MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 29, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:38 a.m. on Wednesday, April 29, 2009, in Room 2149 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Mark E. Amodei

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Marcus Conklin, Assembly District No. 37
Assemblywoman Ellen B. Spiegel, Assembly District No. 21

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Howard L. Skolnik, Director, Department of Corrections

Debra Gallo, Director, Government and State Regulatory Affairs, Southwest Gas Corporation
Judy Stokey, Director, Governmental Affairs, NV Energy
Garrett Gordon, Olympia Group
Angela Rock, Olympia Group
Robert Gastonguay, Executive Director, Nevada State Cable Telecommunications Association
Gary E. Milliken, Community Associations Institute
Sandra Duncan, Airpark Estates Homeowners' Association
Josh Griffin, American Nevada Company
Michael Trudell, Caughlin Ranch Homeowners' Association
Mike Randolph, Homeowner Association Services
Bill Uffelman, Nevada Bankers Association
George Ross, Bank of America

CHAIR CARE:
I will open the work session and address Assembly Bill (A.B.) 473 page 7, (Exhibit C, original is on file in the Research Library).

ASSEMBLY BILL 473: Revises provisions relating to medical and dental services for prisoners. (BDR 16-1128)

LINDA J. EISSMANN (Committee Policy Analyst):
Assembly Bill 473 requires the Department of Corrections to establish certain regulations regarding training and medical emergency response. While there was no specific opposition to the bill, Director Howard L. Skolnik indicated that legislation may not be necessary. They are already implementing some of the regulations provided for in the bill. The Committee had asked for documentation from Mr. Skolnik, including cost estimates, that are included in the work session binder, Exhibit C, pages 8 through 11. There was an amendment proposed by Lee Rowland of the American Civil Liberties Union of Nevada suggesting the adoption of standards should comply with the National Commission on Correctional Health Care. This amendment is not included in the work session document.

CHAIR CARE:
We have the memo dated April 22 from Rebecca Gasca that includes their amendment (Exhibit D).

HOWARD L. SKOLNIK (Director, Department of Corrections):
The fiscal information we provided relates to us if we have to go for accreditation with the standards, Exhibit C, pages 8 through 11. The standards require certain ratios of medical care. We are not consistent with those ratios throughout the State. We would have to add staff, which would be the primary cost to comply with the standards provided.

CHAIR CARE:
In Exhibit C, page 8, it says $1.2 million. Is that correct?

MR. SKOLNIK:
That is correct. It represents the additional positions we need to comply with the ratio outlined in the standards.

CHAIR CARE:
The total expenditure would be a little over $1.7 million, Exhibit C, page 11. I had asked Mr. Skolnik to provide the information. The e-mail we received indicates it is an estimate and is more likely to go up than down.

MR. SKOLNIK:
We did provide you with a number of our regulations already in effect that are consistent with the standards, Exhibit C, pages 12 through 33. We have already done most of what this bill would require.

SENATOR PARKS:
I can understand the requirement for additional staff, but there was some discussion in our initial hearing regarding a cost element to comply with these particular health and safety requirements.

MR. SKOLNIK:
That is correct. The numbers we have given you are the numbers required for us to become accredited, not to implement the standards as part of our regulations. If we were to meet the staffing ratios required for accreditation, we need the additional staff.

SENATOR PARKS:
Rather than being fully certified, could you ascribe to their standards without going through the formal process? Is there a way for some middle ground where we can substantially support this without incurring the entire cost?

MR. SKOLNIK:
We write our regulations to comply with those standards. The issue is not the writing of our regulations; the issue is coming into compliance with the standards. If we were to do that, we would have the additional costs for staff.

SENATOR COPENING:
In looking through the material you provided and going back to the original bill, page 2 in lines 34 through 40, where it says, "... shall establish standards ... (a) The personal hygiene of offenders ... " I did not see any standards for personal hygiene. Did I miss something or has that been established?

MR. SKOLNIK:
I do not know the answer to that question. The definition of personal hygiene would be a problem. We provide inmates with hygiene products if they cannot afford them. We are required by the courts, for example, to provide a shower, under all circumstances, at least once every 72 hours. We are required by the courts, regardless of the position of the inmate, to offer exercise at least five hours per week outside of the cell. Many of these are already required in case law. Regarding a regulation for a personal hygiene standard, it would be difficult, given our staffing patterns, to make sure every inmate gets up in the morning and brushes his teeth and washes his hands.

SENATOR COPENING:
There probably is not a standard requiring a prisoner to receive teeth cleaning. That is not provided?

MR. SKOLNIK:
Yes. We have a standard physical examination. The inmates have access to dental care, either on their own or as part of their initial intake. All inmates are examined both medically and dentally. A plan of treatment is prescribed at that point if they need anything special.

SENATOR COPENING:
Page 2, lines 21 through 23 of the bill discuss establishing regulations, with Board approval, governing staff training in medical emergency response and reporting. I did not see anything addressing training. Do you have a training program?

