MINUTES OF THE MEETING
OF THE
ASSEMBLY SUBCOMMITTEE ON JUDICIARY

Seventy-Sixth Session
May 13, 2011

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 8:26 a.m. on Friday, May 13, 2011, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Allison Copening, Clark County Senatorial District No. 6
Assemblyman Tick Segerblom, Clark County Assembly District No. 9

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada
Marilyn Brainard, Secretary, Commission for Common-Interest Communities and Condominium Hotels

Chairman Ohrenschall:
[Roll was called.] We are having a work session today. I believe we will start with Senate Bill 30 (1st Reprint).

Senate Bill 30 (1st Reprint): Makes various changes relating to common-interest communities. (BDR 10-477)

Dave Ziegler, Committee Policy Analyst:
Senate Bill 30 (R1) was sponsored by the Senate Committee on Judiciary on behalf of the Real Estate Division, Department of Business and Industry. It was heard in this Subcommittee on May 6. This bill revises procedures for transferring or withdrawing money from the operating accounts of homeowners' associations (HOA).

[Continued to read from work session document (Exhibit C).]

On the day of the hearing, there were no amendments.

Chairman Ohrenschall:
Assemblyman McArthur, I think you had some concerns about this?

Assemblyman McArthur:
I do have some notes here. I remember one of them was on page 1 regarding electronic transfers to the United States government. Apparently, it refers back to a $10,000 amount. That basically does not change when you look back at *Nevada Revised Statutes* (NRS). I think that part was cleared up for me.

Chairman Ohrenschall:
I recall having a concern about the potential for fraud or embezzlement, but I believe one of the witnesses alleviated my concerns.

Assemblyman McArthur:
On page 3, section 2, subsection 3, it had 14 days but did not say whether they were calendar days or business days. I do not know whether we cleared that up or not.

Chairman Ohrenschall:
I remember that question. I am not sure whether it was cleared up.

Assemblyman McArthur:
We should probably clarify it one way or the other.

Chairman Ohrenschall:
Mr. Ziegler, do you happen to have a record of whether that was clarified by any of the witnesses? I do not recall it being clarified.

Dave Ziegler:
I do not have any recollection of that.

Assemblyman McArthur:
In that same paragraph, it says 25 cents per page. I suggested that it be kept to what the other bills are doing, which is 25 cents per page for the first 10 pages, and then 10 cents per page after that.

Chairman Ohrenschall:
Do you propose that as a conceptual amendment? Perhaps, another part of your conceptual amendment could include a clarification as to whether the days are calendar days or business days. I would like to ask our Legal Counsel how days are counted in the rest of NRS Chapter 116. That way, we can stay consistent.

Nick Anthony, Committee Counsel:
I believe if it just says "days," it would include all days of the week. I will have to take a look at NRS Chapter 116 to see whether we specify anywhere else.

Chairman Ohrenschall:
Regardless of how NRS Chapter 116 treats the counting of days, do you feel if it is just 14 regular days that is enough? Do you think there needs to be more time?

Assemblyman McArthur:
That is what I was trying to determine here. That may be enough and should cover two working weeks.

Nick Anthony:
It appears that in NRS Chapter 116, it just uses the term "days" and does not specify whether it is business days.

Chairman Ohrenschall:
Assemblyman McArthur, if it were just 14 days, which includes Saturdays, Sundays, and holidays, does that seem sufficient to you?

Assemblyman McArthur:
It probably is because it is after the letter is received. That is probably okay.

I guess I missed the "Text of Repealed Section" on pages 5 and 6. It is talking about the 14 days and the 25 cents per page. I do not know why it is in that section.

Dave Ziegler:
On Assemblyman McArthur's last point, the repealed section is merged into the last section of the bill. That is the reason for the repeal.

Chairman Ohrenschall:
Does that clarify your question?

Assemblyman McArthur:
Yes, thank you.

Chairman Ohrenschall:
If I understand you correctly, you would like an amendment proposed that would clarify the costs of the photocopies at 25 cents per page for the first 10 pages and then 10 cents per page for any additional pages.

Assemblyman McArthur:
That is only because it was put in some other documents. We can check with the Legal Division, but I think that is what we have done before, and I am just trying to keep it the same. On the other ones also, we made a statement that it was not going to cost anything if the information was sent by email. I do not know whether we need to put that in here or not.

Chairman Ohrenschall:
I will defer to our Legal Counsel. Are we being consistent with the rest of NRS Chapter 116? Should we specify that there would be no charge for an email?

Nick Anthony:
If it is the Subcommittee's intent, we can amend this provision to be consistent with other bills you have processed this session. I believe you have included the statement as to electronic availability, either through email or other electronic format. If you want to include that, we can include that as well.

Chairman Ohrenschall:
I would. Would you be amenable to that Assemblyman McArthur?

Assemblyman McArthur:
That would be fine. I just think we need to be consistent. It is not really changing anything.

Chairman Ohrenschall:
So, the amendment you propose would clarify the cost of photocopying at 25 cents for the first 10 pages and 10 cents for each additional page. Information sent through email would be at no charge. We leave the 14 days as it stands. Is there anything else?

Assemblyman McArthur:
I think that was it. We went through it, and I think everything else was pretty clear.

Chairman Ohrenschall:
Assemblyman Carrillo, are you okay with that amendment as it is?

Assemblyman Carrillo:
Yes.

Chairman Ohrenschall:
I would be happy to take a motion with that conceptual amendment.

> ASSEMBLYMAN MCARTHUR RECOMMENDED AMEND AND DO PASS SENATE BILL 30 (1st REPRINT).
>
> ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.
>
> THE RECOMMENDATION PASSED UNANIMOUSLY.

We will recommend this bill to the full Committee when we present our report.

We will move to Senate Bill 89 (1st Reprint).

Senate Bill 89 (1st Reprint): Revises provisions governing audits and reviews of financial statements of common-interest communities. (BDR 10-595)

Dave Ziegler, Committee Policy Analyst:
This bill is sponsored by Senator McGinness. It was heard in this Subcommittee on May 6.

[Continued to read from work session document (Exhibit D).]

On the day of the hearing, there were no amendments.

Chairman Ohrenschall:
As I recall, Senator McGinness was introducing this bill on behalf of a very small homeowners' association (HOA) in his district, which is the Central Nevada Senatorial District.

Assemblyman McArthur:
I have a bunch in my district, as well, with four to ten units. This would be a big help for them also. The only question I have is on page 2, paragraph (b), line 3. It talks about if the annual budget is above $75,000, it is reviewed by an independent certified public accountant (CPA). Once it gets above $150,000, it is audited. What is the difference between a review and an audit? It does not affect the bill, but I am curious. I like the bill.

Chairman Ohrenschall:
Could you point me to that section again?

Assemblyman McArthur:
It is on page 2, line 3. It talks about what you need to do if the annual budget is between $75,000 and $150,000 and what happens if it is over $150,000. It is reviewed if the annual budget is between $75,000 and $150,000. However, if it is over $150,000, it is audited. What is the difference?

Chairman Ohrenschall:
If someone can answer the question, could you please come up?

Assemblyman McArthur:
This is a good bill, and I like it. I am just curious whether it is helping or saving.

Chairman Ohrenschall:
This is existing language in *Nevada Revised Statutes* (NRS) Chapter 116.

Assemblyman McArthur:
Yes.

Chairman Ohrenschall:
It is in NRS 116.31144.

Assemblyman McArthur:
If no one has the answer, that is not going to affect my vote on the bill.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
To answer Assemblyman McArthur's question, there are three types of financial statements. The first one is a compilation, which is very superficial. The second is a review that goes into more detail. The third is an audit, which is the most costly and most detailed. The CPA must have confirmation of the information in the financial statement from all of the creditors and verified the information from the bank statements. The review is middle-ground where the CPA will review bank statements and any liabilities, but he does not get an actual verification from the companies or individuals that are owed any money on the liability side. I hope that sheds some more light on it.

Chairman Ohrenschall:
It does. Thank you.

With these HOAs whose annual budgets are less than $75,000, exactly how small are they?

Assemblyman McArthur:
Some HOAs in my area only have four homes in them because they have a well. There is no reason to have an HOA except for the fact that the homeowners share a common well. That means they have a very small budget.

Chairman Ohrenschall:
There was no testimony in opposition.

Assemblyman McArthur:
I do not remember seeing these amounts before. I think that may be new in the last few years.

Chairman Ohrenschall:
Assemblyman Carrillo, are you okay with removing that requirement?

Assemblyman McArthur:
I am fine with this bill. When you have a budget less than $45,000, you are not doing much. Some have much less than that.

Chairman Ohrenschall:
Assemblyman Carrillo, what are your feelings on this bill.

Assemblyman Carrillo:
I concur with Assemblyman McArthur. I am good with it.

Chairman Ohrenschall:
I will accept a motion on this bill.

