MINUTES OF THE
SENATE COMMITTEE ON COMMERCE AND LABOR

Seventy-fourth Session
April 2, 2007

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:37 a.m. on Monday, April 2, 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:

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

OTHERS PRESENT:

Gary Randall
Sandy Ambrose
Kyle Davis, Policy Director, Nevada Conservation League
Mike Randolph, Manager, Homeowner Association Services, Incorporated
Donna Toussaint, Board President, West Sahara Community Association
John A. Radocha
Robert G. Evans, President, Silverwood Ranch Home Owners Association
Sharen Petrillo
Gail J. Anderson, Administrator, Real Estate Division, Department of Business and Industry

Michael Buckley, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Marilyn Brainard, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Shari O'Donnell, Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry
Robert Sidell, Secretary, Volunteer Associations for Leadership, Understanding, and Education
Kevin Janison
Ray Cox, President, Sun City MacDonald Ranch Home Owners Association
Seth Floyd, City of Las Vegas
Rocky Finseth, Nevada Physical Therapy Association
Robert A. Ostrovsky, Employers Holdings, Incorporated

CHAIR TOWNSEND:
I will open the hearing on Senate Bill (S.B.) 362.

SENATE BILL 362: Makes various changes to the provisions governing common-interest communities. (BDR 10-110)

GARY RANDALL:
I am a homeowner in the Los Prados Golf and Country Club and a member of the Los Prados Community Association. I have written testimony in support of this bill (Exhibit C).

SENATOR SCHNEIDER:
Los Prados is a gated community of about 1,300 homes with a gaming license to allow video poker machines in the clubhouse. This means that the community must be open to the public. This is the same development that will not allow public school buses on the property to drop kids off. This means the buses drop children off outside the community on large four-lane roads, and the children have to walk across these streets into the community and then another mile or so to reach their homes.

CHAIR TOWNSEND:
Is this matter under litigation at the moment?

SANDY AMBROSE:
No. We have filed an affidavit regarding the poker machines with the Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry. We were just informed Saturday that they found our argument that the presence of gaming machines violates our conditions, covenants and restrictions (CC&Rs) document to be unsubstantiated. We are a gated community with a guard; we pay a fee to live there and use the clubhouse.

CHAIR TOWNSEND:
I would like a copy of that letter. I will need to be convinced that a board can put gaming into a private, gated community. What was the reason given for not allowing the school buses in?

MS. AMBROSE:
They just did not want them. They thought having bus stops inside the community would allow more local access, which they did not want.

CHAIR TOWNSEND:
Under the Americans with Disabilities Act of 1990, you cannot stop a school bus that is coming to pick up handicapped kids. Are those buses allowed in?

MS. AMBROSE:
My understanding is that no school buses are allowed in.

CHAIR TOWNSEND:
I would like to hear from your property manager and board president on this. This is a federal matter.

MS. AMBROSE:
I will find that out for you. When the gaming machines were proposed, the board decided to count all the ballots that were not returned as votes in favor of the machines. They did not actually have enough votes to approve the proposal.

CHAIR TOWNSEND:
Do you have the minutes of the meeting where that was done?

MS. AMBROSE:
I will get them. That would be 1998 or 1997.

CHAIR TOWNSEND:
Did the board give a reason for bringing in gaming machines? Was it simply a matter of revenue?

MS. AMBROSE:
I believe there was more to it than that, but revenue was the main premise.

CHAIR TOWNSEND:
Is this the only homeowners association (HOA) with a gaming license?

SENATOR SCHNEIDER:
It is the only one of which I am aware.

MR. RANDALL:
They allow public transit and casino buses in the community, but not school buses.

CHAIR TOWNSEND:
Is the community limited to those 55 and older?

MS. AMBROSE:
Portions of it are, yes. I have a written statement in support of S.B. 362 (Exhibit D).

CHAIR TOWNSEND:
Do you know who is the licensee of the gaming establishment? Is it a slot-route operator?

MS. AMBROSE:
I am sure it is, because we lease the space. I will find the name for you.

KYLE DAVIS (Policy Director, Nevada Conservation League):
We are neutral on most of this bill, but we have an interest in two sections. During the discussion at the last meeting about section 4, the statement was made that an 11-percent drop in the efficiency of a solar panel would be acceptable. In our opinion, 11 percent is a significant loss of energy. Section 26 has to do with drought-tolerant landscaping. Water is a scarce resource in Nevada, and we need to do everything we can to encourage water

conservation. We do not want to see HOAs thwarting residents who want to make their homes more water-efficient.

