

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

**Seventy-Sixth Session
April 13, 2011**

The Committee on Judiciary Subcommittee was called to order by Chairman James Ohrenschall at 7:19 p.m. on Wednesday, April 13, 2011, in Room 4100 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).

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman James Ohrenschall, Chairman
Assemblyman Richard Carrillo
Assemblyman Richard McArthur

COMMITTEE MEMBERS ABSENT/:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Jean Bennett, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Jonathan Freidrich, Private Citizen, Las Vegas, Nevada

Chairman Ohrenschall:

Good evening everyone. [Roll was taken and Subcommittee meeting protocol was explained.] Thank you for being here for this late night meeting of the Assembly Judiciary Subcommittee on Homeowners' Associations. Tonight we will have a work session on the three bills that we considered during our meetings. This is our fourth meeting, and we appreciate everyone's time. We will open with Mr. Stewart's bill, Assembly Bill 246.

Assembly Bill 246: Requires the association of a common-interest community to make available to candidates for membership on the executive board its list of units' owners under certain circumstances. (BDR 10-1067)

We had a hearing on this bill and there was a lot of testimony. From what I understand, the parties got together and submitted two amendments. According to Mr. Stewart, all of the parties have agreed on these amendments. Do the Subcommittee members have any feelings on Mr. Stewart's bill with the amendments? The driving force behind this was to make it easier for people to be able to campaign and run for office.

Assemblyman McArthur:

I think this does that. In looking at these amendments, it looks like all parties are fairly satisfied with them. The only question I had was putting that timeshare in the middle of these, but I think that is probably all right. We may have Legal look at it later if there is a problem. I think we are probably okay with the amendments.

Chairman Ohrenschall:

That is Ms. Karen Dennison's amendment which was going to be parallel to something in a Senate bill. Mr. Carrillo, do you have any comments you would like to make on Mr. Stewart's bill?

Assemblyman Carrillo:

Thank you, Mr. Chairman. My concern is in the proposed amendment to A.B. 246 that states, "Unless the governing documents provide otherwise, the officers of the association are not required to be units' owners." Prior to that sentence, it states "the units' owners shall elect an executive board of at least three members, all of whom must be units' owners . . ." unless it is in the governing documents. Okay, I am good with that.

Chairman Ohrenschall:

Do you have a good comfort level with the bill? The work session document includes an amendment proposed by Garrett Gordon and the other amendment from Ms. Karen Dennison ([Exhibit C](#)). Do you have a good comfort level with both amendments?

Assemblyman Carrillo:

Yes.

Assemblyman McArthur:

Yes. I understand the writer of this bill is comfortable with that and I am also.

Chairman Ohrenschall:

Since we are a Subcommittee, we will make recommendations to the full Committee. I will take a motion to amend and do pass with both Mr. Gordon's amendment and Ms. Dennison's amendment, but I want to remind everyone this does not pass the bill, it is a recommendation to the full Judiciary Committee.

ASSEMBLYMAN MCARTHUR RECOMMENDED AMEND AND DO
PASS ASSEMBLY BILL 246 TO THE FULL COMMITTEE.

ASSEMBLYMAN CARRILLO SECONDED THE RECOMMENDATION.

THE RECOMMENDATION PASSED UNANIMOUSLY.

Chairman Ohrenschall:

This recommendation will be included in our report to the full Judiciary Committee.

We will proceed now to Assembly Bill 389, a bill I introduced that has to do with the open meeting law.

[Assembly Bill 389](#): Revises provisions regarding the Open Meeting Law.
(BDR 19—226)

We had testimony in support of the bill from Mr. Friedrich. Mr. Flint and his daughter recalled an experience they had before the Washoe County Commission, I believe. There was also some opposition from different quarters. We have an amendment to this bill proposed by Constance Brooks of Clark County which is included in the work session document ([Exhibit D](#)). What is the pleasure of the members on this bill?

Assemblyman Carrillo:

The issue that I have with the open meeting law pertaining to homeowners' associations (HOA) is that it does not give a homeowner the option to be alone with the board without airing all of his or her dirty laundry with the other homeowners at the meeting. You may not want your neighbor to know that you are in arrears on anything else pertaining to your property.

Chairman Ohrenschall:

You are on the board of an HOA. Is this coming from your experience with that HOA?

Assemblyman Carrillo:

Yes. In regards to the open meeting law, there is a three-day minimum notice. If I have a violation while I am on vacation, with a three-day notice of a meeting, there could be a meeting without me being there. Currently there is a 15-day to 60-day time frame for giving notice of a meeting.

Chairman Ohrenschall:

I believe that is in *Nevada Revised Statutes* (NRS) 116.3108. It is a minimum 15-day and a maximum 60-day time frame. Under the amended open meeting law a three-day notice would be required.

Assemblyman Carrillo:

That is correct. That is the heartache I have. I have no problem with transparency. Also, I do not think a homeowner is going to want to have to air his or her dirty laundry to everyone else.

Assemblyman McArthur:

Starting at the beginning on the proposed amendment from Clark County, it looks like that is okay. It takes out all of section 1 and adds back in, "A public body shall make a reasonable effort to allow the expression of competing opinions concerning any item on the agenda for a meeting of the public body" Has the last sentence been stricken, or is that still in there?

Chairman Ohrenschall:

Clark County's proposed amendment deletes the language in section 1, and replaces it with, "A public body shall make a reasonable effort to allow competing views to be expressed on any item on the agenda for a meeting of the public body on which the public body determines the public should be heard." My preference would be, if we were to adopt Clark County's amendment, to stop at "public body" and delete the words "on which the public body determines the public should be heard."

Assemblyman McArthur:

I feel more comfortable with that language, Mr. Chairman.

Chairman Ohrenschall:

So section 1 would read, "Chapter 241 of NRS is hereby amended by adding thereto a new section to read as follows: A public body shall make a reasonable effort to allow competing views to be expressed on any item on the agenda for a meeting of the public body." Mr. McArthur, are you okay with that?

Assemblyman McArthur:

Yes.

Assemblyman Carrillo:

I agree.

Chairman Ohrenschall:

Mr. McArthur, do you have any feelings as to the open meeting law, NRS Chapter 241, applying to HOAs as opposed to the current provisions in NRS Chapter 116?

Assemblyman McArthur:

Are we talking about section 4? I think we have some problems there and it might be best if we got rid of that whole section.

Chairman Ohrenschall:

The reason I wanted to make the open meeting law applicable to HOAs is that I felt there might be more transparency. There is an old saying that sunshine disinfects. However, it seems that Mr. Carrillo has brought up some points that have merit.

Assemblyman McArthur:

I think the intent was good, but I think we run into some problems with the open meeting law compared to some of the other HOA laws.

Chairman Ohrenschall:

I also think there will be a huge fiscal note on this, because the Office of the Attorney General traditionally has always enforced the open meeting law. Even though the bill does not mention the Attorney General, it will still fall to the Attorney General to have to enforce this. I think that might tie the bill up in the Ways and Means Committee.

Assemblyman McArthur:

I think we would run into more problems than we want if we try to keep this section. I know that hurts the intent of this bill a little bit, but I think we may have problems getting it through.

Chairman Ohrenschall:

I will accept a motion.

Assemblyman Carrillo:

What about the language that is already stricken from the bill? Will that be put back in?

Chairman Ohrenschall:

If it is the pleasure of the Subcommittee to delete section 4, which would have made NRS Chapter 241 applicable to HOAs, then the stricken language will be restored by deleting that section in our amendment. That means the notice provisions in NRS Chapter 116, such as in NRS 116.3108, will be restored. We can always look at trying to add more teeth into NRS Chapter 116, if that is something you or Mr. McArthur feel would be of benefit.

Assemblyman McArthur:

Not at this point, Mr. Chairman.

Assemblyman Carrillo:

What about the amendment that was proposed by Clark County?

Chairman Ohrenschall:

That was agreed to by Ms. Brooks and Ms. Flint and Mr. Flint, who worked together with Clark County on that. I spoke with Constance Brooks as to deleting those last 11 words in the amendment and she was fine with that. I know there were some concerns from a gentleman in Washoe County during one of the Subcommittee hearings. I would feel more comfortable if we are going to delete the language in section 1, to replace it with, "a public body shall make a reasonable effort to allow competing views to be expressed on any item on the agenda for a meeting of the public body" and stop at that point.

Assemblyman McArthur:

I am more comfortable with that wording also.

Chairman Ohrenschall:

We will be accepting Clark County's amendment with the deletion of the last 11 words, and deleting section 4. I do not recall any testimony in opposition to section 2 which makes the open meeting law applicable to nonprofits that have

the power of eminent domain because they are exercising a governmental power.

Assemblyman Carrillo:

Section 9 has changes there also? In section 9, subsection 4, the word "the" was struck out and the following phrase was inserted: "Except as otherwise provided in NRS 116.31075." Also in section 10, subsection 1.

Chairman Ohrenschall:

Mr. Carrillo, I think Mr. Anthony might be able to answer your question better than I can.

Nick Anthony, Committee Counsel:

If it is the intent of the Subcommittee to delete the provisions relating to the open meeting law, the proposed motion would be to delete sections 3 through 11 of the bill, in their entirety. They would be removed and there would be no changes to those sections.

Assemblyman Carrillo:

The proposed amendment from Clark County will be amended into the bill with the deletions that were discussed, correct?

Chairman Ohrenschall:

That is how I understand it. We would accept Clark County's amendment to section 1, deleting the last 11 words of their amendment, ending with public body.

Assemblyman McArthur:

Are you talking about a different section now?

Assemblyman Carrillo:

As Mr. Anthony said, it would delete sections 4 through 11. Correct?

Assemblyman McArthur:

Not all of sections 4 and 11 though.

