

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

**Seventy-Eighth Session
April 2, 2015**

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Thursday, April 2, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Glenn Trowbridge

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Lynn D. Stewart, Assembly District No. 22

Minutes ID: 617



STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Lenore Carfora-Nye, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

A.J. Delap, Government Liaison, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department
John T. Jones, Jr., representing Nevada District Attorneys Association
Cindy Brown, Private Citizen, Las Vegas, Nevada
Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada
Vicki Higgins, Private Citizen, Las Vegas, Nevada
Tracy Birch, Executive Director, Criminalistics Bureau, Las Vegas
Metropolitan Police Department
Steve Yeager, representing Clark County Public Defender's Office
Sean B. Sullivan, Deputy Public Defender, Washoe County Public
Defender's Office
Robert Robey, Private Citizen, Las Vegas, Nevada
Michael E. Buckley, Real Property Law Section, State Bar of Nevada
Garrett Gordon, representing Community Associations Institute
Gayle Kern, representing Community Associations Institute
Jonathan Friedrich, representing Nevada Homeowner Alliance
Adrina Ramos-King, representing City of Las Vegas
Mark Leon, Private Citizen, Las Vegas, Nevada

Chairman Hansen:

[The roll was called and committee protocol was explained.] We only have three bills on the agenda, but Assembly Bill 397 was pulled on the request of the sponsor. We are very close to the deadline. Therefore, anyone who pulls bills and expects to have a future hearing runs a high risk of not having a hearing on that bill at all. The deadline is next Friday, and we are trying to accommodate as many people as possible. We have two bills to hear, and we are going to start with Assembly Bill 371.

Assembly Bill 371: Revises provisions governing the destruction of certain physical evidence. (BDR 4-734)

Assemblyman Lynn D. Stewart, representing Assembly District No. 22:

I am here before the Judiciary Committee to present Assembly Bill 371. I come with a problem, but I also come with a solution. The Las Vegas Metropolitan

Police Department (LVMPD) is suffering from large amounts of stored marijuana which is currently being held in their evidence vaults. The vast majority of the marijuana serves no evidentiary purpose. The bill provides a remedy to this problem, which is that it provides for the proper documentation of evidence as well as the lawful avenue for the safe destruction of the marijuana. A.J. Delap from the LVMPD is here with me today. He will go over the details of the bill.

**A.J. Delap, Government Liaison, Office of Intergovernmental Services,
Las Vegas Metropolitan Police Department:**

Also in attendance in Las Vegas is our Executive Director for the Criminalistics Bureau, Tracy Birch. She will provide technical support. She is the one that oversees this type of evidence. Essentially, the mechanisms for the destruction of marijuana are languorous. It involves having a defense attorney, the prosecutor, and court hearings involved in order to destroy evidence. There is a huge amount of marijuana being impounded which is usually through grows. A grow is where the suspect is cultivating large amounts of marijuana plants, often indoors. It could incorporate as many as 500 plants. That is far and above what is required to prosecute. As a consequence, our detectives are impounding these large amounts of marijuana which are often in the grow stages. It is very wet and will need to dry out. That causes problems for our evidence vault. The detectives conduct their investigation, serve search warrants, impound the marijuana, and box it up into what could potentially be hundreds of boxes. They take it down to the evidence vault where it has to be stored properly. The reason why it has to be stored properly is because if you do not store it properly and allow it to dry out, there is a potential for hazardous mold spores to begin to permeate the material.

In order for us to combat the permeation, we have quite a large amount of equipment and space dedicated to this process in our evidence vault. We have what is called a high density storage unit. We have provided some pictures of the vault and equipment ([Exhibit C](#)). It is a big machine and stands about 23 feet high. It holds around 250 boxes and costs about \$100,000. The marijuana is processed through it and it expedites the drying process. Unfortunately, this machine can be filled up with one grow house. That is a problem because in the last four or five years, our agency is averaging about 100 grows per year. Some of those grows are quite substantial in size. As many as 150 to 200 boxes can come out of one grow. I think I have described the problem, but I would like to say something about the odor. If you have ever had the opportunity to go into our evidence vault to recover property for which you were a victim of loss, you can smell the marijuana before you even get in the front doors. It is an issue, and it is a safety hazard.

This measure will remove the processes that delay the destruction of the marijuana beyond the amount necessary to prosecute. If you look at section 1, subsection 1 of the bill, we have added language that addresses the destruction of the marijuana. We will agree to keep ten pounds of it, which is about two boxes. The boxes are the same ones as reflected in the pictures that we provided ([Exhibit C](#)). You will also notice that each box has to be perforated in order to facilitate the drying process. The marijuana will be sampled five different times throughout the total impound. That sample will be documented through pictures and other methods of displaying the amount. We will submit that information to the court to make it part of the criminal complaint process. We will then be able to dispose of the excess marijuana, while retaining only ten pounds.

We have had conversations with the Clark County Public Defender's Office. We are suggesting an amendment in the spirit of compromise. We are only addressing marijuana here. We are not addressing any other controlled substances such as methamphetamines, heroine, or cocaine. Our issue is only with the marijuana. I think we have a verbal agreement, and we will write up the amendment. I think I have painted a picture of what the problem is and the remedy that we are suggesting. I would be happy to answer any questions.

Assemblyman Elliot T. Anderson:

In this bill, there is some crossed out language which talks about weighing the marijuana before it is destroyed. Is there any way that can be retained in the language to ensure they will have a chance to inspect it before it is destroyed?

A.J. Delap:

I appreciate the question but, honestly, that is one of the big holdups. That was part of the conversations that we have had with the Public Defender's Office because they have expressed similar concerns. It is my understanding that what this bill presents is acceptable to them. They are at peace with how we are going to document the evidence.

Assemblywoman Fiore:

Thank you for bringing this bill forth. Is there anything you can use the product for instead of just destroying it? Is there any secondary use for the marijuana plants?

A.J. Delap:

That question was posed to us and one that we contemplated. We can prove it is marijuana but there are many different ways of growing this type of material. There are genetic changes or soil changes that could have occurred. Therefore, we do not have a way of vetting out what this material has been exposed to,

how it has been grown, or what its potential side effects are. As far as our agency is concerned, we would not feel comfortable doing anything other than destroying it through incineration. At this point, we would not be comfortable trying to divert the marijuana for any other use.

Chairman Hansen:

Is there anyone who would like to testify in favor of A.B. 371 at this time?

John T. Jones, Jr., representing Nevada District Attorneys Association:

We are here in support of A.B. 371 for the same reasons articulated by Assemblyman Stewart and LVMPD. We have no objections as long as it is limited to just marijuana.

Chairman Hansen:

We will move to the opposition testimony. Is there anyone who would like to testify in opposition to A.B. 371?

Cindy Brown, Private Citizen, Las Vegas, Nevada:

I am a patient advocate. With reference to section 1, subsection 1, I am wondering how you think that allowing someone to destroy marijuana over ten pounds, without prior approval of the District Court, is even close to justice. The section goes on to say that the person may not even be charged or convicted, but allows for the owner to file a claim for reimbursement. What is happening to our justice system? This is not right nor is it justice. If you are going to take the marijuana, at least hold it until the person is convicted. If convicted, give it to the legal dispensaries to use for medicine for the poor. It can be used; it is not poison. If the smell of storing it bothers you, get some smell-proof bags which will solve your problem.

Mona Lisa Samuelson, Private Citizen, Las Vegas, Nevada:

I am a 25-year resident of Nevada with 15 years here in Las Vegas and 10 years in Reno. I am here as a proud medical marijuana patient to voice my opinion that this is a scary situation for us. It becomes easy for law enforcement to have their way with us and hurt us. If they get rid of everything but ten pounds, that is still not enough product for someone for even a year. You can be hurting a lot of people who are not physically able to grow.