CHAIR TOWNSEND:
Section 26 is a Hobson's choice. The Southern Nevada Water Authority is the single largest user of electricity in southern Nevada; the vast majority of the cost of delivering water to your home is electricity. With regard to section 4, is there a difference between the efficiency of solar panels produced in colors other than black and black solar panels that have been painted?

MR. DAVIS:
From what I have read, solar panels produced in a terra-cotta color are 11 percent less efficient than black panels. Black panels that have been painted a different color are 20 percent less efficient than unpainted black panels.

MIKE RANDOLPH (Manager, Homeowner Association Services, Incorporated):
I am the manager of a collection agency that specializes in assisting HOAs to recover delinquent assessments. Section 20, subsection 10, requires HOAs to "... obtain approval from the Commission before attempting to foreclose ... ." This leads me to believe HOAs will have to get approval before recording a notice of delinquent assessment. The Commission on Common-Interest Communities is overworked and does not need to listen to us when we come in with 150 to 200 notices of delinquent assessment liens for approval before recording them.

In section 21, subsection 3, we need to be careful when we make sales "... subject to an equity or right of redemption." I can see the potential for a number of abuses, in which the defaulting homeowner would be the victim by investors who buy these properties at foreclosure sale who would either not buy them and allow the bank to get them back or allow the association to end up with a bigger financial problem than it already has, by having an overburdened home in their inventory. The right of redemption is a great idea, but we would need to structure it carefully.

If we really want to solve problems, the thing that is most needed is putting the onus on the homeowner to notify the HOA of their correct mailing address. Every day, I have cases in which a homeowner calls me from out of state saying, "No one ever notified me," and I find that the only address listed for the

owner is the property in Nevada. If the homeowner was required to give correct information, a majority of our problems would be solved at that point.

DONNA TOUSSAINT (Board President, West Sahara Community Association):
In response to earlier testimony that HOA boards call homeowners into hearings, we are required to do so before we can assess a fine. In my HOA, if a homeowner comes in to tell us they are working on the problem, we will work with them. We are hamstrung by the delegate system. Our community needs 1 delegate for every 50 homes, so we need 84 delegates. Every year we send out delegate election mailers to every homeowner. This costs $856 for postage alone. Last year we got 12 back; this year we got 8. This means we must send the mailers out again. By the time the process is over, we have spent about $2,500 or more, money that could have gone to drought-tolerant plants or landscaping. We cannot change our documents without delegates. If one area does not have a delegate, their votes will not be counted. If an area has a delegate and one homeowner votes, that area gets 50 votes, and the delegate does not have to vote the way the homeowner wants them to vote. This is not the democratic system. We need relief.

JOHN A. RADOCHA:
I have a number of issues I would like to raise. I am disturbed by what I have read of the Volunteer Associations for Leadership, Understanding, and Education (VALUE) Alliance in the newspaper. This is a lobbying group that was funded by the fees paid to HOAs by homeowners. Homeowners did not get to vote to fund this group that is working against their interests. This is taxation without representation.

When a board wants to increase HOA fees, homeowners should be allowed to vote on the increase by secret ballot. Currently, 50 percent of homeowners must show up at an HOA meeting to vote. If you live in a working community, it is impossible for people to attend these meetings because of the times and locations. I have to go six to eight miles to attend a meeting that starts at 6 or 7 p.m. I have been at meetings where they increase the budget, and the president looks around the room and says, "Fifty-one percent of the homeowners are not here, so the measure passes." This is not fair.

If a homeowner questions what a board does and files an affidavit with the Ombudsman for Owners in Common-Interest Communities, Real Estate Division, Department of Business and Industry, the board should be prohibited from

levying fines or liens against the homeowner. This subjects them to selective enforcement in an attempt to intimidate them to move out.

In a gated community, homeowners should vote by secret ballot on all capital improvements, such as speed bumps. Our dues are a form of capital expenditure.

I would like to see term limits on board members, such that no individual could serve on an HOA board for more than three consecutive years. They may serve again after a break of two years. As things now stand, board members become entrenched and run the HOA their way.

When a board member leaves the board before their term expires, the president of the board should not have the right to appoint a replacement. This is analogous to nepotism. Homeowners should be informed of the vacancy so they can apply and the community can vote on a new board member.

