MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fourth Session
April 10, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:35 a.m., on Tuesday, April 10, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara Buckley, Assembly District No. 8

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Thomas Fell, Attorney, Gordon and Silver, Las Vegas
Shari O'Donnell, Vice Chairman, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Karen Dennison, representing Lake at Las Vegas Joint Venture
Pamela Scott, Director, Community Association Management, Howard Hughes Corporation
Kevin Ruth, representing Community Association Management Executive Officers
Joey Rosenberg, Member, Board of Directors, Mystic Bay Association
Lindsay Waite, Ombudsman, Common-Interest Communities, Real Estate Division, Department of Business and Industry
Mauricio Hernandez, Attorney, Minden
Noel Manoukian, Senior District Judge, Minden
Debra Van Veldhuizen, Director, Special Advocate for Elders, Washoe County
Michael Foley, Deputy District Attorney, Clark County District Attorney's Office
Kathleen Buchanan, Registered Guardian; Treasurer, National Guardianship Association
Sandra Hartman, Special Advocates for Elders Volunteer, Washoe County
Sally Ramm, Elder Rights Attorney, Aging Services Division, Department of Health and Human Services
Shelly Register, Geriatric Care Manager; Registered Guardian, Guardianship Services of Nevada
Dennis Travers, Geriatric Care Manager; Registered Guardian, Guardianship Services of Nevada
Angela Dottei, Registered Guardian, National Guardianship Foundation; Member, Board of Directors, Nevada Guardianship Association
Andrea Sommers, Registered Guardian, National Guardianship Foundation

Chairman Anderson:
[Meeting called to order. Roll called.] I will open the hearing on Assembly Bill 483.

Assembly Bill 483: Revises provisions concerning the enforcement of judgments. (BDR 2-1408)

Assemblywoman Barbara Buckley, Assembly District No. 8:
In deference to the Chair's long-time occupation, I would like to introduce this bill by going back in history. In late 1776, George Washington called upon Robert Morris, a principal founding father of the United States, to help raise cash to continue his fight. Washington had thousands of troops without supplies, clothing, ammunition, and there was no U.S. Treasury to turn to. Morris loaned $10,000 of his own money to the government, which used the cash to provision the troops at Valley Forge. The soldiers went on to win the battle of Trenton and changed the course of the war. Morris also helped to negotiate war loans from France, and in 1781, was appointed by Congress to be the first Superintendent of Finance for our country. Unfortunately, he did not manage his own finances well. In 1798, he was arrested for personal debt. He was confined to a debtor's prison in Philadelphia from 1798 until 1802, when he was freed by the passage of the National Bankruptcy Act. The moral of this story: bad things happen to very good people and even smart people make mistakes.

Bankruptcy is America's answer to feudal debtor prisons. The underlying purpose of the Bankruptcy Act and exemptions in general, is to give an honest debtor a fresh start in life by relieving the debtor of some debts, and repaying the creditors in an orderly manner to the extent that the debtor has available means for payment. If the point of bankruptcy is a fresh start, then it is only possible if the debtor is left with something that they can start fresh with. Therefore, state and federal laws make certain property exempt. That is, property is exempt from execution in a judgment, and in Nevada, the same exemptions allow individuals to exempt property in a bankruptcy. Assembly Bill 483 will add two items to Nevada's list of exempt property. First is cash on hand up to $1,000 per debtor, and second is Earned Income Tax Credit (EITC) refunds.

The first exemption is sometimes called the "wild card exemption." Thirty-seven states have a wild card exemption in their laws allowing a debtor to retain a certain amount of cash, ranging from a low of $300 in Pennsylvania to a high of $60,000 in Texas. Federal law exempts $975 of cash plus an amount equal to any unused homestead exemption. A list of the state and federal wild card exemptions are in the handout material (Exhibit C). Why allow

a debtor to keep cash? The classic case involves a debtor needing to pay a utility bill, a car payment, or rent. The goal of saving folks from execution, a judgment, or bankruptcy is not to put the person out on the street; a debtor needs to keep a bare minimum of protected cash to pay that essential bill before next payday. This small exemption I am requesting allows a person to be able to pay for essentials. In addition, this modest amount of protection has only a minor impact on creditors. Nothing eliminates their just claims to garnish wages and seize nonexempt assets. It just means that the debtor will have the opportunity to make sure his lights are not turned off and that he is able to put gas in his car.

The second exemption requested is the EITC refund. The EITC is for lower income working citizens and it reduces their tax liability. Essentially, it returns to taxpayers a portion of their federal income taxes due to their income level. The federal government does not count the EITC as income when determining whether a taxpayer is eligible for all federal benefits. Nevada's exemption law already exempts from the definition of income any state public assistance received by the debtor. Should a federal government tax benefit—only available to lower income households, which the federal government does not treat as income—be treated any differently under Nevada law? At least seven other states have answered this question in the negative and have made this credit an exemption. These are minor additions to the bankruptcy exemption statutes. Nevadans who are overwhelmed by debts and who need fresh starts should be entitled to the opportunity.

In my 12 years on the Judiciary Committee, we have taken thoughtful, prudent steps concerning what the exemption should be, while balancing the rights of creditors and the rights of debtors. In the past several years, we have adopted measures such as increasing the amount for a homestead. What should the proper amount be? Should the amount be unlimited, like Florida, or should we protect just a median-priced home? So we have a homestead for $350,000. We also made a policy decision to protect pension plans—qualified retirement plans up to $500,000. With these exemptions, we have helped those with means who found themselves in a situation they could not control—folks who own homes or have up to $500,000 in a retirement plan. These exemptions we are discussing today would help bring some equity to those without a home; perhaps, without a retirement plan; and folks who we have not paid enough attention to in the past.

Thomas Fell, Attorney, Gordon and Silver, Las Vegas:
My primary area of practice is in the bankruptcy arena. My law firm generally does not handle the usual consumer bankruptcies, but rather handles corporate Chapter 11 work. I have been practicing with Gordon and Silver for 18 years

now. Traditionally, my firm has always encouraged and supported pro bono work. A few years ago I became involved with Clark County Legal Services and the Pro Bono Project. As a result of that involvement, I learned some things. I had never heard of the EITC. As a result of accepting numerous cases over the years, through Clark County Legal Services and the Pro Bono Project, I began to realize what the program was, its intended effect, and how it played out in the bankruptcy arena.

The EITC is a federal assistance program that has been around for a few decades. It was transitioned from the old assistance programs where money was handed out by the federal government, oftentimes administered by the states, to a program that was adopted by our county. EITC encouraged individuals to seek employment opportunities and become productive members of society. The problem that existed was under the old system. There were no withholdings for social security or federal income taxes. If somebody did obtain employment, oftentimes, the bite of social security and other tax withholdings created a situation where it made more sense for somebody to stay on a public assistance program and not seek employment. Therefore, the federal government came up with this mechanism to soften that bite and encourage members of society to work. Ultimately, as their skills and income levels grow the tax credit phases out. It encourages people to work, but it is not long-standing assistance that one would expect to receive perpetually. It is simply to assist while individuals seek employment and then help with the lower wages until such time as they are able to increase their earning capacity. It appears to have been an effective program. It is now the primary method by which the federal government distributes assistance. Given the nature of the prior programs, there is a quirk in Nevada's law regarding the exemptions for public assistance.

Public assistance, as defined by Nevada, is limited to programs that are administered through the State, even if they are funded by the federal government. For instance, the old programs that aided families with dependent children were administered by this State, and thus those funds were exempt. However, with this new federal program there is no exemption. What does that mean? That means the EITC primarily benefits single parents by encouraging them to work and providing them with a break from the bite of the income tax Social Security withholdings until they can get established. I found that the single parent is overwhelmed because of a job layoff, catastrophic medical bills, or a very bad divorce. As a result, it is not uncommon to see someone seeking assistance from a bank. I would receive cases and the individual would be entitled to a refund from their tax return as a result of the EITC. The Chapter 7 bankruptcy trustees are charged with collecting all nonexempt assets of an estate, administering and distributing them based on the priorities of the

bankruptcy code. With tax refunds, it is not uncommon, for example, for a higher income wage earner to get a tax refund that will become property of the estate. Any cash that is held in a bank account by someone would become property of the estate, unless it is subject to some exemption. For example, if one is living on Social Security disability benefits, by federal law, those are already exempt, as are veteran's benefits.

