MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
April 13, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:11 a.m. on Wednesday, April 13, 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 Steven A. Horsford, Clark County Senatorial District No. 4
Assemblyman Jason M. Frierson, Assembly District No. 8
Assemblywoman Dina Neal, Assembly District No. 7

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Michael E. Buckley
Pamela Scott, Howard Hughes Corporation
Karen Bennett-Haron, Las Vegas Township Justice Court, Department 7, Clark County

Tierra Jones, Deputy Public Defender, Clark County Public Defender's Office
Orrin Johnson, Deputy Public Defender, Washoe County Public Defender's Office
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada
Kristin Erickson, Nevada District Attorneys Association

CHAIR WIENER:
I will open the work session with Senate Bill (S.B.) 174.

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

LINDA J. EISSMANN (Policy Analyst):
Senate Bill 174 was sponsored by Senator Allison Copening. The bill was heard by this Committee on February 24 and 25. I will read from the work session document on S.B. 174 (Exhibit C). Since the hearing, we received four documents from Senator Copening's working group that have been referenced several times.

SENATOR ALLISON COPENING (Clark County Senatorial District No. 6):
For the amendments that the working group has put together, I would like to invite Michael Buckley and Pamela Scott to make the presentation. Look at a document that Ms. Eissmann put in the work session document, page 16 of Exhibit C. When we went through S.B. 174, the working group put together a supplementary document explaining all of the sections we were changing and what they meant. After the hearing, we had about two inches worth of amendments. My assistant took every amendment and recommendation and put it underneath each of the sections. On section 1, you will see an amendment from Angela Rock, John Leach, Jonathan Friedrich and Gail Anderson, Administrator, Real Estate Division (RED), Department of Business and Industry. Then this document went back to the steering committee of the working group to consider these amendments and make recommendations. We continued this process to make sure it was fully vetted.

Many of you are aware of the situation of Paradise Spa in Las Vegas. That is the older homeowners' association (HOA) that was raided. This is something that Senator Roberson, Senator Breeden and I have been involved in, and former Senator Bill O'Donnell testified; he sent me an update at 8:12 a.m. The reason

I wanted to share this was it comes back to the provisions in S.B. 174 and how important it is to protect homeowners from bad things happening. Senator O'Donnell said the situation there was an investor who bought up the majority of the units—261—so the investor had control of the majority of the board. He got himself on the board as treasurer, stopped paying his assessments—almost $1 million these past few years—and broke the HOA.

Senator O'Donnell said he was able to talk to the gas company and get an extension from the past due bill from being payable on April 8 to April 18 because this investor also controlled all of the natural gas meters—everything is on one meter. Senator O'Donnell said the HOA's insurance bill of $42,000 was due yesterday. He said the premiums and deductible had increased because of all the problems caused by this investor, and the board did not have enough to pay it. He said all of the board members are volunteering their time to do whatever it takes to keep the place running. This investor's assessments and everything he owes for the month totals $41,760. As of yet, it is unpaid. Senator O'Donnell said the HOA is okay now, but it is going day by day. The HOA is broke, and who knows what is going to happen.

The majority of residents who live in the units are senior citizens. I have been in touch with Gail Anderson with the RED to prevent these people from being put out on the streets. Former Senator O'Donnell said there is nothing more we can do right now, but I hope the HOA can hang on. Many of the provisions in S.B. 174 are to help HOAs against people like this investor.

MICHAEL E. BUCKLEY:
I will read from the work session document on page 7 of Exhibit C, the proposed amendment for S.B. 174 submitted by Senator Copening's HOA working group, April 11.

In section 4, subsection 5, paragraph (a), change language from: "The association may, but it not" to "is not required to ..." rather than force the association not to have an election. The proposal is to allow the association to take advantage of not having to have an election but have it if it so wishes.

Section 4, subsection 5, paragraph (b) is where if there are only enough nominated candidates to fill the vacancies, these people would be elected to the board. This states when the term begins. Section 4, subsection 10 is where the association would retain cumulative voting.

On page 7 of Exhibit C and page 13 of the bill, lines 8 and 14, section 5, subsection 2, paragraph (a) is to change the time to 90 days. On page 7, section 6, subsection 1 of the proposal is that the entity must accept the wall "in writing." We also had a proposal to change the word "governmental entity" on page 14 of the bill, line 22 to "another person"; instead of referring to a governmental entity, we should just refer to a person.

The proposed amendment on page 7 of Exhibit C, page 14 of the bill, line 27, is to delete "unit's owner" and replace it with "the owner of the real property on which the wall is located." That reflects it might not be the unit owner that owns the property, it might be owned by somebody, for example, the HOA.

On page 7 of Exhibit C and page 22 of the bill, section 10, line 36, which is the insurance section, we want to add the words "and subject to reasonable deductibles." That would authorize the HOA to have reasonable deductibles by statute. You see some technical language on page 7, a bracket around "all" and also the brackets around "or, in the case of a converted building, against fire and extended coverage perils. The total amount of." Those changes come from the Uniform Common-Interest Ownership Act and more accurately describe this kind of insurance. This makes it clear there is no difference about the use of the building, but it has to be maintained in terms of the kind of insurance.

At the top of page 8 of Exhibit C, the proposal is to change the word "liability" to "commercial general liability," which is the term used in the industry. That comes from the Uniform Common-Interest Ownership Act. The proposal amends section 10, [sub]section 2; there are some deletions you can see and the new language on page 8 of Exhibit C reflects language from the Uniform Common-Interest Ownership Act, which makes it more clear in terms of how it is describing the property.

On page 8 of Exhibit C, section 10, [sub]section 3 deletes the reference to mail and says "given" because the law states elsewhere how the notices are to be given.

On page 8 of Exhibit C, the proposal is to delete subsection 3 of section 11. To clarify, the proposed amendment affects page 24 of S.B. 174 by deleting subsection 3, paragraph (c), lines 22 through 24. This identifies how an association can invest its funds. On second look, the language was more broad

than people felt comfortable with. The proposal is to delete section 12, subsection 6 and leave existing law in place.

In section 14, subsection 3, paragraph (e), subparagraphs (1) through (3) are changed in Exhibit C, so our proposal is to not follow the proposal in section 14. The language on page 29 of the bill, subparagraphs (1) through (3) are limitations if an association permits electronic transfers; subparagraphs (1) through (3) are the requirements or the formalities the association needs to go through to authorize these electronic transfers. I know the Commission for Common-Interest Communities and Condominium Hotels (CCICCH) supported these subparagraphs (1) through (3) as you will see in section 11, subsection 3, paragraph (c) of the bill.

Section 15 follows on another page. Section 16, which is on page 31 of the bill, has a proposal to delete subsection 2 because the crime of harassment is under *Nevada Revised Statutes* (NRS) 200; the thought is to not add a criminal statute into NRS 116.

On page 33 of the bill, lines 35 and 36, there is a slight language change to section 18, subsection 3. Members of the executive board are not personally liable to victims of crimes occurring within the common-interest community. It is basically changing the word "property" to "common-interest community."

The proposed amendment would delete section 18, subsection 4, paragraph (d), on page 34 of the bill, lines 3 through 5. The intent was to move language, not to change it.