Chairman Ohrenschall:

I believe Mr. Anthony said it would delete sections 3 through 11.

Nick Anthony:

The proposed amendment would state, "Sections 3 through 11 have been deleted by amendment." You are not actually deleting those NRS sections, but you are deleting any potential amendments whether it is a strike through or an

added word. Those would be completely removed from the bill. I believe you would be left with a potential amendment to section 1, section 2 would stay as is, and sections 3 through 11 would appear as deleted by amendment.

Chairman Ohrenschall:

Let me gauge the comfort level of the Subcommittee. We have all agreed that for section 1 we will accept Clark County's amendment, except for deleting those last 11 words. The wording will end with "... agenda for a meeting of the public body." Section 2 will not be changed. There was no opposition to section 2. Sections 3 through 11, which I had hoped would bring more transparency and more openness to common-interest communities (CICs) and their governing boards; you have both brought up many issues and problems that are not accomplishing what I had hoped to accomplish. We can delete sections 3 through 11. That would be our recommendation to the Committee. If you are both comfortable with that, I will accept a motion to accept Clark County's amendment, with the deletions mentioned, and to delete sections 3 through 11.

ASSEMBLYMAN CARRILLO RECOMMENDED AMEND AND DO
PASS ASSEMBLY BILL 389 TO THE FULL COMMITTEE.

ASSEMBLYMAN MCARTHUR SECONDED THE
RECOMMENDATION.

THE RECOMMENDATION PASSED UNANIMOUSLY.

Chairman Ohrenschall:

We will then recommend to the full Judiciary Committee that this bill be amended and do pass with the amendments.

We will move now to Assembly Bill 448 sponsored by Assemblyman Munford. This is a voluminous bill that covers many sections of *Nevada Revised Statutes* (NRS) Chapter 116. I believe it will be best to start at the beginning of this bill. I will enlist our Committee Policy Analyst, Mr. Ziegler, to help us with this bill. We will go through the bill section by section and discuss the points we like and those we do not like, as well as those we have mixed feelings about, and see what we can recommend to the Committee. We want to recommend the best bill possible to the Judiciary Committee. I know that Assemblyman Munford worked very hard on this bill to try to reform the many abuses that he has seen in his district, and that we have seen in our districts.

Assembly Bill 448: Revises provisions relating to real property. (BDR—513)

Dave Ziegler, Committee Policy Analyst:

Thank you, Mr. Chairman. [Reviewed work session document ([Exhibit E](#)).] Section 1 of this bill provides for the issuance of orders to cease and desist by the administrator of the Real Estate Division, Department of Business and Industry, under certain circumstances, and it authorizes a person receiving such an order to request a hearing, which the Commission for Common-Interest Communities and Condominium Hotels (CICCH) must then hold. There were some proposed amendments to this section. Both Mr. Friedrich and Mr. Robey have proposed amendments, which are included in the documents that have been provided to the Subcommittee and the audience.

Chairman Ohrenschall:

One concern I had about this section is the fiscal impact it will have on the Real Estate Division and on the Commission in terms of implementation. I am not quite sure whether that was ever answered. Mr. Carrillo and Mr. McArthur, if either of you have any concerns about this section, please let me know.

Assemblyman McArthur:

It looks as though there may be some problems with liability for the people on the boards if this section is left in.

Chairman Ohrenschall:

I think you mentioned that this might scare people from serving on a board.

Assemblyman McArthur:

It reads as if it leaves the board members open to ensuring things are done properly. If they do not, the board members could end up getting themselves in trouble. It seems if there is a violation that they do not report, the board members could be in violation themselves.

Chairman Ohrenschall:

Another thing that worries me is the fact that it authorizes the administrator to try to issue an order before an action has happened, which is contrary to Chapter 116 of the *Nevada Revised Statutes* (NRS). Giving a governmental agency authority to head off activity before it has even happened gives me some trepidation.

Assemblyman McArthur:

When we are talking about Administrator, are we talking about the Nevada Real Estate Division?

Chairman Ohrenschall:

That is how I understand it.

Assemblyman Carrillo:

The biggest issue I have with section 1 is that you have so many people who are Joe Homeowner and Suzy Homemaker who want to become active and take part in their community. They decide they will run for a board position. They have no prior experience to know how a board operates. They do not know anything about NRS Chapter 116 until they get there and are given a book and are told, "Okay, this is what you have to follow." To put them in a situation where they could be liable to go to jail because of lack of knowledge of the position they have taken is wrong. I understand there are good actors and bad actors, and I can see where this would stop the bad actors. What about all of the good people who just want to take care of their community? They want to be a part of it. They want to make sure that the resale values on their homes are kept up. This is what scares me—to put a homeowner in a situation where he or she could be held liable and possibly thrown in jail for committing a violation that could cause irreversible harm—when they are not intentionally doing something wrong. It should be the bad actors that this bill goes after. Those are the ones who make the HOA "Hall of Shame." I think section 1 is something that would keep many good people from wanting to run for a board position.

Chairman Ohrenschall:

I appreciate your comments. I think that among the three of us there is a lot of discomfort with section 1. I would just as soon not recommend section 1 to the full Committee. Do you both concur?

Assemblyman McArthur:

I agree. Are we hurting the intent of this bill if we delete section 1?

Chairman Ohrenschall:

No, I do not think so. This bill is voluminous. It is an omnibus bill that affects many different areas of NRS Chapter 116. I do not think this section is at the core of what Mr. Munford was trying to accomplish. We will move on to section 2.

Dave Ziegler:

Section 2 prohibits an HOA from doing a number of things. It prohibits an HOA from restricting the lawful rights of the children or parents of a unit's owner to have reasonable access to the owner's unit unless the owner directs otherwise. It prohibits the association from: (1) charging a fee to an owner for obtaining permission to change the exterior appearance or landscaping of a unit; and

(2) prohibits the association from restricting the installation, maintenance or use of an antenna or other device in violation of 47 CFR § 1.4000. For the members and audience, 47 CFR § 1.4000 is a federal regulation that has to do with satellite dishes under one meter.

Chairman Ohrenschall:

I thought these changes to section 2 seemed like positive changes. I remember Mr. Friedrich recounted a story about someone who had fallen ill and could not have his children there to help him; the HOA had prevented that. I think we need to tighten the verbiage on page 6, lines 11 through 14, where it reads, "Restrict, prohibit or otherwise impede the lawful rights of a unit's owner, and the children or parents of the unit's owner" If we change that to "residents" it would cover children or parents. Theoretically there may be some children or parents the owner does not want to have visit, but if they are a resident, then they are allowed to be there.

Assemblyman McArthur:

I have notes on that and think we are all okay with the intent. I just think the wording is not right.

Chairman Ohrenschall:

I agree. The wording also confused me. If you and Mr. Carrillo were open to it, I think I would support section 2 as being in our recommendation to the full Committee, if we change the verbiage from, "and the children or parents of a unit's owner" to "of a unit's owner or residents of the unit." I rent a unit in an HOA and the owner lives in California. I do not want his children, or his parents there.

Assemblyman McArthur:

I think we are good with this, but we just need to tighten up the language. Is that correct?

Assemblyman Carrillo:

I am in agreement with that.

Chairman Ohrenschall:

Our recommendation to the full Committee, on section 2, is that we will accept the recommendations of Mr. Munford, except that the language will be tightened up to read, ". . . and residents of the unit."

Dave Ziegler:

Section 3 of A.B. 448 does a number of things. It authorizes an HOA, subject to the provisions of the declaration, to impose collection costs for late payment

of assessments. It also requires an HOA to provide 48-hour notice before removing a parked vehicle that is blocking a handicapped parking space, and also provides that notice requirements apply to removal of vehicles, regardless of who owns the vehicle. I must confess to some confusion about that 48-hour notice on the handicapped parking space. I think there has been some confusion about that language in the various hearings.

Chairman Ohrenschall:

Starting on page 8, line 26, I believe the bill proposes to change "Impose charges for late payment . . ." to "Impose collection costs and charges for late payment" I do not see how that adds any extra protection.

Assemblyman Carrillo:

Did we skip section 2, subsection 2, paragraph (e), the "charge any fee" language?

Chairman Ohrenschall:

I was in support of that. Do you have some concerns about that?

Assemblyman Carrillo:

I just wanted to be on the record that we were okay with it.

Chairman Ohrenschall:

Mr. Carrillo is referring to page 6, lines 34 through 36, "An association may not charge any fee to a unit's owner for obtaining permission to change the exterior appearance of a unit or the landscaping associated with a unit." If I go to my board and say I want to paint my garage pink and yellow, they should not charge me a fee to turn me down or to approve the request. I think that is reasonable. Are you okay with that, Mr. Carrillo?

Assemblyman Carrillo:

What was that statement, Mr. Chairman?

Chairman Ohrenschall:

It was hypothetical.

Assemblyman Carrillo:

Basically, if we want to keep within the harmony of the community, why charge for something that you are not going to be changing? I do not understand the fee.

Chairman Ohrenschall:

This would prohibit them from charging a fee. We will stick with our decision on section 2. We are supporting it with that amendment.

Moving to section 3, page 8, line 26, "Impose collection costs and charges for late payment. . . ." I think "charges" takes that into account. Maybe I am too simplistic, but that is how I interpret it. How do the members feel about adding those three words?

Assemblyman McArthur:

Unless someone thinks there is a difference between collection costs and charges, I am not sure why we need this.

Chairman Ohrenschall:

I do not see any reason.

Assemblyman McArthur:

Attorneys' fees are not part of charges. Charges is already in there.

Chairman Ohrenschall:

Adding "collection costs" is what Mr. Munford is proposing. There was an amendment about adding the cost of a lien as well.

Assemblyman Carrillo:

Can Legal give us an idea of what the benefit is of collection costs and charges?

