

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

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

The Committee on Judiciary Subcommittee was called to order by Chair Victoria Seaman at 6:29 p.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:

Assemblywoman Victoria Seaman, Chair
Assemblyman Glenn E. Trowbridge, Vice Chair
Assemblyman Elliot T. Anderson
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Linda Whimple, Committee Secretary
Bonnie Borda Hoffecker, Committee Assistant



OTHERS PRESENT:

Joseph Decker, Administrator, Real Estate Division, Department of
Business and Industry
Jonathan Friedrich, Private Citizen, Las Vegas, Nevada
Robert Frank, Private Citizen, Las Vegas, Nevada
Bob Robey, Private Citizen, Las Vegas, Nevada
Pamela Scott, representing the Howard Hughes Corporation
William Wright, Private Citizen, Las Vegas, Nevada
Garrett Gordon, representing Community Associations Institute, Southern
Highlands Homeowners Association, and Olympia Companies
Michelle Goodell, Director of Community Management, Terra West
Management Services
John Radocha, Private Citizen, Las Vegas, Nevada
Mark Leon, Private Citizen, Las Vegas, Nevada
Gary Solomon, Private Citizen, Las Vegas, Nevada

Chair Seaman:

[Roll was called and protocol was explained.] We are going to hold
Assembly Bill 238 and Assembly Bill 240, which were scheduled on our work
session for tonight.

We will open the hearing on Assembly Bill 359.

**Assembly Bill 359: Revises provisions governing common-interest communities.
(BDR 10-910)**

Assemblyman David Gardner, Assembly District No. 9:

I have to apologize because we have not finished everything. I am going to
have some conceptual amendments, so I will go through the bill as well as
I can. We will have people coming up and talking about the bill, but I am talking
to just about everyone right now. I am hoping that I will be able to get the
language together in the next day or two.

Sections 1 and 2 are in regard to due process. I was informed that this had
already been denied by the Commission for Common-Interest Communities and
Condominium Hotels, so I will be putting in new language and talking with the
Nevada Real Estate Division (NRED) as well as several different groups on fitting
in some language regarding due process concerns that I have.

Section 4 allows for the payment of homeowners' association (HOA) members, and that has been withdrawn. Section 7 required judicial foreclosure, and that has been withdrawn. For sections 11 through 21, I would like to bring up the Nevada Real Estate Division. We have been talking about their program, and this was a fix to what has currently been a huge backlog at NRED for HOA complaints. I have been talking with the NRED administrator, Joseph Decker, and he has said that they have made great progress, so I will be taking it out, but I want you to hear the change that has happened.

Joseph Decker, Administrator, Real Estate Division, Department of Business and Industry:

I appreciate Assemblyman Gardner bringing us into the discussions on this bill. Section 11 addressed the ombudsman process in a way that concerned us because the ombudsman process currently involves the dispute resolution process, which accounts for at least 80 percent of the cases that we get and where we start. Can we resolve the dispute between the homeowner and the licensee or the board member? We think that is the first step in trying to resolve HOA complaints. We currently have a 71 percent success rate that we are very happy with, so we think that program is working. In fact, I have gone from having one mediator to three in order to handle the additional volume based on the cases we have, and we are very happy with that process. We appreciate Assemblyman Gardner talking to us about it.

In addition, I have been asked to talk about our backlog. The 440-case backlog that I inherited from the Division was based on cases that were under investigation, but the reality is that most of those cases—approximately 80 percent—could have been handled through the dispute resolution process. However, they never landed there; they skipped that process. They landed in our misconduct investigation section, which was not equipped to resolve those disputes—it was equipped to investigate misconduct. The percentage of cases in which misconduct occurs is actually relatively small compared to the cases in which we can resolve disputes between the two parties by coming to some kind of compromise or agreement.

I personally went through every case that is in the inventory and familiarized myself with those cases. My staff and I made decisions on each case. Unfortunately, some of them were simply too old—four years old. The evidence was cold, board members are no longer serving, complainants have moved away. There were a number of cases which we simply could not do anything about, even though they landed on the misconduct side. We were forced to close those. We contacted the complainants and we offered the speed dispute resolution process if that was available to resolve their concerns. We tried to do what we could, but the reality was that some of them were simply too old

to process. They were not going to be ready for prosecution, and some of them went back to the dispute resolution process where we addressed the concerns of the complainants. Some of them did not and they were closed. We are trying to get to a state where we are working in real time and have no backlog, and when we get a case it is immediately assigned to the appropriate unit. We immediately begin investigating misconduct or scheduling a mediation for dispute resolution. We think we can do that. We think we can get to real time with no backlog in six months. We feel if the Division is working correctly and utilizing our resources that the system can work.