Secondly, I would like to respectfully remind you that you have enforced laboratories to test a product. That makes it viable to take your confiscated marijuana and have it tested. It can then be given to the community, and used by those who cannot afford the dispensary prices. Please keep in mind that we do have laboratories.

Vicki Higgins, Private Citizen, Las Vegas, Nevada:

I am a medical cannabis advocate and a business owner. We own a cultivation center. In section 1, subsection 7, you talk about a dangerous drug or hazardous waste. I think we have established that this is not a dangerous drug. The controlled substance definition in here is unclear. The state of Nevada, and the patients of Nevada, have indicated that this is a medicine. We are working on changing this from being a terrible thing like plutonium. As a cultivation center, we may produce a lot more.

Until the proceeding is complete and the charges are filed, I believe this is a terrible thing and it goes against our rights. We plan on producing more than ten pounds at a time. Should we run into conflict, or a police officer who is not trained about the situation, mass amounts of our profit could be destroyed and that would set us back terribly. Regarding the home growers, there are growers that grow once or twice a year, so they have large amounts on hand. I do not see ten pounds being an issue for the home grower. I see this from a business point of view.

I agree with Cindy, Mona, and Assemblywoman Fiore. If you decide to take our profits before the court decides that we have violated the law, this extra medicine can be tested and sent to our poor. The state has made it very difficult for us to donate, as a business community, to the poor of this state. As advocates, we helped to create this law. We helped to create the regulations. The biggest point in doing this was to help out the patients in some way, shape, or form. I see this as a possibility to help the patients, but I also see this as a bad thing against our business community. I thank you for your time and consideration. Please do the research. It is not hazardous or a controlled substance. It can be tested and it is very safe.

Assemblywoman Fiore:

Thank you, ladies. I want to make sure that I understand correctly. I am not sure that the product would be destroyed until there is a conviction. In this legislative session, we are working on several forfeiture bills. Are you under the impression that the product that had been confiscated would be destroyed prior to conviction?

Vicki Higgins:

In section, 1 subsection 1, it says "...without the prior approval of the district court in the county in which the defendant is charged...." I am a layman so bear with me, but the way I understand it is that the police department or the arresting group would be in charge of that individual decision. The way I understand it, they do not want to store more than ten pounds for any length of time. We object to this. It should all be held and taken care of. It is bad

enough that the law does not require them to maintain our plants. Should we get arrested or have problems in our cultivation center, all of our plants are uncared for.

Assemblywoman Fiore:

I do understand that point. I do have one more question because I consider you ladies the product experts. Let us say language gets strong enough to where the product could either get destroyed or dispensed after conviction. Is there a secondary use for the product that is confiscated? Can you give me a few examples of what could happen?

Cindy Brown:

There are numerous uses. The state implemented lab testing. Anything that would pass the testing could be used for a number of things such as oils to cure cancers, oils to cure arthritis, lotions, or pain relief. There are a myriad of uses. Just because it was obtained by an illegal grower does not mean it is bad. To clarify, the bill clearly says the person may not even be charged or convicted before they will destroy it. They will destroy it right then and there, if they want to. Generally, they will take it down to the storage unit and then destroy it. According to what this bill says, they can destroy it immediately. I posted it on Facebook last night. The lawyers on my Facebook feed all agree.

Assemblywoman Seaman:

First of all, I do not know if I would want LVMPD to be in the marijuana business. Do you think this may put an unwarranted liability on LVMPD if they have the responsibility of who it goes to and where it goes?

Vicki Higgins:

I feel that this medicine would be lab tested. If you need to maintain ten pounds on site for the case, this could be a state agency, or a specific lab, or a dispensary doing the testing. There have been many committees set up. I agree that the LVMPD should not have that responsibility, but we could put something in place for after the proceedings. If there is excess for medicine, it can be distributed in some formal way.

Assemblywoman Seaman:

I think you are asking LVMPD to now be in the marijuana business.

Vicki Higgins:

No, we only ask that they provide the additional amount to a qualified distributor to be distributed to people financially in need.

Assemblyman Ohrenschall:

What if the bill was amended so that the person whose plants were confiscated had a legal right to have them returned, regardless of the weight. Would that address your concerns?

Tracy Birch, Executive Director, Criminalistics Bureau, Las Vegas Metropolitan Police Department:

I would like to address some of the concerns that have been discussed here today. I oversee the evidence vault for LVMPD. The vault is not temperature controlled. We do have issues with storing the large amounts of marijuana we have impounded from grow operations. At the time of confiscation, the material is damp. We take all kinds of precautions to ensure the material is dried out by using ventilation in the boxes. However, we cannot guarantee that there is no possibility of mold growing on the marijuana over time because we do not have a temperature-controlled environment. There is a class of mold called aspergillus which can have some health hazards related to pulmonary or asthma-like conditions. That is one of the reasons why we do not want to store it long term. This bill would decrease the amount of marijuana that is stored in our facility. It is not intended for legal growers but is intended for illegal growers of marijuana. I do not believe that there is any quality control over those illegal growers and what they use to grow their product. This would substantially decrease the amount of marijuana that is stored at the evidence vault. Therefore, returning the marijuana or donating it for medical marijuana use is very problematic for my department.

Assemblyman Trowbridge:

My comments are probably more for the sponsor of the bill. I think we have conflicted thinking going on here. I say conflicted thinking because it is a little bit like the situation where you have a legal Jack Daniels distillery and an illegal moonshiner. The one has a product that is illegal, like what this bill is addressing, and we are destroying the illegal product. In the case of the Jack Daniels distillery, if they are in violation of some law such as not paying taxes, can you imagine what would happen if the local law enforcement agencies destroyed all of the product? The charge is totally unrelated to the legality of the product. I think maybe the bill can be amended with just a couple of words to address the Public Defender's concerns. Maybe it can say a product of a legal grow house would be treated differently than one confiscated from an illegal operation.

My second thought is regarding the aromas associated with the marijuana. The reason it starts to smell is because it is decaying. It is like a compost pile. Compost piles can catch on fire or grow mold, et cetera. The necessity to get rid of the product that has roots, stems, bugs, and more is justified.

The oddball circumstance is where it might involve the illegal grower versus the legal grower and probably needs to be thought through.

Assemblyman Nelson:

Reading through the bill, the strikeouts show what the state of the law currently is and the current process. Other than that, is there any law against destroying evidence or culling evidence? Is there a general policy, aside from *Nevada Revised Statutes* (NRS) 52.395, which would preclude LVMPD from getting rid of evidence?

Tracy Birch:

Our department follows all of the statutes that require procedures for destroying evidence. There are no other statutes that apply to drug evidence except for this one. There are statutes that apply to other property that we store. There is a statute that applies to stolen and embezzled property. There is a procedure in place for destroying or disposing of that property. Otherwise, we follow in-house procedures through the police department.

Assemblyman Nelson:

Without this bill, you just keep the evidence until a case has been decided?

Tracy Birch:

Yes, that is true.

Assemblywoman Fiore:

My biggest concern is as we look at legislation like this, we are looking at a very slippery slope. Once we start setting precedence that we can destroy evidence before a conviction, who is to say we will not do it for other reasons. How much are you currently storing that is becoming an issue?

Tracy Birch:

Within the last seven years, we have stored 3,939 pounds of marijuana.

Assemblywoman Fiore:

How much do you have today in storage?

