MINUTES OF THE

SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
May 14, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:12 a.m. on Monday, May 14, 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:

Keith L. Lee, State Contractors' Board; Board of Medical Examiners
Samuel P. McMullen, Association of Condominium Hotels; Snell & Wilmer, LLP
Michael Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Mandy Shavinsky, Snell & Wilmer, LLP
Jon L. Sasser, Nevada Legal Services; Washoe Legal Services
Joseph Guild III, Manufactured Housing Community Owners Association
Helen A. Foley, Marriage & Family Therapists
K. Neena Laxalt, Board of Examiners for Marriage and Family Therapists

Kevin Quint, Board of Examiners for Alcohol, Drug and Gambling Counselors

CHAIR TOWNSEND:
I will now open the hearing on Assembly Bill (A.B.) 41. We have a mock-up amendment (Exhibit C).

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

SENATOR CARLTON:
The issue I had last time was trying to understand the green language on the top of page 3, section 2, subsection 2, paragraph (g). If I remember correctly, if the podiatrist had not been practicing, then we want them to go back and retest. On page 6, section 7, subsection 3, we were missing the "or" and that is now included. That mirrors other language we put in for the Chiropractic Physicians' Board of Nevada. Other than that I do not believe there were any other concerns.

CHAIR TOWNSEND:
Senator Heck, is that your understanding?

SENATOR HECK:
Yes. The initial concern that I had was that they were requiring people who had been in practice to have to retake their national board examination. This takes that out and says you need to retake the examination only if you have not been practicing. I think it is a good amendment.

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 41.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on A.B. 53. An amendment was provided (Exhibit D). The original intent was to require licensees who had a suspended

license to reapply as a new applicant. The Nevada State Board of Examiners for Administrators of Facilities for Long-Term Care already has regulations in place that deal with reinstatement of licenses following expiration, so this section, as written, is no longer needed.

ASSEMBLY BILL 53 (1st Reprint): Makes various changes regarding licenses for and disciplinary action against administrators of facilities for long-term care. (BDR 54-570)

SENATOR CARLTON:
We are going to allow someone who has had a suspended license to come back in under the same regime as someone whose license has expired? Is that the purpose of this?

CHAIR TOWNSEND:
They already have regulations in place to deal with suspended licensees who would reapply as a new applicant. They are saying they already have regulations to do what we are saying to do in the bill. They want us to take it out.

SENATOR HARDY:
Are they saying they want to remove all of section 2 including existing language? That is the way Exhibit D reads.

SENATOR CARLTON:
I cannot imagine that they would want to remove this whole section.

CHAIR TOWNSEND:
I will have staff call them to find out what they really want.

I will now open the hearing on A.B. 56. We have a mock-up amendment (Exhibit E). Senator Hardy, how do you wish to proceed?

ASSEMBLY BILL 56 (1st Reprint): Revises the administrative penalties that may be imposed against contractors for certain offenses. (BDR 54-880)

SENATOR HARDY:
I think we are in good shape. I do need some edification on the standard for "knowingly" versus "willfully."

KEITH L. LEE (State Contractors' Board):
I am not sure I know the difference. I believe I am correct in stating that the reason "knowingly bidding" is being put into section 2, subsection 3, is that it was always the standard under the old language and we just rearranged the language. I recall that was what Mr. Keane opined last week.

SENATOR HARDY:
The other remaining question from last week was what constitutes a first, second or third offense.

SENATOR CARLTON:
I established that in the last hearing.

SENATOR HARDY:
Okay. Mr. Keane, will you please comment on "knowingly" versus "willfully?"

WIL KEANE (Committee Counsel):
I will definitely look into that for you. I agree with Mr. Lee that "knowingly" was the standard before and we simply moved some of the language to different subsections and we kept the "knowingly," so the standard has not changed.

CHAIR TOWNSEND:
It should be on the record that adding "knowingly" to "bidding" in section 2, subsection 3, would be consistent with "knowingly entering into a contract" in section 2, subsection 4. That would not change the standard currently in place.

MR. LEE:
That is correct.

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 56.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
We now have a clarification on A.B. 53. Ms. Sala's recommendation is what we thought, which is just simply to remove the new language in section 2, subsections 5 and 6. She stated the original intent was to require licensees who had a suspended license to reapply as a new applicant. Since they already had regulation in place to deal with reinstatement of licenses following expiration, this section as written is no longer needed. I do not believe the issue was about someone who had a suspended license for an action. It was a suspended license as a result of expiration. This was more of a technical issue than it was an action issue.

SENATOR CARLTON MOVED TO AMEND AND DO PASS AS AMENDED A.B. 53.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on A.B. 431.

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

SAMUEL P. MCMULLEN (Association of Condominium Hotels; Snell & Wilmer, LLP):
I have with me today Gary Milliken who helps represent what we have informally called the Condominium Hotel Association. With me in Las Vegas is Mandy Shavinsky. —I think what may make some sense to assist everybody who are now looking at this amendment for the first time (Exhibit F, original is on file in the Research Library) is to take you through quickly the changes, which of course on your colored copy are noted in green language, but there are not too many.

CHAIR TOWNSEND:
"—We have this proposed amendment 3980 to A.B. 431. —That is the one you wish us to work from?"

MR. MCMULLEN:
"Yes.—"

CHAIR TOWNSEND:
"Then we have Mr. Buckley's proposed amendments to 431 on a separate sheet (Exhibit G). Is that right, Mr. Buckley?"

MICHAEL BUCKLEY (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
"Yes, Mr. Chairman."

CHAIR TOWNSEND:
"Are they independent from this?"

MR. BUCKLEY:
"Yes—."

CHAIR TOWNSEND:
"Have you had a chance to talk to these folks here?"

MR. BUCKLEY:
"I sent it out yesterday—I do not know if they have had a chance to look at it."

CHAIR TOWNSEND:
"Okay, well let's deal with 431 in the large mock-up 3980. We will walk the Committee through that and then we will come back to Mr. Buckley's recommended proposals. Would that be okay?"

MR. MCMULLEN:
—I just want to say that again, staff and the bill drafter's office worked very hard to try and make sure this was done and we appreciate it. You also have employees that send e-mails at 4:39 a.m. in the morning and I think that should be recognized—. Actually, if I can, I will try to do this quickly and I think on some, I may need a couple of words of help—. I believe the first green language, which is indicative of the amendments that are in here, both the ones that you saw and then the ones that we worked up out of comments from the Committee along with staff. If you start on page 6, section 44, there is some language there that

conformed the special declarant's rights. I think without going through it, Mr. Chairman, I will just point them out and if someone has some questions they can stop me. Down at the bottom of section 45, you will see that we put the meaning of time-share, as it relates to chapter 119A dealing with time-shares.—At the bottom of page 6 carrying over to the top of page 7, it just clarifies the length of time that a lease-hold condominium interest would exist. Again, if you change over to page 9, section 59 at the bottom, basically, there is a recognition that the hotel-unit owner will forward documents to the—residential-unit owners.

SENATOR HECK:
"On that section,—is that just—before they have turned over the association to the condominium owners?"

MR. MCMULLEN:
—Again, let me just sort of clarify that basically the declarant, I think, is the individual that would primarily be developer and have generally a quote "temporary interest" until the units are sold. —The individual or company that operates the hotel will then be considered the long-term hotel-unit owner and they should be there, not on a temporary basis, but all of the time in some form or another, either the original developer, if they choose to do it, the person that they contract with or sell it to and/or the successors to them. So this hotel-unit owner should be a long-term interest and present in the hotel condominium all of the time that it's a hotel condominium.

SENATOR HECK:
"So, this just allows either the association or the hotel-unit owner to send it out?"

MR. MCMULLEN:
"Correct, and then when there is—changes as it goes along this would require them to forward it—."

SENATOR HECK:
"Thank you."

MR. MCMULLEN:

I believe 13 is the next page. You will see red—lining there where we have taken out the ability of the hotel-unit owner to fine. That's something that we removed from our side basically because fining isn't really something that we're gonna be interested in or doing anything about. You'll see that it still allows for prohibiting use of the shared components, which is very very similar to the ability left in 116, of course, for common elements and shared components, in this case, serve the same function as shared components. If you turn over to the next page, 14, we took some time to try and work with this recognizing that we wanted some minimum procedural requirements which were set forth in 66.5, but in effect it relates to functionally,—basically rights between the hotel-unit-owner and their operation and then the residential unit.