Chairman Ohrenschall:

The way I understand it is that charges would include all the other collection costs and the cost of the lien.

Nick Anthony, Committee Counsel:

What this provision would do is actually authorize the association to do any of the following: Impose collection costs and charges. It actually broadens their authority. It is not limiting an association in any manner.

Chairman Ohrenschall:

As I understand, Mr. Munford has been concerned that some of the associations may be going overboard in terms of charging fees. This broadens it. I think this may not be conforming with his intent. On page 7, the beginning of section 3, it says, "Except as otherwise provided in this section, and subject to the provision of the declaration, the association may do any or all of the following:" Currently, it says "Impose charges for late payment of assessments pursuant to NRS 116.3115." If we add "collection costs," we would be broadening it. I do

not believe that is what Mr. Munford wanted. I would recommend that for this section, we keep the statute the way it is.

Assemblyman Carrillo:

I do not see a reason for it to be in there.

Chairman Ohrenschall:

We are all in agreement with that part of section 3. We will not accept any changes and keep it as the NRS is currently.

Continuing on to page 9, beginning with line 7. [Read section 3, subsection 1, paragraph (s).] Mr. Friedrich had some stories about people getting vehicles towed away. Mr. Munford's daughter had her vehicle towed away because she parked somewhere that was not allowed and she did not get proper notice. I would support keeping this section in.

Assemblyman McArthur:

This crosses out the handicapped parking. The intent is unless the vehicle is blocking a fire hydrant and a handicapped space. I think we should put that back in. They would get a 48-hour notice unless the car is in front of a fire hydrant or a handicapped space.

Chairman Ohrenschall:

I am okay with that.

Assemblyman Carrillo:

I am okay with that also.

Chairman Ohrenschall:

We will accept the new language on lines 9 through 10.

Dave Ziegler:

We are still under the general area of management of common-interest communities. Section 4 provides for an emergency election to fill certain vacancies on the HOA board if the board is unable to obtain a quorum because of such vacancies, and requires the Real Estate Division to apply for the appointment of a receiver for the HOA if the unit owners are unable to fill such vacancies.

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

Chairman Ohrenschall:

Thank you. I believe page 10, lines 8 through 9 is the example that Mr. Friedrich gave of an HOA where one person was running the association for six or seven weeks without filling vacancies. I would support this in terms of trying to ensure that situation does not happen and they fill vacancies promptly. I am supportive of lines 12 through 34 also, as a transparency measure. I think the rest of section 4 is going overboard and I would just as soon not see that go through. I am interested in what you both think.

Assemblyman McArthur:

You are in favor of keeping all of subsection 3?

Chairman Ohrenschall:

Correct.

Assemblyman McArthur:

So we are keeping the first part of section 4 through subsection 3.

Chairman Ohrenschall:

I think page 10, lines 12 through 34 add a lot of transparency, giving residents the right to look at books and financial records.

Assemblyman Carrillo:

The concern I have is on lines 8 and 9 where it says "if the executive board is able to obtain a quorum pursuant to subsection 3 of NRS 116.3109" Basically, a quorum is considered 20 percent of the total number. Does that mean that for a large HOA of 7,000 you would need 20 percent of them showing up to have a quorum?

Nick Anthony:

I believe the intent on page 10, lines 8 to 9 is to authorize the executive board to fill vacancies on the board for any unexpired term if the executive board is able to obtain a quorum. They could only appoint someone to a vacancy if the actual board has a quorum to do that transaction.

Assemblyman Carrillo:

Does that mean they need to get 20 percent of the homeowners to attend the meeting to fill a vacancy?

Nick Anthony:

I would say this is referring to a quorum of the executive board, not a quorum of the HOA.

Chairman Ohrenschall:

Thank you for that clarification.

Assemblyman Carrillo:

I am comfortable with that clarification.

Chairman Ohrenschall:

So we will accept section 4, page 10, lines 8 through 34, and omit the rest of section 4, if you both concur.

Assemblyman McArthur:

Are we getting rid of subsection 4?

Chairman Ohrenschall:

Correct, we will delete everything beginning with section 4, subsection 4, through the rest of the section.

Assemblyman Carrillo:

I am good with that.

Assemblyman McArthur:

I think I am good also.

Chairman Ohrenschall:

So we are all comfortable with our recommendation on section 4.

Dave Ziegler:

Section 5 of A.B. 448 prohibits the imposition of a construction penalty if the failure to adhere to the schedule is caused by circumstances beyond the control of the unit owner.

Chairman Ohrenschall:

I remember there was some discussion about this in regards to the economy and how it has caused many people to not be able to finish construction projects they had started. Page 13, lines 38 through 42, states "The association may not impose or enforce a construction penalty against a unit's owner pursuant to subsection 2 if the failure to adhere to the schedule as required pursuant to subsection 1 is caused by circumstances beyond the control of the unit's owner." An example was given that if a bank pulls financing, that is beyond the control of the unit's owner.

Assemblyman Carrillo:

If there was a county, city, or even a contractor issue, is that beyond the control of the unit's owner? If the contractor goes belly-up and cannot finish the job, I would think that would be beyond the homeowner's control. This seems vague to me.

Chairman Ohrenschall:

Sometimes vague is good. Then the court can decide what is or is not beyond the control of the unit's owner. The examples of the bank pulling financing, a contractor going belly-up, or the local government withdrawing a permit, are all debatable, but I would not want to see a homeowner get fined for these.

Assemblyman Carrillo:

If a homeowner loses funding for the project, that is under his control, he is responsible to get the funding. This seems a little overly broad.

Chairman Ohrenschall:

As I understand NRS Chapter 116, not keeping up with a construction schedule can be grounds for foreclosure. It is one of the two categories enumerated in addition to not paying your HOA dues. Penalties occurring due to this could cause you to lose your home.

Assemblyman Carrillo:

When someone is in the process of doing an addition to his or her home, the first thing he or she has to do is submit an application to do the work. If that passes, he or she will not have to worry about getting fined and will have a little extra money. Everyone in an HOA knows he or she must submit an application, that is standard operating procedure. The homeowner needs to ensure he or she has everything in line before he or she begins a project.

Chairman Ohrenschall:

I think that if this went to court, the court would see that he or she had not gotten the proper financing, and that would be within his or her control. I would think that if the homeowner tried to defend himself or herself against these fines, or against a foreclosure based on this, if he or she had not properly financed this project, that would be within his or her control.

That example would not qualify for this exemption. If I hire Acme Construction to build my dream home in an HOA, and Acme Construction goes belly-up, that is something that is beyond my control. These are all issues the court could decide, which is why we would want this to be vague. The court will interpret what is under the homeowner's control.

Assemblyman McArthur:

I think we should try to avoid taking this to the courts.

Chairman Ohrenschall:

I agree, but if we do not pass this, fines could still accrue and someone could be subject to foreclosure.

Assemblyman Carrillo:

Another concern is having a three-year project, something that will go on and on with no end to it. This is not giving the HOA a way to resolve this. Every construction project has a timeline. If a construction company does not meet the timeline, the company has to pay the homeowner for every day the company is beyond the timeline. I think we need to get these projects taken care of within a timeline that was approved in the application.

Assemblyman McArthur:

Can we leave this in as one of the things we will present to the Committee and let them know we have questions?

Chairman Ohrenschall:

That is fine by me. I think the HOA would still have recourse, and still issue these fines. It would be up to the homeowner to try to fight them by establishing that the circumstances were beyond his control.

Dave Ziegler:

Section 6 provides that an HOA may prohibit only the use of a common element to which a violation relates, unless the violation is failure to pay an assessment. [Continued to read from work session document.]

Chairman Ohrenschall:

Thank you. I have some concerns with the lifetime cap of \$2,500.

Assemblyman McArthur:

I have concerns with that also.

Chairman Ohrenschall:

Would you propose a higher cap, or not have a cap at all?

Assemblyman Carrillo:

To some of these HOAs in the high end communities, \$2,500 is a night out. To put a lifetime cap of that is peanuts to some people.

Chairman Ohrenschall:

Would you propose a higher cap?

Assemblyman Carrillo:

I would propose no cap at all.

Assemblyman McArthur:

At this point, there is no real good solution. All the HOAs are completely different. I do not know that we could have a cap that covers all of them.

Chairman Ohrenschall:

I agree. [Read section 6, subsection 2.] Any strong feelings on that?

Assemblyman Carrillo:

I think that delves into the issue of privacy.

Assemblyman McArthur:

Enforcement may be a real problem also.

Chairman Ohrenschall:

I do not have a great desire to recommend that. If you both concur, we will jettison lines 10 through 15 and lines 42 through 45.

Page 15, lines 4 through 10, has to do with double fining by sub and master associations. [Read section 6, subsection 2.] That seems reasonable. I do not think you should be fined twice for the same offense.

Assemblyman McArthur:

That is what this looks like. If so, I am okay with it.

Chairman Ohrenschall:

We will recommend that section to the full Committee.

Scattered throughout section 6, subsection 4, is the "alleged" violation. I like the language. If the violation has not been proven, I agree with "alleged".

Assemblyman McArthur:

I think this is fine.

Chairman Ohrenschall:

Starting at line 43, on page 15, going through to line 9 on page 16. [Read bill.] I believe Mr. Friedrich had a case that seemed particularly egregious about an HOA and someone who was ill and unable to defend himself. I like this section.

Assemblyman Carrillo:

I am fine with this. In fact I have been in a situation where I have had other homeowners who were unable to make meetings and at the time, because of the way the board was set up, some of us with hearts had no problem postponing. If this language will help those who are in that situation, this is good language.

Assemblyman McArthur:

I am fine with it.

Chairman Ohrenschall:

I would recommend that section to the full Committee.

