MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-fifth Session
April 8, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:44 a.m. on Wednesday, April 8, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

Dan Musgrove, NAIOP Commercial Real Estate Development Association, Southern Nevada Chapter
Chris Childs, Commercial Leasing Subcommittee, State Bar of Nevada
Michael Alonso, Herbst Gaming, Inc.; Las Vegas Convention and Visitors Authority
John Leach

Karen D. Dennison, Lake at Las Vegas Joint Venture, LLC; American Resort Development Association
David F. Kallas, Las Vegas Police Protection Association
Frank Adams, Nevada Sheriffs' and Chiefs' Association

CHAIR CARE:
I will open the work session on Senate Bill (S.B.) 338.

SENATE BILL 338: Authorizes a landlord who leases or subleases any commercial premises to dispose of any abandoned personal property left on the commercial premises under certain circumstances. (BDR 10-1152)

We heard testimony yesterday that the Commercial Leasing Subcommittee of the Real Estate Division of the State Bar of Nevada reviewed chapter 118 of the *Nevada Revised Statutes* (NRS) during the interim and discovered while there are several provisions in statute that deal with abandoned property relating to the residential tenant, there is no comparable statute for the commercial tenant. This was an attempt to create one. What happens now is a matter of course. Practitioners apply the existing statute for residential to the commercial context. They are looking for reassurance for landlords that they have something in statute to give them guidance.

Mr. Musgrove is affiliated with my firm. For that reason, I will abstain from any vote on this bill. I asked Mr. Musgrove to meet with Chris Childs, Commercial Leasing Subcommittee of the State Bar of Nevada.

In the binder (Exhibit C, original is on file in the Research Library) under S.B. 338 amendments, John Sande IV suggested a more appropriate trigger, the proposed amendment to S.B. 338 (Exhibit D).

DAN MUSGROVE (NAIOP Commercial Real Estate Development Association, Southern Nevada Chapter):
John Sande IV, Bill Uffelman of the Nevada Bankers Association and Chris Childs worked out an amendment. Mr. Sande has been in contact with Mr. Uffelman but has not had a chance to meet with the Nevada Bar to get their approval. He has seen this and understands what we are trying to do.

After working with John Sande IV, people at my law firm and the NAIOP, that has commercial lease properties among their membership, are all in agreement with the proposed amendment.

In Exhibit D, section 1, line 4, Senator Wiener had questions regarding how we terminate a notice of abandonment or an eviction. We used the language, "which has terminated for any reason." It captures whether the lease itself just expires or whether we follow the court procedures of an eviction or a letter of abandonment. This leaves it open for all considerations.

On line 5, we talked about whether there are sensitive documents in terms of the abandoned personal property regardless of its character. This was the direction we took based on Senator Park's question. It should not be left up to the landlord to determine value while going through a tenant's items if it has been abandoned. They have been notified that it is there, waiting for them to come. After 14 days, we determine what is sensitive, if it should be destroyed or auctioned or returned to the lien holder. That would be our procedure.

We struck the language that requires us to provide for the storage. Mr. Uffelman's portion of the amendment talked about adding a new section 1, subsection 1, paragraph (a) "that the landlord shall take responsibility to notify the lien holder of the abandoned property." This is needed if it is extensive property that has high value, say industrial equipment.

For example, Joe's Pizza Kitchen has pizza ovens with liens on them. The lien holder will deliver a Uniform Commercial Code (UCC) form 1 to the landlord as notification of property on the premises still owned by a lien holder. Using that document, we would have responsibility to take reasonable efforts to notify them the property has been abandoned and they should pick it up.

Finally, we removed line 12, which addresses the 30-day period. That is an extensive time period in the commercial world. It is our duty to get that space rented. If it comes to the point where property has been abandoned, somebody has left in the middle of the night or someone has chosen to ignore the warnings we have given them, we should have an opportunity to turn things around in a 14-day period and move forward to get the space leased.

The final amendment is on line 22, replacing the provisions of section 1, subsection 1, paragraph (a). We deleted the provision regarding safe storage.

Line 22 addresses charging and collecting the costs of inventory, moving and safe storage if necessary. If we choose to move the equipment during this 14-day period or leave it on the premises where it was abandoned, we will take the necessary steps to make sure it is safe and secure.

That is our amendment. We hope you approve. If Mr. Childs still has some concerns and needs to run it by his Subcommittee, we would ask that you pass this bill, then we would work it out on the Assembly side and bring it back to you during the concurrence procedure. As Senator Care stated, we need something in law.

CHAIR CARE:
Thank you, Mr. Musgrove. Does anybody need further clarification from Mr. Musgrove? Mr. Childs, would you agree with what Mr. Musgrove said?

CHRIS CHILDS (Commercial Leasing Subcommittee, State Bar of Nevada):
Yes. With respect to the Nevada Bar Commercial Leasing Subcommittee's position, we have not had a chance to discuss these amendments or take a position. I cannot endorse these amendments. The Nevada Bar Subcommittee still supports passage of the bill as originally presented.

From a personal perspective, not speaking on behalf of the Nevada Bar and as landlords' attorney and house counsel for one of the largest commercial landlords in the State, the change to the trigger language is not any different than what we had before. If you look at the original language of the bill, the storage period ran from 30 days after the termination of the tenancy. I do not see that as a change.

The addition in line 5 talks about disposal of abandoned personal property regardless of the character. That is subject to how you deal with vehicles as set forth below. If it is not personal property, there is an exception for vehicles.

As a landlord's attorney, I support the change to the elimination of the storage requirement. The Bar Subcommittee thought the bill, as drafted, balanced the interests of landlord and tenant, which is the reason the storage period was left in. But that is a good change for landlords.

With respect to the requirement that a landlord identify a lien holder, the way this is drafted, the landlord's obligation ends there. Once you have identified the

lien holder, your duty is discharged. I am not sure what that accomplishes for the lien holder. If I am the lien holder, I am still going to ask the landlord for a separate waiver or make an agreement with the landlord. If the equipment, inventory or personal properties is important collateral to me, I would ask for the right to remove the property after the lease is terminated.

Those are my personal reflections, not those of the Bar Subcommittee. The Bar Subcommittee endorses the bill as originally drafted.

CHAIR CARE:
In the new language, the landlord shall take reasonable steps. Would you agree that if a landlord has discovered a machine or shelves of unopened inventory, he is going to do a UCC search to see if that is not collateral inventory equipment? Correct?

MR. CHILDS:
Yes. Absolutely.

CHAIR CARE:
Now we are adding the language, "shall take reasonable steps." Is there any case law that discusses what "reasonable steps" a landlord is supposed to take to notify a lien holder? This is the last day this Committee is going to meet prior to the Friday deadline to get bills out of Committee. If the bill is going to come out of Committee, it is going to be the language we have here.

MR. CHILDS:
I do not have an answer to that, I do not know if there is case law that addresses what that means. That is my concern with that language. I do not know what the consequences are. It may have unintended consequences. It creates more ambiguities for a landlord than it helps. There are things that a landlord will do. A smart landlord is not going to take possession of abandoned property and assume he has the ability to do what he wishes if there is a possibility the lien holder has a UCC filing.

CHAIR CARE:
About the language in line 4, "which has terminated," I read that to mean that it does not necessarily require going through the process of an unlawful detainer action in justice court. If you post and send out the five-day notice, which is going to have that language, the tenant has five days to file an affidavit with

the court and request a hearing. The lease is terminated if you do not hear back from that tenant, right?

MR. CHILDS:
That is right. There are additional steps to complete the eviction process, but yes, the lease is terminated if the tenant does not file an affidavit within the time period. I agree with the way that language is drafted. The statute needs to cover termination of leases of tenancies other than by way of eviction. This language does that.

CHAIR CARE:
Thank you. Any questions of Mr. Childs? Any further discussion on the bill and the proposed amendment? The Chair will entertain a motion.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 338.
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> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION PASSED. (CHAIR CARE ABSTAINED FROM THE VOTE.)

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CHAIR CARE:
I will open the work session on S.B. 354.

SENATE BILL 354: Revises provisions governing land use decisions. (BDR 22-235)

Senator McGinness asked a few questions, and there were discussions between Renny Ashleman of the City of Henderson and Kyle Davis of the Nevada Conservation League. Mr. Wilkinson, what do we have before us?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
The mock-up in the work session binder, Exhibit C, incorporates the suggestions of Mr. Davis and Senator McGinness's concern regarding the ability of someone to appear before a governing body. If you turn to page 3 of the mock-up at the

very bottom, there is a new subsection 6 added that states:

> The provisions of this section must not be construed to impair or prohibit a person from exercising the right to: a) Seek appropriate redress for any violation of State or federal law by a person or entity described in paragraph (a) to (d), inclusive, of subsection 1, if the person has exhausted all available administrative remedies …

Section 1, subsection 6, paragraph (a) of the mock-up was intended to address Kyle Davis's concern this not affect the ability of a person to seek redress for a violation of State or federal law provided the person has exhausted available administrative remedies. Paragraph (b) indicates that it is not intended to prohibit or impair the ability of a person to appear before a governing body to express his opinion concerning any matter, notwithstanding that the person failed to show up previously and would not be entitled to appeal the decision to the governing body.