So, you'll see there in summary that we—made sure that there is a notice of any violation of the rules and regulations of the hotel-unit owner. You'll see that they have an opportunity to respond. They can choose to respond in writing, they can choose to respond by requesting a meeting and then you'll also see that a meeting with a hotel-unit owner is required and that gives them a chance to resolve it—. Of course, you'll see on line 28 that these are the minimum guidelines, they could be additional procedures set forth in the rules and regulation. —The point would be that those can only be included to the extent that they provide greater procedural protections as you'll see on line 33.

—Page 18 is the next one on line 36, and that was just a —correction from the earlier one to clarify—that in fact you could have a lesser number of votes necessary to amend the declaration. On 19, basically that is I think just basically a clerical correction. Same with 20. —It's the difference between—that and the second one is the difference between plural and singular, so those are just corrections. Top of page 24, you'll see it's just a restatement of the language basically to just change the—structure of that sentence. To remove the word "in" and then say, "Unless the declaration otherwise provides." Top of page 26, that's just a clerical correction to make sure there is an apostrophe "s" for unit's owners. Conform it to the normal language.

Twenty-seven—we're actually gonna need one more additional change on that, but what we were trying to do was clean up the language there that says that, "At least a majority of the members of the executive board," as you'll see on line 16, "Must be residential-unit owners." The other thing we were trying to say, and I don't think we've done it artfully yet, is that there must be a member of the board who is a representative of the hotel-unit owner. —That's what we tried to there, we didn't quite get it done, so that one will be one of the—few changes that I see so far. Again, this is excellent work by your people. If you'll switch to page 35,—this clarified that—this is about—residential—unit owners association meetings or the meeting of the unit owners. —Basically, this is to confirm that it has to be held at least once a year—or otherwise as required by the declaration—.

CHAIR TOWNSEND:
"Based on the amount of problems we have with these meetings, maybe once a year is a good idea."

MR. MCMULLEN:
Clearly, if there is a need for more, they can hold them but we just thought we'd make sure there was a minimum requirement.

On page 37 we added one other thing that wasn't discussed in front of the Committee and it was in a—mode to try and accommodate getting the—financial information and budget information about the hotel unit and its operation, and more importantly, the shared expenses that the residential-unit owners will share in. —Recognizing that annual meetings and fiscal years may not match what we did is we made sure that two things, I will show you the second one later, but this one is to basically require the hotel-unit owner to attend the annual meeting and to at that annual meeting present—current status of the annual budget in the year that they're in, as well as any material issues affecting upcoming budgets. So, this would be one clear opportunity for the largest attendance for people to talk about what's coming next year in terms of budget issues; i.e., maintenance and allocation issues for the shared expenses. —Second of all, to—explain and answer questions about the current budget and do it at a time

when you have a chance for most membership to be there. I will show you the second part later on and that is basically about forwarding the budget as it's been prepared.

—One amendment that was talked about by the Committee,—if you stay on page 38,—line 17, you'll see the change that the Committee requested by changing 10 days to 30, about notice before meeting of the executive board.—You will see on page —38, line 26—,we took out the requirement for publication because in these hotel condominiums, the way that language is written, you'd have to try and figure out how many worldwide papers you needed to publish this notice in, so we thought that might not be necessary, especially since we confirmed, as the Committee requested, that there be a specific—mailing to each —unit owner as necessary under these—laws.

SENATOR SCHNEIDER:
"Do these things have a regular publication though? Do they have like a newsletter they send out and all of that, do you know that?"

MR. MCMULLEN:
"—I don't. Mandy, maybe I'll turn that one over to you."

MANDY SHAVINSKY (Snell & Wilmer, LLP):
—It's possible that—a hotel condominium could have a newsletter.—I don't think it necessarily would be a requirement, but it would certainly be a good tool to keep the unit owners advised of recent developments and just the general state of the hotel condominium.

SENATOR SCHNEIDER:
"—Thank you very much."

MR. MCMULLEN:
—I will direct you again to page 47 and you'll just see a couple of clerical corrections there—to "units" with apostrophes. —Unless there's any questions, I'd move you to page 50. On line 29, you'll see another addition that we made that we didn't discuss in front of the Committee, which is the requirement to make sure that a

—copy of next year's budget for the projected shared expenses is —clearly delivered to the hotel-unit owners at least 20 days before the effective date of that next year's budget.

CHAIR TOWNSEND:

Mr. McMullen, let me ask this and maybe it's—for Ms. Shavinsky. When an individual buys a unit and there are two different acquisitions here. —Before the unit is actually constructed—and maybe its partially up, maybe they haven't gotten out of the ground, whatever, but they're gonna be the original owner. —In the documents, does it say somewhere the projections of; in 10 years we're gonna replace the carpet on all the floors, in 15 years we're gonna redo the pool, in 20 years we are going to change the windows, or whatever and then how does the purchaser who is the second or third purchaser, how do they find out about those things? Is that only through the annual meeting where the budget comes up? —These are fairly sophisticated buyers but, nonetheless, you know we're trying to have an atmosphere in which full disclosure is part of—the common good in Nevada so that individuals who might—not come here otherwise at least are notified.

MS. SHAVINSKY:

—We—added a requirement in here awhile back for a reserve study for major components of—the shared components—. What that reserve study will do is it will set forth the useful life of any type of—any type of capital item. I'd have to think to see whether carpet would be included in that but essentially it would set forth a schedule—of major capital repair items and that way the —purchaser could actually see what the larger capital costs would be down the road. That would be provided,—if not with the public-offering statement, then prior to closing—of that initial purchaser. In addition,—a reserve study would have to be done at least once every five years and—kept by the hotel-unit owner and if any new purchaser should wish to take a look at that, they can certainly request and would have to be provided a copy of that reserve study.

CHAIR TOWNSEND:
I'll go back to my original question. Does the purchaser, new or used, have to be sophisticated enough to know to ask for a copy of the reserve study? Or is it provided or is there a statement in the documents that says if you want a copy of the reserve study, you can get it?

MR. MCMULLEN:
"—If I could have you turn to page 70 of the amendment we are looking on right now."

CHAIR TOWNSEND:
"Did I get ahead of myself?"

MR. MCMULLEN:
No. Actually this is older language but it is a really good question. We ought to just cover it right now. You'll see in section 147 on page 70, that on line 19 or 20,—basically—that is a whole set of sections there starting on line 50 that relate to shared expenses. You'll see that 19, 20 include in the budget as reserves for "repairs, replacement and restoration. "—Then the other section, of course, which is the reserve section, is section 118 and that is different than reserve section for—common elements. Just to reiterate to the Committee that we—did everything duplicate for shared expenses and for common elements. So, that's the five-year study, but—basically—I would say just for the record that even in the instance of a conversion we made sure that there were reserves, and transfer those reserves basically on a ten-year basis as you did last year.

CHAIR TOWNSEND:
The reason I ask this, this is kind of important to get on the record is that over the weekend, I was in San Francisco and because they have a number of these projects, I decided to do my homework so I went and played retail buyer—and every one of them were different. —These are pretty seriously expensive places with —internationally ranked names. So, they're all a little different and if you are buyer in that city or some other city, it's different from property to property. You don't get a real consistent message.

—That's why I am asking these questions because I think it's important that the buyers in Nevada are gonna get a consistent opportunity. —The fact that the unit is different and it's a different square footage and the price is different has nothing to do with the rights and responsibilities I think is in essence what we are trying to do here. So, I think what you're doing in trying to get a hold of this is positive. Otherwise—it's like walking into a car dealership, you just do not know whether you're coming or going and by the time you leave there, you have no idea what you were told. So, I think this is a good positive step in that direction.

MR. MCMULLEN:

—I just want to reiterate that section 147, is in fact, part of the sections governing the public-offering statement. So, that is actually given at the time that you are considering purchase. —I think we were on page 50. I'm gonna move you forward to page—61.

CHAIR TOWNSEND:

"If there's anyone in southern Nevada, well Mr. Buckley, we'll get to yours here in a second. Is there anyone here in the audience who has an interest in this that—wants to jump up and say, 'I hate that part?' Now is the time to do it."

MR. MCMULLEN:

—On page 61, line 4, you'll see the correction to a mandatory audit—of the hotel-unit owners' operations as required by the Committee. —On line 34, section 133.5, that is the—replacement and inclusion of an anti-retaliation provision, similar as in 116. I think Senator Schneider caught that.