On page 16, lines 17 through 24, I would keep that out. [Read from the bill.] That seems too draconian to me. The initial fine has to be large enough to sting, and there should not be all of the repetitive fines. This section is being deleted. If I have a weed in my yard, they fine me \$200. If they keep fining for weed after weed, that is how some of these fines get outrageous.

Assemblyman Carrillo:

So rather than fixing this, we will delete the whole thing?

Chairman Ohrenschall:

I think that is fixing it; this power has been abused by the boards. There were some examples given. Depending on the offense, the initial fine can have enough sting that it should take care of the problem.

Assemblyman Carrillo:

I have learned over time that if you threaten people with a financial fine, they tend to get things done. If you give them a one-time fine, things will not get done. Many times the fines will be rescinded; the HOA imposes them to keep the property values up. If it takes you too much time to pull the one weed, ten more weeds are going to come up.

Chairman Ohrenschall:

Maybe a compromise would be to delete lines 22 through 24 which states "Any additional fine may be imposed without notice and an opportunity to be heard." That troubles me. Maybe there was a good reason; for example, a senior citizen who has a yard covered with weeds and he or she is medically unable to garden. The fact that residents cannot even be heard bothers me.

Assemblyman Carrillo:

If it was to be a situation where they had a fine limit, that is where having a hearing should resolve it. Half the time the homeowner does not communicate to the board; he or she does not let the board know he or she has a medical condition, and to plead his or her case. Instead, he or she will ignore it and put his or her head in the sand.

Chairman Ohrenschall:

I think you are agreeing with me. If we are going to keep lines 17 through 22, then I would propose deleting the last sentence in that statute that says "Any additional fine may be imposed without notice and an opportunity to be heard." If the board is going to impose recurring fines, there should be notice and opportunity to be heard because the homeowner may have valid reasons for not correcting the problem. If we do not have the appetite to delete subsection 6, then I would like to delete the last sentence.

Assemblyman McArthur:

We could also change the time limits. I agree this is a little draconian. We want to have the offense cured and you may want an additional fine; the time frames may be a little tough.

Chairman Ohrenschall:

For a compromise, how about "If a fine is imposed pursuant to subsection 1 and the violation is not cured within 21 days . . ." and keep the 7 days for the recurring violation and delete the last sentence.

Assemblyman McArthur:

As long as someone is not caught on vacation when he or she is fined. I think 21 days is fine.

Assemblyman Carrillo:

I am good with 21 days.

Chairman Ohrenschall:

We will keep subsection 6 but propose it to read "If a fine is imposed pursuant to subsection 1 and the violation is not cured within 21 days, or within any longer period that may be established by the executive board, the violation shall be deemed a continuing violation. Thereafter, the executive board may impose an additional fine for the violation for each 7 day period or portion thereof that the violation is not cured." I am worried about "or portion thereof" too because I think that lets them abridge that 7 days. I would end it at the end of "each 7 day period." The way I interpret the "or portion thereof" is that you could get a fine for a couple of days beyond the initial period to cure.

Assemblyman McArthur:

We can delete that. It also says "may be" imposed, so there is some decision making by the board. We are putting the limits on and the board may be more lenient.

Chairman Ohrenschall:

And we are going to delete the last sentence.

Assemblyman McArthur:

I agree.

Assemblyman Carrillo:

I am comfortable with that.

Chairman Ohrenschall:

Thank you. In section 6, subsection 9, on pages 16 and 17, I would prefer to omit that entire subsection. This seems to me like it adds extra burdens for the Division.

Assemblyman Carrillo:

I am okay with omitting it.

Chairman Ohrenschall:

It seems that it grants an automatic stay. All the unit owner will have to do is file a claim with the Division and any fine will be stayed. This is basically taking teeth away from a board.

Assemblyman McArthur:

I guess this will be resolved, whether it is stayed or not. If we get rid of this section, the homeowner will have to continue to pay the fine, or it will accrue interest. The homeowner will have to keep paying until the issue is resolved.

Chairman Ohrenschall:

This authorizes the stay of the fine until it is resolved. Maybe there are some good reasons that I did not see in this section.

Assemblyman McArthur:

At this point, I would like to continue and not make a recommendation on this section.

Chairman Ohrenschall:

I am fine with that. We can leave it with no recommendation and let the full Committee make a decision.

Assemblyman McArthur:

I would be more comfortable with that.

Chairman Ohrenschall:

Mr. Carrillo, are you all right with that? Okay, we will not recommend section 6, subsection 9.

Dave Ziegler:

Still in the general subject area of management of CIC, section 7 provides that the authority of a community manager to enter the grounds of a unit following the initiation of a foreclosure action, for purposes of maintaining the exterior, expires if the unit owner or the owner's agent performs the maintenance necessary to meet the community standards.

Chairman Ohrenschall:

I do not see any problems with this. Mr. McArthur, Mr. Carrillo, do you have any feelings on this?

Assemblyman Carrillo:

I am okay with it.

Assemblyman McArthur:

I think it looks good.

Chairman Ohrenschall:

We will recommend this to the full Committee.

Dave Ziegler:

Section 8 limits the type of collection fees an HOA may charge to a unit owner and establishes a cap on the amount of such fees. The cap is based on the amount of the outstanding balance.

Chairman Ohrenschall:

I believe this section is being played out in a lot of other bills, including one of mine, and several on the Senate side. I do not see any reason to muddy up this bill. I would just as soon not recommend this section to the full Committee. The full Committee heard Assembly Bill 394, and we may hear the Senate bills when they come over, so I think the full Committee will have a debate on any cap on collections.

Assemblyman McArthur:

I think we may have problems getting this bill through if we keep this in.

Assemblyman Carrillo:

I agree with my colleague.

Chairman Ohrenschall:

We all concur with not recommending section 8 to the Committee.

Dave Ziegler:

Section 9 prohibits married persons or certain related persons from both serving as an officer or member of an HOA board. It also requires a member of the HOA board to successfully complete 2 hours of continuing education concerning the duties of members of an HOA board, annually.

Chairman Ohrenschall:

When I first heard this I thought it was a very good idea to not allow relatives to be on the board. I do remember there were some examples given by the opposition of very small HOAs where this would become an obstacle.

Assemblyman McArthur:

I had the same concern. Just because two people are related, that can be very limiting to some HOAs. I understand the intention of this; I am not sure it is a great idea to try to limit the board members.

Chairman Ohrenschall:

That is my feeling also. Mr. Carrillo?

Assemblyman Carrillo:

There are situations where a very small HOA can have a board with only three members. If you had two members in the same household, that definitely would be an issue.

Chairman Ohrenschall:

There may also be an issue where not enough people want to be on the board. If it turns out that two relatives do, it may not be an ideal situation, but if that is whom the people vote for, it happens. If we all concur, we will not recommend this. We do not want to try to prohibit people from serving on a board just because there is a relationship by marriage or blood.

Assemblyman Carrillo:

I agree.

Chairman Ohrenschall:

On page 24, line 36, the initial language was "may" and this would change it to "shall." The Administrator shall require the association to submit a copy of the

certification of each member of the executive board of that association at the time the association registers with the Ombudsman pursuant to NRS 116.31158." [Continued to read from the bill.]

Assemblyman McArthur:

These are free seminars so that will not be an issue. If the board member does not successfully complete the training, do they get removed from the board?

Chairman Ohrenschall:

I believe the word "successfully" was to be deleted as part of an amendment, because that implies there would be some sort of a test or certification, and these classes do not have any tests or certifications.

Assemblyman McArthur:

This says "shall," what if they do not?

Chairman Ohrenschall:

Then they would be in violation of the statute.

Assemblyman McArthur:

Then what do you do? Do you kick them off the board? Fine them? I know there needs to be some training, but does this have any teeth in it, and do we want to put teeth in it?

Assemblyman Carrillo:

If they go through the process of getting elected, I do not see this as being an issue. However, how can you force someone to go through the training?

Chairman Ohrenschall:

This proposal says that if you want to sit on a board, you must go through some training. I will defer to you two.

Assemblyman Carrillo:

I sit on an HOA board and I have been to every training offered. I knew if I did not, then I would be lacking. The training helps the board, but to impose that on someone, I just do not know whether that would work.

Assemblyman McArthur:

Basically you are in favor of the training, but you are not sure you want it to be in statute, correct?

Assemblyman Carrillo:

Yes.

Chairman Ohrenschall:

Maybe the Division can do this by regulation and we do not have to put it in statute.

Assemblyman Carrillo:

We can make it a requirement if they become elected, but it is still their discretion.

Assemblyman McArthur:

We can use "recommend" instead of "shall."

Assemblyman Carrillo:

It is in the best interest for themselves and the board.

Assemblyman McArthur:

It certainly is, I just do not know how it could be enforced.

Chairman Ohrenschall:

We could go back to the word "may."

Assemblyman Carrillo:

I am good with leaving it as "may."

Chairman Ohrenschall:

Okay, we will leave it as "may" and keep the new language in subsection 14.

Assemblyman Carrillo:

This language has never been there before. If we are going to require, within three months of their election, that they . . .

Chairman Ohrenschall:

Okay, we can change "shall" to "may" in both places.

Assemblyman Carrillo:

If you complete the training, it is done. There is no test, no pass or fail.

Assemblyman McArthur:

I am fine with whatever way you want to go. So we will change the word "shall" to "may" on page 24, line 36, and keep the word "shall" on line 41.

Chairman Ohrenschall:

We will also delete the word "successfully" on line 42.

[Committee took a recess at 8:54 p.m. and reconvened at 9:03 p.m.]

Dave Ziegler:

Section 10 of the bill adds only four words at the bottom of page 25.