That attempted to say, regardless of whatever participation you had before a planning commission, you still have the ability, as any person does, to show up at a governing body and say whatever you want to say.

CHAIR CARE:
Thank you. Does the Committee have any questions of Mr. Wilkinson? Senator McGinness, I know you had a concern. Does this address your concern?

SENATOR MCGINNESS:
Yes it does. I appreciate Mr. Ashleman's work on this.

CHAIR CARE:
Does anybody need to hear from Mr. Ashleman? If there are no questions, Chair will entertain a motion.

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 354.
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> SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

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CHAIR CARE:
I will open the work session on S.B. 372.

SENATE BILL 372: Revises the Nevada Clean Indoor Air Act. (BDR 15-1099)

CHAIR CARE:
We have no offered amendments.

LINDA J. EISSMANN (Committee Policy Analyst):
Mr. Chair, yes, we do. There was the amendment (Exhibit E) which came in from Jesse Wadhams after I prepared the work session binder.

CHAIR CARE:
Committee members, you will find a copy of that in the materials that are before you. Mr. Wilkinson or Ms. Eissmann, do either of you want to explain the amendment? Would you like testimony?

MS. EISSMANN:
Yes, we received this late yesterday. I am not sure either one of us has had a chance to digest it.

CHAIR CARE:
Mr. Alonso, if you could come forward and explain the amendment, please.

MICHAEL ALONSO (Herbst Gaming, Inc.; Las Vegas Convention and Visitors Authority):
The first change is the language in the amendment in Exhibit C, section 1, subsection 6. This change addressed the concern the State had with the local government's ability to delegate from the State Health Officer. We have provided that the State Health Officer can enforce the provisions of the section pursuant to the regulations adopted by the State Board of Health.

The designee, pursuant to our proposed subsection 6, may include any county or district board of health created pursuant to NRS 439. That should have addressed the fiscal note and the issue whether or not the delegation can be to

the district boards of health, Clark County, Washoe County and Carson City. Pursuant to the comments made by Senator Amodei during the hearing, you will see the stricken language of NRS 202.2492, which is the criminal penalty. Subsection 8, paragraph (a), at line 27 was a comment from the State on the potential inconsistency between the adult stand-alone bar, tavern or saloon, and the definition of a restaurant, making it clear an adult stand-alone bar, tavern or saloon can serve food as long as it meets the other requirements, has a gaming license, has a liquor license and prohibits anybody under 21.

The corresponding change is the definition of restaurant. My copy does not have a page number, but it is in subsection 8, paragraph (i), under definitions. We made the change in language that says, "a restaurant means a business other than an adult stand-alone bar, tavern or saloon.

CHAIR CARE:
Thank you. Any questions of Mr. Alonso?

MS. EISSMANN:
Mr. Chair, I did receive an e-mail from Joe Pollack this morning. He agreed with Mr. Alonso about the State Health Officer.

CHAIR CARE:
Good. Thank you.

SENATOR AMODEI:
The blue language is the bill.

MR. ALONSO:
Correct.

SENATOR AMODEI:
Mr. Alonso, on the second page of the amendment at section 1, subsection 1, paragraph (f), line 25, it is talking about exceptions to where you cannot smoke. The blue is new language proposed for the statute. It talks about public smoking area of an indoor place of employment. That is a proposed new exception?

MR. ALONSO:
That is in S.B. 372. That is correct.

SENATOR AMODEI:
I understand that paragraph (g) refers to events not open to the public that are tobacco-related projects. Can you refresh me on paragraph (f). Why was that put in?

MR. ALONSO:
Yes. This was intended to deal with the issue of grocery stores, convenience stores and drug stores. Even though the language is very broad and we try to make it clear, if you read subsection 1, "except as otherwise provided in subsection 3, smoking tobacco in any form is prohibited in indoor places of employment." Then it goes through the following. That was to be an exception, as long as you had a smoking area completely enclosed, a separate method of ventilation and a limitation on people over 21 years of age.

Even though there is little likelihood that the smoking capsule would end up in child care facilities, movie theaters and video arcades, we suggest moving those items into subsection 2, which says, "without exception, smoking tobacco in any form is prohibited within school buildings and on school property." If the Committee had a concern about those items, those could get moved down into subsection 2. There would be no question smoking would be prohibited in those areas.

CHAIR CARE:
Thank you, Senator Amodei. Any other questions of Mr. Alonso? Looking at the bill as written, section 1, subsection 3, paragraph (g), lines 34 through 40, "the area of a convention facility in which a meeting or trade show is being held." The testimony was there had been a loss of two trade shows; some question as to whether smoking under these circumstances would be prohibited. Nonetheless, this remains a practice at the convention authority, among others that are looking for some comfort in statute that it could continue to do what it is apparently doing. I did not hear any opposition to that. My personal opinion is it could go into statute, and I do not have any difficulty with that. Anybody from the Committee want to comment?

SENATOR COPENING:
I am also in agreement. I do not have any problem with that going into statute.

CHAIR CARE:
Does anybody have any opposition? On the issue of local enforcement, my feeling is that it ought to be local enforcement whether we say the State may delegate to the locals or we just say locals. I thought the testimony from Clark County was they were just about finished putting the scheme together to enforce what was Question 5 and that it ought to remain local.

SENATOR AMODEI:
In the amendment, the language in section 1, subsection 6 says, "pursuant to regulations adopted by the State Board of Health ... shall issue citations for violations ... ." This section talks about the ability to designate the County Board of Health, which I assume is an attempt to enfranchise the locals. My question is, was there indication by the State people that they would not designate the Clark County Board of Health as the enforcement authority?

CHAIR CARE:
I do not recall that there was any such testimony. What I recall was if they had to do it, there would be a fiscal hit because they would have to hire enforcers. The impression I got was the State was more than willing to designate a local health district.

SENATOR WASHINGTON:
The amendment that has been presented before us adds some level of comfort to me. In the original bill there was no oversight provided by the State Board of Health. With this provision and new language that the regulations shall be adopted by the State Board of Health provides some oversight but still allows the county boards of health to enforce and issue citations for those that are in violation of the Clean Air Act. I am comfortable with this new language now.

CHAIR CARE:
Any other thoughts from Committee members?

SENATOR AMODEI:
If there is a concern that somehow the State is going to not designate somebody, then perhaps we could add language that says, unless there is good cause shown, a county health board may request that designation. Then will it be granted? They can do that in regulation. I do not think it is anybody's intent to disenfranchise county health boards when they want that authority.

Maybe we need language that would indicate if the county health board requests it, it will be granted unless there is good cause not to. That allows the State to do the rural thing, and in the larger urban areas or counties where people have their programs and want to continue enforcing them, then State Health in regulations could provide that.

CHAIR CARE:
I am in accord with that.

SENATOR MCGINNESS:
Most of the rural counties I represent do not have a county health board and this gives them oversight by the State. As Senator Washington said, it gives me comfort there is oversight.

CHAIR CARE:
Any other discussion on that subject? Let us go to the bill under section 1, subsection 1, paragraph (f) through 3, lines 25 through 33, where smoking would be permitted in an enclosed area where smoke is substantially prevented from infiltrating to other public areas of the indoor place of employment. Does anybody want to offer any thoughts on that language?

SENATOR AMODEI:
The testimony on this was conflicting. I would be more comfortable omitting that from any proposed movement of the bill. It is going to create some enforcement issues. I do not know whether you can have that or not. An indoor place of employment is a very large term. My suggestion would be to omit that from the amendment.

CHAIR CARE:
Any other comments on that subject?

SENATOR WASHINGTON:
Based on Mr. Alonso's testimony, I do not have a problem with the language. I know "substantially" has been used when dealing with grocery stores trying to encapsulate slot machines. Adequate ventilation has been attempted to filter out smoke and they went to great lengths to make sure this language was plausible. But Mr. Alonso's suggestion of moving section 1 to subsection 2 where there are no exceptions dealing with child care facilities and movie theaters. I would

be happy with the current language if we move it to section 1, subsection 2, paragraph (b).

CHAIR CARE:
Senator Washington, I take that to mean you would be in favor of an enclosed smoking area in such places of employment as malls, retail establishments, grocery stores ...

SENATOR WASHINGTON:
Absolutely.

CHAIR CARE:
And the others that are enumerated in what is currently section 1, subsection 1.

SENATOR WASHINGTON:
Right. To make sure those are concerned about child care facilities and movie theaters, move it under subsection 2 where there are no exceptions.

