

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
March 9, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:13 a.m. on Wednesday, March 9, 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

GUEST LEGISLATORS PRESENT:

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

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Keith Munro, First Assistant Attorney General and Legislative Liaison, Office of the Attorney General
Chris Ferrari, Concerned Homeowner Association Members Political Action Committee
Norman Rosensteel, President/CEO, Associated Management, Inc.
Paul D. Hershey, General Manager, Caughlin Ranch Homeowners Association

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Daniel M. Hart, Fenton Grant
Favil West, Commission for Common-Interest Communities and Condominium
Hotels
Gary Lein, Commission for Common-Interest Communities and Condominium
Hotels
Jonathan Friedrich
Ron Brady
Heather Spaniol
Michael Schulman

CHAIR WIENER:
I will open the hearing on Senate Bill (S.B.) 185.

[SENATE BILL 185](#): Makes various changes relating to real property. (BDR 10-23)

SENATOR MICHAEL A. SCHNEIDER (Clark County Senatorial District No. 1):
I will give a historical perspective on Homeowner Associations (HOAs), which I call "sex, drugs, money and HOAs." It is the reason why HOAs do not work today, as you see from the article in the *Las Vegas Review-Journal* dated March 6 and titled, "Federal Probe Into Valley HOAs Broadens" ([Exhibit C](#)) that talks about our HOAs. Another one is "Attorney at Heart of HOA Probe Faces Several Legal Battles" ([Exhibit D](#)). This attorney is one of the many in the HOA probe.

When I proposed the HOA bill in 1997, I also proposed a construction defect bill. The contract lobbyists for the trial lawyers contacted me and requested I not bring the bills forward, further stating the trial lawyers are going to vilify and crucify you. I am stubborn and believe in fair play and in America enough that I brought it forward anyhow. They did proceed to vilify and crucify me. Madam Chair, as a long-standing member of this House, you remember they would bring airplane loads of senior citizens to Carson City; give them yellow T-shirts; march them through the halls of the Legislature; buy them breakfast in Las Vegas; buy them lunch in Carson City; take them home and buy them dinner in Las Vegas. All on the pretense these are poor, abused homeowners, abused by bad builders.

My bill called to make builders repair defects, but they had other motives. Their motives amounted to organized crime. The organized crime is organized expert witnesses and organized attorneys. The expert witnesses include architects,

builders and specialty builders who prey on homeowners' associations, scare them to death and start construction defect lawsuits in HOAs. By doing this, they were wining and dining and buying everything possible for HOA managers. They would buy cars for managers, flowing money freely in order to get into the HOAs and start lawsuits. The corruption is running amok.

We have seen evidence where they rigged defects in homes; we have pictures of defects being rigged on roofs where they break and move tile to show homeowners they have defects in their homes. I know two Hispanic brothers from Columbia, living the American dream as builders in Las Vegas, who were sued once and had a second lawsuit pending. They would purchase leftover ten-acre parcels from big builders and build condominiums. I took their pictures of rigged construction defects to the Office of the Attorney General (OAG) which was ready to take action when a leak occurred, not out of the OAG but another area. They had to let the investigation go because it was blown. It sounds like I am talking about construction defects instead of HOAs, but this starts with the construction defect (CD) attorneys.

After I set up the proposed HOA bill and Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels, the seedy attorneys came in and masqueraded as HOA attorneys. This is one way they got into the associations. After every session we made adjustments to chapter 116 of the *Nevada Revised Statutes* (NRS), they would print out a booklet, a regular bound booklet of NRS 116 with their comments of how this chapter operated. These are not comments from the OAG and the Legislative Counsel Bureau (LCB); these are their comments and interpretations. They gave the booklets to the Office of the Ombudsman, and that is what the Office of the Ombudsman used. The Office of the Ombudsman has used the version of NRS 116 those attorneys put together for years in Las Vegas. That is another way to manipulate HOAs—to manipulate from the Office of the Ombudsman down.

This is organized crime; these people will stop at nothing because there are billions of dollars involved. [Exhibit C](#) says Nancy Quon made \$100 million, but she is small potatoes; there are bigger ones. They have embarrassed this State and this Legislature. We now have a probe with the Federal Bureau of Investigation (FBI) and the U.S. Attorney's Office involved.

Madam Chair, you have processed a bill from this Committee to address this issue. It has failed in the other House, so this Session it is important we

proceed. Madam Chair, if one of your Committee members does not have a construction defect bill to bring forward, I request we process the one that ex-Senator Terry Care and I had last Session. Two years ago when the FBI wanted to see me, I took Senator Care with me. Senator Care was the Chair of this Committee and one of the most honorable and ethical people I know. He did not believe attorneys would organize scams and prey on homeowners. You know that, Madam Chair. He refused to believe it and fought it every session, saying, no, this does not happen. That is when he came to Carson City, called me, and we went to see LCB. That is when Senator Care had the construction defect bill drafted. He saw what egregious things were happening in Las Vegas and across the State. Madam Chair, these people will stop at nothing because there is so much money involved.

When I introduced the first bill and they were vilifying me, I received threats. It went so far that people were calling my home in Las Vegas—unbelievable—threatening to murder my wife and son. That is pretty tough, but it does not matter. They want to do this to me; that is fine, that is business when you are a Legislator.

Three sessions ago, the CD attorneys were lobbying us, one of their own. They took 35 community association managers to Cabo San Lucas, wining and dining them, along with playing golf. The CD attorney up here got upset, sent a photographer and private investigator down there. These guys do not even trust each other. It is like their own mobs; their own law firms are organized crime. They cut the city up, they cut the State up; it is organized crime. It is very organized and very sophisticated. I have seen virtually every CD attorney make presentations to homeowners' associations, everything is bought and paid for.

SENATOR SCHNEIDER:

I went to one of Nancy Quon's presentations at an elementary school in Green Valley, Las Vegas. You can only get in if you are a property owner. My brother and I own some houses; a house in this particular HOA was under the Schneider Family Trust. Who knows who the Schneider Family Trust is? We went, but Nancy Quon was not going to let us in. We showed that we own the home at 1236 Adam Street in the name of the Schneider Family Trust, and she had to let us in. I sat in the back of the room with my brother, and we observed the show. These are shows; they all have the same show. It is like pitchmen in the South with their tent, their religious show; oh, my gosh, here it comes. They had an architect who showed defects to these homeowners. They show

them up on the screen and say, "Look at this defect." They use the same photos from one association to the next; they are so lazy they do not even mix the photos up anymore. But they show it. A lady on this side of the room would go, "Uh, ah, oh my God, look at that." Five minutes later as they go through the photos, another lady on the other side of the room would go, "Oh, my God, that is my house, look at that." The show goes on and they get the crowd riled up. The crowd is in a frenzy; well, we cannot have this. My brother and I hang loose after they adjourn and the homeowners are leaving, kind of upset, and we are smiling. After everybody is gone, the two ladies who were so vocal take the chairs and put them away. They are working for the CD attorney, for Nancy Quon; everything is an inside job. The federal authorities are all over this because we did not want to take action ourselves, and we let this happen. The managers are out of control. I am not saying all of them, but many of them are manipulated and run by the CD attorneys; the money is flowing.

These CD attorneys have changed over the years, and I will address it in my bill. They back HOAs into construction defect lawsuits. They back them in by going to a board and saying, we think you have a lawsuit here. There are defects, let us look and see if there are any. They bring in their expert witnesses looking for defects. Well, of course, they find defects. If not, they manufacture them. They tell the board, "Now you have to sue." If the board says no, they say, "Well, then you have to give us \$500,000 or \$600,000 for the work we have done." Now the board is stuck, they cannot afford \$500,000 or better. They have to sue. The attorneys never did pay them; no money was invested.

Nancy Quon is just an example of it. They have the expert witnesses; they fund the whole thing. They are doing the work and get their money on the back end. They are in the deal, and they have to find defects. They have to go on with the show; it is all part of the deal. In many of these, they do not get paid for doing work up front; they carry the attorney on the deal. That is highly illegal as you know. Everything in here stinks. It has gone from management to every aspect of the HOA.

