

**MINUTES OF THE MEETING  
OF THE  
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fourth Session  
May 11, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:07 a.m., on Friday, May 11, 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/](http://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](mailto: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 Ocegüera  
Assemblyman James Ohrenschall

**COMMITTEE MEMBERS ABSENT:**

Assemblyman Tick Segerblom (Excused)

**GUEST LEGISLATORS PRESENT:**

Assemblywoman Barbara Buckley, Assembly District No. 8

Minutes ID: 1239



**STAFF MEMBERS PRESENT:**

Jennifer M. Chisel, Committee Policy Analyst  
Risa Lang, Committee Counsel  
Janie Novi, Committee Secretary  
Matt Mowbray, Committee Assistant

**OTHERS PRESENT:**

Robert Maddox, representing the Nevada Trial Lawyers Association and  
Community Associations Institute Legislative Action Committee  
Debra Jacobson, Director, Government and State Regulatory Affairs,  
Southwest Gas Corporation  
John Pappageorge, representing Sierra Pacific Power Company/Nevada  
Power  
Dan Carrick, representing ArrowCreek Homeowners  
Brent Zicarelli, Residential Sales Representative, Tyco Fire and Security,  
ADT Security Services, Inc.  
Shawn Elicegui, representing Deutsche Bank National Trust Company  
Karen Dennison, representing the Lake at Las Vegas Joint Venture  
Tom Motherway, representing ArrowCreek Homeowners Association  
Board  
Kyle Davis, Policy Director, Nevada Conservation League  
Joe Johnson, representing the Sierra Club  
Robert Hall, Private Citizen, Las Vegas, Nevada  
Brad Zinner, representing the Value Alliance  
Kevin Janison, Private Citizen, Las Vegas, Nevada  
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada  
Robert Kim, Chair, Business Law Section, State Bar of Nevada  
Pat Cashill, representing the Nevada Trial Lawyers Association  
Scott Anderson, Deputy Secretary of State for Commercial Recordings,  
Office of the Secretary of State  
Kristin Erickson, representing The Nevada District Attorneys Association  
Scott Scherer, representing the Nevada Registered Agents Association

**Chairman Anderson:**

[Meeting called to order; roll called.]

We will continue hearing a bill from earlier in the week in regards to common interest communities. We will not go beyond one hour on this bill. I presume that Bob Maddox will start with the discussion of Senate Bill 436 (R1). There may not be enough time to hear all who wish to speak.

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

**Robert Maddox, representing the Nevada Trial Lawyers Association and Community Associations Institute Legislative Action Committee:**

I will continue my testimony that I began on Tuesday. The Nevada Trial Lawyers Association (NTLA) position on this bill is quite simple. We generally support the bill, there are some very good provisions in this bill and we ask you to keep that in mind, amend the bill, and save the parts of the bill that are meritorious.

There are two provisions the Nevada Trial Lawyers Association opposes. Section 1.6 was briefly discussed Tuesday; it bans the use of radar guns in common interest communities. These are private roads usually within gated communities where homeowners' associations need to be able to provide for the safety of the residents of their communities and to control speeding vehicles. We see this effort to ban the use of radar guns as entirely inappropriate. We feel the Legislature should not be depriving associations of technological equipment to enable them to efficiently provide for the safety of their members.

The other provision is in Section 8, which addresses reserves. The requirement and existing law is that reserves are adequately funded. This Legislature, in years past, determined that homeowners' associations should establish reserve funds for the replacement of major components of the common elements. This would mitigate the need for large assessments.

The Legislature required the reserves be adequately funded, and there have been various attempts to define what that means. In S.B. 436 (R1) there are two alternative provisions. Item 1 states a reserve shall be deemed adequately funded if the amount of the reserves is equal to or greater than the amount specified in the funding plan. That is a good provision, but the alternative is not. It says the amount of reserves available for the next five years should be sufficient to repair, replace, and restore the major components of the common elements designated in the funding plan. In a brand new association, a developer could say that zero dollars in the reserve account is adequate because nothing is going to need replacement in the next five years. That is not good because an association needs to build its reserve fund over a long period of time to replace components that might wear out in ten or fifteen years. We ask that you amend this bill and strike the number two alternative provision in Section 8. The chairman of the Common Interest Community Commission proposed an amendment that NTLA agrees with.

I also speak on behalf of the Community Associations Institute Legislative Action Committee (CAI-LAC). A letter I wrote on May 7 ([Exhibit C](#)) sets forth the position of the CAI-LAC. I will not go into that, but will mention Section 3, Section 4, Section 5, subsection 4 of Section 6, Section 7, Section 9, Sections 12 through 21.5 are all worthwhile, meritorious provisions and should be saved.

**Debra Jacobson, Director, Government and State Regulatory Affairs, Southwest Gas Corporation:**

We are here to support Section 10 of the bill which was included to address a concern that has begun to affect Southwest Gas employees, specifically in southern Nevada. The advent of more homeowners' associations is affecting our employees in northern Nevada.

We have several categories of employees at Southwest Gas who are required to begin their day at home or on call during the month. With this requirement, they are required to take a company vehicle home. We have had growing problems with our employees receiving fines for parking company vehicles in driveways or on the streets. We are trying to address that situation here. The pictures of the vehicles that were passed out on Tuesday ([Exhibit D](#)) are the vehicles that would be taken home by employees. As you can see, the largest vehicle is the construction emergency response vehicle 19,500 lbs., which is why there is a 20,000 lbs. limit in the bill. These are the vehicles that respond if the fire department is waiting for us. There are only 18 of these large vehicles in the entire State: 7 in southern Nevada and 11 in northern Nevada. The ability to respond to an emergency situation is very important.

We ask for your support of this provision in the bill. We passed out a letter from Rusty McAllister, President of Professional Firefighters of Nevada ([Exhibit E](#)), which gives more detail about what happens when firefighters have to wait for our employees to arrive at an emergency.

**Assemblyman Mabey:**

Would it be possible to always park this type of vehicle in a driveway, instead of in front of the house?

**Debra Jacobson:**

No, it would not. The larger trucks do not fit in driveways, so they need to be parked on the streets. We are asking if parking is available on the streets that our employees be allowed to park their vehicles on the streets or in the common areas. The smaller trucks could be parked in the driveway. However, if an employee has an additional vehicle to park, he may already have a vehicle in the garage. He may have an extra vehicle for the time that he is on call.

**Assemblyman Mabey:**

What if parking is not allowed on the streets? Would this not apply?

**Debra Jacobson:**

We would like it if there was available parking or common-area parking. Our employees have gotten potential fines for parking in common areas because of the type of vehicle. We want to be reasonable, but we also want our employees to be able to park in the communities in which they have houses. Some communities have smaller streets for which the vehicles are clearly too big. We understand that and will make arrangements to accommodate those employees.

**Assemblyman Mabey:**

If there is no parking in the streets, but there is a common area to park in, that would be acceptable to you even though it is about a block away?

**Debra Jacobson:**

As long as the employee is able to take the vehicle home and not be fined.