CHAIR CARE:
Thank you. We have a difference of opinion there. Are there any other comments on this section before we go to the adult stand-alone bars? Does anybody want to offer a thought on the statutory recognition or creation of an adult stand-alone bar, tavern or saloon?

SENATOR WASHINGTON:
I am okay with the amended language now. It clarifies it so there is a differentiation between stand-alone bars and taverns versus restaurants, a clarification of how and when they can serve food.

CHAIR CARE:
Senator Washington, you said you are okay with the concept and the language in the proposed amendment, clarifying an establishment in the new language "in addition to giving, serving or offering for sale food and other than in an adult stand-alone bar" to having that clarifying language.

SENATOR WASHINGTON:
That is correct.

CHAIR CARE:
Okay.

SENATOR COPENING:
I am also okay with the concept of an adult stand-alone bar. It comes down to choice in this particular situation, being these would be confined to those who are 21 years of age or older. We know we are not going to have any children involved in this particular establishment. That makes me comfortable. I know one of the main concerns of the opponents, which we heard over and over again, was the exposure of smoke to children. This satisfies that.

CHAIR CARE:
Thank you. Additional comments? Let me throw out a suggestion. I agree with Senator Copening. But I also know there would be an issue with enforcement, and we may have to put it into statute. This is the opportunity to do that. We need provision that puts teeth into the law so the enforcer from the Clark County Health District enters into an adult stand-alone bar and finds somebody there under the age of 21. I am going to throw some figures out here, a civil fine against the establishment of $1,000 per violation or $2,000 per violation, something severe like that.

SENATOR COPENING:
I would not be opposed to a significant fine. I am not sure what that would be, but it definitely needs to be significant to ensure the enforcement is there.

CHAIR CARE:
That is arbitrary on my part. I said $1,000 and making it a civil fee. I am sure there is a mechanism in place whereby the establishment could seek review of the imposition of the fee. I do not know where that would be or ...

SENATOR WASHINGTON:
I would be opposed to it. You now put the onus on the establishment to either identify or check every patron that comes into that establishment, to assure they are 21 years of age. We already do it for retail establishments when they purchase tobacco products.

CHAIR CARE:
That was part of the litigation that went before District Judge Douglas W. Herndon, Eighth Judicial Court, and was argued on Monday before

the Nevada Supreme Court, civil/criminal, as to who bears the burden of the sanction. On the other hand, if this is what people want, there should be a burden.

SENATOR AMODEI:
I am looking at the criteria of an adult stand-alone bar—you are selling an alcoholic beverage—you better know the people are 21. You hold a restricted or nonrestricted license which means the people who are gambling better be 21 years old. I am not sure that creates something that you are not doing as a result of people drinking and gambling. You better be prohibiting people who are under 21 from drinking and gambling.

If a 19-year-old wanted to go in there to have a cheeseburger and get some secondhand smoke, you would have to cite them. Normally, I would agree with that analysis. But, maybe the State Board of Health regulations could require a notice posting. Maybe you need to post a notice that says, this is a—whatever they want to call it—in regulations, people under 21 are prohibited. I would not impose this on the operators either, but they are already doing it.

The only other thought I have is the definition. Already in statute it prohibits loitering by minors in casinos and now in stand-alone bars. These things are adult activities, so you would already have some posting notice requirement in regulations. I see this consistent with what is already on the books in terms of casinos, stand-alone bars, taverns and saloons. You are excluding 21-year-olds from those areas.

CHAIR CARE:
Mr. Alonso, if you would come forward. You see the issue. If the Legislature recognizes an adult stand-alone bar, there is a feeling, at least among some of us; any violation by a minor should have consequences. Senator Amodei is suggesting, and he is probably right, those are already on the books. You cannot drink. You cannot serve a minor. These places are going to hold a restricted or nonrestricted gaming license, so there are implications from gaming enforcement. If we added anything, what would that do?

MR. ALONSO:
We intended the language to have enforcement turn to the business operator. As you know, Judge Herndon ruled you can only enforce the law against the patron. That has been very difficult to enforce. We do not have any problem

with the concept. The amount of the fine we may get concerned about, depending on the level. But these places have gaming licenses, they are serving alcohol and they should be looking for people who are under 21. That is why we put the age of 21 in there. It should be enforced by the owner. It makes enforcement easier. We are already doing it for alcohol and gaming. We would be comfortable with that structure. If the fine was reasonable, we would support it.

CHAIR CARE:
Mr. Wilkinson, these are all concepts. What do we need to do, in light of what you just heard, if we want to heighten the existing sanctions already there?

MR. WILKINSON:
It sounds like what you are suggesting is a separate civil penalty for allowing a minor to be present in the area as it pertains to the smoking section. As was discussed, there is an existing law that provides for penalties and fines for allowing a minor to be present in a gaming area or where alcohol is being served. This would be something that would be in addition to whatever penalties exist for those violations. Whatever the Committee desires, I will draft an amendment. The Committee can review it to make sure it does what you want it to.

SENATOR AMODEI:
One last thought. This offense will expose you to the State Gaming Control Board, the local county commission on your alcohol license and the health district, all for one person being there.

The only thing I would put on the record, if we do something like that is: let us be careful where that fine money goes. Also, let us not do it in such a way that gets the bill sent to our colleagues on the money committee. If that is a slight to people who serve on money committees, then the record should so reflect.

CHAIR CARE:
I am trying to imagine the situation where somebody from the health district, using Clark County as an example, enters an establishment, finds out there is a patron under the age of 21 and says, I know he is not supposed to be here under gaming regulations, and the alcohol statute, but that is not what I am concerned about. I am going to cite the owner because you are not 21 years old and there is smoking in here. Is that too cumbersome?

SENATOR WASHINGTON:
I am very uncomfortable that we are putting another level of responsibility on the tavern or owner of the establishment to ensure, first of all, there is no one in his establishment under the age of 21. If they are, there are three levels of enforcement that may be imposed upon them with civil penalties. There are some young people who can be under the age of 21 and look over the age of 21. That means the establishment owner needs to certify and verify that everyone who steps into his establishment is over the age of 21. We are asking too much. I am not comfortable with your proposed concept.

CHAIR CARE:
That is fine. Mr. Alonso, let me put the question to you this way. If we recognize an adult stand-alone bar, what is there for the health district to enforce? As we discussed, you are going to have alcohol and gaming anyway. We can add things about the State or designated local authority and that would go where you have smoking prohibited in a bar that has chosen to serve food but not have smoking. What is left for the health authorities to enforce as to an adult stand-alone bar?

MR. ALONSO:
I understand the issue of the gaming license and the liquor license. With the Clean Indoor Act, you have establishments that could put a wall up and separate the bar from the restaurant, and that has the infiltration language as well. That is what the health district could continue to enforce. We are not changing that piece. In those establishments that choose not to go over 21, that is probably where enforcement is going to be.

If you are not serving that minor liquor, it should not be in the bar area. Some of these places are large, and if they are not near the gambling devices, which most of them are in the bar, they should not be in the building, period, if this is an adult establishment.

That is why we do not have a concern with the fine, if you make it reasonable. If you take these larger places, people under 21 can walk in and would not violate gaming rules because it is a big enough location and they are not going to be next to the slot machines. They would not violate liquor rules because they are not being served alcohol, but they are still inside the location. It is reasonable to say if they are going to an over-21 establishment where smoking

is allowed, then there should be some penalty for allowing that to happen, and the burden should be on the owner.

SENATOR WASHINGTON:
I appreciate Mr. Alonso's dialogue and answer. I am not going to hold the bill up because of my difference of opinion. You could have any number of circumstances that take place. Someone other than 21 years old may pass through the establishment and then you get some overzealous health officer who sees a minor walking through and fines the individual without knowing the circumstances or situation. It is another layer being placed on the owner that is not necessary.

MR. ALONSO:
Regarding Senator Amodei's point on section 1, subsection 3, paragraph (f), if you limit that to places that have gaming devices, the indoor place of employment issue goes away.

CHAIR CARE:
We have had a lively discussion. You have an amendment before you, and you have the discussion. We have a bill with several sections in it. A couple of provisions do not seem to have generated any controversy. We have had some discussion of an additional fine with the fine being levied on the proprietor. What we have not had, as Senator Amodei suggested, is that a fine could be dedicated to a scholarship fund, or something else. Does anyone want to attempt to craft a motion?

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 372 BY STRIKING SUBSECTION 1, PARAGRAPH (F) OF SECTION 1; RENUMBERING SUBSECTION 1 PARAGRAPH (G) AS PARAGRAPH (F); INCORPORATING THE PROVISIONS PURSUANT TO THE AMENDMENT EXHIBIT E PROPOSED BY MR. WADHAMS TO ALLOW THE DISTRICT STATE BOARD OF HEALTH TO HAVE REGULATIONS; AND DESIGNATING COUNTY OR DISTRICT BOARDS OF HEALTH AS THE LOCAL ENFORCEMENT AUTHORITY.

