MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 7, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:02 a.m. on Monday, May 7, 2007, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Randolph J. Townsend, Chair
Senator Warren B. Hardy II, Vice Chair
Senator Joseph J. Heck
Senator Michael A. Schneider
Senator Maggie Carlton

STAFF MEMBERS PRESENT:

Laura Adler, Committee Secretary
Kelly S. Gregory, Committee Policy Analyst
Wil Keane, Committee Counsel
Scott Young, Committee Policy Analyst
Jeanine Wittenberg, Committee Secretary

OTHERS PRESENT:

Samuel P. McMullen, Snell & Wilmer, LLP; Association of Condominium Hotels
Mandy Shavinsky, Snell & Wilmer, LLP
Diane Radunz, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Gary E. Milliken, Snell & Wilmer, LLP
Michael Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Shari O'Donnell, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Susan Fisher, State Board of Podiatry

CHAIR TOWNSEND:
I will now open the hearing on Assembly Bill (A.B.) 431.

ASSEMBLY BILL 431 (1st Reprint): Establishes provisions governing condominium hotels. (BDR 10-1056)

SAMUEL P. MCMULLEN (Snell & Wilmer, LLP; Association of Condominium Hotels):
Good morning Mr. Chairman and members of the Committee. For the record my name is Sam McMullen from Snell & Wilmer, LLP. I have with me Mandy Shavinsky also a partner in Snell & Wilmer, LLP. Gary Milliken will join us on the record momentarily. I guess the next thing I would say would be a question to you, Mr. Chairman, and how you would like to proceed today.

CHAIR TOWNSEND:
I believe there were a number of questions asked—. I know Senator Heck had some, Senator Schneider had some and if there was in fact answers to those we will go ahead and answer those, and then we will move through the big portions of the bill. I want to make sure there is a clear record on the definition between a couple of areas. One is common elements as well as shared components.

MR. MCMULLEN:
"Mr. Chairman,—if it is appropriate, Senator Heck, I think we can start with questions that he raised. Mandy, I guess I will turn it over to you."

CHAIR TOWNSEND:
When you answer the questions or a reference, will you please make sure you reference the bill by page first and section second.—That way it is easier for us to follow since the bill is rather voluminous. It made for a wonderful weekend of page turning. Make sure you state your name for the record.

MANDY SHAVINSKY (Snell & Wilmer, LLP):
Members of the Committee, Chairman, my name is Mandy Shavinsky and I am an attorney with Snell & Wilmer, LLP, in Las Vegas.—I believe first of all, Senator Heck raised a question

regarding what I believe is section 75, which is page 15 of A.B. 431.—I believe his question was whether the hotel-unit owner would effectively always be able to outvote the residential-unit owners and therefore control the association. I would like to ask you; is that a correct recitation of your question?

SENATOR HECK:
"Yes."

MS. SHAVINSKY:
"Okay great.—I will go ahead and proceed to answer that, and Mr. McMullen, I think, started to explain that but his explanation was pretty brief last Friday, so I will go ahead and answer that."

CHAIR TOWNSEND:
"—There is a lady in southern Nevada—Diane Radunz. Do you have a copy of the bill, Ms. Radunz?"

DIANE RADUNZ (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
"I do—."

CHAIR TOWNSEND:
We do not want to leave you out of this debate. There is nothing more debilitating to one's intellect than having to listen to a debate when you do not have the materials. In fact, for some who have served in this body, even with the materials it is a substantial never mind. If you would stay at the microphone since you are the only one there and then you can follow along. That way if you want to provide input you are more than welcome.

MS. RADUNZ:
"Thank you."

CHAIR TOWNSEND:
—Committee, we are on page 19, section 75 regarding the issue, I believe, on line 27, "The declaration may be amended by a majority of the total voting power in the association." We are talking about whether, in essence, I do not know if—the declarant

or the hotel would always be in first place or always be able to outvote the units owners.—Please proceed.

MS. SHAVINSKY:

—The first thing that I need to get on the record is—just a really brief explanation of the structure so that everybody has the ground rules the same. The hotel unit is composed of what would normally be common elements in a condominium. It's not the individual hotel rooms. For example, if you took a high-rise building and you—cut it in half and you showed a cross section, everything that was not the individual hotel rooms would be either a shared component or a part of the hotel unit.—That gives you an explanation of what we are talking about here.—To answer the question, the hotel-unit owner is really just one unit owner in the condominium.—Again, it is not composed of singular multiple hotel rooms, which in our act, the individual hotel rooms are defined as residential units.—The declarant would certainly own all of the units when it goes to sell them. However, it is the declarant's intention to sell and close these units as quickly as humanly possible and it would effectively have a certain number of votes within the association, but the residential-unit owners would certainly outnumber, in the association, the hotel-unit owner. In addition, once 75 percent of the units in the condominium hotel are sold, control of the board of directors has to be turned over to the unit owners.—Per a recent revision we made to section 87, a majority of that board of directors must be the owners of residential units. Does that answer your question?

SENATOR HECK:

"I believe it does. So, the individual hotel rooms, not the condominium part, but the hotel rooms are not counted as a unit for the sake of the homeowners association to the benefit of the hotel-unit owner?"

MS. SHAVINSKY:

"That is correct. Those would be individual units owned by the residential-unit owners, which would be the end consumers."

SENATOR HECK:
"—That clears up that question. Thank you."

CHAIR TOWNSEND:
"For purposes of follow-up,—how does one consider the hotel units that are not for sale? Are they considered simply one vote?"

MS. SHAVINSKY:
—Yes, those would be one vote. Any residential unit that is not sold would be owned by the declarant. It would be a residential unit for which the declarant would have to pay the same shared cost and the same shared expenses as every other person that owns a unit within that building.

CHAIR TOWNSEND:
"Okay."

MS. SHAVINSKY:
"Senator Heck,—did you have an additional question about the amendments?"

SENATOR HECK:
—I had a question regarding the levying of the homeowners assessments.—Through reading some of these, and it may be just be my misread, it appears the residential-unit owner may be subsidizing the costs to a certain degree of operating the hotel end of the operations through the association fees. I understand common elements of which the residential units have access to enjoy, but it seems like it goes a little bit deeper than that. Specifically, I am looking at section 66, subsection 2, on page 14, especially on line 9 where it also includes, "and—other charges of the hotel unit owner." I am trying to ensure, or find out, whether or not the case is that a residential-unit owner is on the hook for something that is going on in the hotel end that really the residential-unit owner may have nothing to do with. It seems kind of broad in that language.

MS. SHAVINSKY:
—Senator Heck, this really goes to—what truly is the shared components and what is the hotel unit and what portion of the

cost associated with operating those will be paid by the residential-unit owners. What is intended here is that the shared components be those areas that consist of hallways, elevators and service areas. The—shared components are actually a subset of the hotel unit. However, you can have a portion of the hotel unit that is not shared components.—Those areas would be revenue-producing portions of the hotel unit for which the residential-unit owners it would not be fair to ask them to pay for.—Those are things like Starbucks that might be located in the lobby, a restaurant,—any other type of revenue-producing commercial area within the hotel unit that is not really there for the benefit of the residential-unit owners except as a member of the general public.

SENATOR HECK:

—On page 5, section 29, lines 5 through 7, again, that statement there causes me a little concern. Maybe wrongfully, but it appears that the hotel-unit owner is going to be charging residential-unit owners for much more than what might just be related to the maintenance of that section related to the condominium. I'll listen to the rest of the explanation regarding shared components and how that is further described.—That is just kind of a broad concern I have that I would like to have allayed.

MS. SHAVINSKY:

"—Do you want me to go ahead and address that now—?"

CHAIR TOWNSEND:

"Sure."

MS. SHAVINSKY:

—The shared component costs that are to be paid by the residential-unit owners again are intended to encompass maintenance of what would normally be a common area. The "any other charges" language is really intended to address a portion of the hotel unit that the residential-unit owners get the direct benefit—. For example; a very small pro rata portion of operating the front desk for those folks that are in the rental program.—Other items such as if there is—a central plant that might be located within a large mixed-use project that provides certain utilities but

also provides utilities to other portions of the project, including the hotel and perhaps other portions. That is intended to be caught up in the "any other charges" language. I do see your concern in that "any other charges" could be construed as being very broad.

SENATOR HECK:

—Part of it just has to do with my getting a better handle on all of the different definitions.—Under the definition of hotel unit it, says, which is section 24, that it refers to areas within the condominium hotel which are not designated as shared components.—if it is not a shared component, then why is the residential-unit owner on the hook for helping offset the costs?

MR. MCMULLEN:

"—If I can,—I would like to direct the Committee's and Senator Heck's attention to section 43. In terms of actual definition of shared expenses,—if you look at it, it is a very limited set of issues in terms of what exactly is paid for."

CHAIR TOWNSEND:

"What page—?"

MR. MCMULLEN:

—Page 6, carrying over to page 7, starts at line 44—. Again, it is section 43 for the record, the definition of shared expenses. You will see that it relates to the operation, maintenance, repair, replacement and insurance of the hotel unit. The most important thing that I wanted to do while you are reading this definition is, again, that these things would be actually defined in the declaration.—Of course, the law is important in the sense that it sets the general parameters for this. The important thing is that there will also be contractual obligations entered into, along with those contractual obligations will be a statement of expenses for the coming year and so there is a lot of information and a lot of pro forma that a lot of people would be able to look at. Then I think it is important to have Mandy share with you exactly why it is to the hotel-unit owners' benefit to make sure that everything is tuned as closely as possible. For one reason, you would not be able to sell these if you jacked up the expenses too high and there is no real

revenue—. I wanted to make sure that you looked at that definition because that does actually limit it.

SENATOR HECK:

Let me give a practical example and if you can assure me that the answer to this question is no then that will probably take care of most of it.