Homeowners should be fined once only. As it stands now, they can be fined week after week and month after month.

I have confidence in the Legislature. My appeal is for a fair-minded thought process.

ROBERT G. EVANS (President, Silverwood Ranch Home Owners Association):
I would like to ask how many of the members of the Committee live in communities with HOAs. My sole purpose in running for the board of my HOA was to keep my property values at the highest possible level.

I have a few points to make in response to testimony I have heard on this bill. Boards should be governed by homeowners who own homes in the community. This means they have a vested interest in the community.

Executive board meetings sometimes discuss sensitive issues and conduct hearings with individual owners. Would you want your dirty laundry aired with the press in attendance? I have no objection to anyone else attending our board meetings, but it is wrong for the press to attend. We should be able to exclude the press from some meetings.

Fines by the HOA are the only way to control problems created by owners. If a person rents out their home, they should still be responsible for their property. According to this bill, if I move and rent my house, I can no longer be fined by the HOA for anything that happens on my property. My tenants are also not responsible, since they are only tenants.

Nevada now has more laws about HOAs than most other states. The Legislature has a knee-jerk reaction to individual problems that could be solved if people would sit down and talk at the board meetings. If that does not succeed, they can go to the Ombudsman. There is no reason to legislate individual problems and make a burden on every HOA trying to operate to the best of their abilities. There are always going to be a few rotten apples in the barrel, but that does not justify making everyone else suffer. It is getting harder and harder for us to operate and do our job as honest citizens who want to help our community.

SHAREN PETRILLO:
I would like to see more help for the common homeowner trying to deal with HOA problems. I owned a condominium at Cherrywood II and have a painting issue, a plumbing issue and an assessment issue. It has been going on for two years. I had permission to paint my unit, and I have documents stating the board would repay the money. They still have not. I contacted the Ombudsman two years ago and never heard from them. The matter is now in the hands of an arbitrator, but you basically have to be an attorney to navigate that process. I am charging harassment and discrimination. I have been made the target of a vendetta because when I was on the board I stopped an illegal activity of the person who is now the president of the board. This board is a good-old-boys network; they tell me to go home and put my apron on. I would like to see some help for homeowners without going through all the expense of recording documents and hiring an attorney.

CHAIR TOWNSEND:
Are you currently in litigation on this?

MS. PETRILLO:
Yes.

CHAIR TOWNSEND:
When did you first file that?

MS. PETRILLO:
I filed an affidavit with the Ombudsman two years ago and with the Real Estate Commission in December 2006. The HOA was supposed to respond by December 31 and did not. I should have then been able to take the matter to small claims court, but the Commission gave them an extra five days to respond. I then had to pay $900 to go to arbitration. They now owe me a little over $6,000. I went to the management company to get documents last year, and they were missing. When I asked the owner for the documents, she had her son go get them. When he did, he assaulted me and was arrested for battery. This is the kind of thing that goes on.

CHAIR TOWNSEND:
Ms. Anderson, are you familiar with this case?

GAIL J. ANDERSON (Administrator, Real Estate Division, Department of Business and Industry):
No, but I will look into it.

CHAIR TOWNSEND:
We have people here who will try to get you an answer as to where your claim is. We will get back to you within a week. I am sorry for your assault; there is no place in this State or this country for that kind of behavior.

SENATOR SCHNEIDER:
We have received written testimony for the record. I have material from Pamela Scott with the Howard Hughes Corporation (Exhibit E), Leisa Whittum (Exhibit F), Cindy Boucher (Exhibit G) and Shari O'Donnell (Exhibit H).

CHAIR TOWNSEND:
I will close the hearing on S.B. 362 and open the hearing on S.B. 436.

SENATE BILL 436: Makes various changes to the provisions governing common-interest communities. (BDR 10-234)

MICHAEL BUCKLEY (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
I have written testimony regarding this bill (Exhibit I). We thank the Committee for including many of the issues raised at hearings of the Commission for Common-Interest Communities.

We support sections 4, 5, 11, 12, 13, 16, 17, 18, 19, 20 and 21, as well as portions of section 8, all of which derived from Commission hearings.

We support the changes in sections 1, 2, 3, 10 and 11, though the wording may need some fine-tuning.

We have concerns about some of the changes in sections 6, 7, 8 and 9.

CHAIR TOWNSEND:
Please go through the sections one at a time.