In 1997, when I created the Office of the Ombudsman, I did not request we move the Office of the Ombudsman to the OAG. But I am requesting it now. I passed that bill minus that one point because I understand politics; ex-Senator Raggio was concerned about former Attorney General (AG) Frankie Sue Del Pappa, who was the AG at the time. Senator Raggio did not want to give the AG a bigger platform because there was word she may run for

U.S. Senator or Governor. So Senator Raggio said to find another area, we do not want to go to Ms. Del Pappa. I said I understand because I understand politics. We put the office in the Real Estate Division of the Department of Business and Industry, which I thought would be compatible. But the Real Estate Commission (REC) does not have the wherewithal to operate in this field with these attorneys. A lot of homeowners need opinions all of the time on their covenants, conditions and restrictions (CC&Rs), and the REC cannot issue a legal opinion. The homeowners get stuck and it drags on and on, which is why I strongly feel the Office of the Ombudsman needs to be at the OAG where some muscle and horsepower can ride roughshod over these HOAs. If we had the Office of the Ombudsman in the OAG at that time, we would not have this situation now.

Every year we pass something on HOAs, but we are sticking our finger in the dike every time. Every time we leave here, the attorneys look at NRS 116; they give a new opinion for their boards, they change our meaning and create a loophole so they can operate the way they do.

In 1995 and 1997, I referred to HOAs as governments. They are quasi governments; they are the government closest to the people. They have the power to set fines, collect dues and take your home if you do not pay your dues. Many times they have more power than local governments and do not have to show due process. Those are some of the things we have tried to work on.

In 1999, former Senator Raymond D. Rawson brought forth S.B. No. 192 of the 70th Session, a preamble to *Nevada Revised Statutes* 116. In those days the construction defect bill, homeowner bill was in Congress. Ex-Senator Randolph Townsend said, "Is this preamble okay with you? You are the chapter 116 guy." I looked at it and thought it looked a little squishy. I am really not into preambles, I have never done one before but I am pretty good at politics. Senator Rawson was the Assistant Majority Leader and Chair of a big committee at the time, and I pass everything at the sole discretion of a Committee Chair. Being in the minority for a decade and a half, I knew. I said it looks fine to me, let us put it in there.

SENATOR SCHNEIDER:

Let me review this with you because this is important; it is the best decision I have ever made in regard to HOA bills. The preamble goes:

WHEREAS, Planned communities are a dominant method of residential development in the State of Nevada; and
WHEREAS, Planned communities are developed for the purposes of preserving neighborhood continuity and creating desirable places to reside; and
WHEREAS, Planned communities are governed by specific rules and regulations and by unit owners' associations;
WHEREAS, A unit-owners' association is the form of self-government closest to the people; and
WHEREAS, All forms of government should follow the basic principles of democracy found in the United States Constitution and the Nevada Constitution; and
WHEREAS, Some unit-owners' associations in this state have a history of abuse of power; and
WHEREAS, Unit-owners' associations have power over one of the most important aspects of a person's life, his residence; and
WHEREAS, homeowners invest financially and emotionally in their homes; and
WHEREAS, Homeowners have the right to reside in a community without fear of illegal, unfair, unnecessary, unduly burdensome or costly interference with their property rights; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

This is where NRS 116 starts. This gave the FBI the power to come in because it is a government. The FBI's No. 1 charge is political corruption; the FBI told me that. The preamble spells out HOAs are governments. It was the door which opened and what the federal agents used to start the investigation, otherwise it would continue on and on.

People may say, oh, this is not really happening. You know the Nancy Quon story, which is just one of many. She did an elaborate scheme but has worked for every CD attorney in the State, which is where she got her training. She was not smart enough to keep her stories straight and her act together. But she enlisted retired police officers and all kinds of people to help her carry out this organized crime scheme of hers. When the federal investigation started two years ago, a retired police officer—a couple of them were involved—was questioned a few days after the investigation started. He went to Green Valley,

not far from Senator Breeden's house, and shot himself. Innocent people do not do that, especially police officers. Police officers know the truth will come out. It always comes out, so I think he knew that and committed suicide over it. That just shows you the guilt is there, and the corruption is running deep.

I will go over S.B. 185 now. I have laid the groundwork. I am requesting if you do not have a CD bill in this Committee, I will ask the Majority Leader if I can have a bill for construction defects. I would suggest this Committee process one and send it over to the Assembly. This is my last go-around. I am pretty tough; the Assembly has not treated us fairly all the time. I would suggest we shut down Committees until they process the bills and send them back to us. My Committee will be the first to shut down.

Senate Bill 185 is about HOAs and how much they control and exert authority over people's lives. As of December 21, 2010, 2,967 registered HOAs are in the State. This comprises 474,604 homes. As stated, these HOAs are a form of government that could be—if they were all put together—the largest city in Nevada. Senate Bill 185 ensures basic rights as stated in the preamble that need to be protected and preserved.

Sections 1 to 14 talk about transfer fees. Many things happen to transfer fees in Nevada. There are some people with friendly amendments on transfer fees. I am not sure if this happens yet in Nevada, but it does in some other states. Let me point this out because we want to prevent it from taking root here. The developer includes provisions in a deed that each time a unit is sold, the developer gets paid some percentage of the sales price. It goes on and on in other states. We need to be proactive and take action against it here. Some of these provisions reportedly go for up to 99 years. The law has long resisted the "dead hand reaching out from the grave to control property."

SENATOR SCHNEIDER:

Section 9 is a declaration about marketability, unreasonable restraints on transfer of property and potential defects in title.

Section 10 prohibits any new transfer fee obligations. We cannot do much with existing transfer fees except require disclosure.

Sections 11 through 14 describe how existing transfer fee obligations will be treated.

A proactive approach regarding HOA fees for services is in sections 16, 19, 20, 22, 23, 26 through 33 and 35.

Many necessary and reasonable fees are charged by HOAs. However, some are unfair and exorbitant. Some HOAs and property managers are creative in designing new fees to either defeat homeowners' rights or raise money which is not reasonable for the service rendered. Despite legislative efforts to control this phenomenon, the Legislature has always been reactive not proactive, always closing the barn door after the horse is out.

History reveals a pattern—in 1999, the Legislature responded to continuing complaints from homeowners who were being denied the right to see HOA books and records. If they wanted copies, they were charged up to \$3 per page. In response, the Legislature enacted NRS 116.31177, guaranteeing access to HOA records and limiting the copy charge to 25 cents per page. Thereafter, some HOAs began charging up to \$70 per hour to see records.

The 2003 Legislature enacted NRS 116.31175, limiting the fee to see records to \$10 per hour. This evasion of legislative intent is typical of some HOAs and is ongoing.

Similarly, NRS 116.4109 requires HOAs to furnish prospective buyers a resale packet containing important HOA documents. Some HOAs saw the packet as a source of revenue and charged as much as \$500 for the packet.

The 2005 Legislature limited the amount HOAs could charge to a reasonable fee based on the actual cost the association incurs to fulfill the requirements as directed by the Commission to establish a maximum fee and regulation. *Nevada Administrative Code* 116.465 set the fee at \$160.

Soon after, some HOAs outsourced copying to private firms, some of which charged exorbitant fees the Legislature sought to prohibit. Those HOAs argued they are not charging the fees, and that private firms are not subject to the statute. The HOAs play these typical cat and mouse games, and they play them with the Legislature.

Sections 16, 19, 20, 22, 23, 26 through 33 and 35 are proactive approaches to control the fee problem, modeling concepts used in Title 54 of NRS. Senator Roberson is the chair of the Subcommittee on Title 54, Professions,

Occupations and Businesses, Senate Committee on Commerce, Labor and Energy. The Legislature enacts the fee schedule for each board, determining what kind of fees can be charged and setting the maximum amount.

We admit HOAs are too complex to legislatively specify each type of allowable fee and the appropriate amount. But the Commission for Common-Interest Communities and Condominium Hotels (CICCH) has the time and expertise to do this. It also has flexibility to add new service fees through regulations if justified.

The Legislature still retains oversight because regulations must be approved by the Legislative Commission. This approach lets the Legislature, by delegation to the CICCH, control the fee process in advance instead of after the fact. I called for it and put it in the bill.