When I would have one of my clients go through the Chapter 7 procedure, the bankruptcy trustees would request a tax refund. Remember, a tax refund is not necessarily based on the taxes the individual paid. It is based on the credit system that the federal government designed based upon the earned wages the individual received, plus the number of children the individual might have. The trustees would request that money and because of the older exemptions and definitions of public assistance—in Nevada and other states—courts were suddenly faced with this challenge and have struggled in an attempt to address the EITC. In Clark County, Judge Linda B. Riegle, in the United States Bankruptcy Court, actually published a decision in 2005, in *Thompson*, [867 F.2d 416 (7th Cir. 1989)]. You can see that she struggled with her decision, but she came to the exact conclusion I did. Unfortunately, given the definition of public assistance in the State of Nevada, the EITC simply was not exempt. She pointed out in her decision that various states have now addressed EITC or, because of their broader definition of public assistance, had been able to exempt EITC. It would be a simple correction to the Nevada laws to deal with federally administered public assistance and exempt it from both executions by creditors and collection by trustees. Frankly, when you are dealing with $100 or $200, it makes no difference in a bankruptcy estate of an individual. It is not going to make it to the creditors. However, that $100 or $200 makes a huge difference to the individual who is affected; it determines whether he will pay his rent or be evicted.

The income qualifications for the EITC are extremely low. As a result, we are dealing with individuals who truly live paycheck to paycheck. The vast majority of bankruptcies are not about plasma televisions; rather bankruptcies are caused because of catastrophic medical bills or by job layoffs. We saw many people in the resort industry out of work in Las Vegas after September 11, 2001. Those are the individuals who are in the service sector making the lowest wages. As a result of my experiences with Clark County Legal Services and the Pro Bono Project, I became concerned with bankruptcy and have been actively promoting a fix for this problem.

Assemblyman Mabey:
One thousand dollars seems too low. If somebody takes $500,000 from retirement, they would still have considerable funds after taxes and the 10-percent penalty.

Assemblywoman Buckley:
This measure would be new for Nevada. We always have questions regarding the balance we are trying to achieve. Perhaps it is too low, but I want to get it started. An initial reaction to this is "you get to keep cash." The same person who wonders why a debtor should be able to keep $1,000 in cash has no problem with keeping $500,000 in his retirement plan. This bill has been tried before in the legislative process, so I thought I would start the discussions and then go from there.

Assemblyman Ohrenschall:
Would A.B. 483 help all debtors or only those who sought bankruptcy protection?

Assemblywoman Buckley:
It would help all debtors because Chapter 21 is the statute that deals with exemptions from execution. If I sued you, got a judgment, and then attempted to either garnish wages or to execute upon nonexempt property, Chapter 21 would be the chapter that would decide what I am allowed to receive. It also is the same chapter that is utilized in bankruptcy.

Chairman Anderson:
Is the $1,000 for both husband and wife? Or would it be $1,000 for each?

Assemblywoman Buckley:
It would be $1,000 per debtor; however, I would be happy with whatever the Committee chooses to do.

Chairman Anderson:
I will close the hearing on A.B. 483.

ASSEMBLYMAN MORTENSON MOVED TO DO PASS ASSEMBLY BILL 483.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

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

Chairman Anderson:
Mr. Conklin will present the bill on the Assembly Floor. Mr. Horne will be his backup.

Let us open the hearing on Assembly Bill 499. Ms. O'Donnell, are you presenting the bill?

Assembly Bill 499: Makes various changes to the provisions governing common-interest communities. (BDR 10-1342)

Shari O'Donnell, Vice Chairman, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry:
The Commission supports the bill, but has minor concerns. First is Section 1 that relates to an election and not proceeding with it if the number of candidates required for open seats has been reached. When notice of eligibility is given to candidates, if the number of candidates who come forward to fill the open positions equals the number of open positions, the board may choose not to send out secret ballots. Instead, those members would be elected at the time notice of eligibility is given.

We did also have a concern in Section 2, subsection 3. The consensus of the Commission was that it is not appropriate to give notice of an executive meeting. We feel that *Nevada Revised Statute* (NRS) 116.31083 adequately provides for emergencies or unforeseen events that allow a board not to give the ten-day notice of a board meeting; so, we prefer that amendment be stricken. We feel that all meetings of the board, even executive sessions, should be duly noticed. Section 2 of the bill mentions meeting at least once every 100 days unless the declaration or bylaws require more frequently. We are in agreement; however, we would like to add "no less than four times per year." In Section 3, line 19, after the words "funding plan," we would like to add "in accordance with reserve study prepared by a registered reserve study analyst."

Chairman Anderson:
That would be the concept. Ms. Lang, we are looking at Section 3, subsection 2, and adding, "in accordance with a reserve study done by a specialist."

Risa Lang, Committee Counsel:
There is no problem with the language.

Shari O'Donnell:
Another comment from the Commission was about Section 4. We feel that the law should not impinge upon a government entity having the right to enforce their ordinances on a public street or entering into an agreement with a homeowners association (HOA). In part, there are agreements with HOAs and government entities regarding snow removal.

Chairman Anderson:
We will take Michael Buckley's testimony and make it part of today's record (Exhibit D).

Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry:
The Commission feels it is a good idea that the HOA make available the list of candidates to its unit owners. When nominations are being accepted for the board of directors, the list of candidates should be made available to help satisfy concerns that might be raised. We would like to amend Section 1, which relates to the unit's owner not knowing who had self-nominated. May I provide that language on another day this week?

Chairman Anderson:
You need to provide that today.

Marilyn Brainard:
I have a copy that I will make available to the Committee. Essentially, the difference is to let the HOA be aware, by posting in a location—a website or in the association manager's office—who the candidates are.

Chairman Anderson
You want it in this particular document?

Marilyn Brainard:
Yes.

Chairman Anderson:
If we are to make a decision with this particular legislation, we would pull a section from another bill that we heard earlier, A.B. 11. Section 2 of that bill states a member of an executive board who stands to gain any personal profit, compensation, or benefit of "any kind from a matter before the executive board shall: First, disclose the matter to the executive board; and secondly, abstain from voting on any such matter."

Section 3 of A.B. 11 asserts:

> (1) If the association solicits bids for an association project, the bids must be opened during a meeting of the executive board. (2) As used in this section, "association project" includes, without limitation, a project that involves the maintenance, repair, replacement or restoration of any part of the common elements.

Those fit well within this bill.

Karen Dennison, representing Lake at Las Vegas Joint Venture:
We are in support of A.B. 499. I have proposed an amendment (Exhibit E) very similar to Shari O'Donnell's amendment. I would like to discuss Section 3, subsection 2(b), which has to do with the executive board being able to raise assessments to fund reserves without a vote of the homeowners. Our qualification to that—and we accept the language of the Commission—would be that the decision to raise the assessments to fund reserves be made pursuant to a reserve study prepared by a registered reserve study specialist.

Chairman Anderson:
Having lived in a common-interest community and having dealt with this issue many times, I am at the point where I am not sure that I want to live in a common-interest community. I recognize the advantages of outside maintenance, making sure that property value is upheld, and other substantial benefits, which clearly outweigh some of the intergovernmental actions that take place. Are you going to increase reserves without a vote by the membership within the common-interest community, but by its board? If a homeowner is not able to keep up with the payment increase, then the chance of losing his home is increased.

Karen Dennison:
The existing bill provides in Section 3, subsection 2 (b) that the executive board be able to raise the assessments for reserves. We are asking that it would be qualified, that the decision be based on a reserve study. Yes, any increase in dues could increase the possibility that someone could lose his home.

