

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

**Seventy-Fifth Session
May 20, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:22 a.m. on Wednesday, May 20, 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 John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

Assemblyman Harry Mortenson (excused)

GUEST LEGISLATORS PRESENT:

Senator Michael (Mike) A. Schneider, Clark County Senatorial District
No. 11

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nicolas Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Emilie Reafs, Committee Secretary
Steve Sisneros, Committee Assistant

OTHERS PRESENT:

Garrett Gordon, Reno, Nevada, representing the Olympia Group,
Las Vegas, Nevada
Tom Roberts, representing Las Vegas Metropolitan Police Department,
Las Vegas, Nevada
Michael Buckley, Chair, Commission for Common-Interest Communities
and Condominium Hotels
Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno,
Nevada
Michael Schulman, Wolf, Rifkin, Shapiro, Schulman & Rabkin,
representing several homeowners' associations, Las Vegas, Nevada
Kevin Wallace, representing Community Association Management
Executive Officers, Inc., Las Vegas, Nevada

Chairman Anderson:

[Call to order, roll call.] I will open the hearing on Senate Bill 182 (1st Reprint).

[Senate Bill 182 \(1st Reprint\)](#): Makes various changes relating to
common-interest communities. (BDR 10-795)

Senator Michael (Mike) A. Schneider, Clark County Senatorial District No. 11:

This is another homeowner's bill. I have included some materials for your
perusal ([Exhibit C](#)).

This bill came about because, like those of you from Clark County, I read the
news articles about an investigation conducted by the Federal Bureau of
Investigation (FBI) concerning possible collusion among members of some
boards, community managers, contractors, and attorneys involved in
construction-defect lawsuits. There are provisions in this bill to prevent such

abuses of public trust in the future and to punish the perpetrators if abuses occur.

These issues are complex and touch sensitive areas of most Nevadans' lives. Please look at each provision in this bill because each has a purpose and is designed to address a specific problem that has arisen, not once but many times. Let me conclude by observing that the developers of homeowners' associations (HOAs), HOA boards, the attorneys, the community managers who run HOAs, and many others with interests in the management of these communities all have powerful lobbying groups here at the Legislature. The homeowners have no lobbyists. So, in effect, we are their representatives and have a duty to voice their needs and address their concerns.

The handout that I provided explains the genesis and intent of each provision of the bill. I also have provided background materials for sections 6 and 21, since they deal with involved legal issues. The background materials consist of some Legislative Counsel Bureau (LCB) legal opinions and an Attorney General opinion (AGO), as well as the Governor's veto of Assembly Bill No. 396 of the 74th Session.

I would like to review a couple of amendments. One is from Community Association Management Executive Officers, Inc. (CAMEO) ([Exhibit D](#)), which was approved in Senate Judiciary and was in bill drafting because there were so many changes, but it was somehow left out of the bill. There is also the proposed amendment from Bill Magrath, President of the Caughlin Ranch Homeowners Association ([Exhibit E](#)). I have also reviewed the proposed amendment from Michael Buckley, who is the Chair of the Commission for Common-Interest Communities and Condominium Hotels, and I agree with some of the provisions.

The genesis here is to get serious about people defrauding homeowners in HOAs and stealing their money. The class C felony charges, which are proposed in this bill and could be levied against someone, are necessary. We have to be diligent in how we run these forms of government. This bill has a lot of support from people who work in the community.

Chairman Anderson:

This bill is exempt, so we have a little time to review it.

Assemblyman Horne:

Was there discussion in the Senate about the category C felony? This is a higher felony than, say, bribery of an elected official or any other election-process crimes, which are D felonies.

Senator Schneider:

We were told that law enforcement desired to have a serious hammer with mandated prison time for these crimes. It is my understanding that the FBI became involved because HOAs are quasi-governments, so this is political corruption. The Committee members from Las Vegas probably remember, when the story broke, it was detailed as political corruption. This is the way that the FBI and the Las Vegas Metropolitan Police Department (Metro) look at it.

Assemblyman Horne:

It seems odd that the felony for these quasi-governments would be a C, but if it were a county commission, city council, or one of our races, it would be a category D felony.