Tracy Birch:

I do not have those figures, but we have impounded 216 boxes in the last three months. It totals about 1,000 pounds. It has been a very busy quarter for us in the evidence vault. Currently, we keep the evidence over a period of time until there is a conviction. This law would change that. We have so much of it, and our storage capability is not adequate. As you can see in the pictures provided of the high density storage ([Exhibit C](#)), it can be filled with one illegal

grow. The storage unit only stores about 225 to 250 boxes. Because of Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA) standards, it has to be separate from all other property and has to be secured in a cage. We are running out of space to do that. We also have safety concerns for our employees and visitors to the vault.

Chairman Hansen:

I see no further questions. I would like to thank all of you for your testimonies. Ms. Birch, are you a detective there at LVMPD?

Tracy Birch:

I am actually the Executive Director of the Criminalistics Bureau. I oversee the evidence vault, the forensic lab, and the crime scene investigation unit. I have 31 years of experience in the department and started out as a forensic chemist in the lab.

Chairman Hansen:

Thank you very much for your testimony this morning. Is there anyone else who would like to testify in opposition to this bill?

Vicki Higgins:

I just wanted to point out that I understand the police department's complications. I agree that if we define this for business and legal establishments, separate from the illegal users, it would help.

Chairman Hansen:

Is there anyone who would like to testify in the neutral position?

Steve Yeager, representing Clark County Public Defender's Office:

We are officially neutral on the bill. We had some concerns about how the bill was initially drafted, particularly in regard to controlled substances other than marijuana. I want to thank the bill's sponsor and LVMPD for working with us on our concerns. It is our understanding the amendment will only apply to more than ten pounds of marijuana. We certainly understand the space issue and the health issue.

To raise one point that may alleviate some concerns, section 1, subsection 4 says, if it is determined that it is not a controlled substance, the claimant can bring a civil suit. We are in a little bit of a gray area with marijuana because under state and federal law, marijuana is a controlled substance. There is some wiggle room there because how do we classify medical marijuana? Medical marijuana is really just marijuana. The difference is you have authorization to use it. In the scenario where marijuana is seized from someone and it is later

determined that they were lawfully in possession of it, perhaps this provision would come into play. Although, realistically, an individual should never have more than ten pounds of marijuana. We would really be talking about grow houses, if and when dispensaries are up and running in Nevada.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender's Office:

We are officially neutral on this bill. We appreciate working with LVMPD, specifically A.J. Delap, for removing the language referring to one pound of other substances. When you talk about destruction of evidence, in any form, it raises the public defender's hackles. We are willing to work with LVMPD because I understand the biohazard argument and the need to destroy this material for a number of reasons. I also understand the difference between lawful, medicinal marijuana versus an illicit substance. I am still willing to work with LVMPD to craft some language to distinguish lawful medicinal types of marijuana versus the illicit type. I am happy to answer any questions.

Chairman Hansen:

It seems to me that this is more of a storage argument. I do not see them intentionally destroying evidence in order to prosecute someone. The absence of the evidence would actually hurt their cause rather than help it. If someone gets accused of rustling a herd of cattle, they do not have to keep all of the cows. When you have 250 boxes of this stuff sitting there, it seems a little excessive.

Sean B. Sullivan:

When I originally reviewed this bill, I thought about other cases. Ms. Birch discussed earlier storage of other types of property, such as a store that is basically allowed to put the recovered, stolen property back on the shelf and sell it despite the fact that adjudication has not been fully conducted. They do have to go through steps and procedures pursuant to statutes to ensure that it was photographed, properly examined, and the amount in question was properly documented. If it was a perishable item, obviously it would have to be destroyed. There are measures and procedures in place to ensure that the police are not just destroying the evidence pending adjudication of a case. The spirit and intent of this bill is accomplishing that, specifically section 1, subsections 2 and 3. I think that LVMPD is going to great lengths to ensure it is properly weighed, measured, photographed, and the affidavit filed with the court.

Chairman Hansen:

I am sure the bill's sponsor will be happy to work with you for any last minute amendments, if necessary. Is there anyone else who would like to testify in the

neutral position? Seeing no one, Mr. Stewart, would you like to come back up to tie up any loose ends?

Assemblyman Stewart:

With your permission, perhaps Mr. Delap can satisfy some of the questions that have been asked.

A.J. Delap:

I think you summed it up well, Chairman Hansen. This is not anything more than a storage issue. The issue is it is organic material that will decompose. It can take an average of one to two years for adjudication. It is not stored in a manner that would render it usable. If it was found to be usable, we just cannot do that with the amounts coming in currently. As we do with many other forms of evidence, we are trying to document the material. It is fully photographed and all the procedures are in place similar to evidence of a homicide. It is very well documented. The information is conveyed to the defendant and is part of the arrest package. Unfortunately, we just cannot continue to impound these quantities of marijuana and do it in a safe manner. It is far beyond what is necessary to prove the charges. Hundreds of pounds of marijuana is just far and above what is necessary to prosecute a case. Ten pounds of marijuana is significant.

The other thing I wanted to address is more for the legislative intent. This destruction will occur before a full adjudication because it is going to be decaying in our evidence vault as the case is working through the courts. However, what we will have destroyed is documented. We have come to an accord between the interested parties that the method that we propose is acceptable and still allows for a proper judicial process.

Chairman Hansen:

We will now close the hearing on Assembly Bill 371. We will open the hearing on Assembly Bill 233. Since I will be presenting this bill, I will turn it over to Vice Chairman Nelson.

[Assemblyman Nelson assumed the Chair.]

**Assembly Bill 233: Repeals provisions governing common-interest communities.
(BDR 10-1025)**

Assemblyman Ira Hansen, Assembly District No. 32:

Thank you for the opportunity to discuss the concepts of Assembly Bill 233, a rare skeleton bill designed to promote some fresh thinking regarding common-interest communities and ways to deal with the aggravation and time

they have caused the Legislature throughout the years. Admittedly, the majority of states regulate homeowner associations (HOA). There are 21 states without any state statutes. Five of those states are our western neighbors: Idaho, Montana, North Dakota, South Dakota, and Wyoming. By contrast, we have two chapters in the *Nevada Revised Statutes* (NRS) to take care of HOAs. We have a full-time ombudsman and the Commission for Common-Interest Communities and Condominium Hotels.

Each session, the Judiciary Committee hears dozens of HOA bills and listens to hours and hours of testimony. These bills often deal with excruciating minutia that should not require legislation, but should be common sense. Some examples are: allowing the display of political signs, giving notice before towing cars, providing equal space in newsletters for opposition viewpoints, protecting owners from retaliation by an association, allowing utility trucks and law enforcement vehicles to park, allowing owners to install drought-tolerant landscaping, preventing associations from fining owners for violations of delivery persons, allowing installation of shutters and window coverings for security and energy efficiency, preventing associations from prohibiting access by parents or children of owners, and allowing storage of recycling containers.

My personal favorite was the bill in 2003 that was needed to give owners the ability to fly the American flag. This session we have a bill requiring associations to allow owners to display the Nevada state flag. Actually, I think one of the most interesting ones we heard was about garbage cans. Believe it or not, we had a bill in front of this Committee about where someone can or cannot place their trash containers. It was a highly controversial bill. This place was packed with people, and I was amazed. That was also one of the things that made me think about why we are discussing such things at the state level.

I met with the Legislative Counsel Bureau (LCB), and we came up with some different ideas. We discovered that many states do not have any state regulation on HOAs. In many states, they are normally a private contract between the HOA and the individual homeowners. That is how many states handle it. In Nevada, we have a commission set up where many of these issues are supposed to be vetted. Section 1 of the bill lists all the chapters of NRS that we are proposing to be repealed. We are basically eliminating all of the HOA issues from the state level of control. My initial thoughts were to kick it down to the counties. The counties do not want it for the same reason that we do not want it. This is just a nightmare for anyone who is an elected official.