**Assemblyman Horne:**

When I visit some of my friends after 6 p.m. who live in these types of communities and I try to park in the common areas, sometimes there are no parking spots due to guests and others, so I have to park farther away.

**Debra Jacobson:**

That is correct. That is a common problem and part of the problem we have found. We are trying to be reasonable. We are not asking for special treatment for our employees, but we need them to have the trucks when they are on call.

**Chairman Anderson:**

There are only so many parking places in a gated community. If a road is not designated for parking, and every house or unit is assigned parking, there may be only a few small spaces left for this large vehicle. Will this mean that these employees will have to reserve a spot, and are we going to have to make sure that there is always a spot for this particular vehicle?

**Debra Jacobson:**

No, we are not expecting that. We would just like our employees to be able to park the trucks without getting fined. We are not asking for special treatment or a special parking situation.

**Chairman Anderson:**

What if there is no parking available? Some common areas can be a distance away.

**Debra Jacobson:**

That is possible. In those situations an employee can park on the street, right outside his area. We are trying to address where parking is allowed. Because of the types of our vehicles, employees have not been allowed to park without facing violations.

**Assemblyman Carpenter:**

The electrical companies also have emergency vehicles. Do you know what the weight on those might be?

**Debra Jacobson:**

No, I do not know what their weight is. They do have a representative here today. We are not talking about "boom trucks."

**John Pappageorge, representing Sierra Pacific Power Company/Nevada Power:**

The trucks that would need to be taken home are not to exceed 20,000 lbs.

**Dan Carrick, representing ArrowCreek Homeowners:**

I am a resident of ArrowCreek. I am here to solicit your approval of S.B. 436 (R1) with the current language regarding radar guns. My concern is that the president of our homeowners' association had sent a letter to Senator Townsend requesting that the homeowners' association have access to the Department of Motor Vehicles (DMV) records. I find the letter written by Mr. Burkett ([Exhibit F](#)) to be odious. It suggests a homeowners' association could become a law enforcement agency. Mr. Burkett claims a serious concern for our citizens regarding traffic issues. He paints a picture of speeders out of control. I am retired and have a large dog that demands several walks per day. We cover about four miles of ArrowCreek streets on a daily basis. We have speeders, but to my knowledge they are not an out-of-control problem.

Mr. Burkett claims to be concerned about the liability of the homeowners' association. How about the liability of having our members' DMV records available to our private security? This is an idea open to abuse. This information would be available to anybody through that security department. He paints a picture of issuing tickets, but what if an entry-level employee decides to check on the license plates of a good-looking woman just to see where she lives? Now consider the liability issues the homeowners are going to incur.

This radar idea is nothing more than a vehicle to collect revenue. Mr. Burkett has not been forthcoming on what this is all about. It is just another tax collection scheme on the residents. We had a standing-room-only residents' meeting the other night and a bunch of residents are hopping mad. Nobody wants to see this radar gun provision. I ask you, does Nevada? If amateur law enforcement had access to DMV information throughout the State, it could be a huge liability. I request that you retain the language as written.

**Assemblyman Cobb:**

Are you opposed to just radar guns or to the ability to enforce the traffic laws in general? There is a concern that there is no enforcement by the Washoe County Sheriff's office. They refuse to patrol that area. I am not a big fan of homeowners' associations using radar guns, but there needs to be some type of enforcement.

**Dan Carrick:**

Currently, our association does allow for the provision of traffic enforcement. The radar guns will allow them to take pictures of people. Also, the idea has been presented within our homeowners association that members will be responsible for all persons that have anything to do with their property. For example, if there is a pizza delivery man who is caught on the radar gun and is issued a fine the fine is not going to be issued to the pizza man, but rather to the homeowner. The homeowners are going to be responsible for any fine issued to them. There is no point in having the radar guns there. We already have the signs that tell a driver how fast he is going. Our homeowners' association should not become a law enforcement agency.

**Assemblyman Cobb:**

So you are fine with enforcing traffic laws, just not using radar guns.

**Dan Carrick:**

Absolutely, I do not want radar guns.

**Brent Zicarelli, Residential Sales Representative, Tyco Fire and Security, ADT Security Services, Inc.:**

I live in the ArrowCreek community. I am also for the wording and against the radar guns.

**Shawn Elicegui, representing Deutsche Bank National Trust Company:**

I want to express support of Section 11 of S.B. 436 (R1). Section 11 is an important provision which provides protection to purchasers by defining when deposits of earnest money are held in this State. Specifically, Section 7 allows an escrow holder and deems earnest money deposits to be held in this State when the escrow holder has the right to do business in Nevada, appoints a resident agent, and consents to the jurisdiction of the Nevada courts. This section ensures that the services of national banking associations like Deutsche Trust are available to Nevadans and eliminates potential conflicts between federal and state law. Those are the reasons we support this section and urge passage of at least Section 11 of this bill.

**Chairman Anderson:**

We will include your document as part of the record ([Exhibit G](#)).

**Assemblywoman Allen:**

If there is someone here who is a proponent for the radar guns, I have some questions. [There was no one.]

**Karen Dennison, representing the Lake at Las Vegas Joint Venture:**

We generally support the Common-Interest Communities Commission's amendments to this bill. My topic is Section 1, which pertains to solar panels. Under current law, the associations cannot "unreasonably restrict" the use of solar energy and says an "unreasonable restriction" is something that significantly decreases the efficiency or performance of the solar energy system.

We support the current language in Section 1, which defines what a "significant decrease" is. The language in the law is not just a decrease, but a significant one, and we feel the 20 percent provision in the bill is good. It gives the architectural committee, which makes these decisions, a baseline within which to compare their architectural guidelines versus what a homeowner proposes. At Lake Las Vegas, terra cotta manufactured panels are allowed. Research shows that the terra cotta panels, as compared to the slate grey or black panels, appear to be well within that 20 percent test outlined in this amendment.

**Chairman Anderson:**

We will now turn to those who are opposed to S.B. 436 (R1).

**Tom Motherway, representing ArrowCreek Homeowners Association Board:**

I was here on Tuesday, and after that hearing, our residents had a four-hour meeting. Many of our citizens spoke on the speeding issue. We oppose two



parts of S.B. 436 (R1). One is Section 1.6, which denies the use of radar. The other is Section 8, which affects the five-year reserve requirement.

We are a community of just under 1,100. We have in excess of 23 miles of roads, some of which are not to county standards, so when we requested the Washoe County sheriffs to enforce traffic laws, they denied us. We have approximately 400 children in the community and we have heard from their parents for the last year in a safety committee formed by the board to make a traffic enforcement plan.

We have a 28-year veteran of the Sparks Sheriff's Department running our security. He is used to handling radar and trains people well. We have clocked people at 60 miles per hour on 25 miles per hour roads. Nobody likes to be pulled over and ticketed, but this is a serious problem.

There are two places where we have submitted amended language referred to in Mr. Burkett's letter. We do not have general police power. We are not allowed to pull someone over and give a citation and will be left without enforcement if we are denied the use of radar. Radar is a very passive approach. We can take a picture, coordinate it with the speed, and mail the citation. There are not hot pursuits on these roads which have no shoulders. It seems to be an efficient but passive means of solving this problem. The alternative would be to get professional enforcement, but that has been denied.