MR. SKOLNIK:
Our staff is trained in cardiopulmonary resuscitation, which is institutionally based and is required. Staff is required to go through refresher training periodically. We do training for medical emergency. I do not want a correctional officer or case worker to respond to the medical needs of an inmate because we are never going to train them to the standard of medical care.

CHAIR CARE:
I will close the work session on A.B. 473 and open the hearing on A.B. 129.

ASSEMBLY BILL 129 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-34)

ASSEMBLYMAN MARCUS CONKLIN (Assembly District No. 37):
In the interim, representatives from Southwest Gas asked if I would consider sponsoring such a bill. I cosponsored this bill with Assemblyman Bernie Anderson, Assembly District No. 31, because it was necessary to have a bill addressing the ability of first responders in a variety of public services to take their vehicles home and not be excluded from certain common-interest communities. These first responders are ambulance drivers, police officers, firemen and public utilities—gas and electricity.

Because of the contracts they have with the State of Nevada as monopoly vendors, they have the responsibility to respond to emergencies. In doing so, people are sent home with first-responder vehicles. If these people are denied the ability to live in certain communities, a violation of rights occurs. This bill is designed to clarify that in certain circumstances, those people cannot be denied living quarters in common-interest communities.

CHAIR CARE:
Mr. Wilkinson, in section 6 of Senate Bill (S.B.) 351, there was a passage about an association having to amend, without action of the membership, its governing documents to be consistent with state law. If that were to become law, would that provision take care of section 1 of this bill, even though this relates to tariffs as opposed to state law?

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

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
That is a slightly different issue, law as opposed to tariffs. I do not see that these would have any effect on each other.

CHAIR CARE:
This Committee has been concerned about whether some homeowners' associations (HOA) with fewer than 100 units, for example, would have to go back and do paperwork. Section 1 of A.B. 129 requires amendment of the governing documents.

ASSEMBLYMAN CONKLIN:
That is a provision Legal put in. We are primarily concerned with everything after section 2 of the bill. If section 1 of the bill includes provisions that help smaller HOAs comply with the law at minimal expense regarding documentation and bylaws, I am amenable to that.

CHAIR CARE:
Mr. Wilkinson, we could say that the tariffs, rules and standards govern where they conflict with the governing documents. The only problem is how to put the members of the association on notice.

SENATOR WIENER:
I am curious about the reprint. What was the change in the amendment?

ASSEMBLYMAN CONKLIN:
The changes were just owner or tenant. For example, on page 3, line 9 where it says, "A unit's owner ... ," it was originally drafted to say "owner." We realized it does not have to be the owner; it could be a tenant. It is an expansion to include whoever is living in that unit.

MS. EISSMANN:
The amendment made three changes. It removes inoperable vehicles from the list of parking restrictions; clarifies that the authorized parking location for service vehicles is in designated visitor parking, the owner's driveway or in front of the owner's unit; and clarifies that the provisions of the bill apply to tenants.

CHAIR CARE:
In section 2, subsection 3 of the bill and going forward, was it S.B. 183 where we had some discussion that related more to a plumbing truck, but not this situation?

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

MR. WILKINSON:
Section 4 of S.B. 183 is identical to section 1 of this bill. Section 32 of S.B. 183 was identical before the first reprint of A.B. 129 was created.

DEBRA GALLO (Director, Government and State Regulatory Affairs, Southwest Gas Corporation):
We had a similar bill last Session. Our employees are still having the same problem. This bill addresses the problem our employees experience with parking their company-assigned vehicles in communities where they live. There are two types of vehicles. First, our service technicians take home minivans. They are dispatched from their home if someone smells gas. They could be dispatched 24 hours a day, 7 days a week. Second, we have emergency first-responder trucks that are on call one week a month. They go to dig-ins, not gas leaks.

Our employees have been issued citations, monetary fines and liens. Most recently, one of our employees was threatened with towing our emergency-response vehicle.

We are asking that where parking is allowed—in the driveway, in front of the unit, visitor parking, on-street parking—our employees be allowed to park. We are not asking that special parking sections be designated for our employees. We are not asking for special permission to park in certain places. We are just asking that, where parking is available, our employees be allowed to park their service vehicles.

An amendment will be brought by another group, which we are not in favor of. The amendment provides Southwest Gas with the ability to provide a letter. The employee could provide a letter to the HOA governing board saying they are required to have this vehicle for their employment. We have no problem with

doing that. We already do that. It just has not worked. We provide the letter, and they still get ticketed.

SENATOR COPENING:
You talked about two scenarios where vehicles are sent home with employees who respond to emergencies, are on call or respond to something that may occur in the night, but might not necessarily be an emergency.

MS. GALLO:
We still classify it as an emergency. If you smell gas in your house and you call our dispatch, we dispatch a service technician. We do not dispatch one of the larger trucks. Depending on what the service technician finds, they could call out additional resources. They are both emergency-response vehicles. There is a different designation regarding who is sent on what type of calls.