Chairman Ohrenschall:

Those four words are "to the units' owners." Section 10, subsection 3, paragraph (b) reads, "Disclose, in writing, to the units' owners the amount by which the declarant has subsidized the association's dues on a per unit or per lot basis." I see no problem with this. Other members, are you okay with this? I see a nod from Mr. McArthur and from Mr. Carrillo. We will recommend that to the full Committee.

Dave Ziegler:

Section 11 starts a new subject area having to do with meetings and voting of CICs. [Read from work session document.]

Chairman Ohrenschall:

I do not particularly like the videotape. We already have a provision for audiotaping. On page 28, lines 20 through 23, I do not feel this needs to be in here. Lines 31 and 32 read, "A guest of a unit's owner must be allowed to attend any meeting of the units' owners." I think that is reasonable as you may want to have an attorney or a witness attend.

Assemblyman Carrillo:

Does the guest of the unit's owner have a power of attorney? This could mean anybody.

Chairman Ohrenschall:

It could be anyone. It could be an attorney or a witness if you believe the board is acting illegally. There could be a scenario where you may want an independent, unbiased witness.

Assemblyman Carrillo:

What about the press?

Chairman Ohrenschall:

You may want the press there. I like the idea of it being broad.

Assemblyman Carrillo:

If you are the unit owner or on the deed of title, you are the one who should be in front of the board.

Assemblyman McArthur:

I was okay with this. Maybe we could put in something about the unit owner having to give prior notification to the board.

Chairman Ohrenschall:

Would you be okay with that, Mr. Carrillo?

Assemblyman Carrillo:

Yes, if the board receives prior notification.

Chairman Ohrenschall:

Would you like notification that you will be bringing a guest, or specific name and identity of the guest?

Assemblyman Carrillo:

I think they should provide the name and identity of the individual that will be attending the meeting.

Chairman Ohrenschall:

So this will be notification to the board, not approval of the board.

On page 29, lines 17 and 18, regarding the videotape, I think is overbroad. We already allow for audiotape.

Assemblyman McArthur:

I think there may be some privacy concerns with the videotape.

Assemblyman Carrillo:

I agree with my colleague's statement.

Chairman Ohrenschall:

On page 29, line 38, "A meeting of the executive board must be held at least once every quarter, and not less than once every 100 days and must be held at a time other than during standard business hours, but not before 6 p.m., at least twice annually." This would allow people more ability to attend. I know there were some objections. I think this seems reasonable.

Assemblyman McArthur:

This is assuming that the meetings will be held during the week and not on weekends.

Chairman Ohrenschall:

That is not clarified in statute.

Assemblyman Carrillo:

The definition of a swing shift in a 24-hour town can be different things depending on the jobs. I think this seems restrictive.

Chairman Ohrenschall:

How about a compromise that says, ". . . standard business hours, but not before 6 p.m., if the meeting is to be held on a weekday, otherwise no time restrictions if the meeting is held on a weekend." That leaves the board some flexibility.

Assemblyman Carrillo:

Why not leave this up to the owners to decide?

Chairman Ohrenschall:

I think the problem this is attempting to remedy is boards' scheduling meetings when many people could not attend. I think it is reasonable to have meetings after 6 p.m. if they are on a weekday.

Assemblyman Carrillo:

These meetings could last until after 11 p.m. if they do not start until 6 p.m., depending on the size of the HOA and the agenda.

Assemblyman McArthur:

I think this was put in to ensure the boards are not trying to have meetings at 2 p.m. when people could not show up. Do you have another solution? They could always limit their agenda.

Chairman Ohrenschall:

Maybe this is micromanaging and it is best not to recommend it.

Assemblyman Carrillo:

I think we should let the board decide this.

Chairman Ohrenschall:

The problem was the boards were scheduling meetings at a time when most people could not attend.

Assemblyman McArthur:

I am comfortable with no recommendation.

Assemblyman Carrillo:

I am good with no recommendation as well.

Chairman Ohrenschall:

We will make no recommendation. I notice I was getting ahead of myself and went to section 12. Mr. Ziegler, would you like to start with section 12 now?

Dave Ziegler:

There are three more elements in section 12. [Read from work session document.]

Chairman Ohrenschall:

My feeling is that when we decide to not make a recommendation, it should not be included in our report to the full Committee. We should only pass on the things that we agree to.

On page 30, section 12, subsection 4, lines 19 through 24, states, "The notice of a meeting of the executive board must state the time and place of the meeting and include a copy of the agenda for the meeting or the date, which must not be later than 5 days before the meeting, on which and the locations where copies of the agenda may be conveniently obtained by the units' owners." I do not have a problem with this.

Assemblyman Carrillo:

I am okay with this.

Assemblyman McArthur:

Will we leave this at 5 days, which will include weekends, or change it to 5 working days?

Chairman Ohrenschall:

I do not believe NRS Chapter 116 refers to 5 working days anywhere else, so we may want to leave this at just 5 days.

Assemblyman McArthur:

So this will include weekends. I am fine with that if that is the intent.

Chairman Ohrenschall:

We will leave it at 5 days. We will turn to page 31, lines 17 through 21. [Read from bill.] This seems reasonable to me.

Assemblyman Carrillo:

How would we know how many copies will be needed at a meeting?

Chairman Ohrenschall:

The board could have a computer on site and make copies as needed.

Assemblyman Carrillo:

If we stick with the 6 p.m. meetings, all the office staff will be gone, and no one will be there to make the copies.

Chairman Ohrenschall:

You are a good devil's advocate. The office staff may have to stay late.

Assemblyman McArthur:

This does not say the information has to be available on the day of the meeting.

Chairman Ohrenschall:

That is a good point.

Assemblyman Carrillo:

I know there is some mention about having a CD available.

Chairman Ohrenschall:

This talks about electronic versus paper. It appears we are not going to reach a consensus on this; so this will not be part of our recommendation and we will move on. Page 32 has new language beginning on line 8. "The executive board may establish reasonable limitations on materials, remarks or other information to be included in the minutes of its meetings, but any limitation on the page number of such materials, remarks or information must not be less than two double-sided pages." I do not see supporting this.

Nick Anthony:

Currently, it says "any limitation must not be less than two double-sided pages." That means at a minimum you are guaranteed at least two double-sided pages.

Chairman Ohrenschall:

Thank you, I was misunderstanding that. That seems entirely reasonable. Do you both concur?

Assemblyman McArthur:

Yes.

Assemblyman Carrillo:

Yes.

Chairman Ohrenschall:

Okay, we will recommend that to the full Committee. We are now on page 32, starting on line 36. [Read from bill.] This seems reasonable to me.

Assemblyman Carrillo:

I believe that is currently in statute. If you have 100 people who each speak 3 minutes per item, that is a lot of time.

Chairman Ohrenschall:

I agree. Maybe instead of three minutes, it could state a reasonable amount of time. Change it to something similar to Assembly Bill 389 from Clark County. "Reasonable limitations" is already in statute, so I would not recommend this if you both are okay with that.

Assemblyman Carrillo:

I am good with that.

Chairman Ohrenschall:

Moving on to page 33 and lines 37 and 38, it discusses persons who may be sanctioned for an alleged violation. [Read from bill.]

Assemblyman Carrillo:

I am good with this.

Assemblyman McArthur:

I am fine.

Chairman Ohrenschall:

So we agree with the changes on lines 37 and 38. [Read section 14, subsection 2, page 34.]

Assemblyman Carrillo:

I am okay with this.

Chairman Ohrenschall:

I got a nod from Mr. McArthur. On to section 15.

Dave Ziegler:

Section 15 requires an HOA board to discuss fully and completely any written complaint from a unit owner placed on the agenda of a board meeting, and to attempt to resolve the complaint at the meeting.

Chairman Ohrenschall:

I think this is an entirely reasonable section and would like it recommended to the full Committee.

Assemblyman McArthur:

We may run into a personal problem again where you may not want it aired in public.

Chairman Ohrenschall:

I think that would be the choice of the complainant who registers the complaint with the executive board. If he or she does not want it aired in public, then he or she should not register the complaint.

Assemblyman McArthur:

I am not sure where this will be aired. Is it at the executive board meeting?

Chairman Ohrenschall:

That is correct, it is not a public meeting.

Assemblyman Carrillo:

I am okay with this.

Chairman Ohrenschall:

Great. We reached an agreement on section 15 and we will recommend it to the full Committee.

Dave Ziegler:

Section 16 requires the laws relating to fraud, forgery, or other irregularities related to an HOA board election to be printed on each ballot.

Chairman Ohrenschall:

I think this is superfluous, but am open to going along with the Committee. If either of you has a burning desire to have this in there, I am fine with that.

Assemblyman McArthur:

I do not see any reason to have that in there.

Chairman Ohrenschall:

Mr. Carrillo, are you in concurrence?

Assemblyman Carrillo:

I am okay with that.

Chairman Ohrenschall:

So we will not recommend that.

Dave Ziegler:

Section 17 starts a new subject matter having to do with fiscal affairs, insurance, and liability of a CIC. Section 17 defines "surplus funds" for the purpose of determining whether the HOA is required to pay the surplus funds to the unit owners.

Chairman Ohrenschall:

I have in my notes that it was requested to have this removed.

Assemblyman McArthur:

I have that in my notes also, but I am not sure where it came from.

Chairman Ohrenschall:

If that was the sponsor's wish, we can remove the new language.

Assemblyman Carrillo:

I am in agreement with that.

Dave Ziegler:

Section 18 requires an HOA to provide a copy of the review or audit of its financial statements to a unit owner in paper or electronic format at no charge, upon request.

Chairman Ohrenschall:

The cost of this seems minimal, I do not think this is overly onerous, and I am inclined to support it.

Assemblyman McArthur:

This says at no charge.

Assemblyman Carrillo:

I would like a minimal charge for that.