My next thought was to go entirely to a private contractor arrangement. If you are in an HOA, and you have your Covenants, Conditions, and Restrictions (CC&Rs), and there are issues, you would do like anyone else in any other

situation. You would go to the board of the HOA. If you are unhappy with that, you would go to small claims court or some other means for adjudication. However, when the bill came out, there were some proposals from people who thought it may be a little bit extreme. My thinking was about the Hydra of Greek mythology. You chop off one head and another one keeps popping up. It never ended. I believe we have about 25 HOA bills this session. It is growing every session, and there is an absolute need to get this out of our realm. These are not state issues. Whether or not you want to put up shades on your windows, where you put your trash cans, or where you park a utility vehicle is not something that we, as a legislative body, should be determining. It wastes a lot of very valuable state time.

The funny part is when I came up with the idea for this bill, the most delighted people that I have ever seen were our own bill drafters. One staff member said it was the best bill they had ever seen because they spend so much time on these issues. Behind the scenes, there are many people who would like to see this removed from the state level. However, rather than my idea to remove it entirely, there were some suggestions that we increase the authority of the Commission. There is an amendment ([Exhibit D](#)) on the Nevada Electronic Legislative Information System (NELIS). This amendment came together with the efforts of several people, some of whom will testify. I would like to leave it open to this Committee. My method was to do like Alexander the Great chopping the Gordian Knot. The Gordian Knot was a big mess that no one could untie. Nobody could figure out how to untie it, so Alexander the Great looked at it, took his sword out, chopped it, and ended the problem. However, if you do not want to kick it all back to private contract, the next option would be to go to the Commission.

There is a Commission that, in theory, was supposed to be dealing with most of the problems that we deal with at a legislative level. I do not know where the split came where we ended up getting all of these bills at the state level. They really should have been handled at the county levels or at the Commission level. If there is a dispute about whether or not you want coyote rollers on your fences or blinds on your windows, you would see the ombudsman who would act as the go-between for you and the Commission. Instead, for whatever reason, that system has not worked, and these issues wound up being brought to the Legislature. My goal here is simply to get this out of the state legislative level. As you know, today is the halfway mark. We have a very limited window of time for us to take care of some very serious issues. Frankly, I do not think where you put your garbage cans is a serious issue.

The proposed amendment modifies my idea so instead of just repealing the statutes, it gives more authority to the Commission and the ombudsman who

are designed to handle these sorts of things. There will be some folks testifying who will be able to answer some of the questions you may have. At least you have an understanding of what this bill is attempting to do. I really do think it is important for us to get this resolved because we have very limited time with only 120 days once every two years to process the bills. It has to be very frustrating for a member of an HOA to wait two years to try to get an issue resolved. We put those issues into a subcommittee because there are so many of them, and they are time consuming. I thank all of you who have served on the subcommittee, especially the chairman, Assemblywoman Seaman. It is not easy, and there are many surprisingly controversial issues that come to the subcommittee. If I have my way, next session none of this will happen. It does not belong at this level. With that, I will conclude my testimony and will be happy to answer any questions.

Vice Chairman Nelson:

I enjoyed your reference to the Gordian Knot. It reminded me of another one of the feats of Hercules where he had to clean out the stables, which were a total mess. He diverted a river to do it. Apparently, that is what you are trying to do here.

Assemblyman Elliot T. Anderson:

I have to acknowledge you as the bravest person in the Legislature for bringing forward this bill. I was amused when I first read it. I think what happens is that people come to the Legislature because they are looking for a recourse in any way, shape, form, or fashion. I find that people get very passionate about these issues. It reminds me of Patrick Henry saying give me my garbage can or give me death. I wonder if we would actually still keep some bills because legislators, especially new ones, would hear complaints from their constituents and would bring forth bills. Therefore, we would still end up having to deal with them. Are legislators the problem? Is it because we are bringing these bills forward or are they coming from somewhere else?

Assemblyman Hansen:

There are legitimate problems in HOAs. If you are a member of an HOA and you are unhappy, you will go wherever you can go to resolve the issue. The very fact that we have NRS Chapter 116 encourages people to come to our level to try to resolve things that do not belong here. Thus, that is the whole idea of getting rid of NRS Chapter 116. I would not say it is our fault. Our job is to represent our constituents. When our constituents have legitimate problems with their HOAs and they look to the NRS, where do they go? They go to their Assemblyman or Senator. In the future, instead of coming to us, they will go to the ombudsman or the Commission. We will give those groups the authority necessary to handle the decision-making process. We can

certainly do that with plenty of consumer protection built in. Currently, if there is a problem on a public street, it is not brought to us, it is brought to the county commission or city council. That is the legitimate place for it to go. There are divisions of authority in the state, and for good reason. Somewhere along the line, the HOAs got bumped all the way to the state level. What I am trying to do is to basically remove that. They do not belong at this level.

Assemblyman Elliot T. Anderson:

I totally agree and understand that we should have those divisions. What I found is that most people do not appreciate the distinction. What I tend to do for my constituents is to intercede on their behalf and direct them to the right person. They just want a government that works; they do not care who does it. I certainly appreciate what you are trying to do with bringing these down to a lower level because I have spent hours at the HOA Subcommittee meetings.

Assemblyman Hansen:

This is my third session, and I did not even know there was an ombudsman who had anything to do with this issue. I did not know there was a commission. In all of the discussions we had in the last two sessions, I do not remember that even being brought up as a possible resolution mechanism. Yet, it is in state law already. The problem is either we did not give them enough teeth, or in the absence of our own knowledge, we took on the issues. Frankly, if someone came to talk to me about coyote rollers on their fences, I would give them the phone number for the ombudsman who is designed to handle that. It would then go to the Commission to try to work those types of things out. By the way, the Commission is appointed by the Governor. There is still a political angle to it. If the Commission is unresponsive, someone could take it all the way to the Governor, if necessary. There are some folks who would gladly take it up to the Governor, and that would bypass us.

Vice Chairman Nelson:

I do notice there is no fiscal note on this even though you are shifting things.

Assemblyman Hansen:

It is my understanding that there is no fiscal note because this already exists. All we are doing is giving them more authority. They may need more staff at some point, but at the moment, we do not see any need for fiscal increases because everything is already in place.

Assemblywoman Seaman:

What you want to do with this bill is to repeal all of NRS Chapter 116. Right now we are working on important issues such as the super priority lien. Everything would be repealed if this passes as is. Is that correct?

Assemblyman Hansen:

That is a good question. Maybe we should ask Legal. Would that eliminate all of the work currently being done on super priority liens?

Brad Wilkinson:

Yes.

Assemblyman Hansen:

Okay, there is a little glitch we will have to work on. Regardless, you see where I am going with this, and I think you understand why. That issue was created by us getting involved in that process. I do not think it is something the Commission can handle exclusively.

Assemblywoman Seaman:

What if that is created again?

Assemblyman Hansen:

It could be. One thing you learn in the Legislature is that we fix a lot of problems caused previously because there is very little perfect legislation.

Assemblywoman Seaman:

I think the intent is good, and I like it. I do think there will be some unintended consequences.

