

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

**Seventy-Fourth Session
February 15, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:07 a.m., on Thursday, February 15, 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, Chair
Assemblyman William Horne, Vice Chair
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
Assemblyman Tick Segerblom

GUEST LEGISLATORS PRESENT:

Assemblyman David R. Parks, Clark County District No. 41
Senator Dean A. Rhoads, Rural Nevada Senatorial District



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Judith Coolbaugh, Committee Transcribing Secretary
Judith Maddock, Committee Recording Secretary

OTHERS PRESENT:

Pauline May, representing the Certified Court Reporters' Board of Nevada
James J. Jackson, representing the Voice Writers of America
Kathy A. Hardcastle, Chief District Judge, Eighth Judicial District Court,
Clark County
Joseph P. Notaro, representing the Voice Writers of America
Dan R. Reaser, Attorney at Law, Lionel Sawyer & Collins, representing
Deutsche Bank National Trust Company
Karen D. Dennison, Attorney at Law, Hale Lane Peek Dennison and
Howard, representing Lake at Las Vegas Joint Venture, the Howard
Hughes Corporation
Stuart L. Posselt, Private Citizen, Minden, Nevada
Pamela Scott, representing the Howard Hughes Corporation
M. J. Harvey, Private Citizen, Las Vegas, Nevada
Alisa Vyenielo, representing the Community Association Management
Executive Officers, Legislative Action Committee (CAMEO LAC)
Jenny Welsh, Government Affairs Director, Carrara Nevada, representing
the Nevada Association of Realtors

Chairman Anderson:

[Roll called.] I am going to review the procedures for testifying before this Committee. We require 30 copies of any documents that you are going to present to us for our consideration. Any information that is presented to the Committee becomes the property of the Committee. Any material in electronic format should be given to the Committee Secretary. Under *Nevada Revised Statutes* (NRS) 218.5345, it is a misdemeanor to knowingly misrepresent a fact when testifying or otherwise communicating with a legislator. I have the authority to swear witnesses in, but it is not my usual practice to do so. The nuance of this statement refers to the discussion of a bill anywhere. You are bound by the same statute. Any misrepresentation of facts to a Committee member prior to their vote can result in citation under this statute.

I would like to draw the Committee's attention to the green sheet that is before you. On Thursday mornings, I have asked Ms. Chisel to give us a projection of what is going to be considered during the coming week. In addition, a week

from Thursday, the Select Committee on Corrections, Parole and Probation will be hearing a presentation from Dr. James Austin. Dr. Austin is the outside consultant that the Governor, the Legislature, and the Department of Corrections utilize for his knowledge about prison systems on a nationwide basis. He is president of the James F. Austin Institute in Washington, D.C., and specializes in prison projections. Is there any other business of the Committee that we need to take up? We are opening the hearing on Assembly Bill 32.

Assembly Bill 32: Revises provisions related to court reporters. (BDR 54-571)

Pauline May, representing the Certified Court Reporters' Board of Nevada:

This bill increases the number of Board members from three to five. Since the inception of this Board in 1974, our licensees have increased. We currently have 500 active court reporters. We also have inactive and suspended court reporter rolls that we maintain. The daily activities of the Board do require increased participation by individual Board members. The fiscal impact for increasing the number of Board members will be \$1,500 to \$2,000 a year. This amount will cover the additional per diems for Board meetings. We do not anticipate any other issues on this bill, and we hope you will consider this legislation. Are there any questions?

Assemblyman Cobb:

Can you explain how this Board is paid?

Pauline May:

We are a self-funded Board. We get no monies from the General Fund. All of our revenue is derived from licensing, exam, and renewal fees.

Assemblyman Cobb:

Would this addition of Board members require any increase in your fees?

Pauline May:

Not at this point. We did have a dues increase last year or the year before. Our total operating budget is around \$100,000 a year. We feel the \$1,500 to \$2,000 increase for per diems should not impact our budget.

Chairman Anderson:

What is the justification for increasing the number of Board members? Why is this larger Board required?

Pauline May:

The additional members are required because our membership has grown. We currently have 500 active licensees. The Board deals with renewals and disciplinary matters.

Chairman Anderson:

Why was the need for additional members not addressed two years ago when this issue was heard? Has there been that great an increase in the number of court reporters in the two-year period?

Pauline May:

No, there has not. I can only say that the level of activity has increased over the years. I cannot really answer the question as to why the increase was not requested earlier. I deal with the Executive Secretary on a daily basis, and I have observed that the need is there. Another reason for the request is we cannot conduct business if we have a Board member unable to attend a Board meeting. The statute requires all three Board members be present in order to conduct business. This increase in Board members will help us proceed.

Chairman Anderson:

Is there anyone else here to testify in favor of A.B. 32? Anyone wishing to speak in opposition to the bill? We are closing the hearing on A.B. 32. We are opening the hearing on Assembly Bill 55.

**Assembly Bill 55: Provides for the use of voice writing by court reporters.
(BDR 54-765)**

We are taking a short recess.

[Chairman Anderson left and turned the meeting over to Vice Chair Horne.]

Vice Chair Horne:

This hearing is called to order. We are hearing A.B. 55. A proposed amendment ([Exhibit C](#)) is being distributed to the Committee. Is this your amendment, Mr. Jackson?

James J. Jackson, representing the Voice Writers of America:

The amendment has some additional language that was inadvertently left out of the original draft of A.B. 55. The language reads about the same as the bill draft, but it adds a couple of provisions that clarify the licensing duties of the Certified Court Reporters' Board of Nevada. It will give the Board the right, the ability, and the requirement to review and approve the testing procedure for

voice writing. Voice writing is a form of verbatim court reporting that is on the rise.

Vice Chair Horne:

As a point of clarification, are you saying our legal staff made a mistake?

James Jackson:

No, I am not. When the bill draft was completed and reviewed, we missed the problem. We apologize for the error. I would like to give the Committee some background information on the bill. This bill on voice writing is similar to one that was introduced in the 73rd Session by Speaker Perkins. That bill was heard before the Assembly Committee on Commerce and Labor. It was passed out of the Committee, but because of deadlines, it did not go forward. From that point on, Joe Notaro, who is Chairman of the Voice Writers of America organization, worked with the Court Reporters' Board during the Interim. This bill is the culmination of the efforts of that group and their Technology Committee to get mutually agreeable language. That language is now in A.B. 55. This new language makes it clear that the licensing Board has the right, duty, and responsibility to approve the testing procedure to qualify voice writers as certified court reporters in the State of Nevada.

Vice Chair Horne:

From your testimony today, you are indicating you want to include language that was not in the original draft. This addition would be the language in red in NRS 656.030, Section 8. The other new language can be found in red in NRS 656.170, Section 2, subsections (a), (c), and (e); NRS 656.310, Section 1; and NRS 656.335. Is that correct?

James Jackson:

Yes, that is correct. There was some question about the licensing Board having the ability to approve examination procedure for voice writers' certification. I do not have a color-coded copy of the amendment, so I cannot refer to the language you identified in red.

Vice Chair Horne:

We all have color-coded copies of the amendment.

James Jackson:

The most important portion of the new language is in NRS 656.170, Section 2, subsection (a) which states the examination of certified and verbatim reporters is, "approved by the Certified Court Reporters' Board of the State of Nevada." That is the language we missed and failed to submit in the original draft of A.B. 55.