> ASSEMBLYMAN MCARTHUR RECOMMENDED TO DO PASS SENATE BILL 89 (1st REPRINT).
>
> ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.
>
> THE RECOMMENDATION PASSED UNANIMOUSLY.

We will move to Senate Bill 222 (1st Reprint).

Senate Bill 222 (1st Reprint): Revises provisions concerning the lease or rental of a unit in a common-interest community. (BDR 10-294)

Dave Ziegler, Committee Policy Analyst:
This bill is sponsored by Senator Copening. It was heard in this Subcommittee on May 10. Senate Bill 222 (R1) enacts requirements governing the registration of a lease, rental agreement, or tenant in a common-interest community (CIC).

[Continued to read from work session document (Exhibit E).]

On the day of the hearing, there were no amendments.

Assemblyman McArthur:
I have no problem with this bill.

Chairman Ohrenschall:
Do you have a comment, Assemblyman Carrillo?

Assemblyman Carrillo:
I have no problems with this bill.

Assemblyman McArthur:
It seems pretty straightforward. I did not know why it was necessary to bring this up. Someone must have had a problem one way or another. What caused this bill to be brought up?

Chairman Ohrenschall:
Senator Copening, would you mind coming forward to the table? Thank you for spending your morning with us.

Senator Allison Copening, Clark County Senatorial District No. 6:
This came about because of complaints of homeowners who were being subjected to this fine. They thought it was unfair. If you recall the brochure I showed you, one company was charging close to $135. There were two ways to go about it. The homeowner could go online and input the information of the renter, or there was a one-page form he had to fill out. That was it, and they were being charged $135 for that. If the tenant did not change, it was another $95. It was an unfair fee. After talking to people in the industry, I have a better understanding that it was a way for a management company to get more money.

Assemblyman McArthur:
So there was not a problem with the information part, it was mostly the fees.

Senator Copening:
Let me clarify that. Constitutionally, we put that in there because we were told by the Legislative Counsel Bureau staff that it also seemed to a be a bit of a problem. You cannot ask for more information about one person than you ask for about the others. It was constitutionally not right.

Assemblyman McArthur:
I am fine with this.

Chairman Ohrenschall:
I have one question. On page 2, section 4, paragraph (b), currently, without this proposed amendment to *Nevada Revised Statutes* (NRS), may the association or its agent require the renter to provide a copy of the lease? Is that covered by the governing documents?

Senator Copening:
I believe it would be covered by the governing documents, but most of the boards require a copy of that rental agreement. It is the responsibility of the homeowner to provide that to the management company or the homeowners' association (HOA).

Chairman Ohrenschall:
Are there now any fees charged to the renter to submit this information?

Senator Copening:
I imagine some homeowners may charge it back to the renter, but it really is the responsibility of the homeowner to pay that fee because it is the homeowner that could have his home liened if that fee were not paid.

Chairman Ohrenschall:
This would be a fee for the cost of taking in those documents and filing them?

Senator Copening:
Pretty much, yes. I did talk with one of the management companies that was charging that fee, and it did make the argument that there was a certain amount of administrative work that goes into it. It does drive-bys to make sure everything is the way it is supposed to be. In the original bill, I did allow for a $50 maximum that could be charged. The Committee said it wanted that charge to be $0. I was fine with that.

Chairman Ohrenschall:
Assemblyman McArthur, you are all right with this bill. Assemblyman Carrillo, are you good with this bill?

Assemblyman Carrillo:
I am okay with it.

Chairman Ohrenschall:
I will accept a motion.

> ASSEMBLYMAN MCARTHUR RECOMMENDED DO PASS SENATE BILL 222 (1st REPRINT).
>
> ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.
>
> THE RECOMMENDATION PASSED UNANIMOUSLY.

We will turn to the two meatier bills. We are on information overload. We have received so many amendments and will do our best to work through these this morning. I am not sure whether we will finish, but we will do our best. I think the only way we can attack it is the way we did the last Subcommittee work session, which was going through section-by-section.

We will start with Senate Bill 204 (1st Reprint).

Senate Bill 204 (1st Reprint): Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

Dave Ziegler, Committee Policy Analyst:
This bill is sponsored by Senator Copening. It was first heard in this Subcommittee on May 10.

[Continued to read from work session document (Exhibit F).]

There is an attached document with a more detailed abstract that also runs through the proposed amendments. On the day of the hearing, we had amendments on hand from Mr. Friedrich, Ms. Lytle, Mr. Robey, Assemblyman Segerblom, and Ms. Schuman. Yesterday, we received an amendment from Garrett Gordon (Exhibit G).

For the audience and the Subcommittee members, in this abstract, I did identify a couple of typographical errors, which we corrected this morning. The paper copies we handed out today have a few typos in there, and I apologize for those.

The Garrett Gordon amendment is not in the work session document that is compiled in paper. I think it is posted separately on the Nevada Electronic Legislative Information System (NELIS).

Chairman Ohrenschall:
I believe we received quite a few amendments this morning. Normally, we do not take amendments if they are not delivered by 5 p.m. the day before. As a courtesy to everybody who has proposed an amendment, we did post them on NELIS.

Dave Ziegler:
Starting in section 2, this section specifies the manner in which a homeowners' association (HOA) must provide required notices of meetings.

[Continued to read from work session document.]

Chairman Ohrenschall:
I misspoke as to the amendments. They actually need to be presented 24 hours beforehand. Again, as a courtesy to everybody, they are posted in NELIS.

I have a question about section 2. It seems convenient to be able to supplant having to send a regular letter with an email. Is there any potential danger that this could be used for notice of a lien or fine and someone might not get it? Do you think this is tightly written enough that there is no danger of that?

Assemblyman McArthur:
I do have some notes on that. I do not think it was enough to cause a problem. It looks like it is okay. I had some questions, but it is probably okay. It still does leave that lien foreclosure in effect.

Chairman Ohrenschall:
The only thing that worries me is that if there is some kind of notice that could potentially put you in danger of fines accruing or foreclosure. I would feel more comfortable if there was a provision that if there is something that could put you in danger . . .

Ms. Dennison, if you would like to come up and speak to that, please do.

I guess that would be my worry. I still like the idea of a certified or registered letter if it were something that could really harm the homeowner. For newsletters and the like, an email is fine.

Karen Dennison, Vice Chair, Real Property Section, State Bar of Nevada:
It does specifically state that a notice required to be given pursuant to *Nevada Revised Statutes* (NRS) 116.3116 to NRS 116.31168, inclusive, which is the foreclosure statute, is not included in this notice provision. In other words, the provisions of this section do not apply to foreclosure notice provisions.

Chairman Ohrenschall:
That would be a protection. I noticed under those sections it would be sent out certified or registered mail? How would that work?

Karen Dennison:
I believe it is certified mailing, required by this statute. There is some that flip-flop between registered and certified, but I believe this one is certified.

Chairman Ohrenschall:
We have that card out there for foreclosure notices. Arrears, assessments, fines, et cetera, could be sent by email or hand delivery under this?

Karen Dennison:
If there is a specific notice provision as specified in section 2, subsection 3, paragraph (b), that section would override this section. In other words, if there was specific notice provision where this section was not incorporated by reference, then that section would override.

Chairman Ohrenschall:
How do you envision the HOAs using this part of the statute? Do you think it would be used mostly for newsletters?

Karen Dennison:
I am not sure I can think of examples other than the one you mentioned. Whatever communications were required that are not specifically keyed into this statute, there are other sections that do incorporate this by reference.

I would also like to point out that the owner must designate an address. He must designate a mailing or electronic address. If the owner does not designate either of those, these other four methods of communication would be used.

Chairman Ohrenschall:
Are there any other concerns with section 2? [There were none.]

Assemblyman McArthur:
The owner must designate one, so that ought to satisfy them. I am fine with that unless you want to put in certified. I am fine with it the way it is.

Chairman Ohrenschall:
It has the exception for foreclosure notices, and it also has an exception for anything that has a notice provision in another section of NRS Chapter 116.

Assemblyman Carrillo, do you have any concerns about fines and liens coming by email or hand delivery as opposed to another method.

Assemblyman Carrillo:
No.

Chairman Ohrenschall:
I guess we are okay with section 2. We can move on to the next section.

Dave Ziegler:
Section 3 addresses differences between NRS Chapter 116 and the federal Electronic Signatures in Global and National Commerce Act.

Chairman Ohrenschall:
I think section 3 is language we find in every uniform act. We are all right with section 3. We can move on.

Dave Ziegler:
Section 4 addresses catastrophic events.

[Continued to read from work session document (Exhibit F).]

Assemblyman McArthur:
Starting right at section 4 with the term "substantially," do we need to tighten that up? It is pretty broad. Do we need to say 80 percent? I do not know what "substantially" means.

Chairman Ohrenschall:
Ms. Dennison, could you speak to section 4? Is this scenario a Hurricane Katrina type of event?