Senator Schneider:

I would be open to raising the others to a C as well.

Chairman Anderson:

I have heard the arguments about whether these are governments or corporations for some time. The jury is still out. Corporations can also be charged with criminal activities.

Assemblyman McArthur:

You said you looked at some of the suggestions by Mr. Buckley. Could you tell us which ones you do like?

Senator Schneider:

They came in yesterday, so I will review them today and let the Committee know.

Chairman Anderson:

What problem does this bill try to solve that is not currently in law? Why do we need the bill?

Senator Schneider:

Homeowners' associations are a form of government because they have the power to tax, fine, and take property. They are also contracted with the IRS as a nonprofit. There are millions and millions of dollars in the big HOAs which are not being watched. Volunteers with the boards get in, and then, when people with larceny in their blood see all of that money, which they think should be in their pockets, they steal it. In past sessions we have legislated that reserve accounts can be used only for capital repairs or improvements and have outlawed going into reserve accounts to take money out for operating expenses.

We set that money aside so strictly in the law so that people could not get in and take it, whether they are the managers, attorneys, or whomever.

It was purported that certain attorneys, desirous of starting construction-defect (CD) lawsuits, which can be worth tens of millions of dollars, have put board members on HOA boards. They did this by having them buy one one-hundredth of a house and by stacking people in an association in order to elect people to the board who would vote to start the CD lawsuits. It has been purported that the managers are involved and they helped rig the elections with these almost fictitious board members who do not actually live in the communities. The lawsuits are orchestrated from the top. That is what this bill is attempting to address.

It is a lucrative business to start these lawsuits. It is lucrative to award certain contracts to certain contractors, landscape contractors, et cetera, so the money can be controlled and the money can be stolen. The reason the proposed penalty is so harsh is because we want to send a strong message that it will not be tolerated.

Assemblyman Horne:

I have a property in my district, Angel Park Ranch, and they have covenants, conditions, and restrictions (CC&Rs), but they are not in a common-interest community (CIC). My understanding is that there are some neighborhoods that have CC&Rs but are not in a CIC. How would this bill affect them?

Senator Schneider:

There are some CC&Rs over certain parcels of land and units but no dues are collected or anything like that, so they do not participate through the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels. Assembly Bill 207 exempted some of these HOAs in rural areas that do not have boards but have some CC&Rs. So this bill will not apply to them.

Assemblyman Horne:

Would this bill interfere with any existing contracts that non-CIC properties already have with property managers or with enforcement provisions in the CC&Rs?

Senator Schneider:

I do not think so. I would have to look at the facts of the case.

Chairman Anderson:

I have a question about section 7 and eminent domain. Is there an example where a CIC has been using the powers of eminent domain?

Senator Schneider:

There has been. One that stands out is Los Prados Golf and Country Club Community. It was taking some of the property that was set aside as park, drainage area, and some private lots to redo it. The development further out into the desert was complete then, and the HOA no longer needed the drainage channel. The HOA took the property, got it rezoned, and sold lots to a builder to come in and build some townhome units. It took property from the association and from private homeowners.

Chairman Anderson:

So a CIC took its own land from its original use and used eminent domain without a vote of the membership? Did it break the CC&Rs?

Senator Schneider:

Correct, and it did break the rules. One or more of the board members may have been engineers or builders.

Chairman Anderson:

I would not have assumed that an association would even consider that it had eminent domain rights, but things like sewer lines or drainage ditches, which have to be maintained by the association, may allow for that.

Assemblywoman Parnell:

Are association board members required to be bonded? Is there any reference to the bonding of board members in statute?

Senator Schneider:

I am not aware of any.

Assemblywoman Parnell:

When I was the state Parent Teacher Association (PTA) president, anyone on the board who dealt with funds was bonded. It seems like such a common-sense solution to some of these problems.

Could you explain how you came up with the 10 percent of the total number of voting members in section 29, subsection 2, paragraph (c)? That seems extremely low to me.

Senator Schneider:

It is hard to get votes in an association and therefore to take action. If a homeowner can get 10 percent of the homeowners to sign a petition, then the homeowners could take it to the association board and ask that the community manager be replaced or sanctioned.