Section 17 is radar guns, which have always been a hot issue in HOAs. Some HOAs use radar guns for traffic control. Radar guns are sophisticated devices which require training for proper use and maintenance to ensure accuracy. Secondly, traffic regulation is a function best handled by trained law enforcement. Some HOAs have let board members operate the gun. Not only do they lack training, but these guns can be used to harass homeowners they do not like. If you are going to let HOAs be private police, at least require a minimum standard of training, maintenance and unbiased operators.

Some HOAs use the guns like this: You go out to dinner, leave your 13- and 14-year-olds at home and give them \$10 or \$20 to order the pizza. They order a pizza. The pizza boy comes in through the gate going 30 miles per hour (mph) instead of 20 mph because he has a lot of pizzas to deliver. The radar gun clocks him, they pull him over and say, "Where are you going?" He says, "I am going to deliver this to Chair Wiener's house." Okay, thank you, have a good evening. Monday morning the letter goes to Chair Wiener's house charging a \$100 fine for the pizza boy who was speeding in the complex. Maybe we need to take a look at this, but I will leave it up to you. It just upsets me a little bit.

SENATOR SCHNEIDER:

Section 18 covers rental restrictions and responsibility of repairs, which requires the declaration creating the HOA to include conspicuous, plain-English details about limitations on renting units and some type of disclosure regarding respective duties of owners and the HOA in respect to maintenance and repair

issues. Sometimes, owners need to rent a unit because of a job transfer, loss of job or inheritance of a unit. These situations may be more common and pressing in the present economic climate as the real estate market has collapsed. If the owner bought a unit to live in, they may not have much interest in what restrictions apply to potential, future rentals. Then when things change, they find they are unable to rent their unit or make payments without income from the rental. This section will help ensure potential owners know the important factors before they buy a unit; plain-English disclosure of responsibilities for maintenance helps guaranteed buyers and owners to make informed decisions about rights and obligations, and reduces the future disputes emanating from initial misunderstandings or lack of knowledge. There are some amendments on rental units in an association.

In 2005, the Legislature enacted S.B. No. 325 of the 73rd Session. Section 60 clarified the question of whether an executive board member needed to be a unit owner. Senate Bill No. 325 of the 73rd Session amended NRS 116.31034 stating, unless the governing documents provided otherwise, a board member need not be a unit owner.

In 2009, the Legislature made a similar change to NRS 116.31034 regarding officers of a HOA. Unfortunately, executive board members enacted provisions in 2005 which inadvertently changed back to the pre-2005 language. This was not intended in S.B. No. 182 of the 75th Session; it was probably a misunderstanding. I am moving to correct this. Section 21 of S.B. 185 corrects that misunderstanding and allows both executive board members and officers to serve without being unit owners, unless governing documents provide otherwise.

We have places at Lake Tahoe where residences are owned by out-of-state residents. In this case, you would not have a board unless tenants are on the board. Of course, the history is tenants are too liberal with the checkbook and want to spend money to make the association better. But it works in reverse where tenants are worried about their rent increasing, and they watch the checkbook and fees more carefully. This is why it allowed tenants to be board members; it showed they may be more conservative than previously thought.

In 2009, S.B. No. 182 of the 75th Session amended NRS 116.31085 to ensure individuals facing executive session hearings regarding an alleged violation for which the person could be fined should have certain basic due process rights.

However, we inadvertently used language which can be read to limit those guarantees to people who request an open executive hearing. Section 24 makes it clear these basic rights are available to any individual facing a hearing, not just those who request an open hearing.

Section 25 shows NRS 116.31088 as written is undemocratic. It may even be a factor in the FBI fraud investigation into HOAs. Under existing provisions, the executive board can authorize a construction defect lawsuit covering the entire HOA without prior vote of the homeowners. The executive board can throw you in front of the bus and encumber your property for millions of dollars without your approval and knowledge. *Nevada Revised Statute* 116.31088 allows a few board members to commit the entire HOA community to a lawsuit and the majority of the homeowners may not know about it or even want it.

Additionally, NRS 116.4109 requires homeowners and HOAs to disclose to a buyer of any pending lawsuit in which the HOA is involved. If the homeowner receives a job transfer or cannot make the mortgage payment and has to sell suddenly, without any choice on the part of the homeowner, the HOA and homeowner may need to tell the buyer this home is in a construction defect lawsuit. Who wants to buy a house that may have defects? Now the homeowner is trapped because of the need to sell and no one wants to buy. Although the statute requires that a ratification vote of homeowners take place within 90 days after the lawsuit is filed, note the 90 days does not begin to run from the time the board authorizes the lawsuit. The 90 days begins when legal action is actually filed in court. This could be months or years after the board authorizes the lawsuit. Meanwhile, costs for expert examinations amounting to hundreds of thousands of dollars may be incurred. If the HOA members do not vote to ratify the lawsuit, these costs come out of their own pockets, putting enormous economic pressure on members to ratify the lawsuit even if they do not want to.

The way NRS 116.31088 is written, even if the ratification vote fails, the HOA may seek to dismiss the lawsuit only if, at the time the ratification vote was held, HOA members were also asked for permission to dismiss the lawsuit. If the board fails to prevent this option at the time of the ratification vote, the suit cannot be dismissed even if members fail to ratify filing the lawsuit. It is unjust, an erosion of private property rights, to allow someone else to involve your home in legal action without first getting your consent.

SENATOR SCHNEIDER:

Section 25 provides a mechanism where an unbiased court can review alleged justification for an emergency lawsuit. If the court is persuaded there is an immediate need to protect health, safety or welfare of the members of an association, the court can apply independent judgment and allow a lawsuit to be filed without the vote of the homeowners. This process ensures someone without potential financial gain from a lawsuit makes the vital decision about whether to put the issue to a vote of the people or not.

Let me clarify: After reading some of the articles on the FBI probe, I am even getting a little nervous about this because it appears, as mentioned in some articles, judges may be involved in some of this organized crime in Las Vegas; the FBI has indicated to me it goes to the highest levels of judgeship. This is something we have to discuss. Do we allow even a judge to put you in a lawsuit? The attorneys use this part of health, safety and welfare for everything. We need to take a close look at the issue.

Sections 30 and 35 are similar to transfer fees developers collect each time the home is sold; some HOAs are charging up to 1 percent when the owner sells a home. On a \$200,000 home, the seller would give the HOA \$2,000—on top of which there are regular closing costs, i.e., broker's, title and escrow fees—for the privilege of selling the home. Especially in this economic condition when every penny is precious to the seller and many are upside down in their mortgages, these changes are unwarranted, as well as an intrusion to property rights. These fees are used to keep down dues and assessments on the remaining homeowners. Why should a person who is moving subsidize the people staying? It makes no sense. There are large HOAs in Las Vegas which are charging a big fee when you move. They take the fee, put it into capital improvements, and the people leaving are paying the fees and being penalized.

Section 32 deals with arbitration procedures. This requires an explanation of how NRS 38.300 has affected homeowners. These sections require HOAs or homeowners living in a HOA to submit certain disputes arising under governing documents of associations to mediation or arbitration before commencement of a civil action. We thought it was a good idea ten years ago. The problem is that homeowners agreed to what they thought would be nonbinding arbitration under these statutes, only to find the association was able to turn an arbitration award in the association's favor into a court judgment, including award of attorney fees.

Nevada Revised Statute 38.310 prohibits any civil action from being filed if it concerns interpretation, application or enforcement of an association's governing documents subject to chapters 116 or 116b of the NRS, unless the matter is first submitted to either mediation or arbitration. This is what happens: Homeowners go into a nonbinding arbitration, thinking it is nonbinding. If they do not like the decision, they go on their way and maybe the next step is court or they drop everything. They go into arbitration, the homeowners show up, and here comes the board president with an attorney and battery of records; the homeowners lose. In most cases, the arbitrator says this side has an attorney and all the documents and you have nothing; you have not documented your case. Then after the case, the attorney for the association goes to court and the court awards a judgment and attorney fees. The poor homeowner who wanted a decision on his argument with the board now gets hit with a bill for \$20,000 to \$30,000. It is a court order and they are in trouble. We need to address this. The intention was homeowners could get relief for their problem at basically no cost, a couple hundred dollars. You go to arbitration or mediation, you get relief and you do not go through court. The whole thing has failed; they wind up in a mousetrap.