Assemblyman Gardner:

That is the reason I removed that language. The whole point was that we had some problems with the way NRED had been handling them with the great backlog and things were having trouble getting through, but I have talked with Mr. Decker and I think six months is fine. That is why I am taking that section out. I am going to put one part in that section that we talked about, and it would be the ability that if NRED, after their investigation, decided there was no misconduct or they could not fix it, we would allow homeowners the opportunity to appeal to the Commission. The Commission would not be forced to take this appeal, but they could appeal to them. It is just another option.

Section 6, subsection 9, is regarding a homeowner buy-in when there is a large capital improvement. I have talked with Mr. Gordon Garrett, and we agreed to move it from \$5,000 to 20 percent of the budget and to a majority of 15 percent of the total number of homeowners. We agreed on it, and that is one of the few sections where we actually got the language correct. I will be working on these other things with NRED, Mr. Garrett, and any other interested party. Please send any comments you may have on this bill and I will discuss them with you.

Assemblyman Ohrenschall:

How is the mediation program working with an outside mediator or one of NRED's mediators? During the previous session, I was able to work with the Legal Aid Center of Southern Nevada on that bill and we had high hopes that it would be less costly than the arbitrations and that it would divert people from going to court. What has been your experience with it?

Joseph Decker:

With regard to the first part of your question, we start with an informal dispute resolution program. This involves Division staff who are mediation certified. It is nonbinding and informal. The courts do not recognize it, but it is our tool to try and resolve disputes. Ultimately, if the complainant is unhappy with the Division's efforts and wants to pursue a complaint, we put them in what we call the prelitigation track, which includes the formal mediation through the alternative dispute resolution process—the referee and the mediation program where the Division subsidizes much of the cost for the complainant.

The mediation program that you reference was only just funded in October 2014, but it has been on the books for a couple of years. Since then, we have had good success with the program and we think it is a very good low-cost option through the Division's subsidies for complainants who wish to seek jurisdiction in the courts. We are very happy with it; we just have not had enough time to develop a track record.

Assemblyman Ohrenschall:

Is the mediation program being funded in the next biennium?

Joseph Decker:

Yes, it is. We secured funding in October for the next biennium.

Assemblyman Trowbridge:

You mentioned that you were considering changes to section 6, subsection 9, concerning the amount of money for capital improvement. What were those numbers again?

Assemblyman Gardner:

It was going to change from a set \$5,000 to 20 percent of the budget. The percentage that would need to approve it would be a majority of 15 percent of the total number of voting members of the association.

Chair Seaman:

Is there anyone in support of Assembly Bill 359 in Las Vegas? [There was no one.] Is there anyone in support of A.B. 359 in Carson City?

Jonathan Friedrich, Private Citizen, Las Vegas, Nevada:

My question is in regard to the section dealing with breach. I am not sure whether that is still in or out. I found it in section 12, page 18.

Assemblyman Gardner:

I believe that one was taken out. That was part of the section we were trying to go around with what NRED was doing, but since they have informed us they will be able to go on real time in six months, we are willing to take out that section since we did not think we would need to set up that alternate path.

Jonathan Friedrich:

Based on this bill, it looks like all the good protections for homeowners have been gutted. It is not a good day for homeowners.

Chair Seaman:

So you are in opposition, not support. Is that correct?

Jonathan Friedrich:

Now that I know that section is out, I am in opposition. It is a useless bill.

Chair Seaman:

Is there anyone in Las Vegas in support of A.B. 359?

Robert Frank, Private Citizen, Las Vegas, Nevada:

I am a former board member and currently a member of the HOA Commission, but I am not speaking for the Commission. I am speaking for myself as a homeowner representative on the Commission. I am also the chairman of the Citizen Task Force for Voters Rights.

For clarification, should I speak to my proposed amendments now or later? How would you like that to work?

Chair Seaman:

Please go ahead.

Robert Frank:

I have three amendments on the Nevada Electronic Legislative Information System (NELIS) for A.B. 359, which I believe are still relevant. One concerns due process changes, one concerns trustworthy board elections, and a third concerns a commission appeals hearing panel.

I would like to address the due process changes first. This was submitted as a result of being on the Commission and being a cosponsor of the regulation that was required by the last Legislature.

Chair Seaman:

Did you submit the amendments to us?

Robert Frank:

They are on NELIS as exhibits right now. Those are the three exhibits I am talking about. The due process changes are in the same vein as the regulation that was originally proposed and addressed by the Commission for the past two years, but they were unable to get a consensus to agree to it. I took the basic policy issues, extracted them, put them into this proposed amendment, and addressed it from a policy point of view rather than from a regulation point of view, so the words are quite different. I know Assemblyman Gardner has this available to him, and I believe he is going to consider it as he is rewriting the section.

Assemblyman Gardner:

Yes, I have those items and I will consider them when I am rewriting the sections.