The proposal on page 9 of Exhibit C for section 4 of the bill adds the capitalized words that nominated candidates' disclosures would be made available to any unit's owner. This is the situation where the nominated candidates are only enough to fill the vacancies, so the ballots with their disclosures do not go out. This would require the HOA to make those disclosures available to all unit owners without charge upon request.

On page 18 of S.B. 174, section 8, line 36 deal with the situation which would permit an HOA to not notify everybody of an executive session of the board since the units' owners are not entitled to attend a meeting in executive session. This new language would make it clear that the normal rules dealing

with executive sessions still apply and that the board would have to disclose this at its next meeting.

Our proposal would delete the language in section 9, lines 32 to 35 on page 21 of the bill that addresses what an HOA can discuss in executive session. The proposal is to remove the ability to discuss the physical and mental health of managers, as that would be an invasion of privacy or perhaps violate privacy laws.

On page 29 of the bill section 14 was probably incorporated into S.B. 30. But the way the bill is written now, the HOA must meet these three requirements if it wants to transfer funds electronically, which now only apply to subsection (e). The belief was that these three requirements should apply to any electronic transfer, so we need subsection 3, paragraphs (a) through (e), not just paragraph (e).

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

The amendment on page 11 of Exhibit C deals with section 15 of the bill regarding the superpriority. The proposal for when you measure the superpriority is in subsection 2, paragraphs (a) and (b). This would follow the practice of the Uniform Law Commissioners in Colorado, who measured from either the foreclosure by the first deed of trust holder or the foreclosure by the association. This might end up saving expenses for associations and people who bid at foreclosures because if the associations have a superpriority lien from when the first deed of trust holder forecloses, there is less need for the association to take and pursue all of the normal collection efforts in order to perfect its lien.

On the top of page 13 of Exhibit C is the proposal to make subsection 3 clear that the superpriority applies to all HOAs whether or not the documents so provide.

Subsection 4 is another instance where we have discussions with the representatives of the title industry. There is a concern that after a foreclosure and the superpriority lien have been paid off, there is an attempt or misunderstanding about whether the HOA has any lien rights for those delinquent amounts. This would make it clear—once the superpriority lien has

been paid—that the association has lost its lien rights against the unit for the delinquent amounts. Of course, current amounts still continue to be collectible against the unit's owner, the HOA is free to take those actions and the current assessments continue to become a lien. Once the HOA has had its lien paid, it is not entitled to get more funds; there is only one superpriority. That is an important clarification and protection to all people who bid at foreclosure sales and protection to the title industry as well.

CHAIR WIENER:
We will now go through the amendments proposed by others during the hearing. Mr. Buckley, if any of these have been requested or suggested to the Committee for consideration in what you have just explained, let us know.

MR. BUCKLEY:
I can do that quickly for you unless you want to go through them one by one.

CHAIR WIENER:
Yes, if you will, instead of going back and forth.

MR. BUCKLEY:
Page 3 of Exhibit C has the amendments to the bill presented at the hearing. Section 4, subsection 5, paragraphs (a) and (b); section 4, subsection 10; section 6, subsection 1; section 8, subsection 3; section 9, subsection 3; section 15, subsection 2; section 18, subsection 3; section 11, subsection 3, paragraph (c) and section 4, subsection 5 are included in the amendment.

CHAIR WIENER:
Under item 11a on page 5 of Exhibit C, I had all sections deleted. Is any part of item 11a in the amendment?

MR. BUCKLEY:
Section 1 came out, so yes, that was addressed.

CHAIR WIENER:
I also had item 11c, which is section 14, subsection 3, paragraph (e). Was that addressed as well?

MR. BUCKLEY:
Yes, that is correct.

CHAIR WIENER:
I also had item 11d, which is section 14, subsection 4. Was that addressed?

MR. BUCKLEY:
I do not believe so.

CHAIR WIENER:
And item 13 of Exhibit C, which is section 6 of S.B. 174.

MR. BUCKLEY:
The reference to governmental entity was deleted.

MS. EISSMANN:
I will read from page 4 of the work session document, Exhibit C, beginning with item 6.

SENATOR COPENING:
I wonder if there will be some unintended consequences if sections 7 and 8 are deleted because we need to have law that says how meetings are guided.

MS. EISSMANN:
This is to delete the new language in sections 7 and 8, not to delete those statutes. The current statutes would remain the same.

CHAIR WIENER:
I can understand the confusion because it says to delete the sections. Is that the intention of the new language proposed in the bill?

MS. EISSMANN:
It would be to delete sections 7 and 8 of the bill, which provide new language. Therefore, those sections of NRS 116 would not be in the bill and they would remain as written.

SENATOR COPENING:
I do not know the motivation, but I look at section 8, subsection 5, that allows the HOA to send statements to homeowners by e-mail by request, which will cost the homeowners nothing. Otherwise, that deletion means homeowners must come down to a physical location, pick up a meeting agenda and, in some cases, drive many miles to get there. That does not make any sense to me.

SENATOR BREEDEN:
I agree with Senator Copening; we need to have every avenue available for people to be notified of meetings.

MR. BUCKLEY:
I would like to point out that language in section 7 has been moved to section 5, so all of the intricately connected sections are in one place. Other than what Senator Copening mentioned, there is not much change in the law; there is more movement to put things in the right place.

MS. EISSMANN:
In item 7 on page 4 of Exhibit C, Jonathan Friedrich's handout offered the day of the meeting argued against the sections of the bill stating that we should retain existing law and not adopt the suggested amendments. His amendment would delete most of the sections of the bill, deleting new language and returning to existing law. Dr. Robin Huhn offered a handout that she supported the amendments suggested by Mr. Friedrich.

On page 4 of Exhibit C, item 8(a), Rana Goodman had suggested amendments. If you look back at section 8, page 19 of the bill, starting at line 8, "if the association offers to send notice of a meeting of the executive board by electronic mail," her amendment would be "the board should be required to offer to send notice by electronic mail." Item 8(b) on page 4 of Exhibit C concerns section 9, which starts on page 21 of the bill. Tim Stebbins echoed that the term "misconduct" should be clearly defined. In section 10 of the bill, Ms. Goodman believed the crime insurance should be carried by the management company and she said to eliminate provisions against retaliatory acts against executive board members which was in section 16 and already addressed.

In item 10, Robert Robey suggested revising sections 7 and 8, so that instead of referring to electronic mail, it should be retained in electronic format. The argument was that people who do not get e-mail should be able to receive electronic format, a broader term than simply electronic mail. My interpretation of that is it could be on a compact disc or some other electronic means besides electronic mail. His comment was to also delete section 8 that would allow the executive board to hold secret meetings without public notice.

On page 5 of Exhibit C, item 11d was in section 14, subsection 4. This was a recommendation from Angela Rock. That section should be amended to read,

> in addition to any other remedy provided by law, upon a violation of this section, a person in violation of this section may also be in violation of the association's governing documents, if the documents so provide, and the executive board may hear this issue as a violation of the governing documents, and a person aggrieved by the violation may bring a separate action.

SENATOR COPENING:
I ask if Pamela Scott or Michael Buckley can speak to that. I know it was considered, but I do not understand why; maybe it does not work.

PAMELA SCOTT (Howard Hughes Corporation):
That is a wrong reference. Section 14, subsection 4 relates to electronic transfer. I am not sure where this was intended to be.

CHAIR WIENER:
We will come back to this one.

MS. SCOTT:
Someone in the room said section 16.

CHAIR WIENER:
Was that addressed by the working group?