SENATOR COPENING:
An employee would not take a vehicle home for his convenience? He would only take a vehicle home if he was assigned to be on call that particular night?

MS. GALLO:
Yes, that is correct. You would only take a vehicle home if you are on call, which is approximately one week per month.

JUDY STOKEY (Director, Governmental Affairs, NV Energy):
Ms. Gallo's comments are identical to the situations we have. In southern Nevada we only have electric, not gas. In northern Nevada, we have gas and electric.

We requested the language in section 1 of the bill regarding the standards because we have had problems getting HOA governing boards to go along with the standards regarding where we put some of our facilities. It is the same language that was in S.B. 183.

CHAIR CARE:
Give us an idea of what a 20,000-pound vehicle is.

MS. GALLO:
I have pictures to pass around for you to see. Our largest vehicle is 19,000 pounds. We have 7 of these in southern Nevada and 11 in northern Nevada.

CHAIR CARE:
How many of the employees who drive these vehicles live in HOAs?

MS. GALLO:
I am not sure. About 12 HOA violation letters have come to me. It depends when a person is on call. It is not a vehicle assigned to a specific employee.

CHAIR CARE:
Is it practical to park one of those vehicles in a driveway?

MS. GALLO:
No. People have tried to park them in their driveway, but the vehicles extend a little bit. They have been ticketed for extending over the sidewalk. We have also had issues when they have parked in their driveway, and they have received a ticket or warning letter because they have the commercial compartments on the side of the truck. We have tried many things—the letters, talking or having our attorneys talking.

SENATOR WIENER:
The bill also provides for law enforcement and other emergency services. There could be quite a few who are on call and need somewhere to live and be ready to respond.

CHAIR CARE:
Assemblyman Conklin, have you had a chance to look at the proposed amendment from the Olympia Group (Exhibit E)?

ASSEMBLYMAN CONKLIN:
I have had a chance to look at the amendment. Given the history of HOA bills, it is probably best that we consider the bill in its current form because every time we add something to this bill or try to tighten it, we create a greater opportunity for abuse on one side or the other. From my position, the bill is pretty tight. It allows some flexibility. If we have to come back in a later session and tighten it

up, I am afraid the amendment creates the situation where we will be back in two years with more violations.

CHAIR CARE:
Southwest Gas has 18 of these vehicles. How many does NV Energy have?

MS. STOKEY:
We have 60 statewide. We represent the entire State, and there are 14 in southern Nevada.

GARRETT GORDON (Olympia Group):
We have been working with Assemblyman Conklin and the utility companies. We may still have a little work to do. We support everything said by the utility companies. There is no intent to prejudice, prevent or interfere with their duty, response times and emergency first-response trucks. This could turn into a slippery slope. We are asking for some clarifying language.

ANGELA ROCK (Olympia Group):
Regarding the associations we represent and control, we allow first-response vehicles to park in areas designated for parking of unit owners. We have not had problems with Southwest Gas, NV Energy or any utility services. Assemblyman Conklin said this is a specific issue, and we agree with that. We want to narrowly tailor this to keep it a specific issue. He said he agreed and wanted to make it easier for HOAs to comply with this law. He supported documentation.

Our amendment, Exhibit E, is asking that, regardless of the language, we create a situation where both parties can comply with this and do not have to come back here in two years. In practicality, you will have inspectors for communities driving neighborhoods. They are not going to know whether a vehicle is 20,000 pounds or if it is a first-response vehicle. Because they do not know, they will have to ask a homeowner for a letter. We do not want to create a situation where the homeowner believes they do not need to supply the letter. The association does not know if it complies with the provisions of the statute. So, we asked for language permitting an association to ask for a letter. Implicit in that, the case should be closed once a letter is provided by the individual's employer. If we do not create a method to take this to the next step allowing these people to park, associations would be left with nothing but to allow everyone to park if they cannot ask for documentation.

The second issue is when Ms. Gallo testified that she is not asking for special treatment, only that these vehicles be allowed to park where unit owners park. The way the bill is currently written, it says they may be allowed to park in front of the unit. There are myriad situations when even a unit owner is not allowed to park in front of their unit, for example, in a cul-de-sac, when the street is too narrow to allow parking on both sides. We ask that the language be changed to say that the vehicles be allowed to park where a unit owner or resident is allowed to park.

Those are the two biggest issues for us—to make it easier for HOAs to comply and not opening the door to allow these vehicles to park where unit owners are not allowed to park.

Most of the cases in Southern Highlands where we have commercial-vehicle violations are neighbor complaints. We had 189 homeowner calls last year related to people upset because they felt commercial vehicles could not be in neighborhoods. We allow law enforcement. It is a deterrent to allow police officers to park in the neighborhood. I support that. There are many homeowners who purchased a home and read their documents. They did not want to live next door to big utility vehicles. We have to narrowly tailor this to emergency first response. That is why we have asked to strike the word "cable." We have yet to have a conversation with someone where we were convinced that cable is an emergency service.

