chairman Anderson:
This causes a certain level of concern for me. It would not be unusual for a sheriff or undersheriff to have an emergency vehicle at his home as required by his job. Since in southern Nevada, 90 percent of the new housing is in gated communities, you might be limiting those people's opportunity for home ownership.

Marilyn Brainard:
If you will look at the first page of my handout, the new Section 5 includes a gross vehicle weight of up to 12,000 pounds. Most emergency vehicles you referred to would fall well under that threshold.

Chairman Anderson:
The utility companies have specialized vehicles that emergency responders need and their designated employees must have those vehicles with them at all times. Would they be precluded?

Marilyn Brainard:
The photos I have with me were provided by Southwest Gas (Exhibit K) and the gross vehicle weight of those response vehicles is up to 8,800 pounds, and these are the normal vehicles. Anything the size of a pickup truck that has a "service body" would fall under the 12,000-pound limit. We thought that was a reasonable accommodation.

Assemblyman Oceguera:
I thought this was too broad and was glad to see you have changed the limit so every utility employee could bring their car and park wherever he wanted to; however, I am a battalion chief with the fire department, and some of these emergency response vehicles you are talking about may be larger than 12,000 pounds. Frankly, I do not want to have to wait for the employee to go to the yard and retrieve his emergency response vehicle. If I have a broken six- or eight-inch gas main, I want the responder to have the truck at his home and I want him to be able to respond in a timely fashion. You are causing me some concern because this proposal is eliminating some emergency response vehicles.

Marilyn Brainard:
You may notice that "new section 6" at the bottom of the first page (Exhibit J) reads "the emergency response employee will produce evidence of the necessity to have the vehicles available to him at his unit." Would it be possible in a situation as you described to make allowance for that? If that is the vehicle mandated by the governmental entity's fire department, and that vehicle must be at a residence, I would certainly think that a homeowners' association would recognize that need.

Assemblyman Oceguera:
I am not referring to a fire department vehicle; I am referring to a Southwest Gas or Nevada Power Company vehicle. It is my understanding that these vehicles rotate among employees and would not be present 52 weeks a year. There should be some allowance made for these vehicles, which can include larger vehicles like boom trucks or trucks with backhoes. I know those are the vehicles you do not like, but for emergency response, those vehicles are very important.

Marilyn Brainard:
I spoke with someone at one of the large utility companies in northern Nevada who knows how emergency response works. I was told that the first on-call emergency responder who departs from his or her residence goes directly to the emergency with a supervisor. They then call the call center.

Assemblyman Oceguera:
Mr. Chairman, I do not have to be told how it works.

Chairman Anderson:
Ms. Brainard, I am sure the commander of the North Las Vegas Fire Department does not have to be told how a responder to an emergency operates.

Marilyn Brainard:
I appreciate that, but I thought the rest of the Committee might not be aware that a smaller, immediate response unit initially goes out to the emergency. The call center sends out the larger vehicle.

Michael Buckley:
The Commission was concerned about narrowing it down. Speaking for myself as a Commissioner, I am not comfortable saying 12,000 pounds is the absolute line.

Chairman Anderson:
Although the people from Southwest Gas have not had an opportunity to distribute their photos, we see that the gross vehicle weight on one of their vehicles is 19,500 pounds and the others are generally around 8,000. The 12,000-pound limit would work for most, but not all.

Marilyn Brainard:
That is called a boom truck, and I know there are some utilities that keep this size vehicle in their service yards. Of course, speaking to one or two utilities does not cover them all, but most boom trucks are kept at the service yards. The main concern I had was making the reference to the federal regulation that brings in all kinds of vehicles that I believe are not appropriate, nor would they be welcome, in any neighborhood. I do not know how that reference got into the bill in the Senate, but I do not believe it is appropriate.

I appreciate the time you are taking on this issue. It is important because so many of us have chosen to live in these communities. I feel that I am representing their interests, also. I am sure we can strike a compromise and determine the poundage necessary to include the boom truck.

Assemblyman Oceguera:
In your last sentence you mentioned a balance we can strike. The vehicle I am most familiar with, that goes home with the employee and comes to an emergency, is the 19,500 pound vehicle. None of these other service vehicles are what I see in emergency situations; these are the vehicles that show up at your house when you call Southwest Gas, but not when I call them.

Assemblywoman Gerhardt:
I have no concept of gross weight or how much trucks weigh, but I am concerned.

Chairman Anderson:
I asked for this handout (Exhibit K) to be distributed early since we were discussing this topic and I had seen the photos.

Assemblywoman Gerhardt:
My concern is about tradespeople, plumbers and such, who are required to take their vehicles home so that they can be on call. That is a condition of their employment. They do not have the ability to go to a yard and get their vehicles; some of them are tracked using GPS (global positioning system) and their employers know exactly where they are at any given moment. I am very concerned about obstacles on the road and hazards for children, but their fathers and mothers need to make a living as well. I am concerned about those tradespeople. Are we going to say those kinds of vehicles cannot be on the streets?