Vice Chair Horne:

Would you repeat the purpose of this bill?

James Jackson:

It would allow voice writers to be certified court reporters and licensed in the State of Nevada. Currently, they cannot be licensed here. This bill would expand the ability of the licensing Board to approve a test that will qualify voice writers to be certified court reporters. They will also have the designation of voice writer.

Vice Chair Horne:

They would fall under the same definition as court reporter. Voice writers would simply be added to the statute. Is that correct?

James Jackson:

Yes, that is correct

Vice Chair Horne:

Are there any questions?

Assemblyman Carpenter:

What are these people doing now? I know the courts are using this kind of system. What are they currently doing to transcribe those recordings?

James Jackson:

There may be people at the witness table in Las Vegas who can answer your questions better than I. My understanding is those recordings are given to a certified court reporter who takes the recording and prepares a transcript of it.

Vice Chair Horne:

I do see people at the witness table in Las Vegas, but I do not know who is at the table. We would like you to wait until you are called to testify. At this point, we are hearing from witnesses in favor of the bill. Mr. Carpenter was your question answered? [Mr. Carpenter nodded in the affirmative.] Are there any other questions? Mr. Jackson is your client here or are you making the presentation for them?

James Jackson:

My understanding is Mr. Notaro was going to be in Las Vegas to testify. I do not know if he has been delayed. I apologize.

Vice Chair Horne:

Is there anyone else in Carson City wishing to testify in favor of A.B. 55? Is there anyone in Las Vegas wishing to testify in favor of the bill? Seeing none, we are going to move to the opposition to the bill.

Kathy A. Hardcastle, Chief District Judge, Eighth Judicial District Court, Clark County:

I am appearing on behalf of the Eighth and the Second Judicial District court. We are in opposition to this bill as it is written. The language is too inclusive. Currently, we have court recorders who are employed by the courts. We have an audio-video recording system that is being utilized in the Second and Eighth Judicial District Court and the domestic courts. It is also used in Family Court and in the criminal and civil courts. In fact, we are starting to use the system in all of the courts, because we are having difficulty finding court recorders who are willing to be employed in the courts.

The audio-video recording is, by statute, the official record. We have court recorders who offset the cost of their employment with the County by preparing the transcripts of the court proceedings. As the technology is developing, we are working with our court recorders to move towards voice writing. The technology is still evolving in this area, but it is improving. We are starting to experiment with voice writing in the court room to alleviate the need for typing, because some of our court recorders are developing carpal tunnel syndrome. Also, we are utilizing the technology for daily transcripts in real time. We do not wish to be precluded from proceeding in this area.

A bill, such as this, would seem to include our court recorders if they use voice writing even as an aid to transcription. Currently, they are not under the Court Reporters' Board. This bill would appear to possibly put them under that jurisdiction. We want to avoid any move in that direction. As it is currently written, the bill is too broad. It would inadvertently pull our employees, who are covered by a separate statute, into the Court Reporters' Board jurisdiction. As written, we are opposed to the bill.

[Chairman Anderson returned to the hearing. Vice Chair Horne continued to conduct the hearing until the end of the testimony being presented on A.B. 55.]

Assemblyman Anderson:

I am reflecting on how this system in the Legislature has evolved so dramatically because of technology. The committee secretary used to have a tape recorder. We can now be on video and the Internet in real time. In the past, we had a nearly verbatim text of the proceedings. It is important that court attorneys have the opportunity to review previous proceedings for

subsequent trials or appeals. How do you guarantee that the court recorder is professional in transcribing the minutes? I thought that was the purpose of having certified court reporters. They are accountable for the correct transcription of the proceedings. Are the court recorders you use to transcribe the trial certified? Are they sworn in some fashion to verify that what they are transcribing is accurate?

Kathy Hardcastle:

Yes, they are.

Assemblyman Anderson:

Are they directly accountable to you and the court?

Kathy Hardcastle:

Yes, they are. We also have sent many of them for certification as court recorders. They are sworn in under another statute that covers the court recorders, and the transcription of the proceedings is also under that statute. I cannot remember the number of the statute. I apologize. We want to make sure that the court recorders remain under their own statute, and are not inadvertently placed under this statute.

Assemblyman Anderson:

You can take a certified court reporter to other locations to take testimony, and they put their license on the line in order to verify the testimony that was given. I understand they can also swear in witnesses. I want to make sure there is an accurate record of the proceedings.

Kathy Hardcastle:

Right. We recognize that court reporters are a very important part of the legal system, and they have to be able to provide certification. As technology evolves, so will they. We will need to expand the statute to make sure those areas are covered, and we can be assured that the record they are preparing is an accurate one. In the meantime, the records that are prepared in the courts are covered by a separate statute. We want to maintain the separateness of the areas. We make sure that our court recorders and our transcribers are trained. They meet certain standards, so we have assurance that the record they are preparing will also stand up to review. We want to make sure we are not pulled into another statute or association, when it is not necessary.

Vice Chair Horne:

Are there any other questions for Judge Hardcastle? We are now going to take testimony from Las Vegas.

Pauline May:

I am here on behalf of the Certified Court Reporters' Board. I am speaking in opposition to A.B. 55. We are currently working with Mr. Notaro in reviewing the provisions. Our Board would like the final opportunity to review this language again. We want to try and get back to the point where we had no opposition to this bill. At this point, that is not the case. I would like to address a couple of other points that were raised.

Vice Chair Horne:

Will you be speaking to the language in the bill?

Pauline May:

Yes. I want to bring you from where we were on this issue to where we are today. Over the past couple of years, we realized the Board did not have the knowledge necessary to make an informed decision. We formed a committee to gather facts. We advised the Board on the viability of this method for making the official record. The committee was comprised of court reporters, a business owner, a local court reporter program director for stenographic reporters, and Mr. Notaro. Mr. Notaro owns two voice writing schools. One is in Henderson, Nevada; the other is in Phoenix, Arizona. That committee presented a report to our Board.

The committee's report stated this was a viable method upon certain conditions. The Board took the recommendations, and in collaboration with Mr. Notaro's proposed language, we incorporated our concerns. He was kind enough to give us consideration, and he adapted his language to address our concerns. In September of last year, we thought we had finally come to an agreement and our Board would not oppose Mr. Notaro's language. Apparently, that language did not get incorporated into A.B. 55. To sum up, our Board would like the opportunity to review the entire issue and the revisions that are before you. We need a better understanding of the language, and we need language we can all agree on.

We also have a couple of other issues that are unresolved or pending. First, in determining the fiscal impact of this bill, we had to consider our annual operating budget of around \$100,000 that is derived from licensing and renewal fees. In the future, we anticipate changes will be made to this bill by the Legislative Counsel Bureau through the language in the *Nevada Administrative Code* (NAC) to conform to the current NRS changes. There will be legal fees attached to those changes. Also, we will have adoption, workshop hearings, and Board meetings to conduct the review of the regulation changes. We will have the test creation and administration fees for this different method of testing. Our organization is self-funded. We do not anticipate this additional

monetary outlay being covered by our current revenues. As an example, in 2005 the Arizona Legislature passed similar legislation authorizing the licensing of voice writers in Arizona. In that two-year span of time, they had two voice writers licensed in Arizona.