Our two main issues are simply to allow the associations a methodology to comply and do not require them to allow parking where parking is not otherwise permitted.

SENATOR AMODEI:
I appreciate the concerns from the HOA's perspective, but the issues are first response and public safety. With all due respect to the community concept, which is significant in the State, the first priority is the body of statute, and the second priority is probably public safety regarding utility service.

My priority is to get the business taken care of first, which are utilities. If that causes some gray area or some unintended consequences for the associations, we will deal with that. Ease of operation for the association in the context of public safety and utility supply is not on par or above that in my scheme of thinking. If we create letter requirements in statute and how to define the

vehicles, that skews things on the side of the association operations. I understand the concerns you have indicated, but maybe the association has to bend to provisions in the statute as opposed to whether it creates a problem. I have a problem placing association operations above what this bill aims to do.

MS. ROCK:
I apologize if that was the perception that came across. I agree with you. Public safety is the priority. These vehicles ought to be allowed to park in the communities. Maybe the wording should be changed so the utilities would say a letter provided by them shall prove it is a necessary vehicle. I am not opposed to that. I was attempting to say there will be vehicles in these neighborhoods. Associations will not know they are emergency response vehicles, so they will either have to allow everything or ask for some proof. Once the proof is provided, the issue is over. It does require a little more work on the language because I agree with you. The right to have public utility service must come first, but we must have a method by which to manage it once it is there. The letter should suffice as the letter of the law.

CHAIR CARE:
When we had S.B. 182 and S.B. 183 and some other bills, there was a working group that Senator Michael Schneider, who was the sponsor of both those bills, had convened. We just heard that in S.B. 183, there was similar language to what is contained in section 2 of this bill. Were you part of that group?

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

MS. ROCK:
Yes, I was in the group. This issue arose. We spoke about the fact that many of these issues were in this bill. At that time, we asked that language be taken out of those bills and just left in this bill so it could be dealt with independently. We did not discuss modifying language.

CHAIR CARE:
Mr. Wilkinson, please put S.B. 183 in its original form where it touched on this issue in the work session binder. Include how S.B. 183 and the amended version were when they left this House—if that was deleted—so the Committee can look at that at work session.

ROBERT GASTONGUAY (Executive Director, Nevada State Cable Telecommunications Association):
I support this bill in its current form for two reasons. First, Senator Wiener brought a bill this Session whereby broadcasters and video service providers would be trained and certified as first responders in an emergency situation. For example, should disaster occur, people must be able to communicate or listen to communications by over-the-air broadcast signal or video-service-provider signal. We need to stay up and running.

Secondly, there is a Voice over Internet Protocol (VoIP) communication systems, or telephones. If the cable is out and a person is using VoIP, he cannot communicate with the outside world should an emergency situation arise where 911 must be called.

CHAIR CARE:
I understand there are those situations if someone needs to come into the association and park the vehicle. If cable becomes a first responder, it would still be necessary for the unit owner or tenant to have the vehicle in the association?

MR. GASTONGUAY:
Yes. In most cases, those vehicles that go home with the employees are on call for outages and cases like that.

SENATOR WIENER:
The bill Mr. Gastonguay is talking about would create first-responder status for certain employees who are trained to keep those communications online so people have access to information. That could have impact if this measure goes through because certain members of those professions would be characterized as first responders.

CHAIR CARE:
Are your trucks up to 20,000 pounds?

MR. GASTONGUAY:
I do not know the exact weight of our trucks. Our bucket trucks are smaller than those vehicles.

GARY E. MILLIKEN (Community Associations Institute):
I agree with everything Ms. Gallo and Ms. Stokey said. The bottom of page 2 of the bill, the very last sentence says, "... owns the vehicle for the purpose of responding to requests for public utility services ... ." Do we need to add the words "first responder" or "emergency" in that situation?

CHAIR CARE:
I will close the hearing on A.B. 129 and open the hearing on A.B. 204.

ASSEMBLY BILL 204 (1st Reprint): Revises provisions relating to common-interest communities. (BDR 10-920)

ASSEMBLYWOMAN ELLEN B. SPIEGEL (Assembly District No. 21):
As a disclosure, I serve on the Board of the Green Valley Ranch Community Association. My participation on the Board gave me insight into this issue. I learned about some of these issues as I was going door-to-door speaking with constituents, and I did more research.

I am here to present A.B. 204, which can help stabilize Nevada's real estate market, preserve our communities and help protect our largest assets—our homes. Whether you live in a common-interest community or not, whether you like common-interest communities or hate them, and whether you live in an urban or rural area, the outcome of this bill will have an impact on you and your constituents.

