

**MINUTES OF THE  
SENATE COMMITTEE ON COMMERCE AND LABOR  
Seventy-fourth Session  
April 10, 2007**

The Senate Committee on Commerce and Labor was called to order by Chair Randolph J. Townsend at 8:08 a.m. on Tuesday, April 10, 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:**

Marvin A. Leavitt, Urban Consortium  
Mike Alastuey, Clark County  
Frank Master, M.D.  
Keith L. Lee, Board of Medical Examiners  
Angela Rock, Volunteer Associations for Leadership, Understanding, and Education  
Judy Farrah, Chair, Legislative Action Committee, Community Associations Institute  
Ed Allison, Federation of Exchange Accommodators  
Pamela Scott, The Howard Hughes Corporation  
Karen Dennison, Lake at Las Vegas Joint Venture

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Marilyn Brainard, Commissioner, Commission for Common-Interest  
Communities, Real Estate Division, Department of Business and Industry

CHAIR TOWNSEND:

I will open the hearing on Senate Bill (S.B.) 246.

**SENATE BILL 246**: Restricts and takes away authority of cities and counties to impose franchise fees and other similar fees upon certain public utilities. (BDR 58-235)

SENATOR RANDOLPH J. TOWNSEND (Washoe County Senatorial District No. 4):

This bill is similar to S.B. No. 277 of the 73rd Session, with several significant differences. That bill eliminated all franchise fees immediately. Senate Bill 246 phases out the ability of local government to charge these fees over a five-year period. Jurisdictions that charge less than 5 percent would reduce fees on the same schedule used by jurisdictions charging 5 percent. For example, if you charge 5 percent, you would reduce the fee by 1 percentage point a year until you reached zero in year 5; if you charge 3 percent, you would do nothing for the first 2 years, then start reducing in year 3. The statute could also be used for other purposes, such as redirecting a fee that is currently directed.

There are great needs in the State, many of them in southern Nevada, and we want to be sure these opportunities have had a chance to be fully vetted. This is something that is near and dear to my heart, so I have brought it back to the table in a different format to allow jurisdictions to phase out their fee with less of an impact than the last bill.

MARVIN A. LEAVITT (Urban Consortium):

Our objection to this bill is strictly a matter of revenue. Among the 5 cities I represent, the franchise fee produced revenue in 2006 of \$114.4 million that went into the General Fund of these entities. If you include all the cities in the State, that number goes up to \$117.7 million, so you can see how large the 5 cities are in proportion to the rest.

CHAIR TOWNSEND:

What are the five cities in the Urban Consortium?

MR. LEAVITT:

They are Reno, Sparks, Las Vegas, Henderson and North Las Vegas. For these cities, the money brought in by franchise fees equals 10.8 percent of their general fund; for all cities, it is 10.4 percent. This percentage has remained relatively constant over the last four or five years, which means the franchise fees are growing at about the same rate as all revenues.

The objection comes from the fact that we are talking about losing \$114.4 million in revenue. We recognize that the reduction does not start for a couple of years. There is a perception that local governments have a lot of extra money lying around that you can use to help the State. The fact is that right now, local governments are experiencing the same situation the State is experiencing. Our largest revenue source is sales tax. Sales tax is doing the same thing for us as it does for the State.

MIKE ALASTUEY (Clark County):

Franchise fees are an important source of income for all participating local governments. In Clark County, franchise fees yield around \$66 million a year currently, and this will probably rise in the future. It is a little less than 6 percent of the county's budget. If that same size reduction were to hit the budget of the State, it would approach \$170 million a year. Now might not be the time for serious consideration of such a measure. Now is the time to preserve revenue and restrain expenses wherever possible. Thumbing through the Clark County budget for this year, I note that the county finance director has wisely budgeted for a little less sales tax than last year, and that has held true. Sales tax is virtually flat.

What would a loss of this size do to local governments? Virtually all local government budgets statewide have set aside more than half of general fund resources for items related to public safety, such as criminal justice, fire and disaster response, victim services, and so on. All of those kinds of things are provided at the local level rather than the State level. Often perceptions arise that local governments are more flush with funds than the State, despite the reality that both have the same tax base. When one is up, they are both up; when one is down, they are both down. Unfunded needs vary from jurisdiction to jurisdiction, but as an example I will point out the capital improvement program for Clark County. In the section devoted to public safety, we see \$600 million in identified but unfunded capital projects.

Every local government is struggling to keep up with growth. We have been forced to keep hiring levels modest. We have not raised taxes. We see no immediate increase in sales tax; it is slack at the local level and at the State level. For us, this is probably not the time for optimum consideration of a measure like this.

SENATOR CARLTON:

What is the cause of this drop in sales tax? A year ago, we were talking about all these great projects we were going to be able to accomplish. In the last six months, everything has changed. What happened? I know part of it is housing.