The other problem is the vicarious liability problem: homeowners being held responsible for their guests, contractors, et cetera. That is indeed a problem. Our only remedy is to deny access to the community to those who are continual violators. We would all be happy to do that and forgo the vicarious liability provisions. Like many associations, we have a developer who is trying to leave the State. We have a reserved efficiency of approximately \$15 million dollars, and in essence, the provisions of Section 8 would let him escape those provisions. We are currently in litigation with that developer. We are in a world of hurt if either of those two sections passes. I ask for you to kill those two sections and if time permits, review the submitted amended language.

**Chairman Anderson:**

We did not hear from Mr. Burkett at our last meeting and we have now had his original letter distributed ([Exhibit F](#)). Are the amendments attached to his letter the ones you are suggesting?

**Tom Motherway:**

That is correct.

**Chairman Anderson:**

These are suggested for Section 1.6 as part of that handout.

**Tom Motherway:**

That is correct. The objective is to put the private road situation on par with the public roads in terms of traffic enforcement.

**Chairman Anderson:**

The members of the homeowners' association were surprised by the media attention our hearing received. It apparently was not as plainly reported when the bill came out of the Senate. Has the board changed its position on its original concerns?

**Tom Motherway:**

The five member board voted unanimously to sponsor the traffic enforcement program. This is the first time the board heard from the speeders' lobby. This was the most well attended and most vocal meeting that we have had. The board has referred the matter to the safety committee to hear from the residents. All we ask is that we get some degree of traffic enforcement. We think the radar is the best way.

**Chairman Anderson:**

With all due respect, you must realize that giving law enforcement powers is a big deal.

**Tom Motherway:**

I am an attorney, so yes, I understand that.

**Chairman Anderson:**

We do not take it lightly. There are many things to consider, such as access to background information, proper training, and the assumptions made when one is represented as a law enforcement officer. I mean no disrespect to your security guards, but there is a difference between a law enforcement officer and a security guard. What do you think will happen if we give you law enforcement power?

**Tom Motherway:**

All we want to do is control the behavior of the speeders within the community. We would be very happy with Washoe County enforcement if we could get it. We are willing to forgo the DMV access because we can get it through an attorney or private investigator. We merely want to identify the speeders to ultimately change their behavior.

**Chairman Anderson:**

It amazes me that people move into common-interest communities for a particular purpose and then complain that they do not have the same level of service as the people who do not live in those. They want a different kind of control of their environment for property value protection.

**Tom Motherway:**

The thrust of this is to create pockets of traffic law enforcement within the State. That is the public policy that this would set.

**Assemblywoman Allen:**

I have some concerns with the second page of Section 2 of the amendment that has been passed out. It says, "Enforcement shall permit the ability to fine a member or deny access to non-members... the executive board shall take into account the degree of control or influence the member has over a tenant, guest, invitee, employee, contractor, any vendor in assessing the courtesy warnings, notice, fines, denial of access." Are you going to fine homes differently based on who is speeding? Does the maid get a smaller fine than the 16-year-old son? I do not know why you need this type of discretion.

**Tom Motherway:**

This was an attempt to reconcile the conundrum of people who are not members of the association, violate the law, and continually come into our community. We are willing to just deny access. That is the remedy for people outside the gates, people who own homes have agreed to obey the rules, and if they speed and create safety hazards then they can be subject to fines. These fines do not go into their DMV records, but against their property if not paid.

**Assemblywoman Allen:**

From your initial testimony, I got the impression that you were not going to fine because of this questionable liability.

**Tom Motherway:**

We are happy to not fine on a vicarious liability basis. That would include people who are not residents. We would be happy to take that if the Committee so desires. This was an attempt to say that if you invite a contractor who continually violates the law after you have been given notice of that continued violation then you should be held responsible for the people you invite into the community. It may not be drafted well, and I apologize. We are stuck between a rock and a hard place.

**Assemblyman Cobb:**

The best solution here is to have some kind of agreement with Washoe County to enforce these laws. Hearing from the homeowners in your association, they are very much opposed to the use of radar guns. When asked, they do not oppose enforcement; they just do not want a private entity using radar guns to enforce these laws. I have contacted both the Sheriff's office and the Legislative Council Bureau (LCB), and it seems that it is a viable option to have a private contract with the Sheriff's office to enforce those traffic laws.

**Tom Motherway:**

I can speak for the board, and we would be happy to do that. We had the opposite reaction when we requested that.

**Assemblyman Cobb:**

I think that would be the best solution. Perhaps I can help out and find a way to get the Sheriff's office to agree to some type of enforcement.

**Assemblyman Horne:**

I need clarification on the language regarding issuing fines. You used the word "vicarious", what does that mean?

**Tom Motherway:**

The homeowner is held responsible for something someone else did.

**Assemblyman Horne:**

I understand that. Let us say that I am a homeowner putting in a pool. The pool builders are speeding in the neighborhood, so you give me a notice and I tell them to stop speeding, but they do not stop. Am I supposed to fire them in the middle of the job and find another company to finish it?

**Tom Motherway:**

That is a difficult situation, but you have more influence than anyone else in the situation.

**Assemblyman Horne:**

That would put me in a difficult situation, and I do not think I should get fined. Should I accept the fine so I can get my pool finished? Do you call law enforcement and have them enforce a more binding fine on the actual violators?

**Tom Motherway:**

The other alternative would be to deny access to that employee, and get that reported to his boss and let the boss tell him to stop speeding.

**Assemblyman Horne:**

Assuming it is the exact same employee that is speeding. That is why I picked a pool scenario—there is usually more than one person coming and going.

**Assemblyman Mortenson:**

It is not fair if a pizza man comes into a community and speeds, and the homeowner gets fined.

**Kyle Davis, Policy Director, Nevada Conservation League:**

I am here to speak on Section 1 and Section 21.5. We have some situations in southern Nevada where homeowners' associations are putting restrictions on the use of solar panels significantly reducing their efficiency. I do not understand why there cannot be a law that says anyone can use solar panels. The language you see defines the effect as a loss of efficiency of 20 percent or more for it to be considered unreasonable. We would argue that 20 percent is a significant decrease when we are talking about efficiency.

You have a handout ([Exhibit H](#)) in front of you that compares the difference between the payback on a one kilowatt system currently and at a 20 percent decrease in efficiency. We are talking about a difference between 30 years and 37.5 years to pay the panels off with the 20 percent efficiency decrease. These systems already take 30 years to pay off, and we are doing everything we can to increase energy efficiency and the use of renewable energy in this State to reduce our dependence on fossil fuel. We do not want to put too much restriction on the use or on the efficiency of these panels, especially when there is no real argument why we want to decrease the efficiency of solar panels. We want to propose a guideline be included for the associations to use. Our proposal is that the guideline be reduced from 20 percent to 5 percent, which is based on constituent needs in southern Nevada.

