

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Fifth Session
May 15, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:11 a.m. on Friday, May 15, 2009, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman John C. Carpenter (excused)
Assemblyman William C. Horne (excused)
Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Julie Kellen, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Risa Lang, Chief Deputy Legislative Counsel, Legislative Counsel Bureau
Karen Dennison, Reno, Nevada, representing State Bar of Nevada,
Bar Section, Las Vegas, Nevada
Michael Trudell, Manager, Caughlin Ranch Homeowners Association,
Reno, Nevada

Chairman Anderson:

[Roll called.] We will open the hearing on Assembly Bill 554.

Assembly Bill 554: Ratifies certain technical corrections made to NRS and Statutes of Nevada. (BDR S-963)

Risa Lang, Chief Deputy Legislative Counsel, Legislative Counsel Bureau:

Assembly Bill 554 is a bill that the Legislative Counsel Bureau brings forward each legislative session. This bill is what we refer to as the "ratification bill." It basically encompasses some of the changes where we needed to make technical corrections during the codification process to make the bills work during the interim. These are changes that have already been made in the statutes, and they are essentially technical corrections. We bring them back to you for you to approve the changes that we made.

Assemblyman Hambrick:

Several weeks ago Ms. Lang was here to explain that they were going to go through and change *Nevada Revised Statutes* (NRS) to be gender neutral. Should that not have been all-encompassed? I do not understand why we have two separate bills for things like this. Should they have done that all in one bill?

Chairman Anderson:

I am sure Ms. Lang or Mr. Anthony would have more of an explanation than I. I think we do have the responsibility because of the early chapter, and we had a piece of legislation at that time that was dealing with certain kinds of issues throughout the statutes that needed to be corrected. That was the most appropriate vehicle for that particular technical correction in regards to the

gender question. Since that was the only one that opened up that section, we could have waited for this bill and put it in this one. This is an exempt bill, and it is dealing with all of those inadvertent problems that have been taken care of. Ms. Lang, would you like to explain more?

Risa Lang:

Basically, this technical corrections bill covers corrections that have already been made and have been codified. We are bringing it to you to show you the changes that we made during the codification process last interim for you to ratify. The other bill that we brought forward was to change the preliminary chapters so that we could make changes in this next interim. These changes are already made, and those changes will be made in the future.

Chairman Anderson:

We will close the hearing on A.B. 554.

The Chair will entertain a motion.

ASSEMBLYMAN HAMBRICK MOVED TO DO PASS
ASSEMBLY BILL 554.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us turn our attention to the work session document.

We will start with Senate Bill 350 (1st Reprint) ([Exhibit C](#)). This is a bill that we heard yesterday. Assemblyman Cobb was concerned about several issues.

[Senate Bill 350 \(1st Reprint\)](#): Makes various changes relating to business.
(BDR 7-1118)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 350 (1st Reprint) was presented by the State Bar of Nevada to amend certain portions of Nevada's laws relating to business entities. The Committee heard primary testimony on the bill yesterday. During the hearing, Scott Anderson had submitted a memo plus an addendum to the memo, which outlined several amendments. Those amendments are outlined as options 1 and 2 for the Committee to consider for proposed amendments on this bill, and they are also attached for your review.

During the hearing, based on questions raised by Assemblyman Cobb and other Committee members, amendments 3 and 4 were also proposed by the Secretary of State's Office. Amendment 3 relates to a person who fails or neglects to file registration documents, and it adds a "knowingly" requirement. Additionally, amendment 4 changes the fine from a fine not less than \$5,000 to a range of \$1,000 to \$10,000.

Assemblyman Cobb:

To be clear, any type of a fine would require a level of culpability equivalent to "knowingly" failing to file documents?

Jennifer M. Chisel:

Yes, that is correct. The "knowingly" language would go into all of the particular sections of those amendments that add the fine provision for not filing those registration documents, whichever types are required for the particular type of entity.

Chairman Anderson:

By establishing the floor at \$1,000, we will hopefully get the attention of the Attorney General, the district attorneys' offices, and other law enforcement agencies that may have the prosecutor's responsibility in the questions and possibly better enforcement as a result.