Karen Dennison:
This was intended by the Uniform Law Commissioners to cover a catastrophic event. I believe the court would determine if "substantially all" has been destroyed to give it jurisdiction under this particular section. We have no problem with specifying the percentage if that would be the will of the Subcommittee. This is directly from the Uniform Act with the thinking that the court would determine. It is not just "substantially all," but it is if normal methods of providing notice are not likely to be successful.

Assemblyman McArthur:
As long it is okay with the courts.

Chairman Ohrenschall:
I think if we tried to put in 75 percent or 85 percent, it might lead to more problems in trying to decide when this section would apply.

Assemblyman McArthur:
That is fine.

Chairman Ohrenschall:
Sometimes trying to be too specific can cause problems. Assemblyman Carrillo, are you okay with section 4?

Assemblyman Carrillo:
Yes, I am okay.

Assemblyman McArthur:
On page 4, line 2, it says, ". . . any other interested person . . . ." Do we want to tighten that up to make sure they are members of the HOA? I am not sure why it is in there.

Chairman Ohrenschall:
I guess that is law from the Uniform Law Commissioners. I do not know whether Ms. Dennison knows what their intent was. I guess we could look at the Uniform Act to see what the comments are.

Karen Dennison:
I, too, noted this phrase, and I had put in my notes that it would be a person who had an interest in the community, as Assemblyman McArthur pointed out. If that change were to be made, that would be fine with me. Again, we just took this language from the Uniform Act. There was no guidance as to why it used that phrase.

Chairman Ohrenschall:
The drafters' comments did not provide any guidance on that?

Karen Dennison:
Not that I recall.

Chairman Ohrenschall:
I will not waste our time trying to look up the Act online. I will leave it to the pleasure of the Subcommittee whether or not to follow the lead of the Uniform Commissioners or step out on our own. We will take a minute or two to think about that.

Assemblyman McArthur:
I think we are okay. I think this is more leaving it up to the discretion of the courts.

Chairman Ohrenschall:
Assemblyman Carrillo, are you okay with the language?

Assemblyman Carrillo:
Yes, I am okay with it.

Chairman Ohrenschall:
It looks like we are okay with section 4. Mr. Ziegler, would you please proceed to the next section?

Dave Ziegler:
Section 5 contains a provision that is part of the current statute in NRS 116.31036. You can see that in section 37 of the bill.

[Continued reading from work session document.]

Chairman Ohrenschall:
Are there any comments?

Assemblyman Carrillo:
I am okay with it.

Chairman Ohrenschall:
I think I am fine with it, too. Since we are all fine with section 5, we will proceed to the next section.

Dave Ziegler:
Some portions of section 6 are part of current statute if you look at section 51 of the bill.

[Continued reading from work session document.]

If I am correct, I believe the main change here is the change regarding television.

Chairman Ohrenschall:
I am not sure any HOAs in our state have closed-circuit television. Do you know of any, Assemblyman McArthur?

Assemblyman McArthur:
I do not know of any, but that does not mean there are not any.

Chairman Ohrenschall:
Are you okay with section 6?

Assemblyman McArthur:
Yes. It looks like it is fine.

Chairman Ohrenschall:
Assemblyman Carrillo, are you okay with section 6?

Assemblyman Carrillo:
Yes, I am fine with section 6.

Chairman Ohrenschall:
We will proceed to the next section.

Dave Ziegler:
Section 7 provides that definitions in NRS Chapter 116 do not apply to the bylaws and declarations of HOAs.

Chairman Ohrenschall:
This is probably very simple and innocuous. Assemblyman McArthur, are you okay with this?

Assemblyman McArthur:
Yes. I think it is just saying that we cannot change definitions. I am fine with this.

Assemblyman Carrillo:
I am okay with this section.

Chairman Ohrenschall:
We are all okay with section 7. Mr. Ziegler, please proceed to the next section. Are sections 8 through 16 definitions?

Dave Ziegler:
Would you like to skip over sections 8 through 16?

Chairman Ohrenschall:
They just look like cleanup to the definitions, correct?

Dave Ziegler:
Yes.

Assemblyman McArthur:
Let me take a quick look at this first. We are going through section 16?

Chairman Ohrenschall:
Sections 8 through 16 are these definitional sections.

Assemblyman McArthur:
For me, I am okay up through section 16.

Chairman Ohrenschall:
One question I have, and maybe I am not understanding it, but it is section 10, subsection 2, lines 24 to 26.

Assemblyman McArthur:
That is the one I was reading also. It looks like from the Legal Division that it is okay.

Chairman Ohrenschall:
Mr. Anthony, could you help with this?

Nick Anthony, Committee Counsel:
It appears that the intent of that change is just to broaden the term of "common elements" to a more inclusive term. It would include any other interests in real estate, which accrue to the benefit of the owners.

Chairman Ohrenschall:
Does that increase the responsibility of each unit's owner, or potential liability from what it is now?

Nick Anthony:
Common elements are the areas of a common-interest community (CIC) that inure to the benefit of all of the residents, such as a swimming pool or open spaces. This is just clarifying that any such real estate which inures to the benefit of the owners, which is subject to the definition, then it is included for purposes of the definition of "common elements," which is used throughout NRS Chapter 116 for certain purposes such as maintenance and fees. Those are largely the reasons for dues.

Chairman Ohrenschall:
Ms. Dennison, do you think you can provide any additional clarification. I think I have a good handle on what common elements are. I am not sure how this definition expands each unit owner's responsibility or liability. Maybe it does not and I am just misreading it.

Karen Dennison:
I think that common elements are typically plotted on a map, but there could be other easements or other interests in real property which both benefit the owners and are subject to, or included in, the declaration. This just allows those kinds of interests to be included in the definition of "common elements."

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:
Under NRS 116.017, it defines what "common elements" are. That may clarify a bit. There are two sections within that part of the statute. Do you want me to read them?

Chairman Ohrenschall:
No, I have them in front of me. Assemblyman McArthur, are you comfortable with this?

Assemblyman McArthur:
Yes.

Chairman Ohrenschall:
Assemblyman Carrillo, are you comfortable?

Assemblyman Carrillo:
Yes, I am okay with it.

Chairman Ohrenschall:
Mr. Ziegler, could you please proceed to the next section? We are all comfortable with sections 8 through 16.

Dave Ziegler:
Section 17 makes an exception for nonresidential condominiums in the prohibition on a declarant acting under a power of attorney or other device to evade the provisions of NRS Chapter 116 or the declaration.

Assemblyman McArthur:
I think the only problem I have with the next few sections is where it says "except as." I have not looked up these other statutes yet.

Chairman Ohrenschall:
I have NRS 116.12075.

Assemblyman McArthur:
There is that one, and one in a couple sections later.

Chairman Ohrenschall:
Ms. Dennison, could you provide some more enlightenment on section 17?

Karen Dennison:
I believe NRS 116.12075 was enacted last session to exclude nonresidential condominiums from this act. I believe what this section does is conform the "Except as otherwise provided in paragraph (b) of subsection 2 of NRS 116.12075" to validate the fact that in another section of this act, proxies, powers of attorney, or similar devices may be given in favor of the declarant. Generally, with respect to residential properties, the proxy can only be given to another owner, tenant, or relative who lives there. There is a very limited scope

of a class of persons who can receive a proxy to vote for an owner at a meeting. Given the fact that it did not apply to nonresidential-type properties, the statute enacted last year, which is referred to, recognizes that powers of attorney may be given in favor of the declarant in nonresidential situations.

Chairman Ohrenschall:
Is this from the Uniform Commissioners, or is this from your State Bar Committee?

Karen Dennison:
I think it was a conforming change. I am not sure whether it was a Uniform Act conforming change or a Legislative Counsel Bureau (LCB) conforming change.

Chairman Ohrenschall:
I am comfortable with it.

Assemblyman Carrillo:
I am okay with this section.

Chairman Ohrenschall:
Mr. Ziegler, please proceed to the next section.

Dave Ziegler:
Section 18 provides that Nevada's laws regarding forms of organization other than corporations supplement the provisions of NRS Chapter 116.

Chairman Ohrenschall:
My recollection from the hearing was this was to bring in law affecting limited liability corporations (LLCs) and other entities. Ms. Dennison, is that correct?

Karen Dennison:
That is correct. Any other form of organization other than a corporation would be included.

Assemblyman McArthur:
My notes say it is part of the Uniform Act.

Chairman Ohrenschall:
Assemblyman Carrillo, are you okay with this?

Assemblyman Carrillo:
Yes, I am okay with section 18.

Chairman Ohrenschall:
We will proceed to the next section. On the work session document, I noticed the next section also talks about a proposed amendment. We did receive a bunch of amendments this morning. I am not quite sure how we will keep track of each section and each proposed amendment. We will just do our best.

Dave Ziegler:
Section 19 deletes some existing language in NRS.

[Continued to read from work session document.]

Nevada Revised Statutes 116.4117 does address judicial proceedings. There is a proposed amendment from Mr. Friedrich to retain the deleted language.