If all parties have agreed to nonbinding arbitration, any party to a nonbinding arbitration may within 30 days, after decision or award has been served on the parties, commence civil action in the proper court concerning the claim which was submitted to arbitration. This gets too complicated for homeowners, they get buried in this. This is another reason why it would be good to put this into the OAG where homeowners could sit in front of a contentious attorney and get an answer to their problems. They would get a legal opinion about their CC&Rs or similar problem and not be thrown into these messes. With instant notification to a homeowner whether there is a violation or not, a lot of the problems go away.

In 2009, S.B. No. 182 of the 75th Session tried to remedy the trap set. Unfortunately, this accomplished an inclusion of language in NRS 38.330, requiring an arbitrator to provide all parties with informational statements regarding ... what we have to do is clean it up. Maybe the Chair and Senator Roberson could help with this. I would like to take away the ambush that waits for homeowners.

SENATOR SCHNEIDER:

There are people with amendments and concerns; I am willing to work with them and volunteer myself to your Committee. I would love to work with some of your senators and go through the bills; Senator Copening has very important bills and does a good job. I will lend my 20 years of knowledge on this issue and help with the interested parties.

Last Session, when Senator Care ordered me to meet with the parties and put together a bill, I met with Brad Wilkinson, Legal Counsel. Mr. Wilkinson came in, Scott Young joined us and we went over everything. We produced a bill which was good for the Committee. Senator Care was happy and it worked out.

I would like to say that over the years, Senator Copening, I have written these HOA bills. I want you to know if my name appeared in the Sunday paper, I would get phone calls from across the Nation, as people took the paper home with them from Las Vegas. They would call about their HOA problems from Quebec, Canada; San Francisco, California; Kansas City, Missouri; and New York City, New York. They would call with questions about HOA problems and what could I do to help them. I have gotten calls from London, England, and Australia; HOAs are a problem worldwide.

We have problems with our associations, but I found a man in London who had a unit in a midrise building. In London, those buildings are pretty old. Each unit in the building had its own CC&Rs, which created a problem for him. But this problem goes across the Nation. Because of our fast growth and the amount of homes that were built, the people who live in this State, especially Las Vegas, do not know each other. They are from somewhere else, which amounted to easy prey for unscrupulous people out to get money. This is what it is about: sex, drugs, money and HOAs.

SENATOR ROBERSON:

I want to sincerely thank you for your testimony and for shining a light on this greed and corruption as you refer to it. I know this is your last Session, but I want to thank you for your service to the State and to assure you there are others here who will continue your fight.

SENATOR COPENING:

I agree with Senator Roberson about the crime which has taken place with this one example you talked about. It is an unbelievable situation; you and I agree on

construction defects. You spoke in generalities when you went through the bills, and we all know the devil is in the details. I need you to go through the bill, point by point. It is the only way I am going to understand the language. There is questionable language, what I consider dangerous language. Just skimming through the bill does not do the justice we need for the people in HOAs. We all know we write law aimed at bad people, but we also have to write law aimed at good people. We need to protect the good people in the HOAs who are the members. These are the homeowners, our constituents. At the same time, we need to identify those egregious situations that are happening and fix them.

As you know, I try to seek balance in the bills I bring forward. In S.B. 174, some might say they were considered against the management companies, then some might say they might be a benefit to the management companies. It all comes back to the homeowners and how we are helping them. I know it becomes quite laborious, but I need to know what language is going to change, not just generalities.

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

CHAIR WIENER:

You got quite detailed at the back of the bill. I spent time last night reading this measure because you address the private transfer fee, which is the front end of the bill. I have many questions and your explanations will help the Committee understand what you want to accomplish. In this particular piece, if you could walk through the private transfer portion of your bill, and then we can see if we need to go through anything else.

SENATOR SCHNEIDER:

To address Senator Copeney, I have tried to bring balance to this over the last decade and a half and be fair. I do not want to say I am unfair because I mention some areas which are unfair to homeowners. It seems today without the Office of the Ombudsman in the OAG with a big hammer, you will have to ratchet this down because the homeowners get taken advantage of. Senator, you established good subcommittees. I do not care for some of the people in those subcommittees. They do not work in the best interest of their homeowners; they work in the best interest of their pocketbook, almost exclusively.

Maybe I am jaded after all these years of trying to do this, coming back every year and answering the phone calls. The answering machine in my home will be jammed up with people calling. I have even spoken to Mr. Wilkinson over the years getting opinions. But Scott Young, who is the policy analyst on our Committee, the Senate Committee on Commerce, Labor and Energy, is knowledgeable. I have totally abused him over the years by asking him to help me with much of this, taking calls from constituents because it becomes so burdensome. I would like to personally thank him. He is so happy this bill and Senator Copening's bill are not in our Committee. He would have taken an early retirement had we had the HOA mess in our Committee. He has been very good; he knows the issues, and I have taken advantage of him over the years. I want to put this on record. He has been my absolute go-to guy on much of this and knows this issue as well as Mr. Wilkinson does, knows all of the horror stories.

I will go over the bill with you. We took problems which repeated themselves over the last couple of years and built this bill. Mr. Young and I looked at the problems which kept coming back, and we took a stab at addressing those problems.

My secretary just handed me an editorial out of the *Las Vegas Review-Journal* ([Exhibit E](#)) this morning about the corruption of southern Nevada, where abuses of trust and public office are as common as foreclosed homes. Everyone needs to read how the abuse has tied up our whole system down there.

SENATOR COPENING:

Did you work with any experts in the HOA industry to eliminate any unintended consequences, or did you seek counsel? I pulled together a working group of 30 people, as stated in my previous testimony, because many of them were adversaries. I did not want people who were friends, I wanted people who would bring a different perspective. Homeowners were also in the working group, so there was definitely disagreement among the working group—which is the way you arrive at what is going to be best for the people. My question is who did you work with and did you consult any of the people of your choice?

SENATOR SCHNEIDER:

I pointed out unintended consequences from previous bills we put through; this always happens once we leave here and it goes back to bill drafting.

We had worked with homeowners, and we tried to address some of the issues. Even Michael Buckley from the CICCH sent me an e-mail last night; I reviewed what the CICCH has put forward. I do not know if he e-mailed you, but I do not agree with most of what he said. He is out-of-bounds in the e-mail and the positions he has taken, and I like Michael Buckley. But CICCH has gone astray; the members are not looking at things properly, especially on the exit fees charged. The homeowners pay \$2,000 to \$3,000 when they move. I totally do not agree with this, I think that is unconstitutional. Even though people have come to me with similar issues, I come with a pretty heavy hand on this. I am tired of the nonsense that goes on.

No matter what we do on any of your bills or this bill, we combine them all together in one bill. We may even do it if it makes it easier on bill drafting and the staff. I do not have any pride in authorship. But I do know when we produce a bill this Session, we will be back next Session to make corrections and find things that work and do not work. Sometimes, you need to be an advocate for homeowners, managers or whatever. I am a big advocate in this bill for the homeowners; we, at all costs, have to protect homeowners. It has gone too far the other way.

CHAIR WIENER:

If you will start on references to private transfer fees, that is a substantial part of the first several pages of S.B. 185. You have the definition in section 5 through section 13. Please explain the pieces, because there is important language based on your testimony.

SENATOR SCHNEIDER:

The whole thing is the private transfer fee, not the transfer fee from when you sell your home and the State gets a transfer fee. This is the private transfer fee. What I am trying to do is limit or eliminate it.

Page 4, section 5, subsection 2, paragraph (a) states, "the term does not include any consideration payable by the buyer to the seller for the interest in real property." We go through and spell this out, the interest charge, late fee—that is out—rent reimbursement. This is language Mr. Wilkinson helped us with. This is standard language so we eliminate all things that could be considered transfer fees. Is that correct Mr. Wilkinson?