MR. LEAVITT:

The major component is the housing market. The numbers are down significantly from a year ago. All the items that go into a single home are subject to sales tax. When total housing starts are reduced by double digits, sometimes as much as 50 percent, it has a huge affect on sales tax. The number of staff who would normally have been working on these homes is being reduced, and they no longer have money in their pockets to buy things. Once you start that, it expands. Tourism is still doing well, and we have some big projects that are underway; however, it is not enough to offset the huge drop in housing.

MR. ALASTUEY:

Housing is a huge component, I agree. Tourism and entertainment, the most visible sector of the area's economy, appear to be bustling, but other sectors are failing. The housing market also drives expenditures in other areas, such as lumber and home improvement. This reflects a cycle that all economies undergo. You cannot expect double-digit increases in any tax source to continue year after year. At some point, the trend is going to moderate toward a slower long-term increase. If you have double-digit increases two years in a row, it has to be followed by a nearly flat period, and that is what is happening now. Despite the feeling that this is disastrous, I recall a period in which there were actual declines rather than just a slowing of the increase. There have been worst downturns than this; we just hope it does not get worse.

SENATOR SCHNEIDER:

The rule of thumb is that real estate leads you out of a recession, and real estate leads you into a recession. We are going into a recession, and real estate is driving us into it.

If we repeal these taxes, will you cut your wasteful spending or replace the tax with something else?

MR. LEAVITT:

If you look at the situations in which local governments are allowed to cut taxes, what is there that local governments can increase? We are down to the point where there is nothing of significance that the local governing board has the power to increase. If you cut revenues, we have no choice but to cut expenditures to match the cut in revenues. When we look at consolidated tax (CTAX), which is the largest revenue source for local governments, in many cases it is equal to more than 50 percent of our total revenues. This year, CTAX has been flat when compared with a year ago, and there have been losses in some areas. At the same time, our expenditure budgets have growth built into them, and it is difficult to reverse midyear. For example, many employees have built-in salary increases, and there are inflationary increases in services and supplies that we buy. This is particularly true in the construction of roads. Our public works people tell me that in the last five years, the cost of building a road has gone up 18 percent a year. Part of that has to do with the cost of petroleum.

Recently, I compared the growth in the State General Fund for the last five years to the growth in revenue in the five cities I represent, then related that directly to population growth. The State's General Fund is growing at a rate that exceeds the growth in any of the local governments. In fact, for the last five years the State has been growing at almost twice the rate of the fastest-growing city, North Las Vegas. However, the growth in North Las Vegas's revenue is still not equal to the growth in the State's General Fund. We have a tendency to assume the double-digit growth will continue; all our budgets are based on it. We have rainy-day funds, but that is essentially one-time funds. If we are going to have financial security in this State, we will have to assume a more normal growth level and put aside anything beyond that rather than building it into our operations. Otherwise, we will continually have operating problems like we are experiencing right now.

MR. ALASTUEY:

At the county level, CTAX comprises a slightly smaller share than at the city level.

CHAIR TOWNSEND:

The CTAX is comprised of the Basic City County Relief Tax, the Supplemental City County Relief Tax, the cigarette tax, the alcohol tax, the property transfer tax and the government services tax, which is the old motor vehicle privilege tax. When the sales tax is reduced based on the lack of continued housing growth, your transfer tax automatically drops. Is that right?

MR. ALASTUEY:

Yes.

CHAIR TOWNSEND:

There are bills being proposed at the moment dealing the competitive nature of telephony. As a result of that, it is possible that the franchise fee revenue stream is now going to be part of a competitive market. As competition starts to suppress prices, the percentage you collect will not change, but the revenue will. Is that included in your calculations over the next five years?

MR. LEAVITT:

It is difficult to say. We have been in negotiation with the cable and telephone industries regarding these bills and have essentially reached agreement with them on provisions that we believe hold us harmless as far as our revenue goes. We do know we are going to have changes in this industry, though we do not know what they will be.

CHAIR TOWNSEND:

Regarding the tragic situation in the University Medical Center of Southern Nevada (UMC), some might say the fact that you are able to bail out the hospital is evidence that the county does have a great deal of money. Is there going to be debate about stemming that tide, either internally or by turning it into a private, not-for-profit hospital and eventually spinning it out of the control of the county?

MR. ALASTUEY:

I would point to the county's conservative budget practice. As I mentioned, the county's finance director budgeted for the collapse of the CTAX and was

prudent. The county has long been aware that losses are typical at a county-run hospital with a charter of community service and care for the indigent, though the magnitude of the losses was a disappointment, and changes are underway. Before the current crisis, the county undertook a substantial study of the business model of UMC by the Lewin Group. They determined that there were long-term demographic challenges in the market, that the mix of paying patients had declined in terms of revenue per service provided, that the catchment area was geographically shrinking, and that a number of other economic factors were in play. I can get you a copy of that report if you would like it. At the same time, a number of private, for-profit hospitals are expanding on the periphery of the valley, in search of insured patients. A number of business models are being studied, including outright sale of the hospital to a for-profit group, which would require statutory amendment.