**Joe Johnson, representing the Sierra Club:**

I want to go on record supporting Mr. Davis' testimony.

**Assemblyman Carpenter:**

It seems that this first amendment that says the owner of the property has the burden of showing an impact automatically puts him at a disadvantage.

**Kyle Davis:**

I agree with you; that is in there for reasons of compromise. The burden should not be on the property owner.

**Chairman Anderson:**

That is exactly what the amendment does. It says that the owner of the property has the burden of showing.

**Joe Johnson:**

That part of the language was amended in the Senate. Our proposed amendment is simply deleting "20 percent" and substituting "5 percent" and leaving the remainder of the first reprint as it is. If we could have what we really wanted, we would delete most of the additional language and go to line 5 in Section 1 on page 3 and simply remove "unreasonable" and put a period after "unenforceable" and delete the existing parts of the proposed bill. The original language proposed in 1997 did not include the term "unreasonable"; that has been a subsequent addition. That term invites disagreement. In the spirit of compromise, we recognize the problems and are willing to accept 5 percent, if you would consider going back to the original statute and address the issue.

**Chairman Anderson:**

To clarify, the property owner must show a 5 percent decrease in efficiency rather than 20 percent, but you would prefer us to go back to 0.

**Kyle Davis:**

Absolutely, that would be the best-case scenario. We are saying it is the policy of the State to allow people to use photovoltaic cells and not put any road blocks in the way. We do want to have some kind of guidelines so we can eliminate the problem we are seeing in southern Nevada right now.

**Assemblyman Carpenter:**

What is the problem with the solar panels on homes? Do people not like the looks of them?

**Joe Johnson:**

When you put unreasonable in there, some people think that they are ugly, and that is the basis.

**Kyle Davis:**

As far as we can tell, what it comes down to is aesthetics. It is our position that aesthetics ought to take a back seat to energy efficiency and reducing our consumption of fossil fuels.

**Chairman Anderson:**

In a common-interest community, conformity to the standards of the association and neighborhood must be considered.

**Joe Johnson:**

Although this is a common-interest, Section 1 deals with *Nevada Revised Statutes* (NRS) 111.239, which is the general prohibition of having restrictions in deeds and contracts, not only to common-interest communities.

**Chairman Anderson:**

By reducing the standards, we would be reducing it for all communities, not just the common interest communities.

**Robert Hall, Private Citizen, Las Vegas, Nevada:**

*Nevada Revised Statutes* 116.2107 does away with the voting on reserves special assessments ([Exhibit I](#)). This raises two conflicts of law and constitutional issues; the first retroactively wipes out covenants, conditions, and restrictions (CC&Rs). The second is the failure of the Legislature and the lobbying industry to determine when NRS 116 applies and when our governing documents apply. We are going back and forth between these two. Because of the retroactive clauses in the state constitution of New Jersey, they decided that the CC&Rs trumped state law. We have the opposite here. I would caution the Committee to take a long look at this before they move ahead.

**Chairman Anderson:**

Do your concerns rest solely on the fact that you do not feel that we should move with the reserve clause? If there is a CC&R gated community, the rules are fine, but it should not adopt any new rules unless they conform to NRS.

**Robert Hall:**

I live in Sun City in Summerlin, which is not gated. When it is convenient, the board goes to Chapter 116 of NRS, and when it is inconvenient they go to the governing documents, and nobody knows where those documents are. If you are wiping out the governing documents, then say so. If you are not, then will a conflict trump Chapter 116 of NRS? This bill allows the board to spend and spend with no limit.

If you have a golf course, what is a capital improvement and what is maintenance? The answer is that they care excessively for golf courses in the middle of a drought and sending the bill to all of the association member, not all of whom play golf. These are serious issues. I am already in the 9th Circuit Court of appeals with this issue. I can tell you this is just the beginning.

**Brad Zinner, representing the Value Alliance,:**

The one Section I want to discuss ([Exhibit J](#)) is Section 1.4 which prohibits common-interest communities from restricting the operation of motorcycles. We generally do not have any objections to the basic premise of that part of the

bill; however, Section 1.4-1 should apply to "ingress" and "egress" from the community and wording to that effect should be added.

Also, wording should be added to allow the restriction or prohibiting of off-road motorcycles, mini-bikes, motorized scooters, or motorized skateboard equipment. These do not belong in a common-interest community, including common areas such as paseos, walking trails, flood channels, park areas, and sidewalks. And wording should be added to define that the operator of any such motorcycle operated in a common-interest community should be properly licensed and insured per NRS in order that the common-interest communities are protected from underage, uninsured or unlicensed drivers who could expose every homeowner in the community to additional unwanted and undeserved liability.

The other issue regarding radar guns has been thoroughly discussed; we are opposed to the elimination of the use of radar guns. This is a safety issue, and it is very important to those living in these communities. I have heard statements that people want to enforce the laws but do not want radar guns, and I have no idea how that can be done. If there is a mistake made in the writing of a bill, it should be on the side of safety.

**Chairman Anderson:**

In many local areas you have senior citizens who may need to use scooters and need to have access to the different areas rather than stay confined to their homes all day long. How would you allow that to happen in your community?

**Brad Zinner:**

Are you talking about the electric scooters and wheelchairs and so forth?

**Chairman Anderson:**

Yes.

**Brad Zinner:**

This is something that could be written in under certain circumstances. We are saying we want the bill to be improved in parts.

**Chairman Anderson:**

So you are saying you want the bill to be killed.

**Brad Zinner:**

If you cannot amend it and make the necessary changes, then the bill should be killed.



**Chairman Anderson:**

I have a handout here from a Mr. Mohler ([Exhibit K](#)). Also, we have another handout ([Exhibit L](#)) from a law firm entitled Wolf, Rifkin, Shapiro, and Schulman, LLP. I also have one from Harry Demetriou ([Exhibit M](#)) and there is also one from Rick Hsu ([Exhibit N](#)).

**Kevin Janison, Private Citizen, Las Vegas, Nevada:**

I want to talk about Section 10, subsection 2a. There is some language inserted about parking which would enable a homeowners' association to enforce any type of parking restrictions if they are already part of a local ordinance. It was interesting listening to the gentleman talk about radar guns. If the Washoe County Sheriff's Department would enforce the laws, then the associations would not need radar guns. In our case the homeowners' association is asking to duplicate restrictions that could be enforced by code enforcement in the City of Las Vegas. That is absolutely unnecessary; a quick call to code enforcement and they would be out within 24–48 hours to tackle any parking issues that are impacting the homeowners' association. This begins to unravel the hard work that your Committee did two years ago, which made it clear that homeowners' associations were not the ruling jurisdiction on public rights of way.

**Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:**

The three sections of NRS 116 that I refer to is Section 7 ([Exhibit O](#)), NRS 116.315. The proposed change in this section would allow homeowner boards to impose assessments of reserve funding without the approval of the owners in their respective communities. This would be done by a few board members of an association, which would affect the lives of many. There would be little or no input from owners on these assessments, as the proposed changes to NRS 116.31175 would not allow that. I will come back to that in a moment.