In a nutshell, this bill does two things. First, it requires common-interest communities to implement and publicize their collection policies. This will increase the likelihood that associations will be able to collect their assessments or dues prior to foreclosures. Second, it makes it possible for common-interest communities to collect dues in arrears for up to two years at the time of foreclosure. This is necessary because foreclosures are now taking up to two years.

Everyone who buys into a common-interest community understands there are dues. Community budgets have historically been based on the assumption that nearly all of the regular assessments or dues will be collected. Communities are now facing severe hardships, and many are unable to meet their contractual obligations because they are not receiving the revenues owed to them. Others

are reducing their services and maybe simultaneously increasing their financial liabilities. They and their homeowners need our help.

I recognize there are some who are opposed to this bill, and you will hear from them later this morning. The objectives of the bill are to help homeowners, banks and investors maintain their property values; help common-interest communities mitigate the adverse effect of the mortgage foreclosure crisis; help homeowners avoid special assessments resulting from revenue shortfalls because fellow community members did not pay their required fees; and prevent cost shifting from common-interest communities to local governments. This bill is vital because our constituents are hurting. Our economic condition is bleak, and we must take action to address our State's critical needs.

Statewide, our individual property values continue to decline. Our urban areas are being hit the hardest. Everywhere in Nevada, we are having foreclosure problems. Clark County is the hardest hit. Between the second half of 2007 and the second half of 2008, property values declined in all zip codes in the Las Vegas Valley, except for one. The smallest decline was 13 percent, and the largest decline was 64 percent.

Our property values are being depressed because of a few factors. The increased inventory of housing due to foreclosures, abandoned homes and economic recession bring the pricing down. Consumer inability to acquire mortgages, increased neighborhood blight and the decreased ability of communities to provide obligated services also bring prices down. No one wants to buy into a blighted community unless it is at a bargain-basement price.

We all hoped the stimulus package would help, but help is not on the way for most Nevadans. We have the highest percentage of underwater mortgages in the nation. Twenty-eight percent of Nevadans owe more than 125 percent of their mortgage value, so they are not qualified for federal help. Nearly 60 percent of the homeowners in the Las Vegas Valley have negative equity in their homes.

What does this mean for homeowners in common-interest communities? There is decreased quality of life because there are fewer services provided by the associations. There is also increased vandalism and other crime. There is the potential for increased regular and special assessments to make up for revenue shortfalls. As a corollary to that, associations have liability exposure because, if

they say they are providing certain services, people may have bought in because of those services. If those services are not being provided, the association has liability for that. There is increased instability for communities and further declines in property values. Nevada Revised Statute 116.3107 requires associations to maintain, repair and replace the common elements. If the money is not there, it has to come from somewhere. Associations stop providing services or impose special assessments.

I conducted a survey and received responses from community association managers statewide. My responses covered 77,020 doors. Seventy-five common-interest communities responded—55 responded in Clark County and 20 in Washoe County. No one was opposed to the bill. I provided you with a summary of my testimony (Exhibit F, original is on file in the Research Library). The comments I received from the survey were enlightening, Exhibit F, pages 10 through 12.

Cost shifting is going on for some services. The costs are being shifted to local governments. For example, in my community, we have a company that does graffiti removal. Clark County also provides graffiti-removal services. If we needed to cut our budget for lack of funds, we could theoretically advise the homeowners to call Clark County, and they will come and take care of it. This cost would shift to the local government.

Code enforcement would be similar. If we have to cut back on inspections, local governments would have to take on those roles. The use of public pools and parks will increase because, if the communities are not able to maintain their pools, people will then go to the public pools and parks.

I was questioned about security patrols. My community experienced an increase in vandalism and problems along our walking paths. We could not afford to beef up our private security patrols. So, we turned to the City of Henderson. My community is open and ungated. The City of Henderson has increased patrols in my community. There is cost shifting going on because we cannot afford to hire the private companies we have traditionally relied on.

Another potential impact is when communities are having cash-flow issues and make late payments to local vendors—gardeners or small businesses that provide support services. This further contributes to the downfall of the area.

There are a few proposed amendments out there. You have received two of them by e-mail or regular mail. I put an amendment together that encapsulates one of the amendments and has some additional language (Exhibit G). My amendment does two things. The bill has excluded certain types of units because of Fannie Mae and Freddie Mac requirements. At the time, we thought the easiest way to do that would be to limit it to single-family homes. That excluded lots that have been purchased but not developed and other things that should be covered. We have made the language generic so those would be included where permissible.

There are some condominiums and attached townhomes on properties that were excluded in the version of the bill you have, and they do not fall under Fannie Mae and Freddie Mac requirements and provisions. Those should be included as well.

The other component of this amendment is that, if Fannie Mae and Freddie Mac requirements were to change so properties could be covered under them or the super priority could be extended under them, no additional legislation would be needed.

The Bankers Association has an amendment (Exhibit H). I do not support that amendment because it takes away from the intent of helping communities recover funds and make themselves whole so they can provide the services they need to provide.