SENATOR HECK:

The Senate Committee on Human Resources and Education has been looking at this issue in depth. They are considering a bill, S.B. 533, which would require the legislative auditor to do an audit of UMC and require UMC to report quarterly to the Legislative Committee on Health Care on their progress in rectifying the problem.

**SENATE BILL 533**: Makes various changes relating to county hospitals.  
(BDR 40-1388)

MR. LEAVITT:

You commented that utility franchise taxes grow when there is an increase in the rate charged by the utility. The franchise tax is like a number of other taxes in this; for instance, when the price of the merchandise goes up, the sales tax goes up. It is closely allied with the State's insurance premium tax. They are both services, and they are not covered by the sales tax, but they are areas where services are taxed. The main difference is franchise fees are levied by local government and insurance premium taxes are levied by State government. They are also not too far apart in the amount of revenue they bring in.

SENATOR HECK:

I appreciate that. However, franchise taxes are primarily to maintain rights-of-way where the utilities run, and the cost of maintaining that right-of-way does not change depending on how many long-distance phone calls I make or how much gas I pull through the pipe or how many megabytes

I download through my Internet connection. The problem I have is with the franchise fee to maintain rights-of-way being based on a percentage of the overall bill. If it is truly to maintain the right-of-way, that is a relatively fixed, knowable cost. To tie it to how much service someone uses does not make sense.

MR. LEAVITT:

There is not a direct tie-in between the amount of the tax and the amount spent on right-of-way in any one year. A more analogous situation is the fact that when I moved to Carson City a few months ago, I rented a house. The people that own the home have certain responsibilities in relation to the home, but the amount they put out on a monthly basis bears no relation to the amount I pay in rent. They pay property tax, insurance, maintenance, and so on, but what I pay in rent relates to the value they have in the ownership of the property. I pay rent to them because they own the property; they charge me for the use of their property. You might ask why citizens must pay for the rent of their own property. That is a legitimate question, and if everyone owned the same amount of property, it would be a better question. For instance, the amount the owner of a small home pays is minimal compared to the amount paid by the owner of a large casino. But whatever we call it, it is essentially a revenue-producing measure. It just uses a different base.

MR. ALASTUEY:

Regarding the subsidy paid to UMC, I have been reminded that the county made these funds available by dismantling a significant part of the county's annual capital improvement program.

CHAIR TOWNSEND:

I will close the hearing on S.B. 246 and open the work session on S.B. 285.

**SENATE BILL 285**: Revises provisions concerning a restricted license to practice medicine as a psychiatrist in a mental health center of the Division of Mental Health and Developmental Services of the Department of Health and Human Services. (BDR 54-65)

CHAIR TOWNSEND:

We had a discussion yesterday on changing the requirements that would allow psychiatrists to work for the Division of Mental Health and Developmental Services, Department of Health and Human Services. Mr. Sanchez asked that it



be expanded to private hospitals, which would defeat the purpose of the bill, since we are trying to get individuals to provide services through the State. There was also a debate over the term "restricted" versus "limited" and whether the license could be renewed at two years or five years.

FRANK MASTER, M.D.:

My hope in requesting S.B. 285 be written this way was to help the State fill its vacant psychiatric positions with competent psychiatrists who hold active licenses in other states, as well as providing adequate supervision for them. If this is expanded to private hospitals, it defeats the purpose of the bill. I empathize with the fact that private hospitals do not have an adequate number of psychiatrists, but I did not intend this bill to be an end-run around the Board of Medical Examiners.

KEITH L. LEE (Board of Medical Examiners):

I do not think S.B. 285 achieves the purpose of making it easier to license psychiatrists to practice in State-operated facilities, nor does the proposed amendment from Dr. Rosen presented at the last hearing on this bill do so. It was for this purpose that the present law was adopted. It allows a psychiatrist who does not have the 36 months of progressive training required for licensure to apply, and if he meets the other requirements, he may be granted a restricted license to practice in a State facility.

Dr. Rosen's amendment suggests the term be changed from "restricted" to "limited" because of his feeling that it would impair the psychiatrist's ability to be licensed in other states. In Nevada, a "restricted" license restricts the physician to practicing at specific facilities. This is not a reportable event that goes into the National Practitioner Data Bank. That does not put an onus on the physician's licensure status. A "limited" license in Nevada is limited to residents in a residency program.

The Board thinks the needs of the State are best served under existing law. We have the flexibility we need without S.B. 285 or the amendment, especially with the help of S.B. 412.

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

SENATOR CARLTON:

I understand what the bill is trying to do, but it sounds like it will make things more confusing in the long run. If we start changing terms without educating the other states as to what our terms mean, we could end up digging a deeper hole for ourselves and still not be able to fill the positions. I have no problem with the term "limited," but we may be trying to fix something that is not broken.