BRADLEY A. WILKINSON (Counsel):

Correct. There are similar provisions in other states which Senator Schneider mentioned in his testimony.

SENATOR SCHNEIDER:

On page 5, section 10, subsection 1, paragraph (a) states, "a person shall not on or after July 1, 2011, create or record a private transfer fee or obligation." We realize some have been created, but what we are doing is setting a drop-off point.

CHAIR WIENER:

Page 4, section 5, subsection 2, paragraph (a) says "subsequent additional commission payable" and then paragraph (b) talks about subsequent appreciation and the value and commissions. From what you said in your testimony, this is creating a multigenerational fee requirement. It continues to trickle and trickle, a stacking of a fees.

SENATOR SCHNEIDER:

Correct.

CHAIR WIENER:

And then page 4, section 5, subsection 2, paragraph (d) says, "any fee payable to the lessor for consenting to any assignment." I call it a consent fee and do not understand; would you explain?

SENATOR SCHNEIDER:

That fee is permissible and out of the bill. We are not trying to get in the way of that fee. The rents et cetera can be transferred over as fees for running the HOA.

SENATOR COPENING:

You stated you want to limit or eliminate this fee. What section does this? It is either one or the other of this bill. Are you limiting it in a certain section or eliminating it in a certain section?

MR. WILKINSON:

Yes. That is actually contained in section 10; going forward you cannot create this as of July 1. And then if you have one which exists as mentioned in

section 10, under section 11 it has to be recorded properly in the office of the county recorder. If that is not done, it becomes void and unenforceable.

SENATOR COPENING:

The goal is eventual elimination. We know there are some processes in place, but not after July 2011.

SENATOR SCHNEIDER:

We are going forward with no more fees.

SENATOR COPENING:

I do not know enough about the private transfer fee, but do you know why it is in place? You mentioned something about developers can ask for this for up to 99 years. I had not heard of this, so I would like to see documentation. Why was the transfer fee put into place and how was it used?

SENATOR SCHNEIDER:

First of all, we have the government transfer fee where a tax is collected when you transfer your home. But the other one is put into place as a revenue generator. Some builders—and I did mention it has happened in other states, but I am not aware of a builder doing it here per se—have put them on there. I guess your grandchildren get revenue when a place sells. That is what we are trying to eliminate.

SENATOR COPENING:

Does the fee go to the association, does it go to the developer or can it go to both?

SENATOR SCHNEIDER:

When you transferred a home with a particular national builder in Las Vegas, the fee went to a nonprofit; it was the builder's favorite nonprofit, some charity he wanted to support. Every time a home sold in that subdivision, a fee was paid to this nonprofit. Some of the fees go to the association, which is what I want to eliminate, along with the developer/builder. You charge a fee and it goes to capital improvement; it subsidizes the monthly association dues.

SENATOR COPENING:

That was one of the questions, if it goes to the association—and we know the association is made up of all of the members of the association. Transfer fees in

part came about because they wanted to keep the assessments lower. Maybe one of the experts can explain this once we have additional testimony. To me, that would be very prohomeowner. It is not the greatest thing for somebody who is moving out of the community or moving in; however, the transfer fee is worked out. Initially, it may have kept the assessments low for the homeowners.

SENATOR SCHNEIDER:

It does, but it is like putting the maintenance of your association on a credit card; you keep adding to your credit card. What happens if you do not sell homes next year? The credit card bill is coming due and you do not have the money. It is a false sense of security in knowing your association dues are low.

Years ago, I proposed a bill wherein a builder can subsidize the association dues through the sale process, and many builders do. Until the builder leaves, the dues are only \$50; after the builder leaves, they are \$250. The builder has subsidized them to keep everything looking nice while he is selling. We made them disclose the seller is subsidizing it, and it is in the disclosure.

Let me give you an example: There was a townhouse in an HOA in my district years ago. The homeowners called me because we had passed a new version of NRS 116. They wanted me to bring them up to speed. They had a nice-looking HOA, grass looked nice, etc. I took my time and looked around. All of the homeowners and myself sat at the pool and I said, "So, what are your dues?" They were \$65. I looked around and said, "You have shake roofs; they are going to have to be replaced shortly," and they agreed. The sprinklers were hitting the stucco and it needed to be redone, painted; the sprinklers needed to be moved out five or six feet away from the buildings. I looked at the asphalt in the private streets. I said, "It looks like they need at least a new slurry coat or some of them need to be replaced," and they agreed. I told them by just ballpark costs, you need about \$2 million worth of improvements done. They said that was right. I asked how much they had in the bank, and they said around \$200,000. I told them they were bankrupt; you cannot do your repairs. Now they are feeling bad; they said they worked hard to keep the dues low. I said, "Yes you have, and you need to be complimented, but by keeping your dues low, you have been fiscally irresponsible. You have not funded your reserves."

Which gets to your point, Senator Copenig—keeping those dues low and relying on home sales to fund the association is irresponsible. I could never support it, I own rental properties. I would never operate in a similar manner. You have to have a plan going forward. It is not on the “if come.” What happens when those properties are foreclosed and linger for a bank to hold for two to three years? That is no way to run an association because you are not getting the dues while they are under foreclosure. Maybe two to three years down the road you will get a transfer fee.

SENATOR COPENING:

Where I get confused in the bill is in some other areas. You are taking away revenue from the association, such as charges for documentation which is now in the bill. You continuously take away revenue from the association which means the homeowners have to pay more.

SENATOR SCHNEIDER:

If you do not watch the associations, the fees go up; \$3 to \$3.50 per page for a photocopy, we limited that to 25 cents. We have done things to try to cap the fees. The management company says we need fees to operate. Not really, those fees are clerical work. The homeowner management company needs to charge more per door. Instead of charging \$5, \$6 or \$7 per door, maybe they need to charge \$10 or \$12 per door, which is a realistic cost that covers everything. Everybody participates that way, and they pay a fair fee. When you get your documents, here they are. It is part of what your monthly assessment covers. It is a way to operate a business that is more fair.

CHAIR WIENER:

We will work through your bill as you continue to explain, so we have clarity with your intent and why you had it drafted this way.

SENATOR SCHNEIDER:

It is drafted this way by our staff.

CHAIR WIENER:

But you are the one who came up with the ideas. Our able counsel crafted it legally to address what you wanted to include. Is there something else you want to explain?

SENATOR COPENING:

On page 8, section 14, subsection 1, where you say a private transfer fee obligation may lower the value of this property. Can you tell me why you think having a fee would lower the value of the property?

SENATOR SCHNEIDER:

This is a buyer beware. You are paying a fee the house down the street does not pay. It may affect the value of your property. You may be buying into an association which may have excessive fees and you need to be aware because the same style house down the street may not have those fees which go on forever. If you weigh both houses, both houses being pretty much equal, maybe the one with the big fees is not worth as much money.

CHAIR WIENER:

On page 5, section 9, I do not remember the declaration from the Legislature. Would you explain what you mean when you talk about the marketability and transferability, free of defects in title or unreasonable restraints on the alienation of real property?

MR. WILKINSON:

It is a statement of the Legislature's public policy with respect to the sale of real property. It is reaffirming a principle; generally any kind of restraint on the alienation of property is disfavored by law. You are supposed to be able to sell your property; you own it, you can sell it, and anything that affects its marketability is frowned upon. Certainly, there are exceptions, but this is a statement reaffirming the general policy. The Legislature views establishing something like this as a restraint on the alienation of property and something which discourages the sale of property. Therefore, it violates the public policy of the State.

CHAIR WIENER:

Is this included in other states' legislation?

MR. WILKINSON:

It is a common provision you see in other states. Typically, when a statute provides something that violates the public policy of the State, you will find a previous statement of the public policy of the State and why something violates it. This is set forth in a number of places in the NRS relating to employment discrimination, etc.

CHAIR WIENER:

It makes a statement the way we do with preambles within the context of the issue at hand.

SENATOR SCHNEIDER:

On page 9, section 16 talks about the fees which may be charged or service provided by the unit owner or tenants; the maximum amount of fee charged should be established in statute by regulation adopted by the Commission. I mentioned it earlier and I am taking a blind leap of faith because I do not agree with everything the Commission does. But we have to make the system better where we in the Legislature do not have to deal with every little fee in these associations when we see them get abusive. They have the ability to do it right, then it comes back to the Legislative Commission for approval. The Commission can then send it back and say no, you did not do it right, we do not like this. Section 16 is an important piece.