Most homeowners' associations CC&Rs require a majority vote on special assessments before assessments can be made. The proposed change would take that ability away from owners. This would be changing the terms and conditions of what owners agree to when they purchase their properties. This is a major change with far reaching economic impacts on individuals and resale values. This gives homeowners' association boards tremendous power. Assessments are a form of taxation. We fought a revolution in this country over taxation without representation. This bill takes representation away from hundreds of thousands of voters. If this change goes through, it will have an enormous negative effect on people who would be financially ambushed and in effect disenfranchised. This change would impact heavily retired owners living on fixed incomes, and working people who barely earn enough to keep up with

inflation, and everyday rise in fuel, food, and medical expenses. This could force many residents to sell their homes or units because they could no longer afford the increased monthly assessments along with their mortgage payments. This in turn would have a negative effect on values, driving the prices down on homes and condos.

It has been my experience that homeowners' boards like to spend money they have in a reserve accounts. Sometimes this spending is wise, and sometimes it is not. The State of Nevada requires reserve studies to be done every five years along with yearly updates by a registered expert. That individual can be very cautious and conservative in his or her thinking, approach, and opinions. This would then translate into an inflated reserve study that needs to be funded. A board without questioning this study or knowledgeable about the infrastructure would take it as gospel and assess all of the homeowners accordingly. There would not be any input or questions raised by homeowners about the items contained in the reserve study. Homeowners need to be aware of and able to voice an opinion and vote on assessments in their communities.

Now I would like to address Section 9, NRS 116.31175. This proposed change is totally undemocratic. This is an attempt to allow homeowners' boards to operate in a total vacuum and secrecy. It completely eliminates any knowledge of the boards' thinking, debate, or exchange of ideas between the board and the members of the community which the board serves. Owners will be left in the dark concerning the financial impact on themselves and their families' lives. I implore you to remove this section and defeat this draconian change in the law. It would stifle comments and homeowner input on matters affecting their very lives. It would not allow homeowners to be heard prior to a board taking a vote on issues affecting the owners' rights and costs of maintaining their communities. Owners in an association have the right to know what is being considered by their boards prior to adoption of a reserve study, the budget, and minutes of executive board meetings.

If this revision were passed, owners would have little or no knowledge of a board's intent or decisions prior to a meeting. Most associations allow an owner to speak only three to five minutes at the beginning of a homeowners' meeting known as the homeowners' forum. Once the board starts its part of the meeting, no homeowner is allowed to speak on the issues being discussed. This is totally inadequate and unfair to the owners. In fact, I suggest legislation be proposed and passed requiring property managers and/or homeowners' boards give owners copies of proposed budgets and reserve studies prior to being approved and adopted by the boards of association without charge to the owners. In addition, owners should be allowed to speak on issues under discussion by the board.

The last section that I oppose is NRS 116.31152, which deals with reserve studies. Older homeowner associations would be hard hit with huge assessments if they were not fully funded according to this legislation.

**Chairman Anderson:**

Ray Jarvis is not here; I will submit to the record his testimony ([Exhibit P](#)).

**Assemblywoman Gerhardt:**

If this does go to work session, will we be given the option of going back to the original form that was described when we were talking about the solar panels, instead of the 5 percent?

**Chairman Anderson:**

Absolutely. When we open the chapter, the existing law will be in front of us, the proposed amendment will be in front of us, and nothing is safe while we are here. We will now move forward to Senate Bill 483 (R1).

**Senate Bill 483 (1st Reprint): Makes various changes to provisions relating to business. (BDR 7-868)**

**Robert Kim, Chair, Business Law Section, State Bar of Nevada:**

This is a bill that has been proposed by the Executive Committee of the Business Law Section and has been approved by the State Bar of Nevada Board of Governors. I will highlight the most important parts for this Committee ([Exhibit Q](#)).

Section 1 of S.B. 483 (R1) pertains to *Nevada Revised Statutes* (NRS) 78.070. This is an error whereby we allow corporations to adopt more optional provisions in its articles of incorporation. We are trying to permit a corporation to specifically adopt in its articles a provision that will allow it to waive the Corporate Opportunity Doctrine for circumstances that it deems to be in the best interest of the corporation and the stockholders.

The other area that I would like to talk about is Sections 3, 4, 10, 11, 12, 13, 14, 17, 21, 22, 28, 29, 30, 31, 32, 33, and 44. These many sections all relate to the concept of reinstatement and revival of business entities in Nevada. They span Chapters 78–89 of NRS. We are trying to make consistent the effect of a revival or reinstatement of a business entity throughout these chapters. We want to make sure the same effect is granted to each entity.

Section 5 relates to NRS 78.235. This has become a relatively newsworthy issue. It relates to the adoption of clear language prohibiting the use of or

creation of bearer shares by a Nevada corporation. For whatever reason, there has been material on private websites and other private company materials advertising that Nevada permits bearer shares or the issuance of bearer shares. Essentially this means that the holder of the shares is the owner of the shares much like a \$10 bill. If you present a bearer share, you are deemed to own it without any question as to where you got it, much like cash. Why some people are advertising this is not known, but it is giving Nevada a bad reputation in terms of how other states and the United States Senate are looking at Nevada. We would like the language to specifically prohibit that ability. Although as a Committee we believe that the prohibition already exists, we have to say it to make it clear.

Another area I would like to point out is Section 8, NRS 78.330. There is a growing trend requiring corporations to elect their directors by an actual majority; the current statute permits the election of directors by a majority of the votes present. This can be viewed as a plurality. In corporate law we like to allow for and accommodate these pluralities if need be.

Section 15 relates to Chapter 86 of NRS generally. It allows an organizer of a Limited Liability Company (LLC) to dissolve the corporation, if prior to the issuance of any stock or appointment of any directors a client wants to do so. That power currently does not exist.

I have been asked by the Nevada Trial Lawyers Association (NTLA) and Pat Cashill to remove Section 19 from the bill. The intent was to provide owners of an LLC with some protection as to their housekeeping or bookkeeping skills. I agree that this could be used for abuse and may be used by those who do not need this protection, so I am willing to remove this section from the bill.

**Pat Cashill, representing the Nevada Trial Lawyers Association:**

In Section 19, subsection 2 we wish to be stricken the language that says, "The failure of a Limited Liability Company to observe any formality relating to the exercise of its powers or management of its activities is not a ground for imposing liability." We agree with Mr. Kim that the section should be stricken from the bill in its entirety.

For over 50 years, the law in the State of Nevada under *McCleary Cattle Co v Sewell* [73 Nev. 279 (1957)] has been that under certain circumstances the corporate veil may be pierced. This means that one can get at the owners of a corporation if that corporation has been used to perpetrate a fraud or to promote an injustice. The elements under *McCleary* are quite specific. The corporation must be influenced and governed by the person asserted to be its alter ego; there must be such unity of interest and ownership

that one is inseparable from the other. Also, the acts must be such that the adherence to corporate fiction or the fiction of a separate identity would sanction a fraud or promote injustice. Under a case called *Lorenz v. Betio* [114 Nev. 795 (1998)] the court said that factors to be considered in determining if unity exists in an alter ego analysis include, but are not limited to, comingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as an individual's own, and failure to observe corporate formalities.