MR. BUCKLEY:
Page 32 of the bill is section 16, not section 14. This is the section that deals with retaliatory action, and all this would do is permit the HOA to consider retaliatory action as a violation of the governing documents, not just a violation of the statute.

MS. SCOTT:
That is correct.

CHAIR WIENER:
Is retaliatory action addressed in the amendment you are proposing?

MS. SCOTT:
I am not sure. Retaliatory action was addressed last Session or the Session before as it related to a board taking retaliatory action against homeowners. The language added this time states that not only should a board not take retaliatory action against a homeowner, homeowners should not be taking retaliatory action against board members or employees. This language was not particularly addressed anywhere else. I do not have a problem with the language, and as Mr. Buckley said, it makes it a violation of the governing documents to take a retaliatory action. Law always prevails over governing documents.

MS. EISSMANN:
I will read page 5 of Exhibit C, item 12. Richard Rychtarik suggested several amendments, but I do not know if they are specific to a section or general comments. His comment in item 12(e) was about recall petitions too easy to come by and never ending in his HOA.

SENATOR COPENING:
Many of these would beg quite a bit of discussion, but we do not have the opportunity to get into detailed discussion about all of these and how they might work. A couple of other amendments, which also need to be fully vetted, came from the Realtors and one from Olympia Group. I told both of those groups that after this, we can get together on the other side, fully vet it and bring people together. I would be happy to include Mr. Rychtarik's comments as well. We are not going to be able to do things such as property tax. But we could wrap some of them into an amendment. I offer that for the pleasure of the Committee and Chair.

MS. EISSMANN:
I will read page 5 of Exhibit C, item 14.

SENATOR COPENING:
Mr. Wilkinson, is the word "misconduct" found elsewhere in NRS 116 or any other statute that would define misconduct?

BRADLEY A. WILKINSON (Counsel):
That provision is patterned after the Open Meeting Law when you can have executive sessions of bodies. It is not defined anywhere. I do not know if there has been interpretation of that in case law, but it is used throughout NRS without definition.

CHAIR WIENER:
We have had everything presented and offered that we could get into the work session document. We can go back to the amendment as was provided by the sponsor with the inclusions of those concerns that were addressed and offered by others, and then we can address the other concerns individually. We have a lengthy amendment proposed by the sponsor that includes amendments requested beginning on page 3 of Exhibit C—items 5a, 5b with all three bullet points, 5c, 5d, 5e, 5f, 5g, 9, 11a, b and c and 13. That is what is under consideration at this time. We will then take the other points separately that were not included in the amendment as proposed by the sponsor.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 174 WITH HER AMENDMENT AND ALL THOSE INCLUDED FROM THE OTHER WITNESSES.

SENATOR ROBERSON:
I am going to choose my words carefully. This legislation reminds me of a rotten apple that you try to slice and dice to find the good parts. Unfortunately, I think it is rotten to the core. I cannot support this legislation. On the record, I will ask one more time because four members of this Committee have cosponsored it. Are we going to hear or have a vote on S.B. 195?

SENATE BILL 195: Revises provisions relating to the costs of collecting past due financial obligations in common-interest communities. (BDR 10-832)

CHAIR WIENER:
I talked to the sponsor of S.B. 195 the other day and shared that I have contacted Mr. Buckley. I have had a face-to-face conversation with the chair of the Legislative Commission. My concerns are that we are in the regulatory process with strong recommendations to Mr. Buckley and his CCICCH. We had two bills before this Committee that would start at a much lower fee than is being considered under regulation, and to take into account the bills before the Committee because the regulatory process is in process could be much more expeditious. That was my request to Mr. Buckley: to reconsider the amounts, the fees and the proposal that they provided and to amend it down to reflect the work by this Committee so it could be done expeditiously.

SENATOR ROBERSON:
There will not be a vote taken on S.B. 195? Okay. My concern is that the regulatory body can make and change regulation, and there is a lot of support on this Committee for putting this legislation into statute. Senator Kihuen, Senator McGinness, Senator Gustavson and myself collectively represent several hundred thousand people in this State, and we would like to have our voices heard. I am requesting again that we have a vote on that bill.

SENATOR COPENING:
There is some confusion because S.B. 174 does not have anything to do with collection fees. In fact, where we amended section 15 is statute. Section 15 is the only thing that deals with anything to do with collection costs and attorney's fees. It is statute; superpriority already allows for those collection costs to be in superpriority, so there is nothing in here that has anything to do with a collection bill. I will remind you also that my bill is not coming forward for a vote either. I would encourage the body to pass this. This is good law that was worked on by 30 individuals. It is law to protect the HOA. Bear in mind Paradise Spa; it is broke. It will continue to be broke. Gas is about to be turned off on many seniors who live in Senator Breeden's and Senator Roberson's district if they cannot get the bill paid. Section 15 will allow them to go after those costs from the person who did something criminally wrong. Without the passage of this bill, the seniors will just go broke; they are without gas and they are out on the street. I do not know what other way to put this. The main parts of this bill have nothing to do with S.B. 195.

SENATOR KIHUEN:
I think we need further clarification on the amendments for section 15. I do not know if Mr. Buckley or someone wants to give us further detail.

MR. BUCKLEY:
Page 11 of Exhibit C is the proposed amendment to section 15. A number of these changes came from the Uniform Common-Interest Ownership Act amendments of 2008, which is in S.B. 204. I am not sure if Senator Kihuen has any particular questions. Beginning with subsection 1, the reference to a statutory lien clarifies that the lien that an HOA has exists by statute as something different from a judgment lien. That is a Uniform Law change. The next change is the word "attributable to" instead of "levied against." That is a Uniform Law change; it is better language. Neither one of those two changes are substantive changes; they are better language. The next change is added

words of "reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313."

SENATOR KIHUEN:
Can you define reasonable fees?

MR. BUCKLEY:
I can give you the lawyer definition, and that is what a reasonable person would think would be reasonable. It is a term used in law intended to allow whoever is determining the amount to consider what would be a reasonable amount rather than say just what is billed. It gives whomever makes this determination the power to determine whether, based on all of the work, this is an appropriate fee or too much. It is used in all kinds of contracts and elsewhere in law. It is basically an attempt to limit attorney's fees. I think it is even in the Supreme Court rules that a lawyer can only charge reasonable fees. It cannot be defined in terms of it equals X, Y or Z, but it is a long-recognized attempt to give whomever is making the determination ability to say, "I do not think that is enough. I think that is too much," whatever.

SENATOR KIHUEN:
That is what I have a concern with. We are charging $140 for a form letter; according to the people sending out those form letters, that is a reasonable fee. I have a concern with that if it is not defined.

MR. BUCKLEY:
First of all, the collection cost regulation—NRS 116.310313—is where the actual amounts are defined; they are not defined here. This would refer back to the limitation in NRS 116.310313, which allows the CCICCH to determine reasonable costs. Common-interest communities are governed by declarations, and these are covenants running with the land. The whole concept behind NRS 116 and common-interest communities is that there is this document, the declaration, which provides some of the things that are here but allows the HOA to collect the cost of collecting and assessments if people do not pay. Without the word "reasonable," I am not sure there is any ability of the CCICCH or a court to make a determination. You need to have something that says they have to be reasonable; otherwise there is no limit.