CHAIR WIENER:

We pass statute, whatever it looks like, and if it involves an agency, they develop regulations that help implement statutory language. Those regulations are presented to the Legislative Commission, which is a body within our body, that meets during the interim and sometimes when we are in session. One of the Legislative Commission's primary responsibilities is to review regulations. Significant to that over the past many years is to ensure they meet legislative intent, which, for the record, Senator Schneider helped establish.

SENATOR SCHNEIDER:

In section 17 regarding radar guns, you cannot give a ticket unless you are qualified to use the radar gun. The radar guns are controversial. Senator McGinness probably does not have those in the associations in Fallon. We do have some big associations in Las Vegas—Red Rock Country Club, McDonald Ranch—where people get going pretty good speeds when they are coming down hills. I heard about one in Red Rock Canyon where a man was driving his Ferrari or Lamborghini over 100 miles per hour in a HOA. We need to slow people down, but things do get abusive with these radar guns. In the above instance, you would call the police.

SENATOR COPENING:

On page 9, section 16, subsection 1 says "an association shall not impose or receive a fee ... for any good or service provided to a unit's owner," that these

fees must be adopted by a regulation of the Commission. What about in a situation of a gate clicker or transponder? A wide variety of these, depending on which one the association chooses to use, could be of a different cost. But they all charge for the good when a resident comes into a gated community. Would you require the Commission to know all gate clickers that exist? How would you get around it when it says right here all goods and services must be set by fees?

SENATOR SCHNEIDER:

Let me say maybe business has to change in those. I have a home in another state in an association. We have clickers which open the gate; we are given those at no cost. If our clicker does not work, we take it back and they replace it. It is included in the dues. Every so often, they change the receiver on the gate and give us all new clickers. Or we get a clicker and reprogram the automatic door opener in the car. Maybe associations have to look at those instead of being so cheap. They could say every year, we are going to replace so many automatic clickers; and every five years, we are going to replace the transmitter and everybody gets a new clicker. Maybe it is built into your monthly fee, then you reserve for it, which seems reasonable.

SENATOR COPENING:

I would ask you to think about situations where you have a transponder which costs \$50 to purchase; you have a family of four wherein each person has a vehicle versus a family with one. You have \$200 in transponder fees versus \$50. The other argument asks whether it would be fair for the single person with one transponder to have to carry the weight of the family of four. That is the reason some of the individual fees exist.

SENATOR SCHNEIDER:

In this case, everybody gets two or three additional transponders for whatever they cost. Is it a revenue thing? What I found in many of these associations is a revenue generator; we are making a profit on everything. I do not think it is right.

On page 15, in section 20, we have eliminated "impose reasonable fees not to exceed the amounts authorized." We are trying to eliminate many fees.

Page 26, line 39 addresses governing documents and whether the person sanctioned for alleged violations has requested in writing that an open hearing

be conducted. Homeowners can request an open meeting at any time. Over the years, this stems from homeowners across Las Vegas Valley who are so upset with fines and their treatment by an HOA that they want me to come to their board meeting to see how they are treated. When the HOA sees me, they close the meeting and do not let anybody in. They make it private and fine people without due process. You can go to a meeting with a constituent and watch the lack of democracy at work.

On page 28, section 25 has to do with civil action.

SENATOR COPENING:

You talked about construction defects; is construction defect the only kind of civil action an HOA can take? Do other civil actions prohibit them from taking any other action?

SENATOR SCHNEIDER:

No, not that I am aware of.

MR. WILKINSON:

No, that is true. This is not phrased in terms of whether it is a construction defect case or not. "Regarding a civil action to protect the health, safety and welfare of the members of the association" is the provision under which most constructional defect cases are filed without prior approval. I am not sure what other kinds of cases might have been brought by an association other than those; there may well be some.

SENATOR SCHNEIDER:

Maybe you can take action against your gardener, tree trimmer or something like that.

Page 36 has new language on section 30, subsection 8, "the association may not charge a unit's owner ... [or] require a unit's owner to pay, any fee related to the resale of the unit" This refers to what we have talked to before on the different fees such as the transfer fee. Also, "the Commission shall adopt regulations establishing the maximum amount of the fee that an association may charge for transferring the ownership of a unit."

On page 41, section 32, subsection 5, paragraph (a) says, "a party to the nonbinding arbitration is not liable for the costs or attorney's fees incurred by

another party to the nonbinding arbitration." We are trying to eliminate the "gotcha" thing, a loophole in our law. We want people to work things out in mediation or arbitration ahead of time so they do not get caught up in court; we need to make it easier.

SENATOR COPENING:

I would like to hear from other people who are closer to this issue to see if there are any unintended consequences which may come with it. It is muddy to me.

SENATOR SCHNEIDER:

I would be open to making the whole process easier if we want to create a new process where homeowners could get answers to their disputes quickly and it does not require a big process. That was the original thing with mediation and nonbinding arbitration. It is not working the way it should. If this process was put into the OAG, much of it would be cleaned up real quick. I have a problem with contingency fee attorneys.

I will volunteer my time to sit down and go over this. Senator Copening had mentioned making a matrix and comparing the bills. I will also volunteer Mr. Wilkinson's time.

KEITH MUNRO (First Assistant Attorney General and Legislative Liaison, Office of the Attorney General):

Our office has met with Terry Johnson, Director, Department of Business and Industry, and Senator Schneider. We are committed to working with Senator Schneider in determining the problems. He has identified many of them with respect to this legislation: what is broken, how our office can work with them and what the appropriate role is for our office.

SENATOR COPENING:

Can you share any particular thoughts with us because we do have to make decisions about legislation based upon this and whether or not we would choose to move it to the OAG. When could we expect to hear back from the working group of yours to know whether there will be a fiscal note, etc.?

MR. MUNRO:

I would assume some members of this Committee will be on the working group when it starts to whittle down language. I noted some of Senator Wiener's comments about having to particularize things with respect to this bill. As it

starts to develop, we will weigh in on any fiscal cost and the appropriate role for our office.

CHRIS FERRARI (Concerned Homeowner Association Members Political Action Committee):

I represent Concerned Homeowner Association Members Political Action Committee (CHAMP) in support of Senator Schneider's bill. He is addressing some of what we believe to be the biggest consumer abuses that occur in the process. We strongly support the cap on private transfer fees, understanding the concerns of Senator Copening and ensuring sufficient dollars to continue to operate.

Additionally, we will be working with Senator Schneider on a number of items. He was kind enough to meet with us on Monday to discuss issues that can make this bill even stronger. There are a few references throughout the bill with regard to fees which defer to the Commission for Common-Interest Communities and Condominium Hotels per Senator Schneider's comments, and we also want to consider putting those fee options in the Real Estate Commission. This five-member board appointed by the Governor looks at fees.

The CHAMP has met with Attorney General Catherine Cortez Masto on many occasions to make her aware of our concerns as they pertain to consumer protections; she has continuously expressed a significant interest in this issue. We will continue to provide a formal amendment to Senator Schneider after working with him further and discussing matters.

NORMAN ROSENSTEEL (President/CEO, Associated Management, Inc.):

We are an association management company that manages approximately 24,000 homes in northern Nevada. In looking at Senator Schneider's bill, there is a need for a lot of clarification, particularly in sections 2 through 14, as well as section 16.

Section 16, subsection 1, paragraph (b) says "if the maximum amount of the fee ... has not been established by statute ... , the actual cost to the association or community manager of providing the good or service." As a community manager, if we only charge the actual cost of providing the service, there is no profit and we cannot stay in business doing things at cost.

In Senator Schneider's opening remarks, he makes it sound like organized crime is taking over the association industry. As a 25-year member of the industry, I disagree.

PAUL D. HERSHEY (General Manager, Caughlin Ranch Homeowners Association):
I would like to give a little bit of our background, and some of the things I am going to say today are not intended to be derogatory.