Chairman Anderson:
This merely qualifies the fact that such an action is going to take place. A decision has to take place based upon a study by somebody who is qualified to do that.

Assemblyman Cobb:
Unlike you, I do live in an HOA and I pay $300 a month in fees, which is horrendous. You have an amendment that suggests the board will hire an outside person to ratify the idea that they are going to raise assessments without approval. This is incredibly undemocratic. You are going to have boards raise assessments without approval. What is the problem with seeking approval first?

Karen Dennison:
I would have no problem if that section of the bill was removed. We were trying to work with the section. We are concerned when a board has unilateral rights to raise assessments for reserves. We do not want it to be arbitrary, and we were simply trying to put a reasonable qualification on that particular section of the bill.

Assemblyman Cobb:
You would be okay with removing that entire subsection?

Karen Dennison:
Yes, I would.

Assemblyman Cobb:
Moving to Section 4 of the bill, what is the purpose of an HOA having the right to govern a public road, street, or alley that it does not have control of now?

Marilyn Brainard:
There are many governing documents in the original declaration with the developer. I am familiar with one particular case in the City of Sparks. Sparks has ordinances which deal with public safety by banning obstructions in the public streets. Our association would acquiesce to the ordinances that have been passed and are being enforced by code enforcement officers as well as the police department. It is a public safety issue for them. In addition, they are trying to improve the appearance of the City of Sparks. There has been a major emphasis in doing that.

Pamela Scott, Director, Community Association Management, Howard Hughes Corporation:
I have an amendment to Section 4 (Exhibit F). It includes a third section, which clarifies that associations do not want jurisdiction over public streets. We have been in touch with all the major governing entities in Clark County, Las Vegas, North Las Vegas, and Henderson. All of them have said that they are not opposed to the language in this amendment. They recognize the partnership between the associations and the governments that allows us to enforce our

governing documents six inches in front of the curb, as well as six inches behind the curb. We are talking about construction debris, sports equipment, and trash cans that are left out. Under the current law, if any of those things are six inches behind the curb, the association can enforce the document, or the quality of life. All government entities refer to those types of issues in their code enforcement introduction as "quality of life." Why is the quality of life any less important six inches in front of the curb? The municipalities are stretched to enforce the quality-of-life issues. That is why the associations make sure to touch base with all government entities.

Chairman Anderson:
Common-interest communities are an old issue. Fire trucks entering and leaving the properties, or police access, have been reoccurring issues. Common-interest community roads are private, yet they cannot be treated like a parking lot. In reality, some of the jurisdictional questions become similar to traffic accidents that occur around town. Then, there is the question of who has responsibility for the roads in the event of snow removal. Will it be the municipal government or is it the responsibility of the common-interest community?

Assemblyman Cobb:
My HOA actually pays for snow removal, so that will certainly be an issue depending on the association. The responses we have heard today are in regard to the problems within Section 3, subsection 2 (b) of the bill, which suggests the elimination of the subsection, as well as the problems outlined in Section 4, suggest that parking is best handled by code enforcement officers of local entities. I happen to agree with that, and perhaps those sections should be stricken.

Assemblyman Horne:
I have similar concerns as Mr. Cobb, particularly with Section 4. Last session, there was a bill that basically stated what an HOA's authority was regarding public roads and the like. I have not heard testimony today stating passage of that bill had been a mistake or that there was a need for change. What I have heard is that the areas of code enforcement, et cetera, are being taken care of. It seems to me that we are undoing what we just did last session because people are now unhappy with that passage. I do not know why we have a change in Section 4, paragraph 1. When the Legislature put in the regulation of motor vehicles on any road or street, we basically said we are not going to regulate the motor vehicles on the street. You have now opened the issue and tried to disguise it by saying that the Commission does not want to give up jurisdictional rights to state or local governments. I think we always had it anyway. I do not think that we need to put the regulation in the bill that the

jurisdiction rests with the HOA. Until I hear any reason why we are going to undo what we did last session, I do not think that there is a need for this bill.

Karen Dennison:
Many governmental approvals for subdivisions require that the HOA documents the declaration of restricted parking on one side of the street. This is because of the width of the street, so you can only have parking on one side of the street. We told the entity in question that governmental jurisdiction could not do that. We could not post signs and we could not put it in our Covenants, Conditions and Restrictions (CC&Rs) that the HOA had to post "no parking" signs because state law did not permit it. The entity said, "Sorry. If you want your subdivision approval you will have no parking on one side of the street." That is one incident where this section would certainly help clarify the two interests—no regulation of public streets versus the subdivision approval requiring that there be no parking on one side of the street.

Assemblyman Horne:
Is this entity telling the HOA that you will be denied your subdivision because you are complying with the law?

Karen Dennison:
That is correct.

Assemblyman Horne:
If that is true, that sounds like a legal issue and you could easily go to court and say this entity cannot deny us for following the law on the book.

Karen Dennison:
It simply has to do with street width. The street is not wide enough to park on both sides. We have finessed the language to the extent allowed by applicable law and left it at that.

Pamela Scott:
I live in Sun City, Las Vegas. In that HOA's original documents, it was required that they put in the CC&Rs that overnight parking was not allowed on the public streets within Sun City. That was required to change, due to the change of the law last session, and it has had repercussions. A lady was seriously injured because a car was parked overnight on public streets, but the HOA has taken the position that the law no longer allows them to enforce that section of the document, which was a requirement when they recorded those streets.

Chairman Anderson:
The common-interest communities I have visited have designated parking areas for visitors around their facilities. The difficulty comes when you are trying to visit somebody and there is no parking within three or four blocks. Of course, for the developer it is a matter of land usage and is the same reason for not having wider streets. We are still fighting with the issue. I clearly see the city's point in terms of allowing room for emergency vehicles. If you live in the community, you should recognize that parking on the street is an issue. If I am to understand Ms. Dennison, all of these issues reflect the reality of common-interest communities. The Legislature is providing the access and methodology to state these issues in statute, or else we will not do it all. We have to hold something up to the cities, counties, and our associations to show that the Legislature has to act on the issues before us today.

Assemblywoman Allen:
I am not in support of Section 4 as it currently reads. An HOA should not have regulatory authority over a road, street, or thoroughfare that the taxpayers pay for. Many local HOAs deed their roads—if the street is large enough for parking and built to code—back to the city because the HOA does not want to pay for maintenance or street cleaning. In Ms. Dennison's example, the City of Las Vegas would never accept roads that are too small for parking on both sides, so it would not become a public thoroughfare, therefore not subject to Section 4. This is about private roads in private communities. I do not think that you are correct. At least in the City of Las Vegas, they do not deed the streets back to the HOA. In addition, any parking authority prohibiting parking on a public street is not right. The taxpayers pay for the street, so the taxpayers should be able to park on it.

Chairman Anderson:
I would like to point out that it is not uncommon to preclude parking on public streets, at least in the north, that are designated as snow removal routes.

Assemblywoman Allen:
I will not be voting in favor of the bill if Section 4 is contained in it.

Marilyn Brainard:
I do have a problem with removing Section 3, subsection 2(b). The newer associations have a comprehensive reserve study prepared by a funding specialist. Our older associations actually had a funding plan before it was mandated that reserve studies be conducted. Older associations that have fallen into disrepair have put a burden on unit owners to have their properties maintained in a suitable condition. It has been a big problem because we have so many different HOAs established in so many different years in the State.

Since it was mandated by a former session to have reserve studies and a funding plan, the insertion of this language was to emphasize that the reserves can be established by the board based on a reputable funding plan, and it would not go to a vote of the unit owners. I understand that is a concern because I have been to HOAs that do not have reserve plans and funding. Eventually, serious conditions will develop with large expenditures needed, and these conditions become an emergency and not something that was anticipated over a period of 30 years.