SENATOR HECK:

I agree. I appreciate that Dr. Master is trying to ensure that psychiatrists coming in under this restricted license are competent. However, this bill makes it more difficult to license psychiatrists here because of the 36-month requirement of progressive postgraduate training. We issue three types of restricted licenses, all of which are related to either geography or specialty. It is in the best interests of the State to continue the law as currently written.

DR. MASTER:

The State is having a problem getting psychiatrists to fill these positions. There may be adequate laws on the books, but they are not working. Perhaps the problem is how the laws are being applied. Doctors are having difficulty coming on board in Nevada; I have heard from doctors that it is taking them six to nine months to get a Nevada medical license.

SENATOR HECK:

I agree that this is not just affecting psychiatrists; it is affecting all physicians who are licensed in other states and who want to come to Nevada. We are taking steps to make blanket changes to expedite the process.

CHAIR TOWNSEND:

I will close the work session on S.B. 285. I will recess the meeting at 9:09 a.m. to allow staff to distribute the many amendments we have on the next bill.

I will call the Committee back to order at 9:29 a.m. and open the work session on S.B. 436.

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

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CHAIR TOWNSEND:

Mr. Young, could you explain the documents you have handed out with regard to this bill?

SCOTT YOUNG (Committee Policy Analyst):

The main document is the color mock-up showing proposed amendment 3623 ([Exhibit C](#), original is on file in the Research Library).

CHAIR TOWNSEND:

On page 13 of [Exhibit C](#), lines 42 and 43 have been deleted; this is the language about what can and cannot be released before approval by the board. The new language would include minutes of an executive board meeting, reserve studies and budgets to the list of items that are not required to be released, if they are in the process of being developed for final consideration by the board and are not on the agenda for final approval by the board.

On page 15 of [Exhibit C](#), we have new language for section 10 of the bill regarding motor vehicles. I understood Ms. Scott has been working with Clark County and the City of Las Vegas to come up with language about jurisdiction. Is that included in this amendment?

MR. YOUNG:

I am not certain. When I put the mock-up together, I had not heard whether Ms. Scott had been able to work out an agreement.

CHAIR TOWNSEND:

We have an amendment to the bill from Senator Heck ([Exhibit D](#)). Does this language apply to the bill or to [Exhibit C](#)?

MR. YOUNG:

This is to be added to the mock-up.

SENATOR HECK:

This language would go on page 19 of [Exhibit C](#), which is section 15 of the bill. My amendment would add to the existing language to establish an alternative pathway to becoming a homeowners' association (HOA) manager. I appreciate the language in the mock-up on this, but I would like to give more direction for when they develop regulations. I would like section 15, subsection 1, paragraph (b), subparagraph (1), of the bill to include the following language

from my amendment: "Provide for the immediate issuance of a temporary certificate to a person who receives an offer of employment as a community manager from an HOA; and has management experience determined to be sufficient ... ." I would also like to include the new language on page three of [Exhibit D](#) that defines "management experience."

WIL KEANE (Committee Counsel):

The proposed amendment—I put it together for Senator Heck in such a way that it can—it doesn't have to replace any of the provisions in section 15. All of the provisions in section 15 plus the amendment can coexist. They'll blend together easily. We'll just add a new paragraph (b) and everything would work together so that you would have two different schemes of temporary certification in—there's two different ways that somebody could get their temporary certification. They don't—we don't have to blend these together. We can if you want to, but they can—both schemes can go in side by side.

SENATOR HECK:

Rather than creating two alternative pathways, we should just have one alternative pathway. If you take those two passages from my amendment and place it in the mock-up, I will be satisfied.

SENATOR CARLTON:

What does "immediate" mean in this context? We do not want to have HOAs mandated to hand a temporary certificate to someone without looking over their qualifications.

SENATOR HECK:

The word "immediate" was used so there would be no false delays in issuing the certificate. If someone is coming from out of state with a letter of intent to be hired, once the paperwork has been reviewed and his management experience verified, he should be issued a temporary certificate immediately so he can start work, while he is then meeting the rest of the education requirements.

CHAIR TOWNSEND:

The catch term in this amendment is " ... the regulations adopted in accordance with paragraph (a) must include, without limitation ... ." This is not telling the

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Commission for Common-Interest Communities, Department of Business and Industry, to give someone a certificate. It is telling them to draft regulations that have this requirement.

SENATOR HECK:

That was my intention, yes. I am not concerned about including the word "immediately."

SENATOR SCHNEIDER:

We are doing this for the large master-planned communities, but we also need to do this for the high-rise buildings that are going up in southern Nevada. We do not have high-rise managers in Nevada, and those people have to come in from New York or Miami.

CHAIR TOWNSEND:

We will add the portion of Senator Heck's amendment as stated.

We also have an amendment from Senator Lee ([Exhibit E](#)) that would add a paragraph (c) under section 1, subsection 1, stipulating that a member of the board who is not current on all assessments may not participate in the hearing on a violation or vote on the imposition of a fine.