Chairman Ohrenschall:

Maybe reasonable charge is the way to go, since they could provide it electronically.

Assemblyman McArthur:

We had another bill that was 25 cents for the first ten pages and 10 cents after that.

Chairman Ohrenschall:

So if we keep this in, we could go with "the association may charge a reasonable fee."

Assemblyman Carrillo:

What is considered reasonable? They could basically charge for the cost of the CD?

Chairman Ohrenschall:

A different section of the bill talks about 25 cents for the first page and 10 cents for each additional page. We could use that language along with a reasonable fee for an electronic format. Are we in concurrence on that?

Assemblyman Carrillo:

What if we are looking at something to the effect of 25 cents each for the first ten pages and 10 cents for every page after that?

Chairman Ohrenschall:

That sounds fine, and we will use "reasonable charge" for an electronic format.

Dave Ziegler:

Sections 19 and 20 provide that a proposed HOA budget does not take effect unless ratified by the unit owners. If the budget is not ratified, the most recent ratified budget continues in effect. [Continued to read from work session document.]

Chairman Ohrenschall:

On page 36, section 19, lines 41 through 43, it reads ". . . and ratified by the units' owners at least annually . . ." I am a little worried about getting everyone to participate in this. That is why they elect people to the board of directors.

Assemblyman Carrillo:

I do not care for any of section 19.

Chairman Ohrenschall:

I have some concerns with the part on page 37, line 36 about special assessments may not exceed \$35 per unit per month; there may be a need for more than that. Also, on page 37, lines 12 through 15, it states, "The reserves may be used only for those purposes, including, without limitation, repairing, replacing and restoring roofs, roads and sidewalks, and must not be used for daily maintenance or capital improvements." Are you both okay with that?

Assemblyman Carrillo:

It seems that this is micromanaging again. We should leave this up to the board.

Assemblyman McArthur:

I feel the same way.

Chairman Ohrenschall:

All right, we will not recommend section 19 to the full Committee, although there is another part on page 38, beginning on line 26. [Read from the bill.] Arguments in favor are that this would prevent excessive assessments, would prevent expensive changes to exteriors without owners knowing about them, and prevent boards from overspending.

Assemblyman McArthur:

We are back to the \$35 per month again. I also think we are back to micromanaging.

Assemblyman Carrillo:

Most of this is the reason there are HOA boards; to make these decisions. It becomes more of a situation where this stuff is very vague. When you are getting into the specifics . . .

Chairman Ohrenschall:

It looks as though we have no desire to recommend section 19.

Assemblyman McArthur:

I understand the intent, they want limits on things, but the board needs to make these decisions.

Chairman Ohrenschall:

I am suggesting we do not recommend section 19 to the full Committee.

Dave Ziegler:

Section 20, still in the area of fiscal affairs of a CIC, revises provisions relating to ratifying a budget. It also requires the collections policy of an HOA to establish a certain period after which a delinquent fee, fine, assessment, or cost may be referred for collection.

Chairman Ohrenschall:

I think the new proposed text on page 40, lines 29 through 45 seems a little too onerous to the board. Page 41, lines 12 through 24, [read from the bill]. That

seems reasonable; it gives someone a little more time to pay up before the assessment and arrears goes to a collection agency.

Assemblyman Carrillo:

Has this collections issue been debated on another bill?

Chairman Ohrenschall:

This does not place a cap on collections. This basically would provide someone more time before an assessment could be sent out to collection.

Assemblyman McArthur:

This gives a lot more than 60 days, when you start with the first day of the month following the month of the notice of fee, fine, or assessments. Maybe we should leave it at 60 days instead of after the first day of the month following.

Chairman Ohrenschall:

I am open to that.

Assemblyman Carrillo:

I was referring to the collections bill that you proposed, Mr. Chairman.

Chairman Ohrenschall:

Right, Assembly Bill 394. I see these as different. This one does not place a cap; it just basically sets time frames for payments.

Assemblyman Carrillo:

That is how I am reading it also. It just depends on how long we want to give them.

Chairman Ohrenschall:

It says 60 days after the first day of the month following the month in which the notice of the assessment is sent, if it is under \$1,000; if it is \$1,000 or more, 90 days after the first of the month.

Assemblyman McArthur:

If you send the notice out near the first of the month, this could give them almost 90 days. You want to give people that much time, but then we are also talking about assessments not being paid for three months. Then the rest of the homeowners are picking it up. I think we may just want to limit it to 60 days.

Assemblyman Carrillo:

That is what I had mentioned before in another Committee meeting regarding auto-withdrawal. These are assessments that they say are falling under fees and fines. Oftentimes these fines are taken care of before the 60-day period but the assessments are opening up a Pandora's box by sending it to collections.

Assemblyman McArthur:

I agree. We should limit this to 60 days.

Chairman Ohrenschall:

I would be open to that.

Assemblyman McArthur:

The way this is written, when you start at the following month, they can get almost 90 days.

Chairman Ohrenschall:

This copy I am reading limits this only to assessments, not the fees or fines.

Assemblyman McArthur:

Mine shows it as crossed out, but then added right back in, just worded differently.

Chairman Ohrenschall:

If we are to recommend this, do we want it to apply just to assessments or to assessments, fees, fines, and costs?

Assemblyman McArthur:

I think we should leave them all in.

Chairman Ohrenschall:

Make it 60 days but remove "after the first day of the month" That would be within 60 days in which the notice of the assessment is sent.

Assemblyman Carrillo:

I am okay with that.

Chairman Ohrenschall:

So it will read, "A provision that a fee, fine, assessment or cost may not be referred for collection unless the unit's owner has not paid the fee, fine, assessment or cost within 60 days in which notice of the fee, fine, assessment or cost is sent or otherwise communicated to the unit's owner or, if the amount

of the fee, fine, assessment or cost is \$1,000 or more, within 90 days after the period set forth in this paragraph." Do we agree with that?

Assemblyman Carrillo:

Yes.

Assemblyman McArthur:

Okay.

Dave Ziegler:

Section 21 prohibits an HOA board from taking any action based on the reserve study, including, without limitation, establishing a funding plan to provide adequate reserves, until and unless the HOA board approves the reserve study at a board meeting. Section 21 also requires the reserve study to be made available to a unit owner in electronic format at no charge and provides for notice to unit owners of the meeting at which the board will consider the reserve study.

Chairman Ohrenschall:

This seems entirely reasonable to me. Any feelings from the Committee?

Assemblyman Carrillo:

I am okay with this.

Assemblyman McArthur:

I am okay also.

Chairman Ohrenschall:

We will recommend this to the full Committee.

Dave Ziegler:

Section 22 starts a new general subject area of CIC liens. Section 22 revises provisions governing the amount of the HOA's lien that is prior to a first security interest on a unit.

Chairman Ohrenschall:

I would prefer to have this omitted, unless either of you have a strong desire to keep it in.

Assemblyman Carrillo:

I feel that section 22 takes a lot of the collection efforts away from the HOA. They still need the ability to collect assessments.

Assemblyman McArthur:

I agree, this is a little too restrictive.

Chairman Ohrenschall:

We will not recommend this to the full Committee.

Dave Ziegler:

Section 23 prohibits the foreclosure of an HOA's lien and the filing of a civil action to obtain a judgment for the amount due if the foreclosure sale does not occur within 120 days after mailing the notice of default and election to sell, or an agreement extending that period is not reached.

Chairman Ohrenschall:

This seems like it is putting an artificial time limit in.

Assemblyman Carrillo:

Why are we looking at 120 days?

Chairman Ohrenschall:

I agree. I would just as soon not recommend this to the full Committee.

Assemblyman McArthur:

I agree.

Dave Ziegler:

Section 24 moves on to a new topic of CIC books and records. Section 24 revises provisions governing the access of a unit owner to the books, records, and papers of an HOA and requires the publication of the views or opinions of a unit owner in the HOA's official newsletter under certain circumstances.

Chairman Ohrenschall:

I would think some of these things would already be public records.

Assemblyman Carrillo:

Would section 24 violate the attorney/client privilege if the board were to seek a legal opinion?

Chairman Ohrenschall:

I think the answer would be "it depends."

Nick Anthony:

It may depend on the nature of the particular information. There is quite a bit of information contained in section 24 such as cancelled checks and insurance

policies. Some of it is private and some of it, as the Chairman pointed out, is public record. If there was ongoing litigation, if a homeowner had sued an HOA, then it may be subject to attorney/client privilege.

Assemblyman McArthur:

Do we need to have all of this spelled out?

Assemblyman Carrillo:

Why would the board need to make architectural plans public? I do not see how section 24 has a home in this.

Chairman Ohrenschall:

What if we stopped it there, "Except as otherwise provided in this subsection, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association, including, without limitation, the budget, the reserve study, contracts to which the association is a party."

Assemblyman McArthur:

I agree, we may run into problems with the other items.

Assemblyman Carrillo:

I am good with that.

Chairman Ohrenschall:

We will recommend that we stop as noted and not recommend the rest. Moving on to page 48, line 39 through line 18 of page 49, this looks like a fairness doctrine having to do with HOA newsletters for opposing viewpoints. This sounds like a good and noble thing, but I could see disputes in an HOA and someone demanding his or her opinion be published because someone else's opinion was published. I think this will cause more problems than it will solve.

Assemblyman Carrillo:

I agree.

Dave Ziegler:

We have moved on to miscellaneous rights and duties related to CICs. Section 25 specifies certain actions that constitute retaliatory action on the part of an HOA board, board member, community manager, officer, employee, or agent.

Chairman Ohrenschall:

I do not have a problem with listing the retaliatory actions.

Assemblyman Carrillo:

I concur.