Our second area of concern is test creation and administration obstacles. We currently have no practical portion of our test designed for voice writers. Originally, we thought it might be easy enough to have the voice writers come in and participate in our practical portion of the test. In November 2006, a board member, a member of the Technology Committee, and I traveled to Phoenix. We were able to audit the voice writers test. We observed how they administered the test. This gave us a good idea of the procedure. We came away with information that was valuable. We realized we could not have the voice writers just take the court reporter's test. We had major obstacles to overcome. Currently, we are working with the Voice Writers' Association to iron out those obstacles. We do not have a test prepared, and we would need time to develop one. We would like to request a delay of the effective date of this legislation to July 2008 to overcome the testing obstacles.

Mr. Jackson testified that the transcript from the electronic recorders was typed by certified court reporters. That is not the case. This Board only licenses and regulates stenographic and mechanical means of pen writing methods of shorthand for making the record. What you may see in this Legislature is a "streaming" text that comes up on a screen. That is made possible through the use of a stenographic court reporter. Our technology is evolving, and we are proud of the progress we have made. We do believe that voice writing is a method that needs to have oversight. We are willing to embrace it after the obstacles are overcome. I would be happy to answer any questions.

Vice Chair Horne:

Mr. Notaro is not at the hearing in Las Vegas at this time. Although we did get a message that he is en route. Ms. May, you stated you have been working with him on these issues since last September. We ask that you continue to "flush out" the language issues you have with Mr. Jackson and Mr. Notaro.

Assemblyman Anderson:

Ms. May, I would remind you that oftentimes we deal with legislation where there are differences of opinion. Groups work for some time on an issue, but they still have unresolved difficulties. Sometimes you have to come and present what you have, then leave it to us to work out the details. It could leave your Board with problems that we have created. The unanticipated consequences of cost are always a fear whenever we change the language to include another

entity. I urge you to follow the suggestion of the Vice Chair. We delayed this bill in a previous Session because of the same concerns.

Vice Chair Horne:

Madame Secretary, make sure Mr. Jackson's proposed amendment is part of the record. Is there anyone else wishing to testify?

Assemblyman Carpenter:

What is your reaction to the testimony of Judge Hardcastle in regard to drawing people into a situation they oppose?

Pauline May:

The Board did not contemplate the inclusion of electronic recorders in the District Courts. We did not propose this bill, but I can state with certainty that that is our position at this time.

Vice Chair Horne:

Is there anyone else wishing to testify on the bill? Neutral testimony? We are closing the hearing on A.B. 55.

Chairman Anderson:

We need you to get the proposed amendments to Ms. Chisel to evaluate the concerns raised by Judge Hardcastle about any statutory language reflecting an exemption for that particular group. We need to know if the language needs to be clarified. Mr. Jackson, we will try to deal with this issue in a work session document in early March.

[The hearing was recessed for five minutes.]

Chairman Anderson:

This hearing is called to order. I have some procedural questions we need to consider before Mr. Parks testifies. I have a letter ([Exhibit D](#)) from the Attorney General in support of A.B. 32 to be officially entered into the record for the day. I am reopening the hearing on A.B. 32 for admission of a letter ([Exhibit D](#)) from Catherine Cortez Masto, Attorney General, in support of A.B. 32. Yesterday, at our February 14, 2007 hearing, a letter ([Exhibit E](#)) needed to be submitted for the record. I ask that the record reflect a letter from Justice of the Peace Stephen Dahl of North Las Vegas. It was submitted to me in a timely fashion, and should have been part of the record in support of Assembly Bill 49. It will also be included in the exhibits for this hearing today.

It is my understanding that Mr. Notaro has arrived at the Sawyer Building in Las Vegas having just flown in from Phoenix, Arizona. He was delayed in Las Vegas traffic. I would like to give him an opportunity to testify. I will reopen the hearing on A.B. 55 to hear the testimony from Mr. Notaro only. I want to indicate what will happen with this bill. Mr. Jackson presented an amendment that we submitted into the record. Some concerns were raised by various groups. Originally this was a piece of legislation that you, Mr. Notaro, had requested to be submitted to the Committee. In the last two years, we understand that you have been meeting with other groups to reach a compromise in the language. If there is something you specifically wish to have in the record, the record is open for you to do so. With that introduction, we will take your testimony.

Joseph P. Notaro, representing the Voice Writers of America:

The bill came to you in a form that omitted a couple of additions that we agreed upon, prepared, and were recommended by the Court Reporters' Board. The changes give the Court Reporters' Board the right to pass on the validity of our national association test. The Board would approve the test as one of the eligibility requirements to be able to take the State's certification test. The State Board administers its own proficiency test. We take a prior proficiency test, as do the stenographers when they take the National Court Reporters Association test. Our voice writers take the National Verbatim Reporters Association test. The bill calls for passing that test to allow eligibility to take and pass the State's proficiency test to get licensure.

I was informed that Judge Hardcastle was in opposition to having their internal staff under this legislation. It was not the intent of the licensing Board or us to have the court's staff "swept" into this licensing requirement. They would like to be exempt from the provisions that state anyone using voice recognition technology must have a license. That was only crafted in this legislation proposal specifically for certified court reporters to be licensed by the licensing Board. I hope this explanation offers some clarity. I will also discuss with Judge Hardcastle why we did not intend to "sweep" the courts into this piece of legislation. I would be happy to answer any questions.

Chairman Anderson:

Having flown this far to speak, I want to make sure you have that opportunity. We did note that we would clarify in our work session the questions and points raised by Judge Hardcastle. Mr. Jackson did hand out the proposed amendments that you had submitted. Ms. May was also concerned about the unforeseen costs, and asked for a delay of implementation of this legislation to 2009. Those are the issues we will be considering in our work session. It is not a rebuttal. I wanted to make sure you knew what was on the table for

consideration. Ms. May indicated she did not have an opportunity to review the legislation. You have indicated with your amendments that her concerns were addressed.

Joseph Notaro:

With reference to postponing the bill's enactment to 2009, the same comment was made by the Certified Court Reporters' Board in the 73rd Session. They requested a two-year period to study the viability of the proposed bill. In asking for another two-year postponement, they are denying a highly technical and professional group access to the right to work in this State, unless they pass the State's proficiency test.

In addition, there are 39 other states that permit voice writers to practice in their states. Not that the State of Nevada needs to follow other states' laws. It would be a gross injustice to postpone this bill to 2009 under the guise of the need for more time. That would be a four-year time period. The licensing Board convened a Technology Committee which met for 11 sessions from 2005 through 2007. I was a member of that Board and attended all those meetings. All the differences were worked out. Therefore, I cannot see why someone would say, since they did not see the agreed upon language that was inadvertently omitted, that they are opposing the passage of this bill. There was a reason for the omission. I was in an automobile accident, so I did not have an opportunity to see the final version of the bill. At that time, the language was not in it. I apologized to everyone and sent up the revisions. That was the language they agreed to. There is email correspondence indicating their agreement. Then I prepared the bill draft.

Chairman Anderson:

This is not a rebuttal question. Ms. May is not here.

Joseph Notaro:

Yes, she is here.

Chairman Anderson:

We are not going to go through all the testimony again. I want you to know what we would be considering in the work session. Ms. May raised some concerns, so I want to make sure your intent in the legislation is reflected in the amendments you have proposed. Your language may not be what they want. Her concerns included the costs associated with the preparation and administering of the test. That reason was part of her request for postponement. Mr. Jackson has indicated a willingness to work with the documents so everything will be in place when we go to the work session. If there is something you need to get on the record, this is the time to do so.