MR. YOUNG:

There is an error on this amendment. The language in blue, subsections 2 and 6 of section 1, is not part of Senator Lee's amendment and should be ignored. The amendment was based on language in S.B. 362, and when we carried it over we forgot to delete this material. Senator Lee's amendment is the language in green only.

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

CHAIR TOWNSEND:

The language is unclear. Is the board member not to participate or vote on hearings involving himself?

MR. YOUNG:

As it was explained to me, the concern was that board members who are not current in their own assessments should not be able to sit in judgment on people from the HOA who are before the board for violations.

CHAIR TOWNSEND:

Perhaps it should say, " ... participate in any hearing on a violation and may not vote on any imposition of any fine." As it is, it looks as if the board member cannot vote on his own violations.

MR. YOUNG:

That was not the intention.

CHAIR TOWNSEND:

Senator Lee's amendment also includes the addition of a subsection 12 to section 1, stating that HOAs must provide written confirmation when a fine is paid.

MR. YOUNG:

As it was explained to me, the purpose of this amendment was that in some instances, when an HOA member pays a fine, he has difficulty getting confirmation that the fine has been paid. Senator Lee wanted to impose not only a deadline for providing such notice but also a penalty for not giving notification that the fine was paid in full.

CHAIR TOWNSEND:

I understand the importance of having the HOA confirm that the fine is discharged, but I am not sure having a penalty of giving all the money back is the way to go. Perhaps it would be better to delete the last two sentences and end subsection 12 with " ... and that the fine is discharged." The last thing a board member or a property manager wants to do is go in front of either the Ombudsman for Owners in Common-Interest Communities or the Commission for Common-Interest Communities. It is a huge amount of time, and they are meticulous.

SENATOR SCHNEIDER:

I have had many complaints from homeowners who are fined when the pizza delivery truck speeds. The homeowner has no control over the pizza delivery

truck. The boards should go after the pizza delivery companies, giving them a warning the first time and banning them from the community the second time.

I would also like to see something in there on tenants. Tenants get fined and throw the notice away, and then the owner of the property does not know that a fine has been assessed. When the tenant moves out, the owner can have several thousand dollars in fines, and he did not know the tenant was a bad actor. I would like to see the homeowner notify the HOA of the tenant, and the HOA notify the homeowner when fines are assessed on the tenant. If the homeowner fails to do that, he is at risk.

CHAIR TOWNSEND:

Those are both important issues that need to be addressed. We have three proposed amendments from The Howard Hughes Corporation ([Exhibit F](#), [Exhibit G](#) and [Exhibit H](#)). Can anyone speak to these?

ANGELA ROCK (Volunteer Associations for Leadership, Understanding, and Education):

I have spoken with Ms. Scott about these materials.

CHAIR TOWNSEND:

It is my understanding that there may be some consensus regarding control of the roads.

Ms. ROCK:

Yes, there was consensus reached. I would like to ask a question about the amendment in [Exhibit E](#) that would require the HOA to provide written notice when a fine is paid. Is that notification to be provided within 14 days of their written request, or should the HOA daily be going through their records to figure out who has a zero balance and sending out notification within 14 days of that time?

CHAIR TOWNSEND:

The amendment reads, " ... within 14 days after a fine has been paid in full ... ."

Ms. ROCK:

This means that companies managing communities with 15,000 or 20,000 homes would have to go through the records every day, figure out who

had reached a zero balance and send out letters. Currently, many HOAs send out monthly statements. Many times, payments come into a lockbox for processing.

CHAIR TOWNSEND:

How many people have fines out of that 15,000? This amendment only applies to people who have been fined. I would say the 14 days starts from the day the check is posted.

Ms. ROCK:

My concern was to avoid future confusion, since I do not believe management companies look every day to see when payments post. A community of 15,000 could easily have 300 or 400 or more outstanding fines.

CHAIR TOWNSEND:

I do not think it is asking too much to provide a receipt when someone pays off a fine. When you get a check and you post it, you send a notice saying, "Paid in full."

JUDY FARRAH (Chair, Legislative Action Committee, Community Associations Institute):

Perhaps 30 days would make more sense, simply because all financial statements are closed every 30 days. Delinquencies are required to be examined at that point, and boards of directors are required to look at their finances every 30 days.

Ms. ROCK:

I agree. A timeline that was more akin to how the books are done would make more sense.

CHAIR TOWNSEND:

We have an amendment from Senator Titus regarding solar panels ([Exhibit I](#)) that includes information regarding the relative efficiency of the different colors of panels. When panels are made in a color other than black, it decreases the amount of energy produced. The amendment prohibits an HOA from requiring any measure that decreases the efficiency of solar panels by 5 percent or more. The problem with this is that it precludes anything that is on the market except black panels. There are manufacturers who make solar panels in colors like terra-cotta, but it has a decrease in efficiency of 14 to 34 percent compared to



black panels. I think there is middle ground here. I have discussed it with the sponsor of the bill, and the Nevada State Office on Energy should have a regulation on this issue, because they could take testimony on the type of panels available. This is something we need to discuss.