Assemblyman Hansen:

Indeed, but keep in mind, the purpose of the bill is to try to address some previous unintended consequences that are tying up immense amounts of legislative and staff time. I remember talking to Assemblywoman Carlton during my freshman year. I was nitpicking a bill and she said not to let the perfect stand in the way of the good. You need to get to a reasonable compromise, and there will be future efforts to try to clean up some of it. I think that anyone who studies these HOA issues, and looks at its history here, has to notice the constant escalation of bills that are very minor in scope. You do not need the entire state of Nevada making decisions on an HOA in Clark County.

Mr. Vice Chairman, I stand corrected. With the amendment, the bill would not impact the super priority lien sections. That could still fall under our jurisdiction here.

Vice Chairman Nelson:

Let us turn to people who are in support of the bill.

Robert Robey, Private Citizen, Las Vegas, Nevada:

My good friend, Jonathan Friedrich, and I met after he won a case in arbitration and made the front page of the *Las Vegas Review-Journal*. It cost him a lot of money, but it was a milestone. When former Assemblyman Bernie Anderson was chairman of this Committee, he called me on the phone to ask me to testify, and I became involved here. He called me from his home and spent two hours telling me how important it was to have people testify on HOA bills. At the time, former Senator Schneider testified that he was concerned about violence in the HOAs. That is why in my essay I talked about mayhem and chaos. This is the basic reason for NRS Chapter 116. People were getting violent. You must remember that. The NRS has taken away the violence, and now we are down to the minutia. My favorite story was about the delivery man. The pizza guy speeds, but the tenant who ordered the pizza and the owner of the unit gets fined.

The problem with an HOA is that they have too much power. You cannot allow a group of people to fine a person for stupid things like three pieces of grass on the lawn. They have overstepped their authority and have totally gone berserk. There is no reason for NRS Chapter 116 because nothing gets resolved anyway. The ombudsman's office has been a disaster. The Commission protects the industry, and that is the problem. It comes down to the basic *Constitution of the United States*. Somehow, those of us who were dumb enough to buy into an HOA did not realize we were leaving the United States of America and not having the right to live in our own home as we wanted to. An HOA has control of the common elements such as the roads or streets. They do not have the right to tell me what I should wear or whether I can put a roller on my fence to save my dog's life. They do not have the right to say that my garbage can has been out an hour, when the city allows me to leave it out for ten hours. We have gone berserk. That was the reason for the garbage bill because there were problems with garbage cans and people were getting fined. Old people were having to drag their garbage cans. Please consider what we are doing.

I have not been able to read the amendment that has been proposed, but you must remember that there is violence. A man in Florida took a machine gun and killed the president of the association because the president said his hedge was two inches too tall. My goodness, what have we become? We have allowed untrained persons to be on a board of directors that has control beyond belief over a person's life. Repeal NRS Chapter 116. However, something does have to replace it. Mr. Hansen, I cannot thank you enough for what you have done. [Robert Robey also submitted written testimony ([Exhibit E](#)).]

Assemblyman Ohrenschall:

I wanted to compliment you. You have been such a steadfast activist by showing up at many late night meetings. You have contributed so much testimony. Whether we agree or disagree, I think we all appreciate your contribution. Thank you, Mr. Robey.

Vice Chairman Nelson:

Is there anyone else to testify in support of the bill? [There was no one.]
Is there anyone in the neutral position?

Michael E. Buckley, Real Property Law Section, State Bar of Nevada:

I am an attorney in Las Vegas. I am also a member of the Executive Committee, Real Property Law Section of the State Bar of Nevada. I have served on the Commission for Common-Interest Communities and Condominium Hotels when it was formed. For a little background, I was involved in the enactment of NRS Chapter 116 back in 1991. It was actually in front of the Judiciary Committee. At that time, the Chair was former Assemblyman Robert Sader. He believed that one of the positive things about NRS Chapter 116 was that it was a consumer protection statute. There are certainly a number of reasons why there needs to be a law that deals with common-interest communities, particularly condominiums. The motivation for having a law dealing with common-interest communities really goes to condominiums. The people own airspace as well as undivided interest in the roof, and the hallways, et cetera. The law needs to specify how that is taken care of. The law also deals with the protection of lenders which includes the super priority lien issue that the Legislature is dealing with now. That actually was part of the Uniform Common-Interest Ownership Interest Act of 1991.

The other thing that NRS Chapter 116 does is deal with disclosures to purchasers whether it is a new unit or a resale. It creates basic rules for meetings of owners and board members. It deals with finances. Associations own roads, buildings, and common-owned property. The law provides a way to be able to finance that. In 2003, when the Commission was created, the idea was that you would have a responsive body to address some of the issues that often come up when dealing with common-interest communities. The Commission has seven members, each representing a different interest. At one time it consisted of five members, but two additional homeowner member positions were added. When I was on the Commission, my thought was that if the Commission adopted a position, it came about as a result of debate and discussion of different interests from within the common-interest community.

Chairman Hansen mentioned a point that I also found while dealing with common-interest communities. Oftentimes, legislators need to be educated on all the different issues that relate to common-interest communities. There are people on the Commission who are familiar with the workings of the different kinds of common-interest communities. The one thing that I always made a point to mention when I testified is that one size does not fit all. There are different kinds of common-interest communities throughout the state, such as rentals up in Lake Tahoe, big rural areas, high-rise condos in Las Vegas, and master-plan subdivisions. That is why there are statutes to deal with all of these issues when there are so many different kinds of communities.

The Commission is self-funded, and every unit owner in Nevada pays a fee to the Nevada Real Estate Division (NRED) which it uses to administer the cost of the Commission. The Commission operates through public hearings. There are regulations and two existing areas where the Commission has adopted regulations by authority of the statutes. In the early area, there was some concern that certain kinds of associations which do not regulate conduct, or small associations, should be exempt. The authority was given to the Commission to create the descriptions and definitions of how one defines an exempt association. Those hearings were held, and those regulations were put into effect. The Commission also was directed to come up with reasonable collection costs.

The idea behind the amendment is that the Commission be given the express authority to make regulations in particular areas dealing mostly with conduct. There is a list of statutes dealing more with the areas that Chairman Hansen mentioned. For these, the Commission would be given express authority to make the regulations. The position of the Real Property Law Section was to educate and help this Committee reach a decision and help with any questions you may have regarding NRS Chapter 116. If you have any questions, I would be happy to answer them.

Vice Chairman Nelson:

Thank you, Mr. Buckley. We greatly appreciate all of the work you have done through the years in this area. I have known you for over 30 years, and I have the highest respect for you. If the bill is passed, either with or without the amendment, do you have an opinion as to what will happen? Will it create a vacuum or will everything be picked up properly by NRED?

Michael Buckley:

If the bill passes in its original form, there would be chaos. One of the things that has happened during the recession is we now have court cases that interpret NRS Chapter 116, particularly in the area of the homeowner

association liens and the issues dealing with mortgage foreclosures. Supreme Court decisions are made on those issues. Associations are governed by a declaration which is recorded. Without the backbone of the statutory structure, I think there would be a lot of uncertainty. There would be time and expense of litigation, particularly with a condominium, to show who owns what and how that would work. You need something that governs that. My opinion is that it would be a mistake to completely repeal NRS Chapter 116.

If the bill is passed with the amendment, it gives people the ability to go to the Commission which meets regularly. They do not have to wait every two years. There is a body that considers what is going on. One of the things that I was always troubled about regarding statutory responses was you are never quite sure if the problem is something that happened because there were bad people involved or because it is a serious problem in the whole area. If you have something going to the Commission, NRED hears the complaints through the Ombudsman's Office. While I was on the Commission, when we would consider taking a position on legislation, we would ask NRED if this was a serious problem or whether it was something else. The expertise that the Commission has available via NRED would be better than having to go to the Legislature where you never really know if it is a serious problem or bad actors.