There is a hallway in the hotel-unit part.—The hotel-unit owner decides they want to re-carpet all of the hallways in the hotel-unit part, an area that the residential units have no access to or are not involved with—. Is the residential-unit owner liable, or in some way going to be on the hook for offsetting the cost of re-carpeting the hotel unit?

MS. SHAVINSKY:

"—Those residential-unit owners in our example would have absolutely no access, benefit or use to that area."

SENATOR HECK:

"Right, there is no common element—. All that is on that floor is rental units for the hotel."

MS. SHAVINSKY:

If that—would be an area that would be normally defined as a common element in a condominium meaning you go up the elevator, you get off, you turn left, you walk down to your room. Then that would most likely be in a declaration defined as a shared component for which they would pay a portion of the cost of maintenance. If we are talking about a hallway that goes down to, for example; maybe a back of the house area for rental-program operations, then no. They wouldn't end up paying any cost for that because they get no direct benefit out of it.—If it is what would normally be a common element in a condominium; a hallway they walk down to get to their unit or another portion of the hotel tower that they do get some benefit from, then they would end up paying a pro rata portion of the shared expenses for it.

SENATOR HECK:
"—That is the part that causes me concern. If you have the first four floors hotel and the next four floors are condominium, condo owners probably will not be walking on the hotel floors."

MS. SHAVINSKY:

> If those are hotel floors, meaning they are just solely hotel units, they are not hotel condos, then what would happen is that would probably be parceled out as a separate parcel.—There is no reason the hotel condo owners would pay for costs on floors where you just simply have hotel units that the residential units have no interest in, do not own and have no part of.

SENATOR HECK:
"That is the answer I was looking for. Is that in this 128-page bill somewhere? Is that provision in there that spells that out?"

MS. SHAVINSKY:

> —There are so many different structures that we are looking at here.—Some of these are single towers with all hotel condos in them, some of them are located above maybe convention space or a casino—. It is intended that a portion that is just solely hotel is really not even supposed to be included within the structure of the hotel condo. It would simply be parceled out completely for which there would be no cost built back.

MR. MCMULLEN:

> —Page 15, section 67 and 68, I think one thing that would help clarify this for Senator Heck is that, in essence, what the surveyors did for us by looking at some of these provisions and making sure that the actual specific common-interest community, known as a condominium hotel, was defined. It will be done by relative altitudes and air-space definitions within a building. In a sense, what basically happens is you will parcel the hotel condominium part and define it separately as a surveyed and therefore platted item as you would the hotel.—Consequently what you get is an additional protection that says; this area is the hotel condominium portion and, for this purpose, we are talking about a hotel building that might have several floors dedicated to hotel condominiums.

Those would be actually platted, surveyed and measured separately. Therefore, in that space, would be where you are talking about common elements per se and then a probably different allocation of shared components. There is of course some difficulty when you take the elevator up through 20 floors but only 4 of those are hotel condominium. Again, I think that is the concept of putting out a proper budget that says that to the extent that you have some use of those and platted correctly, that basically you would pay for your share. You will see through this that, just like I showed you on the prior section,—basically all of this is supposed to be very specified, very regulated, nondiscriminatory against any unit owner, in this case, residential-unit owner.—I think there is a lot of protection in the specific surveying and platting. It is hard to understand these things. The easiest one is a hotel condominium that is one building all in-and-of itself. Even to the extent that a building is parceled out separately, that is going to be specifically defined, specifically platted and specifically set aside as basically a separate parcel.

SENATOR HECK:
"Thank you, that was very helpful."

SENATOR HARDY:
—It's important to note that is all done through the declarations. None of those protections are contained in the law. I think that is okay because at some point we have to rely on the owners. I do not want to indicate that there are no protections in the law, but what you are talking about is done in the declarations so it becomes incumbent upon the prospective buyer to make sure that those are something he or she can live with. I think we did a good job the other day, thanks to Senator Heck, of establishing a record of what your intention is. I think the marketplace will take care of the rest. If you create declarations that aren't fair and equitable to owners, they will not buy—.

CHAIR TOWNSEND:
I think Senator Hardy's point is an excellent one, and let me follow up to make sure that is underscored. In trying to wade through this; is the law that could be signed this session, where are the

declarants going to find that? Are we going to, for the first two years, make sure everybody has a copy of that so they know what the law is in the State of Nevada? Was that something you discussed?

MS. SHAVINSKY:
"—Are you talking about provision of the actual declaration to the unit owners?"

CHAIR TOWNSEND:
"No,—since this is a new area of law and we are creating this out of whole cloth, maybe there should be a two- or three-year period in which new units are sold, they should have a copy of this. We do it in other areas."

MR. MCMULLEN:
—I was—at a meeting for my own homeowners association Friday afternoon for about three hours and there was actually a very effective booklet I think—is prepared by the Commission. I did not actually see what the genesis of it was but—I thought of that and thought that is a good public-disclosure thing. I think we will try and make sure that, at least throughout the industry, we have some say over if you want to go down that you would have to make sure that these are actually distributed with the sales.

CHAIR TOWNSEND:
That's something that you probably should consider—. It sounds really good and is a feel good that we will make everyone have a copy. What concerns a number of us is the fact that this is such a burgeoning, overwhelming, capitally intensive industry that has grown up in a matter of years. The one thing you do not want to do is pull the rug out from under it because our consumers, as sophisticated and well-heeled as they may be, rise up and say this has been awful and I have had a terrible experience.—In many cases, they had a terrible experience because they didn't do their due diligence.—That is something I think you should consider. Once this is processed, it is not real hard to make it part of the documents that you provide to the customer. It is something we should think about for the first five years while this evolves and we get those things on the marketplace.

—In reviewing many of the advertisements over the last month —there is a number of terms that are constantly thrown around and you are never exactly sure what it is. Let me give a specific example; the Trump property is now advertising for a second tower and I believe there was an article about it in one of the papers and there was a substantial set of four-color, full-page ads in multiple high-end magazines about this second tower. It makes reference to a hotel condominium.—I have to be careful, I am using the term Trump because that is what is on the thing.—I do not know him, but most of the Trump towers, I think would be assumed by the average consumer to be a pure condominium.—In the Las Vegas market, it is being advertised as a hotel condominium, which would lend one to believe you can pick up the phone and make a reservation and stay for two nights.—I guess the question is twofold.

Number one is the concept of maybe following up on Senator Hardy's point.—Should copies of this new law, if we get this in good enough shape to get signed into law, be made part of the declaration, or at least be made part of the documents when they choose to sign them—?

Number two; what can you say and what can't you say.—I didn't know—Trump was going to be a hotel condominium and what does that mean since there doesn't appear to be gaming on that particular portion of the property and there doesn't seem to be open restaurants?

Given the changes in restaurants in the Nevada market who come and go on a regular basis, what happens to that unit owner if a restaurant fails or the hotel property decides they don't like the arrangement and they want to bring another person in and it costs $1 million to redo the restaurant? Is the unit owner going to have any responsibility because he or she does in fact get a benefit by having that restaurant on the property?—I do not know that. It is just that those things happen all of the time.—If you have a bad month in Las Vegas, they have moved on to a new idea. I'm not being facetious, these people are the most aggressive marketers in the world and for that they should be commended. There is nothing

wrong with that, everyone on this body remembers four years ago; we didn't know what one of these high-end nightclubs was and here we are with one on every property and they all have one name—. I think that same—feeling is coming along with these hotel condominiums and I think the effort you have made here is gigantic to get our arms around. We are not trying to pick it apart. We are just trying to get simple answers to—fundamental questions as to the nature of the effect of this on some of those potential changes.

MS. SHAVINSKY:

I think your questions are very good ones. I will go ahead and answer those in the order that you posed them.

The first question was should we make copies of this law part of either the declaration or some other public-disclosure document that is provided to the purchasers prior to the close of escrow or concurrently with the close of escrow. I think we do that with a number of documents in chapter 116 already as part of the public-offering statement. There are a number of statute sections that need to be provided to purchasers, and I do not think anyone could make a good argument on why they would be opposed to providing a copy of the statute as part of the public offering statement; or at the very least the disclosure that we have taken from 116 and tried to mirror that starts out "did you know." I think that is known as the common-interest community disclosure here. It would probably be known under another title but, at the very least, there is absolutely no reason why that disclosure would not be provided. In fact,—I think it's actually noted in the text of the statute. In addition, I can't see any reason why we would not want to provide a copy of the legislation itself just in the interest of full disclosure.

Secondly, I think you raised a question about—advertising. How do you know what something is? What do you say and what don't you say and how do you know what a particular product is when you pick up an advertisement in a magazine that—may be for the Trump International Hotel & Tower?—As a practical matter, the two Trump towers here are in their entirety,—two single-tower condominium-hotel projects.—Every single room within those

two towers will be a condominium hotel unit. There is no gaming on-site on either one of those properties.—The thing that you cannot disclose in advertisements, because it is barred by SEC regulations, is certain details about the rental program that may be available at that property.—Other than that,—a traditional condominium will usually just say condominium, if it is a hotel condominium usually it will say condominium hotel.—In Trump's case, I think you are right, in his properties, in other areas, some of those are completely residential properties. Here, once the Trump towers open you could effectively pick up the phone, make a reservation and you would be provided with one of those units that's in the rental program.

MR. MCMULLEN:

—On page 70 and 71, which is actually part of what we call the public-offering statement provisions, similar to what's in 116 but these are of course conformed for this chapter, basically there are a lot of requirements for offerings of the sale of these units. I was going to point out on page 71,—line 7, sub (d), it already requires copies of the declarations, bylaws, and any rules or regulations of the association, but a plat or plan is not required.—This is at least a new area and these new rules slash statutes need to be understood.—In other words, this new chapter be handed out at the same time and you could include it there.