CHAIR TOWNSEND:

"Yes, Mr. Buckley, go ahead."

MR. BUCKLEY:

"—Just on that section—on line 35, on page 61. I think where it says 'an officer, employee or agent of an association' should probably say 'or the hotel-unit owner.'"

MR. MCMULLEN:
"—It says hotel-unit owner in the first words. Mr. Buckley, are you asking that relate also to officers, employers—or agents?"

MR. BUCKLEY:
"Yes."

MR. MCMULLEN:
"I don't believe we have any trouble with that."

CHAIR TOWNSEND:
"Okay, go ahead, Mr. McMullen."

MR. MCMULLEN:

> Mr. Chairman, that actually points up an issue that we tried to address with—discussions last week in this amendment. There are a lot of things that are required to be done here by the hotel-unit owner and of course those might be very frequently be taken by an agent or designated representative of the hotel-unit owner. Now we thought that maybe some clarifying language—in the definition of hotel-unit owner, that allows for instance,—you know resolution of disputes over shared expenses or something like that, wouldn't necessarily have to be done by—the actual owner as much as a designated agent. —So, we were trying to find the right place to put it in there. —It seemed to us that maybe in the definition of hotel-unit owner that it could be clarified that, that also includes when appropriate designated agent or representative of the hotel-unit owner. —I think that might cover situations like Chairman Buckley is—suggesting here. That would, for instance, be on page 4, section 25, line 9. —I think—it may need to be done right but you could either add that there at the end after the word declarant or you could—clarify that any action or—responsibility under these can be—executed by an authorized agent or representative of the hotel-unit owner.

CHAIR TOWNSEND:

> Mr. Keane, do you understand the—effort that Mr. Buckley is trying to clarify—with regard to the additional language after the

"or" in terms of retaliation? Are the two parties on the same wavelength? —Is it necessary to add that language?

MR. KEANE:

I spoke with the drafter on this and on the issue of—whether or not the definition of hotel-unit owner needed to be expanded to say, "an agent or an officer of the hotel-unit owner" and the decision on the drafter's part was that they felt that it would be included in the language and not necessary. However, we certainly could put that into the definition. Something to the effect of the term includes, "An officer, employee or agent of the hotel-unit owner." That would be fine as well.

CHAIR TOWNSEND:
"Is that your point, Mr. Buckley?"

MR. BUCKLEY:
"—I think—if that was included, that would be fine too."

CHAIR TOWNSEND:
"Okay.—"

MR. MCMULLEN:

I believe the next page is 66. —This was basically to—require the provision—of this new chapter to the people that were —considering purchasing a hotel condominium unit. —Page 67, we took out another thing. —This was basically to make the five-day rule for rescission an unqualified right. —The way this read previously was that if you have personally inspected the unit, you don't have the five-day right of rescission. We thought it might be better to just, in this case,—make it an absolute to a five-day rescission whether you have looked at the unit or not. —That's the change—that's red-lined out in page 67. —Also, on page 69, you'll see a similar change.

CHAIR TOWNSEND:

Committee,—please note on—page 66, section 142 and I believe this is important. It says—"Set forth or fully and accurately disclose each of the following" and it gets down to (d)—, "Copies

of this chapter, the declaration, bylaws, and rules." I think that's remarkably important. That way someone will know exactly what the rules are. They also know what—they're signing, what the declaration is,—the rules of their particular association and their rights and responsibilities under Nevada law. Now if they choose not to review that, that's their business but at least it's been provided to them, which is probably a little different than what's going on in some other states. So, I think that portion should go —on the record.

MR. MCMULLEN:

—Also, continuing in that vein, on page 70 you will see a similar requirement as it relates to that provision that regulates public-offering statements. A similar addition that your staff again and your bill drafters basically caught all of these. —The next pages would be page 76 and page 77. —At the bottom of 76 in section 151.3, that was the requirement that there be—regulations by the commission that could require any additional disclosures in the case of a sale of a unit as it deems necessary. —Then, 151.7 was the language from—chapter 116, I think that it was 4118, I think, 4119, something like that, that related to the right to sue based on—similar to what was in 116. Basically, the right to sue the declarant, the hotel unit and other persons for failure to comply with any of the provisions. —Then I am gonna finally find the next one, I think it moves quite a few pages. I just wanted to make sure we didn't miss anything. I believe the next change is on page 118, which is the last page of the amendment. —That indicates that to the extent that the—common-interest commission has to prepare any regulations that this bill would be immediately effective for that purpose in advance of the January 1, 2008, date for all other purposes. —Again, if there's any questions we'd be happy to answer them.

CHAIR TOWNSEND:

"Committee, questions for Mr. McMullen, Ms. Shavinsky in southern Nevada, Mr. Milliken or—Ms. Dennison before we go to the—proposal by Mr. Buckley, Exhibit G—?"

MR. BUCKLEY:

Thank you Mr. Chairman,—these—were just I think most of them were sorta technical types of changes—and the first thing I wanted to mention was that, as you know, there's other bills that are going to make some changes if they pass to 116 so we wanted to make sure that—whatever those changes are in the other two bills, which are A.B. 396 and S.B. 436 go into this bill. —The main example that I can think of is that the—reserve study preparers are going to be registered, not—permitted and—I think this bill uses the old language. So, we want to make that change.

—I'll just go through and I guess you could stop me if you want to. —Number one, just to add in the definition of "dealer," the term is used and for some reason it didn't get put in.

—Under number 2, the declarant,—I think that the language that's in 116 works better than what is here because—the declarant is a specific person that's not necessarily just "successors" or "assigns." It is someone who has to be designated as a declarant.

—Number 3,—I think that's just—an expansion of the term "governing documents" to incorporate the fact that—there may be documents dealing with the shared components not just the common elements.

—Number 4, that is really technical,—you can just skip over it but —this says the definition of hotel unit allows commercial uses but in section 7, subsection 1, it does it as well—.

—I think that—number 5 is an important note.—That is the adding a definition of major component of the hotel unit. Because the hotel-unit owner can charge the residential owners for repair or replacement of the hotel unit as well as the shared components, there should be reserves there as well.—

CHAIR TOWNSEND:

"Could you give us an example of that, Mr. Buckley?"

MR. BUCKLEY:

—If you look at section 29, it says the liability for shared expenses—and then it says, in the last sentence—, "The hotel-unit owner has the power to charge the residential-unit owners for such unit owner's allocated liability for the shared expenses, including, without limitation, the maintenance, insurance, repair or replacement of the hotel unit and shared components." So, the residential owners are paying for the hotel unit and the shared components. There is a requirement for reserves for shared components. I think we've all talked about the shared components being—, the hallways and the normal common elements in the condominium and the hotel unit would—I suppose could be the commercial spaces in the hotel. If the—hotel-unit owner is going to charge the unit owners for that,—it would seem there should be reserves for both the hotel unit and the shared expenses, unless I am mistaken.

MS. SHAVINSKY:

—Mr. Buckley is right. Generally,—the amount of expenses that is billable back to the residential unit owners for either the shared components or the hotel unit—really depends on how the individual project is structured. There may be some cases—where—a developer would choose to make—the majority of the—areas that are charged back shared components. In other cases they may choose to make it part of the hotel unit so to the extent that —there are portions of the hotel unit, which for an example, I would think of—a portion of the hotel unit that would not necessarily be shared components as for example the front desk. —There may be a case in which a portion of the front desk expenses, certainly not all, are budgeted and billed back to—the residential-unit owners.—In that case, if you have a structure where the residential-unit owners are paying for a portion of the hotel unit and there are—capital items that it's budgeted that they will pay for, those should be included—. Similar to the language that Mr. Buckley is proposing where you would have major components of the shared components and major components of the hotel unit. It is possible that you would have no capital items that are part of the hotel unit that people would be billed back for.

It just depends on the structure. So to the extent that those exist —in any project, that language would be applicable.

MR. MCMULLEN:
"I think I heard her say that—inclusion would be okay. Is that right, Mandy?"

MS. SHAVINSKY:
"That was a very long-winded way of saying yes—."

CHAIR TOWNSEND:
"Please don't fall into Mr. McMullen's pattern of thinking he needs to charge by the word."

MR. BUCKLEY:
—Section 6. —I guess this I will just throw back to the drafters because section 6 says there's no interest in the shared components or hotel units. —Same language in section 42, but then section 66 allows for an interest. So, I guess—those are inconsistent provisions.