MR. BUCKLEY:
We support sections 1 and 2. Section 3 deals with a situation where there is no contest for directors. The Commission supports the idea in concept, but we believe there should be some other step in subsection 4 so the owners know the situation. An example was given where there were two people nominated for two seats, and some homeowners did not want either of them and so got others nominated. We thought there should be another step in there so homeowners have knowledge of who is going to run and have an opportunity to nominate someone else.

CHAIR TOWNSEND:
Do you have specific language to submit?

MR. BUCKLEY:
No, but I will get it to you.

Section 3, subsection 5, paragraph (b), defines the "good standing" of a person who wishes to run for the board of an HOA. Subparagraphs (2) and (3) state that a member is not in good standing if he or she has an unpaid fine more than 30 days overdue. We do not support this change. Someone who has a fine could be not only someone who has violated the CC&Rs, but also someone who is being oppressed or intimidated by a bad board.

We support section 4 in concept, but the language needs to be tweaked. Subsection 2 deals with the audit the developer has to give after the developer turns the association over. The lead-in language says it has to be 30 days, but there is no time limit on subsection 2. We are recommending the audit be done

promptly, but in no event more than 210 days. In addition, it should be required, not optional.

We support section 5 and all the language about reserve studies.

We support section 6, subsection 1. We do not support subsection 3, which says notice does not need to be given of an executive session of the board. If the board members are meeting, even if they are meeting in executive session and homeowners are not allowed to participate, homeowners should be notified that the board is meeting to avoid the appearance of secret meetings.

CHAIR TOWNSEND:
What was the purpose of this section?

MR. BUCKLEY:
Current law excuses the board from notifying homeowners of an emergency meeting when there is not time to send out notices. In executive session, there is time. The thinking was probably that there is no point in informing homeowners when they cannot attend the meeting.

CHAIR TOWNSEND:
We have spent a lot of time trying to ensure openness in these boards. The cost of this notification can be high, however.

MARILYN BRAINARD (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
In most cases, these sessions deal with ongoing legal matters with an attorney. The way my HOA handled this was to recess for the executive session to be held at a future time, and that did not have to be noticed. That was how our legal counsel advised us to handle the matter.

CHAIR TOWNSEND:
Did you give a specific date and time the executive session was to be held?

MS. BRAINARD:
I do not remember, but I believe we did. I can verify the information and get back to you.

MR. BUCKLEY:
We support section 6 of the bill. We support the change in section 7, which allows HOAs to make a special assessment. I have heard some suggestion that we add language specifying that it must be in accordance with the reserve study or some other limitation.

We do not support the change in section 8, which determines when an HOA is adequately funded. The Commission felt subsection 1, paragraph (b), subparagraph (1) was a good idea, but not subparagraph (2). We felt it would be better to leave the language open and do it on a case-by-case basis.

CHAIR TOWNSEND:
The sections about reserve studies came as a result of language in California with specific measurements defining what is an adequate reserve. Right now, "adequate" is a term of art, left to the board, the members, the Commission and the courts to determine. This concept has some value, but I am not sure what the actual language should be.

MR. BUCKLEY:
I agree. We want to give some guidance. We asked the Ombudsman and the Compliance Section of the Real Estate Division about their complaints in this area, and they have had none.

We support section 8, subsection 2.

We do not support section 9 as written. The concept is that certain records of the HOA would not be public records until they are approved by the board. The list of documents in subsection 1, paragraph (d), is overly broad. Certainly, minutes should not be public record until they are approved. However, if the board is reviewing bids, those bids should be available at the meeting at which they are discussed. Boards could use this language to keep a lot of things confidential that should not be. We would be in favor of a more specific listing of documents.

CHAIR TOWNSEND:
What about reserve studies?

MR. BUCKLEY:
My initial thought would be that homeowners should see them. That is something that could be debated. The plan might be to replace roofs in four years, for example, and someone might have a leaky roof that needs to be replaced now.

SHARI O'DONNELL (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):
An example of a document that should not be released to the public would be a draft of a reserve study, which would still be the purview of the board. During the period of declarant control, sometimes a reserve study analyst has failed to include a necessary component. It is important to make sure it is complete and accurate before it is distributed.

CHAIR TOWNSEND:
What is the biggest issue you see in reserve studies? Is it paving, the clubhouse or the pond?