Marilyn Brainard:
A plumbing repair person lived in my association and was bringing home a very large vehicle about the size of a U-Haul rental truck. It was brightly colored and parked near the front of his home. After we spoke, he decided he really could drive his personal vehicle down to his employer's place of work to pick up that service vehicle. If we do not limit this part of the bill to emergency response and public safety vehicles we are heading down the path to visual blight, at the very least, in our communities. Most of us, in reading our association documents, did not sign on to that. That may not be popular with everyone, but it is a true statement.

Assemblywoman Gerhardt:
If you have a plumbing problem, you are willing to overlook the visual blight if the repair person is coming to fix your problem. From my own personal experience, I am more familiar with some of the tradespeople. That individual in your association might have been allowed the time to go pick up a vehicle from a yard, but that is not the case for most tradespeople who are on call 24/7.

They are expected to get up in the middle of the night and immediately go to your house to fix your plumbing problem. That is the difficulty I have with the bill.

Assemblyman Horne:
I appreciate the photos provided by Southwest Gas (Exhibit K). I am also thinking about the trucks used by Nevada Power Company which are clearly going to breach this threshold. I certainly do not want their employees to go back to the service yard to retrieve those vehicles. Much of this proposed legislation would undo past legislation and I have not heard anything to suggest we change it.

Assemblywoman Allen:
Looking at the original bill, Section 10, subsection 2, where the language reads,

> Except as otherwise provided in subsection 3, the provisions of subsection 1 do not preclude an association from adopting, and do not preclude the governing documents of an association from setting forth, rules that reasonably restrict: (a) Parking on any road ....

I have some difficulties with this portion. If you read thoroughly, is it the intent of the Commission to restrict parking on a public road if the parking is restricted by the local governments?

Michael Buckley:
The Commission did not take a position on this particular section. It was in the bill discussed in the Senate, so, whatever the end result is, the Commission will deal with it.

Assemblywoman Allen:
Is there anyone here who can speak to this portion of the law?

Chairman Anderson:
The Senate did not send anyone over to guide this bill.

Michael Buckley:
The provision of the bill that the Commission strongly supports is that the reserve preparers do not have to be licensed. That would entail setting up a new bureaucracy, which we believe would be a misuse of our time and of the State's resources, because there were no problems with those preparers.

Assemblyman Manendo:
I have the same question about Section 2, and apparently there is no one here to address that issue.

Assemblyman Carpenter:
In Section 6, subsection 4 on page 13, it says, "If the sole purpose of a meeting of the executive board ...," you do not have to notify the people. What is that about?

Michael Buckley:
That refers to a hearing on a violation. If a person has violated the rules or the covenants, conditions, and restrictions (CC&Rs) and there is going to be a hearing for that individual on that violation in an executive session, a notice does not have to be sent to the entire community since the matter only involved a certain individual and not the community at large.

Assemblyman Carpenter:
So, notice would be given to only the parties involved?

Michael Buckley:
Yes, that is correct.

Assemblyman Goedhart:
In regard to the service vehicle, the one pictured at the top (Exhibit K) that says 19,500 pounds does not look like an enormous semi-truck to me. A lot of times, the shops may be located many miles away in one direction and the job is located many miles in the other direction, so the tradespeople take their vehicles home with them, which allows them to get up in the morning, even in non-emergency situations, and go to work more easily. This saves time and gasoline and puts fewer vehicles on the roads.

Marilyn Brainard:
In situations such as you just described, well-operating boards would make allowance for those occurrences. I would hope these situations could be worked out on a case-by-case basis by a reasonable board.

[Chairman Anderson left the Committee meeting and turned the gavel over to the Vice Chairman.]

Vice Chairman Horne:
One reason we see all these escalating problems is a lack of reasonable boards. I still see the situation as homeowners' associations (HOAs) taking control of local roads. Is anyone else here to speak on S.B. 436 (R1)?

Karen Brigg, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry:
I would like to speak on behalf of Section 15 on page 23. When the Commission looked at this bill, we were concerned because we had put in place the licensing of common-interest community association managers and this bill allows for the issuance of temporary licenses without the individuals having to go through the education requirements that are in existence. We understand that the industry is having difficulty getting good community managers to manage the associations as more and more are developed throughout Nevada. It is not our intent to place a hardship on the industry or stop individuals from other states from coming to Nevada. In Section 1, subsection 1(a)(1), we have addressed that issue by allowing an individual coming from another state who wants to be a certified community manager in Nevada to obtain a position and, without causing them a hardship, give them a temporary period of time to allow them to get the proper certificates. In this particular case, they do have to go through the Real Estate Division and hold a professional designation. They must have at least five years of community management experience and have no disciplinary action from another state in connection with community association management. We agree with that, but we disagree with subsection 1(a)(2), which puts the onus on the executive boards to make a decision to bring people into the industry who have never dealt with common-interest community management.