Chairman Ohrenschall:
If I understand correctly, deleting this language is not meant to do away with enforcing by judicial proceedings. Is this duplicative language?

Karen Dennison:
This section in NRS states, "Subject to the requirements set forth in subsection 2, if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons suffering actual damages from the failure to comply may bring a civil action for damages or other appropriate relief."

We believe this is duplicative language.

Chairman Ohrenschall:
You just read from NRS 116.4117, subsection 2?

Karen Dennison:
It was from subsection 1.

Chairman Ohrenschall:
It seems duplicative to me. Assemblymen McArthur and Carrillo, are you okay with leaving it there under NRS 116.4117.

Assemblyman McArthur:
It looks like it is addressed in another place; so we are getting rid of the judicial part of this.

Jonathan Friedrich:
As I read this as a nonattorney, it talks about the declaration and bylaws and not about NRS Chapter 116.

Chairman Ohrenschall:
I had that same concern when I was reading it. I then read it again; ". . . if a declarant, community manager or any other person subject to this chapter fails to comply with any of its provisions . . . ." That is referring to NRS Chapter 116. Our Legal Counsel agrees with me. When I first read this, I also shared your concern. I guess I was reading it too quickly and was not paying enough attention to the words.

Jonathan Friedrich:
What about NRS Chapters 81 and 82, which deal with nonprofit corporations? They are referenced in the earlier part of NRS Chapter 116.

Chairman Ohrenschall:
That may be a very good question. I do not believe the deleted language this act proposes to delete covers those chapters because it specifically refers to NRS Chapter 116. Our Legal Counsel is nodding in agreement.

Jonathan Friedrich:
There is also NRS Chapter 78.

Chairman Ohrenschall:
I believe the sentence at section 19 only refers to NRS Chapter 116, as does the language in NRS 116.4117. I do not believe it provides for judicial relief for those other chapters. Our Legal Counsel is agreeing with me. I do think it is duplicative.

Jonathan Friedrich:
As long as we still are protected. That is all I am interested in.

Chairman Ohrenschall:
That is our goal. Assemblymen McArthur and Carrillo, are you okay with deleting that language and feel there is enough protection in NRS 116.4117 to afford people the opportunity to go to court?

Assemblyman McArthur:
I am comfortable with that.

Assemblyman Carrillo:
I am okay.

Chairman Ohrenschall:
I think we are okay with section 19. Mr. Ziegler, you can proceed to the next section.

Dave Ziegler:
Section 20 addresses the applicability of NRS Chapter 116 to CICs or units located outside Nevada.

Chairman Ohrenschall:
Ms. Dennison, I think I would like to reach out to you on this and what this would accomplish.

Karen Dennison:
The difference between the existing law and this amendment is that, as I see it, NRS 116.4108 is not included in those provisions that apply to units located outside the state. The section that is deleted, NRS 116.4108, deals with the purchaser's right to cancel his contract after delivery of a public offering statement. I believe this was a Uniform Act change. We did not come up with this on our own. I apologize, but I do not have the Uniform Act here with me to verify and correspond it with this change.

Chairman Ohrenschall:
I am looking at the Uniform Act now. I was just trying to find the drafters' comments. I think Assemblyman McArthur is also trying to get comfortable with this section too.

Assemblyman McArthur:
I had some problems with it to begin with, but after reading it over a few more times, I think I am okay with it.

Chairman Ohrenschall:
Assemblyman Carrillo, do you feel okay with this section too?

Assemblyman Carrillo:
Yes, I am okay with this section.

Chairman Ohrenschall:
We are okay with section 20. Mr. Ziegler, please proceed to the next section.

Dave Ziegler:
Section 21 is a technical change to NRS 116.1203, adding a cross-reference to sections 5 and 6 of S.B. 204 (R1). However, there is a proposed amendment from Assemblyman Segerblom.

[Continued to read from work session document.]

Chairman Ohrenschall:
Assemblyman Segerblom's amendment should be up on NELIS, and it should be in the work session document as well.

Dave Ziegler:
On the day of the hearing, there was a mock-up prepared by the Legal Division, Proposed Amendment 6818 to S.B. 204 (R1) prepared for Mr. Segerblom.

Chairman Ohrenschall:
Assemblyman Segerblom is here. Would you like to speak a little bit about your amendment?

Assemblyman Tick Segerblom, Clark County Assembly District No. 9:
This amendment was actually brought to me by a friend. It deals with the situation of communities between 6 and 12 units. She was concerned that this bill would have them covered by the general law. She wanted to make it clear that with communities between 6 and 12 units, they would be regulated by their own covenants, conditions, and restrictions (CC&Rs). If the CC&Rs were silent, that decision would be made by them as opposed to being covered by the rules this bill enacts. Mr. Anthony could probably explain it better.

Chairman Ohrenschall:
Hopefully, this is a friendly amendment to the sponsor.

Assemblyman Segerblom:
It is, and we are making the Uniform Law even better.

Assemblyman McArthur:
Instead of adding something, this exempts the communities of 6 to 12 units from this bill, and they can come up with their own CC&Rs. I know there are many differences between the 6- and 12-unit HOAs. Some rules apply and some do not.

Assemblyman Segerblom:
I am just making sure there are certain provisions there. Mr. Anthony, could you clarify that?

Nick Anthony:
In this section, the amendment that is actually being proposed would include small CICs between 6 and 12 units in certain notice provisions that were required under NRS 116.12065. Currently, regarding the large CICs, if there is

any change to the governing documents, those have to be sent out to the units' members within 30 days. This would specifically add that requirement to small HOAs between 6 and 12 units. They wanted to be included in those same notice provisions. That is what section 21 would do.

Assemblyman Segerblom:
I guess I was referring to something else in the amendment, which was farther down.

Nick Anthony:
Correct. I believe that is later in the bill. It is the amendment dealing with NRS 116.2117 and certain exclusions there. We will get to that later in this bill.

Assemblyman McArthur:
What we are doing is not exempting them, but including them. What exactly is this NRS statute we are talking about?

Nick Anthony:
You are actually including those 6- to 12-unit HOAs in the provisions of NRS 116.12065, which states, "If any change is made to the governing documents of an association, the secretary or other officer specified by the bylaws of the association shall, within 30 days after the change is made, prepare and cause to be hand-delivered or sent . . ." to each unit owner a copy of the change that was made. For the small units, if any change to any governing document, such as a declaration or the CC&Rs, is made, then within 30 days a copy of that change must be sent to the units' owners.

Assemblyman McArthur:
Was there a reason why they wanted to be included?

Assemblyman Segerblom:
I know that my friend belongs to one, and there has been confusion at her HOA about not receiving notices about changes that were made. It seems logical to me that this kind of information be sent out.

Assemblyman McArthur:
I understand. Usually, with communities with seven or eight people, they are your neighbors, and that is not really a problem. I was just curious why she wanted this in here.

Assemblyman Segerblom:
If there is no problem, no one ever raises the issue.

Chairman Ohrenschall:
Are you comfortable with the amendment Assemblyman McArthur?

Assemblyman McArthur:
It seems like more work for those small communities. I have no heartache over it.

Chairman Ohrenschall:
I agree that it is more work, but I think people should receive notice of any changes to the governing documents.

Assemblyman Carrillo:
I am okay with this section.

Chairman Ohrenschall:
As part of our overall recommendation to the full Committee, we will recommend that Assemblyman Segerblom's amendment to section 21 be adopted.

Assemblyman McArthur:
Is that the only part to his amendment, or was there something else?

Chairman Ohrenschall:
I believe that was the only part.

Dave Ziegler:
There is another part, and we will come to it in a moment under section 30.

Chairman Ohrenschall:
Mr. Ziegler, please proceed to section 29.

Dave Ziegler:
Skipping ahead to section 29, this section provides that a unit owner's easement to use the common elements is subject to the declaration and HOA's rules.

[Continued to read from work session document.]

Assemblyman McArthur:
I am not sure what that is. What are the limited common elements?

Chairman Ohrenschall:
Ms. Dennison, could you clarify section 29 for Assemblyman McArthur?

Karen Dennison:
Limited common elements would be such things as patios and balconies that are for the exclusive use of one or more units, but not all units. Those would not be subject to the right to use the common elements.

Chairman Ohrenschall:
A common element is a pool, clubhouse, et cetera. A limited common element would be a patio that is just for three or four neighbors?

Karen Dennison:
It could be a patio, balcony, or any amenity that is specifically and exclusively for the use of one or more, but not all of the units.

Chairman Ohrenschall:
I did not realize those existed.

Assemblyman McArthur:
I did not either. Has this been a problem if it is just for two or three units? You would have trouble even getting to them. I do not have any heartache over this, but I am just curious how this came up. I think it would be tough to get to these limited common elements if it is an exclusive patio.

Chairman Ohrenschall:
Ms. Dennison, could you please respond.

Karen Dennison:
This amendment does more than just that. It says that the use rights are subject to the declaration and any rules adopted by the association, but the units' owners have the right to use the common elements. I think it just clarifies that it does not include limited common elements. It is not all of the common elements that would be subject to use by all of the owners.

Assemblyman McArthur:
I understand now. I see what you were trying to say. This exempts them from all of the other common element rules.

Karen Dennison:
I think it would not necessarily exempt them from any rules that are applicable to limited common elements, but it would exclude the use rights of all of the owners to use those limited common elements.

Assemblyman McArthur:
I understand that. I am just curious how many of the unit owners would even have access to these limited common elements. Why is this amendment here? I do not have any problem with it. I am just curious why it came up and what is the problem we are trying to solve? It is going to be okay. If there is a patio for three units, how would anyone else even have access to those? Is there a problem that prompted this amendment?

Chairman Ohrenschall:
Does this verbiage come from the Uniform Commissioners?

Karen Dennison:
Yes, it is a Uniform Act clarification change.

Chairman Ohrenschall:
There may not be a problem here in Las Vegas.

Assemblyman McArthur:
This is to solve the problem before we have a problem. That is fine.

Senator Allison Copening, Clark County Senatorial District No. 6:
I can give an example through my own association. It has tennis courts that are open to all of the members, except when the tennis professional is teaching classes. There are set times when that tennis professional gets to have those courts for his teaching purposes. That is when all of the other unit owners cannot use the court. I looked at that and thought this is an example of where there is a limited use capacity, but if something were not in statute, another resident may say, "Well, you are telling me I cannot use it, but I pay my fees, so I am going to use it." There is just one example.

Assemblyman McArthur:
I am fine with this. If there was some problem we did not know about that we were trying to solve, but there is no problem.

Chairman Ohrenschall:
I am fine with it too. People who move in will know whether they have those limited common elements available to them. Assemblyman Carrillo, are you okay with section 29?

Assemblyman Carrillo:
Yes, I am completely okay with section 29.

Chairman Ohrenschall:
We are okay with section 29. Mr. Ziegler, could you please proceed to the next section?

Assemblyman McArthur:
I think we skipped sections 21 through 29.

Chairman Ohrenschall:
They were not listed in the work session document. If there is one of concern to you, please bring it up. We want to make sure we properly vet every part of this bill before we send it to the full Committee.

Assemblyman McArthur:
In section 22, it has another exception, and I have not looked that up. Is that the same one we talked about before?

Chairman Ohrenschall:
Section 22?

Assemblyman McArthur:
I guess that answers my question. I am fine with that too. I think that will take me up to section 30.

Dave Ziegler:
Section 30 of S.B. 204 (R1) provides that: the declaration may not be amended by a majority vote of the unit owners if the declaration specifies a different percentage or specifies that approval of another person is required.

[Continued to read from work session document (Exhibit F).]

Ms. Lytle has a proposed amendment that is actually picked up more completely in the mock-up provided by Assemblyman Segerblom in subsection 4. I am sorry I did not capture this in the work session document. In the mock-up, section 30, subsection 4, lines 29 through 33, it states, "No amendment may change the boundaries of any unit, change the allocated interests of the unit or change the uses to which any unit is restricted in the absence of unanimous consent of only those units' owners whose units are affected and the consent of a majority of the owners of the remaining units."

Chairman Ohrenschall:
Ms. Lytle's amendment seeks to add, ". . . uses to which any unit is restricted . . . ."

Dave Ziegler:
I think the Trudy Lytle amendment is a layperson's version of the more formal language I just read into the record, which came from the Legal Division.

Chairman Ohrenschall:
Oh, okay. Thank you.

Assemblyman Segerblom:
Ms. Lytle is my friend who gave me the information that I gave to Mr. Anthony, who then put it into legalese.

Nick Anthony:
This amendment simply adds back language that was deleted in 2009 in a Senate bill. Ms. Lytle was concerned and felt that language should be added back in. It adds back preexisting language.

Assemblyman McArthur:
What exactly is it we are putting back in?

Nick Anthony:
In section 30, subsection 4, you are going to add back in the phrase, ". . . the uses to which any unit is restricted." The sentence would read, picking up on page 17, line 43, right after "provisions of this chapter," it will say, ". . . no amendment may change the boundaries of any unit or change the allocated interests of a unit in the absence of unanimous consent." The phrase, "the uses to which any unit is restricted . . . ," will be added. This means an amendment cannot change "the uses to which any unit is restricted without the unanimous consent of those units' owners whose units are affected . . . ." That specific change is more clearly shown in the mock-up that was presented by Assemblyman Segerblom at the hearing.

Assemblyman McArthur:
Is that the only change?

Nick Anthony:
That is the amendment from Assemblyman Segerblom in subsection 4.

[Chairman Ohrenschall left the room, and Assemblyman Carrillo assumed the Chair.]

Dave Ziegler:
We are on section 30 of S.B. 204 (R1). We have been discussing the Trudy Lytle, Assemblyman Segerblom amendment. On the table, there is still

a proposed amendment from Mr. Friedrich, which would delete the word "behavior" on page 18, line 9.

Acting Chairman Carrillo:
Mr. Friedrich, I would like to have you elaborate on your amendment.

Jonathan Friedrich:
The word "behavior" is very vague. What is behavior? Is it somebody playing the radio at 2 a.m. or practicing his or her drums? Is it somebody smoking? It just leaves it wide-open to bully-boards that could claim something as bad behavior. It is arbitrary and capricious. This vague language could be used against a person; for example, if a person has a meth lab, that is a criminal offense and the police will handle it. That should not be handled by an HOA board. However, this language provides the possibility of punitive actions by a board. If there is bad blood between neighbors and neighbor A is a board member and does not like his next-door neighbor, neighbor B, issues can be created where bad behavior is claimed and punitive action is taken against that neighbor. It is almost as bad as the word "misconduct" that is located in NRS 116.3115(6). There is one particular attorney here in Las Vegas that uses that statute time and time again in punitive actions, and winds up socking the homeowner with his or her legal fees at a kangaroo court hearing in front of a board. The word leaves itself open to interpretation, and we all know many board members are not that sophisticated. They may not be attorneys or judges, and the homeowner can suffer. We heard testimony earlier this session on other bills by Norman McCullough, who has been accused of misbehaving because he tapped the manager on the shoulder to get her attention. He was accused of assaulting her.

Acting Chairman Carrillo:
Mr. Friedrich, we are going to try to stick to the points and not too in depth in regard to the actual history that you have experienced.

Jonathan Friedrich:
I just wanted to give you an example with this particular individual where the word "behavior" or "misconduct" can be loosely interpreted.

Acting Chairman Carrillo:
Ms. Dennison, could you elaborate on this?

Karen Dennison:
I have no issue, as I stated in the response posted on NELIS (Exhibit H), to removing the word "behavior." That was part of the Uniform Law. Regarding amendments to declarations, we did not incorporate all of the

provisions of the Uniform Law because we felt some were controversial. This one was incorporated, but we are willing to withdraw the word "behavior."

Assemblyman McArthur:
If the Commission is comfortable with that, it is okay.

Dave Ziegler:
Moving on to section 32.

Assemblyman McArthur:
I do not think we have covered everything in section 30.

Acting Chairman Carrillo:
I am sorry. Please feel free to bring anything else you have forward.

Assemblyman McArthur:
On this page where we have these proposed amendments, it lists many things I thought we had not covered yet.

Dave Ziegler:
We have been discussing two proposed amendments to section 30. We will go back to what the section says without the amendments.

[Read from work session document.]

Assemblyman McArthur:
I would just like to get a reading from Legal. What change does that do to the original wording we had here?

Nick Anthony:
I believe Mr. Ziegler captured it there in that summary. Those are the changes we are making in section 30. They deal with voting, amendments to the declaration, and how those amendments apply, specifically by majority vote. In subsections 6, 7, and 8, there is new language dealing with amendments to the declaration and certain provisions in the declaration creating a special declarant's rights that may not be amended. I believe Ms. Dennison may have further comments, but these changes were part of the Uniform Act.

Assemblyman McArthur:
How about the changes we have here. These are not part of the Uniform Act, correct?

Nick Anthony:
I believe they are.

Acting Chairman Carrillo:
Assemblyman McArthur, do you have any concerns?

Assemblyman McArthur:
I want to read this section again, but I think we are probably fine with it.

Acting Chairman Carrillo:
If we need to come back, we can do that.

Dave Ziegler:
Moving on to section 32, it requires an HOA to have an executive board and authorizes an HOA to be organized in any form authorized by Nevada law.

Assemblyman McArthur:
We are on section 32, right?

Acting Chairman Carrillo:
Yes, we are on section 32.

Assemblyman McArthur:
Why are we throwing in that the association must have an executive board? We have many small associations. Do we want to exempt the ones with fewer than 12 units? If there are only six people, and the board consists of a president and vice president and two other people, are the other two people exempt? It seems like it is not needed for the small associations.

Acting Chairman Carrillo:
I am wondering whether that is more of an "in name only" situation.

Assemblyman McArthur:
You must have a different group of people. There are the officers and executive board. Then, there is no one left over. Can we exempt fewer than 12 units? Why was this thrown in here?

Karen Dennison:
The association is a corporation or other business organization. Business organizations can only act through a board, generally speaking, or a manager if it is a limited liability company (LLC). They are usually incorporated as nonprofit corporations. I am not clear as to whether small communities can do away with having an association under NRS Chapter 116. I do not represent any, so I am

not sure. If that were the case, then I think they could be exempted from this requirement if they would just act as a group of members with no corporate form. It might be wise to exempt them.

Assemblyman McArthur:
Under that 12-unit number, there are so few people there.

Nick Anthony:
I believe Assemblyman McArthur's concern is the language in section 32 that states, "The association must have an executive board." My read is that this provision would apply to associations between 6 and 12 units. Under six units, NRS 116.3101 does not apply. This would require associations with 6 to 12 units to have an executive board. If it is the Subcommittee's intent, we could exempt those small HOAs from this particular provision.

Assemblyman McArthur:
There are just so few people. Having officers, board members, and executive boards is not needed when there are seven, eight, nine, or ten residents.

Acting Chairman Carrillo:
Assemblyman McArthur, I concur with that.

Dave Ziegler:
Before moving on, I will note that the two members present suggest a conceptual amendment that an HOA with 12 or fewer units would not be required to have an executive board.

In section 33, it requires an HOA to adopt bylaws and to adopt budgets in accordance with the requirements of NRS Chapter 116.

[Continued to read from work session document (Exhibit F).]

[Chairman Ohrenschall reassumed the Chair.]

Chairman Ohrenschall:
In the proposed new language of section 33, subsection 3, it says, "The executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented . . . ." Right now, does the executive board have a duty to take enforcement action, or does it have discretion? Would this give it new discretion it does not currently have?

Karen Dennison:
Current law provides that an executive board, or an association acting through its executive board, in NRS 116.3102, section 1, ". . . may do any or all of the following . . . ." The first part of this amendment makes two requirements. The first is that the executive board, or an association acting through its executive board, must adopt and amend bylaws. The second is that they must adopt a budget. Everything else is discretionary. I think the subsection you are referring to basically clarifies something that is often put in CC&Rs. If it is not there, it is not always in the best interest of the association to enforce the CC&Rs, and this gives criteria that the board can use to determine whether or not it should take enforcement action.

Chairman Ohrenschall:
When we are done with this section, perhaps we should jump ahead to the next section Assemblyman Segerblom is concerned about so he does not have to come back after we recess.

Assemblyman Segerblom:
I think section 34 is the only other section I have an amendment to.

Chairman Ohrenschall:
Okay.

Assemblyman McArthur:
I am just looking at these proposed amendments. It looks like the one by Mr. Robey allows civil action. I am not sure we need that. Anyone can sue someone if he or she wants to anyway. This is just putting it in statute. Do we really need to put that in there? It just states that you have the right to sue. I think Mr. Robey's concerns are already taken care of. I am not sure this is doing anything for us.

Chairman Ohrenschall:
We are on section 33 and the amendment proposed by Mr. Robey?

Assemblyman McArthur:
Yes. I certainly understand what he wants to do. That section refers to suing civilly.

Assemblyman Carrillo:
I do agree with Assemblyman McArthur.

Assemblyman McArthur:
I hope Mr. Robey's concerns are satisfied, unless there was something else he was trying to address.

Jonathan Friedrich:
I am very familiar with why he requested that amendment. He is an amputee and is in a wheelchair. There have been numerous occasions where in associations, cars have been illegally towed. Currently, in statute, it allows for if anyone parks in a handicapped space illegally, the car can be towed. If the handicapped sign falls down and is not viewable, that vehicle could be towed, even though it is being towed illegally. How does an amputee, such as himself, get his vehicle back from the impound lot? Currently, under state and municipal law, you cannot tow a car parked in a handicapped spot; it can only be ticketed or a summons issued. That is where he is going with this issue.

Chairman Ohrenschall:
His issue is if he was towed away because the placard fell off or was not visible, correct?

Jonathan Friedrich:
Actually, it has not happened to him, but it has happened to other people. That was his major concern.

Chairman Ohrenschall:
I think we dealt with this issue in Assembly Bill 448.

Assemblyman McArthur:
The amendment is after the vehicle has been towed, but you are talking about before. This amendment is after the car has been towed and the civil liability. That has already been taken care of. This amendment is talking about after, and you are talking about before. I think his concerns are already taken care of if I understand his problem. I just do not think this solves that particular problem.

Jonathan Friedrich:
I am not familiar with that particular section in NRS. Could we go back very briefly to section 32 and an executive board?

Chairman Ohrenschall:
We are on this section now. If I have any questions, I will consult the other members. Feel free to email me any questions you think I may need to ask on a prior section. We are going to stay on section 33.

Assemblymen McArthur and Carrillo, how do you feel about Mr. Robey's amendment?

Assemblyman McArthur:
I do not think it is solving the problem he really wants.

Chairman Ohrenschall:
As to Ms. Schuman's amendment, is there any appetite for that amendment? It seems fair.

Assemblyman McArthur:
It seems reasonable.

Chairman Ohrenschall:
Assemblyman Carrillo does not like the amendment.

[Assemblyman Carrillo asked the Chairman a question without the microphone on.]

That is not in the actual legalese that the Legal Division would come up with. I think this is just her amendment in conceptual language.

Assemblyman Carrillo:
What is the exact language we are looking at? That is my concern.

Chairman Ohrenschall:
We do not know, but if we accept it, Legal would then draft it.

Assemblyman Carrillo:
My concern is that it will get twisted. I need to hear the exact language on this. If we cannot have that, then my answer is no.

Chairman Ohrenschall:
Maybe we can defer on that. Could Legal come up with how it would look? I think for now, let us keep section 33 on the back burner. We will come back to it. Let us proceed to section 34.

Assemblyman Segerblom, in the interest of time, please proceed with your amendment to section 34.

Dave Ziegler:
Section 34 provides that officers and board members of an HOA are subject to the conflict of interest rules.

[Continued reading from work session document.]

Assemblyman Segerblom:
If you look at our conceptual amendment that Mr. Anthony worked on, I guess it just makes it clear that the executive board cannot amend the declaration. It makes sure that the reference to NRS 116. 2117 is not included there. I think that is where these 6 to 12 units are not covered under the general rules. Mr. Anthony could probably explain that.

Nick Anthony:
In further discussing this issue with some of my counterparts in the Legal Division, we are of the opinion that maybe the deletion of the language there on page 24, lines 6 and 7 is not necessary. As I understand it, Ms. Lytle is in a small HOA containing between 6 and 12 units. Her concern is that because that small HOA is subject to the provisions of section 34 and NRS 116.3103, somehow because that language, ". . . except as otherwise provided in NRS 116.2117," would then make them subject to NRS 116.2117. As we discussed within our Division, because those small HOAs are not subject to NRS 116.2117, they are still governed under their exception.

Assemblyman Segerblom:
That language would not bring them in?

Nick Anthony:
Correct.

Assemblyman Segerblom:
With that understanding on the record, that would be fine with us.

Chairman Ohrenschall:
You no longer propose to amend this section?

Assemblyman Segerblom:
No, I would withdraw the amendment. I want the record made that this does not somehow pull her back into NRS 116.2117.

Chairman Ohrenschall:
With that on the record, Assemblymen McArthur and Carrillo, are you both comfortable with this section?

Assemblyman McArthur:
I would be comfortable with that.

Chairman Ohrenschall:
Is there any appetite for the amendment proposed by Mr. Friedrich?

Assemblyman McArthur:
I thought that was the one we had to leave in to satisfy the other one?

Chairman Ohrenschall:
We will accept section 34.

[The meeting was recessed at 10:23 a.m. and reconvened at 11:19 a.m.]

Mr. Ziegler, should we just move on to section 35 in the work session document?

Dave Ziegler:
To be clear, we are going over section 35?

Chairman Ohrenschall:
Yes, let us go to section 35.

Dave Ziegler:
Section 35 requires an HOA to provide a schedule of fines, if any, that may be imposed for violations of the governing documents to each unit's owner. This provision is part of the current NRS 116.3108, and you can see this at section 40 of the bill.

To be clear then, I think this is a restatement, or relocation, of existing statute.

Chairman Ohrenschall:
That does not sound too controversial. Assemblyman Carrillo, are you okay with section 35?

Assemblyman Carrillo:
Yes, I am okay.

Chairman Ohrenschall:
Assemblyman McArthur is not here, but he will let us know whether he has any concerns when he gets back.

Dave Ziegler:
Section 36 provides that a declarant's control terminates the day the declarant, after giving notice to the unit owners, records an instrument voluntarily surrendering all rights to control the activities of the HOA.