MS. O'DONNELL:
Those are some critical issues. Streets and landscaping are big-ticket items, along with water. An example was given in one of our Commission hearings of a huge drainage way that was washed out by a storm and needed to be refurbished before it was planned for.

MR. BUCKLEY:
We were also concerned about financial statements. If a board does not approve a financial statement, this language would seem to say they do not have to make it available to homeowners until the next meeting, which might be five or six months later.

CHAIR TOWNSEND:
I would like to meet with you and Senator Schneider to come up with specific language for this section. Perhaps there needs to be mitigating circumstances as to why a document would not be approved or adopted.

I have heard from a number of property managers who are frustrated because their boards will not listen to them when they tell them what the laws and regulations are.

SENATOR SCHNEIDER:
I have heard from a property manager who tells me that every time she tells the board they are doing something illegal, they call the company she is associated with to try to get her removed as manager. They want to ignore the law; they think they are the law.

MR. BUCKLEY:
We support section 10.

SENATOR SCHNEIDER:
This section has to do with parking, and it is a philosophical debate that the Committee needs to look at carefully. I do not have a problem with a gated community regulating private streets. They maintain the street lights, sewer, water and asphalt; it is totally private. But when a subdivision has an HOA, the streets are deeded to the city and maintained and regulated by them. If the HOA then takes over the management of those streets in some fashion from the city, that is something we need to talk about. The HOA is superseding the city's rules. I have problems with that. It is creeping private government.

CHAIR TOWNSEND:
Wingfield Springs in Sparks is the type of community that might have this kind of problem. Is that correct?

MS. BRAINARD:
Yes. The City of Sparks has good ordinances about use of public streets, including sports equipment and inoperable vehicles. I do not have that information with me today, but I will get it for the Committee.

CHAIR TOWNSEND:
This is mostly an issue in southern Nevada.

MS. BRAINARD:
Paul Burkett, President of the ArrowCreek HOA, has a concern about traffic safety. I have a letter from him on this issue for the record (Exhibit J). However, ArrowCreek's streets are private, even though it is not gated.

ROBERT SIDELL (Secretary, Volunteer Associations for Leadership, Understanding, and Education):
I have written testimony related to this issue (Exhibit K). I have included a photo on pages 3 and 5 that has been altered to represent conditions that the HOA has no control over, including an inoperable car, trash, sports equipment and security shutters, due to legislation passed in 2005. The only thing in this photo that the HOA can legally affect is the satellite dish on the roof. The rationale behind the change was that there were already laws that the Metropolitan Police Department could use to take care of these issues. We have met with them, and their reaction is that these matters are so far down on their list of priorities that they are incapable of enforcing the laws. This means unless the homeowner makes a health and safety issue out of it, there is no chance of getting any relief. In the past, the CC&Rs would dictate the conditions shown in the photos on pages 2 and 4.

SENATOR SCHNEIDER:
Regarding the broken car, the county and the city have neighborhood code enforcement officers who respond to such issues; they are not the jurisdiction of the Metropolitan Police.

MR. SIDELL:
We have run through most of the possibilities.

SENATOR SCHNEIDER:
The pile of dirt and the dumpster do not bother me. Do you not allow a dumpster temporarily while someone is remodeling? As far as soccer nets and basketball hoops in the street, do you not want a community with kids? We can outlaw kids, I guess. You are going to extremes. You have made up pictures and tried to make them look bad, but people have to live. And these are public streets. If they were private streets, I would say yes, do what you want, and I will leave you alone. But on public streets, you have to have some flexibility.

MR. SIDELL:
Flexibility is exactly what we are looking for. We are not talking about enforcing the rules to the letter of the law. In my HOA, it is a simple matter to request the use of a dumpster while remodeling goes on. The problems are with the long-term violations. We are not against children; that is the same argument used to pass this legislation two years ago, and it is nonsense. All we said about sports equipment is that it should be put away out of sight when it is not

being used. That is a normal request. We are facing people who do not want to go to the effort to put stuff away.

CHAIR TOWNSEND:
I do not think you two fundamentally disagree. You are both trying to be rational and reasonable. Let me give you an example of the kind of situation we are trying to deal with. A homeowner called me to say that she had received a violation from the HOA because the film under the landscaping rock on her property was showing. She called a landscaper and asked them to add more rock to fix the problem, and when the landscaper dropped off the rock, the homeowner received a second violation for the rock in the street. If you are going to be cited, some flexibility needs to be shown to allow you to fix the problem. There needs to be a way to fill out a form to say how long a remodeling job is likely to last, and the HOA might say the dumpster can be there during the week but has to be hauled out on the weekends.

MR. SIDELL:
I agree that rationality is the key issue. However, at the moment, the hands of the HOAs are tied. There is no chance to be rational. If we could go back to the situation that existed before 2005 and apply some of that rationality, the problem will be taken care of.

CHAIR TOWNSEND:
The issue we need to talk about is public rights-of-way.

MS. O'DONNELL:
This particular amendment is talking about things that would be in alignment with the requirements that were already placed on the community in these public rights-of-way. In terms of stockpiling material in the streets, the Environmental Protection Agency (EPA) is strict about keeping contaminants out of the storm drains. In our construction project, we are no longer allowed to stockpile landscaping materials in the street, and there are substantial fines for doing so, in the range of $17,000. We now use sandbags and straw to keep the materials contained. The EPA is not as vigilant once we turn over a community, but this is still an issue, and it must be strictly enforced during the period of declarant control.

CHAIR TOWNSEND:
The issue of public rights-of-way is a significant one. We will leave it for now.

KEVIN JANISON:
In section 10, subsection 1, the addition of the phrase "motor vehicles on" completely undoes the legislation passed in 2005 on this matter. The city's response to these matters is much more quick and effective than the response of the HOA. The HOA has to send you a warning letter, then a second letter, and then a hearing has to be set up. The city's code enforcement will do their work in 48 to 72 hours, and they will correct a problem right away. Mr. Sidell makes my case fairly well, since he is on the board of an HOA that is fierce in protection of the CC&Rs. With 16,000 homes in his community, the only way he could demonstrate the worst-case scenario was using computerized rendering. I would suggest that a lot of this has to do with the behavior of individuals who would like to keep their communities in good shape. With regard to who actually enforces the letter of the law, I have been sued even when I obeyed the letter of the law by the HOA, who thought they would challenge laws anyway. Two years ago, this same group was worried about people leaving piles of manure in the street if the legislation passed. Where is the crap? It is disappointing that we are discussing this issue again, after the cities have said the streets are theirs and they will determine what goes on them.

CHAIR TOWNSEND:
I can assure you that long after the five of us on the Committee are gone, you will still be hearing these issues.

MR. BUCKLEY:
The Commission supports section 11. We adopted a temporary regulation with the same wording.

We support sections 12, 13 and 14, which deal with the registration of reserve study specialists. The Commission held hearings and believes that registration would be more effective than licensing and permitting.

We support the concept of section 15, which has to do with the issuance of temporary certificates.

CHAIR TOWNSEND:
Senator Heck has proposed an amendment to S.B. 362 (Exhibit L) covering this same topic.

MS. ANDERSON:
The Commission has adopted a provisional license by regulation, which is in *Nevada Administrative Code* (NAC) 116.175. The provisional license is for someone with no experience in management of common-interest communities. It requires them to work under the supervision of a supervising community manager for two years to acquire experience.

I have two concerns about the temporary certificate. I would like to verify that the initial application process would remain the same, including a background investigation. Secondly, the proposed language would allow the person to work and give them a year to take the required course in Nevada law. That causes me some concern, because a manager advises the board on proper procedures and policies.

CHAIR TOWNSEND:
Are we allowing a year because it is difficult to find the required 18 hours of instruction?

MS. ANDERSON:
No. We have at least one prelicensing provider who has pulled off 18 hours in Nevada law from the 60-hour curriculum and offers it separately. We are also working with an entity to develop a distance program that might be available on demand, which would help people get this requirement completed.

I am supportive of the language in section 15, subsection 1, paragraph (a), subparagraph (1). These criteria are important and would help clarify the current regulation in NAC 116.120, which states: "An applicant may provide evidence of any other combination of education and experience that the Division may deem to be equivalent to the requirements set forth in this section." We have been attempting to apply that liberally. A person who comes to Nevada needs to have experience in another state in association management for 12 months immediately preceding their application and at least 2 of the last 4 years active in that. In addition, they need to pass our exam, complete a background investigation, and take the course in Nevada law. When they have met those criteria, we issue them a full certificate rather than a provisional certificate.

I do have some concerns about some of the criteria for the temporary license. We want people who are qualified and knowledgeable for this important role.