The NTLA's view is that good fences make good neighbors. There are rules in this State governing how corporations are to be run and what documents have to be filed, in a timely manner, with the Secretary of State. What we have agreed to with Mr. Kim and Mr. Scott Anderson from the Secretary of State's Office, is to leave the determination to the entity who tries the facts, whether the entity is the court in a bench trial or a jury. It would be up to the entity to determine if the circumstances are such that the corporate fiction should be set aside for purposes of liability and an individual would be held individually liable for the corporation's wrongs. It makes good sense and good policy, and Mr. Kim and I have agreed Mr. Anderson will take any heat on the position that we have espoused.

**Chairman Anderson:**

The question I have is regarding the Uniform Laws. The Uniform Law Council has recently been doing a great deal of work in this area. I do not want one of the Uniform Acts to come in conflict with the document before us.

**Robert Kim:**

The cases noted by Mr. Cashill are corporation cases for which statutes have been passed. The key things from those cases are the factors that a court considers whether a fraud is going to be perpetrated on people by a corporation not being run properly. Also, this section relates to LLCs, and to an extent, when looking at an LLC to see whether that liability shows to be pierced, we would look to the factors identified by Mr. Cashill.

**Chairman Anderson:**

I ask because yesterday we spent a great deal of time in the explanation of corporations, the newer forms of corporations, and LLCs.

**Robert Kim:**

Was the revised Reform Limited Liability Company Reform Act being discussed?

**Chairman Anderson:**

Yes.

**Robert Kim:**

To the extent that is related to the Uniform Limited Partnership Act, I believe that the proposition there is that the State is being asked to adopt the revised Act as an alternative to the existing Act. The reason is because of the uniqueness of our existing Act, using the traditional partnership concepts and the departure from those concepts of this revised Uniform Limited Partnership Act. This Act takes a limited partnership to be a purer creature of statute versus one that is based on common law principles of partnership. That is the premise for its being adopted as the alternative instead as a replacement for our current Act. That Act does not impact the Chapter 86 concepts that we are discussing here, and those concepts will still prevail and should apply to the extent that there are issues with the limited partnership as well.

**Pat Cashill:**

As a general proposition in theory, Uniform Acts may not be a bad idea, but in practice, Uniform Acts imposed conflict and cause problems on either existing statute or existing Nevada case law. As a practical matter, our organization likes to have a heads up about what Uniform Acts are coming down the pipes so that we can come before you and discuss in a concept of federalism whether or not it is a good idea for the State of Nevada to sweep its law out and bring in another law that just may not fit. We will take a very close look at any Uniform Acts to assist you in determining whether their adoption would serve the interest of the people of the State of Nevada.

**Robert Kim:**

The next section I would like to discuss is Section 20 which relates to NRS 86.483. It corrects an error in the statute. Currently it says that a member of a company does not have a right to sue derivatively the LLC for what is perceived to be causes of action against the management. That is a mistake; a member should always have the right to sue derivatively on behalf of the company to say that it is not mismanaged. Section 20 is designed to correct that oversight in language.

The next series of changes in Sections 23, 25, 27, and 52 all pertain to Chapter 87 and eliminate the limitation on the use of limited liability partnerships only for professional services and to expand it to any and all legal endeavors.

**Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State:**

I want to inform the Committee that we have worked with Mr. Kim and the Business Law section and have reviewed the provisions. We are supportive of this bill, especially in areas where laws can be standardized between the

different business entities. Also, we are fully in support of Section 5, which addresses the bearer shares issue.

**Chairman Anderson:**

Do you have any additional amendments to submit to the bill?

**Scott Anderson:**

No.

**Assemblyman Carpenter:**

What has happened in Section 7, where it says "flexibility in setting the voting standard?" Is that cutting somebody out of the right to vote?

**Robert Kim:**

Section 7 relates to NRS 78.320 and allows a corporation to allow a stockholder to set the appropriate standards when a class of stock has a right to vote. This mimics the standard that already exists. Currently the law does not allow for different proportions of a class or series of stocks, such as a preferred stock, to vote in different proportions. This section is trying to make clear that when the rights of such series are established, all of the parties to that process can agree on the proper voting standards for when a class or series can vote on a particular matter. Right now it is unclear and limiting as to how votes can be taken.

**Assemblyman Carpenter:**

Does that cut somebody out with regard to their right to vote?

**Robert Kim:**

It makes it clearer to everyone what the voting standard is. When an investor makes a decision to buy a Series A preferred stock of a corporation, he knows that the rights tended to that series for a vote can be voted on by either a majority or a higher standard established by the parties involved. In any majority situation there will be a person whose vote is not part of the majority. This is clarifying a comfortable level of voting, whether it be a majority vote or a higher level.

**Assemblyman Carpenter:**

On page 41, you are talking about payments from Social Security. It is changing the payments for individual support. What does that really do?

**Robert Kim:**

The intent of these changes, relating to Sections 46, 47, and 48 of the bill, are to clarify that a financial institution, in its right to offset funds owed to it by an

individual, may not be offset by funds paid under the Social Security Act. If one receives Social Security payments, those cannot be taken away by a creditor or a lender.

**Assemblyman Carpenter:**

What is the difference between the way it is now and this change?

**Robert Kim:**

This is meant to make clearer that it cannot be done. It is to protect the ability of a person who receives these benefits to pay for their daily expenses to ensure that there is no unnecessary offset of their funds for their daily life.

**Chairman Anderson:**

So this is just to clarify the current practice and to codify it into statute so that a Social Security benefit is not at risk.

**Robert Kim:**

Correct. In a prior legislative session, the right to offset was adopted as a practice, and a member of the Committee brought up this area of concern.

**Chairman Anderson:**

This is not establishing something new; it is merely clarifying.

**Robert Kim:**

Correct.

**Chairman Anderson:**

I will close the hearing on S.B. 483 (R1). We will now begin on our work session.

Let me indicate today that we have a "Concur" or "Not Concur" bill on the Floor that has been delivered to us. The Chair is of the opinion, after talking to staff, that the bill does no dramatic harm to the Committee or its intent. It is an amendment dealing with the crime of luring a child. We are going to change the amendatory language so that the intent is to persuade or lure a child or person believed to be a child to engage in a sexual conduct. That will be specifically stated in the bill. It is my intent to concur with the Senate's recommendation so that they are clear.

Let us turn first to Senate Bill 35 (R1).



**Senate Bill 35 (1st Reprint):** Revises certain provisions relating to the admissibility of certain affidavits and declarations in certain proceedings. (BDR 4-507)

**Jennifer Chisel, Committee Policy Analyst:**

[Read from work session document ([Exhibit R](#)).] Several parties testified in favor of the bill; however, some Committee members had concerns, and the ACLU brought forth an amendment which is included in the work session document. The amendment would place the burden on the prosecutor to prove that the witness does not need to testify in person. As we heard in testimony, this amendment was presented on the Senate side and was rejected during their work session.