SENATOR COPENING:
Mr. Buckley, what looks odd here is new language that for the first time would allow attorney fees and any fees to cover the cost of collecting a past due obligation. To my understanding, this is already in law and allowable, and the provisions we put in cap the amount. It needs to be reasonable, or did I misunderstand something?

MR. BUCKLEY:
No, you are correct about declarations, since HOAs were created allowing the HOAs to collect their costs when they have to pursue a delinquent assessment. The law was changed in the last Session to let the CCICCH limit costs of collection. You are right, this language refers back to the cap in NRS 116.310313, which is not presently there. Without this, HOAs are left to the declaration language.

SENATOR COPENING:
Meaning that without something like this, they can charge whatever they want and gouge a homeowner?

MR. BUCKLEY:
The protection is NRS 116.310313, which requires the CCICCH to set reasonable collection costs it actually requires. Without this, it does not limit HOA collections; this does limit it.

SENATOR BREEDEN:
Mr. Buckley, you mentioned last Session this issue came up and the CCICCH can cap fees. I guess we are here because the CCICCH did not cap fees. Am I correct?

MR. BUCKLEY:
No, the CCICCH held hearings beginning at the end of 2009 in accordance with the statute and held a number of hearings over 2010. In December 2010, the CCICCH came out with a regulation addressing foreclosure fees. It did come up with caps, then the Governor's moratorium on the regulations stopped that regulation. There is a regulation in place, but it was stopped. I am told that now it is back to go before the Legislative Commission. It was heard numerous times in 2010; there was much input and public comment. People thought the fees were too low; some thought they were too high, but the CCICCH did address it.

SENATOR BREEDEN:
Okay, so your new regulation does cap fees; if they are approved, it caps fees moving forward? Yes, no?

MR. BUCKLEY:
Yes, it does.

SENATOR BREEDEN:
My understanding is Senator Copening's whole intent is to assist HOAs as well as homeowners, but my concern is that we have to stop the property management companies from charging all of those fees. Parts of her bill help the HOAs without giving them too much authority I think we are all for that because she is working really hard for that. I hear Senator Kihuen and myself saying the fees are an issue and the power of HOAs has gotten out of hand.

SENATOR COPENING:
To my esteemed colleagues and in my caucus: We did have a conversation the other day, and I did ask to have the sections of the bill identified that were in disagreement. I only hear section 15 being the part in question; if that is the case, I am willing to rescind my motion and accept everything else except section 15. We can have more of a discussion on section 15, perhaps involve people in the working groups so they can fully understand what this is supposed to do. Section 15 limits what property management companies—HOAs, whatever you want to call them, whoever is responsible for charging those fees—what they can charge. I am willing to take this out to see the bill go through because there are so many important measures protecting homeowners in here. If we are getting caught up in this one section, it would be a travesty to see this bill go down for that reason.

CHAIR WIENER:
I am going to base it on what Mr. Buckley shared—that with the debate over reasonable attorney's fees might be what would ensure that cap. I need clarity Mr. Buckley. If we were to remove section 15 from consideration, how would that affect what you are doing and the strong recommendation I sent in the letter to you about coming down even further on recommendations you may make to the Legislative Commission. If you take that out, where are we?

MR. BUCKLEY:
Number 1, if section 15 comes out, there still will be a limit on collection costs under NRS 116.310313, which the CCICCH is required to address by regulation. I would point out, though, that language in subsection 3 of NRS 116.3103115 determines how the superpriority is collected. If this passes, the CCICCH believes there should be less collection costs because the HOA does not have to take as many steps, knowing they get paid if the first deed of trust forecloses. The other thing is that there are situations where we believe some collection companies or HOAs are trying to assert a lien after there has been a foreclosure when they are not entitled to that lien. That amendatory language in subsection 4 is a positive thing that would help clear title following a foreclosure. When people buy at a foreclosure, they would know they paid the superpriority and there are no more liens. That has been subject to dispute.

I would also say that section 15 does allow the superpriority as part of the costs of the superpriority. Without this bill, the issue will still be open and there are courts that have said it is included. There are people who have said it is not included. Life will go on with people taking positions on one side or the other until the Nevada Supreme Court makes a ruling. But this would have clarified it. People will still be paying collection costs as part of the superpriority. The one thing I did think that was helpful were those provisions that measured how it was included and made sure there was no lien after foreclosure.

SENATOR COPENING:
I withdraw my motion.

CHAIR WIENER:
Obviously, there are more things we need to discuss. I am going to roll S.B. 174 to Friday, April 15, to get some answers. I have some questions as well. I will be seeking answers to things that arose during our conversation this morning.

I will open the work session on S.B. 185.

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

MS. EISSMANN:
Senate Bill 185 was sponsored by Senator Michael A. Schneider and was heard on March 9 and 10. My summary is numbered for ease of reference only. I will read from the work session document (Exhibit D).

The private transfer fee was one of the aspects of S.B. 185. The second major aspect of the bill was fees. There was some confusion from the hearing as to how exactly this applied because of the way it legally had to be written. During testimony, there was confusion because aspects of the bill said a cap on the fee was eliminated. But that elimination is effective October 1, 2012, assuming regulations go into place.

During testimony, the explanation for item 5 on page 2 of Exhibit D was so renters could be on the board.

No amendments were given to me on this bill following the hearing, so the only amendments in Exhibit D are ones that the Committee saw the day of the hearing. There has been nothing provided since then. I will read the summary of the amendments as they appear in Exhibit D.

CHAIR WIENER:
We will take these one at a time. Senator Schneider had requested an amendment that would move the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels from the RED to the Office of the Attorney General (OAG). Any discussion, Committee?

SENATOR MCGINNESS:
Was this an existing ombudsman's office?

CHAIR WIENER:
It is in the RED now.

SENATOR MCGINNESS:
The fiscal note would not change, then.

CHAIR WIENER:
In supporting this, one of the concerns from the sponsor of the bill and the amendment was that the attorneys are not employed at the RED, and

Senator Schneider felt there was some advantage in having the OAG involved because of the legal staff; am I recollecting right?

MR. WILKINSON:
I believe that was one of the reasons Senator Schneider cited.

CHAIR WIENER:
There seemed to be support for that, Senator McGinness; that was not part of the dialogue.

SENATOR KIHUEN:
Did the OAG testify in support of or against this?

MR. WILKINSON:
The OAG did testify on this and had some fiscal concerns about moving the Ombudsman's Office.

CHAIR WIENER:
It would probably require some additional staffing.

MS. EISSMANN:
My notes are not detailed, but I have that Keith Munro from the OAG was neutral on the bill and that he would weigh in as soon as details are known. There were no other details provided.

CHAIR WIENER:
Any questions or comments on item 2 of Exhibit D, Committee? Any questions or comments on item 3 of Exhibit D, Committee? Any questions or comments on item 4 of Exhibit D, Committee? Any questions or comments on the remaining items 5 through 10 of Exhibit D, Committee?

SENATOR BREEDEN:
Since we are holding S.B. 174, I would ask you hold this bill as well because I would like to be part of the discussion with you, Senator Copening and whomever else. I would very much like to be part of that discussion.

CHAIR WIENER:
I will move S.B. 185 to Friday, April 15, as well. I will open the work session on S.B. 204.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

MS. EISSMANN:
Senate Bill 204 was sponsored by Senator Allison Copening. The bill was heard by this Committee on March 16. My summary is numbered for ease of reference only. I will read from the work session document on S.B. 204 (Exhibit E).