SENATOR HECK:
I had no intention of preventing the background check. The application process would remain as is. This is just the criteria to become an association manager. The concern that was brought to me was that although you are using other experience as another pathway, the problem has been that the experience had to be in association management. There are other entities, other careers and other educational requirements that would prepare somebody who has not actually worked as an association manager just as well. For example, you could have a retired military person who had been a base installation commander, who could probably run an HOA as a pretty tight ship. But he would not meet the qualifications listed here because he was not in association management.

The reason for allowing someone to take the course after they get here was that you cannot get a course in Nevada law in other states. The idea was to allow the person to start work, have time to get all the requirements listed, including the 60 hours of training that went into effect January 1, 2007, and then be able to function in the job. Also, if there is an association willing to hire that individual, the association bears the burden of whether they are led astray by someone who is not qualified.

This amendment was brought to me by the association at Sun City MacDonald Ranch, who had applicants they thought were qualified who did not meet the NAC requirements and thus could not be hired. The idea of working under a supervisory manager does not apply to them because they only have one manager who does not work for a management company. They would thus have to hire a supervisor to train their provisional manager.

RAY COX (President, Sun City MacDonald Ranch Home Owners Association):
In almost all cases, this is a well-drafted bill that effectively addresses certain problems. Senator Heck's amendment is excellent and will do much to assist associations such as ours when we find ourselves in need of a community manager. There is a wealth of talented people out there, both inside and outside the State, who may not have managed HOAs but still have the managerial expertise to do a good job. We are the hiring authority and want someone who will be compatible with our association and who we think will do a good job. The board should therefore be the one making the decision as to whether or not a person is qualified.

MR. RADOCHA:
Regarding votes and fines, I have been fined for retaliation and selective enforcement. I ran for the board and lost by one vote, and now the board has taken my vote away. Since I am paying my dues and not allowed to vote, this is taxation without representation. Will the Ombudsman be able to help me?

CHAIR TOWNSEND:
If you will send us a letter with the specifics of this matter, we will address it for you.

SETH FLOYD (City of Las Vegas):
I would like to echo the concerns brought up by Mr. Janison. We are happy to work with you prior to the work session on language for section 10 to make sure we have authority over public streets.

CHAIR TOWNSEND:
We will return to this bill and S.B. 362 in a work session next week, on April 10 or 11. We will provide all potential amendments to these two bills in a manner that will be understandable, and we will try to have that to you before the meeting. If you are interested, you need to provide us with contact information.

I will close the hearing on S.B. 436 and open the work session on S.B. 22.

SENATE BILL 22: Authorizes the State Board of Physical Therapy Examiners to charge fees relating to the program of continuing education for physical therapist's assistants. (BDR 54-635)

ROCKY FINSETH (Nevada Physical Therapy Association):
I have a letter from the American Physical Therapy Association (APTA) on this bill (Exhibit M).

SENATOR HECK:
When we first heard this bill, I expressed a concern regarding how the State Board of Physical Therapy Examiners was reviewing continuing education provided by APTA and other matters, since they are the only national physical therapy association. The Board, APTA and the Nevada Physical Therapy Association have worked out the problem as noted in Exhibit M, and my concern has been resolved.

SENATOR HECK MOVED TO DO PASS S.B. 22.

SENATOR CARLTON SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR TOWNSEND:
I will open the work session on S.B. 113.

SENATE BILL 113: Requires certain policies of health insurance and health care plans to provide coverage for annual screenings for prostate cancer in certain circumstances. (BDR 57-333)

SENATOR CARLTON:
We looked at the language we used regarding mammograms and still had some concerns with naming specific organizations. We would like to eliminate the naming of the organizations and refer only to the American Cancer Society. I do not have the specific language with me.

CHAIR TOWNSEND:
We will take it up at a later work session. I will open the work session on S.B. 231. We have a color mock-up of the amended version of the bill (Exhibit N).