The 10 percent rule also applies to having a special election called. We have set the threshold pretty low so people can get involved and take action in their associations.

Assemblywoman Parnell:

That is to bring the action, not making the decision on the action?

Senator Schneider:

That is correct.

Assemblyman Manendo:

I have a question about section 12, where in the handout ([Exhibit C](#)), you talked about the pizza delivery man. I am not sure if this section covers it or not, but an HOA in my district was charging an admission fee on vehicles that came and provided services like yard maintenance or pool cleaning. Does this section cover that as well?

Senator Schneider:

I am not sure it does.

Let me point out some examples. Assemblyman Hambrick lives in Summerlin North. It was turned over from the Howard Hughes Corporation to the homeowners, and now they are running it. It is a large association, and in their budget, and in the budgets of other large associations, they have a line item for fines. They use the fines to balance their budgets. They project what amount they are going to fine each year, and it is in the tens of thousands of dollars. They consider fines as a budgeted item, and some associations are living off of those fines, so they are motivated to fine.

Assemblyman Manendo:

The same association had projected tens of thousands of dollars in fines for an HOA that had fewer than 300 homes. I saw the budget. I went to the meetings, and the board tried to have security remove me, even though I was invited by homeowners to attend the open HOA meeting. HOAs should not be allowed to charge a fee for service providers because next it is going to be utilities or trash collection.

Chairman Anderson:

First, in section 30 the bill proposes to increase the number of people on the Commission for Common-Interest Communities and Condominium Hotels' board of directors from five to seven, to include two people who are not members of an association's board of directors but are members of a CIC. The admonition is that they cannot be on the board of directors; would a former board member qualify?

Senator Schneider:

The Commission is made up of an attorney who practices homeowner association law, a developer representative, an accountant who practices HOA accounting, an HOA manager, and an HOA board member. That is how the Commission was set up in 1997, and we wanted experienced people for the first Commission. Now the thought process is to get more representation from homeowners.

Chairman Anderson:

Under the current law, there was one member who was a unit owner residing in the state and who has served on an executive board.

Senator Schneider:

It would be the executive board of his homeowners' association. The original idea was to have someone who knows how an association operates from a board member's perspective. Now we are trying to diversify the Commission and have some more input from people who are just homeowners living in an association.

Chairman Anderson:

Then in paragraph (d), that one member holds a certificate. What is that?

Senator Schneider:

That would be the manager.

Chairman Anderson:

There are probably more people living in homeowners' associations than in most of the rest of state.

Senator Schneider:

More people live in homeowners' associations than in the 15 rural counties of the state combined.

Chairman Anderson:

My next question is about the training officer in section 31: "The Division shall employ one or more training officers who are qualified by training and experience...." So we are now going to legislate the responsibilities of the people who work for the Real Estate Division?

Senator Schneider:

What this section says is that the Division should have a training officer who will prepare manuals to help train people on homeowner association boards and those who live in homeowner associations. Board members have been on their own and do not live under the same rules. They depend on the attorney and manager to know how the association is run. We want all boards to run somewhat the same. We also want to make sure that relevant information is provided, such as legal opinions for HOAs. Those opinions should be organized and available because the same problems come up in all of the associations. So when there is an AGO or an LCB opinion which states the intent of the law, it would be included in the manual, as would an official breakdown of all of *Nevada Revised Statutes* (NRS) Chapter 116 so people can understand it.

Chairman Anderson:

That is an admirable goal, recognizing the dramatic differences in size and expertise of CICs. Is the Legislature overly controlling a group, like the CICs, that wishes to separate itself from a governing body of the city or county? There also seems to be no oversight as to what is going to be included in this manual. It would be helpful, but would it increase the costs to the Division, to produce this manual, and potentially increase the cost of belonging to a CIC? Once the manual is created, how do we make sure it is being utilized?

Senator Schneider:

The manual would be put together by the staff, with the administrator for the Division overseeing it. The manual would be submitted for review, alteration, and approval by the Commission. Training is ongoing, even for large, established HOAs like Assemblyman Hambrick's, because there are new board members every year. The training manual will help the new members get up to speed.