On page 2 of Exhibit E, in item 15, the word "liable" should be changed to "liability."

There were amendments provided by Senator Copening's working group following the hearing. The amendments from other people at the hearing are also listed here, but there are no specific attachments. I attached the amendments received since the hearing.

MR. BUCKLEY:
This bill came out of the State Bar of Nevada's Committee on Common-Interest Communities, with the intent that the Nevada law be updated to include the 1994 and 2008 changes. After the hearing, we looked at the draft bill. We did have amendments I can walk you through and perhaps approach in a similar way as we did in S.B. 174.

On page 6 of Exhibit E, the proposed amendment in item 3 relates to section 20 of the bill. An inadvertent reference to statute needs to be added. You can see in Exhibit E that NRS 116.41035 is underscored; that same reference needs to be inserted in section 20, subsection 2, paragraph (c) on page 9 of S.B. 204.

Item 4 of Exhibit E pertains to section 30, which is on page 17 of the bill. When this bill came out of drafting, the language on lines 39 and 40 were eliminated from the statute, and the proposed amendment puts those words back in. There was never an intent to take them out.

On page 7 of Exhibit E, item 5 is S.B. 204, section 37, which is addressed in section 5 of S.B. 174. Those need to be conformed. The language on page 7 of Exhibit E would also be an amendment to S.B. 174, but S.B. 174 and S.B. 204 amend NRS 116.31036. We suggested certain uniform changes that were not in S.B. 174 be made to NRS 116.31036 without going into detail.

Item 6 of Exhibit E pertains to section 39 of the bill on page 31, line 13 where we are proposing to change the word "and the declaration" to "or the declaration."

Item 7 of Exhibit E relates to section 42, which is on page 38, lines 21 through 23. We are proposing subsection 4 implies that any reference to parliamentary procedure has to be in the bylaws, and we know some HOAs have them in resolutions and abide by them. As you can see on the bottom of page 7 of Exhibit E, we clarified that if the HOA already has a resolution with its parliamentary procedures, this is not intended to change that.

On page 8 of Exhibit E, item 8, section 45 of the bill amends NRS 116.3113. I will point out that one of the most important provisions in S.B. 174 was this change, which is in section 10 of that bill and also section 45 of this bill. This section now would require an HOA to have crime insurance. The Legislature in 2009 tried to address this by requiring managers to have bonds. The CCICCH was charged with coming up with a regulation on how those bonds would be calculated and so on. The CCICCH heard from a number of insurance experts that said having the manager put up a bond was not the best way to protect the HOA's money, and everybody agrees. There is no disagreement that HOA funds need to be protected.

The language in section 10 of S.B. 174 and this section focus on requiring an HOA to have crime insurance. That was not in existence before. It is unanimously agreed by anyone who has looked at it that this is an important provision. There are technical changes between S.B. 174 and this bill. In most cases, when I compared them, S.B. 174 should be followed in this bill. The only thing different between S.B. 174 and this one is that this allows reasonable deductions, which we proposed as an amendment to S.B. 174. In NRS 116.3116, subsections 2 and 3, we also proposed an amendment to S.B. 174 that would conform to this bill, updating the insurance requirements for HOAs. It is HOA money that needs to be protected, and it is the HOA that needs to have insurance.

On page 9, item 9 of Exhibit E, section 48, page 46 of this bill amends NRS 116.3115 because there has been some discussion and questions by witnesses on the definition of the word "misconduct." Mr. Wilkinson mentioned that term is in Open Meeting Law. The Uniform Common-Interest Ownership Act has a stronger requirement and changes it to "willful misconduct" or "gross

negligence." You can see on page 46 of the bill it is a higher standard before the HOA can come after the unit's owner. The reason we proposed that was to follow the Uniform Law.

Item 10 of Exhibit E addresses section 49 and is an amendment to NRS 116.3116, which is the same as section 15 of S.B. 174. Our Committee did not take a position on superpriority collection costs but otherwise followed S.B. 174. There are some slight differences. Obviously if NRS 116.3116 is amended, the two proposed bills should be conformed.

On page 10, item 11 of Exhibit E, section 56, page 58, lines 8 and 9 of the bill, had an objection. We are proposing it be deleted.

Item 12 of Exhibit E proposes eliminating section 59, subsection 5, paragraph (d) on page 61 of the bill to conform to the proposed amendment to S.B. 174.

To go back to page 6 of Exhibit E, item 2 discusses section 6 of the bill. There was a proposal that came before the CCICCH. On page 11 of Exhibit E, Commissioner Favil West put together a proposed amendment. Senate Bill 204 was not intended to amend the law; it put in section 6, which is equal time on official publications law now in a separate statute, so it deserved to be in one place. We heard testimony at the CCICCH that the law has sometimes discouraged equal opportunity. Commissioner West's proposed language would be an attempt to make sure that these official publications result in equal time for opposing views.

To go through what might be in our proposed amendment on page 6, I am looking at item 4. Mr. Stebbins' comment in item 7(a) on page 4 was addressed in Commissioner West's proposed amendment. Other than that, I do not think the amendments address beginning item 4 on.

SENATOR COPENING:
Mr. Buckley, could you explain the Uniform Common-Interest Ownership Act and the people who are behind it because it is separate from our 30-member working group. However, I think some of the people crossed over. It is a completely different process when you do these Uniform Acts. I thought it might benefit the Committee to know.

MR. BUCKLEY:
Your counsel might help you. If you look in the index to NRS, you will find dozens of uniform laws. There is a national organization, the National Conference of Commissioners on Uniform State Laws, which is composed of attorneys and a number of legislators from every state. I know ex-Senator Terry Care is or was a Uniform Commissioner and Assemblyman Tick Segerblom is a Uniform Commissioner. Every state has representatives to this national body that considers laws dealing with all different topics. The Commissioners meet annually and discuss these laws. *Nevada Revised Statutes* 116 came out of the Uniform Common-Interest Ownership Act, which was adopted by the National Conference of Commissioners on Uniform State Laws in 1982. That was the law that Nevada adopted in 1991.

Since Nevada adopted the law, the Uniform Law was changed by the Commissioners. When these Commissioners meet, they form a study group. The study group would consist of experts from all different fields. For example, when the Uniform Common-Interest Ownership Act came out, there were representatives from title industries, lenders, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, and Fannie Mae, so the study group meets over a period of time.

You may also be familiar with the Uniform Commercial Code that is in effect in all 50 states. From time to time those are changed. There is an amendment this year to Article 9. The Uniform Commissioners who come up with the changes to a particular area are different for different topics. The people who propose change to the Uniform Commercial Code are experts in dealing with bank transactions, secured transactions or sales of personal property, whereas the changes to the Uniform Common-Interest Ownership Act are by people familiar with cooperatives, condominiums and planned communities.

A State Bar of Nevada committee in 2001 was going to propose Nevada adopt the 1994 amendments, and we could not find anybody interested in it except for the lawyers who work in this area.

SENATOR COPENING:
I was looking to let everybody know that an objective group of attorneys make up the Uniform Commission, not the 30-member working group, although our working group brought it forward.

MR. BUCKLEY:
No connection at all.

CHAIR WIENER:
If there are no further questions or comments, I am going to take the prerogative to roll S.B. 204 to Friday, April 15, as well.