**Chairman Anderson:**

I think we are trying to go back to the way the statute was before. I recognize the concern of the ACLU and appreciate Ms. Rowland's attempts at amendments.

**Assemblyman Horne:**

I was assured by Kristin Erickson and Ben Graham that there would not be any abuses by district attorneys about my concerns that the use of an affidavit could expand outside the use of Driving Under the Influences. I have a level of comfort that I would support this legislation.

**Kristin Erickson, representing the Nevada District Attorneys Association:**

We did engage in a discussion with Mr. Horne. This is putting back the same law that was previously in effect, and we are not aware of any abuses. If there are abuses in the future, we will come back in two years and address them, but we are not aware of any.

**Chairman Anderson:**

It is your intent to use only blood drawers, nurses and phlebotomists?

**Kristin Erickson:**

The phlebotomists, with proper notice and without objection from defense council, will give an affidavit to show the blood alcohol content.

ASSEMBLYMAN CONKLIN MOVED TO DO PASS  
SENATE BILL 35 (R1).

ASSEMBLYMAN COBB SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

**Chairman Anderson:**

Assemblyman Ocegüera will take the floor assignment for S.B. 35 (R1).

Next we will look at Senate Bill 148 (R1).

**Senate Bill 148 (1st Reprint):** Revises certain provisions of the Uniform Principal and Income Act (1997). (BDR 13-903)

**Jennifer Chisel, Committee Policy Analyst:**

[Read from work session document ([Exhibit R](#)).] The Uniform Law commissioners have reviewed this proposal and are in agreement with it.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS  
SENATE BILL 148 (1ST REPRINT).

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

**Chairman Anderson:**

The floor assignment for this bill will go to Assemblywoman Allen.

Next I will reopen the hearing on Senate Bill 317 (R1) for the purpose of hearing a potential secondary amendment.

**Senate Bill 317 (1st Reprint):** Makes various changes to provisions relating to agents for service of process and business entities. (BDR 7-445)

**Assemblywoman Barbara Buckley, Clark County Assembly District No. 8:**

I am here to present a friendly amendment ([Exhibit R](#)). I have been very concerned about the issue of payday lending in our State. I am particularly concerned about Nevada being named the number one source of payday lenders preying on the military. This information was set forth in the Department of Defense report that came out within the last year. Nevada is being seen as a haven for unlicensed payday lending activity. I sponsored a bill on payday lending, trying to crack down on them last session, which all of you supported. I have sponsored a bill this session, which all of you have supported. This session's bill tries to crack down on folks who are evading the law we passed

and adds further protections for our military as over indebtedness has been declared a threat to military readiness.

This is because if a person is not in good financial order, his security clearance is revoked and he cannot serve. The members of the military have been helping me immensely with this. Recently the pieces, on one aspect, fell into place for me. I had a conversation with the acting director of the Division of Financial Institutions. The conversation's main point was, "How is Nevada being used as the haven for unlicensed payday lenders? What laws or activities are allowing this to happen?" It came back to registered agents. I have made copies of a press release issued by the Division of Financial Institutions. It talks about fining a Reno payday lender for \$50,000 for unlicensed lending activity involving a complainant living in Michigan who went on the Internet to get a payday loan. The company was based here in Nevada and operated through a registered agent.

The Division of Financial Institutions has received 65 complaints on Internet payday lending institutions that are based in Nevada just since April 16, essentially one month. Here is how it works: These companies are located in other states or off shore and are mistaken as a Nevada business because they use a Nevada registered agent to provide a business address and telephone number. The consumer learns of the company from the internet and the company requires direct payment from the customer's bank account due on his next payday. Most of the lenders will automatically extend the loan to the next payday at an annual percentage rate (APR) of 650 percent. The customer fills out the online application form that requests all of their personal information: his bank account number, social security number, and employer information. Sometimes the customer will fax a copy of his paycheck stub and address verification. The customer never gets any loan documents.

Once the lender verifies the information and knows the customer can pay it back, it funds the loan, and takes out its fee at the 650 percent rate. The loan payment and finance charge are automatically deducted from the customer's bank account. In all cases, the customer is paying interest only in order to make the 650 percent interest payment. The lender does not automatically deduct any principal in order to keep the customer on the debt treadmill. Some lenders actually require customers to take out a new loan if they want to repay any of the principal instead of the interest only.

The customer cannot find the lender because the registered agent is not the lending company. All the agent does is pretend to be the company. If a customer does not have sufficient money in the bank account to cover that

month's finance charge, then both the payday lender and the bank impose insufficient fees on the account.

What exactly is the registered agent's part in all of this? Many of these lenders, whether they are off-shore companies or companies located in other states, contract with a Nevada registered agent to form a Nevada corporation, be the agent for service of process, provide telephone service, and act as a mail drop or clearinghouse for the payments. The agent actually processes the payments for deposit, and gets bank statements to be forwarded to the off-shore company or company in another state. Most of these registered agents are active participants in these business practices. They are not just forming corporations and being available for service of processing payments; they are actually part of this entire illegal enterprise.

These amendments require a registered agent to do three things: confirm that the lending institution, for whom they work, has the appropriate license in the State of Nevada; the rationale is that they do not need a Nevada registered agent if they are not doing business here. Second, refrain from actually conducting or facilitating financial transactions on behalf of the client or actually engaging in lending activity without a license. Third, require the registered agent to provide identifying information concerning its principal and information on behalf of a principal in response to a request for information from the Division of Financial Institutions, the Attorney General, or the Secretary of State.

I would note for anyone who wants to read it, the Department of Defense report dated August 2006 notes that Internet lenders claim jurisdictions in states with lax protections and unlimited rates and often attempt to bypass state credit or payday loan laws of the state where they do business. All of the military installment lenders surveyed in the Department of the Defense report listed Nevada as their home state. With a couple of common sense protections, we do not have to be known as the haven for the folks preying on our military.

**Chairman Anderson:**

We have your documents as part of our work session document ([Exhibit R](#)).

**Assemblywoman Buckley:**

I circulated this proposed amendment to the Division of Financial Institutions, as well as the Secretary of State, Senator Amodei, Senator Care, and Scott Scherer. Scott Scherer and I are having some discussions about actual language beyond the concept stage. We agreed that if the Committee was willing to work with Risa Lang, Committee Counsel, on more appropriate language, we would approve.

**Scott Anderson, Deputy Secretary of State for Commercial Recordings, Office of the Secretary of State:**

We are not opposed to this amendment.

**Chairman Anderson:**

Were you aware of this problem prior to today?

**Scott Anderson:**

We were not aware of how the payday lending people were using the registered agents.

**Scott Scherer, representing the Nevada Registered Agents Association:**

The association wants to clean up any illegal activities that registered agents might be involved in. That is part of the reason for agreeing to the amendment proposed to Senate Bill 242 (R1). That way the Secretary of State would have some authority to go to court and force registered agents to cease and desist any fraudulent or illegal activities. We are happy to work with the Speaker to come up with language to address her concerns. Our issues are ensuring the registered agent knows the client company is in the lending business and figuring out a procedural mechanism as to how the agent determines the client company is actually making loans. They do not always know that, especially if they are just offering the basic registered agent services.

**Chairman Anderson:**

Would it be helpful if we put both bills together? Senate Bill 317 (R1) has a lot of very important language and would be a good carrier to try to clean up this issue.

**Scott Anderson:**

We would not be opposed to combining those two bills.

**Scott Scherer:**

That is fine. Senate Bill 242 (R1) is more the Secretary of State's bill.

**Assemblywoman Allen:**

On amendment 2(b), where it speaks about granting the injunction, is the injunction against the registered agent or against the business entity?

**Chairman Anderson:**

That pertains to S.B. 242 (R1); I will open the hearing on that shortly.

I will close the hearing on S.B. 317 (R1). Now I will open the hearing on S.B. 242 (R1).

**Senate Bill 242 (1st Reprint): Enacts the Model Registered Agents Act.  
(BDR 7-460)**

**Scott Scherer, Representative, the Nevada Registered Agents Association:**

The amendment to S.B. 242 (R1) does two things ([Exhibit R](#)). The first Section adds a new section to the bill. We worked with the Secretary of State's Office to provide it with the authority to establish regulations for enforcement of the statutory requirements for registered agents. Subsection 2 would allow it to go to court to enjoin any person from serving as a registered agent.

To answer Ms. Allen's question, the injunction would be directed against the registered agent or officer, director, or manager of the resident agent.

**Assemblywoman Allen:**

There is no injunction on the actual business.

**Scott Scherer:**

That would be handled separately by the Commissioner of Financial Institutions. In a case of an unlicensed lender under the provisions of the lending laws, the Commissioner would have the ability to go after that unlicensed lender for engaging in unlicensed lending. This bill is simply to get the registered agent. It is actually not just for unlicensed lending, but any fraudulent or illegal activities that a resident agent might be knowingly involved in.

**Chairman Anderson:**

The amendments in this bill were those recommended by Scott Anderson and Scott Scherer to add a new section and amend various sections of the bill.

**Jennifer Chisel, Committee Policy Analyst:**

I want to point out that the Committee had several questions about the fee for a registered agent to resign. Tom Conway of CT Corporation testified that the fee, in his opinion, is viewed as the cost of doing business.

**Assemblyman Carpenter:**

Are there any penalties attached to the registration or things like that?

**Scott Anderson, Deputy Secretary of State for Commercial Recordings,  
Office of the Secretary of State:**

Currently Chapter 225 of *Nevada Revised Statutes* (NRS) says that it is a category C felony to file fraudulent documents in the office of the Secretary of State. With the regulatory authority given in A.B. 25 and some other bills out there now, there is a potential that we could go after these criminals filing fraudulent documents with our office and apply that category C felony.

**Chairman Anderson:**

I am concerned. I think that Ms. Buckley's concerns are well addressed in S.B. 317 (R1); can we place them into S.B. 242 (R1) and combine them to make things easier?

**Risa Lang, Committee Counsel:**

I think that would be fine.

**Chairman Anderson:**

Do you think that S.B. 242 (R1) would be a better vehicle regarding the ease of drafting?

**Risa Lang:**

We can do it either way. Senate Bill 242 (R1) is a much longer bill so we could make a shorter amendment.

ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS  
SENATE BILL 242 (R1).

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

**Assemblyman Carpenter:**

I had some concern about S.B. 317 (R1). The office of these resident agents must be in a location that is zoned for such use. I do not know if that fits every situation or not. Resident agents in some areas may not have zoning.

**Chairman Anderson:**

We would make sure that there was a physical location by having an address and a postal route number. This is to prevent certain businesses from being operated in certain homes and communities.

**Assemblyman Carpenter:**

I do not have a problem with the address, but the zoning situation could force hardship on some people.

**Chairman Anderson:**

We have dealt with this in terms of signage and other things for other groups in the past. We continue to deal with the issue, but we have to do something because they are supposed to be in the proper location where you can have access to them. You cannot serve them if they are in a place where you cannot get at them.

**Assemblyman Carpenter:**

If you have the address, that should qualify, rather than the zoning.

**Risa Lang:**

The way this is written, you have to have the address, and the location must be zoned for that use. It could potentially impact certain groups.

**Scott Scherer:**

The intent is that if someone is going to be engaged in the business of a resident agent, he must comply with the local ordinances for business owners. If the local ordinances allow him to do that out of his home, then that is fine. The issue you raised was if the agent were in a gated community, how he can be served papers. The idea is to make the agent accessible and make sure that he is in compliance with the local zoning standards.

**Assemblyman Carpenter:**

I do not have a problem with compliance with local law. I think there should be language added to say that if ordinances allow it, people should be able to work out of their homes.

**Chairman Anderson:**

We will see if Ms. Lang can draft some language.

**Risa Lang:**

I think we can come up with some language to alleviate Mr. Carpenter's concerns.

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS  
ABSENT FOR THE VOTE.)



**Chairman Anderson:**

I will assign S.B. 242 (R1) to Mr. Goedhart for the Floor. Mr. Horne will take care of the amendments on the Floor.

[Meeting adjourned at 11:01 a.m.]

RESPECTFULLY SUBMITTED:

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Janie Novi  
Committee Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chair

DATE: \_\_\_\_\_

## EXHIBITS

**Committee Name:** Committee on Judiciary

**Date:** May 11, 2007

**Time of Meeting:** 8:00 a.m.

<b>Bill</b>	<b>Ex hi bit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B.436 (R1)	C	Robert Maddox	Letter
S.B.436( R1)	D	Debra Jacobson, Southwest Gas	Pictures
S.B.436( R1)	E	Rusty McAllister, Professional Firefighters of Nevada	Letter
S.B. 436(R1)	F	Paul Burkett, ArrowCreek Homeowners Association	Letter
S.B. 436 (R1)	G	Shawn Elicegui, Deutsche Bank National Trust Company	Testimony
S.B. 436(R1)	H	Kyle Davis, Nevada Conservation League	Energy Chart
S.B. 436(R1)	I	Robert Hall, Private Citizen	Testimony
S.B. 436(R1)	J	Brad Zinner, The Value Alliance	Testimony
S.B. 436(R1)	K	Lee Mohler, Private Citizen	Email
S.B. 436(R1)	L	Michael Schulman	Letter
S.B 436(R1)	M	Harry Demetriou, Private Citizen	Letter
S.B. 436(R1)	N	Rick Hsu, Private Citizen	Letter
S.B.436 (R1)	O	Jonathan Friedrich, Private Citizen	Testimony

S.B.436 (R1)	P	Raymond Jarvis, Private Citizen	Testimony
S.B.483 (R1)	Q	Robert Kim, State Bar of Nevada	Summary of Changes
S.B. 35 (R1) S.B. 148 (R1) S.B. 317 (R1)	R	Jennifer Chisel, Committee Policy Analyst	Work Session Document