SENATE BILL 231: Revises provisions relating to confidentiality of contents of prescriptions. (BDR 54-524)

SENATOR HECK:
Thank you, Mr. Chair. In the packet, you have the mock-up that makes some changes to the original bill. One is that in section 1, it clearly states now that it's not—a pharmacy, pharmacist, or anybody who has possession of the contents of a prescription shall not divulge it. Then we added some additional exceptions in the spirit of trying to meet what was termed "the greater public good," although no real documentation was provided to me to show that that was necessary. However, in (e) we'll add a federal or state government agency charged with providing medical care. In (f), it's

a health insurance carrier or a health plan that's responsible for paying or all or part of a claim for the prescription. And as you may recall, an attorney for—I believe it was IMS—had stated that the current law actually was not being followed because it required a written authorization from a patient, so we're taking that out. And also, for the purposes of formulary compliance, case management or utilization review; for a person effectuating a drug alert, drug recall or other notice relating to drug safety; for a pharmacy benefit manager, as needed for the performance of his duties; and for a person engaged in health care research that is funded in whole or in part by the federal government. So that should allow any potential public good to still be considered. The issue that was brought forward by those in opposition was that was a patient-privacy law and was not meant to be a physician-privacy law. The fact is that's a rather broad assumption. The law was put into place in 1967. Minutes from that time are not available, so we really don't know what the legislative intent was, and HIPAA [the Health Insurance Portability and Accountability Act of 1996] didn't come into being until 1996. So since there's no legislative intent and the law says "contents," it has to be used in its general usage, which would mean everything on the prescription. So I offer the amendment as stated.

SENATOR CARLTON:

I would have to respectfully disagree with my colleague on the subcommittee. I was one of the people that did bring up the fact that in the original hearing on this bill, a lot of discussion was had about people breaking the law. And then it was pointed out that yes, it did say "pharmacist," but there's a lot of other folks who do have that information, so therefore they were not breaking the law. And I also was the person who made the statement that when I boiled this thing down to its essence, it was the public policy decision of whether we're taking the privacy rights that have been bestowed upon patients and applying them to providers also, and I'm not comfortable with going there yet. So I do not agree with the amendment.

SENATOR HECK:

If I can point out one change that would be made to the amendment that Mr. Young just brought to my attention—on page 2, letter—subparagraph (f), it would be not a health insurance carrier, but an insurance carrier or health plan, because there may be some insurance carriers, like an automotive insurance carrier that's paying a claim for a motor vehicle accident. So that's just one change to the mock-up.

SENATOR HECK MOVED TO AMEND AND DO PASS S.B. 231 WITH AMENDMENT NO. 3507 AND SECTION 1, SUBSECTION 1, PARAGRAPH (f), CHANGED TO READ "AN INSURANCE CARRIER OR HEALTH PLAN."

SENATOR HARDY SECONDED THE MOTION.

THE MOTION PASSED. (SENATOR CARLTON VOTED NO.)

* * * * *

CHAIR TOWNSEND:
I will now open the work session on S.B. 281.

SENATE BILL 281: Revises provisions governing industrial insurance. (BDR 53-1136)

ROBERT A. OSTROVSKY (Employers Holdings, Incorporated):
I have an amendment to offer (Exhibit O). There was considerable objection from other parties to changing the word "process" to "accept and deny," so I have removed that proposed change in section 1, subsection 1, paragraph (d) of the bill.

Secondly, on line 6 on page 4 of the bill, I am proposing to change the penalty to be paid by the insurer to the claimant to be not less than $3,000 and not more than $10,000 for the first violation, and not more than $37,500 for successive violations. The arbiter of the decision as to the exact amount of the fine would be the Division of Industrial Relations. This is an attempt to answer complaints that $5,000 was not an adequate fine for a first violation.

CHAIR TOWNSEND:
We also have an amendment from Senator Heck (Exhibit P). We will hold both of these amendments for discussion at a later date because they are complex, and we need to have everyone involved present for discussion.

MR. OSTROVSKY:
I will ensure that all involved parties are present for that meeting.

CHAIR TOWNSEND:
I will open the work session on S.B. 310.

SENATE BILL 310: Makes various changes relating to professions and occupations. (BDR 54-131)

CHAIR TOWNSEND:
Senator Carlton, do you want to make application for the increases to pay every Title 54 group?

SENATOR CARLTON:
That was the intent. I have an amendment (Exhibit Q) putting language in each chapter to allow the different boards to adjust their rates of pay. I have another amendment (Exhibit R) that I will hold for another day.

CHAIR TOWNSEND:
Is there any further business to come before this Committee? Hearing none, I will adjourn the meeting at 11:07 a.m.

RESPECTFULLY SUBMITTED:

_____
Lynn Hendricks,
Committee Secretary

APPROVED BY:

_____
Senator Randolph J. Townsend, Chair

DATE:_____