Joseph Notaro:

Yes, sir.

Chairman Anderson:

Is there anything else you wish to submit?

Joseph Notaro:

There is one more issue I would like to address with reference to cost. This is cost neutral. The State Board of licensing currently administers the test that we are asking the voice writers be permitted to take. It is given twice a year. Anyone who is eligible to take the test will pay a licensing fee. The test is normally conducted by the Court Reporters' Board. There is no additional cost. Only the number of people in attendance to take the test will increase. Their group came to Phoenix, Arizona last September to see how to administer the test. They do not have to develop a different test. It is the same test a stenographer would take. That is what I would like to submit for the record.

Chairman Anderson:

Are there any other questions? We are closing in the hearing on A.B. 55. We are opening the hearing on Assembly Bill 11. This bill was the first one scheduled for this hearing. It is Mr. Parks's bill.

Assembly Bill 11: Makes various changes to provisions relating to common-interest communities. (BDR 10-195)

Assemblyman David R. Parks, Clark County District No. 41:

This bill was passed by both houses in the 73rd Session. This bill "died" when it was amended to A.B. No. 290 of the 73rd Legislative Session. That bill was subsequently "killed." This Session's bill is an abbreviated form of the previous bill, because a few of the provisions did get passed when they were added to other pieces of legislation.

There are two primary purposes of this bill. The first is to prohibit board members of common-interest communities—homeowners' associations—from personally profiting from a matter before the board. They would have to make a disclosure to that affect and abstain from voting on the matter. That language is in Section 2 of the bill.

Second, Section 3 requires associations, who solicit bids for projects, open those bids during an open meeting of the executive board. We have had a lot of response on this language. This provision has been a little difficult for associations to comply with. Some homeowners' associations will be asking for modification of that language. The language for opening requests for proposals

or requests for quotations is to ensure the integrity of the process. That is my intent with this legislation. I did want some degree of transparency. We have all heard stories about managers of homeowners' associations who have done things that later have proven not to be in the best interests of the homeowners' associations as a whole. There are some people in the audience today who have some suggested language that they would like to have added to the bill or deleted from it. Those organizations include the Nevada Association of Realtors, Community Association Managers, and Lake at Las Vegas. Mr. Dan Reaser is here with a request for an amendment. I would be happy to answer any questions.

Chairman Anderson:

With slight modifications, this is similar to a piece of legislation that was passed by this Committee after some hard work during the 73rd Session. We are now looking for additional amendments which you, Mr. Parks, have had an opportunity to review. Some of which you agree to and some of which you do not. Is that correct?

Assemblyman Parks:

Yes, that is correct. On several of the amendments, my position is neutral. In my estimation, they do not significantly change the bill. Also, there is a gentleman here, Mr. Stuart Posselt, who has some recommended language. I have looked at it, but I would have to study it more thoroughly before I could make a recommendation on it. I defer to this Committee to render its expert judgment.

Chairman Anderson:

Is there anyone else you specifically want me to call up to testify? Or would you like me to call up witnesses who are speaking in support of the bill with amendments?

Assemblyman Parks:

Witnesses speaking in support of A.B. 11 with amendments would be appropriate.

Chairman Anderson:

I have had several people come to talk to me about this bill since the start of the Session. What is your pleasure, Mr. Parks?

Assemblyman Parks:

I would be happy to stay here and answer any questions that are directed to me. There is one individual in Las Vegas who would also like to testify.

Dan R. Reaser, Attorney at Law, Lionel Sawyer & Collins, representing Deutsche Bank National Trust Company:

We have submitted prepared testimony ([Exhibit F](#)). The last pages of that testimony are our proposed amendment and a one-page summary of the issues that we are bringing before you.

The reason we are asking for an amendment has nothing to do with the central objectives of the original legislation from the 73rd Session, nor does it bear on what Mr. Parks is doing. We are not trying to change his objectives or the language. We are asking that you add a new Section 7 which relates to a different section of NRS 116.411. This is an issue that arose in the interim period. The current law provides for monies collected to be placed in an escrow account. In enumerating the types of entities that hold these escrows, an ambiguity exists in the statute. With the current language, it is questionable whether a national bank or other financial institution chartered and regulated by the federal government, whether they have interests in Nevada or not, can act as a fiduciary. We are asking through the proposed amendment to make clear that federally chartered banking associations or other federally regulated and chartered financial institutions can also act as escrow fiduciaries for those funds.

We have asked for and received a temporary regulation from the Nevada Commission for Common-Interest Communities in January of this year. However, they were of the view that we should try to seek the support of the legislation to extend to federally chartered institutions the right to act as escrow fiduciaries. As this Committee may know from other matters that it has heard, there is a provision under the Constitution that provides preemption to the federal government. When the federal government grants a federal financial institution the right to be chartered, it grants the right to do business in all fifty states. The institution is not required to have "bricks and mortar" in a state. The Comptroller of Currency does the regulation.

As NRS 116.411 exists today, it calls into question whether those federal financial institutions, which also have Federal Deposit Insurance Corporation (FDIC) insurance, would be able to hold these escrow funds. To ensure that Mr. Parks's concerns are addressed, we have carefully crafted in subsections (b) (1) and (2) what the State can regulate as a state legislature relative to a federal financial institution.

The State can say that if a federal financial institution is to act as an escrow fiduciary, a resident agent must be designated in this State. A written consent must be filed with the Division of Real Estate stating that the institution will stand and answer to any issues relative to its fiduciary obligations in a state

court. This ensures that a Nevadan will not have to chase after a federal financial institution that is located outside of the State. This is one of the objectives of the consumer protection sections in NRS 116.

This is an important amendment. It does not relate to the core issues of the bill, but since the Legislature is currently in Session, we felt it was an appropriate time to present our request. Also, this bill will remove anti-competitive issues by allowing a number of different federally chartered financial institutions to provide these services to Nevada businesses and residents. It eliminates the possibility that some federally chartered financial institution would feel the necessity to challenge NRS 116 in federal court. It would eliminate any impediment to their fifty state franchise granted by the federal Comptroller of the Currency.

I have reviewed this proposed amendment with Mr. Parks, and I do not believe he has any concerns about the concept as long as it does not impact on the essence of his bill. I am happy to answer any questions.

Chairman Anderson:

Are there any questions? This kind of legislation is very technical. It usually takes us a whole day to get through the common-interest communities' bills. We are going to have several pieces of legislation in this general area. This is a prefiled bill and I wanted to make sure that we hear these bills early in the Session. There are a couple of issues here. When administrative regulations are filed, it is on a temporary basis. The regulations are ultimately approved by the Legislature. If we are not in session, then they are approved by the Legislative Commission. This process has become a somewhat controversial way of doing business. Since the Legislative Commission is a subset of this body, we get to hear the issue now, and it is proper that it be placed in front of us. It often concerns me that the Commission and its regulatory processes are going to be subset by legislative action. In this particular case, there does not seem to be any conflict. This issue is a real question of legitimacy. I wanted to make sure this statement was made as part of the record.

I have a question relative to your proposed language in Section 7, subsection (b) (1) where it states, "...designates a resident agent in this State pursuant to...." Do you feel that the resident agents have a "cloudy" background? They are working hard to clean up their image. Would any resident agent, who meets our statutory requirements, meet this heavier financial obligation? Or, is this just a "paper-pass-through" question, and this is all you are looking for?