I will open S.B. 349.

SENATE BILL 349: Provides for the establishment of a community court pilot project to provide an alternative to sentencing for misdemeanor offenders. (BDR S-387)

SENATOR STEVEN A. HORSFORD (Clark County Senatorial District No. 4):
I will read from my written testimony (Exhibit F).

I would like to also state for the record, I have information from James Austin, Ph.D. (Exhibit G). I know this Committee has heard from Dr. Austin who has just updated statistics relating to offenders in the prison system. Dr. Austin has identified the top ten zip codes throughout the State where certain offenses occur and where the offenders previously lived prior to being incarcerated.

The reason I am submitting this information for the record is by working with Judge Karen Bennett-Haron, we can better target those resources in a way that the community court pilot project proposes. We can avoid the costs incurred by the offenders from these top ten zip codes. These top ten zip codes are primarily located within southern Nevada. Evidence from Dr. Austin and the Advisory Commission on the Administration of Justice, which has reviewed it, shows that while this is where the offenses are occurring, when you overlay that with where there are resources for substance abuse, mental health, job and employment training, there is a lack of services in the places with the highest level of offense.

If we are serious about getting fiscal discipline in our budget process, then we have to look at the places where we spend a lot of money, and the Department of Corrections (DOC) is one of those places. The Governor's budget actually proposes an 11 percent increase from two years ago in the DOC, even though the inmate population is declining. The reason for that is because you still have to pay for the costs of these prisons and prisoners in custody.

My support of S.B. 349, and the concept of the community court, is to put those resources at the front end—to use this as a intermediate sanction so we can stop offenders at the front end, at the lowest level of offense—so we are not paying for these offenders at the back end when they are in our prisons costing us $20,000 a year.

CHAIR WIENER:
If someone does not succeed, is he or she allowed to be referred at a future date?

SENATOR HORSFORD:
I will defer to Judge Bennett-Haron because she knows better how it works. But let me just say the concept is you have to be tough on people on the front end too. You want to give them support, but you need to be tough. If they do not follow the direction of the court, the court needs to impose the penalty. Because the evidence from Dr. Austin—and I believe it was the Pew Center on the States that has been researching this issue—shows that if we could stem the percentage of offenses on the front end, then we can avoid these offenders going on to commit other offenses, leading to felony convictions with the result in them ultimately going to prison. That is not good for these individuals, it is not good for the community that they are committing those offenses against and it is not good for us as a State. We cannot afford to continue to build prisons to house these people.

KAREN BENNETT-HARON (Las Vegas Township Justice Court, Department 7, Clark County):
I am currently the Chief Judge of Las Vegas Justice Court. I am also a major fan of the community court pilot project proposed by Senator Horsford.

There are a few things I would like to address. The first is a response to your question of not making it within the community court model. The thing about the community court model is it is a problem-solving model. That is one of the things that makes it different from what you are accustomed to, and that is the therapeutic or treatment court like our Moderate Offender Program and Drug Court. Those courts have been designed to be therapeutic in nature. The judge essentially oversees the treatment component. What the problem-solving model does is say we as judges are not experts in what is needed in order to modify, change or introduce someone to a new behavior model. We have come to realize in the problem-solving model that by collaborating with those experts and

those services and resources that are already a part of our community, becoming more of a collaborative justice model, we can be more effective in our sentencing. Each sentence is customized, based upon the recommendations of the collaborative justice partners. It is also monitored in collaboration with the justice partners.

In the scenario where someone does not make it, it is not quite that black and white. It depends upon a case-by-case basis and what is ultimately recommended. If there is no intent to comply, obviously the alternative is to go back to the traditional model and be more punitive. But if the problem is something that needs to be rectified within the community court model and the resources are made available to the person, that is certainly something that has to be incorporated and considered.

CHAIR WIENER:
Comparing the two models is important to know as well.

ASSEMBLYMAN JASON M. FRIERSON (Assembly District No. 8):
I am thrilled to be a part of S.B. 349. It was approximately two years ago that Deputy Public Defender Bita Khamsi and I met with Judge Bennett-Haron about this subject. I begged them to give me a handful and I will show you how we can save $35,000 a year at least and turn somebody's life around. I cannot tell you the number of clients I have had who needed a little extra effort. I want to emphasize that this is not about being soft, this is about being smart, about saving money and lives. We save money by avoiding incarcerating people unnecessarily. We catch them on the front end and give them the tools they need to stay out of the system. But we also save money because we decrease the number of victims of crime and provide members of our community the tools to be successful and productive members of our society.

Some of the things that Judge Bennett-Haron and I talked about were coming up with a program that catered to the needs of individuals. We discussed drug counseling, family therapy, personal finance, teaching and maybe even requiring offenders open a checking account so that if they have a drug or gambling problem, they do not have to go to a casino to cash a check. These are some of the things our clients do not have the tools to do. We believe providing a structure furthers the goal of making sure we decrease crime and save these people who are at a crossroads in their lives. This is a matter of being fiscally

and socially responsible to save us money and protect the community. I think it is the right thing to do. I urge your support of S.B. 349.

CHAIR WIENER:
You might explain for those listening on the Internet what you meant when you said that this is something you know about in your professional capacity.

ASSEMBLYMAN FRIERSON:
I am a deputy public defender, and I have seen this both in the past six years as a deputy public defender and previous to that as a deputy attorney general. I also wanted to point out that Chair William C. Horne of the Assembly Committee on Judiciary was also here and in support of this bill but had to go back to his work session. He is fully supportive as well.

CHAIR WIENER:
Thank you for stating that for the record.

ASSEMBLYWOMAN DINA NEAL (Assembly District No. 7):
I am here in strong support of the concept of the bill of community courts. When we speak as a community and State on the issue of how to deter crime, one of the factors to deter crime outside of punishment is to eliminate the reasons why offenders may have committed the crimes in the first place.

I remember in law school when I was in clinic, I had to listen to a person being charged with a crime for stealing socks. Now, although this was a crime of poverty, this particular issue brought forth the examination of section 3 of the bill. When you look at section 3, it gives the court the flexibility to examine the reason why a person may be a repeat offender. This section attempts to deter and create flexibility within the courts to address the root cause of the behavior that may have caused the wrongdoing. I am a strong advocate in that I do not believe in going around the problem; I believe in actually addressing it head on. When you look at section 3 of the bill and the ability to do services or treatment for substance abuse, deal with health education, do literacy assistance and job training, those reasons overlay with poverty. Other reasons have to do with the mind-set or the stability of the individual. If you can get to the crux of that problem, if you can discern the reason why offenders may have done something, then you at least have an edge in attempting to deter it.

I strongly believe that although there is a need for punishment, on the overlay of the punishment, there is a need to get at the reason for why you did what you did in the first place, fostering that ability and a capacity to do that. I am strongly in support.

SENATOR HORSFORD:
If I could refer to the report from Dr. James Austin, Exhibit G—which are the updated crime and punishment statistics in Nevada and Las Vegas—I just want to cite a few things for the record. I know we will get into this if the Committee chooses to process this bill and it goes to the Senate Committee on Finance. But I want to hit on the cost and the ability to put the money in the front end so we avoid having to pay much more in the back end.