The CIC fund has money in it. That is the \$3 a door fee which is still in the black. That fee was instituted in 1997, and the amount has not increased in 12 years. We may have to go to \$3.50 at some time in the future, but at this time it is still solvent.

Chairman Anderson:

So the agricultural groups that are exempted from that \$3 fee would not be able to avail themselves of this training?

Senator Schneider:

That is correct. They do not need that type of oversight because they are not doing this type of management.

Assemblyman Hambrick:

I agree that we have to be careful about positions we create and the objectivity of these manuals or instructions that go back out to the community. Instead of a position, perhaps we could consider a contract person who would work 24 or 36 months to come up with a DVD so trainees could take something home. I do not like the idea of adding to the bureaucracy if we can avoid it. Also, we could have different emphasis in the training for the different-sized associations. I am concerned about the homeowner members of the Commission; they may be slanted toward certain geographic areas. We need to be careful to avoid targeting areas.

Senator Schneider:

We have left the decision to hire an employee or a contractor to the administrator of the Division, Gail Anderson, and it is possible that there are existing personnel who can do this. We are only requesting that Ms. Anderson comply with the requirements of section 31.

Garrett Gordon, Reno, Nevada, representing the Olympia Group, Las Vegas, Nevada:

The Olympia Group supports the bill in its current form.

Tom Roberts, representing Las Vegas Metropolitan Police Department, Las Vegas, Nevada:

We are in support of the bill in its current form. I have not seen the amendments, specifically about the criminal application in section 3. I do not have a lot of experience investigating HOAs, because these crimes are not a violation of state law. They are mostly federal offenses. I have been told that there are instances of associations running rampant in the state, but we do not have the resources to address it.

To answer Assemblyman Horne's concern about the category C felony, we do not object to reducing it to a D, as long as it is consistent with the rest of the law.

As a citizen, I live in a HOA, and I understand the frustration that some people have if their fees are being taken or used unjustly. Metro supports the victims of crime in the community and therefore supports this bill.

Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels:

With regard to the training officer, I would point out that the Commission has seen the work product put together by the ombudsman and the education officer for the Division. They produced two DVDs which are very good; we were very pleased. They did it on their own. It is exactly the kind of thing we all hoped could be put together: it is an entertaining question-and-answer video. So that work has already been done but more certainly needs to be done, and the Commission encourages education.

Chairman Anderson:

I see that you have proposed amendments, but the Senator indicated that he received them only yesterday.

Michael Buckley:

That is correct; they are new amendments based on the revised bill ([Exhibit F](#)). A number of them are clarifications.

The first thing is that the preamble is really a one-sided view of associations. Most associations are governed by responsible, volunteer board members. Also, in these communities, members of the board have to be good citizens of that community. The preamble is somewhat inflammatory and unnecessary to what the bill attempts to do.

In section 3, our amendment clarifies that the crime of tampering with elections also applies to any other vote of the units' owners.

In section 4, which deals with undue influence, the Commission wants to make sure that the fact that someone is employed as a manager does not inadvertently bring him under the provisions of this section, just for normal management kinds of things. I have not yet seen the Community Association Management Executive Officers, Inc. (CAMEO) amendment, and if they are happy with it, I guess we would be.

Section 5 is a good idea in concept. People can petition the Division for a determination, or as the bill actually says, whether provisions of the law apply. I am not quite sure what that means. I added the word "interpretation." It deals with the applicability of the law and of Commission decisions and regulations. The point is that the Commission would like to have the final

approval over those regulations or interpretations that the Division might provide. That is existing law in NRS 116.615, subsection 3, which states, "The Commission, or the Administrator with the approval of the Commission, may adopt such regulations as are necessary to carry out the provisions of this chapter." And also subsection 5 states, "When regulations are proposed by the Administrator . . . the Administrator shall provide copies of the proposed regulations to the Commission The Commission shall approve, amend or disapprove any proposed regulations" We just want to make sure, when interpretations come from the Division, the Commission can look them over. The Division already does that when people come to them with complaints.