Chairman Anderson:
The concern is the financial stress of homeowners and the willingness of the HOA to increase their monthly assessment in order to satisfy the reserve demand. That is why I asked the question regarding an increase in monthly payments, which could cause one to lose their entire property over a reserve plan that a homeowner may disagree with. That is one of the major concerns we hear from common-interest communities, and how homeowners lose their property because of nonpayment of assessments. I was merely trying to reestablish the issue of raising assessments without a vote of the public. Of course, a board member has a fiduciary responsibility to keep up the community standards.

Marilyn Brainard:
Yes, and there are cases where the boards have not kept up with maintenance in these communities. For many people, these homes are their primary investment in life. We cannot ignore situations where the property is not being maintained, especially in a common-interest community where the homeowner shares that responsibility. I do know the reserve plan is always adopted in a public meeting by an executive board. The reserve study is discussed and copies of it are made available. In our situation, the association posts these copies in the office for the unit owners to see. What you have to overcome is the general thinking of "why should I help to fund this reserve? I am only going to be here for another 10 years." It is the responsibility, over a long period of time, of all the homeowners in the HOA to keep that property maintained. That is how I see it, and we have to respect the boards that must do what is right for everybody in the HOA and for the property.

Pamela Scott:
Regarding the unit owner's right to vote on special assessments for reserves, it was two sessions ago that the Legislature wrote language that said an association, in order to bring their reserves up to be adequately funded as required by law, did not need to vote on that special assessment. The law requires that the reserves be adequately funded. That has not changed this year. The language Ms. Dennison was adding clarifies that if there is no vote,

then the board needs to have a reserve study that indicates a special assessment is needed. That is their documentation of the need for that. The vote has not been required for the last four years.

In regard to my two amendments, the amendment on the left was the one that I left last week. The one on the right basically does the same thing. It does undo what was done last session. The one on the right was the recommendation of one of the local governments in southern Nevada. I included them both for comparison, but they do the same thing.

Assemblywoman Allen:
In Section 2, am I reading it correctly, that it no longer requires notice for executive board meetings?

Pamela Scott:
Ms. O'Donnell testified about that section too, and said that the Commission would recommend that section be eliminated from this bill.

Assemblyman Carpenter:
I received a letter from a small, common-interest community in Elko. They are concerned about the registered reserve study specialist coming to Elko. There are few homes in this community, and the study was going to cost them a large amount of money. Since there are only a few of them living in this community, the homeowners felt that they could decide what was needed to maintain a road. If they are not under the exemption, there should be someone the homeowners could go, either to their board or the Real Estate Commission, to discuss an exemption. This community does not need an expert to do this if they can document that they are doing the right thing.

Marilyn Brainard:
Yes, the Commission did discuss that community. It was a 19-unit owner association where it primarily had an unpaved road. Are we talking about that community?

Assemblyman Carpenter:
It is called Ruby Home.

Marilyn Brainard:
Our Commission discussed this two weeks ago. The issue was not the reserve study; rather, it was the audit every four years. Did you receive that communication?

Assemblyman Carpenter:
The letter I received mentioned the audit and also the reserve study. Apparently they did not receive satisfaction from your group, so they contacted me.

Marilyn Brainard:
The Commission shares concerns about the burden on the smaller communities. However, Ruby Home has a substantial acreage for each of those 19 homes. We have no remedy to suggest today, but the Commission is looking for a way to help associations with annual budgets of less than $75,000, and Ruby falls into that category. We have not achieved a solution yet. I will tell you that a commissioner, who is a certified public accountant (CPA) representative on the Commission, feels strongly that the four years they have been given to do their first study should be sufficient time to set aside the funds to have the audit done. It is only fair to the homeowners. I suppose we could look at some legislation where an independent community could do a financial review, but at the current time that is not available. The Commission certainly would be happy to look at other ways. I do feel that accounting is important for the safety of all homeowners, and that they should have an audit done at least every four years for homes in an association with a budget under $75,000.

Chairman Anderson:
The calls that I generally get fall into three categories. One group is of small common-interest communities. The second group is of communities of fewer than 30 units that may have a common road and other large acreage, and then there are the groups that are over 300 units. We need to recognize that the size and sophistication of HOAs differ. Some HOAs solve simple issues such as road access or water problems. Others do more by providing security and ensuring that homeowners maintain their properties as a courtesy for other members in the community.

Assemblyman Goedhart:
I wanted to echo the point brought up by Assemblyman Carpenter. I represent a rural district that has a small HOA in Pahrump and its monthly fee is only $18. Its concerns are whether there will be an increasing need for a sophisticated set of rules to follow, or audits, or reserve studies, et cetera. It almost makes it untenable for them to still provide reasonably priced HOA membership and dues.

Assemblyman Cobb:
Ms. Scott pointed out that NRS 116.3115 explicitly stated that HOAs need to have prior approval for raising assessments. Where is that language in NRS 116.3115?

Pamela Scott:
It is not explicitly stated. The Legislative Counsel Bureau (LCB) gave an opinion on this issue after the language came out about adequately funding reserve studies and whether the board had the right to assess without a vote. That was the LCB's opinion, and associations have been doing that ever since. In fact, the one I live in was involved in a lawsuit over it because they did a special assessment. The amendment is in this section so there is no misunderstanding of LCB's opinion.

Assemblyman Cobb:
So, the LCB did not explicitly put that in there?

Pamela Scott:
As I recall, it was in 1999 that this language went into NRS 116.3115. When reserve requirements were made for associations, it was the intent of associations who were inadequately funded to raise assessments. That is why they requested an opinion from LCB about it. It was the intent of the Legislature that the board could make the determination to have a special assessment to adequately fund those reserves. Associations have been relying on that opinion.

Chairman Anderson:
Mr. Cobb, we will ask Legal if they can find that opinion. While Ms. Scott is knowledgeable about common-interest communities, the Committee remembers last session and the agonizing work over that bill.

Assemblywoman Gerhardt:
Is Section 4, subsection 2(a) on line 24, a backdoor approach to the issue of basketball hoops?

Pamela Scott:
I do not think it is a backdoor approach at all. Basketball hoops are the least of the issues, because no association prohibits anybody from playing basketball, hockey, or anything else in the street. The only concern is where homeowners store the hoops or their trashcans. They put them behind the wall. Most of the issues that were addressed are about ordinances within the government entities in Clark County. We are only addressing storage, not children playing in the streets. In any city jurisdiction, no HOA wants to enforce the city's ordinance.

Assemblywoman Gerhardt:
That is part of the problem that I have as a Legislator. There are HOAs who are misusing that authority. The number one complaint that I have from constituents concerns problems with HOAs. I will not be supporting this bill.

Shari O'Donnell:
When I initially gave my comments for the Commission, I neglected our concern with Section 1, subsection 5, which deals with a homeowner not being deemed eligible or in good standing to qualify as a board member if they have an outstanding fine. The proposed amendment makes it clear that the candidate must have attended the hearing and that something was deemed a violation. Our concern is that the eligibility is determined by the way the association is interpreting their documents or enforcing an issue. In fact, the candidate could be running for office because paying fines is something he hopes to correct. This could be denying eligibility to somebody who is really trying to do something good for his community. Secondly, HOAs always treat this information as proprietary. We do not disclose homeowners who have violations and have been fined. The only time a hearing is conducted in public is if it is the wish of the homeowner. Homeowners are kind of running against the way we have been conducting business for a long time.

Kevin Ruth, representing Community Association Management Executive Officers:
Community Association Management Executive Officers (CAMEO) represents most of the management companies in the State of Nevada, and includes over 340,000 homes. We support A.B. 499, but request one area of amendment in Section 2, subsection 3 (Exhibit G). We would like to see some ability for the board to meet in executive session for a limited reason without giving notice to homeowners, in order to help prevent excessive costs to the HOA. A few sessions ago, the Legislature required that prior to any imposition of a fine the HOA must hold a hearing for the individual. Typically that is done in an executive session with the board of directors, or as a committee that has been designated by the board of directors. In both cases, there is a notice requirement. The current proposed amendment does open the window for the board to meet in executive session without notice, but it does have the words "if practicable." It is hard to justify if it is "practicable" to give notice to the homeowners for the hearing. In most hearings, none of the unit owners attend. Here, the law requires the HOA to send out notice to every single homeowner for a hearing that they cannot attend at a cost that includes the mailing plus administrative charges. The reality is that 95 percent of the time, the person who the hearing is being held for does not show, in which case, the board makes a decision based on any materials provided and moves forward. The gist of the issue is that most HOAs now meet every three months, because of the requirement to hold hearings. They really want to get those hearings taken care of, not for the purpose of directly fining the individual, but for the purpose of discussing the problem and seeing if they can get compliance.