I will defer to committee counsel if statute is not the appropriate place, but the record ought to reflect that if a local or district board of health requests primary jurisdiction, unless there is good cause shown not to, it will be granted.

In addition, incorporate the new language at lines 26 through 33 of page 4 of the amendment, a new definition for adult stand-alone bar, tavern or saloon.

I will defer to committee counsel for penalty issues and whether that is more appropriate for state board of health regulations or if there is language that we can put in that says there will be jurisdiction of the health board to impose civil penalties for first and repeat offenses.

CHAIR CARE:
We also need to include in the motion the language on page 3 of the proposed amendment, line 20, further clarifying the definition of a restaurant. Does everyone understand the motion?

SENATOR WASHINGTON:
I understand the motion quite well. Two provisions of the motion that I am not in agreement with are lines 25 through 30 on page 2 of the mock-up amendment which deals with public smoking in areas of indoor places of employment. I would leave those lines in, and the second provision of the motion is the civil penalties to be imposed upon infractions by owners that have first and additional offenses.

The only addition I would add to the motion would be to move section 1, subsection 1, lines 6 and 7, under subsection 2, child care facilities and movie theaters, where there are no exceptions. That would be my motion. All of the rest I agree with.

CHAIR CARE:
So noted. As you correctly point out, Senator Washington, there is no second to the motion yet. Does everybody understand the motion? Is there any confusion? I want to make sure everybody is clear.

SENATOR COPENING:
I would like clarification. Michael Alonso mentioned we could make section 1, subsection 3, paragraph (a), regarding gaming establishments, not necessarily malls and retail establishments, but anything that might have gaming within it. Is that what Senator Amodei is proposing when we are talking about an indoor place of employment? The conversation was going back and forth. Should it be any indoor place of employment or should it be those that might have a gaming component?

CHAIR CARE:
As I understand it, that is not part of the motion.

SENATOR AMODEI:
That is correct. We will see where this goes, and then if the Chair wants to talk about that for an additional amendment, that is fine.

SENATOR COPENING:
Senator Amodei said about a posting requirement on the adult stand-alone bar, tavern and saloon. There needs to be something clearly posted so the unsuspecting family does not walk in and get exposed.

CHAIR CARE:
For purposes of Legislative intent, Legislative history, I took the motion to mean the proposed regulatory authority would include posting.

SENATOR AMODEI:
Thank you for reminding me. I do not know if that is appropriate to put into statute or for the health district to do as regulation. I will defer to committee counsel after he has a chance to look at it. Whatever Staff indicates is fine with me, but I think that is important.

MR. WILKINSON:
That could actually be either way. It seems clear on the record now that it is something that is desired to be included in the regulations. When those come before the Legislative Commission to review, that could certainly be considered, or it could be specifically added into the statute as saying the regulations have to include such a requirement.

SENATOR PARKS:
Was I correct in understanding that in section 1, subsection 1, paragraph (f), it is okay to have smoking in grocery stores?

CHAIR CARE:
No, that is stricken. The entire paragraph (f) is not part of the motion.

SENATOR PARKS:
It would then be permissible?

CHAIR CARE:
No, it would not be. Does anybody need any additional clarification? Does anyone want to make a second?

SENATOR McGINNESS SECONDED THE MOTION.

SENATOR WASHINGTON:
If I can go back to page 2 of the amendment, lines 25 through 30 in the new language dealing with public smoking. Based on Senator Park's questions regarding grocery stores, this issue has been hammered out in previous sessions. In the 1999 Session, they dealt with encapsulated slot machines or slot routes and grocery store owners providing adequate ventilation or filtration for those grocery stores. The language that was agreed upon for those who advocate against smoking, grocery store owners are to provide some amenities to those who smoke. I am very uncomfortable striking this language. Mr. Wilkinson, you might have to help with what cause and effect this will have on existing language. That means there will be no smoking in those areas at all, and grocery store owners have spent a great deal of money to provide ventilation systems in encapsulated areas for their customers and patrons. I really do have a problem with removing that language.

CHAIR CARE:
Thank you, Senator Washington. Any other questions or comments?

SENATOR AMODEI:
What is going on in those types of places is covered by existing law, so we are not taking anything away. I assume a grocery store is a public place which exists under section 1, subsection 1, paragraph (d). I have no problem continuing to think about Mr. Alonso's issue regarding tying that with gaming devices. My motion just reflects the areas I feel dangerous. I am not saying I disagree with you, but the way it is put right now, I still have some questions. That is why it is not in the motion in terms of seeing how that would work.

This is an area that will continue to get phenomenal micro amounts of scrutiny for people who are in business, people who do not want to be exposed to secondhand smoke and people who are in the enforcement business. In that context, I am personally uncomfortable putting that in there just because it leaves too many gray areas and will continue to ferment and add confusion. I am not saying that area cannot work more.

SENATOR WASHINGTON:
I am not going to hold up the bill, but, Mr. Chair, if you will allow me to work with my colleague, maybe we can figure out the language and come to some consensus. If you allow us to offer a floor amendment, we will move the bill forward and go from there.

CHAIR CARE:
If there is no other discussion on the motion, Mr. Wilkinson, as you understand it, would you explain to the Committee what the motion is so everybody understands?

MR. WILKINSON:
The amendment would strike the language in subsection 3, paragraph (f) regarding public smoking areas of an indoor place of employment. It would include the existing provision of the bill regarding adult stand-alone bars, taverns and saloons as modified by the amendment submitted by Mr. Alonso, which contains the further clarification of the ability to sell food and changes the definition of restaurant. It would include the proposed amendment regarding the State Health Officer designating the local health authority, and the creation of civil penalties. Senator Amodei mentioned civil fines, the figure of $1,000 was mentioned previously too. I do not know if the Committee's desire was to have $1,000 for a civil penalty. The existing provision has an account for education of minors into which that money goes. It would simply go into that account.

There was also a mention of a subsequent enhanced penalty. I did not know what the desire was for that amount. If it would be doubling it or if there would be some specific time period in which a second violation would have to occur within a year, two years, three years, whatever period.

CHAIR CARE:
We cannot just leave that part up to the regulatory authority of the health district. It would still have to be approved by the Legislative Commission.

MR. WILKINSON:
That would be one way of doing it, although the civil penalties are set forth in statute. It might be odd to put that into regulation; it would tend to be more appropriate to be in a statute.

CHAIR CARE:
Okay.

MR. WILKINSON:
And Mr. Alonso originally mentioned moving child care facilities, movie theaters and video arcades into the prohibited category. Senator Washington referred to (a) and (b), but I do not think the motion included moving any of those.

CHAIR CARE:
That is my understanding as well. Senator Amodei's motion also included crafting some language about good-cause showing. You have that under the State versus local.

MR. WILKINSON:
Yes.

CHAIR CARE:
Okay. We have a motion on the floor to amend and do pass.

SENATOR WASHINGTON:
Before you do that, I do not know if the maker of the motion would be amenable to moving section 1, subsection 1, lines 6 and 7 under line 14?

CHAIR CARE:
That is the reference to the child care facilities and movie theaters?

SENATOR WASHINGTON:
That is correct. And video arcades.

CHAIR CARE:
Everybody understands that the way the motion is, none of that gets changed and the request from Senator Washington, if Senator Amodei wants to amend his motion, or if that is going to be subject to discussion between the two Senators after today.

I am going to call for a vote on the motion. Depending on the results, we can discuss it further, but I am inclined to call for a vote as crafted.

SENATOR AMODEI:
Then I will let the motion stand as it is.

I am mindful of some testimony from some people who said this was voted on, this would do this perspective and it has not been the three years. That has been addressed with the effective date. I would also remind those people that the legislative process is a continuing one which, if it goes somewhere, needs to get off the floor of the Senate and go through the same process in the Assembly. There is also the 2011 Session where, if this proceeds, there is nothing to prevent the people in 2011, for those of you who will be here, from altering this again in a perspective sense. And there is nothing to prohibit those same people from accessing the other processes, such as the initiative process. Speaking only for myself, and I do not want to leave that, somebody will say, oh, they do not respect the will of the voters. Listen, I respect the will of the voters, and I also respect the ability of the Legislature to attempt to make policy in those same areas.

That is not a poke in the eye or anything like that, but somebody has to stand up for the legislative process once in a while. This provision allows that time frame to pass by the effective date. I know this may come as a shock to some people, but the legislative process sometimes does a good job in policy.

CHAIR CARE:
Thank you, Senator Amodei.

THE MOTION PASSED. (SENATOR WIENER VOTED NO.)

* * * * *

CHAIR CARE:
I will open the hearing on S.B. 348.