According to Dr. Austin, Nevada taxpayers spent nearly $13 million to imprison residents sent to prison in 2006 from just two zip codes—89106, $7 million in Las Vegas, and 89030, $5.9 million from North Las Vegas. All totaled, Nevada taxpayers will spend over $30 million to incarcerate people sent to prison in 2006 from the five highest-cost zip codes in Clark County. I am asking for us to invest $1 million so we can avoid paying as much as $30 million in the five highest zip codes of offense. I believe that is fiscally prudent, I think it is responsible, and I believe that it is time that we change our correctional approach and make it more solutions-based as Judge Bennett-Haron indicated and as other pilot programs such as this have proven to work. I will submit this for the record so the Committee can digest the information; it was informative for me.

CHAIR WIENER:
I notice that it becomes effective on July 1, and there is a sunset, so it has two years to prove its effectiveness. Judge Bennett-Haron, with a July 1 start date, would you be able to have this up and running and ready to go by putting your collaboration of justice experts together?

JUDGE BENNETT-HARON:
We would certainly be at least at Stage 1. We have worked out our relationship with the Center for Court Innovation based in New York that founded this program. The program has adopted us as one of its mentees. New York's program is the only recipient of the U.S. Department of Justice Community Court Initiative. In that respect, we are ready to go. We do have some other work that we need to do. We have our facility identified; some mechanisms that

need to be put into place, but I believe we could be up and running fairly shortly.

CHAIR WIENER:
Will you provide that to the Committee? I am sure many of us want to check the zip codes.

TIERRA JONES (Deputy Public Defender, Clark County Public Defender's Office):
As far as our office is concerned, we want to go on the record to say we strongly support this program. This would be a great program, and many of our clients would receive its benefits. Many people keep coming through the system because they do not have the tools and the mechanisms in place to assist them in getting to the core of the problem. Based upon that, we strongly support this bill.

ORRIN JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):
The reason I did not sign in to speak is because this is a Clark County bill and I knew my colleague from the south would be supporting it and I did not want to waste a lot of time. I do have additional information to share with our experiences in Washoe County.

We have this system, but not quite. I would like to see or have the opportunity to get diversion programs. What we have is called a Court Compliance Program in Reno Justice Court run by Judge Harold G. Albright. Judge Albright was not reelected but has stayed on in his capacity as a senior judge in order to continue on with this program. It works very much like many other specialty courts, in that people come to court once a week, it is staffed ahead of time, there is somebody from the Public Defender's Office in case somebody is not following through with what they should do.

There is no diversion opportunity. The reason many people participate in the program is because it beats going to jail for six months. The second reason is many of them recognize that they need the help. We want to get them in a position where they stop offending, stop drinking or stop whatever it is so we can get to the core of it so they are not repeat customers. The program, even without the additional carrot of diversion, has had extreme success. I do not know the exact recidivism rate, but the last time I talked to Judge Albright about it, it was below 20 percent. Because that program is already in place,

perhaps there is something we could do. I want to put on the record that I hope this processes through.

I look forward to speaking with the bill sponsors to see if we can show you what we use in Washoe County to save money—a proof of concept—with diversion attached. I wanted to share that with the Committee and note that these programs work, even without the diversion. We think they are fantastic. We hope Clark County is able to take advantage and participate. I am certainly ready to work with anybody to share those experiences.

CHAIR WIENER:
Mr. Johnson, you mentioned the Court Compliance Program, and you are guesstimating about a 20 percent recidivism, a statistic in the direction we want to go. How old is the program?

MR. JOHNSON:
It is about four years old. When I started at the Washoe County Public Defender's office in 2007, it was already there and relatively new at that point. It has been going since. There is a good track record, and I know Judge Albright is very proud of it. I am willing to see if he is also willing to work with this Committee and people in Las Vegas.

SENATOR MCGINNESS:
You mentioned that the diversion program is not available. Would it be good to put language in the bill that would allow other jurisdictions the authority to do so?

MR. JOHNSON:
A bill last Session authorized other local municipalities to set up departments of alternative sentencing, which we supported. There may already be language that allows it, but in terms of diversion, that is not there. We would support something like that.

SENATOR GUSTAVSON:
Ms. Jones, what percentage of first-time offenders are sentenced to jail that this program would affect?

MS. JONES:
I do not have the exact numbers. It depends upon what the allegations are, how the case is ultimately resolved or whether the offenders went through a trial. Some people are sentenced to jail on a first offense. Some people are given the opportunity to complete classes, pay a fine and have jail time suspended but hanging over their heads.

MR. JOHNSON:
In some cases, such as domestic battery, jail is mandatory. All of those people go to jail for some period of time. In most of those cases, they have already been to jail, so they might get credit for time served. But that would be before there is diversion. In the Court Compliance Program, offenders are sentenced to six months in jail; that is suspended, it is hanging over their heads, so there is the carrot and the stick, which is necessary. Sometimes, they might do that incrementally but with a lot of backing of the program. I do not have those numbers. The district attorneys and judges want to get most first-time offenders into community service before we spend time and money on jail.

SENATOR GUSTAVSON:
I just wanted to get a ballpark figure percentagewise. The second question is to Mr. Johnson. Since this is being done now in Washoe County, where did the funding come from? Did you require funding to do this?

MR. JOHNSON:
I cannot speak to that. I know there is a budget for senior judges and I think that is what Judge Albright is doing. I do not want to speak for Reno Justice Court or for Judge Albright. I am bringing this up as something that is being done. I believe Judge Albright seeks federal grants, and so on; he has been aggressive in trying to get a hold of those. I want to contact him. There is great experience and wisdom to share that can benefit the whole State.

SENATOR GUSTAVSON:
I know there is a fiscal note. I think there are good programs that Judge Albright and Senior District Judge Peter I. Breen are doing along with the DUI programs. If we could do something like this by grants or funding, that might help get this passed.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
I initially did not sign in but chose to speak, particularly with relation to the reference to Dr. Austin. Dr. Austin has been a wonderful resource for this State during the interim hearings by the Advisory Commission on the Administration of Justice. He has looked with much detail into the state of our criminal justice system and ways to correctively address not only recidivism but also the overincarceration issue that a number of states are dealing with at this time. But having sat through many of Dr. Austin's presentations, we are heartened to hear the Committee considering this. From our perspective and that of Dr. Austin and the Advisory Commission, these issues need to be dealt with at their core. We think that is what this bill allows this State the opportunity and certain jurisdictions to do.

Though the ACLU is a nonpartisan organization, I do want to reference a recently formed organization called Right on Crime, which is a national organization spearheaded by Newt Gingrich and a few other very conservative individuals. They look at criminal justice principles and about using money wisely in order to address core issues to lower recidivism rates, and this is one of the types of programs they support. This is a broadly supported issue regardless of political stripe, and we think it will go a long way toward addressing the overincarceration issue and the budgetary impact in our State.

KRISTIN ERICKSON (Nevada District Attorneys Association):
We are neutral on this bill. Our only concern is with DUI and domestic violence convictions. As I am sure you are all aware, each of those crimes are enhanceable. That means if offenders come back for a second time, they face more severe penalties. On a first conviction, they get a fine and some times community service. If a person is not sentenced on domestic violence or a DUI, the conviction is not final. We would ask that DUI conviction cases and domestic violence be excluded from this bill.