Section 6 deals with the issue Assemblyman Horne raised. An AGO last year opined that if there are CC&Rs, then it is a CIC. That was not the interpretation by the Commission, and as a technical point that I am raising as a lawyer, this is a nonuniform change. There was a change in section 7 of Senate Bill 261 (2nd Reprint), which was approved by this Committee, which adopts a uniform change. That change is a better one. The AGO says that if there are CC&Rs, your right under the CC&Rs is a property interest. So this section on the bottom of page 6 of the bill attempts to clarify that, and I agree with the language from lines 41 to 43, which says, "'Real estate other than that unit' does not include any interest in any covenants, conditions or restrictions to which the unit is subject" If it stopped there, it would be okay, but it goes on to say, "and the fact that the unit is subject to covenants, conditions or restrictions is not relevant and not to be considered" First of all, "covenants" and "conditions" are not defined in the law, but "declaration" is. People often refer to the declaration as the CC&Rs, but that last clause is very confusing, and there might be situations where CC&Rs are actually a declaration. So there are some technical issues with that part of section 6.

In sections 12 and 12.5, the new language deals with the unit owner and protects the unit owner or the invitee of the unit owner, but the tenant got missed: he could also have an invitee. So we added tenants in our amendment.

Section 13, subsection 9, says, "An association shall not adopt any rule or regulation that has the effect of prohibiting or interfering with a candidate" The word "unreasonably" needs to be added because there may be normal rules or regulations, for example, to not knock on doors before 9 in the morning or after 10 at night, which are reasonable limitations.

There are just a few more points. We support the amendments of Caughlin Ranch on punitive damages. Sections 24 and 26 cause concern because they say that an executive board "shall not intentionally interfere with

the exercise of any right conferred on a person pursuant to the provisions of this chapter." As we look through this law, there are rights of associations, of owners, of board members, and there is always this balancing act. This language is overly-broad, does not solve anything, and may, in fact, exacerbate situations.

Section 35 would prohibit the award of attorneys' fees by the Commission. If, in a proceeding before the Commission, the plaintiff is the Attorney General or the Division represented by the Attorney General, in the past the Commission has awarded the cost of the proceeding, including the costs of the Attorney General, to the Division as part of its recovery. This proposal misinterprets the situation. It does not deal with governing documents; it deals with a violation of NRS.

Assemblyman Segerblom:

Currently, under what circumstances could punitive damages be awarded and by whom?

Michael Buckley:

There is an argument that one cannot get punitive damages because of the language in NRS 116.4117, which does not spell out that punitive damages are allowable. But there is punitive damage language in NRS 116.31036, which is confusing. This is a clarification.

Assemblyman Segerblom:

At this point are you aware of anyone being awarded punitive damages or having punitive damages assessed against them?

Michael Buckley:

No.

Chairman Anderson:

Has this statute ever been used in the past? There is some concern all of a sudden, and there was recently a potential for its use in Caughlin Ranch.

Michael Buckley:

The problem is that, at the Commission level, we have the ability to make associations whole. That is the goal of the Commission's authority and NRS 116.4117. This language got buried in the indemnifications sections, and it was never focused on before.

Chairman Anderson:

I find it hard to believe that an attorney would not have found it there before if he was looking for a way to harm somebody, but now that we have raised the flag over it, everyone will know it is there.

Assemblyman Segerblom:

Have you seen the CAMEO amendment?

Michael Buckley:

I have not.

Bill Magrath, President, Caughlin Ranch Homeowners Association, Reno, Nevada:

I have served on my homeowner association board for 20 years. I am here for one major issue, which the Chairman just mentioned. No one really focused on NRS 116.31036, but if the Committee will look at the Caughlin Ranch amendment ([Exhibit E](#)), there is some red language that we ask be crossed out.

The current law states that one cannot obtain any punitive damages against an association. That makes sense because then all of the members would have to pay the punitive damages. The law then states, "but may be recovered from persons whose activity gave rise to the damages." That is what shocked me. It has gone unnoticed until now, but what the law does is put a target on my chest. A lawyer can sue me for a variety of reasons. If our board does not get the minutes out within 30 days, I could be sued for punitive damages. The Committee knows that is ridiculous, but I can be sued for it. I am here on behalf of the thousands of volunteers who run for office in our homeowners' associations.