Assemblyman Elliot T. Anderson:

We have heard about chaos. I wonder exactly what that chaos might look like. Before HOAs, a long standing part of old-school property law was about covenants and easements. When it comes down to it, an HOA operates through a covenant, right? The true effect of a straight repeal of NRS Chapter 116 would be a lot of work for lawyers to draw up covenants and easements when you have shared services and you do not have individual metered units in a multifamily complex. Would that be the true effect of what a repeal would do?

Michael Buckley:

One of the things the Legislature passed was the arbitration process through NRS Chapter 38. I am not a litigator, but I was told at the time that the judges did not like hearing these. It would be better going through an arbitration or mediation process. Certainly, there are covenants which are subject to interpretation. It definitely would create work for lawyers. I guess the question is whether you want to create an area where you go to dispute resolution through the judiciary. It seems like it is better to have the framework rather than just have people dealing with private contracts set out in the declarations. Chapter 116 of NRS tells you what has to be in the declaration. It explains what the powers of the association are. If those statutes are eliminated, there may be gaping holes in new common-interest communities that are created.

There may be issues about what kind of power associations have. You just would create a lot of uncertainty.

Assemblyman Ohrenschall:

You have been practicing quite a while here in Nevada, even before the Uniform Common-Interest Ownership Interest Act of 1991. I wonder how things worked with HOAs and disputes at that time. Can you describe that for us?

Michael Buckley:

We had statutes before 1991. We had NRS Chapter 117 which came from the Federal Housing Administration (FHA). The reason it was adopted in Nevada was when you have condominiums, lenders need to have some framework on how their liens work. We also had NRS Chapter 278A, which deals with planned unit developments allowing the county to create and approve what we now call a planned community, which is a subdivision with private streets. We did have a structure there. Before 1992, the world of common-interest communities was much smaller. The whole industry exploded after 1992 because the local governments started requiring associations. The reason for this was to pass off some of the maintenance obligations to the associations. One of the questions might be, if NRS Chapter 116 is repealed, what responsibilities would fall back to local governments if private streets are not maintained? I do not think it was not chaotic, people just lived with it. I heard about this Uniform Act at a conference in San Diego. Here was a law that was vetted throughout the country, and that had the approval of experts from many different fields.

One of the good things in Nevada is that we have very few court decisions because the Supreme Court is so busy, and it does not have the time to issue all of the guidance in dealing with this area. We thought that having a uniform law, where we could look at the comments and look at other states that have adopted the same law, would help people of Nevada interpret the law. Before 1992, if you had a question, you really did not know how to address it. As Assemblyman Elliot Anderson previously noted, it deals with real estate, and it deals with covenants. That affects title insurance. You need to get the title companies involved. Can you get an owner's title policy if you have concerns about whether the covenants work or whether they create something that works? There were a lot of open questions that NRS Chapter 116 was intended to solve. We did not have the volume of issues for the hundreds of thousands of units that have been created since then, and it was really a different world.

Assemblyman Ohrenschall:

The way I read the amendment, it seems to me that we are delegating a lot of authority from the Legislative Branch to the Executive Branch of government.

In the other jurisdictions that have adopted the Uniform Common-Interest Ownership Interest Act, have any of them moved in this direction to try to pass on the authority? I do not think the Commission has promulgated any amendments in this vein. With the amendment, I wonder if we are treading on new and potentially dangerous ground by giving one branch perhaps a little too much authority.

Michael Buckley:

The statutes are already very explicit. They cover many topics. The point of the amendment is not to go into new areas but to deal with new questions involving the interpretation, further definition, or clarification of what is already in the statutes. I certainly believe that the Commission needs to operate within the parameters dictated by the Legislature. The Legislature will say you can do this or you cannot do that, and if you have questions, go to the Commission who will interpret that. It is not as broad of a delegation as you may think.

I am not aware of how it is affecting other states. California has the same type of common-interest communities that we do. I am sure they have hundreds of thousands. There is a whole judicial system that deals with that. They have courts of appeals. Therefore, I suspect in California it is mostly dealt with through the court system. I am not aware of any other state where it is done through a delegation to a Commission. I do not think there are any commissions. There may be one in Maryland or Virginia. Senator Schneider and I talked to the California Legislature at one time, and they were considering it. I am not sure whether that actually went into effect. Once again, I do not think the delegation is as broad as you think. Certainly, it can be tailored to whatever the Legislature believes should go to the Commission.

Assemblyman Ohrenschall:

Has California adopted the Uniform Common-Interest Ownership Interest Act?

Michael Buckley:

No, they have a different act.

Vice Chairman Nelson:

Is there anyone else in the neutral position? Seeing no one, is there anyone in opposition to A.B. 233?

Garrett Gordon, representing Community Associations Institute:

The Nevada Legislative Action Committee of the Community Association Institute is made up of homeowners, associations, community association professionals, as well as Southern Highlands Homeowners Association, and the Olympia Companies. To my right is Gayle Kern, who is an HOA attorney. She

is part of our Association and has been practicing for many years. She can answer any specific questions as they relate to NRS Chapter 116 and how it is handled in private practice.

First, I will say that we certainly appreciate the Chairman's intent. I have been working on HOA issues for the last four or five sessions and can understand the minutia of garbage cans, or what color solar panels should be. We are opposed to repealing all of NRS Chapter 116 for many of the reasons described by Mr. Buckley. There are 3,000 associations and most of them, if not all of them, own common area. Repealing NRS Chapter 116 leaves the question as to who would maintain the common area, and what the enforcement mechanisms are to maintain it. Would the cities or counties have to take over? Another example that Mr. Buckley did not mention is that most, if not all, CC&Rs refer to NRS Chapter 116. There is a provision in the CC&Rs that says "shall be implemented and enforced with accordance of NRS Chapter 116." Therefore, if NRS Chapter 116 was fully repealed, it leaves a lot of open holes and interpretation issues. For those reasons, we are currently opposed to the full repeal.

With the amendment, our position is neutral. We believe that there is current language in statute that delegates a lot of this to the Commission. We certainly appreciate Chairman Hansen's reinforcement of those statutes that delegate this to the Commission. We still share in Assemblyman Elliot Anderson's concerns that this does not prohibit additional HOA bills to be introduced, passed, or discussed at the legislative level. It may provide a tool for a legislator or chairman of a committee to delegate an issue to the Commission for discussion and interpretation. What also gives us confidence about delegating to the Commission and NRED is the new leadership at NRED. In our opinion, Mr. Decker has been phenomenal. He has been approachable—we have his cell phone number and his email address. He, as well as Director Breslow, have been very helpful, approachable, and problem solvers not only on behalf of the industry, but for homeowners. We have seen a dramatic change on how complaints are handled and how associations are dealt with given that new leadership. We certainly have a lot of confidence in delegating more to that level.

If we are going to delegate to the Commission, I believe we should live with their decisions or at least give them time. For example, with regard to the hot-button issue of collection costs, the Commission has had numerous hearings and workshops. They came up with a collection cost schedule that was based on input received from homeowners, professionals, lawyers, accountants, board members, and unit owners. Frankly, we all believe it has been working pretty well in putting a cap on some of the collection costs. Every session we still

deal with bills that try to undo or unwind what the Commission did. Therefore, we would ask if we are going to delegate to the Commission, we should give it a little time to work rather than attempting to undo the decisions that they make.