I am new to the State. I have practiced in four other states: Virginia, North Carolina, South Carolina and Georgia. I have worked with U.S. Senators Jim DeMint and Lindsey Graham about the private transfer fees which have gone to Fannie Mae and Freddie Mac. The language in your bill is neither consistent with what is going on with the federal government nor with the Federal Housing Financial Agency (FHFA) on private transfer fees. The due diligence for this bill needs a relook.

Second, this bill is full of holes. While we have addressed some issues, we have not addressed everything in depth. When you look at section 17 regarding radar guns, if you believe in the National Institute of Standards and Technology, a 10-to-1 ratio is required for calibration. It is a self-calibration; you hit it with a tuning fork and it gives you mileage. I have been on the other end of this where people driving through HOAs have hurt children by speeding. This bill does not address the qualifications of the standard on who is using the gun. When you have privatized roads, the law in the State cannot address the issue of speeding. This law basically says if I go through the ArrowCreek gate and run 100 mph from that gate to my house, the only way to validate the speed is to set up a high-speed chase.

Put together a committee the way you did with S.B. 174 with all parties concerned. The CC&Rs are not written by associations, they are written by the developer in 99.9 percent of the cases. When you look at the ambiguity of this bill, the due diligence needs another look.

SENATOR ROBERSON:

I would follow up on your comment regarding transfer fees and how federal law looks at these differently, at least from your experience in the Southeast compared to what is represented in this bill.

MR. HERSHEY:

I neglected to add I was chairman of the Legislative Action Committee for the state of South Carolina for six years with Community Associations Institute (CAI). If you look at the history, what took place with Chicago Title Insurance started the ambiguity about the private transfer fees. The address of the third-party administrator or developer gets money from a transfer while all of the positions are negated; we all recognize that it should not happen. Many communities throughout this Country use transfer fees to fund their capital reserves. Kiawah, South Carolina—where they are going to hold the Ryder Cup in 2012—assessments are going from \$4,000 to \$26,000 if transfer fees are not allowed. We realized what was going on and we addressed it; if the transfer fee was helping to hold assessments down for members in the association by funding the capital or reserve or something along those lines, then we wanted to move forward.

Before I came to Nevada, my Committee met with U.S. Senators DeMint and Graham and started addressing it because Fannie Mae and Freddie Mac were on board with doing away with the private transfer fees. The new FHFA is now saying the community association transfer fees are not affected by the proposed rule to do away with capital transfer fees.

We did find that everything is on a case-by-case basis, but anything dealing with the property values did not deter from the property values at all. The assessment was also done by Freddie Mac and Fannie Mae.

The other interesting thing from an outsider is when we start talking about fees, most of the fees generated by associations are normally voted on by the board elected by the membership. This is my second session since being in the State, and I have listened to some of the information disseminated to this group. The inaccuracies are enlightening because 95 percent of the people living in community associations like what they have; 5 percent do not.

When you pass a special assessment, you either have to pass it at a two-thirds vote or higher; that is more stringent than required. It is all voted upon.

A committee, or something to do the due diligence all the way across the board, needs to be looked at. I recommend tabling this bill, putting together an ad hoc group and moving those issues forward.

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DANIEL M. HART (Fenton Grant):

I represent the law firm of Fenton Grant, Las Vegas. We would like to register our opposition to section 15 of S.B. 185, which creates a standard difficult to meet. The first instance requires over 50 percent of those members of the HOA to vote—a standard that cannot be met. We urge you to excise that part of the bill.

FAVIL WEST (Commission for Common-Interest Communities and Condominium Hotels):

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

CHAIR WIENER:

You signed in for and against the bill; what can you support?

MR. WEST:

Depending on how you look at the radar guns, if you take our addition regarding gated communities, we could support that end of it.

CHAIR WIENER:

You would support the amendment you are providing?

MR. WEST:

That is correct. Bringing back the fact a HOA does not have to have all homeowners, we support a few areas that run back to the previous law. In certain cases; as with the litigation the Senator brought up, we need limitations.

Our problem in trying to figure this bill out is confusion; we spent a number of hours going over it. It requires some work so we can understand it.

CHAIR WIENER:

Was the litigation part the nonbinding arbitration portion of the measure?

MR. WEST:

That is correct. One other thing, people do not understand nonbinding arbitration. I was a member of the American Arbitration Association for 13 years. It needs to be defined so the regular homeowner, who the Senator is addressing, will understand it.

GARY LEIN (Commission for Common-Interest Communities and Condominium Hotels):

I am a certified public accountant (CPA) representative on the CICCH. Section 16, subsection 3, paragraph (b) and section 30, subsection 8 deal with actual costs. The issue to realize is the different sizes of associations and not one size fits all. In section 30, subsection 8 deals with the transfer fee. The language is difficult; it says a fee must be based on the actual cost the association incurs to record the transfer fee of the ownership of the unit, and the Commission shall adopt regulations establishing the maximum amount of fees the association may charge for transferring the ownership of a unit. The key is the actual cost. How do you define it? Is it the recording fee plus the labor cost, burden, insurance, copying costs; how do you define actual costs? The Commission would be charged with establishing the maximum amount, but only the actual cost could be charged and passed on to the unit owner. Will a number of homeowners challenge actual costs, leading to affidavit filings and a burden on REC?

As it relates to section 16, subsection 3, paragraph (b) again deals with the actual cost for the good or service. Senator Copeney has already brought up a valid point relating to the transponder and the cost. Is it the actual cost of the transponder plus the administrative costs for handing out that service? Senator Schneider talked about passing on these costs to all the unit owners. It should be a cost paid for by the person utilizing the service.

In my practice as a CPA, I am seeing associations struggling financially. There are over 30 percent to 40 percent delinquencies in many of these communities, there is deferred maintenance occurring and there are reserves becoming underfunded. The deterioration of these associations will have a long-term effect on our community. Will putting a bigger burden back on the individuals paying their assessments make the matter worse? The person utilizing the services should pay for the costs; yes, they should be reasonable and fair, but it is inappropriate to pass on those costs to unit owners who are not utilizing the service.

JONATHAN FRIEDRICH:

I applaud Senator Schneider's repeated statements about moving the Office of the Ombudsman to the OAG. It is much-needed. The subject remains how it is funded or is this to be an additional financial burden on the OAG. Every door is paying \$3 per year to the REC. Those monies could be transferred to the OAG,

and if more money was needed, it could be raised \$2 per year; a \$5 per year charge is not burdensome.

There are many references to regulations to be created by the CICCH in this bill. I have witnessed how this Commission has acted in the past. It gives preferences to members of the HOA industry over homeowners and takes time to create and adopt regulations and allows some members of the Commission to be overly generous by wanting to set higher rates for management and collection company fees at the expense of the public living in associations.

This bill will be a bonanza for the attorneys and management companies that service the HOAs. The bill is supposed to protect unit owners which the Commission has failed in a number of areas. One of the major concerns is the elimination of caps on charges an association or the manager can charge for documents and the hourly charge an owner pays to review the books and records of the association. If left to a management company or a board trying not to be transparent, costs will be set so high no one will have access to these documents.

What if the Governor decides to eliminate the CICCH? Then what happens to the regulations set into place? Who will set the fees? On the flip side, a number of sections in S.B. 185 go a long way to correct the abuses perpetrated upon homeowners.

On February 24, I presented the members of your Committee a binder with examples of some of the abuses that take place against homeowners. This bill goes a long way to stop the arbitration trap and make much-needed changes to NRS 38. Transfer fees are all but eliminated. The use of radar guns is once again to be prohibited.

I sent you a copy of an e-mail from the American Arbitration Association ([Exhibit G](#)), of which I am an arbitrator, not an attorney. I have circled the sections that apply to this subject.

There is also a copy of the Rules Governing Alternative Dispute Resolution adopted by the Supreme Court of Nevada ([Exhibit H](#)). The bottom paragraph talks about arbitrators having a cap of \$1,000 placed on their services.

I will read from my written testimony ([Exhibit I](#)). Fees would be left up to others to set. If associations or management companies do not want a homeowner to access these documents, these prices would skyrocket. I recall in another session, Senator Breeden questioned the 25 cents as too high compared to what you can get a copy made for at a place such as Kinko's.