I will recess the work session on S.B. 436 and open the work session on S.B. 476 while we wait for Ms. Scott.

**SENATE BILL 476**: Makes various changes concerning business practices.  
(BDR 54-1389)

CHAIR TOWNSEND:

It is the intention of the Chair not to take up the issue of payroll services in this bill because we have not had any testimony on that. It is an important issue, but to just throw something in there would be inappropriate. We will be focused on qualified intermediaries only.

We have two amendments to this bill, amendment 3482 ([Exhibit J](#), original is on file in the Research Library) and amendment 3629 ([Exhibit K](#)). Does Mr. Barrett have some interest in this?

ED ALLISON (Federation of Exchange Accommodators):

Yes. He works with me, and I will speak for him.

CHAIR TOWNSEND:

When we return to this bill, I will want to know that we did not remove the requirement that when a qualified intermediary sells the business, those who have property or cash still with them are notified.

I will now recess the work session on S.B. 476 and return to S.B. 436.

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

CHAIR TOWNSEND:

Ms. Scott, we have three offerings from you, [Exhibit F](#), [Exhibit G](#) and [Exhibit H](#). Could you tell us what these are?

PAMELA SCOTT (The Howard Hughes Corporation):

Certainly. [Exhibit F](#) is an amendment of section 10 of the bill regarding rights-of-way. [Exhibit G](#) is a repeat of this same amendment, along with a fuller explanation of our reasoning for asking for the change. [Exhibit H](#) is an amendment of section 3, subsection 4, regarding nominations to executive boards.

The amendment in [Exhibit F](#) was one I brought for discussion last week. Since that time, we have been in discussion with the cities of Henderson, Las Vegas and North Las Vegas, and Clark County. They all indicated that with the inclusion of subsection 3, they have no opposition to section 10 of the bill. We are not trying to hide that this amendment undoes what was done last session, by putting the words "of motor vehicles" back into the statute. It has caused some problems for HOAs with public streets. In the HOA I live in, their original documents from 1988 required that there be no overnight parking on the streets, which are more narrow than most public streets, and that the HOA must enforce this rule. Since the change in the law in 2005, they have been unable to enforce it, which resulted in an accident when an elderly woman driving a golf cart hit a car parked where cars did not used to be allowed to park. We want to be allowed to enforce the provisions of our conditions, covenants & restrictions (CC&Rs) when it comes to quality-of-life issues like trash cans, sports equipment, debris, inoperable cars and so on. This should apply to six inches in front of the curb as well as six inches behind the curb.

SENATOR HECK:

After the last hearing on this bill, I received an e-mail from someone living in a gated community stating that their CC&Rs prohibit them from riding motorcycles within the community. That causes me concern.

Ms. SCOTT:

I believe you are talking about private streets. Current law does not prohibit any regulations on private streets that they choose.

SENATOR HECK:

Nonetheless, it seems ridiculous that the person has to wheel his motorcycle to the front gate before he can go to work.

SENATOR SCHNEIDER:

I have an amendment to offer regarding that issue ([Exhibit L](#)) using language that was proposed for S.B. 362.

Ms. SCOTT:

[Exhibit G](#) also includes an amendment that is being offered on Assembly Bill (A.B.) 499. I apologize; that is an error and should be ignored. The end result of the two amendments is the same.

**ASSEMBLY BILL 499**: Makes various changes to the provisions governing common-interest communities. (BDR 10-1342)

SENATOR HARDY:

What is an "inoperable vehicle"? Is that a vehicle that is in disrepair and cannot be operated, or it is a vehicle that works but is not currently being used?

Ms. SCOTT:

It is a vehicle that does not run or is not licensed. I am not aware of any associations that are towing vehicles. They would want to address the problem of unlicensed vehicles that are left on the street for weeks at a time through civil remedies.

SENATOR HARDY:

The language might want to specify that it applies to vehicles that are unlicensed or in disrepair. I have an old Jeep I keep at the side of my house because I do not use it often. I use it to drive to the airport during the Legislative session and occasionally on weekends. Is that an "inoperable vehicle"? I would prefer that the section refers to vehicles that are not registered or are in disrepair.

SENATOR CARLTON:

Ms. Scott, I am getting the message that you do not speak for everyone with this amendment, and that there are others who do not have a problem with the changes we made in the 73rd Legislative Session. What group do you represent?

Ms. SCOTT:

I am speaking on behalf of The Howard Hughes Corporation. We made sure we touched base with all the municipal entities in southern Nevada, and we also

talked with other large associations with public streets, such as Sun City Summerlin, Southern Highlands, the Olympia Group and others.

SENATOR CARLTON:

I am hearing the exact opposite: that this amendment is aimed just at this particular group and that there is not consensus.