The Chair will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO AMEND AND DO
PASS SENATE BILL 350 (1ST REPRINT).

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us turn to the common-interest community bills starting with Senate Bill 351 (1st Reprint). Assemblyman Segerblom has reviewed these three pieces of legislation along with Ms. Chisel and Mr. Anthony, spending time developing the overall questions for the Committee's work session document ([Exhibit D](#)).

Senate Bill 351 (1st Reprint): Makes various changes relating to
common-interest communities. (BDR 10-1145)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 351 (1st Reprint) is the common-interest community bill that was presented by John Leach. The Committee has four amendments to consider for this measure, which would delete four of the sections out of the bill that raised the most significant concerns during the hearing. Mr. Leach agreed to delete sections 6, 8, 10, and 11, and with those deletions, it is our understanding that both Michael Buckley and Karen Dennison support the bill. Section 6 is the section that relates to the authority of the Board to amend the governing documents to conform to changes in *Nevada Revised Statutes* (NRS) without a vote of the owners, and that section is proposed to be deleted. Section 8 relates to the authority of the Board pursuant to the governing documents, and deleting that which would maintain existing law in that area. Section 10 relates to removal elections for board members, and section 11 relates to workshops of the executive board.

Assemblyman Segerblom:

We looked at this, and these are basically technical changes that appeared to be to the benefit of everybody. We took out the controversial sections, so with the amendment, I think the bill is very good.

Chairman Anderson:

The chair will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
SENATE BILL 351 (1ST REPRINT).

ASSEMBLYMAN HAMBRICK SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

Let us turn our attention to Senate Bill 261 (1st Reprint) ([Exhibit E](#)).

Senate Bill 261 (1st Reprint): Makes various changes relating to
common-interest ownership. (BDR 10-789)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 261 (1st Reprint) incorporates certain provisions of the uniform common-interest ownership act into *Nevada Revised Statutes* Chapter 116 and other common-interest communities sections. During the hearing on Monday, Committee members raised concerns about section 5 of the bill, which relates to master-planned communities. After the hearing, the proponents of the bill, Karen Dennison and Michael Buckley, proposed to delete section 5 of the bill

because of the policy concerns that were raised. That is the amendment for the Committee to consider on this measure.

Assemblyman Cobb:

I wanted to know if deleting section 5 eliminates the ability of the developer to be exempted from having to turn over control at a certain level of build-out.

Karen Dennison, Reno, Nevada, State Bar of Nevada, Bar Section, Las Vegas, Nevada:

Yes, the provision in section 5 relating to master-planned communities is the only section in the bill that deals with control turnover, other than the fact that if you have a commercial condominium, let us say a nonresidential condominium, you can be exempted from the entire bill, which would also exempt you from the control turnover provisions.

Chairman Anderson:

Will that create harm to the interests of the people in the development? I thought that was one of the things that we wanted to make sure, that at some point in time a developer really gets out of it since their voting rights are so dramatic during development. Is this going to somehow create a problem for people living in a common-interest community?

Karen Dennison:

The commercial condominiums are generally office condominiums, and the developer would not have any greater voting rights than the number of units the developer owns. He would be able to keep control of the board until 100 percent sellout. That would have to be disclosed in the declaration.

Chairman Anderson:

Do I detect reluctance from the Committee to move the bill at all? Is the Committee of the mind not to move the bill?

[No response.]

The Chair will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
SENATE BILL 261 (1ST REPRINT).

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN CARPENTER, HORNE,
AND MORTENSON WERE ABSENT FOR THE VOTE.)

We will move to Senate Bill 183 (1st Reprint). This is the larger of all the documents but only because of how much we are going to delete ([Exhibit F](#)).