I am in support of the bill because there are good changes in the law. If someone bribes a board member, there should be punishment. And there should be punishment if a board member takes a bribe. If someone tampers with an election, he should be punished. We have to maintain integrity. But if I make any mistake in following NRS Chapter 116 and *Nevada Administrative Code* (NAC) 116, I can be sued for punitive damages. Insurance can help defend against the lawsuit, but it cannot protect me from punitive damages, since they are excluded from the policy. My personal homeowner's policy also excludes punitive damages. I have to pay a lawyer to defend me. So, even though no one has brought a lawsuit in the past, when the board makes tough decisions, someone always gets upset. If he can sue me for punitive damages, he can coerce me into making decisions that are bad for the association. The threat is that I would have to hand over my personal financial net worth in the discovery process of a lawsuit. I am certain that no one would ever win a

punitive damages action against me because I am confident I acted correctly, but he can sue me for it. The nuisance value of that lawsuit alone will cause me to quit.

Karen Dennison from the Real Property Section of the State Bar of Nevada also supports this amendment. We are not afraid of punitive damages; we are just trying to increase the pool of volunteers. Would any of you want to serve on your homeowners' association board, for free, with the possibility that every member of your association can sue you for punitive damages? The system only works when there are good volunteers. The Commission has been in existence since this law was originally written. Mr. Buckley has done a wonderful job as the Chairman of the Commission. The Commission can remove or fine any board member who violates the law. If the amendment is passed, anyone in the association can still sue and be awarded compensatory damages and attorney's fees. By removing punitive damages, it increases the pool of volunteers, which makes the system work.

Chairman Anderson:

We also want everyone to recognize that those who serve on a board like this take on an enormous responsibility. I appreciate your concerns.

Assemblyman Segerblom:

Is there anything in the law which would prevent your homeowners' association from agreeing to indemnify board members if they were hit with punitive damages?

Bill Magrath:

There is nothing that prevents that from occurring, but it may be a breach of fiduciary duty, required by the law, for a board to indemnify a member for punitive damages. That is an expansion of what our duties are to our general membership.

Senator Schneider says that associations are little governments. I do not disagree to the extent that we have a governmental function, but we do not have immunity. We have the worst of all worlds: I am subject to all of these laws, which I am happy to follow, but if I do not follow the law, I am subject to punitive damages, because someone disagrees with me and sues to get back at me.

Chairman Anderson:

I appreciate your passion, but I also recognize that no one has been sued under this provision up until now. I hesitate to think that you are of the opinion that the whole bill depends upon this provision.

Bill Magrath:

No. I support the bill, in general, and I hope this amendment will be added. There are a lot of good things in this bill. I would also urge you to look at and support Chairman Buckley's comments, because he is an expert in this area.

Chairman Anderson:

What is your opinion about a performance bond that the association would buy for its board members?

Assemblywoman Parnell:

It just amazes me that we have never required bonding. So it seems to me that we should address this issue, either through this piece of legislation or in some other piece this session. Even if there was a threshold of, say, \$100,000, there should be something. But to have all of these associations with the kind of money in their accounts that law enforcement was referencing, and not require bonds for the people on the boards who deal with money, seems criminal. It is worth addressing.

Bill Magrath:

My association has a \$1.5 million reserve account. No one is bonded on my board. I do not disagree with the idea. I do not know if that would require changes in the election requirements. If one gets elected, one should get bonded. It makes sense to protect the members' money. It is a good idea.

Assemblyman Manendo:

Could you answer my earlier question?

Bill Magrath:

In the private neighborhoods behind gates, it is ridiculous to charge an admission fee. The one concern I have is that people speed and drive recklessly behind the gates. If there is no ability for an association to control that, then there are difficulties. I understand there are races in gated communities in Las Vegas. I just want to make sure the Legislature does not go overboard and not allow control of safety issues. I was appalled that anyone would charge an admission fee, and that provision should be added to this bill.

Chairman Anderson:

Ms. Dennison had to leave, but she supported the Caughlin Ranch amendment.