Assemblyman Horne:
You said people may not attend these executive meetings. As a homeowner, do I not have the right to know what was discussed at those executive meetings? If I do have a right to know, you must find a way to tell me.

Kevin Ruth:
You are correct. Homeowners do have a right to know what is discussed at those meetings, but currently, the law limits what can be discussed at those meetings. The specifics of what may be discussed certainly would not be important to all the homeowners. The general idea that there were hearings that might have included discussions with the attorney, or other limited features, already exists in law. You will see those issues on any agenda for a meeting. When the board meets in executive session, we recommend there be several subjects they be allowed to discuss. It is already defined in law, so there is already constructive knowledge to any homeowner about what is discussed in an executive session.

Chairman Anderson:
A few of us have strong feelings about open meetings and notification to people, and the opportunity for a full disclosure to people who are not even in a homeowner's community.

Judy Farrah with the Legislative Action Committee of the Community Association Institute has concerns with Section 1. She was not able to testify before us today, but we will put her proposed amendments on the record (Exhibit H).

Joey Rosenberg, Member, Board of Directors, Mystic Bay Association:
We would like to echo Mr. Ruth's comments. My concern is if you are renting a unit in the association, you should not be able to serve as a director on the board. There are conflicts of interests involved and there are other avenues if you have problems. If a person who is renting is on the board, he has different values about his living situation than people who actually own the property. Overall, today's discussions sound good. I would like to acknowledge that our subdivision is handled well through Terra West, and we are up to speed on everything—our reserves are good. I became involved with the board because I felt the prior board was too strict. I felt like I was in a prison camp. Now, I feel that our community is good and everybody seems to enjoy it.

Chairman Anderson:
Is there a problem with meeting the reserve requirements as they are portrayed here and making sure the person who does the reserve study is somebody who is competent and recognizes honest recommendations?

Lindsay Waite, Ombudsman, Common-Interest Communities, Real Estate Division, Department of Business and Industry:
I have only been in this job for eight months; however, my understanding of the last session is that standards for reserve specialists were created and then tightened up. I believe they only have to be done every five years. My understanding is that there was concern about people being qualified to do reserve studies. In terms of the cost, that is not something within my purview. I am the one at the beginning of the process who holds these informal conferences to resolve concerns. I have not had an issue where a homeowner or a board was concerned about the cost, but I am not saying that will not happen. Homeowners do have concerns about reserves and about special reserve assessments and I have seen those concerns during our informal conferences.

Chairman Anderson:
I will close the hearing on A.B. 499 and open the hearing on Assembly Bill 522.

Assembly Bill 522: Provides for licensure of private professional guardians. (BDR 13-1343)

Mauricio Hernandez, Attorney, Minden:
[Read from prepared statement (Exhibit I).]

We see adjoining states like California and Arizona ahead of us in their protection of the elderly and the disabled by regulating and professionalizing fiduciaries. As Nevada increasingly becomes a retirement destination, I ask, "If not now, when?" I urge you to give A.B. 522 a Do Pass recommendation.

Chairman Anderson:
Are we changing the roles of banks and defining professional guardians in Section 8 of the bill? Are we limiting the banks' responsibilities by excluding public or private professional guardians? Also, did you find a problem with the definition of "banking corporation" in *Nevada Revised Statutes* (NRS) 657.016 in Section 8, subsection 3?

Mauricio Hernandez:
There are a number of issues that need to be addressed in the bill, and we tried to address those challenges when we met with the professional guardians. As I alluded to in my statement, the scope of the bill is who is encompassed within its purview. Should it just be limited to private professional guardians or should all fiduciaries be brought within its scope and regulation? This bill is a good start. We need to look at what is being addressed in terms of fiduciaries with banking and with public guardians. There have been reported problems with

public guardians in other states. I can see a reason for us to examine expanding the scope beyond private professional guardians, but that is a separate consideration. What is critical is the need for the licensing board.

Chairman Anderson:
So, banks will be addressed in the future; however, that is not the purpose of this bill?

Mauricio Hernandez:
That is correct.

Chairman Anderson:
What we are trying to do is have people who are not related, but who have guardianship responsibilities, come before a court to ensure that they meet certain requirements.

Noel Manoukian, Senior District Judge, Minden:
There may be no more than 15 private guardians in this State, but some have understudies working with them. The private guardians are concerned about more regulations, but licensure will help the State prevent abuse of elders. It will assure us that the applicants before the licensing board are free of criminal records and, in their fiduciary capacities, better educated in relevant areas such as dealing with wards. There is a saying that those who forget history are doomed to repeat it. It would be appropriate to say that those who ignore serious problems in surrounding states, such as California and Arizona, are doomed to experience those same problems here. Nevada is growing rapidly. Clark County is pushing 1.8 million residents; Henderson continues to be one of the fastest growing cities; Washoe County is booming as well as Carson City, Elko, and many other parts of the State, including Pahrump.

California and Arizona have passed legislation that regulates guardians, caregivers, and other fiduciaries. They do so in response to serious exploitation of elderly people by unlicensed people who call themselves conservators or fiduciaries. We do not know of any serious problems in Nevada, though, as an attorney and judge, I have seen a few. But those culpable conservators in California and Arizona can no longer work in those states, and Nevada should keep them from coming to our State.

As you know, judges in this State have huge caseloads, particularly in Washoe and Clark Counties. I have presided in the family courts in Reno and Las Vegas for about four years now. In my born-again capacity as a senior judge, I can say that we have burgeoning caseloads which the judges study closely. Covering the situation from a licensed guardianship standpoint would make us

better informed when it comes to accountings and reports concerning the condition of their wards. I request that you give A.B. 522 a Do Pass recommendation.

Chairman Anderson:
Now the Committee understands why I was convinced that this was a serious issue for us to look at. I appreciate your comments.

Debra Van Veldhuizen, Director, Special Advocates for Elders, Washoe County:
Special Advocate for Elders (SAFE) has been around for about eight years. Our only cases are referrals from the courts. When a judge feels that there may be concern in a guardianship case—for elder wards or a guardianship—we help the courts monitor the guardianship and advocate for the elder ward. Through court order, we have the right to access all information, but we do not make decisions. Our caseload is pretty stable, with about 95 cases a year. About a third of our cases concern private professional guardians, a third involve public guardians, and a third are family—generally private family or friends. That means two thirds of our cases generate enough concern for the judges to ask for this advocacy role as professional guardians. I am in support of this bill because we have to professionalize standards. However, I believe that the public guardian also acts as a professional guardian and therefore, should not be eliminated from this. We should be looking at professional guardians, by whatever definition, and should include both the private-for-profit professionals and the public guardians.

I am also concerned with the elimination of the subsection regarding banks, specifically when they act as guardian of the estate. We are seeing more cases where banks serve as the guardian of the estate. In fact, some banks are actively marketing themselves to people, hoping that they will be named to act as guardian of the estate. I hope the Legislature will support this bill because I think it is time. This is a nationwide problem that is more pronounced with the aging of baby boomers. We are seeing more people in retirement communities, and the question is, "Who is guarding the guardian?" The professional guardians, both public and private, are doing a good job; however, there is certainly room to professionalize the regulations and the standards.

Chairman Anderson:
This is a small step in approaching the larger issue of banks and other fiduciaries involved. We want to be cautious if we are to move the bill along. We need to make sure that we are not doing harm. If I am to understand, you support guardians dealing with banks when family relationships do not exist, and would like to see three or more guardians so the courts can set a standard based on

this legislation. You also support the need for creating the Nevada State Board of Examiners for Private Professional Guardians.