MR. MCMULLEN:
"What line on—section 66?"

MR. BUCKLEY:
"Section 66,—it is on the bottom of page 12, carrying over to page 13. —I guess my quick fix would be to take the language out of 6 and take the language out of 42 because it is addressed in 66."

CHAIR TOWNSEND:
"Wasn't 6 your—definitional section? Wouldn't you want to just make them consistent? I do not know whether you would want to get rid of it. The drafters have to figure that out."

MR. BUCKLEY:
"—Like I said, my suggestion in section 6, you just put a period after association and—that way it is possible for that to happen, which section 66 contemplates there is a possibility."

MR. MCMULLEN:

—Unfortunately, I do not know every word in this bill that well but because section 6 is a definition of the phrase "allocated interest" it would only apply as a definition to that phrase wherever it is written just that way. While section 66 talks about allocation of interests and allocating processes and procedures, I was just trying to make sure that—when I asked Mr. Buckley whether there was actually a phrase "allocated interest" that he's defining.

MR. BUCKLEY:
"—I am not suggesting taking out the definition of "allocated interest" but if you look at section 66 it is speaking of what is allocated to the unit—, so actually section 6,—is probably referring to the things that section 66 spells out.—"

CHAIR TOWNSEND:
"So your recommendation Mr. Buckley, in a simpler sense, is in section 6. Simply when you get to the word "association" put a period and strike, "But not in the shared components or hotel unit?"

MR. BUCKLEY:
"That's correct."

CHAIR TOWNSEND:
"Mr. Keane?"

MR. KEANE:
"Thank you Mr. Chairman, we certainly can do that."

CHAIR TOWNSEND:
"You think that clears the issue up where you don't have the conflict where you can't in one section but you can in the other?"

MR. KEANE:

Yes. Although I would also point out that I would agree with Mr. McMullen's reading that the definition only applies to the term as it appears in those quotes. So, just because one speaks of allocating things—it doesn't necessarily mean that is what this definition applies to.

MR. MCMULLEN:

—I don't mean to complicate this but on page 14, line 1, is the only time I've actually seen "allocated interest" as a phrase. —I would just indicate as long as I am talking that it is possible under page 12 going over to 13, the last sentence line 45, that it's possible that the declaration could provide—that—there is an undivided interest in the ownership, the hotel unit or the shared components under the language that we provide for that opportunity. —What we may need to do is just figure out exactly how to handle this—in conjunction with Mr. Buckley and make sure that it works throughout the bill. I would suggest that.

SENATOR HARDY:

—Section 66, subsection 2, as I read it allows—the declaration to allocate a portion of the liability for shared expenses and separately allows for the—allocation of interest in ownership. It doesn't separate those so—the declaration could say you're liable for the common area but you don't have any ownership. I am wondering, should those two be tied together just as an issue of fairness? If you allocate a portion of the common areas for ownership, then you can issue, or then you can provide, a percentage of the liability. Because right now you are basically saying you are liable to pay for—something you have no ownership in.

MR. MCMULLEN:

—Good point, Senator Hardy. —Actually, since allocated interest in a lot of ways is a—general concept relating to common elements and—homeowners associations in that sense,—what I think may make some sense—as it relates to the shared components—we're talking about as Senator Hardy said—an interest in paying for the expenses; i.e., an interest in the liabilities for common expenses but also under 66,—a residential-unit owner would be paying some part of the liability for—shared expenses, which of course would be the shared components.

SENATOR HARDY:

This is a little different than a homeowners association; I guess is the point and if you're gonna say, "I am gonna make you liable for

a portion of the shared components," then you ought to say that you have an allocated—share of the interest.

CHAIR TOWNSEND:

—That's where this gets dicey and I think Mr. Buckley's—point is well taken because Senator Hardy's point is it doesn't say anything in 66, but if you go back to 6, "'Allocated interests' means the undivided interest in the common elements, the liability for common expenses and votes in the association but not in the shared components or the hotel unit." So, it does state that you'll have responsibility for your particular unit in the common elements. You have a—liability of a shared expense but it doesn't highlight that in 66, which deals with the issue previously—discussed.—

MR. BUCKLEY:

—I think—Senator Hardy's question really—is the whole concept is that—the residential owners do not have an ownership interest in the shared components, but do pay for it. I think that is fundamental. —To wrap up this thing on allocated interest, the term is used in the declaration as something that you must describe, and that's in section 64 of the act and I am looking at the old draft, so I don't have the new page, but the declaration must have, "An allocation to the units of the allocated interests as described in this chapter." So, that's just why—if you do have an interest in the—ownership of the hotel unit or the shared components, it does need to be stated in the—declaration. I think I may be confusing myself at this point.

MS. SHAVINSKY:

—I think the other way to fix this is just simply to delete the last sentence in section 66. We were trying to—retain the ultimate flexibility for this act in the event that—the declarant actually decided to give the residential-unit owners an ownership interest in the shared components. We conceived a situation in which that could happen. However, as Mr. Buckley states the fundamental difference between this act and chapter 116 is that the hotel-unit owner actually would own—the shared component. So, although we were trying to reserve some flexibility—I don't know that someone would really want to do that as a developer—because it

would really—nullify—any advantages they would have by—having their project governed by this act. So, I guess I would ask Mr. Buckley if he—thinks that, that would be—an adequate change to resolve this.

MR. BUCKLEY:
"Yes. I guess I wasn't trying to do away with the flexibility—so I certainly don't have any objection to that solution."

CHAIR TOWNSEND:
"—That solution being the removal of the last sentence on page 12, starting with, 'unless the declaration' and moving over to page 13? Is that what you're suggesting Ms. Shavinsky?"

MS. SHAVINSKY:
"—Sorry, Mr. Chairman, I am looking at the old draft—. Yes, that's exactly what we've agreed upon."

CHAIR TOWNSEND:
"Counsel may have a solution since he's responsible for getting this drafted."

MR. KEANE:
—Perhaps one way to resolve all of these different interests but leave the flexibility in place would be on—page 2, line 19, which is part of section 6 and—that line reads, "association but not" and then I would insert right after the, "but not"—, "unless the declaration provides otherwise" and then continue on with the rest of the sentence. —That way you preserve the—flexibility to add section 66, and yet for all other purposes, the—allocated interest definition would stay as it is.

MR. BUCKLEY:
"That's the best solution so far."

MR. MCMULLEN:
"—That also would allow for an allocation of the liabilities of the shared expenses as well as a potential ownership. So, it covers both the aspects—."

MR. BUCKLEY:

Section 7 of my notes was just to—make it clear that it's the declarant who has the special declarant rights, not—successors or assigns, unless they're the designated declarant.

—Section 8, and this refers to section 46,—that had a reference to a residential unit or a hotel unit or any other unit and I don't think there is any other kind of unit.

MS. SHAVINSKY:
"—We conceived—a structure in which there might be commercial units. —Those really aren't addressed in this chapter. —I wonder if it is worth keeping that reference in here."

MR. BUCKLEY:
"—I guess I don't have a problem with keeping it in."

CHAIR TOWNSEND:

—I guess Mr. Buckley's point is if you are not a residential unit or a hotel unit, then what are you? Are you a commercial unit, then you can put a commercial unit in, but just to say any other unit tends to leave some vagueness. —I am not trying to put words in your mouth, Mr. Buckley, but I understand that concern and I understand the need for flexibility.

MR. BUCKLEY:
"—I certainly don't have an objection to it and certainly there could be other types of units. I guess if—there are going to be other kinds of units, I guess we would want to say something about them—."

CHAIR TOWNSEND:
"Would the other units include time-shares Ms. Shavinsky?"

MS. SHAVINSKY:

—That's a good question,—I think if you—time-shared these, it would probably be under a completely different structure other than this. I was thinking that if the hotel-unit owner—decided to subdivide, maybe a portion of the lobby, and sell those spaces to third parties,—for example, if—a certain section of the lobby was

subdivided and it was a restaurant space and it was sold to a third party, then—that could be a commercial unit and that unit would —really be treated for most purposes exactly like a residential unit is and they would be responsible for a certain portion of the shared-component costs.

CHAIR TOWNSEND:
"I think I asked that question—a week ago. Now, do we have a different position on that?"