Finally, I spoke to Chairman Hansen about a possible conceptual amendment to his amendment. Currently, the Governor appoints Commission members. In statute, there are a number of specific seats on the Commission which would include an accountant, a lawyer, a homeowner, et cetera. This makes for a very diverse group of people. The Governor appoints those folks. Unlike other commissions and boards, there is no specific authority for the Governor to remove a commissioner. We would say if we are going to delegate more authority to the Commission, the Governor should also have the right to remove members. Assemblyman Hansen agrees with this amendment, and I am happy to work on putting it together.

Assemblyman Elliot T. Anderson:

If we take out NRS Chapter 116, a lot of people think that this will dissolve their HOAs. I do not think that will happen, right? HOAs are maintained through covenants which are a contract, and we would be prohibited constitutionally from doing that. If I understand it right, this just gets rid of the parameters.

Garrett Gordon:

I would say yes and no. I think you are correct with respect to the CC&Rs and the contracts. By repealing NRS Chapter 116, it certainly does not repeal 3,000 plus associations with 3,000 plus sets of CC&Rs which are all different. If it was repealed, it would delegate the interpretation of those to NRED or to the court system. Many of those CC&Rs refer to NRS Chapter 116 which provides the uniformity as to how board members are elected, how elections should occur, costs and fees related to printing materials and requesting agendas, or how much public comment should be provided. If it was repealed, it would go on a case-by-case basis. Some associations may decide not to open it up to public comment, or they may handle their elections completely different than the statute requires. I would argue there is a framework in NRS Chapter 116, and you get into some of the minutia like garbage cans that should be in the CC&Rs and handled more on an association level.

Gayle Kern, representing Community Associations Institute:

I have been practicing law for a little over 30 years, and the majority of that has been representing associations. I have represented associations both before and after NRS Chapter 116. What NRS Chapter 116 did was fill in the holes and normalize some of the practices that were going on within associations. One of

the major provisions that we struggled with is the associations never reserved any money to pay for anything. Chapter 116 of NRS imposed fiscal responsibility on those associations, and it has worked. We no longer have huge assessments. Before 1991, I can remember one association that had to pass on to the homeowners a \$20,000 assessment for repairs needed for the roof because they had not saved any money to pay for it. It was devastating to the homeowners within the association.

If you repeal NRS Chapter 116, all associations will remain intact. However, they will be governed solely by CC&Rs, some of which are woefully inadequate. Not only do you have those that came after NRS Chapter 116 that actually incorporate and reference the chapter, you also have those pre-1991 associations that never addressed those very important things such as noticing of meetings, election by secret ballot, reserve studies, and financial responsibility. We used to have board meetings in someone's living room over a bottle of wine, and nobody knew what we were doing. They would simply receive the invoice for what they should be paying. We do not do that anymore. Everything is out in the open. Budget ratifications are done by association members. Whether or not an association would agree to comply is going to be on a case-by-case basis.

The real problem is for those associations that have been operating under NRS Chapter 116 and would like to continue to do so, but they are not able to get their amendment completed. Amendments of CC&Rs are generally by a super majority vote. While we have a provision in NRS Chapter 116 which allows us to petition the court if we have a majority in favor, we will no longer have that option. I think it would result in large gaping holes for the things that are actually really good for associations. That is why we are officially opposed to throwing it out. I do have to say that I found myself completely shaking my head in agreement to everything that Chairman Hansen said. He is absolutely correct that there has been a micromanagement in looking at the minutia of associations.

One of the reasons that we are neutral on the amendment is we were concerned that it would not really address certain issues. Like Assemblyman Elliot T. Anderson pointed out, what do we do with the new issues? Those are not things that can go to the Commission. Under this amendment, it would not be allowed. I apologize because I am part of the Real Estate Law Section of the Nevada State Bar, and I could have waited. However, it did not dawn on me until I heard Assemblyman Elliot T. Anderson ask the question.

As to another portion of this amendment, can we provide the ability for a level to address some of these concerns before they come to the Legislature? As Mr. Buckley also addressed, we can try to find another way for there to be a vetting to determine if there is actually a big problem or a minor issue that does not require legislation. What if there was a provision that allowed for new issues to go to the Commission? They would not be able to adopt regulations because that may be too big of a delegation; however, they would be able to vet it. If, in fact, they find that there is a widespread issue, they can then be the conduit to bring it to the attention of the legislators. Therefore, if a legislator had a constituent who was raising an issue, instead of drafting a bill, the constituent can be diverted to bring it to the Commission. The Commission could examine the issue and they would determine if it is something appropriate to bring to the Legislature in the next session. I am just throwing that out as a possible solution to the issue of addressing problems of minutia of associations.

Garrett Gordon:

Over the last three or four sessions, there have been HOA-related bills that have been brought to an interim committee. Certainly there is a funding and time issue and that may be what Ms. Kern was referring to. Perhaps there would be the ability to vet the issues. Maybe the Commission will have a bill or two to bring which would be a big issue such as a super priority lien. Chairman Hansen was agreeable to something else I would like to note. There should be a one-word revision to the amendment. In section 1.5, subsection 3, of the amendment, it reads "In addition to any regulations required to be adopted pursuant to specific statute, the Commission, or the Administrator with the approval of the Commission, may adopt such regulations as are necessary..." The following language currently reads "and appropriate." We would recommend to change it to "or appropriate." This would make it less restrictive and narrowed. The intent would then be giving the Commission more authority, and provide the ability for them to work with either of those conditions.

Assemblyman Gardner:

I would disagree to allowing HOA members to approve the budget. Currently, unless 51 percent vote no, it is automatically put in place. I actually kind of like the idea of giving homeowners the chance to fill in some of these holes. Is that the issue with the possibility of taking this away? Or, is it the fact that it is hard to change those situations?

Gayle Kern:

I think it is both. For example, regarding associations where the CC&Rs do not provide for notice of board meetings, I do not think I would want an association to not be required to give notice of their board meetings. However, the bylaws, as they currently read, do not require it. The amendment process would be very

difficult. Therefore, without the overlay of NRS Chapter 116, associations would not comply with some fundamental requirements, and homeowners would not know what is going on. I would be worried about that.

Vice Chairman Nelson:

Is there anyone else in opposition?

Jonathan Friedrich, representing Nevada Homeowner Alliance PAC:

I am a former commissioner on the Commission for Common-Interest Communities and Condominium Hotels. Repealing NRS Chapter 116 is a wonderful idea. I would like to address a couple of items that Chairman Hansen raised. Why do we need all of the minutia dealt with at the Legislature? I will give you two words—fines and bullying. Homeowner association boards are made up of volunteers who have little or no expertise in many areas. Interestingly enough, the other night, a bill was presented that would require education of board members. In theory, it sounds great and I am for it. However, the opposition and problems brought out were almost insurmountable. As far as taking the problems to other agencies such as the police and the district attorneys, they do not want to deal with HOAs. Assemblywoman Fiore brought forward a great bill two years ago with Assembly Bill No. 395 of the 77th Session. I know of three people, including myself, who have brought a complaint to the Las Vegas Metropolitan Police Department (LVMPD). They will not deal with it. The office of the ombudsman is overwhelmed, underfunded, and they do not have a well-educated staff to deal with these problems. When Mr. Decker took over, he inherited 440 complaints that were sitting at the ombudsman's office for as long as four years. After reviewing them, he made the decision to dump about 200 of those complaints. Those people never got any due process or justice because their complaints were never heard.