SENATOR HARDY:

—First of all, I think you have done a really good job of taking a new animal and building a statute. The only—thing that is really unique and different here is the common-area element. Other than that, it looks a lot like a regular common-interest community and you have appropriately structured it as such. I think that is what is giving most of us concern.—It says that the declaration must contain a description of shared components, which isn't even defined in the statute.—

MR. MCMULLEN:

"'Shared components is in section 42, page 6.'"

SENATOR HARDY:
"I missed that—."

MR. MCMULLEN:
—I would also direct your attention to pages 17 and 18, section 70.—To show you how complete 116 is already,—we did a sister section for the definition of common elements but you will see this one is actually one that requires the shared components to be described as well in the declaration.

SENATOR HARDY:
—The uniqueness of that is what I think is—a good strong attempt to define a shared component. I jumped over that because there's another definition somewhere of shared something that indicates shared component. I wish I would have written it down. Common elements indicates that it is shared components and—I totally missed the definition of shared components, so I will go back and reread that.—That's the new part and that is the uniqueness of this and how—you define this. Senator Heck's example is a great one —. I know it would be bad business practice for that to occur, which is why I am willing to let the market take care of it and we will come back—in two years and find out. That's the concern I have and I would not even classify it as a concern, just a question—.

MR. MCMULLEN:
—I will say that I had my own period of grappling with this so I understand it.—If this were not a hotel condominium and was a condo tower that basically—is the shared components plus the common-elements portion, which is usually quite reduced in a hotel condominium. If you added those two things together, those basically, in a—regular condominium tower, would—be your common elements.—There are some distinctions in that in terms of some of the back-of-the-house items that Mandy has already discussed.—I think if you keep that in mind—that helps a little bit. The real responsibility and the real issue here is the provisions both by contract and by declaration, more importantly by statute. Therefore, through the declaration, as you said, Senator Hardy, will be exactly how well those things are defined.—Then, with

sophisticated buyers, sophisticated operators and complete disclosure and contractual terms, I think we will eliminate many of those issues. I think over time what we are going to have to do is figure out exactly what we need to protect in terms of all of the different arrangements that could be made and what things need to come into statute as sort of over-arching protections—.

SENATOR HARDY:

—I am reading this definition in section 42. It then takes us back to shared components set forth in the declaration, so really at the end of the day the shared components are going to be whatever the declarations say they are.—Even though we have made some effort to define them in statute, we have basically said that they are going to be whatever the declarant claims they are. That requires a lot of responsibility on behalf of the person that is considering purchasing. That is all I am trying to establish for our record. —I really like the Chairman's suggestion that until people become familiar with this, because in a condominium situation or homeowners association, the idea of the concept of a shared component is pretty simple and pretty intuitive. Here it may not be and there—is potentially room for mischief.—It basically says that the shared components are whatever the declaration says they are.—I just am trying to establish a record that people will proceed with caution and take that into account when they consider purchasing or getting involved with one of these. That's all I am trying to do.

CHAIR TOWNSEND:

My feelings are a little more practical. Whether there's any mischief or not, I can see someone coming in two years from now and complaining about the fee increase in their assessments for $15 because they saw that they took Starbucks out of the basement and put in a Coffee Bean and they think that they are paying for it. I mean seriously, that is what we are going to hear because we hear that all the time.—I am not saying that this is going to be a perfect bill, in spite of what we all may think, we haven't passed one of those yet, at least in my 25 years. So, we need to adjust it and we need the Commission, the Real Estate Division and all the participants—to be sensitive to that as we move through it and

when they work with their purchasers try to be vigilant so that when we come back here we don't react—.

GARY E. MILLIKEN (Snell & Wilmer, LLP):

—I think you are going to see tremendous competition out here between the Trump's, the MGM, the Palms and these. I think some of these buyers are really going to be shopping around to see who has the best amenities and what is being offered. I think they will take a look at this closely.

Secondly,—let's just talk about the high-rise—condominiums. I think we are going to be back next session because they're going to have some unique problems out there.—Again, you are talking about who is paying for this and who is paying for that? I think that will be an interesting discussion and we have not gotten into that—.

SENATOR HARDY:

I agree with that.—The marketplace and competition and those —things are going to take care of things. It is going to be much better than anything we can write in statute.—That's why I am willing to go forward. I just think it is important that we establish a record that we understand the potential for this.—I think those that are going to be concerned are considering getting involved in purchasing here and are going to be pretty sophisticated buyers. —I just want to make sure the public understands that we are giving a lot of leeway in terms of what a shared component is. —I understand the marketplace is going to say that is not going to work, but it could be that Starbucks example —. Understanding that does not make sense at any level as a business model, I understand all of that, but that is the kind of leeway we are potentially giving here.

MR. MCMULLEN:

—I would like to direct your attention again to section 142 on page 70 and 71. This doesn't handle all of the issues that you have raised, especially going forward issues.—Again, these are the public offering documents and the level of disclosure that should be given to, and required to be given to, an individual purchaser. If

you read them, you will see a lot of very important detail and disclosure for any prospective purchaser relating to—the projected budget for shared expenses, et cetera. You will see on page 72, line 10, subsection (m), that they have to put forward, "Any current or expected fees or charges to be paid by residential unit owners for the use of the shared components or the common elements and other facilities related to the condominium hotel." Those of course, are the same public-offering statements that are in 116, but they have been conformed to cover all of the potential expenses, costs and fees that would be charged in a condominium hotel.—Frankly, I think first of all it is a testament of how strong our laws are already, but also—by carrying over those protections from 116, a lot of these things are going to be detailed for purchasers.

On the second point, in terms of change of space inside the commercial-use area of a hotel condominium, I just wanted to direct your attention to section 70—.

CHAIR TOWNSEND:
"Page?"

MR. MCMULLEN:
Page 18, specifically line 6 and the words surrounding that. In the sense that if there is a replacement of a commercial use it has to be done in a commercially reasonable manner—. Again, that is not perfect, but it certainly gives a residential-unit owner whose got some responsibility that passes through to them for whatever the improvements or changes might be and the hotel unit certainly says that it has to be done in a manner that makes some sense under a commercially reasonable theory—.

CHAIR TOWNSEND:
"You three represent a vast majority of these properties. Is that fair to say?"

MR. MCMULLEN:
"—It is hard to know exactly how many there are, but yes, it is a significant number of the potential hotel condominium rooms coming—."

CHAIR TOWNSEND:
"Will you list those who are in this consortium of people?"

MS. SHAVINSKY:
"—The Cosmopolitan,—Palms, MGM Mirage and I may be forgetting a number of others,—and Trump and Turnberry."

CHAIR TOWNSEND:
"—Do you have an estimate of what the range of those properties cost? I am more concerned about the low end than the high end. In other words, what is the ante to be in one of those five or six properties?"

MS. SHAVINSKY:
"You mean for the individual-unit cost?"

CHAIR TOWNSEND:
"Yes, I am a buyer walking in the door. What is the lowest unit I can buy on average—?"

MS. SHAVINSKY:
"—I think it is unusual to see a unit in any of those projects, all of which are pretty high end, that starts at under $400,000."

CHAIR TOWNSEND:
"Under $400,000?"

MS. SHAVINSKY:
"Yes, it is rare to see that and they do go up. I believe Trump now, with some of their units, is at $1,200 a square foot, but that also carries with it a very high level of service."

CHAIR TOWNSEND:
"—What percentage of those do you expect to be actually owner occupied?"

MS. SHAVINSKY:
> Currently, we expect a very low percentage of those to be owner occupied. I think that the two demographics that we are looking at here are people that want a second home in Las Vegas, but do not necessarily want a traditional condominium.—Second-home buyers

and kind of as an offshoot to that, people that maybe will come here one or two weeks during the year and then the remainder of the year place that unit in the hotel rental program, rent it out themselves or provide it to a third-party property manager to rent out for them.

CHAIR TOWNSEND:
"Is it fair to say that these are fairly sophisticated buyers with some understanding of the marketplace relative to real estate and certainly with a little bit of disposable income—?"

MS. SHAVINSKY:
—I think that is definitely a fair statement. Most of these people have purchased one of these products before in other jurisdictions, most notably Florida, or they are looking at a second, third or fourth home purchase in some cases.

CHAIR TOWNSEND:
I think if you talk to a number of your—members of your association or consortium, or whatever this group is you call it, even they would have to admit they are surprised by the depth of the market, but more importantly the breadth of it, meaning the international marketplace. The reason I say that is that I have tried to study this and understand it because I knew this bill was coming. I have also looked at a number of newspapers worldwide and the amount of paid advertising, and also earned media that this activity in that city has occurred in a number of papers is absolutely remarkable. I think even the people that have financed these and brought them to market are—kind of amazed at the world depth of this city and how it has penetrated relative to this particular market. I don't know if it is going to be as hugely successful as everybody hopes it to be, but the fact is that it's different. I think it is more complex and we will see if it flattens like the regular primary market for real estate does—.

SENATOR SCHNEIDER:
—This is a financing tool, building these hotel condominiums. It is just a different way to finance, get your money out and then you

just have a management contract so your equity and your exposure is very limited going forward.

With that, there are some questions I—have because this is a casino town.—For instance; on a real hotel condominium, not a condominium tower sitting on the Strip—you have the common area there in the middle of the tower near restaurants and—I guess that you know that you can have a casino with it. You can put slots in there right now. You can put 15 bar slots in there without doing anything or you could put 100, 200 slots in and you can have a full casino because you do have the 300 rooms. You have restaurants, you have bars—and it has to be open to the public under gaming law. In here, when you allocate the unit owners above, they can be allocated to maintain some of that area even though it may be used more by the general public than their unit. —I guess that is a concern.—How would that be handled because the unit owner can come down, use the spa, they can use everything and yes they can go have a scotch and play the slots? —Then, that gets into the—the tax.—Whether you have a Starbucks in there—or Emeril Lagasse's restaurant or slot machines, those areas are going to be more valuable and will probably be taxed differently. That is common area and some of it is going to be allocated towards the unit owners above but they get no real benefit from some of those things. They do not get a percentage of the slot drop or anything like that, but they can be taxed like they are.—Can you tell me how that works?