SENATE BILL 348: Revises certain provisions of the Uniform Principal and Income Act (1997). (BDR 13-1280)

I do not know if the testimony of Commissioner Frank W. Daykin was all that clear to the Committee yesterday. Members of the Committee, there is a handout from the Uniform Law Commission (ULC) with a summary of the 2008 amendments (Exhibit F) which is what is contained in S.B. 348. It says in the

opening paragraph, "at its annual meeting in 2008, the ULC approved amendments to sections 409 and 505 ... " which have corresponding sections in this bill, the Uniform Principal and Income Act (UPIA), that implement technical changes related to developments and interpretations relating to tax matters. The amendments are as follows. There is an explanation, because of certain tax rulings, that it was necessary for the drafting committee for this Act of the ULC to draft these amendments. Does anybody have any comment on that?

By 2008, this Act was adopted by five states. It has been introduced in ten other states, not including Nevada. Are there any comments from the members of the Committee? Does anybody want to make a motion?

SENATOR COPENING MOVED TO DO PASS S.B. 348.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
Thank you, members of the Committee. Mr. Daykin is a longtime Commissioner. He wanted to do that yesterday. I apologize. I do not think the testimony was all that clear.

I will open the work session on S.B. 253, the bill sponsored by Senator Parks.

SENATE BILL 253: Makes various changes to provisions relating to common-interest communities. (BDR 10-18)

We have amendments Exhibit C, one offered by Karen Dennison. Senator Parks testified that the amendment is acceptable. Another is offered by Mr. Jonathan Friedrich who has testified from Las Vegas on several occasions on bills related to common-interest communities (CIC). Senator Parks, have you looked at that proposed amendment?

SENATOR PARKS:
Yes, I did review that. The proposed changes suggested by Mr. Friedrich are definitely helpful. I would suggest they also be included in an amendment to the bill that would include Karen Dennison's comments as well.

CHAIR CARE:
Thank you, Senator Parks. Any comment on the bill or proposed amendments? I do not see any. Does anyone wish to make a motion?

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 253.
>
> SENATOR WASHINGTON SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on S.B. 261.

SENATE BILL 261: Makes various changes relating to common-interest ownership. (BDR 10-789)

I am the sponsor, but this bill is by request from other practitioners in the area of common-interest communities. There was no opposition. You will recall the testimony from Mr. Leach.

We have an amendment in Exhibit C proposed by Mandy Shavinsky representing the Real Property Division of the State Bar Association. There is an explanation of what the amendment would do. Any discussion on the amendment or the bill from the Committee?

Mr. Wilkinson, there is a definition proposed for civil action in that bill. What does that give us or take away under existing law?

MR. WILKINSON:
That provision is in one of the other bills that is coming up, S.B. 351.

Any further discussion on S.B. 261 or the amendments? I do not hear any. The Chair will entertain a motion.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 261.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on S.B. 182.

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

The Committee should have a mock-up in your binder, Exhibit C. My understanding is the mock-up is the work of several people who testified but did not include all people who testified. They had access to many of the proposed amendments, testimony offered, the handouts and e-mails, and they went through all of that and came up with S.B. 182. Senator Schneider, it is your bill. Please comment on the process about the proposed amendment to S.B. 182 in general.

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 11):
The process was all the concerned parties came to my office. We locked ourselves up for the afternoon, four and one-half hours or so, and went over both bills, almost line by line, section by section. Mr. Wilkinson and Scott Young were also there.

As we went through these, we made a lot of changes. I listened to and took under advisement remarks from all of the people in the room, representatives from Olympia Group, Caughlin Ranch from the north, all the big developers in the south, and representatives of some of the small associations.

We covered it. I listened to many of their concerns, and we made adjustments. I want to thank you for your legal counsel, Mr. Wilkinson. He and Scott Young

did an excellent job of putting this together. The two of them have been collaborating for 12 years on all of this. I gave a lot of ground, but there are some things I would not give on. One of the people who was there called me the other day and complimented us on the amendment. She said it looked as if we listened to all of their major concerns.

CHAIR CARE:
Thank you, Senator Schneider. We had many people, including some in Las Vegas, whom we could not get to. Some we were able to bring to the microphone to testify; some liked it, and some did not, specifically and generally. It was not possible to have everyone testify. I took every single e-mail that I received with a proposed amendment or in-depth discussion of the bill, not just those who said for or against, and passed those on to Staff. My understanding is all of the information was made available as well.

We had the case from a previous bill. Senator Parks entertained a motion from somebody who testified from Las Vegas and submitted an amendment. It was a good idea and we adopted it on the bill we just moved.

SENATOR SCHNEIDER:
I provided Scott Young with all of the comments I received too. I do know that Mr. Wilkinson had a lot of comments you forwarded to him. Those were all in the hopper. They were all taken under consideration. Those that fit, we tried to fit in. Some of them fell by the wayside, but that is the process.

CHAIR CARE:
Thank you, Senator. For members of the Committee, I am not going to go through this line by line. As I read it, the significant changes are changes in the concept of tampering with the election process within a CIC contained in section 3. There is the deletion in section 1 about the self-dealing, but much of that is now covered in section 4.

The construction-lien penalty provision contained in what used to be section 11 is gone. There is language still in the bill about guests; now the legal term “invitee” is substituted, and I will confess with you I disagree with what is in the mock-up. But I also recognize this is the product of many, many people trying to come to a consensus.

SENATOR SCHNEIDER:
Mr. Chair, you are the Chair of the Committee, at your pleasure.

CHAIR CARE:
No, I am willing to listen to everybody here. A few provisions about the automatic appeals are out. There is discussion about campaigns. Somebody wants to run for the board—I was not quite comfortable with that language—but I acknowledge this is the work of some people much brighter than I am.

In section 18, there are revisions to due process language that was in the bill. The construction-lien language in section 23 is out. Political-signs language has been revised in section 26. The artificial-turf language, originally contained in the bill in section 27 is still there. This would permit artificial turf under certain circumstances; it just cannot be shoddy.

SENATOR SCHNEIDER:
And the homeowners' association set the standards for the artificial turf they want. We concluded if it was good enough for Steve Wynn at the corner of the Strip and Spring Mountain Road, it is probably good enough for Summerlin.

CHAIR CARE:
Okay. I wanted to discuss section 29, punitive damages. It is sometimes difficult for people to run for positions on boards. Punitive damages are not going to be covered in an insurance policy. Is that going to deter some people from running for a position on a board? Was there any discussion that you can recall about that, Senator?

SENATOR SCHNEIDER:
Mr. Chair, punitive damages has been in there since 1990. There have been thousands of people running for boards throughout the State. I do not see that a big problem since it has been in statute for at least a decade.

CHAIR CARE:
Okay, thank you. There are certain provisions I am not necessarily in love with, and that is one of them. I realize this is a work in progress and is going to be revisited on the other side, at any rate.

Any additional questions of Senator Schneider regarding S.B. 182?

SENATOR MCGINNESS:
Looking at page 23 starting on line 37 of the amendment,

> Notwithstanding any provision of the governing documents to the contrary, to establish adequate reserves ... the executive board may, without seeking or obtaining the approval of the units' owners, impose the necessary and reasonable assessments against the unit in the common-interest community.

Is that vague?

CHAIR CARE:
Mr. Wilkinson, you were part of these discussions. Why not explain that provision? That is not amendatory language but language in the bill.

MR. WILKINSON:
Yes, Mr. Chair. There is a discussion of this on page 3 which I put into the digest of the bill to make it clear. What we are doing is a clarification of existing law. Our office has written opinions to that effect. Existing law provides an association has a statutory obligation to fund adequately its reserves to include in its annual budget statement concerning its reserves, and whether it is necessary to impose any special assessments and to review the study of reserve to see they are always adequately funded.

Because certain associations have challenged this provision or it has been in dispute, we are adding this clarification to existing law specifically, to make that crystal clear for the record. That is not a change in the law, but is what the law says. We are reiterating it and making it absolutely clear so it does not arise again.

CHAIR CARE:
Any other questions from the Committee? Chair will entertain a motion.

> SENATOR PARKS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 182.
>
> SENATOR AMODEI SECONDED THE MOTION.

SENATOR COPENING:
I would request as we adopt these, if it should pass, that I meet with the sponsor and go over these so I have a clear understanding. Having served on a board and worked for a developer and having been a member of a homeowners' association (HOA), I want to make sure there are no unintended consequences.

SENATOR SCHNEIDER:
No problem. The door is open, glad to meet with you.

CHAIR CARE:
That raises another subject. The veto last Session by the Governor of a Senate bill ... , I cannot recall?

SENATOR SCHNEIDER:
That was an Assembly bill.

CHAIR CARE:
It was A. B. No. 396 of the 74th Session. One thing I have attempted to do this Session is keep all of these HOA bills as stand-alone bills rather than one big bill giving everybody an excuse to vote against. We are going to continue to do that on this side. There is a process to reconcile where we have what appears to be contradictory language between these bills. We will not get into that today, but Senator Copening, your suggestion is well taken. One thing we will attempt to do is keep these bills separate rather than roll or merge one into another.