With the elimination of NRS Chapter 116, HOAs are no longer defined. We no longer have to be concerned with elections or even honest elections. Without the requirements of audits, it makes it easy for boards and managers to embezzle funds from the associations. Boards can now charge owners thousands of dollars in fines. I was asked to represent someone who was hit with an \$11,200 fine for some weeds and other minor issues. Eventually, it was reduced substantially. It would prohibit owners from speaking at meetings. Secret meetings would take place, and there would be no agendas. It would allow boards to foreclose if you are one month in arrears on your assessments. It will completely ignore the little due process that currently exists. The boards will refuse to turn over financial records, or deny the holding of hearings for alleged violations of the governing documents. We will not be able to remove dishonest members. It would get rid of the incompetent investigators at NRED, and simply do away with both NRED and the Commission. That only works for

the betterment of the HOA industry. It would allow for management companies to give large gifts to board members. It would eliminate the Alternative Dispute Resolution (ADR) program, and the so-called caps on the collections companies. There would be no requirement to get bids for services to the community, or to prohibit retaliation against homeowners. There would be no adequate reserves funded. What will happen to NRS Chapter 116A, which is the statute that deals with managers and is dependent on NRS Chapter 116? The best part of eliminating NRS Chapter 116 is that both you and I will no longer have to sit in their hearing rooms late into the night. Another plus is that I will no longer have to hear Barbara Holland drumming on about me and how I want to protect the one million people living in associations.

Vice Chairman Nelson:

Let us not get into any ad hominem attacks. Please just focus on the bill and wrap up your testimony.

Jonathan Friedrich:

The new solution will be to simply have a shootout on Main Street at noon when there is a dispute between board members and owners once NRS Chapter 116 is repealed. I hope you realize I am being facetious. If NRS Chapter 116 is repealed, who will owners turn to for help as ADR will no longer be available or administered by NRED? Owners can then turn to the courts, which might be a better solution. The Commission meets every three months. Being a former commissioner, I know there are 2.5 homeowner representatives on the Commission or perhaps, theoretically, there are three. The Commission was top heavy with industry officials. I tried for a year and a half to get a due process regulation passed as it is called for in NRS Chapter 116. The other commissioners felt it was too burdensome and it died. As I have said before, the basis of our legal system in this country is based upon due process. Homeowners are being denied that. People are coming to Mr. Robey and me for help because they are desperate. They are being fined. Do not do away with NRS Chapter 116 because there will be mayhem and chaos. This is the only form of limited protection that we currently have. Without it, there are over one million people at the mercy of a few people that are running over 3,000 associations.

Adrina Ramos-King, representing City of Las Vegas:

The City of Las Vegas understands the intent of the bill. However, the Alexander the Great method proposed by Chairman Hansen would repeal almost all of NRS Chapter 116. Not only does that chapter govern HOA operations and authorities, it assigns major responsibilities such as common element maintenance.

According to neighborhood planning, there are 639 operating HOAs in the City of Las Vegas. The city has a symbiotic relationship with our HOAs, even more so since we are a newer community and around 20 to 30 percent of our subdivisions are common-interest communities. [Continued reading from prepared statement ([Exhibit F](#)).]

Mark Leon, Private Citizen, Las Vegas, Nevada:

I am a homeowner and volunteer board member in the Mountain's Edge Master Association which is a community of about 10,500 homes. With regard to Assemblyman Elliot Anderson's question of what chaos would ensue if the chapter was repealed, I discovered while looking through our governing documents that I would remain a board member for life. This would give board members far more power, and it would cause our legal expenses and insurance to skyrocket because any remedy would involve the courts and would be extremely expensive. The sponsor talked about bills that were kind of silly and involved a lot of minutia. However, as I understand it, these bills must be sponsored, so is it not the legislators' fault that these bills are coming up?

Assemblyman Jones:

It is good to see you, Mr. Leon. I would like to acknowledge that Mr. Leon represents an HOA in my district. Did you look at the amendment or were you looking at the bill?

Mark Leon:

I have not seen the amendment.

Assemblyman Jones:

I think the amendment might address a number of your concerns.

Mark Leon:

That is excellent. Thank you.

Vice Chairman Nelson:

Are there any others in opposition? Assemblyman Hansen, would you like to come forward?

Assemblyman Hansen:

I enjoyed hearing testimony because on one hand we have a bill that will destroy the state of Nevada but, on the other hand, we have a million homeowners that are being denied their due process under NRS Chapter 116. We have some interesting disputes. I almost feel sorry for HOAs because nobody wants them. The Judicial Branch does not want them, the cities do not want them, the counties do not want them, and the Nevada Legislature does

not want them. However, somebody has to deal with them. It is a big problem, and what we are trying to do here is to find a solution. Obviously, eliminating NRS Chapter 116 is not going to be the solution. I do think that giving the Commission more authority and following the amendments will. I also want to thank Karen Dennison. She did not testify, but she worked diligently on this bill, as well as Michael Buckley. People have really been involved to try to resolve some of these things. I think you have an idea of what the problem is. My initial solution may be too draconian. However, a solution does need to be found. The best solution, so far, is the amendment along with some of the suggestions that came out of the testimony. We will be working on it. Thank you for allowing me to present the bill today.

Assemblyman Elliot T. Anderson:

I just wanted to acknowledge that this was probably the most interesting academic discussion that I have been involved in here at the Legislature. I enjoyed talking about this.

Assemblyman Ohrenschall:

Thank you for bringing this bill. When you were going through the different stories about the American flag and the Nevada flag, it reminded me of a bill that I sponsored a few sessions ago. I had a constituent who was very green and wanted to save energy by hanging her wet laundry out on the clothesline. Her HOA forbade it and fined her. She had asked me to create a bill to allow anyone who wants to dry their laundry on a clothesline to be able to do so. I did create the bill and, unfortunately, I was unsuccessful. You still cannot dry your laundry on a clothesline in most HOAs. I think that was another good example of what you are trying to fix with this, and I appreciate your hard work.

Vice Chairman Nelson:

We will end the hearing on A.B. 233. Is there any public comment?

Robert Robey, Private Citizen, Las Vegas, Nevada:

I have a question. I was stunned when the lady from the City of Las Vegas talked about a symbiotic relationship and how she would incur this debt of a quarter of a million dollars for one little association. After that, there was a comment that Chairman Hansen made about due process on the rise. People are being denied due process. There seems to be a dichotomy here where I am opposed to due process. I am not opposed to the common interest. I do not know anything about the amendment, and I hope the Commission can deal with it. The city does not want to touch the common elements, but the police will not come in and do their job.

Vice Chairman Nelson:

Actually, the hearing on this bill is over. I would suggest you get with the stakeholders to follow up on your comments. With that, I will turn the hearing back over to Chairman Hansen.

[Assemblyman Hansen reassumed the Chair.]

Chairman Hansen:

We will try to do our best, Mr. Robey. You and Mr. Friedrich have been involved for many years. I really do respect the time and effort you put into it. We are trying to make it better for you.

Is there any other public comment at this time? Seeing none, we have some Committee business. If you want your bill on a work session, you must get your amendment to Diane Thornton as soon as possible. We will have work sessions nearly every day next week in order to try and get as many bills processed as we can. Today is a little bit unusual because we had one bill that dropped. Going forward, if you drop any bills scheduled for a hearing, it is very likely they will not be heard at all. We have until next Friday to get everything done. With no other Committee business, this meeting is adjourned [at 10:06 a.m.].

RESPECTFULLY SUBMITTED:

Lenore Carfora-Nye
Committee Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 2, 2015

Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 371	C	A.J. Delap, Las Vegas Metropolitan Police Department	Pictures of storage vault and equipment
A.B. 233	D	Assemblyman Hansen	Proposed Amendment to A.B. 233
A.B. 233	E	Robert Robey, Private Citizen	Written Testimony
A.B. 233	F	Adrina Ramos-King, City of Las Vegas	Written Testimony