Assemblyman McArthur:

Line 3, page 50, says "prohibiting the use of common elements by the unit's owner"

Chairman Ohrenschall:

Do you think it should be changed to "unreasonably prohibiting" because there may be an occasion where someone is not allowed because of misuse.

Assemblyman McArthur:

This looks like it is the unit's owner who is prohibiting the use.

Chairman Ohrenschall:

I do not think that is the intent. The prohibition would be coming from the association.

Assemblyman McArthur:

That may be awful tough to enforce. I am comfortable with leaving the list in.

Chairman Ohrenschall:

Okay, we will move on to section 26.

Dave Ziegler:

Section 26 prohibits an HOA from charging a fee to a unit owner to obtain approval for the installation of drought tolerant landscaping.

Assemblyman McArthur:

Someone must have had a specific problem.

Chairman Ohrenschall:

My gut tells me this seems reasonable and fair. There may be occasions where you would need to have someone approve it and there may be a fee. Earlier in the bill we prohibited charging a fee for changing color schemes and landscaping. This seems to go hand-in-hand with that. I am okay with it.

Assemblyman Carrillo:

Many times, there could be a professional landscaper or a person to do all of this for the drought tolerant landscaping and some of the HOAs have many applications come through per week. I know with our situation with water in southern Nevada, this is probably more prominent than you would normally see. I have a little bit of a problem with this.

Chairman Ohrenschall:

Okay, we can just not recommend it then.

Assemblyman McArthur:

I guess I am not sure where the charge would come in. The unit's owner is seeking approval.

Assemblyman Carrillo:

In the larger HOAs the potential for keeping within the dynamics of the community, the aesthetics, et cetera.

Assemblyman McArthur:

So you think they would call in a landscape professional to look at the plans?

Assemblyman Carrillo:

Right. They are going to have specifics.

Assemblyman McArthur:

How about the architectural review committee? Should they be doing this instead of calling in landscape architects? I can go either way on this, it is just that if you have an architectural review committee, this is probably what they should be doing.

Assemblyman Carrillo:

I agree with your opening line on this, that someone must have had an issue.

Chairman Ohrenschall:

In section 2 we did keep in and recommend language that said we are prohibiting an association from charging a fee to unit's owner for obtaining permission to change the exterior appearance of the unit or the landscaping associated with a unit. I think, in order to stay consistent with our recommendations, we should recommend this stays in. We want to encourage xeriscape landscaping and being water smart.

Assemblyman Carrillo:

When it comes to painting a house, you are not changing the outside structure of the house. When it comes to landscaping, you are going to have to defer to a professional to ensure it is properly done and that it meets the criteria of what the HOA is expecting. I think this does not fall under the same category as painting a house as we had discussed in section 2.

Chairman Ohrenschall:

Page 6, section 2, lines 34 through 36, says the HOA shall not charge any fee to a unit's owner for obtaining permission to change the exterior appearance of a unit or the landscaping associated with a unit. We have already put in a prohibition for charging for an approval of landscaping. This would be consistent with that. Basically we will not allow an HOA to charge a homeowner a fee for obtaining approval for a change on landscaping.

Assemblyman Carrillo:

How about we delete section 2 and keep section 26 to promote water efficiency?

Chairman Ohrenschall:

I think they go hand-in-hand.

Assemblyman McArthur:

If we get rid of section 2, no one will ever know it was there. I see what you are trying to do, but I do not know whether there is another solution.

Chairman Ohrenschall:

If we have problems with this, we will not recommend it and move on. We will take out section 26 if you have concerns, but I do not want to backtrack to section 2. Section 26 is slightly different because it addresses drought tolerant landscaping. At the pleasure of the Committee, we will not recommend section 26.

Dave Ziegler:

Still under miscellaneous rights and duties, section 27 replaces the authority of an HOA board to approve the renting or leasing of a unit under certain circumstances with a provision requiring the board to grant such approval under certain circumstances.

Chairman Ohrenschall:

I support this.

Assemblyman McArthur:

We had a bill last session that stopped rentals. We would not need this because the rental issue is already fixed.

Chairman Ohrenschall:

Basically, this is to not allow an HOA to stop someone from renting out their home.

Assemblyman McArthur:

This takes out the "may." Are you comfortable with "shall?"

Chairman Ohrenschall:

I am comfortable with "shall" because if someone has an economic hardship and he or she needs to rent out the house, I would not want the association to stand in his or her way.

Assemblyman McArthur:

Who determines the economic hardship, the executive board?

Chairman Ohrenschall:

That is how I interpret it.

Assemblyman McArthur:

That is fine, because they can always say no.

Assemblyman Carrillo:

I agree with this, as long as the homeowner shows an economic hardship and lets people know he or she has a situation instead of putting his or her head in the sand.

Chairman Ohrenschall:

Great, we all agreed on that. We are on section 28 now.

Dave Ziegler:

Section 28 prohibits an HOA board and the governing documents from interfering with the parking of an auto, privately owned standard pickup truck, motorcycle, or certain other vehicles; and requires the HOA of a CIC that is not gated or enclosed to display signs on or near any property where parking is prohibited or restricted.

Chairman Ohrenschall:

This seems reasonable to me, Committee? If you are in danger of having your vehicle towed away, there should be proper posting.

Assemblyman Carrillo:

This is one of the issues that seems to pop up every so often in HOAs. There are parking standards for a reason, which is why there are areas designated as no parking. I agree with the posting, but there should be a standard and it should be followed.

Chairman Ohrenschall:

I do not believe page 52, lines 21 through 24, prohibits the HOA from having that standard. It says, "Except as otherwise provided in paragraph (s) of NRS 116.3102, interfere with the parking of any automobile, privately owned standard pickup truck, motorcycle or any other vehicle not specifically described in subsection 2." Subsection 2 gives the enumeration of all the different types of vehicles and watercraft that they can adopt rules and reasonably restrict parking and storage of RVs and those kinds of things. Page 53 deals with posting a notice, which I think is only fair if you are potentially in danger of having your vehicle towed away. I think there should be proper posting and notice.

Assemblyman Carrillo:

I am okay with the posting. It is just that some people think they can park wherever and they are not following the community standard. It could be, like I said, on your landscaping. And I am not talking grass or the flowerbeds. I am talking about rock, which is defined by a lot of HOAs as landscaping.

Assemblyman McArthur:

If it is not gated, are these roads private or are they maintained by the city or county?

Assemblyman Carrillo:

That brings up another issue. Some of the HOAs are gated and they are private.

Assemblyman McArthur:

And some of them are not gated, and the roads are publicly owned.

Chairman Ohrenschall:

I think it would be an absurd interpretation of lines 21 through 24 on page 52 that someone could park on landscaping. I do not think this would preclude an HOA from having reasonable regulations. Mr. Munford recounted a story about his daughter's car being towed away when she visited a friend in an HOA.

Assemblyman Carrillo:

Yes, but where was she parked?

Chairman Ohrenschall:

I do not remember the particulars, but I do not believe she was parked anywhere she should not have been.

Assemblyman Carrillo:

This says that the HOA cannot interfere with the parking of any vehicle. Then why have parking rules at all, if the HOA cannot interfere.

Chairman Ohrenschall:

However, Mr. Carrillo, it also starts off saying "Except as otherwise provided in paragraph (s) of NRS 116.3102" [Read paragraph from the NRS.] Basically, this section of the NRS provides for towing and enforcement of the very rules you are concerned about.

Assemblyman Carrillo:

How is "interfere" going to be interpreted?

Chairman Ohrenschall:

That depends on the judge it gets referred to.

Assemblyman Carrillo:

"Interfere" is my concern.

Chairman Ohrenschall:

I can think of a scenario where an HOA passes rules that you can only park one car for every three houses. That might be ruled as interference. That is kind of absurd, but it is possible. With the reference to NRS 116.3102(s), this is not going to lead to chaos and anarchy in terms of parking.

Assemblyman Carrillo:

You would be surprised.

Chairman Ohrenschall:

The HOA will still be able to enforce reasonable regulations. If you have very serious concerns, maybe we should not recommend that part and keep the posting part.

Assemblyman Carrillo:

I concur with that. I am okay with the posting, but I am not okay with the word "interfere."

Assemblyman McArthur:

So we recommend the change on page 53 and no recommendation on page 52, right?

Chairman Ohrenschall:

Correct.

Dave Ziegler:

Section 29 moves on to a new subject, protection of purchasers in CICs. Sections 29 and 33 are related. [Read from work session document.]

Assemblyman Carrillo:

I am okay with section 29.

Chairman Ohrenschall:

So am I. Mr. McArthur, you are okay as well? Okay, we are all in concurrence, and we will recommend section 29 to the Committee.

Dave Ziegler:

Sections 31 and 32 require the sharing of information by parties to an affidavit filed with the Real Estate Division alleging a violation of existing law governing CICs.

Assemblyman Carrillo:

I am good with this section.

Chairman Ohrenschall:

It seems to bring a lot of transparency, I am good with this as well.

Assemblyman McArthur:

I think this is good.

Chairman Ohrenschall:

So we are all in agreement with section 31.

Dave Ziegler:

Section 32 requires an opportunity for a party to an alleged violation to respond to allegations by the other party.

Chairman Ohrenschall:

This seems reasonable.

Assemblyman Carrillo:

I am okay with section 32.

Assemblyman McArthur:

It seems reasonable.

Chairman Ohrenschall:

We are in agreement and we will recommend section 32 to the full Committee and move on.

Dave Ziegler:

Section 33 goes back to the subject of arbitration and mediation, and is related to section 29. [Read from work session document.]

Chairman Ohrenschall:

Maybe it is the litigious side of me, but I like the idea of people having the option of being able to go straight to the courthouse. I know that mediation and arbitration are wonderful things, but sometimes it is nice to have all the different arrows in your quiver.

Assemblyman Carrillo:

Arbitration and mediation is a process that has been proven for years. To see this be done away with, I can imagine what the court cases would be if we cannot mediate and arbitrate.

Chairman Ohrenschall:

I do not see this section as doing away with mediation or arbitration; it just simply gives the complainant the option of which remedy he or she will pursue. The complainant could still pursue mediation or arbitration. It would probably be more cost-effective for the complainant to choose mediation or arbitration, which may dissuade him or her from going to court or filing a lawsuit.

Assemblyman Carrillo:

I feel that if it is taken to that level, it will essentially do away with mediation.

Chairman Ohrenschall:

We will have to agree to disagree with this. I think mediation is very popular and will not be done away with. I think many people will still choose that. They may agree to it by contract as well.

Assemblyman McArthur:

I am not sure. If we get rid of this section, it will not get rid of any court action, will it?

Chairman Ohrenschall:

The way I read it, it is giving someone the option of pursuing mediation or arbitration or going directly to court.

Assemblyman McArthur:

Could someone do that anyway?

Chairman Ohrenschall:

The way I understand it, no, you would have to go to mediation or arbitration first. It looks like we are not going to come to a consensus on this; so we will pass on it with no recommendation and move on.

Assemblyman Carrillo:

I agree with that.

Dave Ziegler:

Section 34 also has to do with the protection of purchasers in CICs. [Read from work session document.]

Chairman Ohrenschall:

I believe this is a common-sense section. I was given a copy of the Supreme Court Rule 24 that has a cap on arbitrator's fees at a maximum of \$1,000 per case. This is very close, with a maximum of \$750 per case on HOA issues. I think the provision of not requiring someone to pay the opponent's fees is also reasonable, otherwise people may be afraid to complain if they are worried they will have to pay the other side's attorney's fees. On page 57, lines 16 through 19 state "If a party commences a civil action based upon any claim which was the subject of mediation, the findings of the mediator are not admissible in that action." That seems reasonable as well.

Assemblyman Carrillo:

Regarding lines 16 through 19, the purpose of the mediator is to bring parties to agreement. I think the findings should be admissible in that action. I have an issue with this.

Chairman Ohrenschall:

The way I read it, this new action would be based on something that was not the subject of the mediation, which is why it should not be admissible.

Assemblyman Carrillo:

This states "If a party commences a civil action based upon any claim which was the subject of mediation, the findings of the mediator are not admissible in that action." I believe the subject of the mediation should be admissible.

Chairman Ohrenschall:

If we were to change that and leave it to the discretion of the judge, would you be okay with that?

Assemblyman Carrillo:

I am okay with that.

Assemblyman McArthur:

Normally, if you go to court, previous rulings cannot be brought up.

Chairman Ohrenschall:

If we change it from "are not" to "may be" it would be up to the judge who would follow the rules of evidence.

Assemblyman McArthur:

In normal court cases you cannot bring in previous rulings, right?

Chairman Ohrenschall:

This is not criminal.

Assemblyman McArthur:

If both of you are fine with this, I am too.

Chairman Ohrenschall:

I am fine.

Assemblyman Carrillo:

I agree, that is something we should leave to the judge.

Chairman Ohrenschall:

So we will change the verbiage to the "findings may be admissible." We will accept and recommend the rest of this section to the Committee?

Assemblyman Carrillo:

What about the change on page 58?

Chairman Ohrenschall:

That sets a cap on the mediator or arbitrator which is very similar to the cap under Supreme Court Rule 24, set at a maximum of \$1,000. It also discusses the procedure for removing an arbitrator or mediator if they have a conflict of interest. This all seems reasonable to me.

Assemblyman Carrillo:

I do not know how much an arbitrator would be, so I do not know whether this is realistic or not.

Chairman Ohrenschall:

I was given a copy of Supreme Court Rule 24, and it states "Arbitrators appointed to hear cases pursuant to these rules are entitled to be compensated at the rate of \$100 per hour to a maximum of \$1,000 per case unless otherwise authorized by the Commissioner for good cause shown."

Assemblyman McArthur:

Perhaps we could bump it up to \$1,000.

Chairman Ohrenschall:

We could do that or have a provision for an exception for good cause shown.

Assemblyman Carrillo:

I like round numbers.

Chairman Ohrenschall:

So, \$1,000, with no exception?

Assemblyman McArthur:

Did the rule you just read have an exception?

Chairman Ohrenschall:

The Supreme Court Rule 24 states "up to a maximum of \$1,000 per case unless otherwise authorized by the Commission for good cause shown."

Assemblyman Carrillo:

Yes.

Assemblyman McArthur:

I agree.

Chairman Ohrenschall:

So we will model this after that language.

Assemblyman Carrillo:

Subsection 5 on page 58 states "A party to a mediation or an arbitration conducted pursuant to this section is not liable for the costs or attorney's fees incurred by another party during the mediation or arbitration." I think this should go in favor of the prevailing party.

Chairman Ohrenschall:

In many cases, that is a good decision, but in the HOA disputes, that could have a chilling effect. If I feel I am being discriminated against by my HOA, and

if I know there is a threat that if I take this to mediation or arbitration and I lose, then I may have to pay the HOA's attorney's fees. It just so happens that the HOA has hired the most expensive attorney in town. I think many people would be fearful of taking anything to mediation or arbitration.

Assemblyman Carrillo:

Is that a common practice where the prevailing party gets legal fees?

Assemblyman McArthur:

That is not really the case in mediation and arbitration.

Assemblyman Carrillo:

My concern is frivolous fees and frivolous lawsuits. That may be an issue.

Assemblyman Carrillo:

They are both paying half of the fees already.

Assemblyman Carrillo:

How about if we use "reasonable costs for attorney fees?"

Chairman Ohrenschall:

In most cases, each side pays his or her own.

Nick Anthony:

Generally I believe the rule under the American legal system is that each side bears his or her own costs unless it is specific to a contract or a specific statutory remedy granting attorney's fees or costs.

Assemblyman Carrillo:

So it is not a common practice for the prevailing parties?

Nick Anthony:

Generally it is not.

Chairman Ohrenschall:

We want to encourage people to work out these disputes, to come to mediation and arbitration. If there is a danger that I go in there on my own and have to pay for the association's attorneys, which could be more than \$10,000, that will have a chilling effect.

Assemblyman Carrillo:

It is then going to be where all the owners have to pay the attorneys, not just one party.

Chairman Ohrenschall:

If we were to make this the prevailing party, I could be the homeowner going against the association in mediation. I could go in with no attorney, representing myself, and if I lose, I might end up having to pay for the association's attorney who could be charging \$500 per hour with 30 hours putting the case together. Next thing I know there is a giant judgment against me just because I tried to protect my rights as a homeowner. I think prevailing party would be unworkable and that each side paying his or her own attorney's fees is fair. The homeowner is not going to have the resources of a big association.

Assemblyman Carrillo:

I would move to go with no recommendation on this one.

Chairman Ohrenschall:

Legal counsel told me that generally, if after the arbitration someone commences civil action and is not successful, the other side might be awarded attorney's fees. If we cannot come to an agreement, we could delete the section about each side paying his or her own attorney's fee, and we could process the rest of it.

Assemblyman McArthur:

That is leaving it pretty open. I would rather leave it in there and go with no recommendation on that particular part.

Chairman Ohrenschall:

Our legal counsel sees no problem with deleting it if that would give you more comfort, Mr. Carrillo. We could delete subsection 5.

Assemblyman McArthur:

If you take that out, then who will decide?

Chairman Ohrenschall:

That would be left up to the mediator or the arbitrator.

Assemblyman McArthur:

So you go to the mediator and halfway through the mediation he or she decides who pays? We need to know up front.

Chairman Ohrenschall:

I think keeping subsection 5 is good.

Assemblyman McArthur:

I do too.

Chairman Ohrenschall:

I do not think we need to have a consensus. Two of us agree.

Assemblyman McArthur:

I would not delete it, but possibly not recommend it.

Chairman Ohrenschall:

I think we can recommend it, going with the majority.

Assemblyman Carrillo:

How about if we leave this up to the full Committee.

Chairman Ohrenschall:

We can inform them that every other decision was unanimous, and this was a two-to-one split.

I appreciate everyone staying so late. I think we have come up with some good recommendations for the Committee. We will close the work session and open it up for public comment.

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

In the last discussion about the attorney's fees, all you gentlemen were given a binder with copies of arbitrations and the outrageous fees. That is why that was put in there. No one considered what if the HOA loses? The HOA is now stuck with the homeowner's fees. That is why this is fair; each side pays his or her fee. The other item to be considered is that currently the HOA attorneys know they will win 85 percent of the time based upon the Real Estate Division's statistics; so they could run the fees up to the sky. You cannot leave it to the judge because it is not to that point yet. You would now have to file a *de novo* lawsuit. This evens the playing field, and you also have to remember the homeowner may be representing himself or herself whereas the HOA has got the deep pockets.

Another item you did not cover is the section dealing with the Americans with Disabilities Act requirements.

Chairman Ohrenschall:

We went over that section.

Jonathan Friedrich:

I did not hear it, which is ironic because I have a hearing loss.

Chairman Ohrenschall:

It is on page 32, we kept it with reasonable limitations. Thank you for all your hard work on this bill, Mr. Friedrich. This work session is adjourned [at 10:52 p.m.].

RESPECTFULLY SUBMITTED:

Jean Bennett
Recording Secretary

Nancy Davis
Transcribing Secretary

APPROVED BY:

Assemblyman James Ohrenschall, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 13, 2011

Time of Meeting: 7:19 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 246	C	Dave Ziegler	Work Session Document
A.B. 389	D	Dave Ziegler	Work Session Document
A.B. 448	E	Dave Ziegler	Work Session Document