CHAIR CARE:
We have a motion before us for S.B. 182. Are there any other comments before we vote?

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on S.B. 183.

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

SENATOR SCHNEIDER:
Legislation similar to S. B. 183 was vetoed last Session by the Governor. One of the pieces we took out of the bill was the rolling shutters. That was one of the things the Governor highlighted. We have taken some things out of this bill. Today we bring it forward, adding a few things.

I would like to point out the utility vehicles for Southwest Gas and the power company. That is important. Some employees live in HOAs are required to take their work vehicles home. Some gas company employees have their tools and everything in their truck. They are not the big huge trucks with cranes on the back. These are pickup trucks with a box on the back where they keep their tools. It is important for these people to have their work vehicles because when they get a call in the middle of the night, they go right to the call, not to their yard and pick up their vehicle and then to the call. That is for public safety. That would pertain to police also. A few years ago, Arizona passed legislation to allow the utility employees to bring their pickup work trucks home with them.

One thing that is not in here that we should address is attorney contracts. Since we have recognized these are government's attorney contracts, they should be open. Homeowners should know what the board is doing. It is like our contracts here, which are open to the public. That is a very important piece that the Chair may want to consider.

CHAIR CARE:
Thank you, Senator Schneider. We also have a provision for radar guns.

SENATOR SCHNEIDER:
That is a little controversial.

CHAIR CARE:
It does allow the use of radar guns under certain circumstances.

SENATOR SCHNEIDER:
Right.

CHAIR CARE:
And if you want to ...

SENATOR SCHNEIDER:
I have heard arguments. Let me share those with you. There are people who have Ferraris and Lamborghinis who live in these associations. They have been clocked at 110 mph driving down the street at night. That is the reason for radar guns. Radar guns have to be calibrated, and you have to be trained to use them. Do we really need those, and do these law enforcement officers need those? Some of the testimony was, hey, if you put those road signs out like at the airport, which say you are going 18 miles per hour, those work as well. This is not as if you are going to ticket everybody to fill your account. Some of these HOAs become aggressive with their radar guns. That is what I have heard from constituents.

CHAIR CARE:
I only raised the issue because there is a provision for that in the bill, and that is the by-product of the effort and work that went into the bill. I did want to call it to the Committee's attention. Any questions of Senator Schneider?

SENATOR COPENING:
I have a question about the legality of radar guns. If you are talking about a common-interest community that is not gated, therefore the streets are not owned; these are city or county streets. Can radar guns be used on city or county streets? Do they have jurisdiction? To my understanding, they do not.

SENATOR SCHNEIDER:
A few sessions ago, we passed a law regarding basketball hoops on public streets. The HOAs have no power for controlling public streets. That would be the same instance. That would be my understanding on the radar guns. Those are public streets, and these are not public police officers using them.

SENATOR COPENING:
But this bill is allowing for those, correct?

SENATOR SCHNEIDER:
Only in gated communities with private streets.

SENATOR COPENING:
Oh, I missed that. That was what I was questioning. So within the bill it does specify gated communities?

SENATOR SCHNEIDER:
It does not specify it there, but if you go back to 2005 Session regarding public streets, HOAs cannot control public streets. They cannot give you a ticket on a basketball hoop on a public street.

SENATOR COPENING:
Thank you. That is the clarification.

SENATOR PARKS:
With regard to the radar guns, is there a requirement that they must be calibrated?

SENATOR SCHNEIDER:
Yes, there is; that was the verbal agreement. I will defer to Mr. Wilkinson. I am not a fan of radar guns.

CHAIR CARE:
The language is on page 3, section 6, subsections 1 and 2 in Exhibit C.

MR. WILKINSON:
Mr. Chair, that is correct. We took that directly from the existing NRS provision regarding radar guns.

CHAIR CARE:
Any other questions for Senator Schneider? I do not see any. Any comments from the Committee?

SENATOR COPENING:
I would appreciate being able to work with Senator Schneider to go through this, if these are adopted.

SENATOR SCHNEIDER:
If you want to eliminate the radar gun, feel free.

CHAIR CARE:
The Chair will entertain a motion.

> SENATOR WASHINGTON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 183.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on S.B. 216.

SENATE BILL 216: Revises provisions regarding the addition of shutters to units in common-interest communities. (BDR 10-1078)

SENATOR SCHNEIDER:
I am not aware of any amendments to this bill.

CHAIR CARE:
We have no amendments. We have testimony for and against. I have, on a personal level, wrestled with this because there is a legal issue. I know it is no surprise to the sponsor of the bill. Mr. Wilkinson, I was unaware until testimony that the exterior of a unit owner's unit is a common area, not his or hers. If we pass this bill as is, what is the legal conundrum we run into?

MR. WILKINSON:
Mr. Chair, that is the issue and the purpose of the bill. Existing law allows a unit's owner to put shutters on the unit itself but not on anything that does not constitute the unit, which would be a common element or a limited-common element. As you identified in condominiums, the exterior and sometimes anything beyond the paint itself, but part of the interior wall, depending on how the community is set up, would be a common element or limited common element.

There has been some mention whether it would constitute an unconstitutional taking to pass this bill and allow some use of a limited common element or common element by a unit's owner. That issue arose last Session during the discussion on A.B. No. 396 of the 74th Session. That is not something which there is extensive case law on or something our office has issued any formal opinion on. Personally, based on my understanding, saying that would constitute an unconstitutional taking may be something of a stretch. Allowing

someone to put a bracket on a common element does not rise to the level of the taking in a constitutional sense.

I would be happy to review if someone has some case law I do not know about which more clearly identifies that issue. I would certainly look at and consider it. My opinion is, we are not talking about a constitutional issue but a policy issue for the Committee to determine.

SENATOR SCHNEIDER:
During testimony on this bill, Mr. John Leach testified he understood this was a taking, could not put it on the outside, and may penetrate the membrane of the house. He suggested maybe you anchor them on the inside. The interior of the wall is owned by the HOA, you are drilling through the sheetrock into the studs. You are doing the same thing as if you were mounting them from the outside.

They should be allowed for energy and security purposes. If you want to put it in for counsel's consideration, it was brought up at the hearing. Maybe if you mounted shutters on the windows and doors of your unit, that takes away the issue about common area where you mount them on the clubhouse. That is not the intent, so people specifically could do it. People ask what happens when you sell your unit and leave? Those shutters are specifically built to fit specific windows and doors. They are not things you can take off and leave with. However, if someone did remove them, the association can require a fee to patch the stucco and paint. You are not talking about much work when these shutters come off. Each HOA could assess a fee to cover the costs.

CHAIR CARE:
If we narrowed it to that, are we still using the common area, door and window only? The exterior of your unit apparently is a common area. Does that include the exterior of the window?

MR. WILKINSON:
That is the gist and difficulty of the issue. If it is just the unit and the area the unit's owner can control, the existing law allows that and we do not need to make any change. This bill specifically allows a unit's owner to go outside the unit. It is limited to the extent that it says, it is not part of his unit, it is a common element or limited-common element; it has to be adjoining or in close proximity to his unit, which is our way of describing it has to be nearby.

I do not know how many other ways we can pin it down. You cannot go all the way down to the clubhouse under the bill as drafted. It has to be adjoining or in close proximity to the unit. It is hard to pin down the exact language and cover every kind of common-interest community that exists and every configuration because they are all different.

The point of the bill is to allow the unit's owner to put the shutters on something that is not part of the unit. It has to be outside the unit itself.

SENATOR SCHNEIDER:
Mr. Chair, if I may. Maybe you can put in the bill that this portion only applies to condominiums and townhomes. It is covered under regular single-family homes in associations. The problem we have run into is the common area. If we spelled out the common area of your own unit, your own windows and doors in a condominium or townhome ... . That is where the problem comes up.

CHAIR CARE:
Does that change anything, Mr. Wilkinson?

MR. WILKINSON:
I understand what Senator Schneider is saying, that it is clearly the intent to address condominiums and townhomes. But this is not going to be an issue in a planned community, or outside that context anyway, because in those single-family homes, that is part of the unit to begin with.

CHAIR CARE:
Any other questions for Senator Schneider? Any comments, thoughts from the members of the Committee? The Chair will entertain a motion.

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 216 WITH THE AMENDMENT RESTRICTING THE AREA FOR INSTALLATION OF SHUTTERS TO THE FRAMEWORK OF UNIT-ONLY WINDOWS AND DOORS.
>
> SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED. (SENATORS CARE, COPENING AND WIENER VOTED NO.)

* * * * *

CHAIR CARE:
I will open the work session on S.B. 351.

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

This is another HOA bill. There are a number of amendments proposed in Exhibit C. This is a bill that Mr. Leach and others who practice in this area felt the time had come to review the statute. In light of recent Nevada Supreme Court decisions and problems they have run into with the existing law, perhaps it was time to make some changes to this statute. Does anybody have any questions so far? We do have proposed amendments. Mr. Leach had his own amendments and that includes what I discussed earlier, modifying the definition of civil action in section 2.

Mr. Leach was agreeable to the amendment offered by Mr. Lein. We had Mr. Wadhams representing Southern Nevada Homebuilders expressing concern for the definition of civil action.

MS. EISSMANN:
Mr. Chair, to clarify. There was a secondary amendment (Exhibit G, original is on file in the Research Library) I gave to the Committee members this morning.

CHAIR CARE:
That is in the handout we received?

MS. EISSMANN:
Yes, from Mr. Leach. He brought his own copy, so you may have two, but it was one of the amendments. We also have Karen Dennison's proposed amendment (Exhibit H) brought in this morning as well.

CHAIR CARE:
That is right. I acknowledged receipt to Mr. Leach of his latest proposed amendment, Exhibit G. Mr. Leach, if you want to walk the Committee through your amendments, please.

JOHN LEACH:
All of these amendments, Exhibit G, are the same amendments that I recommended on April 2. I had a memorandum and attached some exhibits to that memorandum. None of these amendments proposed changed anything not presented at the April 2 hearing. I will be glad to go through them with you, briefly.

Section 2 was amended to broaden the definition of civil action. I was aware of Mr. Wadhams' concern and unless Mr. Wilkinson or Ms. Eissmann have another thought, I do not think it interferes with any of the possible other provisions in S.B. 182 or S.B. 183. All we tried to do was define civil action by broadening it. The reason was NRS 38 provisions are too narrow. It deals with matters heard by the division before it goes to litigation.

Section 3 is Gary Lein's. He is the accountant on the Commission for Common-Interest Communities and Condominium Hotels. We have incorporated his exact language in the mock-up. It was not an attempt to change anything.

The same can be said for the other amendments. They were all issues we talked about in our last hearing. They are more consistent with the intent, as well as in compliance with existing provisions.

Karen Dennison has submitted a proposed amendment, Exhibit H, that would amend a section of NRS 116. It refers to the provisions that require disclosures when the property is sold by the declarant and when sold by a homeowner on a resell. I have no problem incorporating her proposed amendment, except I view it as an addition rather than a substitution. Her proposal is that it be substituted for section 6. It can be added but should not remove the section. It is the provision that would grant to the board of directors the discretion, not mandatory or required, to update their governing documents to come into compliance with NRS 116. The law has changed, so their documents would become consistent with the law.

The practical effect of just adopting Ms. Dennison's proposed amendment, Exhibit H, would be handing a prospective buyer hundreds of pages of documents of bylaws and covenants, conditions and restrictions (CC&Rs). The homeowner is counseled to read those because they are buying this home. They read that, then they are handed a document that says NRS 116 may have changed. We give them a Website to look up NRS 116. That means we the purchaser need to read the documents and then read NRS 116 to see where it is changed.

That disclosure is important and should be included, but as a practical effect, the most significant purchase a person makes is their home. When we have boards that have the ability to update governing documents so they are in compliance with the law, the purchaser knows what they are receiving, and the boards should be given the discretion to do that.

One of the arguments presented was this means that a board can do whatever they want. After the last hearing, I contacted Angela Rock at Olympia Group and Troy Isaccson, who works with Bob Maddox, Michael Shulmann and Gail Kern. I tried to ask as many people as I could who work with homeowners' associations, and we cannot find one case where this power has been abused, where the right to update to come into compliance with the law has been abused or taken advantage of. I know many times our legislation is adopted to address a problem we see, so we have to fix it. But I am not aware of a single instance where a board of directors has attempted to unilaterally amend their documents to trick homeowners into not getting their approval when it is for the purpose of coming into compliance with NRS 116.

Disclosure is critical. Our homeowners should have the opportunity to know that they are buying.

On section 6, I have no objection to adding Ms. Dennison's proposed amendment, Exhibit H, but recommend it be in addition to, rather than a replacement of, the existing proposed amendment.

CHAIR CARE:
Any questions of Mr. Leach?

SENATOR COPENING:
Mr. Leach, we heard one of the oppositions was these boards could possibly interpret NRS 116 as what they wanted it to be. I suggested perhaps we could get one governing body that would put out uniform language to all of these HOAs so there would not be any question. The opposition was, if these boards are allowed to change the CC&Rs behind closed doors, what are they going to change?

I agree that it would be a nightmare to try to involve an entire HOA in the updating of language they do not have any control over. We need to have uniform language in this. We agreed there was not any governing body assigned to it. This could ease some concerns if there was. I do not know who the right governing body would be, rather than the Ombudsman's Office or the Department of Business and Industry's Real Estate Division. What are your thoughts?

MR. LEACH:
We talked about this before. The problem is any time you are interpreting a law or statute, who is best suited to do that? Is there going to be difficulty any time you have a citizenry being asked to look at NRS 116?

Built into the *Nevada Administrative Code* (NAC) are requirements that boards of directors not do things outside the scope of their authority or do things that are beyond their expertise. They can be penalized by the Nevada Real Estate Division if they were to attempt to act like an accountant or an attorney, something they are not licensed to do. They are under obligation to contact an attorney in that situation, to update it so they are not doing it unilaterally on their own. That would be a violation of NAC in existence.

The other problem is there is not an entity or agency involved. It would have to be an attorney, whether it be through the Attorney General's Office, Legislative Counsel Bureau—somewhere there would have to be this entity. We are equipped to do that right now.

Here is the other problem with uniformity. Many of the provisions of NRS 116 say subject to your declaration, here is the law. That means many of these documents are unique. Most CC&Rs are not identical. Some builders do use the same document over and over, but they are not the same. The problem would be if we try to come up with a uniform language, we might be in conflict,

because if their document says something and another one does not, this one the law will apply and this one will not.

For example, the law says unless your document says otherwise, a quorum of the membership to act is 20 percent. This document does not address it. This one says it is 33 percent. So the uniform provision would not work in those two positions because this one does address it. The law says subject to what your document says, this one does not address it, so the law would kick it.

Senator Parks made a comment that an interim committee could be set up over the next period of time and to revisit some things because it is getting so huge. I agree, and over the next few years, I would be delighted. There are many people north and south who would work on something to make this more concise and easier for the homeowner. We are not trying to complicate it for the homeowner. The consumer is what we should be focusing on. What are we doing? That is why section 6 is significant. It does go to the consumer's need of knowing. The most significant thing I buy is my house. What restrictions am I going to have to live with? I hope section 6 helps promote the buying of homes and understanding what they are getting, which is critical.

CHAIR CARE:
Mr. Leach, I remember your testimony on the definition of civil action. The rules of civil procedure is what constitutes an action. I am sure there is case law that discusses that. Do we absolutely have to have that definition?

MR. LEACH:
Do we absolutely have to have it?

CHAIR CARE:
There was some concern from the Southern Nevada Homebuilders Association is the reason I ask.

MR. LEACH:
I saw the e-mail message from Shari O'Donnell in Exhibit C and think that has been addressed by the change. We took NRS 38.300, which had a definition, and we said why not use that in NRS 116? But we cannot. When the original draft of S.B. 351 came out, it was lifting the definition from NRS 38. The Nevada Real Estate Division has jurisdiction over some cases, but not others. They tried to define civil action as the cases the Real Estate Division would have

jurisdiction on before you could go to court. Cases of declaratory injunctive relief, immediate threat of irreparable harm, temporary restraining orders and preliminary injunction-type cases were exempted from jurisdiction by the Division. But that does not work in NRS 116.

My proposed amendment defines what a civil action is. The section that is amended goes into detail as to what civil actions can be commenced without membership approval. Statute says the association cannot initiate a civil action without membership approval, except, and then it gives you four or five exceptions to the rule where the association needs to be able to act without membership approval.

Do we absolutely have to have the definition? Probably not, but I felt it was significant because what we have done is carve out civil actions that do not need membership approval. I thought it was appropriate to have the definition in there. I do not know if Mr. Wilkinson or Ms. Eissmann has had a chance to look at it. This was not an attempt in any way to interfere with any of the other bills or what the intent was on those bills.

CHAIR CARE:
Did you want to reply Mr. Wilkinson?

MR. WILKINSON:
Yes, Mr. Chair. This is an issue I looked at. I understand what Mr. Leach is saying about the way this definition works. The only concern I identified, mentioned previously, was the interaction with the provisions of NRS 116.31088 as it pertains to association approval before commencing a civil action. In this bill alone, standing on its own, that would not create any sort of issue. There is a provision that was contained in section 20 of S.B. 182 in which NRS 116.31088 is amended. That provision specifically removes from the exception of actions commenced to protect the health, safety and welfare of the members of the association, a constructional defect action. There may be some conflict in terms of our definition of a civil action including an action in equity in which there is the immediate threat of irreparable harm. At least that is potentially a conflict between those two.