I have a handout from Mr. John Leach ([Exhibit G](#)) and an email from Barbara Nicodemus, who is a community manager, that I want included in the record ([Exhibit H](#)).

Michael Schulman, Wolf, Rifkin, Shapiro, Schulman & Rabkin, representing several homeowners' associations, Las Vegas, Nevada:

I am for some parts of the bill and against other parts of it. I represent three associations that we took over after they had FBI issues, so I am very much in favor of the provisions regarding felonies for people who violate the law.

I agree with what Mr. Buckley said on sections 5 and 6 ([Exhibit I](#)). I agree with Mr. Magrath about section 12; there has to be something that says we can stop speeders. I have a bigger issue with that provision: there needs to be something that says we can stop contractors who are there on a regular basis and fine the owners if they are breaching the rules. If this provision were to pass, I do not think we would have that ability anymore.

Section 14 is going to make it easier to remove board members. I would suggest that we leave the language as it is, which Senator Schneider had two years ago.

I have a big issue with section 18, which affects the attorney-client privilege. This provision drops language that allows the contract between an attorney and the association to be discussed in executive session. If this were dropped, in essence, I would have to give notice to the other side and all owners, ten days in advance of a homeowners meeting, that I am going to meet with my board to talk about a possible injunction or attachment, giving the other side tremendous insight. I request that be returned to the original language.

Sections 33 and 37 are somewhat surprising. They provide that the Division will not disclose any information that is confidential, meaning an affidavit it receives complaining about an owner, board member, or attorney, prior to the filing of a formal complaint. There is a process that tries to resolve these complaints on an informal basis. If one cannot get that affidavit, and if knowledge about the complaint is kept from the person who is being complained about, there will be no way to resolve these problems, and they will all end up in front of the Commission. This will put more work on the Division and will limit the cases that are already heard.

Section 39 speaks to the issues the Committee has been dancing around with respect to bonds. This section would require that a bond be posted by an applicant, meaning a manager. Substantially all associations have fidelity bonds, which are usually in the name of the association and protect against theft by the association's employees. And a rider or endorsement is added, which protects against theft by the management company's employees if that is an independent party. If the Committee wants to change NRS Chapter 116 to require all associations to have a bond, it would make sense, but it does not make sense to require a bond of an applicant or manager who is not even in contractual privity with the association. He is usually an employee of the management company and makes \$30,000 to \$50,000 a year. A bond will cost him \$2,000 to \$2,500 a year. He would have to get the bond before he even applies to become a manager, which seems ludicrous. The burden needs to be on the management companies or, better, the associations. I would be willing to bet that Caughlin Ranch has fidelity insurance to protect against theft from the \$1.5 million reserve.

Kevin Wallace, representing Community Association Management Executive Officers, Inc., Las Vegas, Nevada:

We are in agreement with the amendments presented by Caughlin Ranch and also those from the Commission. We also support Mr. Schulman's amendments and urge your support. We presented an amendment, but, after listening to the discussion, it is redundant, so we withdraw it and urge support for the bill as amended.

Chairman Anderson:

You no longer feel your amendment is needed at all?

Kevin Wallace:

That is correct.

Chairman Anderson:

Is there anyone else who would like to be on the record? [There were none.] I will close the hearing on S.B. 182 (R1).

We are adjourned [at 10:06 a.m.].

RESPECTFULLY SUBMITTED:

Emilie Reafs
Committee Secretary

Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 20, 2009

Time of Meeting: 8:22 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 182 (R1)	C	Senator Michael A. Schneider	Handout
S.B. 182 (R1)	D	Senator Michael A. Schneider	CAMEO Amendment
S.B. 182 (R1)	E	Senator Michael A. Schneider	Caughlin Ranch Homeowner Association Amendment
S.B. 182 (R1)	F	Michael Buckley, Commission for CM1304 Common-Interest Communities	Amendments
S.B. 182 (R1)	G	John Leach, representing several homeowners associations	Letter
S.B. 182 (R1)	H	Barbara Nicodemus, Community Manager	Email
S.B. 182 (R1)	I	Michael Schulman, representing several homeowners associations	Letters