[Chairman Anderson returned to the meeting.]

Assemblyman Manendo:
How long does it take to get a certificate?

Karen Brigg:
An individual must have 60 hours of education that includes specific items such as 18 hours of Nevada law. After passing a test, a provisional license is issued. Under that provisional, two-year license, the individual has to work under a supervisory CAM (common-interest association manager). Once through the provisional period, the individual can receive a CAM certificate. If an individual has five years of industry experience, that person can take the 18 hours of law classes in Nevada and then get a certificate. This one-year temporary certificate gives them time to obtain the 18 hours of classes relating to the Uniform Common-Interest Ownership Act.

Assemblyman Manendo:
I believe 18 hours is not a whole lot of time for a year. If someone wants to come to our State and do this for a living, 18 hours could probably be

completed in a month. I cannot accept allowing them one year to complete those 18 hours.

Karen Brigg:
I agree with you; however, the problem we are seeing is the difficulty in getting the classes—finding people who will teach them. That is the problem the industry is having and why we are giving such leeway. We would look at a reduced time if you felt that is too long.

Assemblyman Manendo:
Who is currently teaching the classes? Why are we having problems in that area?

Karen Brigg:
The classes are taught by people in the industry. It is difficult because it is hard to find educators to teach these classes because there is not a huge pool of people wanting to take them, so they are not real moneymakers. The industry needs to step forward and teach the classes. Of course, everyone is very busy.

Chairman Anderson:
We have heard from many in support of the bill, does anyone have additional information on either side?

Bob Maddox, representing the Legislative Action Committee, Community Association Institute; and the Nevada Trial Lawyers Association:
I would like to respond to Assemblyman Horne's comments about homeowners' associations in general. I have been representing homeowners' associations for over 30 years. I have seen the good, the bad, and the ugly; but in my experience, 90 percent of the homeowners' associations are well run. It is the rare problem you end up hearing about. You need to realize that we are talking about volunteers, people who volunteer to serve on these boards of directors. I have represented homeowners' associations that cannot get people to serve on their boards because it can be a thankless task. I just want to balance the facts. You do hear complaints, I know problems are out there, but I honestly believe that most of the associations are very well run. The ombudsman study from about two years ago, which included an opinion poll, found that 90-plus percent of the people who live in community associations are very satisfied with life in community associations.

The Nevada Trial Lawyers Association is fine with S.B. 436 (R1) as it is, except for two things (Exhibit L). The first one involves Section 1.6 on page 4 of the bill that would ban the use of radar guns in homeowners' associations. We believe that is bad public policy to say that an association cannot use radar

guns on its private streets to cite speeding vehicles. Those streets are not patrolled by law enforcement; they can only be regulated by the associations. There is no possible justification for saying that homeowners' associations should not be able to use radar guns to cite speeding vehicles within their communities.

The second objection the Nevada Trial Lawyers Association has to the bill is in Section 8.

Chairman Anderson:
We are going to repost the bill and add it to our Friday agenda for a continuation of this hearing. I am not going to give it short shrift. I want to be certain that discussions on this bill are fully developed so that everyone who wants to speak on the issue has that opportunity. Is there anyone here who will be unable to participate on Friday? If you cannot attend Friday's hearing, and you have a written document, we will allow those to be added to the record on Friday.

I will close the hearing on S.B. 436 (R1). We are adjourned [at 10:51 a.m.].

RESPECTFULLY SUBMITTED:

_____	_____
Terry Horgan	Doreen Avila
Transcribing Secretary	Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE:_____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 8, 2007 **Time of Meeting: 8:10 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
SB 216 (R1)	C	Randy Robison, representing the City of Mesquite	Proposed amendment
SB 277 (R1)	D	Senator Valerie Wiener	Proposed amendment 3941
SB 277 (R1)	E	Kathy Hardcastle, Chief Dist. Judge, Eighth Judicial Dist. Court	Statistics of the Serious Offender Program
SB 277 (R1)	F	John Johansen, Program Manager, Office of Traffic Safety	Handout concerning a National DUI [DWI]-sentencing summit
SB 235 (R1)	G	Karen Dennison, rep. Am. Resort Develop. Assoc. and Lake at Las Vegas Joint Venture	Proposed amendment
SB 235 (R1)	H	Bob Maddox, rep., Leg. Action Comm., Community Assoc. Inst. & NV Trial Lawyers Assoc.	Letter of concern
SB 436 (R1)	I	Michael Buckley, Commissioner, Comm. for Common-Interest Communities	Proposed amendments
SB 436 (R1)	J	Marilyn Brainard, Commissioner, Comm. for Common-Interest Communities	Proposed amendments
SB 436 (R1)	K	Southwest Gas Corporation	Photos of utility/response vehicles
SB 436 (R1)	L	Bob Maddox, rep. Leg. Action Comm., Community Assoc. Inst. and NV Trial Lawyers Assoc.	Letter of concern