Chairman Ohrenschall:
It seems pretty straightforward. What do you think Assemblyman Carrillo?

Assemblyman Carrillo:
Yes, I agree.

Chairman Ohrenschall:
Please proceed, Mr. Ziegler.

Dave Ziegler:
Section 37 establishes a procedure for an election to remove a member of an HOA board. This is what is known as a "removal election."

[Continued to read from work session document.]

To sum up, this section incorporates existing NRS language and actually deletes existing NRS language, which is then relocated elsewhere in the chapter. I suggest the net change of this is a wash.

Chairman Ohrenschall:
Mr. Anthony is nodding his head that he agrees. Assemblyman Carrillo, do you have any concerns?

Assemblyman Carrillo:
No concerns.

Chairman Ohrenschall:
Nor do I. Mr. Ziegler, please proceed.

Dave Ziegler:
Section 38 of S.B. 204 (R1) authorizes an HOA board to terminate certain contracts without penalty, under certain circumstances.

Chairman Ohrenschall:
Assemblyman Carrillo, you have so much experience having served on an HOA board. I think out of the three members of the Subcommittee, you are the only one who has actually served on an HOA board. What are your thoughts on section 38?

Assemblyman Carrillo:
I am okay with section 38.

Chairman Ohrenschall:
We will proceed on.

Dave Ziegler:
Section 39 requires the bylaws of an HOA to contain any provisions necessary to satisfy requirements in NRS Chapter 116 or the declaration concerning meetings, quorums, voting, other activities of the HOA, and requirements of state law.

This is a provision that requires what the bylaws of an HOA must contain.

Chairman Ohrenschall:
I see no problems with section 39. Assemblyman Carrillo?

Assemblyman Carrillo:
No, I see no problems with section 39.

Chairman Ohrenschall:
We were just joined by Assemblyman McArthur, so we will let him catch up. We are on section 39. Assemblyman Carrillo and I did not find any problems with it. If you concur, we will proceed. If not, then let us know. We started on section 35, so if you have any questions or problems, please let us know, and we can go back to address those.

Assemblyman McArthur:
We did not have any problems with section 36 and that language?

Chairman Ohrenschall:
We were all right with it, but if you have a concern, please let us know.

Assemblyman McArthur:
I do not have any notes, but I have a question mark. If you are both okay with it, I probably will be too.

Chairman Ohrenschall:
We can go back. If you have a question, please ask. We still have Ms. Dennison here.

Assemblyman McArthur:
Section 37 is current language, and 35 percent was a number that was fine. That is on page 28, line 26.

Chairman Ohrenschall:
That is current language.

Assemblyman McArthur:
I did not know whether that 35 percent was good.

It looks like section 39 is probably okay too. I do not have any notes on section 39.

I just did not know where that 35 percent came from that was current language. I assume someone had a good reason for that.

Chairman Ohrenschall:
I am confused on how section 37, subsection 1 worked with the new subsection 2. If I am understanding this correctly, subsection 1 explains the requirements to remove a member of the executive board, whereas the new subsection 2 talks about the requirements to schedule a removal election. Ten percent would be the magic number to schedule the removal election, and 35 percent would have to participate to successfully remove a member of the executive board. How they picked 35 percent, I do not know.

Assemblyman McArthur:
I am not sure what it means in subsection 1, paragraph (b), where it says, "At least a majority of all votes cast in that removal election." You can win or lose with 18 percent of the vote.

Chairman Ohrenschall:
Ms. Dennison, can you elaborate on this at all, or is this something you would rather stay out of?

Karen Dennison:
I know this was the subject of some testimony that I cannot exactly recall, other than you can always have more. Eighteen percent would be the bare minimum if only 35 percent chose to participate. If 100 percent chose to participate, then you would need a majority of the 100 percent. I believe the testimony in prior sessions had to do with voter apathy and difficulty in getting people to participate.

Assemblyman McArthur:
I completely understand. That is probably what the problem is. It is kind of scary when 18 percent can run things. That is current language; so I guess I do not have a problem with it.

Chairman Ohrenschall:
I am fine with it too. Assemblyman Carrillo stepped out, but he will be right back. We can proceed on.

Dave Ziegler:
I hesitate to do this, but I want to make sure the record is clear. On page 28, commencing at line 24, ". . . the number of votes cast in favor of removal constitutes: (a) At least 35 percent of the total number of voting members of the association . . . ."

Chairman Ohrenschall:
I believe that is how I understand it.

Dave Ziegler:
The relocation of the words "in favor of removal" from line 29 to line 24 changes the meaning of this section.

Chairman Ohrenschall:
Could you repeat your point one more time? I am not sure I am getting it.

Dave Ziegler:
Section 37, page 28, says that in a removal election,

> . . . a member appointed by the declarant may be removed from the board, with or without cause, if at a removal election . . . the number of votes cast in favor of removal constitutes:
>
> (a) At least 35 percent of the total number of voting members of the association; and
>
> (b) At least a majority of all votes cast in that removal election.

Let us say you had 100 voting members in this association. You would need 35 votes in favor of removal. If 36 people voted and 35 voted in favor of removal, that would work. I do not think you can get down to 18.

Assemblyman McArthur:
I think you are right. By reading that sentence up above, it looks like you must have 35 percent of the vote.

Chairman Ohrenschall:
You need to have a minimum of 35 percent participating.

Assemblyman McArthur:
Voting actually.

Chairman Ohrenschall:
If you only have 35 percent voting, you must have 100 percent of those voting for removal of the member of the executive board.

Assemblyman McArthur:
That is a little higher percentage.

Chairman Ohrenschall:
It is a high bar to remove someone from the executive board. Is there any desire to change that? This is in existing statute. Otherwise, we are all right with section 37. We were on section 39, unless you have any other concerns Assemblyman McArthur.

Assemblyman McArthur:
No.

Dave Ziegler:
I will repeat section 39.

[Read from work session document.]

Chairman Ohrenschall:
I have to quickly meet with the Chair of Senate Judiciary, so I will hand this over to Assemblyman Carrillo.

Assemblyman McArthur:
Are we on section 39?

Acting Chairman Carrillo:
Yes.

Assemblyman McArthur:
I do not have any problems.

Acting Chairman Carrillo:
You said you have no problems?

Assemblyman McArthur:
No problems.

Acting Chairman Carrillo:
I concur with that. We will move to the next session.

Dave Ziegler:
Section 40 requires a unit owners' meeting to be held at least once each year at a time and place established in accordance with the bylaws.

[Continued to read from work session document.]

Assemblyman McArthur:
I think that handles my problems. It is relocated. I saw these big, huge deletions, but the material is relocated. I do not have a problem with section 40.

Acting Chairman Carrillo:
I am in agreement with that on section 40. We will move to the next section.

Dave Ziegler:
Section 41 of S.B. 204 (R1) deletes certain language, which is then relocated elsewhere in NRS Chapter 116. If you look in section 2 of the bill, this has to do with the notice that is given to owners. If you recall, this is the very first section we talked about this morning.

Acting Chairman Carrillo:
I am okay with this section. Are you okay with it Assemblyman McArthur?

Assemblyman McArthur:
Yes.

Acting Chairman Carrillo:
We will move to the next section.

Dave Ziegler:
Section 42 amends requirements for determining whether a quorum is present at a meeting of an HOA board.

[Continued to read from work session document.]

Acting Chairman Carrillo:
Assemblyman McArthur, do you have any issues with section 42?

Assemblyman McArthur:
I guess I do not really have any issues. I guess this just means you must have a quorum present when you wind up voting. Before you take a vote, will you have to determine quorum again? Normally, you do that at the beginning of the meeting.

Acting Chairman Carrillo:
Not necessarily, unless board members were to leave in the middle of a meeting for whatever personal reasons.

Assemblyman McArthur:
I guess there is no problem with that.

Acting Chairman Carrillo:
I am good with it.

Dave Ziegler:
Section 43 addresses how a unit owner may vote at a meeting of unit owners, including voting by absentee ballot, and authorizes an HOA to conduct a vote without a meeting in certain circumstances.

Assemblyman McArthur:
I think it is probably okay. Instead of having to be physically present, it is allowing other ways to vote. This includes absentee ballots and proxies. I am assuming this came out of previous wording. There do not appear to be any problems. It looks like this is the only thing we are doing to this section, correct?

Acting Chairman Carrillo:
Looking at it, yes, that appears to be so. I am good with the language the way it is.

Assemblyman McArthur:
I think I am too. I just want to take one second to look at it again. On page 39, lines 18 and 19, it says, ". . . a majority of the votes cast determines the outcome . . . ." I assume it says how many votes must be cast somewhere else. Since it just says "a majority of the votes cast," maybe only a few people showed up or had their proxy there. I do not know whether there is a minimum amount set up in another place.

Acting Chairman Carrillo:
That is something Legal can help out with.