I urge your support. Assembly Bill 204 supports Nevada communities and is vital for our recovery. It stabilizes communities; it will mitigate further declines in property values and local businesses; and it will help homeowners, families, banks and other investors.

CHAIR CARE:
We have two proposed amendments, one from Sandra Duncan (Exhibit I) and one from the Bankers Association, Exhibit H. Your mock-up, Exhibit G, would relate to all real property within the association, correct? Initially, it was the detached family dwelling.

ASSEMBLYWOMAN SPIEGEL:
Initially, it was all property. Then, we limited it to single-family dwellings in consideration of Fannie Mae and Freddie Mac because condominiums,

townhomes and other attached dwellings could not be included or they would not underwrite the mortgages. We thought that was acceptable because they underwrite approximately 80 percent of all mortgages. We did not want to create more problems for homeowners. However, we excluded lots such as Mrs. Duncan was concerned about.

CHAIR CARE:
The way your amendment, Exhibit G, is drafted, it says, "... unless the federal regulations ... ," Exhibit G, page 2, line 15. It goes on to say, "... If the federal regulations ... ." There are already federal regulations. Is this in anticipation of federal regulations being adopted?

ASSEMBLYWOMAN SPIEGEL:
I understand there are regulations or requirements that say for loans Fannie Mae and Freddie Mac underwrite, there is no more than a six-month super priority associated with that. The second part of the language says, if they were to change their regulations to whatever period they would designate, that would apply here as well.

CHAIR CARE:
Apparently, discussions like that are taking place in Washington, D.C.?

ASSEMBLYWOMAN SPIEGEL:
They are either taking place or are imminent.

CHAIR CARE:
If they were adopted, I do not know if we need the language.

SENATOR PARKS:
Detaching condominiums and townhouses is a problem for me and a number of my constituents. Something has to be in this bill addressing their issues. The existing language appears to include single-family, condominiums and townhouses, whereas the revised language appears to me to only include single-family detached dwellings.

ASSEMBLYWOMAN SPIEGEL:
The original version of the bill did include townhomes and condominiums. The amended version to address the Fannie Mae and Freddie Mac issue was limited to single-family homes. My amendment, Exhibit G, would extend it to

condominiums, townhomes and other types of property wherever possible because Fannie Mae and Freddie Mac's federal regulations take precedence over Nevada law.

CHAIR CARE:
Section 1 of the bill, page 3, line 24 through 27, says the executive board will make the policy established available to each unit's owner. Does that mean it is available upon request, or is there a requirement contemplated here that policy would be given to the unit owners as a matter of course?

ASSEMBLYWOMAN SPIEGEL:
Under NRS 116, the boards are required to mail the budget to each homeowner within their association for approval and ratification of the budget. This provision would require the collections policy to be included in that packet.

SANDRA DUNCAN (Airpark Estates Homeowners' Association):
I had submitted a proposed amendment, Exhibit I. However, the language in Assemblywoman Spiegel's amendment, Exhibit G, is better than what I had suggested. I am in favor of her bill. We have at least one homeowner who is seriously delinquent. The process of foreclosure is taking considerably longer than the six months. This extension of the super-priority lien would help avoid other homeowners having to make up for the amount of money we are losing. Even though we are small, our association has a collections policy. We mail that out annually to our homeowners. If you pass Assemblywoman Spiegel's amendment, Exhibit G, I will withdraw my amendment.

JOSH GRIFFIN (American Nevada Company):
We support this bill and Assemblywoman Spiegel's amendment. American Nevada Company has built and developed the two largest condominium projects in that section of Green Valley in Assembly District No. 21.

MS. ROCK:
Olympia Group supports this bill. It is valuable. The lack of the ability to collect assessments puts a burden on government agencies. Southern Highlands, which is our largest master-planned community, is located in the southwest area of Las Vegas. The Las Vegas Metropolitan Police Department (Metro), Southwest Area Command services that area. On any shift, they generally have between 11 and 16 vehicles on the road. They cover 250,000 rooftops. That is approximately one Metro vehicle to 20,000 homes. We have 7,000 homes in

Southern Highlands and 4 security vehicles. That is 1 security vehicle for every 1,700 homes. On a daily basis, when calls come into Metro, they call our security force to be a first response for backup if there are vehicular accidents. Master-planned communities provide vital services that take the burden off law enforcement agencies. But it is a nonessential service and is something considered to be cut when there is a lack of funds.

MICHAEL TRUDELL (Caughlin Ranch Homeowners' Association):
We support this bill. I had some concerns about the amendment approved on the other side because, as a manager, we have to interpret these provisions, and we disagree with title companies or Realtors regarding our interpretation. This amendment, Exhibit G, clarifies the intent of the bill and the provisions that would exclude those houses from the two-year super-priority lien to the six-month in a way that satisfies our concerns.

MIKE RANDOLPH (Homeowner Association Services):
I am in favor of this bill. I am glad to see the requirement to send the collection policy annually. It should also be sent with all welcome packages and resale packages.

