

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

**Seventy-Fifth Session  
May 27, 2009**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:25 a.m. on Wednesday, May 27, 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/](http://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](mailto: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 Harry Mortenson  
Assemblyman James Ohrenschall  
Assemblywoman Bonnie Parnell

**COMMITTEE MEMBERS ABSENT:**

None

**GUEST LEGISLATORS PRESENT:**

Senator Michael 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 Counsel  
Emilie Reafs, Committee Secretary  
Steve Sisneros, Committee Assistant

**OTHERS PRESENT:**

Bill Magrath, President, Caughlin Ranch Homeowners Association,  
Reno, Nevada  
Michael Buckley, Chair, Commission for Common-Interest Communities  
and Condominium Hotels, Las Vegas, Nevada  
Marilyn Brainard, Member, Commission for Common-Interest  
Communities and Condominium Hotels, Sparks, Nevada

**Chairman Anderson:**

[Call to order, roll call.] This is a work session for Senate Bill 182 (1st Reprint).

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

**Jennifer M. Chisel, Committee Policy Analyst:**

[Reviewed work session document ([Exhibit C](#)).] There are several amendments  
that were proposed, and in order to go through this in an organized fashion,  
I will review them section by section.

The first proposed amendment I broke down into subsections lettered  
(a) through (h), and these are technical amendments proposed by  
Michael Buckley, Chairman of the Commission for Common-Interest  
Communities and Condominium Hotels (Commission). I have attached the  
language he submitted last week during the hearing, and it begins on page 13 of  
the work session document.

**Assemblywoman Parnell:**

I have a question on the first page of the work session document, third bullet from the bottom: "Clarifies that an executive board has authority to impose necessary assessments to adequately fund reserves without obtaining approval of units' owners." I have a question about the parameters of the word "reserves."

My friend was in a situation where they needed new roofing, so his assessment was increased to cover the roof. Would that be something about which units' owners would not have to be notified? What do units' owners not have to approve?

**Senator Michael A. Schneider, Clark County Senatorial District No. 11:**

We discussed reserves several sessions ago, and we dictated that they have to be fully funded. There has to be a reserve study, which goes out 25 to 30 years, so that when the end of the life of the major common elements like asphalt, roofs, and swimming pools comes up, the money is there to repair them. Homeowners continually pay into the reserve. It is not an item that has to be voted on because, by law, the money has to be in that fund. The reserve assessment is not like the regular maintenance dues.

**Chairman Anderson:**

That is in section 21, so when we get to section 21 we can amend the bill to clarify that any special assessment is based on an approved reserve study.

**Senator Schneider:**

And to clarify more, we did that years ago so that when someone new moves into the homeowners' association (HOA), and their dues are \$100 a month, but there is \$1 million in deferred maintenance, they are not broadsided with a \$10,000 assessment.

**Chairman Anderson:**

Do we have suggested language for that?

**Jennifer Chisel:**

No, that was just a conceptual amendment.

**Nicolas Anthony, Committee Counsel:**

We can certainly draft something that would require any of those assessments to be based on an approved reserve study.

**Jennifer Chisel:**

Amendment number two was proposed by Mr. Buckley to delete the preamble, because he believes it presents only one side of the issue, the abusive associations.

**Chairman Anderson:**

This brings up the question again if common-interest communities (CICs) are a separate form of government or a corporation. If they were a government, they would have to come before the Legislature and ask for approval to be set up as a governmental entity. That is something that will come up in the future.

**Jennifer Chisel:**

Amendment 3 covers sections 3 and 4, which is where the election-fraud penalties are created in the bill. The amendment would reduce the penalties from a category C to a category D felony.

**Chairman Anderson:**

So it is consistent with other election-fraud penalties.

**Jennifer Chisel:**

The fourth amendment would add language to section 5 of the bill regarding the adoption of regulations specifying certain procedures for declaratory orders or advisory opinions issued by the Real Estate Division (Division). This was proposed by Mr. Buckley, and it is in the work session document on pages 13 and 14.

**Chairman Anderson:**

If CICs were separate from the Division, I could understand Mr. Buckley's point, but the Division is still the responsible party, so we would not want to exclude it from its supervisory role of the Commission.

**Assemblyman Horne:**

I agree with you, so that any motion for this bill will not include this amendment. I, too, believe the Division should remain in a supervisory role over the Commission.

**Jennifer Chisel:**

The fifth proposed amendment would delete the proposed definition in section 6, lines 41 through 44. Mr. Buckley believes that the amended definition of CIC, which was included in Senate Bill 261 (2nd Reprint) is better. It is uniform law language and resolves the issue that section 6 of this bill is trying to resolve. I have included the language of S.B. 261 (R2) at page 17 of the work session document.

The amendment of section 12 of the bill was a proposal by Assemblyman Manendo to prohibit an association from charging an admission fee to people who enter association premises to provide services to a unit's owner in that association. This is a conceptual amendment.