Debra Van Veldhuizen:
Yes.

Assemblyman Horne:
I need clarification on the banking issue in Section 8. As it currently reads, "professional guardian means a person who..." then the second sentence of the bill is struck. It later continues with "the term does not include a banking corporation, as defined in NRS 657.016." Before striking the second sentence, "banking" was already excluded, but if you strike it completely, it says "professional guardian means a person who..." then we have the blue language "is required to be licensed pursuant to...." Is a banking corporation not going to be included as a "private professional guardian" or a natural person?

Chairman Anderson:
Ms. Lang can you clarify that for us?

Risa Lang, Committee Counsel:
Currently, the term does not include those entities that are listed under Section 8. Now, it is going to just be a person who, for purposes of NRS 657.016, is both a natural person, and, in addition, any form of business or social organization or other nongovernmental entity.

Assemblyman Horne:
A bank would now be or could be defined as a "private professional guardian"?

Risa Lang:
The term is defined in Section 27. The bill continues to exclude the banking corporations in that section.

Michael Foley, Deputy District Attorney, Clark County District Attorney's Office:
I am present to advise Kathleen Buchanan, who is here to testify. Section 6, subsection 1, does not allow anybody to handle more than three guardianships unless that individual is a private professional guardian. The language means that the public guardians of Washoe and Clark Counties could not handle more than three cases.

Chairman Anderson:
Mr. Hernandez, perhaps you can clarify Section 27. Is it your intention that if a bank acts as guardian, they would or would not fit into the requirements of the bill?

Mauricio Hernandez:
My understanding is that banks were going to be excluded. If an amendment was made to encompass banks, there are instances where banks, particularly with larger estates, may have an interest in playing the role as fiduciaries; but they do not have that interest in smaller estates. Smaller estates are not economically practicable for banks; consequently, that is not a problem. The way to address that would be in Section 27. By deleting the reference to banks, the regulation would include the banking corporations. Similarly, if additional cleanup is needed to include public guardians, then you would also delete subsection 2 in Section 27. By taking subsections 2 and 3 out, you would be automatically including banks and public guardians within the regime of licensing.

Kathleen Buchanan, Registered Guardian; Treasurer, National Guardianship Association:
I am in support of A.B. 522. All guardians should be licensed. Two years ago, I took it upon myself to have my entire case management staff licensed with the National Guardianship Association. I am here today because of Section 6.

Michael Foley:
As an unintended result, the language of Section 6 says that, except for private professional guardians, courts cannot handle more than three cases. Section 27 says the private guardian does not include a public guardian. We need a clarifying amendment at the beginning of Section 6, subsection 1, such as "except for public guardians or as otherwise provided, a court shall not appoint more than three wards to a guardian." The current language actually prohibits the Washoe and Clark County public guardians from having more than three cases. I do not think that is what was intended.

Sandra Hartman, Special Advocates for Elders Volunteer, Washoe County:
[Read from prepared statement (Exhibit J).]

Chairman Anderson:
This legislation would not damage the voluntary nature and training of other individuals who may have an interest in doing and helping with this kind of program. Would this affect those who are officially appointed by the court?

Sandra Hartman:
Yes, for the professional but not for the private professional. As far as training, this bill would enhance our ability to work together.

Assemblywoman Gerhardt:
I have a concern with page 3, Section 6 at line 20 where the language reads, "if the court determines as a result of the annual review" that the person is not licensed, they can revoke the guardianship. If that annual review only happens once a year, what if something inappropriate is going on? Is there some kind of safety net that would catch bad actions before this annual review?

Sandra Hartman:
We would hope that there would be a special advocate for elders (SAFE) who would report those discrepancies.

Assemblywoman Gerhardt:
So there would be a way to act before that annual review?

Sandra Hartman:
Yes, if there is a SAFE appointed to the case. Right now, that would only be in Washoe County.

Assemblywoman Gerhardt:
Is there somebody who can answer for Clark County?

Chairman Anderson:
Currently, there is nothing that provides for such a review. This bill would be putting a review in place. What safeguards are there if a fiduciary acts inappropriately in under a year's time?

Sally Ramm, Elder Rights Attorney, Aging Services Division, Department of Health and Human Services:
Currently, the law requires an annual review of the estate and of the guardian. There is nobody who monitors that review. When you have a professional guardian on the case, they are good at getting their reports in, although sometimes they are late. An annual review, as it states in the bill, is as good as it gets in the State of Nevada right now.

Assemblywoman Gerhardt:
If this bill passes and you did see something, do you have the ability to report it to the licensing board so that action can be taken before the annual review?

Debra Van Veldhuizen:
At this time our only recourse, other than talking to the guardians and reminding them of annual reviews, is to go to the court and ask for a hearing. Our SAFE program is the only one in the nation that does what we do. One of the big problems is the monitoring and the fact that courts are so overwhelmed they

often do not recognize when they are not getting the annual review. They do try to send out notifications. In the meantime, if something happens and you do not have a monitor to catch it, there is really not anything we can do. The annual review is as good as it gets and, hopefully, it will be on time.

Assemblywoman Gerhardt:
Maybe we could explore some type of notification system? I am concerned that in a year's time somebody could be "cleaned out." If somebody realized, like one of your organizations, that something was going on, and if you could report it to the licensing agency, immediate action could take place and it would not have to wait for that 12-month review. That might be a good addition.

Sally Ramm:
There are a couple issues here. First, this bill will prevent abuse by requiring background checks and additional education for guardians who are not related. The problem that we are going to have is related guardians and relatives taking elderly people's money. If elder protective services are notified, they will investigate. But it has to be reported.

Chairman Anderson:
Currently, the protection of elders is not working?

Sally Ramm:
Currently, everybody is not being protected and this bill is to try to increase the protection. But it is certainly not going to eliminate the problem.

Shelly Register, Geriatric Care Manager; Registered Guardian, Guardianship Services of Nevada:
The definition of private professional guardians was set forth by this Legislature and requires the certification and the training that is required by the National Guardianship Foundation (NGF). The definition also addresses the application process that a person would have to go through to become a registered guardian. I was previously employed by the Missouri Department of Social Services and represented the Missouri Division of Aging in Guardianship proceedings when there was nobody in the rural counties that could file for guardianship. Oftentimes, the Division of Aging stepped forward to seek guardianships for the alleged-incompetent person. I maintain my status as a nonresident member of the Missouri Bar. As a stakeholder interested and experienced in practicing and protecting vulnerable people, I choose to work as a private guardian to help people and work directly with them and their families. I also help by keeping my caseload lower than I could if I worked with a government agency. As a guardian, I care about ensuring that people are not abused, neglected, or exploited by anyone.

We did have a conversation with Judge Manoukian and Mr. Hernandez. The main problem with this bill is that it is not broad enough. It not only proposes to license private professional guardians, but it also creates liability issues in earlier sections that only apply to private professional guardians. Our concern is that the bill should apply to all guardians and not just apply to private professional guardians. There is a discussion about who should be included in licensed guardianships. We agree with the general theory that licensure could help raise the professionalism, and ensure that there are no fly-by-nights in the industry. There are a number of ways that this can be done. One suggestion is adopting the certification process through the NGF, which was established by this Legislature last session. Many people have taken the registered guardian test for that first purpose. In order to be a registered guardian, you need at least one-year's experience, which is why under the previous statute NGF leased people out; so they had an opportunity to gain experience. For licensure, there should be some different discussion, and it should not be limited just to people who are guardians for three or more.

Unfortunately, A.B. 522 came to our attention a few weeks ago. We submitted our comments to Ms. Ramm, but with additional time we can actually put together a bill that would protect the wards and vulnerable citizens of Nevada. The monitors in place now are not official, but there are many involved—doctors, attorneys, and caregivers. If an elder is being abused, neglected, or exploited, those people can file a report with Elder Protection Services, and the Division of Aging will do the investigation. It has done so with professional guardians. We certainly like to see the full protection of elders.