Dan Reaser:

In response to your question on Section 7 regarding the adequacy of the designation, we do believe it would be adequate in this circumstance. Since the singular purpose of the resident agent designation is, in this instance, to ensure service of process can be made on a national bank by delivery to a resident agent designated in the State. It would eliminate the necessity of a Nevadan having to chase down a resident agent in another state. While I understand the comments about some aspects of the resident agent business, the service of process issue is straightforward. If the agent receives a complaint, they have to respond within 20 days or get an extension from the party bringing the cause of action. When this subsection is coupled with subsection (b) (2), which states a national bank must file, "a written instrument with the Division..." that is a consent to jurisdiction. A Nevada court can exercise jurisdiction.

Chairman Anderson:

Senator Rhodes, we are honored that you are here today. Do you wish to be recognized in the record? [Senator Rhodes answered "yes" from the audience. He did not sit at the witness table.] Madame Secretary, please record the presence of Senator Rhodes. Are there any questions?

Assemblyman Segerblom:

I do not see that this amendment has anything to do with Mr. Parks's bill.

Chairman Anderson:

Since Mr. Parks's bill opens up part of the NRS 116 area of influence, the Chapter as a whole is opened. This is the appropriate Chapter of the NRS for Mr. Reaser's amendment.

Assemblyman Segerblom:

Does this violate the common interest or the rule that states a bill must deal with a single subject?

Chairman Anderson:

We will find out.

Dan Reaser:

I would be happy to respond to that question. I preface my answer by saying before I joined Lionel Sawyer & Collins, I was Chief Deputy Attorney General for the State of Nevada. The Constitutional limitation, or the one subject rule, is a provision that is not violated by this amendment, because the subject matter that is at issue in A.B. 11 is amending Chapter 116 of the NRS. It is also a bill whose subject matter is in part for protection of the public through the provisions that Mr. Parks is requesting reconsideration of from the 73rd Session.

Chapter 116.411 is a consumer protection related provision. It allows national banks to provide these services in a way that ensures Nevadans will be protected. It satisfied Chapter 116's one subject rule for the Chapter that is being amended. Our amendment is the same theme. The Constitution does not require a "thematic" amendment. In my opinion, with deference to the Chair and the Committee, I do not believe this amendment violates the *Constitution of the State of Nevada*.

Chairman Anderson:

I call the Committee's attention to page 2 of the bill, Section 1, line 1 where it states, "Chapter 116 of NRS...." As soon as we open Chapter 116, everything within that Chapter becomes open for broader interpretation. That is always something we have to deal with because we will have a multitude of issues to consider. If we do not have a bill that opens a desired chapter of the NRS, a committee Chair will hold the bill "on the board." It may have chapters in the bill that we may want to open for other purposes. It is one of the subtleties of the political arena. Mr. Segerblom, is your question a procedural one, or is it a question to the bill itself? Or, is your question specific to the suggested amendment?

Assemblyman Segerblom:

It was a question to follow-up on your comment about the one subject rule. In this Committee, if we are dealing with a chapter of NRS, then we can propose amendments that also deal with the same chapter.

Chairman Anderson:

It is at the discretion of the Chair.

Assemblyman Segerblom:

I see. Does this proposed amendment directly deal with Mr. Parks' bill?

Chairman Anderson:

It does directly deal with Mr. Parks' bill. It is a proper topic.

Assemblyman Segerblom:

It is a proper topic because of its relationship to Chapter 116.

Chairman Anderson:

Yes.

Assemblyman Mortenson:

Mr. Parks' bill seems to be a very good bill. It is very logical. I like the Lionel Sawyer & Collins proposal to try and open up a particular area of

commerce to more competition. It is always better for the people. What worries me is that Mr. Parks' bill was "killed" the last time because of the addition of an amendment. While Mr. Parks' bill seems uncontroversial, I would think there may be some opposition to "knock down" some possible competition. Will this amendment endanger Mr. Parks' bill?

Chairman Anderson:

Your question is a procedural one. It is the intention of the Chair that whatever is the work product, we will take it as an amendment to the floor. Then the amended bill will be rereferred back to this Committee, so any matter of a controversial nature will be open to public review. Since this Assembly adopted a new procedure for amendments to be reviewed as soon as they are released from the Committee, the opportunity will be there. We will be dealing with more bills in this area.

Dan Reaser:

I understand the issue you bring forth, Mr. Mortenson. I was not in the "trenches" like Mr. Parks and the rest of you were in the 73rd Session. The bill was "cut up" because of difficulties at the end of Session. We are early in this session on this particular bill, so I do not believe it will present that same problem. As to the subject matter of the bill, I do not think it is controversial. The grant of the fifty-state franchises to federally chartered financial institutions is one that President Jefferson, President Jackson, and Mr. Hamilton fought for many centuries ago. Anyone who would appear before this Committee or the Legislature who says we should pass a State statute that would undo the federally chartered rights of federal financial institutions would be clearly and resoundingly told by legislators that they will not go down that route. It does not present a substantive impediment to passage of Mr. Parks' bill. I have worked with Mr. Parks in a number of different arenas, and I would have told him if there was a problem.

Chairman Anderson:

Is there a question relative to the bill itself or to the amendment? To follow-up, Mr. Mortenson, are you concerned with the bill or the process?

Assemblyman Mortenson:

I am satisfied with the answer.

Assemblyman Ohrenschall:

I have a question about the amendment. Is there any case law interpreting NRS 116.411 that mandates any national bank must have a "bricks and mortar" office in the State?

Dan Reaser:

No, there is not. On page 5 of my prepared testimony, I cite in footnote 7 some examples of federal decisional law by the Supreme Court of the United States, and the Ninth Circuit Court, which has jurisdiction over the State of Nevada in matters of federal law. There is a fairly clear enunciation of the federal preemption concept that I touched on earlier. With regard to interpretation of NRS 116.411, there are no interpretations within that statute about "bricks and mortar" requirements. In fact, the statute itself is silent. That is what creates the ambiguity and the problem. Can a federally chartered financial institution, within or without the enumerated kinds of fiduciaries, hold these deposits? There is a citation, which I will provide to your office, in which former Attorney General Frankie Sue del Pappa opined that Chapter 80 of the NRS, the Foreign Corporations Registration Act, could not be applied to a federal financial institution. It could not be required to qualify in order to do business in the State, or to have premises in the State, because of federal preemption. That is probably the closest piece of Nevada legal authority that I am aware of that would touch on this point.

Chairman Anderson:

Are there any other questions? [There were none.]

Karen D. Dennison, Attorney at Law, Hale Lane Peek Dennison and Howard, representing Lake at Las Vegas Joint Venture, the Howard Hughes Corporation:

Lake at Las Vegas Joint Venture is the master developer of Lake at Las Vegas. I have submitted a proposed "friendly" amendment to A.B. 11 ([Exhibit G](#)). Although this bill apparently passed this Committee in the 73rd Session, we are taking another look at the language to make sure that it is clear in our amendment.

Our first proposed amendment will change the language in Section 2. We agree wholeheartedly that anyone who stands to personally gain from any contract or matter before an association board should disclose that fact and recuse. They should not vote on that matter. There appears to be a blurring in the language. Our concern is that, until there is a 75 percent sell out, the declarants have the right to appoint the majority of the board of directors. You would have a majority of board members who are at times employees of the declarant or employees of the developer sitting on the board.