MS. SHAVINSKY:

—That is a very good question. The Mandarin itself—has a hotel component on the bottom and a traditional residential-condominium component on the top, so in our parlance in this bill it is not a hotel condominium and I do not think there is any rental program that is contemplated for that.—Say we had a casino on the ground floor or a portion of the ground floor of the Mandarin Oriental just for the sake of example.—If you mapped the casino as part of the condominium, first of all I would never do that because you would never want unit owners, either paying or being charged for a portion of a casino due to a number of considerations including casino licensing.—I think at that point there could actually be a

concern that if those people are getting a portion of the revenue that they could have to be licensed. So, although under the flexible definition of shared components, it is possible that someone could map a casino as part of the hotel-unit owners shared components. My thought is that there would really be no potential benefit to anybody in having the unit owners pay any portion of those costs at all.

SENATOR SCHNEIDER:

—I know there is no benefit to the unit owners but there could be big benefit to the hotel management company because they would be managing the casino and then they control all the assessment and the dues from the unit owners above.—In the mock-up that Mr. McMullen used—you deleted NRS 116.3114 and it says, "Unless otherwise provided in the declaration any surplus funds of the association remaining after payment of or provision of common expenses and prepayment of reserves must be paid to the unit owners in proportion to their liabilities for common expenses or credited to them to reduce future assessments for common expenses." If that is deleted out, then the hotel management company, which is kind of the association, has all the money and they do not have to credit back anything to the unit owners. They control all of the money coming in and allocate the money out. —Playing devil's advocate, once you control the money, it is another financing tool you can use and I guess everybody here trusts MGM Mirage and Terry Lanni and we trusted Harrah's —. Harrah's is gone and we have two investment companies spread across the country. They are going to be running that company and Mr. Kerkorian is almost 90 years old now so somewhere in the next decade we may have a change of ownership of MGM Mirage and—then what happens.—There could be a company from Bahrain that owns MGM Mirage. What you have set up here is you have taken away some of the checks and balances of 116 and allocated everything to some management company.—Can a local real estate company manage some of the properties and can some of the local real estate companies sell the properties?—Is there anything in here—where they are disallowed from doing it? It has to fall underneath just a certain company—?

MS. SHAVINSKY:

—I am going to answer your first question by explaining that everything that is financial or economic with respect to the shared-component expenses here is required to be disclosed very clearly as part of the public-offering statement and as an ongoing matter at the time of purchase. Really, if I looked at one of these budgets and I realized that I was paying for a portion of the casino and their five other projects that are coming online—where the shared component expenses are less, then I would most certainly gravitate toward the other projects just as a matter of general economics.

I think the second thing that's important to point out here is that chapter 116 is intended to be and provide for some form of, I guess, representative government in some sense, for the unit owners within an association. The structure here is a little different as you can see, and I would be misstating if I told you that this was exactly the same as 116 or it employed exactly the same kind of democratic principles.—I will tell you right now it does not. One of the reasons it doesn't is because one of the primary motivations of unit owners in these is to come in and not have the burden of maintaining. They are looking to a professional hotel operator to maintain this facility in a manner that is attractive, not only to the unit owners, but to transient guests as well.—I think one of the reasons they are purchasing at these properties is because they know there is a professional hotel operator that is keeping the level of quality and standards up. It's not 116 and really is not intended to be 116.—This is not necessarily the same type of democracy, it is a different product and a completely different animal.—I think the best thing we have going for us here is that we have taken a structure that has been adopted in many other states, that is not to say that it's been adopted in the statutory sense, but this structure is used in Florida. It's used in many states around the country and what we have tried to do here is to provide more protection in Nevada than is available to many of the residents—or purchasers in other states. —We are taking at least the base level of protections that is indicated in one of the documents that we passed out here instead of leaving this all to contract, which you know, as much as we all

like to do that, there's a certain point at which you have to provide basic protections.—It is very different from a homeowners association.

—With respect to your concern that the surplus isn't distributed back to the unit owners, for the shared component cost, I don't think there is really any intention that the hotel-unit owner will make money off the maintenance cost associated with those. The hotel operator is there to make money off selling the rooms.—It is in the hotel operators best interest to make that property as attractive as possible to everyone so that everyone in this—joint venture, if you will, is happy and makes some level of profit that may offset their ownership costs.

MR. MCMULLEN:

—The section that you talked about in 116 on surplus funds is limited to the issue of whether or not in a normal homeowners association—there is excess surplus funds after all the common expenses have been paid—. I think again in the public-offering documents the issue generally would be, at least in the start up, it's not so much an issue of surplus funds as it is an issue of reserving, making sure that the developer has adequately stated the reserves, has actually set forth the reserves for a ten-year period. Those are the protections that are in 116, put into law by you guys last session, those carry over and are restated here—as it relates to, not only just general reserves, but also the issue of conversions, which is an area that we know that there is some action in that with respect to creating hotel condominiums by conversion of existing buildings.—I just wanted to make sure that was on the record that we actually have those provisions in here and they are exactly as they would be in 116 adapted but for the concept of hotel condominiums.—I just wanted to put that on the record if that helps you.—I can direct you to the sections if you need those.

SENATOR SCHNEIDER:

I understand that these are different than a regular homeowners association.—What makes them different—is how they are because they are a financing tool of a hotel company but you still have

privately owned condo units. They all have their own deed and you have those above or below or wherever you have them or mixed up in the unit.—I know that over the 12 years I have been bringing stuff like this to this Committee we have heard every session, "well our association is different, we won't have those problems, we're more sophisticated."—Mr. McMullen lived in one of those associations up here and there are wealthier people, they are more sophisticated, which means when they got—p****d off they bought ads on television to run for office and so being different—is just people and people are going to get p****d. I am playing devil's advocate here but they are going to get p****d.—If you go to—the layover that Mr. McMullen used—on page 79,—there's something interesting that you took out.—You know you do have a management company in there but you did say that you can manage your own unit. Well, what was taken out is 116.31183,—retaliatory action prohibited. "An executive board, a member of an executive board or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the unit's owner has: 1. Complained in good faith about any alleged violation of any provision of this chapter or the governing documents of the association; or 2. Requested in good faith to review the books, records and other papers of the association." So, if that was taken out, what is the protection of Joe Citizen that owns one of these and they want to see the books? I realize that also in—here it says on the meetings you only have to have one meeting a year and—, in special cases, you can have a meeting and you only have to give ten days' notice. That seems pretty short to me also, ten days' notice and you only have to put it in a public area. You can do it by mail but if you are in a big hurry you just post it in a public area and it is over. Well if you have people living in Beijing that own these, how are they going to know that there is an emergency meeting? Then it says you are not going to supply the minutes of the meeting to a person. If someone wants copies of the minutes, they have to request them and pay for them. So, the owner of a unit cannot get minutes of the meetings.—What you took out here is if they requested in good faith they review the books or the records of the association they can be retaliated against—. Again, these are just owners that live

all over the world that some are not used to associations and especially associations that are run by Fortune 500 Companies—.

MR. MCMULLEN:

I think what he is referring to is a comparison of 116 with what we originally proposed. Basically,—on the notice provisions —I do not think we meant to change those or they certainly were not projected to be changed. Unless we did something that we did not intend to do.

CHAIR TOWNSEND:

"You might want to just address the one year. You only have to have one meeting a year and the ten days. What was the thinking behind both of those changes?"

MS. SHAVINSKY:

—I think the thinking on the meeting once a year was that the role of the association comparatively to other associations in 116, where there is a requirement that there be a board meeting —at least once every 90 days,—was that the association's role would be—really minimized in this case such that they would not have to have a meeting every 90 days. Of course if they want to they're more than welcome to do so. Further to the one-year requirement, I have to agree with you. The ten days' notice if you are going to have one meeting a year does seem to be a little paltry in that effect and I think we are happy to increase that to make sure that all of these folks get notice of the meetings. In addition, as far as mailing or posting these notices, Senator Schneider is right and I am not reading the language exactly from the section right now so you will have to forgive me but, if these people don't live there, they're not going to walk down the hall and see a notice that's been posted in the hall.—We'll take another look at that language—.

CHAIR TOWNSEND:

"We can't get them to show up now when they live there."

MS. SHAVINSKY:

"I know, it is hard enough isn't it?"

CHAIR TOWNSEND:
"Yes. His point is extremely important."

MS. SHAVINSKY:
Right, but certainly mailing or any other means that is more effective than posting in a hallway. I don't think any of us have any aversion to that whatsoever.

On the provision of the minutes, we will go back and take a look at that, but as Mr. McMullen suggested, it was our intention specifically in these sections to mirror 116 exactly. So, to the extent that something has been taken out which provides—the provision regarding retaliatory action has been omitted—or that there will be some restrictions on the provisions of the minutes was not intended and that will be corrected if it needs to be to provide exactly as it does in 116.

MR. MCMULLEN:
We have no problems with having those things put back in. We certainly didn't mean to do that.—On the annual meeting; that does not restrict the homeowners association from having more frequent meetings. This is basically to define a minimum and make sure there is at least one annual meeting.

CHAIR TOWNSEND:
I think Senator Schneider's point was if you are going to extend that to at least one a year, you can have more, but you can't notify someone in ten days. The 10 days works if you are going to have them every 90 days, but you can't change both of those—.

MR. MCMULLEN:
"We have no problem putting in whatever notice you think is appropriate. It sounds like it certainly should be 30 days—or more if you wanted."