I would like to point out to the Committee pages 26 and 27 of my proposed amendments (Exhibit K). We would suggest a legislative committee be appointed to study guardianships, caregivers, and people who call themselves fiduciaries but are being appointed as guardians, and maybe include the banking issue. We would like to suggest that there be an interim committee that would work on this bill and perfect it, working with all of the stakeholders in the process, including Judge Manoukian, Mr. Hernandez, interested legislators, and other stakeholders.

Chairman Anderson:
When did you share this amendment with the other parties?

Shelly Register:
I shared the proposed amendments Friday evening with Judge Manoukian and Mr. Hernandez.

Chairman Anderson:
Communicating this amendment is going to be essential to the disposition of the bill. We could pass this bill out of Committee without any amendment and send it to the Senate. You could attach your amendment there, which would give you additional time to work out other issues for this session. The solution that you have suggested would be two years away. The question is can we wait two more years to solve this issue? There may be some who say we can wait, but there are many who feel that this bill is way overdue. Some feel that this issue has been in front of the Legislature for some time and that we are not moving rapidly to solve it, yet we do not want to make a decision just because Arizona and California are certifying private professional guardians. That should not deter us either. You are not against the concept of the bill, correct?

Shelly Register:
I am not against the concept of licensure, but I think that in order to have a good bill we need to have further discussions. There are changes that need to be made.

Chairman Anderson:
There are only three studies done by either House between sessions. If we request a study, there is no guarantee that this bill would be one of the three selected by either House.

Shelly Register:
If the Legislature cannot commit one of its interim committees to this issue, then the stakeholders and I would be willing to continue with our discussions independently. Hopefully, we can bring something forward that would address all of the risks. I know private professional guardians are getting an unfair focus in this bill. Some folks have admitted that problems exist, but not just in private professional areas. For instance, if somebody gets is the only guardian of a million dollar estate, that person could suck it dry in one day.

Chairman Anderson
Do you think your discussions could take place over the next month?

Shelly Register:
I do not know. I would like to think so, but I am not sure how many of the stakeholders we can gather by that time.

Dennis Travers, Geriatric Care Manager; Registered Guardian, Guardianship Services of Nevada:
I would like to echo the comments made by Ms. Register and would like to clarify some of the testimony heard today. Indeed, there are protections already

in the NRS 159.0595 from the last legislative session that require any private guardian to be either appointed by a judge or a registered or master guardian with the NGF. A registered guardian must have one year of full-time experience and pass a proctored test. A master guardian designation requires five years and a test that takes the entire day to complete. My concern about the bill is that it may create a chilling effect on our accounts. Currently, there are approximately nine entities practicing in Nevada as private guardians. As proposed in A.B. 522, if the costs of an overview are passed on to a group of practitioners, this could easily dissuade people from wanting to be private guardians or possibly put existing private guardians out of business.

Chairman Anderson:
Given your long history in this area, do you think that everybody who puts themselves forward needs to meet these requirements to be a guardian? Merely because you wish to join is not sufficient.

Dennis Travers:
One of the problems we are working out is how to provide the minimum one-year experience currently required by NRS 159.0595. Prospects need to be able to take the NGF exam to become registered guardians, unless the judge finds reason otherwise. Currently, any private guardian during the last two years has been either a registered guardian or a master guardian.

Chairman Anderson:
Did you help draft the potential amendment?

Dennis Travers:
Yes.

Chairman Anderson:
What would be the advantage of the amended version of the bill?

Dennis Travers:
The primary advantage would be that the amended language would attempt to get the National Guardianship Association (NGA) and NGF involved in the testing and oversight of private guardians of the State. Other states have affiliated with those two national agencies to cooperate in the licensing and monitoring of their private guardians. It would save the State of Nevada quite a bit of money. It would also provide a situation where people doing the monitoring would have expertise in the area of guardianship. Oftentimes, the boards that are set up to monitor different functions do not have that level of expertise.

Chairman Anderson:
We spent a good deal of time this morning talking about the boards and trying to bring uniformity to the process. If the board is not established early enough to monitor what is going on, we will have something that will continue to grow and the guardians will assume that they are doing good jobs with their fiduciary responsibilities. In reality, there is a great opportunity for a guardian to take advantage of older adults if there is no monitoring in place. This becomes a concern for all of us because the licensing standards are real and there is a responsibility for taking on the role of a guardian. We should not assume that an older adult is receiving proper care and expecting the court to monitor the guardians is not working. That is where we are concerned. Do you feel that is an issue?

Dennis Travers:
I feel that the handful of anecdotal cases that have been used to justify the creation of A.B. 522 are minimal in the real world. If there is any group of guardians where these kinds of abuses are least likely to take place, it is with professional guardians. As has been pointed out to the Committee, the bulk of exploitation, abuse, and neglect occurs with third-party family, friends, and guardians. That is pretty well established and accepted. I, too, would like to see the protections of this bill broadened significantly.

Chairman Anderson:
Let me put KayCee Zusman on record for today because she had to leave early. She is not in favor of the fact that private guardians are not included in all guardians.

Angela Dottei, Registered Guardian, National Guardianship Foundation; Member, Board of Directors, Nevada Guardianship Association:
I provided my written testimony for the Committee (Exhibit L). I want to put on the record that I take great pride in my work as a guardian by advocating for wards who are not able to manage their affairs anymore. I act as an arm of the court. I do not take matters into my own hands. I feel defensive in bringing this forward because this bill segregates and alienates private professional guardians as perhaps needing more oversight than public professional guardians, or family or friend guardians. My big concern is that we are not including licensing and regulation of all guardians. Clark County and Washoe County public guardians have large staffs in charge of the fiduciary and personal needs of wards under guardianship. All vulnerable adults and folks who are facing guardianship truly need to be regulated.

Chairman Anderson:
Did you have an opportunity to look at the amended language suggested by Ms. Register?

Angela Dottei:
I did.

Chairman Anderson:
Do you feel that there is a need for a long-term study or can the issues be addressed during this session?

Angela Dottei:
I believe that there needs to be a study and that this bill does need to be broadened before it can be carried forward.

Chairman Anderson:
Do you think that doing nothing is better?

Angela Dottei:
No, I believe that NRS 159.0595 does address some of the regulatory problems by providing that private professional guardians be registered or be master guardians with the NGF. There are a lot of prerequisites and work needed to be able to get that standing. For the time being, the current issue is in the court's ability to enforce its authority. Maybe we need to look at ways and means to support the courts in monitoring and utilizing the jurisdiction they have.

Andrea Sommers, Registered Guardian, National Guardianship Foundation:
I am a registered guardian, and have passed the NGA's test. For 12 years prior to that, I was a paralegal working for various attorneys doing probate and guardianship. I personally witnessed abuse and exploitation of wards by family members and friends as I worked with those attorneys. This bill should be expanded to include all who are not relatives, at the very least. I would also like to see the amendment by Ms. Register included in the bill. I am currently appointed registered guardian in a matter where an insurance agent became guardian for a person. In one year, he has taken almost all of her funds. If we had to license or register all nonrelatives that could never happen.

Chairman Anderson:
I will close the hearing on A.B. 522 and open the hearing on Assembly Bill 534. This bill is to ratify and clean up legislative language and intent. I asked Mr. Ohrenschall and Mr. Cobb to spend time together and discuss this bill on behalf of the Committee. The Committee has been working diligently and

presumes if there were conflicts, that Mr. Cobb and Mr. Ohrenschall would bring those to the Committee's attention.

Assembly Bill 534: Ratifies the correction of certain clerical errors and the resolution of certain statutory conflicts in legislative enactments from previous sessions. (BDR S-1073)

Assemblyman Ohrenschall, Assembly District No. 12:
I have distributed an explanatory handout (Exhibit M). I met with the LCB and with Deputy Legislative Counsel Steve Coburn to discuss the process. They brought to light NRS 220.120, paragraph 8, which states:

> The Legislative Counsel shall resolve all nonsubstantive conflicts between multiple laws enacted at any legislative session as if made by a single enactment. If multiple amendments to a single section of NRS are made during a legislative session, such amendments are all effective and must be complied in a manner that is consistent with the intent of the Legislature as determined by the Legislative Counsel.