Condominium and townhouse associations have a high foreclosure rate. The costs not paid during the super-priority lien raises fees to other members who are struggling to stay in their homes. If we can include the condominiums, townhouses and mobile home communities, it would be great for Nevada and all homeowners.

BILL UFFELMAN (Nevada Bankers Association):
I am a representative to the Summerlin North Community Association. We modified our policy to specifically emphasize the ability of the association to do collections outside the lien process. They could bring an action.

The irony is that homeowners' associations, in many cases, are the first one to know a homeowner is in trouble. They have not missed their mortgage payment but miss their HOA payment. If the association stays on top of that and exercises its right under the law, there is self help there.

You processed a bill from Senator Parks talking about the foreclosure owner filing within 30 days; they are the new owner. The association will know who the new owner is. On May 5, you will hear a bill from

Assemblyman Richard McArthur, Assembly District No. 4, which talks about a homeowners' association entering properties in the association to do minimal maintenance so it is not an eyesore.

That lien, because it is an assessment, will survive and be part of the foreclosure and would be paid. The new owner of that property has an obligation to maintain the property at the HOA standards.

In foreclosures, a bank or the lender does not have any title or right to that property until the foreclosure sale. You have a 21-day notice that there is going to be a sale. You have to give a 90-day notice of default and the intent to exercise rights to sell. Typically, you do not get the 90-day notice until you have missed payments for 3 months. The reality is, in approximately 210 days, the lender may become the owner at the foreclosure sale, or a third party may purchase the property. That is where the six-month look back on homeowner assessments comes in.

Until you start missing payments, the lender has no idea what your situation is. The bill is retroactive. As the bill is written, prospectively, we can pick and choose among the dwellings this will apply to in a homeowners' association because it would apply if someone's loan is a Fannie Mae or Freddie Mac conforming loan. If Fannie Mae or Freddie Mac own the loan, their rules would apply. If it is another mortgage-backed security, you would have another set of rules if it forecloses another time.

The bill is disruptive of the lending process. Lenders, when a bundle of mortgages is offered, have to evaluate what they are buying. This is in part what got us where we are because the people who were supposed to do that evaluation were not paying attention to their job.

My amendment, Exhibit H, is to strike section 2. That will keep the law at the six-month look back on homeowners' association dues. It takes advantage of the provision, saying HOAs must get serious about managing their association. With Senator Parks' bill and Assemblyman McArthur's bill, you are attacking the core of the problem. In many ways, there is a reward for homeowners' associations where the association management has not exercised their right. The purchaser at the foreclosure is going to pay—the financial institution that is foreclosing or a third-party purchaser at the foreclosure sale.

The Nevada Bankers Association is opposed to section 2 of this bill and ask that you strike it from the bill.

CHAIR CARE:
Were you stating there are people who are making their mortgage payments but skipping the general assessments? The property manager or HOA is aware of that. I do not know the degree of tolerance for that.

MR. UFFELMAN:
My association tightened down its collection policy. Before that, you were allowed about six-months slippage before they attacked you. Now they attack more aggressively and quicker. They give you 30 days to cure, and if you do not cure, you no longer get the option of monthly payments; you have to pay a year ahead. They made it clear they have a right to sue in civil court under the contract. You have a contract with your homeowners' association and have a contractual obligation to pay the fees. You could get a judgment against you. That could all be triggered before you miss your first mortgage payment.

CHAIR CARE:
You gave us the 200-day scheme, which gave rise to the 6 months currently on the books. The testimony was that foreclosures are now taking up to two years.

MR. UFFELMAN:
I do not know whether they are taking two years. One of the ironies is that around Thanksgiving, Fannie Mae and Freddie Mac dictated a moratorium that they were not allowing any more foreclosures for about 90 days. So, we had a big spike in foreclosure filings in March. That was because Fannie Mae and Freddie Mac's foreclosure moratorium expired.

Those who service the mortgages—receive the payments and distribute them to paper holders, mortgage-backed securities or the bank—the system got bound up. We have worked through those things. There are lenders who have not pursued foreclosures. Once I have become the owner, I have an obligation under Nevada law, and as further emphasized by Assemblyman McArthur's bill and Senator Parks' bill, to maintain that property to the association's standards. That is going forward after the foreclosure. I have no control over what happens up to the time of the sale.

There is the situation where an investor purchases a home and intends to flip that home to make money. Perhaps he sat on it for a year and did no maintenance. Assemblyman McArthur's bill speaks to that situation. Senator Parks' bill speaks to the situation that, once it is sold, the association will know who the owner of the property is. Then the association would pursue the new owner to do what he is required by law to do. As lenders, we have no control of it until we own it.