CHAIR CARE:
As Chair of the Committee I cannot make a motion. I attempted to recommend somebody make a motion to amend and do pass, the amendments being the

adoption of your most recent version of amendments Mr. Leach, the amendment from Karen Dennison and for reasons given, deleting the definition of civil action.

MR. LEACH:
I understand the concern. We can address it if it is passed in that format. We can address it later on the other side. Maybe I can get together with Mr. Wilkinson because I would be more than happy to work with you to make sure that we are not interfering in any way with any other bill.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 351, ADOPTING THE MOST RECENT AMENDMENTS FROM MR. LEACH, THE AMENDMENTS FROM MS. DENNISON AND THE DELETION OF CIVIL ACTION FROM THE PROPOSED AMENDMENT.
>
> SENATOR PARKS SECONDED THE MOTION.

MR. WILKINSON:
Mr. Chair, the amendments were Mr. Leach's and Ms. Dennison's. Ms. Dennison's original amendment was to delete section 6. Mr. Leach suggested preserving section 6, but also adding Ms. Dennison's amendment.

CHAIR CARE:
Do we need to reconsider, or …

MR. WILKINSON:
No, I did not hear what happened one way or the other.

CHAIR CARE:
We took the most recent amendatory language from Mr. Leach and Ms. Dennison. Are they contradictory on section 6?

MR. WILKINSON:
To the extent that Ms. Dennison's amendment suggested replacing section 6 with the amendment to the disclosure statement. Mr. Leach had proposed retaining section 6 but also adding Ms. Dennison's disclosure language. That was what I interpreted as the action.

CHAIR CARE:
I took Mr. Leach's amendment to mean that he is incorporating the language proposed by Mr. Lein.

MR. WILKINSON:
Yes. Is section 6 in with the amendments proposed by Mr. Leach?

MR. LEACH:
My recommendation was, I read Ms. Dennison's proposed amendment. It is appropriate as an addition but not as a replacement for section 6. I would respectfully suggest that section 6 has merit on its own, but the addition by Ms. Dennison is appropriate. I have no opposition to that. But as Mr. Wilkinson pointed out, I understood the motion to be with my changes and then her addition, rather than deleting the section.

CHAIR CARE:
Ms. Dennison, what is your understanding of what we just did?

KAREN D. DENNISON:
I thought you had adopted my amendment, which would delete section 6. But if that was not your intention, you need to reconsider.

The only point I want to make, which I made before and will not belabor, is it is dangerous to empower boards to amend CC&Rs without owner oversight, owner vote, owner check and balance. We have had much testimony over the years regarding boards being overzealous and not being malicious. The owners would have to undo what they did if they recorded CC&Rs, which Article 2 does not apply to all associations, and if they tried to make Article 2 apply, that would be one example.

As Mr. Leach pointed out, many of the sections say unless the declaration provides otherwise. The declaration may provide otherwise and the statute may not apply. It is a very complicated statute. The CC&Rs can be very complicated in large, master-planned communities. I understand the need for consumer understanding, but on balance, I think much of the damage could be done if boards, without owner oversight, are allowed to amend CC&Rs.

CHAIR CARE:
Committee can reconsider or vacate our previous action on this bill and get into the discussion of whether we want to add the proposed language of section 6 from Ms. Dennison, or bring it in and delete section 6 from Mr. Leach. We can stand by our action because this bill is going to be worked over on the Assembly side. This is not an effort by me to say let the Assembly worry about it. Is there any appetite from the Committee to revisit the issue of section 6?

MR. LEACH:
Based on what you just suggested, would it not be appropriate to leave both of the provisions in if it is going to get worked over? Then they would not be introducing new things, they would have an opportunity to look at the existing provisions.

CHAIR CARE:
That is the idea.

MR. LEACH:
Section 6 does have merit. I am not aware of a single instance where this has been abused. We have been doing this for at least the last ten years, since 1999 when the Nevada Legislature adopted the reviser's notes that said it needed to be done. In that case it was a mandatory requirement that updates be done.

SENATOR COPENING:
Are you looking for a motion?

CHAIR CARE:
I do not know if the Committee wants to go that way. You can certainly make one.

SENATOR COPENING MOVED TO ACCEPT BOTH AMENDMENTS ...

CHAIR CARE:
Here is what we have to do ...

SENATOR COPENING:
Oh, we have to withdraw.

CHAIR CARE:
We have to vacate, what is the appropriate term, rescind what we have already done, then discuss what we want to do only as to section 6. Or let this be hammered out in the Assembly or a floor amendment.

MR. WILKINSON:
If the desire is to leave them both in, then you do not need to take any action.

CHAIR CARE:
Okay. And we can also do a floor amendment if we wanted to delete a part of section 6. Senator Copening, did you still want to make a motion under that?

SENATOR COPENING:
No, but just for clarification, if we are leaving both of the amendments in, part of Ms. Dennison's amendment was to delete section 6 in its entirety.

CHAIR CARE:
That can be done by floor amendment.

MR. WILKINSON:
No, I meant leave the section in, both sections, not both amendments.

SENATOR COPENING:
Perfect.

CHAIR CARE:
Thank you, Committee.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
I will open the work session on S.B. 396.

SENATE BILL 396: Revises provisions governing an investigation of a peace officer by a law enforcement agency. (BDR 23-1098)

In spite of the lengthy testimony yesterday, there is a proposed amendment from the proponents that makes this simple. As you will recall, there was testimony from the opponents yesterday. This was a lot in a very short time. There had not been time to work it over or adjust it all, and I am in agreement with that. Mr. Kallas, do you want to come forward?

DAVID F. KALLAS (Las Vegas Police Protection Association):
I am here to answer any questions about the proposed amendment I submitted after yesterday's hearing, Exhibit C.

CHAIR CARE:
You have proposed an amendment. We did have the one-word amendment or two-word amendment from Mr. Cuzze, Mr. Dolan and Mr. Adams. But those were in the context of the mock-up of your amendment itself.

MR. KALLAS:
Correct. I proposed an amendment on April 7, which was proposed after the hearing. I have spoken with Frank Adams, who represents the Nevada Sheriffs' and Chiefs' Association, and Tom Roberts, who represents the Las Vegas Metropolitan Police Department. We are all unequally unhappy with some of the language, but agree it is best suited to move forward. I have agreed not to attempt to propose any additional amendments on the Assembly side if the Senate would agree to pass out this bill. Based on those representations, I believe we have a consensus on this bill moving forward as proposed on the amendment dated April 7.

CHAIR CARE:
The amendment, looking at section 2, says the officer may make a copy of the administrative or investigative file.

MR. KALLAS:
Correct. And that is after the conclusion of investigation to determine if the officer is going to grieve the potential imposition of punitive action.

CHAIR CARE:
There is no language in section 1 as to probationary.

MR. KALLAS:
Correct. All of the objectionable language, with the exception of what we would consider the language similar to the Garrity Rule, was removed. There were no fines, no ability to obtain or require the agencies to provide audio/video or written evidence they may use during the investigation. This was all removed.

CHAIR CARE:
Okay. I have this marked up in yellow. Mr. Adams? Do I have a later one? No, I am looking at the April 7 version.

MR. KALLAS:
The April 7 amendment should be three pages long. The yellow is the information that has been agreed to, and the blue is the original language that was not objected to during the course of the hearing.

SENATOR AMODEI:
Your amendment takes care of the concerns from Mr. Adams and Sheriff Haley. If we do your amendment and Mr. Cuzze's one or two words, do you have any objection to that?

MR. KALLAS:
I would have concerns about Mr. Cuzze's one or two words because we have not had the opportunity to digest that. I have passed on the amendment dated April 7 to Frank Adams to present to the Nevada Sheriffs' and Chiefs' Association and to Mr. Roberts to present to the Metropolitan Police Department. It is the consensus from those two groups, based on the amendment dated April 7. We are in concurrence. I have agreed to not attempt to seek amendment to it in the Assembly if the Senate is agreeable to passing it out of this body.

SENATOR AMODEI:
That takes care of Washoe County too?

MR. KALLAS:
Correct.

CHAIR CARE:
Mr. Adams, you have had an opportunity to review the proposed April 7 amendment from Mr. Kallas.

FRANK ADAMS (Executive Director, Nevada Sheriffs' and Chiefs' Association):
Yes, I did look at that last night. We have discussed it this morning, and we feel comfortable with the amendment as long as we hold fast to that amendment.

CHAIR CARE:
Any questions from the Committee?

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 396 WITH THE THREE PAGE AMENDMENT DATED APRIL 7 PROVIDED BY MR. KALLAS.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR CARE:
The Committee is adjourned at 11:08 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Terry Care, Chair

DATE: _____