We want to make sure that the compensation from their employment does not disqualify them from voting on a matter before the board that could involve the declarant. An example would be a declarant subsidy period, which in a large association can last a long time. Declarants will subsidize a project by providing

services to the association. If those services are provided by a declarant affiliate, it could be argued that one who is receiving compensation from the declarant—even though it is the regular salary of the employee—could be disqualified from voting. The language we have proposed says, "An employee of a declarant or an affiliate of such declarant who is a member of the executive board shall not, solely by reason of such employment, be deemed to gain any personal profit or compensation for purposes of this Section." Just the fact of employment, itself, will not disqualify that person from acting on a matter.

I would also like to point out there is a section in NRS 116.3101, which codifies what is the common law. Every member of a board of directors has a fiduciary duty to the owners who are the members of the association. They must exercise the "best business judgment" rule in any decision they make. They are bound by fiduciary duties to act in the best interests of the association.

Our second proposed amendment has to do with the bidding process and the opening of bids. Some of the other people present who are in the management area can also address this issue. We have tried to balance the need for transparency and openness of process when boards are signing contracts and taking bids for contracts. It needs to be an open process so the board can carry on its day-to-day functions. There should be some monetary threshold limit for bids that must be opened at a board meeting.

We recognize that boards are only required to meet quarterly. Board meetings do have to be noticed to every member of an association. When the association is very large, the mailing of the notification can get expensive. We are suggesting a threshold amount of 15 percent of the annual budget as being the amount which bids must be opened at a board meeting. I am sure people, who are in a management position, probably have many examples of inconveniences that would be caused by having to open every bid at a board meeting. I will take any questions.

Assemblyman Cobb:

I do not know if this is going in the right direction. As I understand the law the declarants have too much power and too much say. For example, if a declarant has not sold out to 75 percent, they have control of the board. The declarant wants to ensure there is enough security for their buildings that are empty or under construction. This gives them the ability to spread the cost to everyone else in that community. Is that correct?

Karen Dennison:

Yes, they do have the ability to spread the cost, but normally in a budget situation a budget is prepared as a 100 percent sellout budget. The declarant

will then subsidize the shortfall in the operating expenses. The declarant is required to pay its share of the reserve as well. Declarants' employees, such as bookkeepers, occasionally provide their services. We want to ensure a declarant's employee sitting on the board will not be disqualified from voting on matters involving the declarant just because they are an employee of the declarant. The person is not receiving any additional compensation. There is no additional profit.

Assemblyman Cobb:

What you are talking about now is a situation where a declarant can completely control the board, including appointing their own employees to the board. The rest of the members would have to pay the increased fees, and they have no say in that process. You would like to ensure that this type of situation can continue.

Karen Dennison:

If I understand the question correctly, you are concerned about the increase in the association dues that an employee of the declarant would vote on. Is that correct?

Assemblyman Cobb:

The rest of the homeowners would have no say because the declarant in essence controls the board.

Karen Dennison:

The declarant controls the board, but there is a process in statute which states a budget must be ratified. In other words, the manager of the board proposes a budget to the board. The board adopts the budget. After adoption of the budget, it goes through a ratification process by the owners. If the owners reject the budget, then normally the budget would revert to the previous one.

Assemblyman Cobb:

The last year's budget would also be the declarant's budget.

Karen Dennison:

It would be whatever they were paying previously. If it is the initial budget, it would be the one they had when they purchased their unit. I do not think the owners are left out of this process. This is not a situation where the owners are unable to reject or have a say in a budget if it was too high.

Assemblyman Cobb:

In terms of voting power, does the declarant have voting power for each unit that the declarant owns in a homeowners association?

Karen Dennison:

The declarant has voting power for each unit which is annexed or subject to the declaration. Often units are brought on-line in phases, so whatever units are within the purview, or the umbrella of the declaration, are those with unit votes, which the declarant can exercise. The declarant has those unit votes. I do not want to confuse that with the process of appointing the board members. That process is in a separate statute, and it allows the declarant to appoint certain board members at each juncture that owner elected board members are serving. Yes, the declarant has the right to appoint board members versus votes based on the number of units the declarant owns.

Assemblyman Cobb:

If the declarant must put that budget up for ratification, they have the ability to vote on it themselves based on the number of housing units they own. Therefore, they get multiple votes on the budget that they created.

Karen Dennison:

That is correct.

Chairman Anderson:

This is an old issue. The developer has units up for sale, and he gets to control them through the board. We are not testing that question in this piece of legislation.

Assemblyman Segerblom:

I am not sure there is a need for this amendment. If an employee cannot vote, they can still lobby. If it is a good project, the remaining members of the board would vote for it anyways. There is an inherent conflict since the person works for you. That is my concern.

Karen Dennison:

Am I required to respond to that or was it just a comment?

Assemblyman Segerblom:

Can you explain to me why this is necessary? If it is a good project, the people that do not work for you would vote for it. If your employee is on the board, is that vote necessary?

Karen Dennison:

The statutory scheme as it presently exists, which is not on the table at this point, allows the declarant to have a controlling vote until 75 percent of the units are sold out. Conflict of interest is the issue we are talking about. If the person voting—having a fiduciary duty and having to exercise the best business

judgment rule as a matter of law—is not entitled to vote, you have removed three votes from the board, and the two owner members would be acting. I do not think that was the intent of the statutory scheme. We are only talking about conflicts of interest here. It is not a conflict of interest, if you are just receiving your regular salary, and you are sitting on the board. The statute allows you to do that already. We are just saying that the situation does not constitute personal profit to the board member. He is not getting paid to vote a certain way or getting extra compensation whether a contract goes through or not.

Assemblyman Segerblom:

Hypothetically, if this bill passes, the employees are barred from voting. What is the problem that you see will occur? I do not understand.

Karen Dennison:

I can only say that they are entitled to vote because they are on the board. They are entitled to govern even though they are appointed by the declarant. That right is in a separate statute that has been in place for some time. It is also part of the Uniform Common-Interest Ownership Act. Since the declarant is building the project, they should have some control over how the project develops. They can make sure that items they represented to other homeowners will get done. Everything, as they represented it, has to be done. The law already allows those people to sit on the board and vote on matters that come before the board. They are not receiving any additional personal profit or compensation from this. The only point of this bill is to clarify that they should not be disqualified from voting.

Assemblyman Segerblom:

I do not think that you answered my question, but that is okay.

Chairman Anderson:

It is difficult to make the transition from a court of law to the legislative process, where we have to wait turns to speak.

Assemblyman Carpenter:

I have a problem putting this 15 percent threshold in, because the more "sunshine" you allow in these procedures the better off you are. I know that with the county commissioners if a bid is less than a \$1,000 they just have to get two proposals. They do not have to go through a formal bid process. Fifteen percent can be quite a bit of money. If the people on the board want to have a voice in running the association, it seems to me they need to be willing to meet to carry on the business of that association. That way business will be

conducted in the open, more than it has in the past. I have a real problem with this 15 percent situation.

Chairman Anderson:

We will take that question up when we come to the work session. We need to ask the questions now on Ms. Dennison's document.

Assemblywoman Gerhardt:

Mr. Carpenter voiced my concerns as well. I am very concerned about the 15 percent. In a project like Lake at Las Vegas, what is 15 percent of your annual budget? We need to get a sense of numbers. I also have a follow-up question.

Karen Dennison:

I have no idea what 15 percent would be. I did not have an opportunity to investigate those numbers. Maybe there are certain contracts that should require the opening of bids, such as a management contract. Perhaps, this is not the way to go about it. We were just trying to suggest a threshold, so that every miniscule repair does not require a bid. Transparency and openness are important, but there are daily maintenance and repair items that do not really concern the members. They would probably rather have the boards handle those issues. We could have language that says certain contracts, which are important to the owners, should have the bids opened in a board meeting. That may be a solution.

Chairman Anderson:

Ms. Gerhardt, are you suggesting there should be a fixed dollar amount rather than a budget percentage? You could be dealing with a gigantic project with a huge budget, or you could be dealing with a minor project with less than 20 homeowners in it.

Karen Dennison:

We had talked about a dollar amount, but as time goes on those dollar amounts become smaller and smaller as inflation creeps in. Rather than having to go back, we could have an inflation index. We are asking that every single repair bill does not have to be brought to a meeting for board approval.

Assemblywoman Gerhardt:

There are maintenance contracts, so every single repair does not go to the board. A contract with a maintenance group is certainly appropriate and is something that should go out to bid. No one is expecting that every single maintenance repair would go before the board. Why is a quorum not required? Can you explain why that would not be necessary?

Karen Dennison:

If you call a board meeting, and only 2 out of 5 members are there, no business can be conducted even if the other owners are present. The whole point was to have a notice meeting where the bids would be open. The fact that a quorum is not present means no action could be taken. This section simply deals with the opening of the bids, not the acting on the bids. Once you have noticed the meeting and have gone to the expense of having the meeting, the bids are opened there. People attending can evaluate and compare the bids. This process would give you the required "transparency."

Assemblyman Manendo:

I appreciate the bill. One of my concerns is a health and safety issue. If the board only meets quarterly and something happens, how do they get everybody together? What happens in the case of an emergency? We have to have some type of exemption in the bill. Mr. Parks and I had some discussions, but I do not know if this is the appropriate time to respond to that concern.

Assemblyman Parks:

I had talked to Mr. Manendo about an emergency situation. We can put specific wording in the amendment to provide for an exemption in an emergency situation. An emergency situation entails something would have to be fixed immediately. You do not have the luxury of time to ask for two or three bids. As soon as you can find someone to fix a life safety problem, you go with that person. I would not want to hamstring any common-interest community's ability to remedy an emergency situation. I would be happy to offer that language. I would like to comment on the previous questions relative to a set percentage figure. If we use a different form of wording, we can get around that problem without having to use specific amounts of money.

Assemblyman Manendo:

I agree with that. That was my other concern.

Chairman Anderson:

We have other people waiting to testify. We will limit questions to Ms. Dennison's proposed amendment.

Assemblyman Segerblom:

I want to ask Mr. Parks if he has a concern about Ms. Dennison's proposed amendment.

Assemblyman Parks:

I am comfortable with Ms. Dennison's requested and submitted language.

Stuart L. Posselt, Private Citizen, Minden, Nevada:

I represent myself. However, I probably speak for a large number of people who are purchasing common-interest subdivision homes, condominiums, or townhouses. For background, I would like to indicate that I am a retired architect from California. I worked in real estate development for over 30 years. I documented, processed, and managed five homeowners' associations. I processed them through the California Department of Real Estate along with the help of title companies and an attorney. I am familiar with homeowners' associations, and what they should be doing for the homeowners.

In 2004, I purchased a Syncon home in Skyline Ranch. I read the Conditions, Covenants and Restrictions (CCR) in detail. I studied the by-laws and all the documentation that was given to me. Some documents were not given to me, like the Statement of Public Offering and the budget, although it said "attached thereto." I did not receive them until a year and a half later. I asked the licensed real estate agent what the homeowner's association was responsible for and what actions those responsibilities require. He waved his arms toward the subdivision and said, "Some drainage facilities." I said, "What drainage facilities." I asked what we were required to do. He said, "Maintain them." I wrote a letter to Syncon and I asked them the same questions. I received no reply. Last year, I contacted my Assemblyman and Senator, and asked for an amendment to Chapter 116 of the NRS. I have found a "big hole" in the statute. My proposed amendment ([Exhibit H](#)) would remedy the statute omission.

This amendment addresses customer protections in Chapter 116 of the NRS. Therefore, it is a valid amendment. I propose a new subsection (d) under Section 1. However, I leave it up to the Committee to determine the best place to put it. I am asking a language that will say:

...all specific areas, items, and duties for which the association is responsible, including but not limited to, those items/areas for which the association is responsible to manage and/or maintain along with detailed statement(s) of the extent and limitation of those obligations including, but not limited to, such things as paint, repair, replace, landscape, clear, irrigate, etc. Any changes to those statements shall require an amendment to the declaration in accordance with the provisions for same contained therein.

This way when a homeowner purchases a residence in a common-interest subdivision, they will have the opportunity to read the document regardless of what the real estate agent says. The homeowner would then understand what the homeowner's association will be responsible for. I was not given a

statement of public offering, which requires a budget be attached. I was told the budget would be "x" number of dollars. So in essence, I was buying a "pig in a poke." However, I liked the location, the house, and the view, so I went through with the purchase.

I started to look at Chapter 116 of the NRS, and found that my developer and broker had violated at least six sections. I filed a complaint with the Division of Real Estate, and I was told to get an ombudsman. They finally accepted it as a complaint and went through the process. They issued what was called a "Letter of Instruction." I do not know what that is. Do any of you? I had never heard of it. I asked for a copy of it, and I was denied. The Real Estate Commission never received my complaint nor did they have a hearing on it. I talked to the Deputy Attorney General in charge of the Real Estate Division, and I was told I could not get a copy of the letter. She never answered my question, which was, "What was the legal authority and standing in law of such a Letter of Instruction."

Our association had a Board of Directors that did not meet for over two years after the association was formed and started selling units. There were five members of the declarant on the Board. When they got around to doing it, they had to elect two members of the homeowners to serve on the Board. I am requesting that you adopt my amendment regarding the contents of the CCR. Also, I request an enforcement and enhancement of the penalties for violation of the homeowners' association agreement, and a clarification of the complaint process. The Division of Real Estate should be required to take complaints to the Real Estate Commission. If a homeowner goes to the Commission, the homeowner needs to have some recourse to remedy the items that the developer and his agent failed to disclose. I hope you will give favorable consideration to my request. I do not think Mr. Parks will have any problem with this, because it does not affect any portion of his legislation. I would be happy to answer any questions.

Chairman Anderson:

Let me indicate that this Committee has already taken action with an introduction of a bill on its own that covers some of the issues you are addressing. The purpose of it is to address many common-interest community problems. Since the 73rd Session, there have been many complaints about process and procedures. Some of those issues may be better addressed in another bill. I hesitate to add another "ornament to the tree." We will put your amendment in the work session document for consideration. I will have my secretary inform you of hearings for other common-interest community bills, so you will be able to monitor them on a regular basis.

Stuart Posselt:

When I contacted my legislators and asked them to propose this legislation, I was told they were limited in the number of bills they could propose, and the best way to get this request through was to attach it as an amendment to another bill which addresses common-interest subdivisions. This is the only bill I have seen or know of so far.

Chairman Anderson:

It is the first bill to be heard of this type. Mr. Parks took the opportunity to submit this bill himself as a pre-filed bill. We appreciate his developing the first bill on this topic, but it surely will not be the last.

Stuart Posselt:

I look forward to hearing from your secretary. Thank you.

Assemblyman Mabey:

Mr. Posselt brought up a point I was going to ask. I was waiting to see if it was going to be answered. What is the penalty for someone who violates these laws? For example, the board member who does not follow through, does he get a slap on the wrist? What happens to someone who breaks the law?

Chairman Anderson:

Ms. Dennison, can you answer that?

Karen Dennison:

I am not sure that I can specifically answer your question. It is my recollection that the bill adopted gives the Common-Interest Community Commission the ability to fine. I would have to get back to you on the exact amounts of the fines.

Chairman Anderson:

We will get the answer to your question from our Research Division.

Assemblyman Mortenson:

Who is responsible for carrying out the fining procedure?

Chairman Anderson:

We will ask Research to include that answer. Ms. Scott is there something you wish to include for the record?

Pamela Scott, representing the Howard Hughes Corporation:

I am co-sponsor of Ms. Dennison's amendment. Her presentation adequately covers all the points. I have nothing further to add.

M. J. Harvey, Private Citizen, Las Vegas, Nevada:

Since 1979 I have lived in a single-family development in Las Vegas. For years, I have attended each of the regular homeowner's association meetings as an interested property owner. I am in support of Sections 2, 3, and 5 in A.B. 11.

I spoke on A.B. No. 290 of the 73rd Session, which was similar to this bill on several points. I spoke specifically for the inclusion of Section 2 which states, "a member of the executive board who stands to gain any personal profit or compensation of any kind from a matter before the executive board shall... disclose and abstain." I was promoting the inclusion of such language.

I have a question on the language that says, "...who stands to gain any personal profit." We had an instance where a board member voted on a variance for his property which he requested and which would benefit him alone. That subsequently led to a change in the association rules, which unfavorably affected all of us. This person was not looking for money compensation of any kind. Can you insert the word "benefit," so the language would read, "a member of the executive board who stands to benefit or gain any personal profit or compensation?" I do not know if the words "profit" or "compensation" include the intent of the word "benefit." I would suggest that this specific word "benefit" be included, so there is no conflict or misinterpretation.

Chairman Anderson:

We are looking at page 2 of the bill, on line 4. You are suggesting a broader definition than personal profit.

M. J. Harvey:

I am suggesting the inclusion of the word "benefit," because that would include any thing other than monetary gain.

Chairman Anderson:

You are suggesting that non-monetary benefits should be noted. It would have to be something that was not available to other members of the association in general, but a board member could receive the benefit simply because he was on the board. Would that be an example of what you are referring to?

M. J. Harvey:

I do not want the language changed. I am suggesting the inclusion of the word, "benefit." Perhaps, in your wisdom, it is better to leave the language alone.

Chairman Anderson:

Board members are getting the use of golf or other facilities for free whereas other people in the common-interest community might have to pay for. Is that the type of situation you are referring to?

M. J. Harvey:

I had not considered that larger issue, but within our association we do not have anything like golf or other extra facilities. I will stand on what I said and in your wisdom you can act accordingly.

I wholeheartedly support the Section 3 requirement that "the bids must be opened during a meeting of the executive board." In our case, we do not have a separate Executive Board, and we do not have separate meetings unless it involves a particular individual. We had an instance where a Board member pushed one of three bids received for a large project. The Board was about to vote on the bid when a property owner asked if the contractor was licensed in Nevada. The Board member was surprised at that and said she did not know. It turned out the contractor was not licensed in Nevada. It resulted in a considerable increase in cost to get a Nevada licensed contractor to do the work.

One of the previous speakers talked about a dire emergency, and I thought Mr. Parks addressed that issue quite well. If the language in Section 3 is used, everyone would know exactly what the bids contain before any changes may occur. It is all in the word, "transparency." It makes things more open for the property owners and allows them to be knowledgeable.

Chairman Anderson:

If you have written testimony, we will put it in the record. If there is some criticism of the bill that you need to bring to our attention, it is time to do so. The anecdotal information highlights the importance of the bill, and is helpful. If you have some criticism, could you give us some suggested language as you did earlier?

M. J. Harvey:

I am in favor of A.B. 11, and I hope you will pass it.

Chairman Anderson:

Would you submit any written remarks, so we can place them in the record in their entirety? We will leave the record open for you on this particular issue, so you can get your statements in.

Alisa Vyenielo, representing the Community Association Management Executive Officers, Legislative Action Committee (CAMEO LAC):

We support A.B. 11 with the inclusion of the amendment presented by Karen Dennison from Lake at Las Vegas. I have submitted a written statement for the record ([Exhibit I](#)).

Jenny Welsh, Government Affairs Director, Carrara Nevada, representing the Nevada Association of Realtors:

The Nevada Association of Realtors is requesting that you leave the population cap of 400,000 or more in NRS 116.240. Washoe, Carson, and Douglas Counties are governed by the Tahoe Regional Planning Agency (TRPA), where short-term rental uses are an intrinsic part, and an historical aspect of Lake Tahoe and its economy. The TRPA's version of zoning and its subsequent implementation and entitlement process is highly complex. Because of geographical, environmental, and regulatory constraints at Lake Tahoe, removal of the cap would effect this area. We are asking that the population cap be left in the statute. I have submitted a suggested amendment proposal ([Exhibit J](#)).

Chairman Anderson:

Did you have an opportunity to share your amendment with Mr. Parks ahead of time?

Jenny Welsh:

Yes, I did.

Chairman Anderson:

What is the outcome of your proposed amendment?

Jenny Welsh:

This is a separate issue. Currently, transient commercial use is only in Clark County, and bringing the same provision to the northern part of the State would have an effect on rental property at Lake Tahoe.

Chairman Anderson:

We will put your request in the work session documents. Mr. Parks, you had an opportunity to review this document, and you did not disagree with it. Is that correct?

Assemblyman Parks:

No, this is a separate section of Chapter 116 of the NRS that deals specifically with transient commercial use issues. It would not affect any other portion on this bill.

Chairman Anderson:

Is there anyone else who wishes to testify on A.B. 11? I am closing the hearing on A.B. 11. Madame Speaker wants me to make very clear that this is an open meeting. If there are issues that should be addressed, this would be a good time to bring them forward. If you have a constituency who has a request for bills that are in the jurisdiction of this Committee, make sure they are submitted in a timely fashion. I request the Committee take the green sheets with them for reference.

[The meeting was adjourned at 10:52 a.m.]

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Secretary

Judith Coolbaugh
Transcribing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 15, 2007

Time of Meeting: 8:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Rosters
AB 55	C	James J. Jackson	Proposed Amendment
AB 32	D	Catherine Cortez Masto, Attorney General	Letter of Support
AB 49	E	Judge Stephen Dahl	Letter of Support
AB 11	F	Dan R. Reaser	Testimony
AB 11	G	Karen D. Dennison	Proposed Amendment
AB 11	H	Stuart L. Posselt	Proposed Amendment
AB 11	I	Alisa Vyeniolo	Testimony
AB 11	J	Jenny Welsh	Proposed Amendment