Nick Anthony:
Quickly looking at section 43, it does appear that it would be a majority of the votes cast, unless the declaration provides a greater percentage. Ms. Dennison may have something otherwise.

Acting Chairman Carrillo:
Ms. Dennison, could you please elaborate?

Karen Dennison:
There is a quorum requirement, both for ballots and for meetings. If you look at page 41, line 6, for ballots, there must be a quorum met in the votes cast. It is a majority of the quorum.

Assemblyman McArthur:
I am good.

Acting Chairman Carrillo:
I am good, too.

Dave Ziegler:
I think we are moving on to section 44. This section provides that a unit owner is not liable, solely by reason of being a unit owner, for an injury or damage arising from the condition or use of the common elements.

[Continued to read from work session document (Exhibit F).]

Assemblyman McArthur:
I am still looking at this part.

Acting Chairman Carrillo:
From what I can see, it pretty much takes the liability away from the unit owner because he is a unit owner. It is not an assumption he is guilty until proven innocent.

Assemblyman McArthur:
I am wondering why we need this. I do not know why anyone would go after the unit owner for something in the common element. I am trying to see whether there is something else there or some other reason for this.

Karen Dennison:
Regarding subsection 1, "A unit's owner is not liable, solely by reason of being a unit's owner, for an injury or damage arising out of the condition or use of the common elements." In the case of a condominium, the owner would be an

undivided interest owner in the common elements. As an owner, he could be a defendant in an action involving the common elements. I think this basically says that the unit owner is not personally liable for any judgment that could be obtained. You could not go after the other assets of the unit owner.

Assemblyman McArthur:
I understand that. Do we need language in here that refers just to condominium-type units? Is this fine the way it is? This way, it is sort of all-inclusive. You do not go after individual unit owners for a common element liability, but you would in the case of condominium units or townhomes, where the unit owner has an interest in the whole thing. I just did not know whether we needed to divide those people out or not.

Karen Dennison:
This is a Uniform Act change. I think the intent is basically that unit owners do not have control over what happens with the common elements. Normally, the maintenance, management, and operation of the common elements have been delegated to the association. The unit owners should not be liable for something for which they had no responsibility in creating.

Assemblyman McArthur:
I understand that. There is a difference between an HOA unit and a condominium unit. Maybe we do not need to separate the two in this case because it is obvious that you would not do that in an HOA, but you would need it for other unit types. This wording may be okay, I guess.

Acting Chairman Carrillo:
Assemblyman McArthur, you are good with this language?

Assemblyman McArthur:
I guess we do not really need to separate them out. It is obvious that you would not do that in an HOA. This would actually pertain to condominium-types, so I think we are okay with this.

Dave Ziegler:
Moving on to section 45, this section requires an HOA to maintain property liability insurance and crime insurance, subject to reasonable deductibles. There is a proposed amendment on this section. Mr. Friedrich proposes that an HOA should not pay for a manager's crime insurance. Insurance coverage should exclude all but the first $500,000 of the reserve amount plus three times the monthly assessments.

Acting Chairman Carrillo:
There are HOAs that are large and get into the millions of dollars, as compared to the small HOAs. I just want to reconfirm that we are on the same page. Because the Chairman is not here, any amendments we would look to accept, I would like to bring him into the picture, as well. Assemblyman McArthur, do you want to elaborate on any thoughts?

Assemblyman McArthur:
I do not have the amendment in front of me. I am still going over this. So basically, with the amendment, you are really only covering $500,000, plus three months. That is not a lot these days. I am not sure about not paying for a manager's crime insurance. Are we talking about the management company? We are talking about the money that belongs to the HOA; so is the manager automatically covered, or is he or she excluded because he or she really has nothing to do with the money of the HOA?

Acting Chairman Carrillo:
This could be a rider on somebody's general commercial policy. It is not something someone would actually have to go out and get a policy for. It would just be a rider on an existing policy. The discussion of the amount of the reserve . . .

Assemblyman McArthur:
I understand limiting it because premiums may start to skyrocket, but $500,000 is not a lot these days.

Dave Ziegler:
To be a little bit clearer on what the amendment is proposing, there are two parts. First of all, this section says, ". . . the association shall maintain, to the extent reasonably available and subject to reasonable deductibles:" Jumping down to paragraph (c), it says, "Crime insurance which includes coverage for dishonest acts by members of the executive board and the officers, employees, agents, directors and volunteers of the association and which extends coverage to any business entity that acts as the community manager . . . ." One of the amendments Mr. Friedrich is proposing runs counter to that and says the association should not be required to pay for the manger insurance. On page 43, lines 11 through 13, ". . . the minimum amount of the policy must not be less than an amount equal to 3 months of aggregate assessments on all units plus reserve funds." Mr. Friedrich is suggesting that it should exclude everything after the first half million in reserve funds. I think his point from his testimony the other day is that some of these reserve funds can be quite large.

Assemblyman McArthur:
I think that is a problem. Although, I think $500,000 may not be quite enough coverage.

Acting Chairman Carrillo:
We are talking about the aggregate. For some of these larger HOAs with 7,000 homes, that is a lot of money if we are looking at three times the aggregate.

Marilyn Brainard, Secretary, Commission for Common-Interest Communities and Condominium Hotels:
If I may add a little sunshine onto this, and a little clarity, the Commission met and teleconferenced. I briefly went up and joined the call. The Commission has confirmed that it does not wish to see a cap on the amount of the policy. In Summerlin, I understand that two months worth of revenue is over $1 million. That has nothing to do with the reserves. That is another issue. A cap is not a good idea when you have the crime insurance policy, especially for these very large associations. While you want some minimum requirements, which are stated very clearly in the proposed statute, you would not want to have a cap.

If I may clarify on the crime insurance policy for an individual manager, we had extensive comments from insurance professionals at our Commission workshops on this matter. It is extremely expensive, and it is almost impossible for an individual manager to obtain a policy. Further, it is the association's funds that need to be protected. That is why it is important for the association to take out the policy and not the individual manager. It is the association that needs to protect its funds. In most instances, community managers are not exercising any hands-on control over the funds of the association. The management companies usually have a separate accounting department to handle the whole invoice preparation and payment procedures. Most managers do not want to be a signatory on a checking account. That is my understanding.

The main point is that it is the association's funds that need to be protected. Therefore, it is the one to carry the policy. If you want to not have requirements as to the amount of insurance or what it should cover, that would certainly be up to you. It is very important on who carries the policy. I hope that is helpful.

Acting Chairman Carrillo:
I have a little crosshair between cap and minimum.

Jonathan Friedrich:
I am not asking for a cap as a cap. The statute, as written, as Mr. Ziegler stated, is three months. I concur with that. The issue is covering the full amount of the reserve funds. When you have a Sun City Summerlin or Anthem, there are many millions of dollars in those accounts. The premium would be predicated upon the amount of potential loss. Most associations do not have anywhere close to $500,000 in their reserve accounts. The cap, if you want to use that word, of $500,000 would be on just the reserve portion.

If I may respectfully disagree with Ms. Brainard, it was difficult to get bond coverage insurance, and that verbiage came out of the 2009 Session because of the embezzlements that took place by managers. I do not feel that an HOA and the homeowners should be saddled with the cost of the crime insurance for the manager. The association does not directly pay the rent or the workman's compensation of the management company. In many cases, managers have been proved to be dishonest. That was the reason for the original language of a bond. Crime insurance is what is actually needed. That was my reason for the amendment. I do not disagree with the three months. In an association like Sun City Summerlin, there are 7,781 homes paying monthly fees of $100 a month. You do the arithmetic there.

Assemblyman McArthur:
It looks like the only problem we may have is with the amount. The way the bill is right now, we are talking about a minimum amount. Would the author of this bill be comfortable with an amount of $500,000 or 50 percent of the reserves? That would be a minimum amount.

Karen Dennison:
This section was not in our original bill. We had a fidelity bond. This section was moved to conform with Senate Bill 174, which is Senator Copening's bill. I would really like to defer to Senator Copening on her desires there.

Assemblyman McArthur:
I am just trying to find some common ground. If we went with the minimum of $500,000 or 50 percent, whichever is less, this would cover some of the really big associations. I am just throwing this out as common ground between these two.

Acting Chairman Carrillo:
We are going to adjourn because of floor session. We will repost for next week.

The meeting is adjourned [at 12:02 p.m.].

RESPECTFULLY SUBMITTED:

_____
Julie Kellen
Committee Secretary

APPROVED BY:

_____
Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 13, 2011 **Time of Meeting: 8:26 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 30 (R1)	C	Dave Ziegler	Work Session Document
S.B. 89 (R1)	D	Dave Ziegler	Work Session Document
S.B. 222 (R1)	E	Dave Ziegler	Work Session Document
S.B. 204 (R1)	F	Dave Ziegler	Work Session Document
S.B. 204 (R1)	G	Garrett Gordon	Proposed Amendment
S.B. 204 (R1)	H	Karen Dennison	Response to Amendments