MR. MCMULLEN:

—I think the important point about this is that we were trying to make sure, for purposes of allocation and payment of shared expenses, common-element expenses, et cetera, that if a commercial unit, which is generally the one we are talking about, I don't know that anybody has a contemplation at this point but probably wanted to keep flexibility,—but the point would be—that if we took this definition proposed by Mr. Buckley that would mean that those other units had no share in the,—so to speak, common expenses or shared expenses and we want to make sure that that happens. Because the restaurant and the area for instance,—totally separate commercial use inside a club or something like that, we'd want them to pay their fair portion of the shared expenses. We'd want to do that for homeowners. —I think with Chairman Buckley, maybe if he'd just recognize that we need some flexibility on this for a while. The point is they would be specified in the declaration. Any purchaser would clearly know what other kinds of units were and then that would maintain the consistency—of the act for purpose of allocation of expenses, thank you.

MR. BUCKLEY:

Mr. Chairman—and Sam, just an example, if you look at section 29, the liability for shared expenses is the liability for shared expenses allocated to each residential unit. So, I think if we—are going to have other kinds of units that might be sharing in the expenses, we'd need to go through the whole act and make sure that it's clear that—it doesn't always refer to residential unit as being the other kind of unit. —It might just say unit.

CHAIR TOWNSEND:

I guess one of the questions could be that stemmed from the original question, which was if there is a four-walled restaurant that—sells its space to a different four-walled restaurant, now do the—units' owners become responsible for the upgrades and the TIs and then vice versa? If that's considered a unit under this definition, that restaurant—space is considered a unit, are they then responsible for redoing the pool, the hallways, the other things that would be considered common elements?

MR. MCMULLEN:

—I think I should have Mandy take that question but—first thing I wanted to point out was section 43,—which is the one I think I keyed off of. Michael Buckley caught an inconsistency, potentially. —Section 43 means, as Karen helped remind me, —those charges we shared to the units. —I think that's all units but—we may need to clarify that. So, I'll let Mandy take over from here.

MS. SHAVINSKY:

—I guess there's two different answers depending on whether that restaurant's a part of the hotel unit or is actually a commercial unit. If the restaurant we are talking about was part of the hotel unit and the hotel retained and operated that,—the only benefit the unit owners get from that is just as a member of the general public, they can go in and sit down in the restaurant and eat in it. —I don't think that the hotel unit would necessarily even want to charge expenses back—because I think necessarily that would mean that if there are any profits from that restaurant that they would probably have to split them. So, on the hotel unit,—if the restaurant was part of the hotel unit, I think the answer would be no, unless that restaurant was only for the residential-unit owners, the cost wouldn't be billed back. The only reason really to make this a commercial unit is if the hotel-unit owner intended to subdivide that portion and sell it and if that portion was no longer a part of the hotel unit, we'd want a mechanism—to make sure that—portion of the project—would have to contribute certain portions back. —It really depends on how you set this up. If that —restaurant owner does not really—have any right to use any of

the amenities then—it's possible that they wouldn't be billed back, but it really depends on how you set it up and what the—level of flexibility is in the individual projects. Does that answer your question?

CHAIR TOWNSEND:

Yes—. Is it fair to say that if there is commercial space available and it is generally available to the public at large and the unit's owner is obviously a member of the public that they would not be responsible—for those—expenses unless it was specifically designated by the declarant? —Now, if it was a club or a restaurant or a coffee shop that was available only to the units' owners, then that is a different case. Is that a fair statement in which they might share in those expenses depending on how the declarant sets it up?

MS. SHAVINSKY:

Yes. I think in the—examples we're providing, a coffee shop or a restaurant or the lounge that you're discussing, I think that's a fair statement. As to a front desk,—that's a little bit different because the unit owners may—actually be using that for people to come check in so that's a little different but as to the components that we discussed, I think—you're absolutely right.

CHAIR TOWNSEND:

"Okay. Mr. Buckley, let's go to your next point."

MR. BUCKLEY:

—Just let me finish on this idea of the unit. I do think it is—a good idea to be able to have commercial units but I think that there's several places here where the term, residential unit, would need to be changed to just the word, unit. For example; in the declaration, the declaration, only if you look at—the top of page 11,—there is a requirement for the description of the boundaries of each residential unit. I think you'd want the boundaries of every unit if it was, say for example a commercial unit. —In subsection (l) there, on line 30, also says an allocation to the residential units. So again, I think it's a good idea to have the flexibility to have commercial

units but then I think we'd wanna search for the term residential units in several places and perhaps change it just to unit.

—My number 9 was simply—that—this states that the boundaries of the hotel unit could be set forth in any governing document and I just wanted to make it clear that whatever that was it should be recorded so that everybody knows what the description is.

—Section 66. —I think this is—unnecessary now since they took out the fining provision.

CHAIR TOWNSEND:
"Okay."

MR. BUCKLEY:
—Section 75—I guess I'll just raise this with you, the first provision of section 75 says that if the sales agreement, "Permits the declarant to amend or change the governing documents before the close of escrow that is enforceable." —I know that its something I put in my contracts and—I guess I'm okay with it. I just wanted to raise the issue that—theoretically that means that you could —change the allocated interest. You could change the description of the boundaries. —I guess what happens if there were a material change, someone would have the right to bring an action to rescind the contract or—terminate it if it was a material change. —I just point that out—.

CHAIR TOWNSEND:
"—Are you trying to just point this out? You're not trying to change it?"

MR. BUCKLEY:
"No, Mr. Chairman,—I just raise the question—."

CHAIR TOWNSEND:
"—I think the point is well taken. Why would anyone sign a document that allows unilaterally somebody else to change it and make it enforceable? I don't understand that."

MR. BUCKLEY:
"People don't read the fine print, I think."

MS. SHAVINSKY:
—Mr. Buckley's point, as you point out,—is very well taken. I think—a lot of times and I'm sure Mr. Buckley would agree with me on that, the developer may make certain minor changes to the documents prior to the close of escrow—that are—intended to be cleanup changes, or changes that were necessary—because the project may have changed slightly. What we're intending to do here is to give the declarant the ability to—have provisions that allow them to make changes be enforceable, but certainly from—a case law perspective—if there is a change that in a purchaser's mind—affects them and is very different from what they thought when they entered into—this deal in the first place, then this would not affect their right to rescind—is my thought. This is intended just to give us the ability to make the change but not necessarily the unit owner's ability, the purchaser's ability, doesn't remove their ability to get out of the contract if this isn't what they bargained for.

MR. BUCKLEY:
"—I think Mr. Chairman, that's a good point to make on the record so that if you look at the legislative history of this in the future, you would get that intent."

CHAIR TOWNSEND:
So what you're saying, Ms. Shavinsky, is that under—sub 1 of 75, that is a standard provision where a declarant who may have to make some technical changes as a result of the building going up,—code changes, whatever it is, they'd have to change those but it doesn't materially affect what the purchaser has agreed to. Becomes enforceable although there's a five-day right of rescission—that only comes in after they've purchased it but that still could change after the five days if they chose—not to rescind after five days and the projects still go forward and it could still be changed, it would still be enforceable at that point. Unless they argued a case that it was a material change and did so in a court of law.

MS. SHAVINSKY:

That's correct and really the materiality standard—depends on what that particular purchaser may consider to be a material change. So, you're right, that would have to be the case they would have to make in court. That—change, as it was made, or with the developer, as it is that—change was material to them in their purchase.

CHAIR TOWNSEND:
"Okay. We probably have to get on the record on that—."

MR. BUCKLEY:
"—Let me just point out that subsection 3 here, that I see Commissioner Radunz pointed this out that after the period of declarant's control with regard to."

CHAIR TOWNSEND:
"—Where are we Mr. Buckley—?"

MR. BUCKLEY:

I'm on page 3, section 75,—subsection 3. It says after the declarant's control period if there is an amendment that affects the hotel unit the declarant would have to consent, and I think we wanna change that because, or say, "As long as the declarant owns a unit," because the declarant may be long gone. —We wouldn't want—to have to go searching for them.

CHAIR TOWNSEND:

—Maybe this is an extremely naïve question, in this case, even though the declarant may have sold to another ownership interest, doesn't that make the second ownership interest the declarant under these terms, or is the declarant only the builder, developer and initial seller?

MR. BUCKLEY:

The latter is correct. The—declarant is the developer. —Everybody buys their unit from the declarant. It's somebody who buys units to resell them, basically. —I think the proponents of this bill would want to take out the reference to declarant there—in that

subsection 3, or—add the words, "So long as the declarant owns the unit."

MR. MCMULLEN:
"—I think taking it out is fine because—even if the declarant owned some units, they would be within the total voting power of the association and they'd be able to express their interest through those votes—."

CHAIR TOWNSEND:
"—You would want to remove all of 3 of 75, is that what you are saying Mr. Buckley?"

MR. BUCKLEY:
"No, Mr. Chairman, just remove the word "declarant or."

CHAIR TOWNSEND:
"Why don't you give us a line, because I can't find it."

MR. BUCKLEY:
"Line 34, page 18."

CHAIR TOWNSEND:
"So it would say, 'Such as amendment is not effective without the prior written consent of the hotel-unit owner?'"

MR. MCMULLEN:
"Correct."

MR. BUCKLEY:
Correct.

—My number 12, I'm on page 4 of my document. —I guess I just point this out that—section 78, if there's a termination,—allows only the hotel-unit owner to select an appraiser and I suppose there should be some input by the—association or the unit owners. It's obviously going to be a very rare situation but—I guess I didn't see why it would only be the hotel-unit owner that would select the appraiser. —That's on page 20, line 23.

MR. MCMULLEN:
"Mr. Chairman, I'll defer to Mandy in case she's got an opinion on this."

MS. SHAVINSKY:
"—I am fine with—allowing the board of the directors of the association to provide some input to the hotel-unit owner if they have a preference on the —independent appraiser they'd like to select."

MR. MCMULLEN:
"—Are we talking about language like, 'In consultation with the executive board of the association?'"

MR. BUCKLEY:
"I think that makes sense."

MS. SHAVINSKY:
"I think it does to or 'in consultation' or 'the board shall offer recommendations' or something of that nature."

CHAIR TOWNSEND:
"Okay."

MR. BUCKLEY:
> —This is just—a suggestion, on page 27, in section 88,—this has the—terms of office for the executive board members at two years. —Remember, Mr. McGrath was suggesting that be changed to three years. This would certainly be a good opportunity to do that in this bill.

MR. MCMULLEN:
"—We all have discussed it on the outside and—have no problem having this bill be also the vehicle by which that would be changed for chapter 116 as well—."

SENATOR SCHNEIDER:
> —The change two-year term limit to three years. I guess what I would like clarified is that it really isn't term limits, it's that you have to run every three years. So,—I just wanted that on the record if that could be spelled out because I don't want them to

start dumping people out of there. Believe it or not, I'm one of those guys that is—opposed to term limits—.

MR. BUCKLEY:
"—That's already there because it does say,—'Unless the governing documents provide otherwise there is no limit on the number of terms.' That's on page 27, line 25."

MR. MCMULLEN:
—I just wanted to restate that the reason for that is so that there's not a majority up for election one year and then the next term there would be a majority minus one that's up for election. We've found that that has changed. Had an opportunity to remove continuity and consistency while at the same time putting these boards in play. So, three years would mean that one-third of the board is up every time.

CHAIR TOWNSEND:
"Alright, section 90?"

MR. BUCKLEY:
—My next comment was on section 90,—that's on page 30. —There were some changes, just to highlight this in S.B. 436 that dealt with the—audit—on transition and how that was done. I just want to point out that—should be made in this section. Here's another example, in section 1(c), that refers to the reserve preparer, holding of permit, that needs to be corrected. —Also, in section 1(c),—this is the provision that deals with transition and—I don't know that I've actually—thought this out well enough, but what this section really is dealing with now is the termination of the declarant control period vis à vis the association. —I guess and maybe I'm just thinking out loud here that there really is no transition for the hotel-unit owner so that is why there is no reserve study for the hotel components. —So, what I listed as number (c) under section 14 is—incorrect and I guess section (d) too because—really there is no transition for the hotel unit.

CHAIR TOWNSEND:
"Okay, section 98 and 100?"

MR. BUCKLEY:
—Section 98—deals with the kinds of rules that the association can make and I guess it seemed to me to make sense that if the hotel-unit owner is going to have rules, they ought to have the same kinds of limitations on them as does the association. In other words, they have to be reasonably related,—sufficiently explicit. These are just kind of generic requirements on rules.

CHAIR TOWNSEND:
"—Section 101?"

MR. BUCKLEY:
—This is important, I think this was also brought up by Commissioner O'Donnell and Commissioner Radunz and that is I don't believe there is anywhere in this act something called the financial statement of the hotel unit. —It seems to me that is something that should be defined and made available to the —association.

CHAIR TOWNSEND:
"What is the financial statement of the hotel unit?"

MR. BUCKLEY:
—Right now you have the financial statements of the association, which are basically the normal financial statement for that entity. —I think the financial statement of the hotel unit I guess, would be the financial information relating to the operations for which the owners have to pay for.

MS. SHAVINSKY:
—We tried to provide what we thought was—a broader—definition of what the hotel-unit owner had to provide as far as financial information for the owners to inspect, should they want to. —I think that's in section 131. —Perhaps, if we need to make a change, we might be able to make it there. —That's on page 60.

MR. BUCKLEY:
"—I think you're right—. Okay, that's correct."

CHAIR TOWNSEND:
"—So, we don't have to deal with 101?"

MR. BUCKLEY:
"Correct."

CHAIR TOWNSEND:
"—Section 103?"

MR. BUCKLEY:
—I'm sure this Committee was responsible for passing this several years ago, but this basically says that if the board or the association gets a complaint, they have to respond to it promptly and unless I was missing it, I didn't think there was a similar provision for the hotel-unit owner.

MS. SHAVINSKY:
—Mr. Buckley is right. —There really isn't an equivalent provision for the hotel-unit owner. I think we could work that in. —I don't think it is unreasonable to have the hotel-unit owner respond to complaints—because we all know they're probably going to get them. —I think we need to kind of rework 103 to—obviously take out the reference to the executive board—and then we'd need to agree on number of business days that it would be—considered reasonable for the—hotel-unit owner to respond to that complaint.

MR. BUCKLEY:
"That sounds like a good idea."

CHAIR TOWNSEND:
"Ten days is not what we generally do in 116?"

MS. SHAVINSKY:
"I think ten business days probably is what you do in 116. Isn't it?"

MR. BUCKLEY:
"Yeah, ten business days."

CHAIR TOWNSEND:
"Okay, so you're not worried about the days, it's who is authorized to respond to the complaint. Is that right, Mr. Buckley?"

MR. BUCKLEY:
"—No,—we have a provision that the association has to respond and it seems like there should be a provision that the hotel operator should respond as well."

CHAIR TOWNSEND:
"—Well, wouldn't you just add that in?"

MR. BUCKLEY:
"—Mandy's right, because—subsection 2 deals with the executive board and there's not going to be an executive board, it' just going to be the hotel-unit owner."

MR. MCMULLEN:
"—I think you could use a—smaller but similar adaptation to 66.5 in the sense that—when they issue a complaint or forward it to the hotel-unit owner that it's just as simple to say,—'must respond within x days.'"

CHAIR TOWNSEND:
"Okay, I don't have any problem with that. I just don't want to be back here two years from now and hear, 'Well the complaint process only meant those guys not us—.' Okay, let's go to 108."

MR. BUCKLEY:

> —This is just to point out that this section prohibits the association from—encumbering or conveying the common elements without the approval of the unit owners. —I just point out to the Committee that there's no restriction on the hotel-unit owner conveying or encumbering the hotel unit. —I don't think in the real world that the unit owner should have that approval but I suppose it ought to be something that is put in the declaration so that the unit owners know that they have this power.

MS. SHAVINSKY:
—I think that's definitely fair to disclose in the declaration —because in almost every case you're gonna have a hotel-unit owner that has financing. —The hotel unit will be encumbered, but at the very least it seems to me that we can disclose that to—the unit owners in the declaration or have a requirement in the statute that it must be disclosed in the declaration.

CHAIR TOWNSEND:
"Okay, section 111?"

MR. BUCKLEY:
—Okay, if you look at the top of page 47,—in line 2, it says if there's a damage, it has to be repaired by the association. —I think it should probably be, "or hotel-unit owner" because either one of them might have the insurance. In fact, it might more likely be the hotel-unit owner.

MS. SHAVINSKY:
"—I'm fine with that change. I think it's appropriate."

SENATOR HARDY:
"—Okay, next section."

MR. BUCKLEY:
"—This is section 115. —I think this is just a correction—I'll defer to Mandy because—there's a reference to reserves but only the declarant's funding plan so I think there should also be a reference to the hotel-unit owners' funding plan."

SENATOR HARDY:
"—Did we skip over section 112—?"

MR. BUCKLEY:
"Yes, we did because—we talked about the financial statements. That other section that they had in."

SENATOR HARDY:
"Okay,—I just wanted to make sure that's clear for the record.—"

MS. SHAVINSKY:
"—In section 115, that change is fine that Mr. Buckley has proposed."

MR. BUCKLEY:

> Number 22, this is just a cleanup. —There's a reference in —section 122 to the declarant that needs to come out and in section 125 because it's only the association or the hotel-unit owner that would be foreclosing. It wouldn't be the—declarant and that would be consistent with 116.
>
> Number 23, in section 126. Section 126 is the—provision that would deal with the actual foreclosure sale for the assessments. —I'm just proposing that we strike the language which would allow the foreclosure sale to be held in some county other than where the property is. —You may remember that NRS 107, which changed at the last session to tighten up the foreclosure trustee sale provisions and this language here was taken from the original 107 which allowed the foreclosure to be in any county where the association or the person conducting the sale had an office. So, I think we just should clean this up and just say—within the county.

CHAIR TOWNSEND:
"Is there a reason—Ms. Shavinsky, why you would want it not in the county where the residential unit is?"

MS. SHAVINSKY:
"No, there's—really no reason for that. I think that was an overhang from —before 116 was changed the last time—."

MR. BUCKLEY:
"—Actually, Mr. Chairman, all they did was copy the language from 116 so it's a problem in 116 as well."

CHAIR TOWNSEND:
"—Okay."

MR. BUCKLEY:

—We talked about my number 24, which we—already dealt with. —My last two sections—deal with the public-offering statement and rather than go into all of these, I think basically there's just some provisions where I would add references to the hotel-unit owner or the shared components. That, I think, would be appropriate in the disclosures.

—In 142, subsection (a), public-offering statement, it obviously should have the name of the hotel-unit owner as well as the —declarant. —Subsection (b),—I'm suggesting that we add in a description of the shared components so people know what they are. —Subsection (d), of 142, I'm suggesting we add in, "any rules of the hotel-unit owner as well as the association. "—Subsection (e), the budget should be for the hotel unit as well as the association. —Forget that, that's already there.

Chair Townsend:

Does anybody else want to add anything? I would like Mr. McMullen, Ms. Dennison, Ms. Shavinsky and Mr. Buckley to meet with Mr. Keane at a time that he agrees to so you can work to make sure everything that was put on the record here today is with him so that he can get this drafted. When it gets back, we will then take this up again. Is there anything else you want to put on the record with regard to A.B. 431?

MR. MCMULLEN:

It's my understanding that we are only going to deal with the condominium hotel requirements in here and the references to chapter 116 of the NRS and potential changes that are processing through the Legislature each year either in A.B. 396 or Senate Bill (S.B.) 436 are going to continue to be handled by those bills and not A.B. 431?

CHAIR TOWNSEND:

"Since we are creating a new section of the law, the preference would be to leave this bill focused only on this particular area.

These are very difficult things to deal with and we should separate them as much as we can."

MR. MCMULLEN:
"I appreciate that, Mr. Chairman."

CHAIR TOWNSEND:
I will close the hearing on A.B. 431 and open the hearing on A.B. 195.

Mr. Buckley, you had an interest in this bill?

ASSEMBLY BILL 195 (1st Reprint): Makes various changes relating to residential landlords and tenants. (BDR 10-1127)

MR. BUCKLEY:
I did and worked with Mr. Sasser and we agreed upon an amendment to section 1, subsection 1.

CHAIR TOWNSEND:
Mr. Sasser and Mr. Buckley, please take us through what you agreed to in the mock-up amendment (Exhibit H).

JON L. SASSER (Nevada Legal Services; Washoe Legal Services):
The amendment to section 1 was proposed by Mr. Buckley and it was to eliminate section 1, subsection 6 and include the language in green on page 1, starting on line 17. We are fine with that language.

The rest of the amendments are amendments that we had agreed to that were proposed by Ryan Works, representing the Southern Nevada Multi-Housing Association.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 195 WITH THE PROPOSED MOCK-UP AMENDMENT.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on A.B. 365. We do not have an amendment for this bill. They said they could accommodate our concerns on their own.

It should be noted that my wife is a licensee of this division, but this will not affect her any differently than anyone else.

ASSEMBLY BILL 365 (1st Reprint): Revises provisions relating to renewal of licenses, permits, certificates and registrations issued by the Real Estate Division of the Department of Business and Industry. (BDR 54-1291)

SENATOR HARDY MOVED TO DO PASS A.B. 365.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
Senator Heck, are there conflicts with A.B. 385 and S.B. 412? We have a mock-up amendment (Exhibit I).

ASSEMBLY BILL 385 (1st Reprint): Makes various changes concerning the practice of medicine. (BDR 54-356)

SENATE BILL 412 (1st Reprint): Makes various changes regarding health care. (BDR 54-540)

SENATOR HECK:
Yes, actually the language that is now proposed in A.B. 385 mirrors the language that is in S.B. 412.

SENATOR HARDY MOVED TO AMEND AND DO PASS A.B. 385 WITH THE PROPOSED MOCK-UP AMENDMENT.

SENATOR HECK SECONDED THE MOTION.

SENATOR CARLTON:
I understand the purpose of this but have a problem with section 10. I do not like that we are equating the uninsured or those that are unable to afford health insurance with people who are indigent. When I put in the volunteer doctor language in 2001, it was never to create two classes of health care. I understand the intentions but am bothered by the way this is worded and structured.

CHAIR TOWNSEND:
In 2001, did we not define all of that language in the *Nevada Revised Statute* (NRS) 630.258, which is referred to in section 10?

SENATOR CARLTON:
Yes, but I believe they will be able to practice outside of a federally qualified health center (FQHC) with this.

CHAIR TOWNSEND:
What are they doing now?

SENATOR CARLTON:
Unfortunately, we only had one volunteer doctor in the State and he has since passed away. It was always my intention that they would practice under an FQHC, but I have heard from different people that may not necessarily be true. I am not sure if that issue has been addressed or if it is clear as it relates back to that.

You have to keep in mind that we use a lot of different terms and a lot of them are federal terms, you have the terms underserved, uninsured, indigent, etc. If we start changing terms, we could be changing the underlying effect of what we are trying to accomplish. That is why I have a problem with section 10. We are actually equating uninsured with indigent. I do not think that is the intention. We just want to serve the uninsured but not equate them with it. We need to be careful in clarifying who is being served and where they are being served.

CHAIR TOWNSEND:
The current law is, "A physician who is retired from active practice and who wishes to donate his expertise for the medical care and treatment of indigent persons in this State may obtain a special volunteer medical license by submitting an application to the board." In other words, the same mechanisms

are in place but the blue language is adding, "Who are indigent, uninsured or unable to afford health care."

SENATOR CARLTON:
If the Chair will remember, when we did the volunteer doctor bill, we specifically used the definition of indigent because those were the folks that end up at those types of emergency rooms and facilities because there is a specific definition of indigent. In this, we are still going to be providing health care, but will it still be under the same umbrella?

My suggestion was to change everything to "underserved" and then the underserved would be served at those particular clinics and that way everyone would be protected.

SENATOR HECK:
I appreciate Senator Carlton's concerns. What this attempts to do is open up the same pool of currently nonexistent volunteer physicians to take care of a broader base of people. As Senator Carlton pointed out, indigent is a very specific category of individual that has to be determined by the county in which the person resides. At least in Clark County, if you are indigent, that means you go to University Medical Center because they are the indigent-care provider for that county. Really it is the uninsured and those unable to afford that go to the federally qualified health centers. This does nothing to affect or prohibit an individual's ability to be named in a malpractice suit because they do not accept payment unless they are working at a medical facility that provides their malpractice insurance. It is not like it has to be under federal tort claims; it does not give them the right to practice without insurance. The goal is to provide medical care to a broader pool of people than just the indigent under this volunteer license. Those under a volunteer license really would not provide the care to indigents because the indigents already have a place to go. It is really the uninsured and the unable to afford that need the help. That is the intent and all it really does is open up the ability for these physicians with a special volunteer license to provide more care to more people in need.

KEITH L. LEE (Board of Medical Examiners):
I had a conversation with Senator Carlton trying to figure out some language on this that would satisfy her concerns. We looked at underserved, and I checked with Dr. Haartz to see if we cannot find some term that works and for whatever reason, underserved does not seem to work. The issue that Senator Heck just

spoke to is that we are trying to broaden the umbrella for which volunteer physicians can render their services.