KAREN DENNISON (Lake at Las Vegas Joint Venture):

I live in northern Nevada. One of the reasons we support the bill and this amendment has to do with the development of subdivisions. Local jurisdictions are requiring that there be no parking on one side of the street because the street is not wide enough. We are currently running afoul of State law because our CC&Rs do not allow parking on one side of the street and we have posted "No Parking" signs. This amendment would balance the interests of local jurisdictions being able to regulate versus the interests of using a public street for public purposes.

SENATOR SCHNEIDER:

I have not heard of any problems since we made the change in 2005. I have not gotten any calls that people cannot enforce street regulations. I would have to hear from Mayor Goodman and Councilman Brown that they are in favor of this amendment. I also note that in the amendment for A.B. 499 in [Exhibit G](#), you have included a provision that exempts provisions "designed to maintain and protect the quality of life in the community." This is a catchall phrase that can be used to justify any measure the board wants to take.

Ms. SCOTT:

That language was added at the recommendation of one of the government entities we met with. The issue is not playing basketball; we would have no objection if you want to carve basketball out of this bill. The issue is storage, whether of basketball hoops or trash cans. It is an obstruction, and it is in most local ordinances.

SENATOR SCHNEIDER:

If people leave their trash cans out in the street for weeks at a time, there are local ordinances to cover that. This is a huge discussion: do we give private governments more power than city or county governments? That is what this amendment does. This is a policy discussion.

SENATOR HARDY:

This amendment ([Exhibit F](#)) deals with common-interest communities that are not gated or enclosed. However, in subsection 2, it simply says "an association." Is subsection 2 intended to apply to all common-interest communities or just to gated communities?

MR. KEANE:

Subsection 2—when it says, "The provisions of subsection 1 do not preclude an association from adopting ... " et cetera, all it's saying is that the operation of subsection 1 does not interfere with anything that's set forth in subsection 2. So effectively, it only applies to the common-interest communities that are identified in subsection 1. Because all we're saying is those—that despite whatever we're saying in subsection 1, which limit common-interest communities that are not gated or enclosed—despite that, all communities can do what is set forth. So effectively, what we're saying is that the non-gated communities can already do the things that are set forth in subsection 2, and we're just not preventing gated communities from also doing it, if that makes sense.

SENATOR HARDY:

Regarding the policy question Senator Schneider raised, you can make an argument that there is not really a role for the local government in communities that are enclosed. But if the community is open for anybody to access, we necessarily have to protect the integrity of the local government to have jurisdiction in those cases. That is a threshold issue from a policy perspective, and I tend to come down on the side of the local government's ability to control where we are not limiting the access of the general public.

SENATOR HECK:

I still have a concern with the amendment ([Exhibit F](#)) in the inclusion of the phrase, "of motor vehicles." Adding that phrase to the language means motor vehicles are the only thing the HOAs cannot regulate, and it allows them to regulate all those other "quality of life" matters. As was stated, most jurisdictions already have local ordinances regarding those issues. If we add the language in subsection 3, we are not abrogating jurisdictional rights to those local governments. I therefore see no reason to have the HOAs also enforce them; they can leave them to the local jurisdictions.

SENATOR HARDY:

What would be the consequences of removing the phrase "of motor vehicles" from subsection 1? In the situation Ms. Dennison describes with the narrow roads, would the HOA then have to appeal to local government to adopt that restriction on their behalf?

SENATOR HECK:

I do not believe so. Including "of motor vehicles" allows HOAs to regulate other things than motor vehicles. The motor vehicle issue is already addressed in subsection 2, paragraph (a).

SENATOR HARDY:

The question then is whether the regulation of a motor vehicle is the regulation of the operation of the motor vehicle.

MR. KEANE:

I think the reason that we put the new language in 2 (a) was that when we inserted the new language "of motor vehicles" in subsection 1, it was not clear whether or not we were talking parking or operation, and arguably, it includes both. And so we added the language in 2 (a) to make sure that the new prohibition—or the prohibition of operating, or of dealing with motor vehicles in sub 1 was not going to prevent the association from dealing with parking.

SENATOR HARDY:

Senator Heck, was your concern with the regulation of operation or of parking?

SENATOR HECK:

That phrase actually had nothing to do with motor vehicles. The entire phrase is, " ... must not provide for the regulation of motor vehicles on any road ... " which means that they can then regulate everything else on the road other than motor vehicles, like basketball hoops, nets and all those kinds of things.

CHAIR TOWNSEND:

I have another amendment from Ms. Scott and Shari O'Donnell regarding section 4, subsection 2 of the bill ([Exhibit M](#)). Could you go over this for us?

Ms. SCOTT:

This section of the law deals with what the declarant needs to turn over to the HOA when the period of declarant control ends. The question came up as to whether the declarant should be paying for the audit when they turn over an accounting of the money. The bill is written to address the average HOA that perhaps turns over in 18 months to 2 years, rather than the large HOA that may have a 10- to 20-year build-out. The amendment is to address that issue and provide a safety net for the HOA with a bad declarant who did not do an audit and is not turning one over. When the declarant puts together the initial budget, the expenses of the HOA include audits and reserve studies. When the declarant pays his share of the assessments, either because he is paying assessments on unsold units or he is subsidizing the HOA, he is basically putting his share into the reserve study and paying his share for the audit as part of the HOA expense. To require that declarant to pay those expenses for the next 10 or 20 years plus pay for the audit every single year of the HOA until it actually turns over control during a long-term build-out is asking the declarant to pay twice.