That was something new to me, so I thought I would inform the Committee about what happens at the end of the session in the world of the LCB.

Chairman Anderson:
Did you or Mr. Cobb find any conflicts you needed to bring to our attention?

Assemblyman Ohrenschall:
I personally agree with the bill. I looked through each bill from the 2005 Session and I could not find anything wrong, but there is always a chance that something may have slipped by me.

Assemblyman Cobb:
Can somebody address Section 1? It says that it was fixing a conflict in Senate Bill No. 41 of the 73rd Session. I want to make sure that this still does not contain a conflict. I am not familiar with the law, but it states that "in the case of lien acquired pursuant to NRS 108.315"—which has to do with unpaid rent or utilities—that would be a first lien. Then the bill says in the case of a lien on a motor vehicle, the first 30 days would also be a first lien. Does that need further prioritization if you have multiple liens?

Chairman Anderson:
Did you not pose that question to Legal at the time?

Assemblyman Cobb:
We discussed it and the priority of multiple liens did not seem like a conflict, but I just wanted to confirm that is the case.

Risa Lang, Committee Counsel:
The Legal Division changed and codified this amendment in subparagraph 1 of paragraph (b) where it states "if the amount of the lien does not exceed $1,000..." The language used to say "is;" but, because that was inconsistent with the rest of the statute, it was changed to "exceed" for consistency. How the liens actually work was not something that we addressed in this particular section in the codification process. I would be happy to look at how the section works in general, if you would like me to.

Chairman Anderson:
No, I do not think there is a problem.

Assemblyman Cobb:
If that is the extent of the change, then it seems appropriate.

Chairman Anderson:
Your basic question does not change the position of the bill. The bill does resolve conflicts or errors in other parts of the bill.

> ASSEMBLYMAN OCEGUERA MOVED TO DO PASS ASSEMBLY BILL 534.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMEN MABEY AND CONKLIN WERE ABSENT FOR THE VOTE.)

We will assign the bill to Mr. Ohrenschall to present on the Floor.

[Chairman Anderson left the room at 12:02 p.m.]

Vice Chairman Horne:
All of you should have a work session document (Exhibit N). We are not going to hear the first bill, which is A.B. 87, because that will be moved to another day. Let us turn our attention to Assembly Bill 248.

Assembly Bill 248: Revises provisions relating to approval of nonrestricted gaming licenses in certain counties. (BDR 41-383)

Jennifer Chisel, Committee Policy Analyst:
Assembly Bill 248 (Exhibit O) was discussed several times in this Committee. This is the bill that revises provisions relating to approval of unrestricted gaming licenses in the smaller counties in Nevada. There were no amendments submitted for this bill; however, there were several discussions on the bill.

> ASSEMBLYMAN OCEGUERA MOVED TO DO PASS ASSEMBLY BILL 248.
>
> ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Vice Chairman Horne:
Is there any additional discussion?

Assemblyman Carpenter:
I had great concern about this bill. This bill really is not needed because the smaller counties are already restricting licenses under general powers. What I do not like about this bill is that this is a real intrusion of private property rights. Wendover, a community in my district, has passed an ordinance requiring a restricted license before anyone can build a 150-room hotel. That is going to cost big bucks. As I see this bill, it really is protecting the larger casinos that are already in place. I think that the government has ways to control properties through zoning and infrastructure. This bill goes against the free enterprise that I believe in. I will not be supporting this bill.

> THE MOTION PASSED. (ASSEMBLYMAN CARPENTER VOTED NO. ASSEMBLYMEN MABEY AND ANDERSON WERE ABSENT FOR THE VOTE.)

Vice Chairman Horne:
I will assign that bill to Mr. Segerblom.

Jennifer Chisel, Committee Policy Analyst:
The next bill is Assembly Bill 406.

Assembly Bill 406: Revises various provisions relating to marriage licenses. (BDR 11-523)

This bill (Exhibit P) was heard last week by the Committee and relates to changes to marriage licenses. During the Committee hearing, we had discussions about certain changes to the bill. You will find a mock-up in the work session document that was prepared by Legal Counsel which shows the changes that the Committee discussed. Those changes are to remove the

references to full legal name, so that is no longer a requirement. Additionally, in Section 2, the only amended language of the bill that is retained are lines 13 on page 1 of the mock-up to line 2 on page 2. They discuss the branch offices being designated in certain counties. The other portion of the bill that was retained starts on page 4, and discusses that a date of birth must be on the marriage certificate. There was discussion about how that conforms with Social Security provisions.

Assemblyman Oceguera:
I must not have been here the day this bill was being heard. Can somebody tell me what the discussion was regarding the removal of the "full legal name"?

Jennifer Chisel:
There were problems with some birth certificates that do not indicate full legal name—they just use an initial. So there could be problems identifying the person by not being able to actually match the person with the documents that are presented, if there is not a full legal name on those documents.

Assemblyman Segerblom:
Henderson wanted to issue marriage licenses. The Department of Motor Vehicles (DMV) tried to make the bill conform to the national Real ID (identity) Act of 2005 by requiring all this stuff. The Committee agreed to stick with the current bill and let Henderson have the licenses.

Vice Chairman Horne:
The bill seems fine with the resolution of the name issue.

Assemblyman Ohrenschall:
The amendment addresses the concerns of the wedding chapel industry. People who are traveling from another country and do not have proper documentation cannot get married. That would hurt the wedding industry.

Jennifer Chisel:
That is correct. The amendment does address that, since the full legal name would not be necessary. Both parties will no longer have to answer the questions as proposed in Section 2. There was discussion about how that may be problematic for foreign applicants, so that language was stricken. The amendment will return to the existing language.

Assemblyman Ohrenschall:
That would be the additional language on page 3, from lines 2 through 19?

Jennifer Chisel:
Correct. Also, on page 2, the language with the purple lines was proposed for the bill and that has been taken out.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS ASSEMBLY BILL 406.

ASSEMBLYMAN GOEDHART SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ANDERSON AND MABEY WERE ABSENT FOR THE VOTE.)

[Meeting adjourned at 12:21 p.m.]

RESPECTFULLY SUBMITTED:

_____
Doreen Avila
Committee Secretary

APPROVED BY:

_____
Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 10, 2007 **Time of Meeting: 8:35 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 483	C	Barbara Buckley, Assembly District No. 8	Bankruptcy exemptions
A.B. 499	D	Michael E. Buckley, Chairman, Commission for Common-Interest Communities	Proposed amendments
A.B. 499	E	Karen Dennison, representing Lake at Las Vegas Joint Venture	Proposed amendments
A.B. 499	F	Pamela Scott, Director, Community Association Management, Howard Hughes Corporation	Proposed amendments, Written testimony, and letter from homeowners
A.B. 499	G	Kevin Ruth, representing Community Association Management Executive Officers	Proposed amendments
A.B. 499	H	Judy Farrah, Chairman, Nevada Legislative Action Committee	Proposed amendments
A.B. 522	I	Mauricio Hernandez, Attorney, Minden	Written testimony
A.B. 522	J	Sandra Hartman, Special Advocates for Elders	Written testimony
A.B. 522	K	Shelly Register, Geriatric Care Manager; Registered Guardian, Guardianship Services of Nevada	Comments and proposed amendments
A.B. 522	L	Angela Dottei, Registered Guardian, National Guardianship Foundation; Member, Board of Directors, Nevada Guardianship Association	Written testimony
A.B. 534	M	Assemblyman Ohrenschall, District No. 12	Document regarding the revision of statutes

A.B. 87	N	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 248	O	Jennifer Chisel, Committee Policy Analyst	Work session document
A.B. 406	P	Jennifer Chisel, Committee Policy Analyst	Work session document