SENATOR SCHNEIDER:
Also, on the voting in—chapter 66 in your proposed bill,—explain that to me a little more about how the voting is going to happen and —also, how board members are elected and how that whole process works.

MR. MCMULLEN:
"Did you say section 66?"

SENATOR SCHNEIDER:
Yes.—We have members of the Commission here and so I think we ought to get this pretty clear. There is some of that in there and then there is some other sections that pertain to voting and the election of officers—.

MR. MCMULLEN:
First for the record, I believe that our theory on this is that the election of members and officers of the board would be the same as it always is. I don't know that there is anything that we consider to be distinct about this as opposed to any other homeowners association, nor was there an intention to make it distinct in any way, for the record.

SENATOR SCHNEIDER:
"—I was reading over the weekend—on the proxies—. How are those handled—?

MS. SHAVINSKY:
—The proxies are intended to work exactly the same way they were in 116. I should point out that was a particular concern of Assemblyman Horne.—The general nature of proxies is very controversial, so—we kept it exactly the same as it was in 116—. I can't remember what sections those are but those should be substantially the same as they are in 116.

SENATOR SCHNEIDER:
—You said you would adjust the ten days' notice. I think 30 days would be more appropriate because people coming from out of country would have to have good notice. Then you have—the emergency meeting on page 41, starting on line 5 going through 12. That had to do with the emergency meeting and how you post it.—The associations in the past where you have local people just living in them, they would say you have to be notified by mail and everybody is complaining about, "well it costs me 50 cents to mail something out or 79 cents and oh it is costing us so much money"

and I could never figure out why that was so much money to be notified.—I guess if some component really failed that wasn't expected in one of these towers, I guess you could have an emergency meeting.—I guess we would have to plan for emergency meetings but it seems like maybe we could e-mail everybody or fax them or something like that because you are dealing with a lot more money here than just a little old homeowner association—.

MICHAEL BUCKLEY (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
—I think the short answer to your question is that all of the language in the statute is exactly the same as I could tell for the association, but I think the bigger issue is that the association really only controls not much. The issues that you raise, the hotel-unit owner controls all of those things so there's actually no meetings that deal with. The questions that you raise don't apply.—That is sort of the fundamental structure.

SENATOR SCHNEIDER:
"So you need emergency meetings."

MR. BUCKLEY:
—I guess if the roof was caving in or something like that maybe you might need an emergency meeting. I mean it is set up the same way as existing 116 for the association and if it's the hotel-unit owner they don't need to have a meeting.

SENATOR SCHNEIDER:
"So you are comfortable with that."

MR. BUCKLEY:
"Well, it is the whole structure. I have some thoughts on the bill—. I don't know if now is a good time or not—."

SENATOR SCHNEIDER:
"It is a good time with me—."

MR. BUCKLEY:

From what I am hearing, I think that you can't really put all of the protections that you want in and still have this structure.—To me, and I know Commissioner Radunz is in Las Vegas, but some of the thoughts that occurred is that the information statement which is described in here really needs to be reworked and I think one of the things that I've heard is the question of services and I think that in the information statement one of the things that might be appropriate there that is not in a condominium, is what services are guaranteed and what services are not guaranteed. Because I think the big thing which this Committee is focused on is really the disclosure, so I think the disclosure really needs to be beefed up. I think not just getting a copy of the statute but really tweaking that information statement to sort of explain the difference in how these things work.

The other thing that I know that Commissioner Radunz pointed out to our committee is that section 131 does not require an audit. It "may" be audited, that is on page 65, and I think certainly the Commission would support that the information given to the homeowners for the hotel unit be audited—.

SENATOR SCHNEIDER:

—Most of these companies are public companies anyhow, so they are getting audited all of the time, so this shouldn't be a big thing to have this audit broken out from the overall audit. I would support that they need to have a copy of the audit every year—at the annual meeting.

MR. MCMULLEN:

—That is line 34 of page 65—. Mr. Buckley brought that up to us on Friday which we thought was a very important point and frankly we have no problem with that language being mandatory. I would imagine that the addition of "shall" in replacement of the words "may but need not." So it would be "record shall be audited and reviewed by a certified public accountant." If that's not the correct amendment, I am sure the bill drafter and your staff can figure it out, but we don't have any problem with that. As long as I am talking, the other thing that Mr. Buckley said to us on Friday that

I thought was extremely pertinent, and we had discussed this before and it hadn't made it in here, was in terms of the effective dates. Mr. Chairman, that we would actually allow an early start date for purposes of the Commission to develop any regulations it needs to under this so—those regulations would be clearly processed and promulgated before the January 1, 2008, effective date of this bill—.

CHAIR TOWNSEND:

—Counsel, that would be something to the effect that section 221 would be upon passage and approval for purposes of the Commission on Common-Interest Communities to draft regulations for purposes of implementing the provisions of this law. Is that basically what you are looking for, Mr. Buckley—?

MR. BUCKLEY:

"—Yes, Mr. Chairman."

CHAIR TOWNSEND:

—You would go on record to officially say that you would do that as opposed to some other agencies with regard to segments of bills this Committee has passed who didn't bother to put the regulations in until we had to literally sue them to do it—?

MR. BUCKLEY:

—We will commit to that. It's a long process. Actually, I think most of the regulations would be substantially similar to what we already have.—A thought that occurred to me, in terms of the disclosures, is that perhaps the proponents of this bill might work on a draft of that disclosure to be approved by the Commission —rather than have it in the statute.—I think getting the industry folks to get the input on drafting what the disclosure is would be very helpful.

CHAIR TOWNSEND:

That should be fairly easy. It probably should be left to regulation and it probably should be something that says that the declarant shall provide the Website of the NRS and the NAC—for the affected portions and then the Commission has prepared common

questions—and answers—, not the proponents, so that would be part of the declaration but that'd be for your regulatory process. —Something like that could be very helpful.

MR. BUCKLEY:
"Right."

SENATOR SCHNEIDER:
—with this modern technology, the Internet sitting here, and people in Las Vegas listening to this hearing, let me read this to you. This comes from a Realtor in Las Vegas that is actively involved with this industry. It says: "Budget for tower A at MGM, this is an area we are struggling with as well. Sophisticated buyers or not, they do not expect to shoulder the burdens of the entire building without sharing in resulting revenue. This does not even go into the hotel charges that are being generated from the hotel owner's free rooms. Remember, these units are paid for by the owners, such as room service, long distance, pay-per-view movies."

—The hotel is making the revenue off that and the owner is not. Then they split revenues on the rent of the room and the owner of the condo is paying the full burden of the room. Paying the debt service on it and they split the fees and then that goes to one other thing and that is steering.—When MGM or any of the other companies, when things get a little tough and revenues fall, what prevents them from steering over to their towers where they have debt service?—They also generate more revenue themselves to show on Wall Street—. The contract they then have—the condo towers then is affected.—How do you prevent that—? Already we're getting questions that are coming up from Las Vegas from people that are very concerned about some of these things already. These are sophisticated people.

MR. MCMULLEN:
I stated on Friday and I won't restate it largely, but basically one of the underlying features of this as a new product—should be differentiated and a different niche product than general hotel rooms.—I think—Senator's point is whether or not in a contractual

setting, if nothing else, although there are some statutory protections that I think apply, is that somehow someone who had common operating responsibility for their own hotel and then a hotel condominium would—"steer business" to one where they either make more money or they pay off their debt service faster—. I think again, there are financial disclosures, there are basically some of the other things that are given not only in the offering documents, but generally year from year that I think would have to be projections and forecasts of exactly what they're going to do and how they are going to do it. To some extent—it is a disclosure issue, that isn't the complete protection but to a certain extent as things change, there should be some sort of identifiable demarcation or departure from exactly what they pro formaed and why.—Then I would imagine that there's going to have to be some information that's going to have to be forthcoming with respect to that.

CHAIR TOWNSEND:

When you sign one of these contracts, isn't there a disclosure up front before you sign that says if you, as a unit owner, determine you want to turn this over to a pool here is what you get in return and it is very substantial? I don't know what they say, but if it only says you are going to get 50 percent of the room rate and all other revenues, whether it is buying something on pay-per-view —or something like that is kept by the hotel, that is disclosed up front.—Am I wrong?—I think the term steering is an interesting one but perhaps that is done on a market-driven basis. Let me give you a for instance: If a large corporation who owns multiple properties has an event going on at one property and that's where the unit is, why would they steer somebody to one of their other properties unless it was such a substantially increased upgrade on the financial side? But if someone demands to be on property for that particular event then they are going to want to stay in one of those units as a rental customer, a transient customer. But somebody who only cares about, "I just want to be in town and I'll stay at any of your other properties", I guess it is a market-driven issue and I do not know what these contracts say relative to the ability to rent the thing. I presume—that's left up to the market as well. I mean if you show up on the worst day of the year from a

transient point of view, it's going to be whatever the market bears. If you show up on the best day of the year for a time period that is less in demand, then you may cut a pretty good deal. I don't know, all of that is left up to the market I would presume. Is that incorrect?

MS. SHAVINSKY:

—I think that is a pretty accurate assessment. On your first point, as to the disclosures in content in the various rental-program agreements, which I know as we discussed on Friday are all very different depending on—which operator it is. It is very clearly disclosed in there how revenue is defined, what your portion of that will be on a percentage basis—and what fees do come out of that.—It needs to be disclosed because the last thing you want is someone at your desk downstairs saying, 'You didn't tell me that revenue meant you took a 10-percent marketing fee out first and then you did the split.—I think that's very clearly disclosed at each one of those rental program agreements, as I mentioned, are all different.

Secondly, the rental of these units is almost entirely market driven as you state.—If someone decides to use their unit on New Year's Eve, as opposed to someone that decides not to, their share of revenue obviously will be much higher because that is one of the biggest nights of the year in Las Vegas.—Further to Sam's point, especially at properties like the MGM, these towers that they have are specifically a suite product which are being marketed to certain groups of people that are probably a little higher-end than some of the other tour groups and whoever that may come through and stay at the main building—that has other rooms. As to—the hundreds of variations there may be on these projects, the Trump project for example is entirely condo hotel so there would be no ability for somebody to want to stay in another portion of the property that's closer to the casino because there is none.

CHAIR TOWNSEND:

Let me just get something on the record—. On page 94, section 182, which is your old language, Mr. Buckley, we are adding the term condominium hotels to current 616.630 and

in sub 3c—line 28, "The fees required to be paid pursuant to this section must be: Established on the basis of the actual costs of administering the Office of the Ombudsman and the Commission and not on a basis which includes any subsidy beyond those actual costs. In no event may the fees required to be paid pursuant to this section exceed $3 per unit." So that means there will be $3 per unit collected on every one of these individual units in order to support the activities of the Commission and the Ombudsman's Office relative to the activities of complaints, et cetera. Is that the way you read this?

MR. BUCKLEY:

That is my understanding. In fact,—there was something that I think Gail Anderson put together that I had a copy of. I think it was a fiscal note where she said they believe they already have jurisdiction over these units and it will be the same. Although, as a Commissioner, it is kind of interesting because if there is a violation, it is not going to be the homeowner against the State. It is going to be Trump against the State or MGM against the State. The proceeding will be a little—different.

CHAIR TOWNSEND:

"—When do you start collecting it? When the unit is sold or when it has received a C of O?"

MR. BUCKLEY:

—When they form the association they need to get a certificate from the Real Estate Division for however many units. Let me just make a note, because I think it's kind of important and I didn't know if this was intentional or not, but it appeared to me that NRS 116.4117 was missing from the bill and that's sort of basically the basic provision that says if somebody violates this chapter, you have a right to sue. Unless I am mistaken, I didn't see that.

CHAIR TOWNSEND:

"—Did you delete that from the statute? If not, it stays in the law, is that correct?"

MS. SHAVINSKY:

Senator Townsend, I'll take a look at that. It wasn't our intention to delete that and I think we may have actually pushed a portion of that into another part of our statute to cover it there—. As I'm looking at that right now, I don't necessarily know why that would be deleted.

MR. BUCKLEY:

—Maybe just ask Mandy to take a look at those four sections, 116.4118, .4119 and .412 of existing law, which at least when I reviewed it, I didn't see. Some of those are like if you see a picture it 's supposed to say this doesn't have to be billed or this has to be billed, that kind of stuff.

MS. SHAVINSKY:

We'll go ahead and take a look at those to the extent they have been deleted, they will be added back in. Michael, I think they are in another portion of the statute but I'll take a look and to the extent they are not, they will go back in.

CHAIR TOWNSEND:
"—Just because it is not printed in the bill then it means it stays in the law unless it is in the bill and is being deleted."

MR. BUCKLEY:
"Mr. Chairman, it's a new chapter so it would have to be in the bill."

CHAIR TOWNSEND:
"It's a new chapter."

MR. BUCKLEY:
"All this language is a new chapter."

CHAIR TOWNSEND:
"—It's going to be what chapter?"

MR. BUCKLEY:
"116B or something like that."

CHAIR TOWNSEND:
"—You are making reference to 116A, are you not?"

MR. BUCKLEY:
"No, what I am saying is that 116 has a section that says if you violate it you can bring an action. So a section just like that needs to be in this bill as well."

CHAIR TOWNSEND:
"Okay—."

SENATOR SCHNEIDER:
"So, then 116.4117 goes back in and that was from the overlay on page 97."

MS. SHAVINSKY:
"Yes, to the extent it has been deleted and does not appear anywhere else, it goes back in."

SENATOR SCHNEIDER:
"—Would you feel more comfortable in doing a lot of this stuff that I think we're going to miss here by regulation?"

MR. BUCKLEY:
"—I'm not sure how you would do that—."

SENATOR SCHNEIDER:
> —Mandy and Sam keep saying, "well a lot of this will be covered in our contract that we have."—It seems like because we have so many different forms of this, we have a regular condo tower sitting on hotel property, we have hotel condo,—all of that mixed use involved, so you could have—a hotel condo, you have restaurants, bars, maybe gaming, you have all of that in there—so you can have different types of structures. You can have three or four different types of business models there and it is hard to write it all in kind of—a 116B. Would regulation be better for some of those? —Mandy keeps saying well this is a hands-off deal but to the owners of these things, it really isn't a hands-off deal to them —because it is real estate, something they can feel and touch. It's not like buying stock—. I think—people are buying some of the sizzle—. It is going to come back like a regular residential thing is

what I am a little scared of—. I think it was three or four months ago, it was *FORTUNE Magazine* or *Forbes*, one of those said these hotel-condo things are like the world's worst investment. So they got banged real hard nationally and with that, after the honeymoon of a new purchase is over with and you go down the road three or four years and maybe it is not performing like you hoped it to perform, then the problems start to come to you and to whoever is chairing this Committee four or five years from now. So that's why I was saying—maybe we could get something in regulation. I don't know.

MR. BUCKLEY:

—I think maybe what would help and—Commissioner O'Donnell and Commissioner Radunz are there, we really can't have a meeting but I suppose we can all speak our minds, but I think what maybe we could do would be to have a provision that would say something like "they shall give such other disclosures as the Commission determines"—because I think disclosures are the big thing. I don't think we want to approve these documents —. The Real Estate Division, the Commission, don't have the time to do that, but if there were particular abuses that came out that we knew about we may want to say "okay this seems to be a hot thing, let's make sure everybody knows and let's disclose," so maybe we just give the Commission additional authority to require other disclosures. Other than that, I'm not sure and I do not know if Commissioner O'Donnell or Commissioner Radunz have any thoughts on that.

CHAIR TOWNSEND:

"Ladies?"

SHARI O'DONNELL (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):

—With regard to these disclosures, I think we're seeing today that there are substantial issues that do need to be disclosed. One thing I would suggest, in terms of the law, rather than saying that the public-offering statement and these required disclosures be delivered prior to close of escrow. I would strongly encourage that

the have to be delivered at the time of contract. I think that's a more timely delivery—.

CHAIR TOWNSEND:

Your point, Madam Commissioner, is an important one because at the end when people are trying to close escrow, they're racing around, they're trying to get documents, they're not reading everything, they're running from title company to escrow officer, the banks—. Mr. McMullen, do you think that is spelled out in the provisions of this proposal?

MR. MCMULLEN:

—If I heard what Commissioner O'Donnell said, I—believe we're talking about section 142, which is the provision of the public-offering statement.—Frankly, that should be the initial offering document that anybody sees—. On page 71,—basically that's where I was reading from about the copy of the declaration, bylaws and any other rules. That is the disclosure statement—as separate from the information statement.

CHAIR TOWNSEND:

"—When is that delivered?"

MR. MCMULLEN:

—It's an offering document. I don't think you can actually offer a unit to anybody without handing them one of these documents. It should be at the initial point that they're even interested in one of these—. This is meant to be a very sophisticated and substantial document with a lot of disclosures in it. Just for the record, it is separate and apart from 148, which is—another information statement. This is the document that would include financial statements, budget for reserves, budget for shared expenses. It even has, to Mr. Buckley's point, under sub (h), line 37, 142,—"A description of any services or subsidies being provided by the declarant or an affiliate of the declarant not reflected in the budget."—Excuse me, maybe more specifically, section 146 on page 74.—I think it is at the time of contract to her point because it would be line 39, "Not later than the date on which an offer to purchase becomes binding on the purchaser."

CHAIR TOWNSEND:
"I think Ms. O'Donnell's point is that needs to be sooner. Is that correct?"

MR. MCMULLEN:
I think she was thinking that it might be close of escrow.—Maybe we confused the record today, but it's at least time of contract, which is I think what she said but if she wants it sooner than that, let's make sure that she answers this question—.

MS. O'DONNELL:
"I would think at time of contract, maybe Michael can help me with this. I think it becomes binding, don't you have a certain rescission period—?"

MR. BUCKLEY:
"—I think it's there Shari, in 146, because it's at the time of contract and then you do have the right of rescission five days after you get it."

CHAIR TOWNSEND:
Yes, which is on page 95 in the current law, section 183. Let's go back to Senator Schneider's point. I think it's a good one, and I don't know how to resolve it. His concern regarding the use of rental monies as a unit's owner for purposes of offsetting your investment and those rental monies in a downturn economy becoming a problem. The buyer obviously needs to be sophisticated enough to understand whether those rental monies come in or not, he or she is responsible for the dues, the assessments and obviously any financial instrument they used to purchase the property. Where it may get a little troublesome is when the marketing of those units starts to heavily emphasize the fact that you can offset some of your costs because these units are going to be rented as a hotel, if in fact you put that into the pool. I guess that's where the question came from. I haven't been solicited by one of those folks so I don't really know how it works and I don't know what kind of marketing approach they take.

MS. SHAVINSKY:
—The marketing that you are talking about is the initial marketing that would be directed toward a potential purchaser and there is a very limited amount of information about the rental program that

can even be disclosed to potential purchasers due to federal securities laws.—In fact, the only thing that you really can disclose to purchasers in marketing materials is that you may or will have a rental program as part of that project.

CHAIR TOWNSEND:
"Okay. That's an important thing to understand and we need to add that on the record."

MS. SHAVINSKY:
Certainly, and then—to that end, there certainly can't be any representations made either at the contract stage or at the rental program stage about any particular level of occupancy or any kind of rack rate that may be obtained.

MR. MCMULLEN:
—I just want to say one other comment that I think adds some perspective to that. Basically, the investor has to make an investment decision first under federal law and then has a second decision and a second exercise that they can go through relating to rental. Those are—effectively separated by the effective federal law.

CHAIR TOWNSEND:
"Commissioners in southern Nevada, do you have anything to add?"

MS. RADUNZ:
I think my main reason for being here today, in reading the act, it appears as though there are a lot of costs mentioned throughout the act and defined in different ways.—Quite honestly, I tried to follow it through and got a little lost myself, but in section 115 it states that the hotel-unit owner can charge all residential units for shared expenses for operation, maintenance and insurance of the hotel unit, shared components and the residential units; reserve funds for repair or replacement of major shared components; reserve funds for maintenance of hotel unit or shared components; charges for capital improvements; charges to offset burden on shared components or hotel unit as a result of transient rentals and all other charges imposed by declarant in connection with the

shared components. Then, in section 43, which is on page 6 of your act, it mentions cost-sharing agreements, easement agreements or other agreements to which the hotel-unit owner is a party. The costs for which are also passed through to the residential-unit owners and it is not entirely clear in all instances as to which units these costs are allocated to.—It appears in section 66 that only the residential units bear the cost of these shared expenses. So, in the interest of disclosure, I think it's important to have, and I don't know if I can say the word, loss contingency, but a lot of the articles I've read about hotel condominiums talks about—you have to be a viable hotel operation in order for this to work and at least 80 to 90 percent of the —residential units have to be put into the rental program. —Senator Schneider mentioned the *Forbes Magazine* article and it does state in there that there are a lot of dissatisfied buyers right now because they're not getting the daily rate they expected to get and they're not getting the income they needed to offset the cost that they're having to shell out.

CHAIR TOWNSEND:

—In all fairness, that is like saying someone who buys a new car is really disappointed that a month from now it is not worth the same as it was when they bought it. That's an investment decision and I'm sorry about those folks, but if anyone buys a hotel condominium unit in the State of Nevada thinking they are going to offset their investment with rental income, then they need to sit with someone like you, Madam CPA, and get a lengthy piece of advice with regard to how you have to manage that. Is that a fair statement?

MS. RADUNZ:

"I don't know that I will be available—."

CHAIR TOWNSEND:

"I was not talking about for free, I figured in your practice you might be able to help them out a little bit."

MS. RADUNZ:

—My other comment, if I may—, and I appreciate Chairman Buckley mentioning the audited financial statement should be made available initially and on an ongoing basis of the hotel-unit owner.—I'm wondering if there wouldn't be an opportunity for the residential-unit owners to be involved in the budgeting process for the hotel because any operating losses of the hotel are going to be passed through to the residential-unit owners.

MR. BUCKLEY:

Mr. Chairman, just a thought that occurred to me and I don't know if this makes sense or not, but I did notice as Commissioner Radunz did that the—residential-unit owners are not involved at all in the budgeting process and maybe it would be appropriate—for the association as an entity to be involved rather than all of the unit owners.

MS. SHAVINSKY:

"—There is no formal role of the association in the budgeting process. I think if we were going to make certain changes we could certainly indicate that—."

CHAIR TOWNSEND:

"Are you talking about the initial budget process?"

MS. SHAVINSKY:

"It's the initial budget process and—the ongoing budget process as well. I think is Michael's point."

CHAIR TOWNSEND:

"Why wouldn't the association have a role in the ongoing budget process?"

MS. SHAVINSKY:

Because it's the hotel-unit owner that operates the hotel, the association's role is really minimized because it would typically have dominion control over common elements, which there really are not very many at all in this instance.—We could certainly, I think by regulation if that works, indicate that the hotel-unit owner, to the extent that the association has concerns, questions,

you know, etcetera,—request a meeting or an opportunity to be heard for input with the hotel-unit owner.—In fact, I put that in a number of sets of CC&Rs to the extent that the association wishes to have a formal meeting with the hotel-unit owner on budgeting issues, rental program issues, whatever. Then the hotel-unit owner is obligated to meet with them and attempt to address their concerns.

CHAIR TOWNSEND:
Wouldn't it be fair to both sides to say that there should be, at the request of the association, a meeting before the budget is formally adopted every year so that the association could be briefed? Input could be taken before it is finalized. Wouldn't that be respectful —rather than have someone discover something after the fact —and maybe there isn't another meeting for another six months or so. You would allow them to have access and input to the thinking of why they wanted to do certain things at the hotel level as opposed to the association level and then the association would have input.

MS. SHAVINSKY:
I think that's fair.—Tell me if I'm misstating what you said but —say we already have an operating budget in this hypothetical situation. For example, we would say maybe 30 to 60 days prior to the next year's fiscal budget for the shared components being provided or formally adopted or being used by the hotel-unit owner. A meeting with the association would then be called, so to the extent there are concerns, they could at least express those to the hotel-unit owner prior to having to pay the costs that are stated in that budget.

CHAIR TOWNSEND:
"I think that's rational."

MS. SHAVINSKY:
"Okay. I think it is, too."

CHAIR TOWNSEND:

—I have tried to follow this fairly closely but let's look at the real workings of a hotel condominium. A lot of maintenance issues come up, particularly with regard to elevators. I didn't find anywhere where it says a normal kind of notice is going to be provided when maintenance for "elevator 4" is going to be provided. Is that just something that is assumed would be done by reason of logic? That you're going to make sure everyone is noticed when the pool would be closed, the gym or the spa will be closed for the next ten days for its annual refurbishing or whatever term is used. Is that just an assumption that's done because it's done everywhere or it should be done everywhere?

MS. SHAVINSKY:

I think that is an assumption, and I would think that it works the same way really within an association, too; that as a matter of fairness you better give people notice before you go closing the pool for ten days right before the 4th of July.

CHAIR TOWNSEND:

Well there are those that haven't figured that part out because they don't swim, so what do they care when it is closed—. I'm not saying it has to be in the law but I think there's got to be someway that somebody can say wait a minute, we don't have control over that and yet you are affecting our living style.—I mean those are the kind of things you just have to think through and I know we're doing this by anecdote, and that's never the way to do public policy, but that's what happens when we come back here in two years.

MR. MCMULLEN:

—I am assuming that your question about notice was on-premise notice. I just wanted to say that this may be one of the areas where a hotel condominium has a lot more reason to do that much more effectively than maybe even a regular condo tower or other homeowners association.—I think the intent here, or at least the feeling, would be that this is not going to be a firewall set of entities within this building if the association and the hotel-unit owner and operator are going to have communication and I think a

lot of consultation. I think that is sort of a sense. If we find out that it isn't, and we actually had to go to the extent that we put in a common-sense provision in the law that these people would consult together, then we have a bigger problem than I think we have.—I think the bottom line is that many of these will operate with a high level of consultation and a high level of input. So, again if it something that should be addressed by regulation or some other protection, so to speak, I think that could be handled.

CHAIR TOWNSEND:
"Okay, Mr. Buckley?"

MR. BUCKLEY:
—It sort of relates to this issue in a roundabout way but if you look at section 84, on page 25, line 8 and 9, this retains the language that says that the officers of the association are fiduciaries for the unit owners. I am not sure there is a similar description of the duty of the hotel operator.

CHAIR TOWNSEND:
"Where are you again?"

MR. BUCKLEY:
Page 25, lines 8 and 9, where this says, "In the performance of their duties the officers and members of the executive board are fiduciaries."—I am just pointing out that—there is no description —of the duties of the hotel-unit owner with regard to the residential owners. I am not sure it would be fiduciary and in a couple places it does refer to being commercially reasonable but it seems somewhere it should be addressed.

SENATOR SCHNEIDER:
I know you brought it up in section 85.—I had some stuff highlighted—about the fining and it tells about a unit owner or tenant or a guest.—That is on line 20 and 21 of page 25.—Then down further—on line 27, using the common elements—they talk about—on 29 the tenant or guest.—What I would want to know on 34, "Impose a fine against a tenant or guest for each violation." —Do you fine a guest?—You have rented your unit out, the hotel

branch has rented the unit, now the guest has done a violation, or even the tenant—you rent it for a week so that could be a tenant I guess—or you have rented it for a month, that would probably be a tenant and then the other person would be a guest which would be the transient occupancy. Would you be fining the owner of the place? We've had that discussion now with guests coming in to the homeowners association and they get fined for speeding and the owner gets the ticket.

MR. BUCKLEY:

—To put it in perspective, I think the law as written has the same protections if the association makes the fine. I am not sure what the association would fine, because the association is governing the common elements, which we have all said are minimal.—If you look at page 14, line 28 and 29, the hotel-unit owner does have a right to fine for relating to the use of the shared components. I think that is a defect here that there is not a similar protection if the hotel-unit owner fines. I mean rather than get into the whole description of everything we have addressed in 116, I would think at a minimum, if the hotel-unit owner is going to fine a person, they ought to follow the same procedures that the association would have to.

SENATOR SCHNEIDER:

—Let's say I go down and have a couple drinks at the bar, which is a common area, shared component, and then I go to the health club or the spa, whatever it is—and I'm drunk and get out of line. I get fined but I am just a guest in room 6420 on the sixty-fourth floor.—Does that owner of that unit get fined—?

MS. SHAVINSKY:

—We are speaking on generalities here.—I guess your question is if somebody is staying in your room and you have it in the rental program—and the guest goes downstairs—they are drunk or whatever damages a portion of the shared components—do you have to pay for that guest's damage because they happen to put an idiot in your hotel room? I think the answer to that question is no. To the extent that there is a guest, meaning the hotel's guest,—you don't know this person, they are Joe Smith staying in

your room. To the extent that something like that happened, I think it would be handled the same way that any other hotel guest is, meaning that—if they tore up part of the gym, their credit card's on file and they would end up either getting charged back or the hotel would pursue them because you as the unit owner don't know who they are and really don't want anything to do with it. You are not responsible for their actions while they are there anyway.