RON BRADY:

I am in support of sections 1 through 14. Excessive fees run into section 16, where I am against lifting the safeguards setting the rate of \$10 per hour to review the records along with the 25 cents per copy. Owners should not be punished for wanting to find out about the association and its records; exorbitant fees could punish the people for wanting to look at them.

Section 32 will put a cap on the fees of an arbitrator who can charge for each party to share the cost of the arbitration fees. Having each side pay its own legal fees is much-needed, as I too have been a victim of the arbitration trap. I had my car illegally towed and wound up in arbitration. I was ambushed as many people are when they get into the arbitration process. I went into the arbitration expecting fairness, being able to tell my side of the story. I thought it would be simple. You hear about arbitrators hearing each side of the story. At the end of the yearlong process, along with legal maneuvering between the arbitrator and attorneys, I had no standing. I ran up over \$16,000 worth of costs because I was not the actual owner of the property from where the vehicle was towed. I was never able to tell my facts, which goes back to the beginning of the trap where a person should go into arbitration and tell everything. When you involve attorneys and arbitrators doing everything, I understand you need to follow the law; I support that, but something in this needs to be changed.

HEATHER SPANIOL:

I have been harassed by the HOA for three years. I have been a homeowner for 11 years, of which the first 8 years were amazing. I never had an issue until this third house I now live in. It started the day I moved in and has not stopped.

In section 16, the new language must be removed; there is no explanation of how actual costs are determined—very dangerous for the homeowner.

In section 19, we already have language clear enough. This allows runaway fees for attorneys.

Section 20 does not place caps on fees and leaves it up to the association—very dangerous for the homeowner.

Section 25 allows more billable hours for attorneys with the application. It is hard enough to file against a HOA if you have a dispute, if you feel you have been wronged. We all know this is the same as a motion. The people who put these together do not think highly of the public.

Section 32 is a great step in stopping the arbitration trap, but it needs to be clarified when two parties each pay half. It needs to be capped at \$750. This gives the arbitrators no incentive to go after HOAs, and it does not break homeowners as well.

Section 33 lets the CICCH set rates, giving the Commission the power. It has already been generous to the community association managers and the collection agencies; this gives it more power.

In light of the FBI probe involving 75 to 100 judges, attorneys and policemen and the \$1.3 million scandal involving the Internal Revenue Service and the Sun City HOA, a gentleman involved in the scandal was here earlier speaking on behalf of HOAs. Do we really want to give these people more power than they already have? To the CAI, HOA board members and everyone else who loves their HOAs, I am not sure all of you have stated your opinion; I know Senator Copening has, she loves her HOA. If you guys love your HOAs so much, why would you spend hours upon hours making change?. It just does not make any sense. If it is so great and you are so happy with it, why would you waste your time trying to change it? It does not make a whole lot of sense to me, why would you change something you love?

Why are there so many negative bills and a little bit of positive? It is like we will give a little bit of positive, but then we incur all of these fees with it.

The more power you give the boards, attorneys and management companies to harass the homeowners, the harder you are making it to sell your home later on. Boards change. Everyone who is friends with their boards right now, you might not be next year.

Senator Copening, you were quoted in the news stating S.B. 174 has many homeowner-friendly items. I do not know what to say about that because the

costly, outrageous negative measures in S.B. 174 highly outweigh the positive. I cannot believe that was even said.

All of you work together; you are friends. I hope you do not pass this bill just because you spent so much time on it. It is harmful, not only to the homeowners but to everybody up there. When you want to sell your house, it is a selling point to not have a HOA. I will never buy a house with a HOA again.

The people lucky enough to stand up and fight for themselves have money careers or they have had money. So many low- and middle-income families are not here because they do not know about this meeting. They do not have the money to spend; they are worrying about paying their gas bills, electric bills and HOA fees.

It was in the news this morning that over 50 percent of houses in Nevada are either in foreclosure or on their way to foreclosure or have lost value. So keep giving associations more power because, guess what, the rest of us are going to lose our houses as well.

I am sick of feeling I have a landlord. I am sure everyone else is too. The scariest thing—as homeowners, as a citizen in this community—is we have nobody. The judges and lawyers are all being probed right now, who do we have to go to? We have this Committee. I beg of you to not pass these bills without making drastic, major changes.

MICHAEL SCHULMAN:

I am an attorney here representing myself. Our law firm represents in excess of 500 or 600 homeowners' associations. I teach for the Office of the Ombudsman; I also teach certification classes for the State for new managers. I had the honor of serving on Senator Copening's group with respect to S.B. 174.

I have a number of issues with this bill. I did send you a letter which set forth most of them. The problem is the bill is not written well enough for any of us to understand. While I rarely agree with Mr. Friedrich, I do respect him. He and I agree this bill would increase attorney time a lot.

Basically, the three transfer fees that Senator Schneider is trying to distinguish are not explained. The federal government is trying to outlaw the first one that

Mr. Hershey spoke about very eloquently. We all agree the kind of fee that goes to developers or their heirs should be outlawed. In fact, the federal government will pass a bill to that effect. If you do not know, they are working on it. One of the other things they fear is that those kinds of fees would be bundled and sold on Wall Street as an annuity.

The second type of fee is the one discussed by Commissioner West that my client as well as his HOA passed: an actual fee paid to the association upon the sale of a unit. We have senior communities, just as Commissioner West's community, where 5,500 people actually voted to put this fee in their governing documents. It should either not be outlawed or the State should come in and change what a group tries to do by 67 percent or 75 percent. The language is so confusing. It is described somewhere as a transfer fee. Other language says an exception for assessments, then the words "asset enhancement fee" appear somewhere. In his last bills, Senator Schneider used to try to cover this. We have a number of communities where homeowners actually vote to change their governing documents. It is not like the board chooses to do this; it is to prevent little old ladies from literally losing their homes due to assessments.

The third transfer fee is not discussed very well in the bill.

In section 17, the radar gun has been hit to death. Senator Schneider gave the example of trying to find the pizza boy. If he would acknowledge what his bill was last time, we can no longer do that. The last bill he had passed says we cannot fine an owner for service providers who break those rules.

The second thing he said is the police will actually come in and take care of it. Policemen will not come into gated communities. Therefore, if this passes with the language, we will ultimately have the death of a child and be back here and changing the law.

The third thing I want to talk about is sections 22, 23, 26 and 27, which talk about fees. Everyone up here seems to think this gives unlimited fees. I read the bill as Senator Schneider, eliminating the ability to get copying costs, not fees, or hourly fees for someone reviewing records. It has been well said by many people; why should I have to pay if someone else wants to go in and review the documents, numerous times? A substantial amount of testimony from the president of Caughlin Ranch last Legislative Session was in regard to this.

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The final thing is section 25, which is obviously the bill. For different reasons, people have said they do not want this to pass. I like to call a spade a spade. This is Senator Schneider trying to eliminate construction defect cases. He knows if you are required to get 51 percent of the vote of the owners, it will not occur. He has passed legislation which does away with quorum requirements for the most important things owners do, which is to elect the boards. We will never get the vote—it is not because people do not want to go forward—because of apathy. I suggest that section be deleted to eliminate the issues raised about people having to go to court to get permission.

CHAIR WIENER:

The hearing is recessed until 8 a.m., March 10. The meeting is adjourned at 10:57 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 185	C	Senator Michael A. Schneider	<i>Las Vegas Review-Journal</i> "Federal probe into valley HOAs broadens," March 6, 2011
S.B. 185	D	Senator Michael A. Schneider	<i>Las Vegas Review-Journal</i> "Attorney at Heart of HOA probe faces several legal battles," March 6, 2011
S.B. 185	E	Senator Michael A. Schneider	<i>Las Vegas Review-Journal</i> Editorial – HOA abuse March 9, 2011
S.B. 185	F	Favil West	Written Testimony
S.B. 185	G	Jonathan Friedrich	American Arbitration Association E-mail
S.B. 185	H	Jonathan Friedrich	Rules Governing Alternative Dispute Resolution
S.B. 185	I	Jonathan Friedrich	Review and Comments