JUDGE BENNETT-HARON:
One issue that was raised by one of the members of the Committee was the cost for first-time offenders getting placed in jail. In Clark County, we are up to a 72-hour wait before a person is seen by a judge. That is an unfortunate circumstance that we are trying to remedy, but that includes first-time offenders, particularly misdemeanor offenders. That costs $140 per person a day, if the person has absolutely no medical needs or other issues that have to

be addressed while in custody. That can go up to as much as $175 a day, depending upon our labor costs and so on. There is always an initial cost in Clark County whether you be a first-time offender or less if you have the means to bail out immediately. Even then, it takes at least 16 hours to get you in and out. Those costs are plaguing our system right now.

CHAIR WIENER:
I will close the hearing on S.B. 349.

SENATOR BREEDEN MOVED TO DO PASS S.B. 349.

SENATOR COPENING SECONDED THE MOTION.

SENATOR MCGINNESS:
Will this go to Finance?

CHAIR WIENER:
It will be picked up on the Senate Floor.

SENATOR BREEDEN:
I withdraw my motion.

SENATOR COPENING:
I withdraw my second.

SENATOR BREEDEN MOVED TO DO PASS AND REREFER S.B. 349 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COPENING SECONDED THE MOTION.

SENATOR MCGINNESS:
As long as the Majority Leader is present, could we think about allowing other jurisdictions?

CHAIR WIENER:
We get a nod and a head shake from the Senate Majority Leader. That looks good.

SENATOR ROBERSON:
Can we simply make a motion to refer to the Finance Committee?

CHAIR WIENER:
We are on a motion right now. We will vote this motion and then if it fails, we can take another motion.

SENATOR ROBERSON:
I will abstain now, as I just heard this and want to hear more about the fiscal impact.

THE MOTION CARRIED. (SENATORS GUSTAVSON AND ROBERSON ABSTAINED FROM THE VOTE.)

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CHAIR WIENER:
We will go back to our work session on S.B. 254.

SENATE BILL 254: Revises provisions relating to common-interest communities. (BDR 10-264)

MS. EISSMANN:
This bill was sponsored by Senator Copening and was heard on March 25. I will read from the work session document (Exhibit H).

A copy of an amendment proposed after the hearing is in Exhibit H. The amendment was provided by Mr. Buckley. Other than that, several amendments were provided during the hearing. I have summarized those on the following pages in Exhibit H.

MR. BUCKLEY:
This bill is an attempt to provide better dispute resolution in HOAs. Starting on page 2 of Exhibit H, we addressed all of Gail Anderson's concerns other than paragraph h. We also addressed Eleisa Lavelle's comment on page 3 of Exhibit H. What I did was handwrite in the bill on page 5 of Exhibit H. Mediation would be managed by the Office of the Ombudsman rather than the RED, as that is what the Ombudsman does now.

Page 6 of Exhibit H has one of the major concerns expressed by a number of people on this bill: the cost. Page 6 proposes that instead of the language that the CCICCH "may" adopt regulations on how the mediators are paid, it be changed to the CCICCH "shall" adopt how much the mediation costs. Page 6 of Exhibit H proposes to change the RED to the Ombudsman.

The change on page 7 of Exhibit H is this whole process should not involve after the CCICCH has made an order, so that reference has been deleted in several places.

On page 7, section 2, lines 24 and 25, the reference to claimants having a hearing directly before the CCICCH has been deleted. I will explain that elsewhere because it appears in several places. That was Ms. Anderson's point.

Section 3 has been deleted on pages 7, 8 and the top of page 9 of Exhibit H.

On page 9 of Exhibit H, the change to NRS 116.31175 was in regard to charging an owner with fees in connection with these proceedings, and that has been eliminated from the bill.

On page 14 of Exhibit H, the way this provision was drafted, it was envisioned that if there is a dispute, one of the end results could be that the respondent and claimant could go directly before the CCICCH. That was not the intent. The intent is that either the parties go to arbitration or mediation, or the RED decides whether to prosecute the case. But we are not going to have respondents and claimants going directly before the CCICCH like a court.

On page 15 of Exhibit H, there is a new reference to NRS 38.320, which deals with the fact that this claim can involve a matter of governing documents, not just a violation of the chapter. Those changes also include the fact that if this claim is filed with the RED, it can address governing documents and not just violations.

Regarding page 16 of Exhibit H, Ms. Anderson objected to any fee in connection with a mediation claim, and that has been eliminated. Lines 12 through 15 are a technical change in connection with arbitration because the parties serve the claims in arbitration, not the RED. Lines 25 and 26 eliminate the requirement of a fee.

Page 17 of Exhibit H reflects the concern that fees could be charged by the CCICCH against the person, including attorney's fees of the losing party, and that has been eliminated out of a concern that this not overload fees on people involved with disputes. That same change is on lines 22 through 24, 39 and 40 to eliminate a direct right of action before the CCICCH, and that is the same change on page 18 of Exhibit H. All of the changes on page 18 are because there is no direct right of proceeding before the CCICCH, and the same thing is on page 19. Those are eliminating any right that the parties have to go directly to the CCICCH.

The change on page 20 of Exhibit H is to shift the supervision to the Office of the Ombudsman. Page 21 of Exhibit H requires the CCICCH to adopt the maximum amount of the mediation costs and the Office of the Ombudsman to supervise this process.

A technical change on page 22 of Exhibit H makes it clear that a charge which is subject to arbitration includes assessments, penalties and fines, which echoes the language in NRS 116.3116.

On page 23 of Exhibit H, an amendment provides allows no need to refer to a hearing panel in NRS 38, which these sections deal with. Also, on lines 19 to 21, we are not turning over violations to arbitration; that needs to stay with the RED. And then the two changes to mediation or arbitration keep the language as in statute; those were Ms. Anderson's corrections, as are the changes on page 25.

An insert on page 27 of Exhibit H is another important provision. One of the major complaints Commissioners and perhaps this Committee have heard and Mr. Friedrich has mentioned is the arbitration fees are getting way out of hand. One of the reasons is because these go to full-blown arbitrations. The proposal on page 28 is that these arbitrations should be fast-tracked where there is limited discovery, limiting motions that would keep the costs of arbitration down much lower than now.

On page 29 of Exhibit H, we have deleted the word "binding" in a couple of places. The reason for that is an arbitration could be nonbinding or binding. The intent of the original law, which we want to preserve by deleting this language, is once you go to arbitration, whether it is binding or nonbinding, you are free to appeal that to the court within the limits of the arbitration rules. But there is a

sanction that even if you go to nonbinding arbitration, if you appeal an award and you do not get a better decision, that the judge has the ability to award costs to the party who did not prevail.

I do not think we addressed any of items 3, 5 or 6 of the proposed amendments in Exhibit H.

CHAIR WIENER:
Any questions on what has been presented or items 3, 5 or 6? Because this seems like a package deal at this point, I am going to roll any final work we do on S.B. 254 to our work session on Friday, April 15.

The meeting is adjourned at 11:04 a.m.

RESPECTFULLY SUBMITTED:

_____
Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

_____
Senator Valerie Wiener, Chair

DATE: _____

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
S.B. 174	C	Linda Eissmann	Work session document
S.B. 185	D	Linda Eissmann	Work session document
S.B. 204	E	Linda Eissmann	Work session document
S.B. 349	F	Senator Steven A. Horsford	Written Testimony
S.B. 349	G	Senator Steven A. Horsford	Update on Crime and Punishment in Nevada and Las Vegas
S.B. 254	H	Linda Eissmann	Work session document