On page 2, section 5, the deleted language there that begins on line 44 was not suggested by me. My recollection was that there was no testimony opposing the injection of a cosmetic or chemotherapeutic substance. It was only as to the laser issue and that was what we suggested be deleted from this bill and referred to an interim study committee. I do not know if it is the Committee's will that the injection of chemotherapeutic substances also be referred to that or if that was just an oversight in deleting that from this mock-up, Exhibit I.

CHAIR TOWNSEND:
Who is the person, other than a physician that, "Shall not inject a patient with any cosmetic or chemotherapeutic substance unless: 1. The person is licensed or certified to perform medical services"?

MR. LEE:
Anecdotally, what we are trying to get to here is Botox injections. We want to ensure that they are injected by someone who is licensed and has the ability to perform injections.

CHAIR TOWNSEND:
Why are not just physicians doing this? Are you telling me we have some type of certification or license that allows people to do that?

MR. LEE:
We do not. What we are trying to get to is that only physicians and those licensed as a medical care provider under the direction of a physician may do this.

CHAIR TOWNSEND:
Do you have enough language to do that now?

MR. LEE:
We do not believe we do without the language that is in section 5.

CHAIR TOWNSEND:
Do you want the language in section 5 to stay?

MR. LEE:
Yes. On page 12, section 17, paragraph 1, subparagraph (b), we are not suggesting that be referred to the interim Legislative Committee on Health Care.

SENATOR HECK:
We decided to send all of it to the interim Legislative Committee on Health Care because there is more than just Botox that is being injected. Since this whole thing revolved around the cosmetic-spa industry, whether lasers or injectables, it would be better to send it to that interim committee so more in-depth testimony could be taken and a better package could be presented for the next Legislative Session.

MR. LEE:
Having heard that, we have no objection.

SENATOR HECK:
In section 10, line 25, what if the wording was just, "Persons in this State who are unable to afford health care"? not making reference to uninsured or indigent.

SENATOR CARLTON:
How are we going to define or use "unable to afford health care?" How would we qualify people so that we do not have someone just dropping their health care coverage to save $300 a month and then using these clinics? I know this is not going to happen within the first year because this is going to be a slow process. This could end up turning into a valuable tool, but I am apprehensive about trying to figure out how to define these people. Honestly, there are a lot of people who cannot afford health care insurance, but they buy it anyway.

CHAIR TOWNSEND:
Mr. Lee, you want to leave in section 5?

MR. LEE:
Yes.

CHAIR TOWNSEND:
If we did nothing, indigent is still in the law. It is a question of whether we add "uninsured" or "able to afford health insurance."

We will think about that and take it up again tomorrow.

I will now open the hearing on A.B. 216. Mr. Guild and Mr. Keane were asked to work together to address Mr. Guild's concerns. We have a mock-up amendment (Exhibit J).

ASSEMBLY BILL 216 (1st Reprint): Provides additional requirements for closing or converting manufactured home parks. (BDR 10-141)

JOSEPH GUILD III (Manufactured Housing Community Owners Association):
I have reviewed Exhibit J and I appreciate the Committee addressing the concern that I raised. The language in the mock-up encompasses that.

I do have a question on page 1, lines 10, 11 and 12. Is it "any" decision that body makes or is it "the" decision which grants the approval for the conversion under the NRS 118B.180 or the change of land use under NRS 118B.183 or the decision by the local health department under NRS 118B.177, which is in section 2 of the bill?

MR. KEANE:
It would be any decision that the applicable body would make. I believe your concern is if the owner of the park would have to provide these documents before the health decision which initiated the entire closing. That would not be the case because the documents would have to be provided upon the earlier of either the first date after the owner begins the process. In other words, after the owner begins the process he needs to provide this document to the governing body before they make their first decision relative to the park, whatever that decision.

CHAIR TOWNSEND:
Is that "any" decision regarding the park?

MR. KEANE:
Exactly, it is any decision after the owner begins the process of converting it. If the body made a decision before the owner was even contemplating converting, then that would not apply. The documents would not have to be provided for that.

MR. GUILD:
That clarifies it and provides the legislative record that I wanted.

CHAIR TOWNSEND:
Mr. Keane, please provide us with a statement we can use to put this on the record on the Senate Floor.

MR. KEANE:
Certainly.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 216 WITH THE PROPOSED MOCK-UP AMENDMENT.

SENATOR HARDY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on A.B. 224. Senator Hardy, you were concerned about section 6, subsection 3. We do not have an amendment.

ASSEMBLY BILL 224 (1st Reprint): Makes various changes to provisions governing the regulation of factory-built housing, manufactured buildings and modular components. (BDR 43-583)

SENATOR HARDY:
I was just concerned about the inclusion of a specific price, but I have been informed by Ms. Diamond that is fairly standard language. Apparently it is handled administratively with the State Contractors' Board, so I no longer have a concern.

SENATOR SCHNEIDER MOVED TO DO PASS A.B. 224.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
I will now open the hearing on A.B. 424. We have a mock-up amendment (Exhibit K, original is on file in the Research Library).

ASSEMBLY BILL 424 (1st Reprint): Revises provisions relating to the licensure of counselors. (BDR 54-1294)

SENATOR HECK:
After last week's Committee meeting, Senator Carlton, Assemblywoman Leslie and I met to review the two different mock-up amendments from the original bill and came to consensus. That is in this mock-up, Exhibit K. This recognizes the licensed clinical professional counselor credential and places it under the Board of Examiners for Marriage and Family Therapists. This would allow them the opportunity to be represented in an escalating fashion so that eventually there would be parity between the two disciplines. It recognizes which educational programs would be acceptable utilizing the Council for Accreditation of Counseling and Related Educational Programs (CACREP). A definition of what professional counseling is what the three of us agreed upon. Requirements for licensure, for internship, all of which are consistent with the national standard for licensed clinical professional counselors.

HELEN A. FOLEY (Marriage & Family Therapists):
We strongly supported Senator Carlton's original amendment. We do not support this amendment.

One of the most important reasons is that we always said if we had a new mental health profession it had to have strong academic background in mental health. This amendment includes community counseling and that could mean many other things. We think this is contrary to what was originally agreed.

With this mock-up amendment, we have taken clinical professional counselor interns and have given them licenses. We think this is bad public policy and someone should not have a license to practice a mental health profession until they have actually received licensure for it. We do not have a problem with having them registered but all the way through this amendment these people end up being licensed. That sends a bad message to the general public.

K. NEENA LAXALT (Board of Examiners for Marriage and Family Therapists):
Our Board echoes the concerns of Ms. Foley.

KEVIN QUINT (Board of Examiners for Alcohol, Drug and Gambling Counselors):
We had submitted some language for sections 35, 36 and 54 that I can go over with Committee members at a later time. That submitted language was not included in this mock-up amendment.

CHAIR TOWNSEND:
Senator Heck and Senator Carlton, have you heard the concerns of the last three testifiers already?

SENATOR CARLTON:
Yes. I think we did a pretty good job as far as being able to establish a new profession that is recognized in 48 other states. We do sunset the one provision that I think causes the heartburn for people. It is just for the first few years and we added in a credentialing component to whereupon licensure they will look at their work experience to make sure it is not a school counselor, recreational counselor or something like that. There are a lot of people in this State who have been doing this job for a long time and we want to be able to look at their work experience in order to be able to evaluate them. That is only for the first few years. When that sunsets, we will move to the other examination. We do not want to exclude people who have been doing this in this State.

SENATOR HECK:
I appreciate Senator Carlton's comments. The primary reason for including community counseling is because the only two CACREP accredited mental health counseling programs in the State, one each at the University of Nevada, Reno and the University of Nevada, Las Vegas, are in community counseling. We do not have a CACREP approved mental health counseling program in this State. The whole purpose was to have people who go to school and graduate here stay in the State. I think that we have done very well with this in trying to increase access to mental health services in Nevada.

SENATOR CARLTON MOVED TO AMEND AND DO PASS A.B. 424 WITH THE PROPOSED MOCK-UP AMENDMENT.

SENATOR HECK SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR TOWNSEND:
The meeting of the Senate Committee on Commerce and Labor is now adjourned at 10:51 a.m.

RESPECTFULLY SUBMITTED:

_____
Jeanine Wittenberg,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____