Senate Bill 183 (1st Reprint): Revises various provisions governing common-interest communities. (BDR 10-70)

Jennifer M. Chisel, Committee Policy Analyst:

Senate Bill 183 (1st Reprint), sponsored by Senator Michael A. Schneider, makes various changes to the law regarding common-interest communities. This bill contains many of the same provisions that were included in the homeowners association (HOA) bill, Assembly Bill No. 396 of the 74th Session, passed by the 2007 Legislature that was later vetoed by the Governor. As the Chairman indicated, Assemblyman Segerblom worked with several interested parties on this bill to identify the noncontroversial provisions of the bill. Those sections will be retained in the bill. The sections that are included in other HOA bills passed by this Committee and sections with issues that remain unresolved have been proposed to be deleted from the bill. The attached mock-up reflects the amendments outlined for the Committee's consideration, and again, all 10 amendments that are outlined in your document would be to delete certain sections of the bill.

Amendment 1 relates to solar panels, and this would be to delete sections 1 and 45 from the bill. This issue is contained in another piece of legislation: Senate Bill 114. Senator Schneider indicated that that bill could probably be moved forward, and the sections in S.B. 183 (R1) could be removed.

Amendment 2 relates to utility tariffs, and that issue was contained in Assembly Bill 129. The motorcycle provisions in section 5 still have unresolved issues, as well as the radar gun issue in section 6, so those are proposed to be deleted.

Amendment 5 deletes section 23, which is addressed in Assembly Bill 311, and amendment 6 deletes section 24 regarding funding adequate reserves. There were still concerns on this particular section.

Amendment 7 in section 30 relates to rental units, and those provisions were contained in Senate Bill 253, which the Committee considered yesterday in work session.

Amendment 8 relates to parking for utility service and emergency service vehicles, and this is in section 32. Those provisions are addressed in Assembly Bill 129.

Amendments 9 and 10 have unresolved issues that relate to resale packets and temporary community managers.

Michael Trudell, Manager, Caughlin Ranch Homeowners Association, Reno, Nevada:

Bill Magrath appeared before this Committee when this bill was first heard. He had submitted an amendment for section 15 regarding the deletion of punitive damages for board members. That was not included in your packet. I am not sure if that was an oversight or if that was not supported by Assemblyman Segerblom.

Assemblyman Segerblom:

It is my understanding that it was taken out of the bill in the Senate. We thought we should leave it in now until we have seen what they have done with it.

Chairman Anderson:

They deleted it from which section in the Senate?

Assemblyman Segerblom:

Mr. Anthony can address that.

Nick Anthony, Committee Counsel:

To my understanding, the issue of punitive damages was taken up in Assembly Bill 350 on the Senate side. Therefore, I believe there was some discussion that in order to avoid the overlap, this bill did not need to address that issue.

Chairman Anderson:

Mr. Trudell, is it the language on line 15 of the mock-up? Is that what you said?

Michael Trudell:

It is in section 15 of the bill. It would be on your page 15, line 28.

Chairman Anderson:

This is existing statute?

Michael Trudell:

Yes, and what we had proposed at that time was that the line that reads "punitive damages may not be recovered against the association" would be amended to say "punitive damages may not be recovered against (a) the association, (b) a member of the executive board for actions taken as a member

of the executive board, or (c) an officer of the association for actions taken in this capacity as an officer of the association" and deleting the words "but may be recovered from persons whose activity gave rise to the damages."

Assemblyman Segerblom:

Because that was the existing law, that was not proposed as a change by Senator Schneider. We did not feel there was any need to change it in our bill. Additionally, it is our understanding that as A.B. 350 was amended in the Senate, this section was taken out. Before we do anything further, we want to see what they have done. They supposedly took A.B. 350 and basically only left one section in there.

Chairman Anderson:

Mr. Trudell, did you talk to Assemblyman Segerblom in the course of his discussion on this? I was under the impression that you were here yesterday to do that. Did you not?

Michael Trudell:

I did not have an opportunity to speak to him directly. I did leave him a message.

Michael Trudell:

Senator Schneider had met with Bill Magrath on several occasions and had agreed to that amendment. We tried to get him on the record that day. He did come back into the room, but there were others testifying on behalf of the solar panels, and he needed to get back to committee, so he did not get it on record. We did represent that we had met with him and that he was in agreement with the amendment.