The next amendment has two parts. There are two proposals to choose between. The first is 7(a)(i), on page 3 of the work session document, from Bill Magrath of Caughlin Ranch and supported by Michael Buckley. The amendment language on page 18 of the work session document would specifically exempt the association, members of the executive board, and officers of the association from punitive damages. Section 29 of the bill is also included to provide a technical internal reference to that statute. The second proposal, 7(a)(ii), is to put a period at the end of the sentence "Punitive damages may not be recovered against the association" and strike the language "but may be recovered from persons whose activity gave rise to the damages."

**Chairman Anderson:**

I found it interesting that Mr. Magrath and others would raise this question after the many years it has been in the legislation. After discussion with the Legal Division and others, I think my amendment will solve the problem in a simpler fashion.

**Assemblyman Segerblom:**

Also, Assembly Bill 350 (2nd Reprint) was amended in the Senate to also delete punitive damages, so that amendment is pending and may end up in a Conference Committee.

**Chairman Anderson:**

There is also a part (b) to amendment 7, on page 4 of the work session document which Assemblywoman Parnell suggested. There was a problem trying to find that kind of a bond for a homeowners' association since it would be predicated on the amount of the reserves and the cost of the bond itself.

**Assemblywoman Parnell:**

My idea was that the person or persons who have access to reserve money be bonded, because reserves can be hundreds of thousands of dollars. I do not know if it is possible to do, and there could be a threshold. I just do not know if anyone has ever looked into it.

**Chairman Anderson:**

Part of the contention was that there was difficulty in finding bonding capacity for this kind of endeavor, as opposed to charitable groups that often require the

fiduciaries on their boards to have them. We require a bond of the association manager, who runs the day-to-day operations.

**Assemblywoman Parnell:**

I would have been more comfortable if someone who had access to the money was bonded.

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

The law currently provides that at least two association board members must sign all reserve checks. The idea is to have at least two members sign off on those checks to prevent theft, and that the second signature confirms the right to spend the money. That is the check and balance. The reality is that many board members do not have the ability to get a bond for the reserve amounts. Managers are not allowed to sign reserve checks, so having a bonded manager does not solve this issue.

**Assemblywoman Parnell:**

If we cannot settle this issue in this piece of legislation, I would like to have it explored further in the Interim.

**Senator Schneider:**

We can have some hearings over the Interim, and I would commit to working on that. It can be done on an ad hoc basis. The lion's share of the associations are in the Las Vegas Valley, so we can arrange some hearings there. There are a lot of rural associations in the north, so there are a lot of issues. It is difficult to put together a bill during the Session, and my bills were put together with the help of Scott Young, who has worked with me for years.

**Assemblyman Segerblom:**

Is there an issue of someone having stolen reserve funds?

**Senator Schneider:**

It is an ongoing issue; there have been millions of dollars stolen over the years. Embezzlement is not the highest-priority crime for law enforcement.

**Assemblyman Segerblom:**

It would seem like a liability or an errors and omissions policy would be easier to get than a bond.

**Senator Schneider:**

A lot of associations have their reserve and operating accounts cleaned out. There have also been issues with managers, who are managing several

associations, shifting money among associations' operating accounts, while skimming off the top. It is an unusual situation, but it has happened more than once. Ten years ago, managers did not even have a license and were not regulated at all, but now they are licensed. If someone goes bad, just like any other crime, he can take a lot of money very quickly.

**Chairman Anderson:**

I will direct this question to Mr. Buckley. Have you ever looked into the possibility of bonding and for a bonding for association board members?

**Michael Buckley, Chair, Commission for Common-Interest Communities and Condominium Hotels, Las Vegas, Nevada:**

We have not.

**Chairman Anderson:**

Has the issue ever come up?

**Michael Buckley:**

I have two points. We have heard from the Real Estate Division Compliance Department that there are cases of embezzlement that we are not privy to because they are confidential. I know there are investigations, but I am not sure whether there are bonds or insurance to protect for that. The other point, and I will check on this, is that there may be requirements in Fannie Mae or in the Federal Housing Authority (FHA) for some kind of fidelity bonding. I just checked *Nevada Revised Statutes* (NRS) 116.3113 for the general insurance requirements, and I did not see it there, but I would not be surprised if it was required by some of the regulatory agencies that finance associations. It is something the Commission would be happy to look into, because the bonding of managers has come up before and the issue of board members being fiduciaries has come up before, so if there is a way to make it more concrete, we would be happy to do so.

[Chairman Anderson stepped away.]

**Vice Chair Segerblom:**

So you have no opinion as to how hard it would be to get bonds of this size for board members versus liability or errors and omissions insurance?

**Michael Buckley:**

That is correct. We should have an insurance expert talk to the Commission.

**Assemblyman Horne:**

As a cautionary note on this issue going forward, some smaller associations have large reserves that have been compiled over a period of time, but they might not be able to afford the bonds, which can be expensive. We need to be aware so we do not create something that is overly burdensome to some associations.

**Assemblywoman Parnell:**

Yes, I had mentioned the threshold, but it does concern me, and we need to protect those who are paying their dues and fees, assuming that everyone is being responsible with the money.