SENATOR SCHNEIDER:
"But it says, 'except as otherwise provided' and then it says, 'the guest or the tenant.'"

MS. SHAVINSKY:
"That is in the association section. So, then I think we would need to look back over as Mr. Buckley said to the section that provides for fines—."

SENATOR SCHNEIDER:
I am just concerned that,—they are going to start fining and these cases will wind up before Mr. Buckley and he is going to refer back to the law maybe and say well, "It says the guest got out of line here so the violation can go to the unit owner."

MS. SHAVINSKY:
—I am looking at page 14, section 66 and I believe it is 4, sub (d), and this talks about, "For the hotel unit owner's ability to fine residential unit owners or prohibit use of the shared components for violation of reasonable rules and regulations." —This is a little bit more vague than the equivalent provision we had for the association which did provide that you could fine for the actions of tenants or guests. The words tenants or guests are not really used in here. It kind of shifts the burden on that over to the reasonable rules and regulations that would be adopted by the hotel-unit owner.

MR. BUCKLEY:
Mr. Chairman and Senator Schneider,—I was thinking the answer to that would be to have something like, "but you can't fine a unit owner if it is a guest in the rental pool or something," but I'm not

sure you would want to go to that detail in the law.—Again, that might be something in the regulations.

CHAIR TOWNSEND:

I think Senator Schneider's point is just a logical one. If the unit's owner doesn't have control over to whom it is rented, why should he or she be responsible for it?—The answer is they shouldn't be. Once they gave it to the pool, under a contractual obligation, they shouldn't be responsible for any of it, other than maintaining it in an acceptable fashion. If the hotel wants to fine somebody, they have to fine the "guest." It wasn't the unit owner's fault.

MR. MCMULLEN:

—I think one way to solve that would be in section 85.—Clarify that the tenant or the guest of a residential-unit owner—does not include a guest or a tenant that is put in there by the hotel-unit owner/operator.—Then it would read an act exactly like other homeowners associations.

CHAIR TOWNSEND:
"Exactly—."

MR. MCMULLEN:

—I just wanted to go back to the point about the fiduciary obligations of the hotel-unit owner. I did want at least the Committee to understand that we had carried over the provisions about unconscionability and more importantly the obligation of good-faith and any right or provision relating to these common-interest communities that was carried forward in 116.1113.—The good-faith section is 55, "Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement." That may or may not rise to the level of fiduciary standards but I wanted to make sure the Committee knew that we had basically carried all of those through as well as the liberal administration in section 56 so, ... "that the aggrieved party is put in as good a position as if the other party had fully performed." So again, these are maybe poor answers to an issue that comes up but the bottom line is they are referred to there.

CHAIR TOWNSEND:
"I don't think they are poor answers.—Do you have any statistics on how many units are currently affected by this were it to become law? What the projection is over the next 24 months before we get back here—?"

MR. MILLIKEN:
> The figures I'm giving you are from Jeremy Aguero—. At the present time there are 1,407 units on the market.—Within the next year we are probably looking at another 5,000 units so in about a year probably at least 6,400. This is just Las Vegas.—He is projecting, probably in the next 2 to 3 years maybe as many as 4 years, there will be about 17,000 units altogether. This is assuming at 30 percent of those you see announced in the paper —. This is assuming only 30 percent of those are actually built.

CHAIR TOWNSEND:
"—Is that only hotel condominiums or is that condominiums and hotels?"

MR. MILLIKEN:
"—Only hotel condominiums."

MR. MCMULLEN:
"Thank you for clarifying that, Mr. Chairman."

CHAIR TOWNSEND:
"—that's extremely important.—There's about 1,400 units of that currently."

MR. MILLIKEN:
"Currently."

CHAIR TOWNSEND:
"Are they currently purchased? Are they currently for sale? There's a big difference. You said for sale."

MR. MILLIKEN:
"MGM is completed, so that would be about 1,100 right there. Palms is sold —so that would add another 599 and that was not in the original 1,400 figure I gave you, so that is almost 2,000."

CHAIR TOWNSEND:
"Okay, that's a lot.—The market is there and the need only increases exponentially over the next 20 months."

MR. MILLIKEN:

Mr. Chairman,—and I don't have this figure, but remember a lot of these are larger units. You know we talk about a 5,000-unit hotel, maybe the MGM only has 1,100 units and those are much larger units than you find in the usual hotel—.

CHAIR TOWNSEND:

What I suggest, Committee, is that Mr. Keane, along with the assistance of Ms. Gregory and Mr. Young, take the original proposed changes on the handout provided by Snell & Wilmer, add to it the concerns that I believe were agreed to by all of the parties at the table, provide us a mock-up that we can review for our next work session and then we can take additional questions, bring up additional concerns. Maybe Ms. Radunz's concerns should be at least debated so that we can make sure everyone is comfortable with some of the answers.—Then at the end of the day, I would say Mr. Buckley, this really is going to come down to getting something on the books to get this started much like we did originally when Senator Schneider brought common-interest communities to us originally knowing that it's an evolving market and that we can't presuppose that we know everything in the bill and in working with you through the Legislative Commission and members of this Committee we could have the fine tuning of that as an ongoing process so that when we're ready to come back here in 20 months we'd be ready to go if we needed any big problems addressed.

MR. BUCKLEY:

—One of the things that I think would help the process, I know we can't really control it, but certainly if some of these proposals get aired at the Commission level before they get into bills that makes them have a lot more thought out and support and you know some of the wrinkles get ironed out ahead of time.

CHAIR TOWNSEND:
"That is a point well-taken—."

MR. BUCKLEY:
I think—that Commissioner Radunz was talking about a task force, but if you do something like that ahead of time then you can actually solicit the views of people and get their input ahead of time instead of having it creep up at the last minute.

CHAIR TOWNSEND:
—Particularly the regulatory entity that's still trying to—get its arms around what we've asked them to do. You know we've asked you to take a completely new section of the law and be really cool experts—. That's very difficult. It's not like we have 20 years of history with this. Committee, I will let you know as soon as legal lets us know when we have one, so it'll probably be a handful of days and then if nothing else it'll be—maybe the 14th, maybe Monday again. And then I think it's important that the concerns that have been brought up be addressed and we will have at least a bill to work on, at least an amendment to work on.

We'll close the hearing on that. Committee, I believe—we can have the debate now on Assembly Bill 41—.

ASSEMBLY BILL 41 (1st Reprint): Makes various changes concerning podiatry.. (BDR 54-631)

SUSAN FISHER (State Board of Podiatry):
There were some concerns within the Committee about making a podiatrist take the national board examination again. We had proposed that if they had not taken it in the last five years that they would have to retake it in order to be licensed in Nevada. We have deleted that from statute but put in a provision that was actually borrowed from another area of medicine that says, "If they have had a disciplinary action in another state or if their license had been suspended for some reason" then we would have a little bit of leeway to be able to require some sort of test or examination to let them come back in or at least check to make sure that the disciplinary action had been resolved. That is under section 2, subsection 2, paragraph (g), (Exhibit C).

We did have a two-thirds requirement on the bill before because we had seen our costs rise to take the examination because we pay a national organization. We have worked it out with that agency so that the licensees will pay them directly; therefore, we are not handling the money so we do not have a two-thirds vote requirement. The fiscal impact is no longer there.

Everywhere there was the term "temporary," we have changed to "provisional license" just to match other statutes.

SENATOR CARLTON:
They will not be required to take the test again? Will the board still be allowed to ask them to test? That would depend upon what circumstances?

MS. FISHER:
If they have had a disciplinary action against them in another state or here, we will look at that. If their state says they are now a member in good standing, then we will not require them to test again. This just gives us a little bit of protection.

SENATOR CARLTON:
It is my understanding that not being in good standing could have a lot to do with other things other than just typical practice. In any of the practice acts across the country, everyone has different ways of looking at good standing. If it would be an instance where they were not in good standing because they did not get their continuing education done, they would have to literally get it done, then be in good standing, then come here.

MS. FISHER:
That is correct. They just have to be able to show us they have satisfied all of our requirements and they have their license up to date.

SENATOR CARLTON:
Why would we make someone go back and retest?

MS. FISHER:
If they have not been in practice and if they have not kept up their continuing education for an extended period of time, they are out of practice. We want to make sure they still know how to do what they are supposed to be doing and what we are regulating them on.

SENATOR CARLTON:
I do not see that in Exhibit C. I just see that if they are not in good standing, then they will have to go test again. Is that in conjunction with the not practicing? I am still confused as to how this is all fitting together. I know that was the intent, but I do not see the intent in here.

SENATOR HECK:
On page 6 of the mock-up, Exhibit C, the green language, that is what specifically applies to somebody who has a suspended license, somebody that has not been practicing. If they come back into practice, those are the requirements and that states where they need to take the examination again. Since this is Ms. Fisher's bill, I do not want to be argumentative, but I do not see the permission here that allows you to test somebody based on discipline. The only time I see that you are allowed to retest is if they have had a suspended license.

MS. FISHER:
That is correct. It is only if it has been suspended, not if they have just been away.

SENATOR HECK:
It is if it has been suspended due to lack of renewal, it has been inactive. What we are trying to do before we reinstate it is make sure they have been practicing and in good standing wherever they were practicing and if necessary, take an exam to prove they are still competent.

MS. FISHER:
That is the intent.

CHAIR TOWNSEND:
Ms. Fisher, you may want to talk to Senator Carlton about her concerns when you make those changes. They are very difficult because if you do not reference back to the original language in the NRS, then you are not sure what section it affects. We can take up this bill again in another work session.

CHAIR TOWNSEND:
The meeting of the Senate Committee on Commerce and Labor is now adjourned at 10:34 a.m.

RESPECTFULLY SUBMITTED:

_____
Jeanine Wittenberg,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____