Chairman Anderson:

The concern would be what will happen if the Senate deletes it. Assemblyman Segerblom, you are anticipating that we will not agree with whatever they delete, so this is going to be taken care of in conference?

Assemblyman Segerblom:

Correct. We do not want to give up something and, in conference, we can see what they deleted and what they kept in.

Chairman Anderson:

So they removed this language that we had inserted in our bill?

Assemblyman Segerblom:

They took A.B. 350 and used it as an opportunity to delete the section that he is talking about, even though it is existing law. We have not actually seen that in black and white yet. If they are going to use our bill to delete certain things, we do not want to be in the situation where we are overlapping what they may have done.

Chairman Anderson:

This Committee had been pretty adamant about the overall question of making sure that holding executive boards personally liable for anything was not our intent.

Does it harm the bill by putting it back in? Are you of the opinion that this is going to be one of the issues that the members are not going to agree to?

Assemblyman Segerblom:

Existing law deals with punitive damages, and Senator Schneider's bill did not change that. We did not hear any testimony to change it either. We now understand that the Senate has changed it in another bill they have pending, and that bill will come back to us. At that point, if we want to discuss whether we want to take it out of existing law, we can do that. We are getting ahead of ourselves to try to take it out in this bill at this time.

Chairman Anderson:

I thought we were adding it.

Assemblyman Segerblom:

It is in existing law.

Chairman Anderson:

I thought we were adding the proposed amendment.

Assemblyman Segerblom:

The proposed amendment would take out punitive damages from existing law, which Senator Schneider had not done.

Assemblyman Hambrick:

Could we get Legal to jump in at this point? Could we take the verbiage we had in A.B. 350 and insert it in this location? I am very concerned, as you are, Mr. Chairman, about personal liability. Being new to the process, I am not sure why we need to wait upon the upper house to do or not do what we think they may. We should take the issues that are in front of us to make sure this goes forward. As it is stated now, I will be voting against it. We need to make sure

that the personal liability aspect is taken out. The volunteers on these boards need to come in knowing that they have some protection as long as they act in accordance with existing laws.

Chairman Anderson:

I am in a bit of a quandary here because I do not disagree. If we put in the things that are of importance, this is an issue that was brought forth and the Committee had taken a position on in the bill that was sent to the Senate. It is our intention that it will be clearly in front of you as one of the issues that must be resolved in conference.

Assemblyman Segerblom:

Mr. Anthony, could you explain one more time what you have learned from the Senate?

Nick Anthony:

There is a policy choice before this Committee. Existing law currently has punitive damages on the books. It has been on the books since about 1993. On the Senate side in A.B. 350, I believe Mr. Trudell and his associates asked for an amendment to A.B. 350 to remove punitive damages from existing law. That amendment was agreed to by the Senate Judiciary Committee. Thus, this Committee, if they would like to make the same policy choice, could also insert that language and it would mirror A.B. 350. They would not be in conflict, and it would be the exact same amendment. You could also choose to leave the question until conference committee to resolve any differences.

Chairman Anderson:

Let us try to be consistent with the issue. Although it does not appear that it has provided an element that has caused people to be reluctant to serve on the boards, there is the potential for that. It was also portrayed that they may not realize they are personally held accountable for that in statute. I would suggest that we be consistent with our other amendments; however, I believe it is a debatable question, and I will support the bill whether it is in or out.

Assemblyman Cobb:

I personally believe that it is the will of the Committee that we eliminate the provision of law that allows for punitive damages against board members. We are assuming that people are not being dissuaded from serving on boards because of that, but we do not know how many more people would come forward to serve if we were to eliminate that provision. It is important to remember that you cannot purchase insurance to cover you for that type of recovery of damages, and if someone alleges it, that could subject you to \$200,000 or more in legal fees just to defend it. Insurance will not cover it.

I think it is an important provision, and I would support the amendment that was brought forward by the Caughlin Ranch Homeowners Association.

Assemblyman Segerblom:

To my knowledge, there has not been any testimony or evidence since 1993 that anyone has been sued, paid, or been defended for punitive damages. Insurance companies will defend you, even if you do not have punitive damages. I do not see that this is a pressing issue.

Assemblyman Cobb:

I wanted to bring up the recollection from testimony that the Caughlin Ranch Homeowners Association did testify to the fact that their board members were sued for punitive damages, and the court costs were well over \$200,000. They recovered those court costs, but that is a completely subjective decision by the court. There is no mandatory recovery of court costs and attorneys' fees. This has happened and could happen again in the future. Just because we do not have reams of examples of people being sued for punitive damages is not an argument, in my opinion, of why we should not remove that provision from the law.

Chairman Anderson:

I am going to support the mock-up as it is with the understanding that it will be part of the questions that will be in front of the conference committee with the Senate. I think the overall questions that need to be addressed are addressed in the bill.

The Chair will entertain a motion.

ASSEMBLYMAN SEGERBLOM MOVED TO AMEND AND DO PASS
SENATE BILL 183 (1st Reprint).

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

Assemblyman Manendo:

I had a question about the motorcycles in section 5. Why are we deleting section 5?

Assemblyman Segerblom:

There were some concerns raised, and we were trying to get it out quickly without having to debate each issue, knowing it would come up in the conference.

Assemblyman Manendo:

Is this particular section in another bill?

Assemblyman Segerblom:

It is in the Senate version. When it goes to conference, it will come back again. It dealt with whether they can require somebody to push their motorcycle out before they start it up.

THE MOTION PASSED. (ASSEMBLYMEN GUSTAVSON AND HAMBRICK VOTED NO. ASSEMBLYMEN CARPENTER, HORNE, AND MORTENSON WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

Today on the floor I will recommend that we not recede from our amendment number 587 to Senate Bill 45. This is a bill that dealt with adding murder, assault, battery, robbery, and other crimes to the list of crimes against an older person that may be subject to civil penalties. The Attorney General's Office indicated the need for that amendment. I do not think the Senate understood the nature of the Attorney General's suggested amendment to the bill. I am going to recommend a conference. It is my intention to have Assemblyman Kihuen chair the conference committee with Assemblymen Segerblom and Gustavson as the members.

We now come to the point where we are not in the work session document. Mr. Scherer is still concerned about corporation sole, which is the subject of Senate Bill 334. This is a bill that we took up earlier, and Mr. Scherer asked me about it again this morning. I was under the impression that most of the votes had not changed. Assemblyman Horne is not here, and that distresses me because I know that he was not happy.

If you recall S.B. 334, I need to know if there is a desire for further discussion on the bill or whether we can leave it as it is. The proper motion is a motion to rescind our action. This would be in compliance with Assembly Standing Rule 100, and the Chair has been advised that *Mason's Manual of Legislative Procedure* governs our ability to revise that action, and that is in chapter 42, section 480. The motion to rescind is proper to revise previous actions after the time for reconsideration has passed. Since there was no notice for reconsideration at the time, we could not take a motion to reconsider our action taken today. The motion to rescind takes a majority vote, and any member can make the motion to rescind, and it does not have to be voted on the prevailing side.

Mr. Scherer indicated there was a need for the legislation that had been proposed. There was an amendment that would have changed section 1.5 to include a long list of archbishops, bishops, presidents, trustees, and trusts. It would also change section 3 of the bill, "The purpose of the corporation sole is to acquire, hold or dispose." It would clearly give them the opportunity to do so. Does the Committee want to further discuss this? I would like to see a show of hands of who would like the issue to come up again.

[No hands were raised.]

Are there other issues that anyone wished to discuss?

[No response.]

[The meeting recessed at 9:19 a.m.]

[The meeting adjourned at 1:39 p.m.]

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 15, 2009

Time of Meeting: 8:11 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda.
	B		Attendance Roster.
S.B. 350 (R1)	C	Jennifer Chisel	Work session document.
S.B. 351 (R1)	D	Jennifer Chisel	Work session document.
S.B. 261 (R1)	E	Jennifer Chisel	Work session document.
S.B. 183 (R1)	F	Jennifer Chisel	Work session document.