GEORGE ROSS (Bank of America):
Bank of America opposes A.B. 204, at least section 2. The time of six months should not be extended to two years. Bank of America works with those with whom it has mortgages to try to keep them in their properties. Those people are beginning to exhibit signs that they may fall behind. If they do fall behind, miss payments or make late payments, Bank of America makes every effort to contact that person and find out what is happening. Bank of America tries to find out what it can do to adjust the mortgage, forgive payments for six months or redo their mortgage. Similarly, Bank of America is now in a nationwide program to redo hundreds of thousands of mortgages. Six thousand or more people work directly on this.

Sometimes, these efforts do not work, and the home is ultimately foreclosed. This can take time, up to two years. What we are seeing here is that because we worked with these people for a period of time to try to keep them in their home, we will be penalized for 18 more months of homeowner dues. If we work with these people and are then penalized with homeowner dues, that is not a good economic calculation.

You will get several bills from the Assembly having to do with helping renters in foreclosed situations and bills helping those who are getting mortgages. Assembly Bill 149 will set up a mediation process for those who are afraid to go to their lender. Those are progressive bills. But this bill sends the wrong message to a bank who may be trying to help people stay in their homes.

ASSEMBLY BILL 149 (1st Reprint): Revises provisions governing foreclosures on property. (BDR 9-824)

CHAIR CARE:
I will close the hearing on A.B. 204. We will go back to work session and address A.B. 59, Exhibit C, page 2.

ASSEMBLY BILL 59 (1st Reprint): Creates a rebuttable presumption against an award of custody or unsupervised visitation for any person who has abducted a child in the past. (BDR 11-265)

CHAIR CARE:
There are no amendments. There was opposition from Mr. Johnson. We had discussion over what constitutes an abduction—returning the child home beyond the deadline from attending a movie, for example. The bill was brought by the Attorney General's Office. Hearing no discussion, I will entertain a motion.

SENATOR COPENING MOVED TO DO PASS A.B. 59.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR McGINNESS VOTED NO.)

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CHAIR CARE:
We will address A.B. 233, Exhibit C, page 3.

ASSEMBLY BILL 233 (1st Reprint): Makes various changes concerning scrap metal. (BDR 54-53)

SENATOR AMODEI:
I had some concern about section 7.5 of the bill on page 5, line 36. I spoke with Mr. Wilkinson, and if you eliminate it entirely, you can go to other provisions in the *Nevada Revised Statutes* and find misdemeanor treatment for section 7.5. In discussing it with Mr. Wilkinson, it is probably cleaner to amend section 7.5 to simply say a violation of the provision is a misdemeanor. It is my understanding that allows the prosecutors some discretion based on whether it is first offense, second offense, to go for a fine or a fine and jail time, or whatever the options are within the sentencing maximums of a misdemeanor. If there is appetite to process the bill, section 7.5 should be amended to read that a violation of this section is a misdemeanor.

CHAIR CARE:
My recollection is the bill sponsor was not married to the language in section 7.5.

SENATOR WIENER:
I did contact a primary source I use in my identity theft work. He responded that because of the information required with no assurance of protection of that information, it is ripe for identity theft. I do not have language of protection, except I could work with the industry to ensure people's identity is protected in these transactions.

SENATOR PARKS:
Am I correct in understanding the standard misdemeanor is a fine of $1,000 and six months?

CHAIR CARE:
It is six months or less. We will address A.B. 237, Exhibit C, page 5.

ASSEMBLY BILL 237 (1st Reprint): Revises the provisions governing the certification of certain juveniles as adults for criminal proceedings. (BDR 5-825)

CHAIR CARE:
It was suggested the age for discretionary certification be raised from 14 to 16. Mr. Pomi suggested eliminating presumptive certification in its entirety. There was some language offered by Mr. Bateman.

MS. EISSMANN:
This bill was on work session once already. In the previous work session discussion, the Committee agreed not to pursue that.

SENATOR PARKS:
Does raising the age from 14 to 16 leave the 14- and 15-year-olds in no man's land?

MR. WILKINSON:
For those you would still have the offenses that are excluded from the juvenile court jurisdiction, murder or attempted murder. That would raise the age for

discretionary certification to 16, so those 14- and 15-year-olds could not be certified as adults.

SENATOR MCGINNESS:
I spoke with both sides on this, I like the bill the way it came over. There was some testimony that the bill was good from the Assembly.

SENATOR McGINNESS MOVED TO DO PASS A.B. 237.

SENATOR COPENING SECONDED THE MOTION.

SENATOR WIENER:
If the juvenile justice system is not working for those 14- and 15-year-olds because their behavior was so egregious, when they are 16, is there a mechanism to reconsider and place them in the adult system?

MR. WILKINSON:
No.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will address A.B. 462, Exhibit C, page 6. There was no opposition to the bill and no amendments.

ASSEMBLY BILL 462: Revises the provisions governing sureties. (BDR 14-838)

SENATOR WIENER MOVED TO DO PASS A.B. 462.

SENATOR McGINNESS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
There being nothing further to come before the Senate Committee on Judiciary, we are adjourned at 10:22 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: