MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
February 25, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:06 a.m. on Friday, February 25, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Thomas R. C. Wilson, Former Senator
Graham Galloway, Nevada Justice Association
Norman McCullough
Jonathan Friedrich
Robert L. Robey
Bill O'Donnell, Former Senator
Richard Rychtarik
Iris Hokanson
Richard Ziskind
Heather Spaniol

Mike Randolph, Homeowner Association Services
Eddie Haddad
Mark Coolman, Western Risk Insurance
Keith Kelley, Kelley & Associates
Randolph Watkins
Robin Huhn, D.C.
John Radocha
Delores Bornbach
Troy Kearns
Audna Lang
Tracey Donley
Yvonne Schuman
Roger Flannigan
Marlene Rogoff
Vicki Hafen Scott

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 165.

SENATE BILL 165: Revises provisions governing arbitrators. (BDR 3-44)

SENATOR MICHAEL ROBERSON (Clark County Senatorial District No. 5):
I will read from my written testimony (Exhibit C).

THOMAS R. C. WILSON (Former Senator):
I was startled to find that often arbitrators are not impartial. An arbitrator has the same responsibility as a district judge and jury in state or federal court to be impartial, exercise judgment and follow the law. I have had a number of arbitrations in commercial cases. There are more and more of these because they are complex, take a lot of time and involve a number of lawyers and a lot of money. The contracts between the parties who come into dispute require arbitration. It is like going to district court.

Under some of the rules of arbitration associations, arbitrators selected by a party are required to advocate for that party. An arbitration is like a case in court where you have lawyers. They file briefs addressing the law that applies to the facts and the facts as they attest to them. You expect a judge to be impartial. Arbitrators appointed by the parties are entitled to advocate in

deliberations for the party who appointed them. That does not sound like an impartial judge.

Arbitrators should be impartial. Under the rules of many arbitration associations, the parties can agree the arbitrators not be impartial. That is a problem. Business litigation is more frequent, more complex and more expensive. To the relief of the court, people go to arbitration because there are three judges, not just one.

This practice has been going on for some time. It is critical to our system. The arbitration process has to succeed. We need it because the courts are overworked. It is better to have three judges because the cases are complex and lengthy. For those reasons, arbitration has been an advantage for jurisprudence.

CHAIR WIENER:
Are arbitrators neutral unless they are required to be nonneutral? Please explain when arbitrators would be required to be nonneutral.

SENATOR WILSON:
That would appear in rules of the arbitration association. I do not recall if they are automatically neutral. In this State, the presumption should be they are neutral.

CHAIR WIENER:
What scenario would require a nonneutral arbitrator?

SENATOR ROBERSON:
In the American Arbitration Association rules and many other arbitration association rules, that can be left silent. However, it can specifically require the parties to pick their own arbitrators. Those arbitrators can be nonneutral. One concern is for the little guy who signs a credit card agreement or the everyday contract with a mandatory provision requiring binding arbitration in accordance with the rules. Each side picks an arbitrator, and a third arbitrator is picked from the first two. These contracts do not say the people who wrote the contracts can pick whomever they want. Each person can do the same. Not everyone knows it is possible to choose.

The general policy in Nevada should be that arbitrators are neutral. If you enter into a contract with another party, the contract should permit or require nonneutral arbitrators. That should be made clear.

CHAIR WIENER:
From what pool are arbitrators selected? Is there a standard? Is there training? This has the weight of court.

SENATOR WILSON:
The litigant has an attorney, and the attorney will know how to pick the arbitrator. Arbitration associations, such as the American Arbitration Association, have lists and arbitrators are selected from those lists. I do not know whether it is prohibited to pick an arbitrator from outside these lists.

SENATOR ROBERSON:
The Wisconsin Supreme Court recently vacated an arbitration award because the insurance company did not pick its arbitrator from a list. It picked its in-house attorney. The concept that each party picks from a list of neutral arbitrators is fine. That is how most people think this process works. However, that is not necessarily how it works. It is a problem when litigants can pick someone who is paid by them, not from a list, but someone who actually works for them.

CHAIR WIENER:
The arbitrators become paid advocates.

SENATOR ROBERSON:
That is correct.

SENATOR BREEDEN:
When arbitrators become members of the American Arbitration Association, are there rules and guidelines requiring them to take an oath or promise they are neutral?

SENATOR ROBERSON:
Yes and no. Language in the rules of the American Arbitration Association and in most state laws are contradictory in that way. In one place, it says you have to be neutral. In another place, it says you do not have to be neutral, that you are a nonneutral arbitrator. That causes confusion. We are trying to say in

Nevada, unless your contract requires nonneutral arbitrators, we favor neutral arbitrators.

SENATOR WILSON:
The *Nevada Revised Statutes* (NRS) addresses this and supposes the arbitrators are to be neutral. There is a caveat. The parties can decide to do something else. When they decide to do something else, the arbitrator is an advocate. How can a judge or arbitrator advocate in deliberations? If arbitrators can advocate on behalf of the parties who appointed them, they cannot say the judgments reached are impartial and fair. It is a conflict.

CHAIR WIENER:
As part of that process, must arbitrators disclose they are nonneutral arbitrators?

SENATOR ROBERSON:
In many cases they do not have to disclose. That is a problem. More and more courts are vacating arbitration awards because of this issue. The practice of nonneutral arbitrators is becoming more disfavored, but it is still there.

CHAIR WIENER:
Arbitration is used as an alternative dispute resolution. Our courts have heavy caseloads.

SENATOR COPENING:
Are you requiring that disclosure in this bill? We should make sure a disclosure clause is in the bill.

SENATOR ROBERSON:
Yes. Disclosure is required except where the parties contract otherwise to require a nonneutral arbitrator.

BRADLEY A. WILKINSON (Counsel):
The provisions in the bill relating to disclosure are on page 4 in section 6. A number of requirements relate to disclosure and require the arbitrator to disclose the financial or personal interest in the outcome of the arbitration. A continuing obligation to disclose that appears in section 6, subsection 2 of the bill.

SENATOR ROBERSON:
Section 6, subsection 5 of the bill has been amended to require disclosure of all arbitrators, not simply neutral arbitrators.

SENATOR MCGINNESS:
Is Nevada unique?

SENATOR WILSON:
I do not know. In my experience, arbitrators seem to be neutral.

GRAHAM GALLOWAY (Nevada Justice Association):
We are neutral. We concur with the goal of neutrality. We have a concern with the waiver provisions contained in sections 3 and 5 of the bill. It is not a problem if two sophisticated businessmen, corporations or those on a level playing field agree to waive the provisions of neutrality.

We are concerned about the individual who applies for credit or to purchase a vehicle. Buried in the contract in fine print is a mandatory binding arbitration clause requiring the individual to go through an organization, such as the American Arbitration Association, and enter into nonneutral arbitration.

If you allow people to waive that goal, it undercuts the purpose of the bill. It is one thing for an individual to knowingly and voluntarily waive that neutrality. However, it is problematic for individuals who have no idea they are agreeing to arbitration in a nonneutral context.

We ask that you consider an amendment concerning the waiver provisions in sections 3 and 5 of the bill that would include language saying the parties knowingly and voluntarily agree to waive the neutrality provisions. Include something that draws attention to individuals so they know this is occurring.

CHAIR WIENER:
How would you educate individuals so they would be knowingly or willingly waiving neutrality?

MR. GALLOWAY:
Automobile insurance companies are mandated to offer underinsured motorist coverage and medical payments coverage to individuals purchasing automobile insurance. The NRS provides the language waiving those coverages must be in

a certain print size. If individuals waive this coverage, there must be a separate signature line for the waiver. This could be done in this context.

CHAIR WIENER:
Many contracts are interstate commerce issues. How would we require that on documents originating outside our State?

MR. GALLOWAY:
It could be done. I have seen paragraphs at the bottom of documents generated out of state. You could require interstate transactors to include paragraphs that only apply to Nevada. Oftentimes, insurance contracts have separate pages for coverages that only apply in certain states.

SENATOR COPENING:
I recall seeing a provision in contracts that precludes arbitration or any type of legal recourse in the event of a bad outcome. Is it against the law for any organization to preclude legal recourse in a bad situation?

SENATOR WILSON:
That might not be enforceable.

MR. GALLOWAY:
You often see that in agreements when you participate in some recreational activity, such as skydiving or riding horses. Releases include that language. Those only go so far and are typically not upheld. However, certain portions of them are upheld. For example, if you injure your back just riding the horse because it is bumpy, that is appropriate. However, if the horse owner or skydiving corporation is negligent, they cannot have you waive that negligence.

SENATOR COPENING:
If a person signs that release, does the individual have legal recourse if there is a negligent activity, or has that person they signed away rights?

MR. GALLOWAY:
Yes and no. A person would have legal recourse if the entity putting on the activity has been negligent. Skiing is a classic example. If you ski and fall and hurt your knee, you can sue the ski resort, but you will not win. However, if the ski resort rents you a defective set of skis where the bindings malfunction, you would have a right of remedy against the ski resort.

SENATOR KIHUEN:
Would this bill affect arbitrations covered by collective bargaining?

SENATOR WILSON:
As a matter of public interest, it may not be enforceable. I have not done research.

SENATOR KIHUEN:
I would like to have an answer by our work session.

SENATOR ROBERSON:
We did not have collective bargaining in mind when we looked at this. Collective bargaining agreements would be like any other contract. Our proposed changes in this legislation would be prospective. It would not affect any current contracts. Collective bargaining agreements, more so than others, are entered into by sophisticated parties who knowingly understand what they are entering into. My guess is this would not be an issue with collective bargaining agreements because the parties to collective bargaining agreements are familiar with the arbitration proceedings. They specifically decide to adopt procedures incorporating nonneutral arbitrators or not.

MR. GALLOWAY:
There is a body of federal law governing collective bargaining. That would preempt anything we do here today. Whatever the federal law says in the collective bargaining arena, you have sophisticated parties. That is acceptable for them to agree to waive these provisions.

NORMAN MCCULLOUGH:
I was surprised by this unfair situation. I am the little guy you have referenced. I am a senior citizen. I do not want to see things in fine print. I want them spelled out. I demand neutrality, and that should be included in this bill.

JONATHAN FRIEDRICH:
I have been an arbitrator with the American Arbitration Association since 1989. In becoming an arbitrator, one of the most important questions is, do you know the parties? They ask you to disclose whether you have had any contact or past dealings with any of the attorneys or individuals. They stress disclosure. I support this bill. Arbitrators must take mandatory training periodically. In the Real Estate Division, parties involved in a homeowners' association dispute must

go to arbitration—binding or not binding. I have been involved twice, once with a biased arbitrator. That has created additional litigation. The arbitrator did not disclose prior relationships with the attorneys. The State ignored this and said it could only facilitate the process. Neutrality of an arbitrator is paramount because if there is no neutrality, it is a kangaroo court.

ROBERT L. ROBEY:
I am pleased with this bill. Twelve years ago at my homeowners' association, an arbitrator explained arbitration to us. I submitted an affidavit into the public record saying I would never file an arbitration with the Real Estate Division under NRS 38. I was told I could not get a fair arbitrator. I have seen people hurt financially, incurring large bills over little things.

CHAIR WIENER:
I will close the hearing on S.B. 165. Today is the deadline to ask for bill draft requests. Two requests have come to the Committee. One would require the Nevada Gaming Commission to adopt regulations requiring the State Gaming Control Board to review a license applicant's history of any proven violations of the Equal Employment Opportunity (EEO) Commission laws or regulations relating to discriminatory practices in the workplace. The State Gaming Control Board would consider any such history in making a recommendation to the Nevada Gaming Commission regarding a prospective licensee.

> SENATOR BREEDEN MOVED TO INITIATE A BILL DRAFT REQUEST REQUIRING THE NEVADA GAMING COMMISSION TO ADOPT REGULATIONS FOR AN EEO HISTORY REVIEW OF LICENSE APPLICANTS BY THE STATE GAMING CONTROL BOARD.
>
> SENATOR KIHUEN SECONDED THE MOTION.

SENATOR MCGINNESS:
Where did this come from?

CHAIR WIENER:
There was much discussion, and a group asked for consideration.

> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:
The second request is a measure dealing with title. The intent of this bill draft request would be to make sure when the consumer is selling a unit, the statement sent to the title outlining unpaid assessments is good for a period of time, in this case, ten working days.

> SENATOR COPENING MOVED TO INITIATE A BILL DRAFT REQUEST TO ENSURE THE UNPAID ASSESSMENT STATEMENT WITH TITLE FOR A UNIT SALE IS GOOD FOR TEN WORKING DAYS.
>
> SENATOR KIHUEN SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:
I will open the hearing on S.B. 174.

SENATE BILL 174: Revises provisions relating to common-interest communities. (BDR 10-105)

BILL O'DONNELL (Former Senator):
I provided you with a handout (Exhibit D). My comments today regard the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels in the Real Estate Division. We support this bill. We would like to change a couple items in the bill.

I will read the first page of a letter written by the Ombudsman's Office, Exhibit D, page 1. This letter is dated December 29, 2010.

A section in the bill includes an existing law allowing the owners to disband their homeowners' association (HOA) with 80 percent of the vote of the members. In our case, we have an investor who owns 261 of the 384 units. If he purchases 80 percent of the units, he could vote to disband the HOA. The problem is we have one gas meter, and he knows that. If you can change the language to say that if it is metered by one meter, you need 100 percent of the people to disband the HOA.

One of the biggest problems in this bill is there is no increase in the budget for the staff of investigators for the Real Estate Division. In addition, the Ombudsman can do virtually nothing. The former board would not cooperate with an investigation. People have died in our complex waiting for justice.

I have enclosed a letter written by the Ombudsman on October 18, 2010, Exhibit D, pages 4 through 6. It is now the end of February, and we have heard nothing. The investigation is confidential, so board members say they cannot tell us anything.

The letter was written to one of our former board members regarding the cooperation of the old board about the investigation, Exhibit D, pages 4 through 6. The board has not cooperated from October 18 to December 29, 2010, even after subpoenas were issued for the records. On October 2, 2010, I asked to look at all the books and records. To this day, I have not seen the records.

The investigation has been going on since April 5, 2010, but no one cares about the time it takes to do a thorough investigation or issue an arrest warrant for the actions of the board of Paradise Spa.

In summary, the association dues have not been paid in the amount of approximately $800,000. The units are now in foreclosure. We risk losing that $800,000 because the super priority liens to be placed on all those units have not been placed because the investor is the treasurer of the association. The $378,000 in assessments made to the homeowners for reserve is gone. There is an insurance check for $842,000 to build out two burned-out buildings. That money is gone.

These people need help. If you pass this bill and do not fund it, you have done nothing. You must fund this. You must give the Real Estate Division the tools. You are trying to put out a house fire with a squirt gun.

SENATOR COPENING:
We had a good conversation last night. I commit to you we will figure out how to get this moving. I will personally get involved. I will also request that Senator Roberson work with me. These are his constituents as well. Together, we can get with the Real Estate Division, figure out why this is taking so long and try to mitigate a negative outcome.

RICHARD RYCHTARIK:
A number of pressing problems must be addressed by the Legislature. I submitted some of those issues (Exhibit E). Section 5 of this bill addresses removal from the board. It says 10 percent of unit owners, or a lower percentage specified in the bylaws, can remove an individual board member. In my association, there are 128 homes. That makes it possible for 23 homeowners to vote a board member out. That should be changed, at least for the smaller HOAs. If it were 50 percent, at least for the smaller HOAs, it would take 33 unit owners to vote a member off the board.

For example, I have been in my HOA for ten years. Three board presidents have been removed. The current board president has been voted out, reelected, voted out last October, reelected 20 minutes later and has another recall pending. That is because we have a 5 percent criteria for these petitions, not 10 percent. We get seven members who continue one recall after another. That section of the bill should be adjusted.

Board members must notify the membership when a lawsuit or legal action is pending. The law does not require the board to notify its insurance company. That becomes an issue. For example, the insurance company was not notified by our board regarding a particular lawsuit. Everyone assumed an insurance company was involved. As a result, we carried the burden of financing that. The board should be required to notify the insurance company immediately when an action is pending.

Collection costs are an issue. If the HOA had the same rights of collection as state and local governments do for property taxes, we would not be in the mess we are regarding collections. When 24 months of dues collections was cut back to 9 months, that was a real negative for small HOAs especially. If we had at least two years for our HOA to collect back dues, we would not be so quick to get someone into collections.

When a homeowner defaults and a lien-warning letter is sent to that particular homeowner, the law does not require that the homeowner be given a written statement of potential future costs. The homeowner is blindsided after discovering collection costs are astronomical. If a homeowner has a temporary funding problem, it may be better to pay the HOA dues and not the property taxes. The costs for delinquent property taxes are not as onerous. You need to consider that issue.

The entire collection process is an issue. There are two types of HOAs. One is gated and one is not. Homeowners in the gated communities pay the same property taxes, but they pay costs normally paid by local governments—streets and lighting. That is a hidden tax. The real problem is collection of HOA dues. Nine months is not long enough.

IRIS HOKANSON:
I live in a two-bedroom rental. I own Units 250 and 251 in Building 20 that had a fire on January 15. I expected to be back in my home in six months. They wanted me to sign a lease. I did not want to, but I did because I did not think we would be there for six months. It has been over a year, and I am still not back in my home. The building has been condemned. It has a fence around it. I still have some belongings in there. I am still making my house payment because I do not want to be foreclosed on.

SENATOR O'DONNELL:
Ms. Hokanson lived in a unit in a building that burned. The people got the insurance check for $842,000. They gave her nothing, and they allowed her to rent from them for $600 a month. She has to continue making her mortgage payment on the burned-out units, and we get no justice. This has happened since January 2010. In April 2010, complaints were made. Here we are in February, and the Ombudsman's Office is overwhelmed.

CHAIR WIENER:
You said the people received the $842,000 insurance money and Ms. Hokanson was not compensated. Who are you referring to?

SENATOR O'DONNELL:
The people are the HOA board. The HOA received the insurance check. After that, we learned the treasurer of the HOA is also a director of a bank in California. The money went into the account and out of the account in the same month. We have the documents to show that.

CHAIR WIENER:
Ms. Hokanson, who are you renting from?

MS. HOKANSON:
The unit I am in belongs to Aaron Yashouafar. I am making the check to CRR, the receivership, because they have been foreclosed on. Previously, I made my checks out to a company in California.

CHAIR WIENER:
Is the rental connected to those who received the insurance money?

SENATOR O'DONNELL:
Yes. Aaron Yashouafar was the treasurer of the board. He received the check, and he is the investor who owns 261 units. He allowed Ms. Hokanson to pay him rent while he took the money for the burned-out units.

He has not paid approximately $800,000 in dues in arrears. If they go into foreclosure, the HOA, which includes all the members living there now, will lose that $800,000. That is the only money we have to pay for the burned-out buildings. That will be gone because the Ombudsman's Office is taking so long to remove these people from the board so we can put the liens on, and they will become a super priority lien on these properties. The scheduled date was February 17 for the sale. Now, it is scheduled for March 16. If it goes to sale on March 16, we are done.

SENATOR COPENING:
We will get on this as quickly as possible. Senator Breeden shares the district with Senator Roberson, and we will all come together to figure out what we can do as quickly as possible.

RICHARD ZISKIND:
I am a past president and board member of the Canyon Gate Master Association. I have been a resident for 12 years. I am not representing any special interests. The revisions to S.B. 174 are necessary and a good basis for developing the final revisions.

The HOA's ability to collect incurred costs associated with foreclosures is addressed in section 15 of the bill. Foreclosures are a significant factor in our community. We have approximately $400,000 in uncollected assessments, associated costs to collect and violations, etc. Much of this is attributed to the foreclosure situation. The board can increase assessments or cut expenses to deal with that deficit. We have cut expenses. For example, we closed one of

our entrances for eight hours at night, which has inconvenienced our residents and reduced security. We have cut maintenance, primarily landscaping. This affects the appearance of the community.

Raising assessments for those who pay is unfair. The lenders who issued bad loans are responsible for the amount owed, not the other residents. Investors who profit by purchasing at reduced prices and reselling are responsible.

Section 15 of the bill clarifies the responsibility for payment of the past nine months of money due, including the cost spent to recover the money. It does not overreach. The super priority status for the HOA is critical because it motivates the lenders to move forward. Otherwise, the homes are blighted, the debts are not collected and the community goes further downhill. All homes lose value in that process.

Why do HOAs foreclose? We do not want to own these homes. The homeowners owe more than the home is worth. The HOA takes this step after significant time has expired, the owner has not taken action to pay and the lender has not foreclosed. This is an effective way to produce action. Banks are slow to foreclose. In most cases, the HOA's foreclosure prompts action by the lender.

When we cut expenses like security, a number of security personnel are unemployed, likewise when we cut maintenance. These people become innocent victims of the failure to collect money owed by those responsible.

HEATHER SPANIOL:
I am a homeowner. I have been harassed for the past three years. Someone mentioned it is the anniversary of chapter 116 of NRS. It is time for a change. Yesterday, Randolph Watkins discussed a survey done by the Community Associations Institute (CAI). Seventy-one percent of homeowners are happy. That is possibly a biased survey because it was done by the CAI. Those here yesterday in T-shirts were board members. Everyone in this room is either an attorney, collection agency or board member.

I would have a good case with everything that happened to me. My car was illegally towed twice. I have been retaliated against. I have been selectively enforced. I spoke with an attorney who said it would be a waste of my time because the law is against homeowners.

When the economy bounces back, if you live in an HOA, you will not be able to sell your house. It is a selling point to not have an HOA. If you vote for this bill, it is a vote to feed the cash cows—the collection agencies and the HOA attorneys. Only homeowners on the board would want this bill passed.

Senator Copening is a former board member, which is biased. I hope you were not biased when you put this bill together. You mentioned yesterday the HOAs are strapped for cash. How about the people who will be strapped in their house when you take away more rights? No one will buy these houses in HOAs.

I do not like to see attorneys use NRS to their advantage. We work our whole life to own our home. You do not feel comfortable in your home when you get violation notices and letters in the mail a couple times a month about trash cans being out an hour early, rocks being out of place, cars being towed or the color of the driveway not matching. I feel like I have a landlord. What was the point of buying a house when I have a landlord? My landlord is the HOA.

The HOA should maintain the golf course, pool and gates. Stop telling people how to live. Las Vegas is a city where people do not get involved. There are many people who feel like I do.

If you do not do something, people will rally and shut down HOAs. Former board members should not be biased. Please think of everyone else. Please do not give HOAs more power. Make them more homeowner-friendly for us.

MIKE RANDOLPH (Homeowner Association Services):
I manage the Homeowner Association Services, a licensed collection agency specializing in homeowner assessment recovery. The 2009 Legislature passed legislation requiring regulation of collection agency fees. The Governor's freeze on regulations has prevented the regulations from becoming effective.

I have considered different ways to do the recovery that would be the most cost-effective and efficient. The super priority lien refers to the nine months immediately preceding an action to enforce the lien. In the *Nevada Revised Statutes*, the word "action" refers to court. I have spoken with attorneys about suing homeowners for nonpayment as opposed to the judicial nonforeclosure. I have been quoted fees of $3,500 minimum to do this. The investors would not want a bill from me for $3,500 in attorney's fees on top of the nine months of assessments.

This week's newspaper reported a total of 3,785 sales of existing homes in January. Of those 3,785 homes, 1,424 were foreclosures and 756 were short sales. Close to half of them are lender-involved foreclosures or sales.

Associations need collection agencies because not every property is foreclosed. Many homeowners have financial problems and end up in collections. We put them on payment plans structured to bring them back into compliance. This brings the association the money required to keep them operating.

The *Las Vegas Review-Journal* reported the median home price is $104,000, which is the lowest since 1991. Over 70 percent of the homes in the Las Vegas Valley are underwater. It does not make sense for the association to foreclose and execute a deed. The association, already strapped for cash, would own a property that is $100,000 upside down. The association cannot sell or short sell it because it is not the original signatory on the deed of trust or mortgage. The bank does not have to work for the association.

I support this bill as a collection agency and board member.

EDDIE HADDAD:
This bill will not make Nevada proud. Would you pass a bill that is unlawful under the Federal Trade Commission? If you do, many people will take this to federal court.

A leading Website, <http://www.condoassociation.com>, tells associations how to handle their collection policies. The Website says associations should be involved in graduated sanctions for untimely payments. That means penalties. Penalties should be graduated. If you do not pay a bill by a specific time, it will increase. Those penalties go to the collection companies. They are called service fees.

I protested a bill on July 28 because it was $4,839. On October 11, I got a bill for $6,382. It was $1,600 more for being 70 days delinquent. That penalty went to the collection agency. These penalties could enrich our associations. Do not call them service fees.

Threatening to take someone's home or threatening extra fines or graduated sanctions for untimely payment are the only tools the collection industry has. It is against the law of the Federal Trade Commission. The Fair Debt Collection

Practices Act prohibits threatening to seize a home unless it is actually contemplated.

I turned this over to the Office of the Attorney General. The Attorney General said you cannot put people in foreclosure because they are 60 days delinquent. Board members of the HOA must get together and determine whether there is equity in the property and whether they want to own the property in 120 days. If the answer is yes, they foreclose. If the answer is no, they cannot do anything. Collection companies are not earning their service fees. All they are doing is threatening.

SENATOR COPENING:
I want to go on the record to say I have proposed a separate bill that caps collection costs. This bill says reasonable collection costs. That amount will be capped. If my collections bill passes, it will go into effect at the same time as S.B. 174.

Senate Bill 174 is 43 pages long, and the area you are talking about is a few lines on one page. There are many cost savings to homeowners in this bill. It is my understanding that investors want to pass the collection costs along to all homeowners in the HOA, which is unfair. What is the most money you have made flipping a home?

MR. HADDAD:
I use my hard-earned money to invest. I take three risks when I buy. I take the risk if the title insurance is not right. I take a risk the property will never be vacated by the inhabitants. I take a risk the property is damaged. I earn a fee based on what I buy because I am spending my money.

SENATOR COPENING:
I am asking what you have profited. Are you saying you pass these costs on to hard-working homeowners instead of the person who buys the home? I want to protect homeowners from paying fees the investor wants to pass on to them when he buys a home rather than covering the fees himself. My collection bill will prevent that from happening.

MR. HADDAD:
I am not suggesting the fees be passed on to the homeowners. If you have an HOA with 100 homes and 15 of them are delinquent, the HOA should collect

penalties. Those penalties should go to the HOA. If the penalties go to the HOA, everyone's assessments will go down.

MARK COOLMAN (Western Risk Insurance):
I support this bill. For a bill this large, not everyone agrees with every word. This bill deals with a great problem. From an insurance perspective, we looked at this from the association's point of view. We tried to save the association the most money and give it the most protection.

KEITH KELLEY (Kelley & Associates):
I support most of the bill. I have some concerns.

Because of the economy and housing issues, many people have been forced to rent property. Section 16 of the bill addresses tenants' responsibility for property damage and harassing board members. I agree with this. However, I have seen tenants harassed by HOAs. Problems between tenants and property owners could be handled easily if management companies would communicate with the property manager. We need something to address harassment of the tenants and communications between the property managers and HOA management companies. Property managers want to ensure fines are taken care of in a timely manner and do not get out of hand.

Sometimes, fines are from previous owners. They should be taken seriously so HOAs can be financially stable. I am involved in a sale where the collection fees are $8,500. The monthly HOA fee is $45. Of this $8,500, almost $1,600 related to landscaping. For less than $125, the repairs were made, but the collection is still there. The buyer may be required to pay. Is that money going back to the HOA?

In closing these transactions, we look at different economies being affected, such as painting, flooring or lighting. Communicating will help close these transactions and help the economy move forward.

RANDOLPH WATKINS:
I support S.B. 174. I am responding to testimony earlier today. I have been a member of CAI for ten years. I have never been an elected official of the HOA where I live.

ROBIN HUHN, D.C.:
I support the testimony of Ms. Spaniol and Mr. Haddad.

I will read from my written testimony (Exhibit F).

JOHN RADOCHA:
I am a homeowner who has been harassed and retaliated against. Selective enforcement has been used against me. This bill gives boards and management too much power. If I wanted to cross-examine my accuser, the board would respond it is the Privacy Act. Where are my rights? When the Ombudsman fails to settle a dispute, the Real Estate Division advises alternate dispute resolution. The odds are 85 percent that you will lose. It would cost between $10,000 and $20,000.

Please explain section 16 of the bill, page 31, beginning on line 16.

CHAIR WIENER:
That is law, not new language. We are not addressing that.

MR. RADOCHA:
How would that be proved? The board says they have never retaliated against someone or used selective enforcement. Please explain section 16 of the bill, line 26, page 31. Am I allowed to ask the management company to see the violations and fines they have given people in the community?

MR. WILKINSON:
You could make a request in good faith, as opposed to making a request for the purpose of harassing someone or causing undue burden.

MR. RADOCHA:
I would like to see those documents to prove the selective enforcement used against me.

DELORES BORNBACH:
I am not a member of an HOA. I am here on behalf of John Radocha, sitting next to me. He has been harassed. You should get rid of HOAs to avoid all these problems.

TROY KEARNS:
Today, I received a violation for a burned-out porch light. I sell real estate. I sell real estate owned (REO) foreclosures. I oppose S.B. 174. I am concerned about the collection provisions on pages 29 and 30 of the bill. This bill makes it easier for collectors to make money. I have ledgers showing collection companies receive 65 percent to 95 percent of the money from a debt paid to the HOA. That does not help the HOA's solvency but helps collectors make millions of dollars. The marketing scheme of the collectors is that collection will not cost the HOA anything. The collectors educate HOA board members on their interpretation of the law.

As an REO agent, I find that most foreclosures are a government-sponsored enterprise—Fannie Mae, Freddie Mac and the U.S. Department of Housing and Urban Development. That represents approximately 65 percent of the inventory. The taxpayers are paying for this, not the banks.

Once HOAs send a bill into collection, they are, in most cases, not willing to deal with the homeowner, realtor or agent for the owner. Once it is in collection, the fees increase rapidly. If you pass this bill, you will be allowing the fox to guard the henhouse.

Most HOAs are managed by a for-profit management company. In addition to that, some management companies own collection companies. If you pass this bill, you will not give power to homeowners. You will give power to for-profit businesses that stand to make millions of dollars. The HOA collection companies in Nevada should not be given more power but limited power.

AUDNA LANG:
I am a professional real estate agent. Most of my clients do not want to live in an HOA. This bill allows the collection companies and lawyers to continue adding bloated fees on the back of HOA dues. The HOAs do not get this money, the collection agencies and lawyers do. This bill would enrich the collections agencies and lawyers. The caps referred to in another bill should be part of this bill.

I work for a company that handles REOs for a credit union. My broker has proof of the collection fees charged to the credit union. I will ask him to send these to you by electronic mail.

I recently had a short sale that fell apart because of excessive fees. The bank would not authorize payment of over $5,000 in back dues and fees. It was not the buyers' responsibility, and the seller did not have the money. If it had only been the dues, the bank may have allowed it out of its proceeds. Everyone lost, including the HOA. After close of escrow, banks are suing HOAs over outrageous collection fees.

Please be aware some HOAs appear to be looking for owners whose homes are paid for. I received a call from a homeowner asking for help because the HOA had started foreclosure on property that was free and clear. The HOA had not put a lien on another home where the owner was thousands of dollars in arrears. That owner filed bankruptcy. The party who called was $600 in arrears because he was out of work. This HOA demanded the party pay six months in advance or it would not accept payment.

This bill should address not only harassment of a board member by a homeowner, but harassment of a homeowner by a board member. Homeowners and board members should be protected equally.

The provision relating to the Real Estate Division and the Commission for Common-Interest Communities and Condominium Hotels should be eliminated or changed. The Real Estate Division's authority would be questioned and undermined. Additional investigators will have to be hired for the Commission to redo the investigation the Real Estate Division already did. In the meantime, there will be a log jam between the Division and the Commission.

CHAIR WIENER:
Please define REO.

MS. LANG:
It is a repossessed property.

SENATOR COPENING:
The collections portion of the bill was written with the intent it would be following the new regulations being set by the Commission. We expected those reasonable fees were already capped, but the Governor has put all regulations on hold. The Governor is considering releasing regulations relating to money issues. These collection fees are egregious. If my collection bill does not pass, there is the protection of the regulations that did pass when the Governor

releases them. I can put an amendment in S.B. 174 that says, "per set by the Commission for Common-Interest Communities and Condominium Hotels." I will work with Legal Division to accomplish this. The fees have already been voted on by the Commission.

MS. LANG:
The problem is if and when those regulations become effective.

MR. ROBEY:
On December 13 and 14, 2010, the Commission was asked by the Attorney General not to act on the collection fees because it was in litigation. I say this from memory, so I am not sure of accuracy. The Commission acted on those fees and limited the collection fee to $1,950.

I will read from my written testimony (Exhibit G).

TRACEY DONLEY:
I am here to represent victims of collection agencies or short sale sellers. I have closed over 100 short sales. I advise my clients to pay their HOA fees. Sometimes, people have to decide whether to put food on the table or pay HOA fees. I have tried to negotiate with HOA management companies and collection agencies. In one instance, there was a $9,300 bill for $2,700 worth of HOA fees, which was 13 or 14 months in arrears. I went to that association and tried to negotiate in excess of $3,000 in fees, which would have made them whole. The HOA management company told me they were advised by the collection agency not to accept that. As a consequence, the HOA waited four months, the bank foreclosed and the HOA got a super priority lien. That makes no fiscal sense.

This bill refers to reasonable fees. There is no control, legislative or otherwise, over any kind of fee a collection agency can charge. I represent people who are forced into foreclosure by the collection agencies after I have obtained full short sale approval from the lender. Taxpayers ultimately pay for this.

I do not get paid if I do not sell a house. If a collection agency does not realize funds for the HOA, they should not get paid. When you talk about fees being capped, the collection agencies would automatically get $3,000 in addition to the nine-month super priority lien. If effective laws are in place for banks and everyone else, collection agencies are necessary only in instances where people

with the means do not pay. If you pass this bill with the collection portions, you are allowing the collection agencies to automatically get $3,000 whether or not they do their job.

YVONNE SCHUMAN:
The fees and costs we are discussing go to the collection agencies, not the HOAs. Why is the Committee drafting legislation to help collection agencies pad their fees and costs further? People who oppose this section of S.B. 174 do not want to pass fees on to other homeowners. These fees are not going to the other homeowners in the first place.

Collection agencies, in most of these cases, make more in fees on each of these foreclosed properties than the investor, without risking a single dollar. The investors are trying to help turn the neighborhoods around and improve the HOAs by getting those properties rehabilitated and back on the market. They take a risk when they do that.

ROGER FLANNIGAN:
I want to help homeowners in trouble. I run across people who are trying to negotiate short sales. There are unreasonable fees tacked on, and debt collectors will not cooperate.

An undisclosed relationship goes on between the HOA, the HOA management company and the debt collector. The HOAs hire a for-profit management company. My HOA hired RMI Management. A debt collector is also hired. My HOA hired Red Rock Financial. In this case, the person who owns RMI also owns Red Rock Financial. My $120 fee turned into $3,000. I called the management company, which would not talk to me because it was in collection. I appealed, and the management company went to the HOA board to waive some unreasonable fees. The company waived two $10 late fees the HOA had assessed. The HOA agreed to waive its fees, but the debt collector did not. This bill promotes that relationship. If we want to solve the problem, we need to stop the corruption.

The foreclosure fee for a first deed of trust is small compared to the fees being tacked on. You should look at other ways to solve the problem. Perhaps you should give the HOA more than nine months but strip away the collection fees. The debt collectors are of no benefit to the HOA.

MARLENE ROGOFF:
I am concerned about this bill. If passed, this bill harms homeowners and their rights against associations and community management companies. Many of the proposed sections are too vague and broad, which could lead to abuses by associations and management companies. This bill should not be passed.

I oppose section 3 of this bill. It gives the right to enter a home before foreclosure. This violates the Constitution. Section 8 refers to a closed-door session of the HOA executive committee. The HOA will not be required to provide notice to the unit's owner of a required repair to a wall. I am against all closed-door sessions of any HOA because it includes representatives of the people who live in the community and who have a right to hear all sessions of an HOA executive committee. This means an HOA can hire someone to repair the wall without giving the homeowner an opportunity to repair it.

Section 9 of the bill is subject to abuse. It refers to closed-door sessions to discuss vendors. All meetings of an HOA should be open to all owners in the HOA.

Sections 10 and 19 of the bill propose to eliminate the requirement the community management company post a bond. I oppose these sections.

Section 11 allows HOAs to invest association funds in anything in an investment policy established by the executive board. Now, investment funds of the HOA must be investments authorized by the governing documents. This could lead to abuse of thousands of dollars.

Section 12 of the bill is too broad. Section 14 allows withdrawal of funds without required signatures. If someone withdraws funds, there would be no trail to show who withdrew the funds. Section 15 is too broad. This bill should not be passed.

SENATOR COPENING:
Most of what you referred to is existing law and has nothing to do with S.B. 174. The sections you referred to are protections so the executive board could not do some of the things you think the bill is allowing them to do. The bill makes sure funds are in federally insured reserves. I will meet with you and discuss the bill.

MS. ROGOFF:
I took this off the Nevada State Legislature's Website. I am clear on it.

VICKI HAFEN SCOTT:
I support this bill. I am the treasurer of an HOA. I would like to clarify that an HOA board and management staff do not have the expertise to collect, file liens and file notices. We need an attorney or collection company to do that. If the collection company fees are not covered in the nine-month priority, costs of collection must be paid through the HOA because it will not be done for free.

When homeowners do not pay their dues, the other owners must make up the difference. In 2008, our owners experienced a 20 percent increase in dues to cover delinquent assessments. We have a budget of approximately $3 million a year. Last September, we had accumulated $1.6 million in delinquencies over a three-year period. We have increased dues because it takes one to two years to collect the nine-month priority. We are experiencing cash flow difficulties because we have real expenses—landscaping, water expenses, electricity expenses, security expenses. It is important the nine-month priority be kept in place because we charge our owners extra to cover three to six months of operating costs.

You should couple this bill with the regulations capping collection fees. That is the majority of the problem.

CHAIR WIENER:
Over the last two days in Las Vegas, approximately 70 people signed in to speak for S.B. 174. Approximately 32 signed in to speak against the measure. In Carson City, approximately 22 people signed in to speak in favor of the bill, and approximately 8 signed in to speak against the measure. That is a total of approximately 132 people who took the time to participate in this process. I will close the hearing on S.B. 174. The hearing is open for public comment.

There being nothing further to come before the Committee, we are adjourned at 11:05 a.m.

RESPECTFULLY SUBMITTED:

_____
Kathleen Swain,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE:_____

EXHIBITS

Committee Name: Committee on Judiciary

Date: February 25, 2011 Time of Meeting: 8:06 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 165	C	Senator Michael Roberson	Written testimony
S.B. 174	D	Senator Bill O'Donnell	Letters from the Real Estate Division
S.B. 174	E	Richard Rychtarik	List of issues
S.B. 174	F	Robin Huhn	Written testimony
S.B. 174	G	Robert L. Robey	Written testimony