**Senator Schneider:**

A lot of what is in S.B. 182 (R1) is a direct result of the construction-defect scam that went on in Las Vegas. I know that the Vistana Association was not only scammed on the construction-defect lawsuit, but the reserve accounts were also raided by the same group of people. I have been told that that association is sitting with no funds at all, and it will take many, many years to build them back. It has happened across the state, which is why we asked to be able to charge felonies for people who do these things.

**Vice Chair Segerblom:**

Again to Mr. Buckley, you have no way of knowing, if this law were adopted, if the associations could in fact obtain bonds for this level of money in reserves?

**Michael Buckley:**

That is correct. Also, we do not know whether the cost would be prohibitive.

**Marilyn Brainard, Member, Commission for Common-Interest Communities and Condominium Hotels, Sparks, Nevada:**

Several national insurance companies specialize in liability and other insurance for homeowners' associations, so we can find out more information during the Interim and have those companies respond. It would not be difficult to do.

**Vice Chair Segerblom:**

Assemblywoman Parnell, would you be happy with that?

**Assemblywoman Parnell:**

I go back to my comment last week—if the state Parent Teacher Association (PTA) treasurer can find a way to get bonded, it seems as if we could find a way to provide some level of security for HOAs, at least for the two check signers.



**Assemblyman Hambrick:**

In my past career, we used to use suspension and debarment. Does Nevada have suspension and debarment available? If it does, not only can we suspend and debar corporations but also individuals up to a lifetime suspension and debarment, and that is a heavy hammer.

**Michael Buckley:**

The Commission does have the ability to remove someone from office, and I suspect the Division has that same power, since it can take one's license. If that person is ever convicted of a crime like embezzlement, the Division is required not to permit him to ever be licensed.

The other thing I would mention, because of the legislation passed in 2005, audits are now required which is another help here along with the two-signature requirement. It is not going to stop someone who purposely embezzles, but it is a help.

[Chairman Anderson returned.]

**Chairman Anderson:**

Let us move on to point 8 in the work session document.

**Jennifer Chisel:**

The proposal is to delete the proposed language of subsection 2, of section 24, of the bill. It deals with interference with rights and, according to Mr. Buckley, is too vague. As an alternative, the Committee could enumerate specific rights.

**Chairman Anderson:**

We could spend an entire session trying to determine which rights would be included, so I think Mr. Buckley is correct to want to delete that section.

**Jennifer Chisel:**

Amendment 9 is actually a similar proposal from Mr. Buckley regarding subsection 3 of section 26 of the bill. This deals with tenant rights and is broad, so the Committee could either enumerate the rights or strike that provision.

**Chairman Anderson:**

It seems like these would be things that the associations would want to determine for themselves, so, again, Mr. Buckley's suggestion to delete the provision is acceptable.

**Jennifer Chisel:**

Amendment 10 deals with section 35 and is, again, a proposal by Mr. Buckley to delete the proposed language found in subsection 5. Deleting this provision would go back to the existing law, allowing the Commission the discretion to award reasonable attorneys' fees.

Amendment 11 deals with paragraph (b) of subsection 1 of section 39, which is about a manager's bond. There are two amendments to choose from, (a) or (b). Amendment (a) is proposed by Mr. Buckley to amend the proposed language in section 39 to clarify that the manager's bond may be obtained by the manager's employer. He indicated that is what happens in practice. The second choice, at (b), was proposed by Mark Coolman, which was in a document the Committee received, submitted by Michael Schulman. Instead of the proposed language in section 39 of the bill, this would amend NRS 116.3113 to require each association to maintain a fidelity bond or crime policy with extended coverage that included non-compensated officers and directors.

**Assemblyman Horne:**

I will state the motion first to make sure that we all have the same amendments. I propose we amend and do pass S. B. 182 (R1) with amendments 1, 2, 3, 5, 6, 7(a)(ii), 8, 9, 10, and 11(a) from the work session document.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS  
SENATE BILL 182 (1ST REPRINT) AS STATED.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

**Assemblyman Hambrick:**

Are we including amendment 7(b) or omitting it?

**Chairman Anderson:**

This is something that will be looked at, but it will not be included at this time.

**Assemblyman Gustavson:**

Would you please review the amendments?

**Chairman Anderson:**

Yes, they are 1, 2, 3, 5, 6, 7(a)(ii), 8, 9, 10, and 11(a) from the work session document.

THE MOTION PASSED. (ASSEMBLYMAN CARPENTER WAS  
ABSENT FOR THE VOTE.)

It has been an honor and a pleasure to serve with you all. Thank you for a wonderful experience. We are adjourned [at 9:34 a.m.].

RESPECTFULLY SUBMITTED:

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Emilie Reafs  
Committee Secretary

RESPECTFULLY SUBMITTED:

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Karyn Werner  
Editing Secretary

APPROVED BY:

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Assemblyman Bernie Anderson, Chairman

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

**EXHIBITS**

**Committee Name:** Committee on Judiciary

**Date:** May 27, 2009

**Time of Meeting:** 8:25 a.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 182 (R1)	C	Jennifer Chisel, Committee Policy Analyst	Work Session Document