CHAIR TOWNSEND:

What is an ancillary audit?

Ms. SCOTT:

It is basically an audit between audits. If the HOA has had an audit done for the year 2006, but declarant control ends in April 2007, the declarant would do an audit for the four months. That would simply say that if an audit was never done, they would have to go back to the inception of the community and do audits for all the years.

Ms. DENNISON:

I have a handout with two amendments to the bill ([Exhibit N](#)). One of these amendments addresses this same section of the bill, and I will withdraw it and support the amendment offered by Ms. Scott. I would like the amendment to section 7 to be considered, however.

CHAIR TOWNSEND:

Ms. Scott, are you also offering [Exhibit H](#) as an amendment to section 3?

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Ms. SCOTT:

I believe the Commission for Common-Interest Communities has an amendment for this. I will withdraw my amendment to section 3.

MARILYN BRAINARD (Commissioner, Commission for Common-Interest Communities, Real Estate Division, Department of Business and Industry):  
The Commission supports the amendment to section 4 in [Exhibit M](#) regarding audits. I have brought material from the Sparks Police Department ([Exhibit O](#)) regarding the use of the streets. Regarding section 3, Mr. Buckley drafted new language for this section that I do not have with me at this point.

CHAIR TOWNSEND:

We will have to come back to this issue another day. Please get together with the other interested parties and provide the Committee with language you all agree on for section 3. Senator Schneider, you have an amendment, [Exhibit L](#), regarding motorcycles. In the case in question, was the prohibition against motorcycles an amendment to the CC&Rs of that community, or was it in the original controlling documents?

SENATOR HARDY

I will find out.

Ms. SCOTT:

I am neutral on this issue; we do not regulate motorcycles.

CHAIR TOWNSEND:

Ms. Dennison, would you care to speak to your amendment, [Exhibit N](#), regarding section 7?

Ms. DENNISON:

This amendment has to do with the portion of the bill allowing the executive board to increase assessments for reserves to fund the reserves. We are in favor of that section, with the caveat that the decision of the board to increase assessments to fund reserves be based on a reserve study prepared by a registered reserve study specialist, so the assessment is not raised arbitrarily.



CHAIR TOWNSEND:

That makes sense. Ms. Scott, in your age-restricted development, did it include the ability to use golf carts in the original controlling documents? Do they have to be registered like cars?

Ms. SCOTT:

Yes, they were, and I believe these are the provisions of almost all of the Sun City communities. They are public streets, slightly narrower than normal, and they put into their CC&Rs when they get their entitlements that the HOA will enforce regulations that overnight parking is not allowed. The golf carts must be registered, and they cannot take them outside the main entrance. The accident I alluded to involved a woman on her golf cart hitting a parked car, and she was injured quite seriously. Prior to last session, the car would not have been allowed to park in that spot.

SENATOR SCHNEIDER:

If they deeded the streets to the city or the county, and there is no parking on one side of the street because they are narrow, would that not still be under the city's jurisdiction? These are public streets, not private.

Ms. DENNISON:

This is part of the entitlement process, where the city or county reviews your CC&Rs to make sure you have certain provisions in there they want for their approval of your subdivision. When the street is not wide enough to park on both sides, they require you to put that in the CC&Rs. Prior to this, the CC&Rs could not contain such a restriction.

CHAIR TOWNSEND:

Here are the amendments we have agreed on at this point: Senator Lee's amendment without the penalty provision, [Exhibit E](#); Senator Heck's amendment clarifying those who qualify for a temporary certificate, [Exhibit D](#); Senator Schneider's amendment regarding motorcycles, [Exhibit L](#); Ms. Dennison's amendment regarding reserve studies, [Exhibit N](#); and Ms. Scott's amendment on ancillary audits, [Exhibit M](#). There is still debate on Ms. Scott's amendment regarding the street issue, [Exhibit F](#). We will also talk further about Senator Titus's amendments regarding solar panels, [Exhibit I](#).

I will now close the hearing on S.B. 436 and return to S.B. 476.

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**SENATE BILL 476**: Makes various changes concerning business practices.  
(BDR 54-1389)

CHAIR TOWNSEND:

I suggest we remove the sections regarding payroll services from the bill and focus only on the business of qualified intermediaries. Unfortunately, we are out of time for this morning. We will take this bill up again at a future meeting.

Is there any further business to come before the Committee? Hearing none, I will adjourn this meeting at 11:08 a.m.

RESPECTFULLY SUBMITTED:

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Lynn Hendricks,  
Committee Secretary

APPROVED BY:

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Senator Randolph J. Townsend, Chair

DATE: \_\_\_\_\_