Robert Frank:

The purpose of these three amendments was my concern that the Commission, the Division, and the Legislature, in my observation, have not yet really dealt with the fundamental lessons learned from the Federal Bureau of Investigation (FBI) HOA fraud criminal case. I am worried that this session really needs to deal with at least the main issues. Recently, I heard one of the Senators publicly comment, No problem with the FBI case because it was all about construction defects, and we have handled that. I respectfully submit that that was only a symptom of the problems. It was not the cause of the problems. In my judgment—I hope, in all due respect, you accept it with the experience and the position I have—the cause of the problems has to do with the policy changes that are needed in order to fill gaps in the policy areas concerning how to prevent the kind of abuse and fraud the FBI brought forth that we saw in the elections.

Second, I would refer to some of the due process violations we saw which caused the dozen or so HOAs to be abused the way they were by criminals. I ask, with all due respect, that each of the members of the Subcommittee take a look at these very carefully. I worked hard to try to fill some of those gaps and make it easier for you to try to solve them. I would really hate to be here two years from now talking about the same things with even more HOAs being abused by fraud.

I am going to jump back to my first amendment because it refers to due process.

[Vice Chair Trowbridge assumed the Chair.]

Vice Chair Trowbridge:

You have submitted them in writing, correct?

Robert Frank:

Yes, they are online and posted as three exhibits under NELIS. You can see that they have the Legislative Counsel Bureau style guide in terms of marking out in red the words that I am recommending be deleted and blue for the new words being added.

Vice Chair Trowbridge:

If you would give us a moment, we are trying to find your documents on NELIS as it would be easier for us to follow along. Is there anyone else in Las Vegas who would like to speak on this matter in support?

Bob Robey, Private Citizen, Las Vegas, Nevada:

I am speaking for myself, and I want to compliment Assemblyman Gardner on the proposed changes of 20 and 15 percent. Thank you very much; it is much needed. I think there will be pushback, but please keep the change. It is reasonable.

I also have a caution. When we talk about due process, there has always been a real concern—during the last few sessions—that the board would go out and hire an attorney for a hearing and then charge that fee to the unit owner. Please be very careful when amending this bill that attorney fees are not included. If anyone wants to invite the attorney, that is their privilege, but the unit owner does not do anything to invite an attorney. That is a real caution. Thank you for your time, and thank you, Mr. Gardner, for your efforts.

Vice Chair Trowbridge:

Is there anyone else in Las Vegas who would like to speak in support? [There was no one.] Is there anyone in Las Vegas who would like to speak in opposition?

Robert Frank:

Are you going to come back to me in a few minutes?

Vice Chair Trowbridge:

Yes, when we find the paperwork.

Pamela Scott, representing the Howard Hughes Corporation:

I am happy to learn of some of the modifications that will be made by the bill sponsor. I want to quickly address section 6. I know Mr. Robey said he thinks that 15 percent is a very good amount, but I want homeowners to have to vote in favor of capital improvements. I want to point out that one size does not fit all and in Summerlin, we would never get 15 percent. Our large associations were set up with a representative voting system. Each neighborhood elects their own delegate from amongst their homeowners. That delegate represents their neighborhood issues that need to be voted on to amend conditions, covenants, and restrictions (CC&R) and the types of things the entire group would vote on. In order to cast the votes of the neighborhood, a ballot would go to every homeowner in the neighborhood and they would return the ballot to their delegate as to how they wanted their vote cast. The delegate is required to vote exactly as their homeowners ask them to do. In the case with a neighborhood with 100 homes, if only 50 returned the ballots, then the other 50 votes for that neighborhood could be cast for the delegate in any manner that he wanted.

We also use these delegates to have quorums, and that has been the problem. The Legislature did away with the delegates a number of years ago, and since then—in the Summerlin master associations—we have never been able to have a quorum at an annual meeting, we will never be able to amend our CC&Rs, and we will never be able to get 15 percent of individual homeowners to return a ballot. We get about 1 percent of votes cast by the secret ballot. I would like you to reconsider either the 15 percent or reconsider the homeowner vote and simply make it a percentage of the annual budget.

Vice Chair Trowbridge:

If you have some suggested language that you would find more acceptable, we would entertain it, but you will need to turn it in pretty quickly. You are talking about section 6, subsection 9, so if you have some suggested language, we could take it into consideration if you have a unique situation with your HOA.

Pamela Scott:

Thank you for your consideration.

Vice Chair Trowbridge:

Is there anyone else who would like to speak in opposition? [There was no one.] Now we can go back to the gentleman who has been patiently waiting for us.

[Chair Seaman reassumed the Chair.]

Robert Frank:

As I mentioned, I am a member of the current Commission for Common-Interest Communities and Condominium Hotels representing homeowners, but I am not representing the Commission with these comments. This is independent research and recommendations. I have no reason to believe that members of the Commission might not agree with my comments, but they have not been presented to the Commission for any discussions.

My independent research on the FBI case and some of the causes the FBI fraud investigation has shed light on shows that some issues are a policy matter, not a regulation matter, in my opinion. They are certainly not a matter of a CC&R corrective behavior with 3,000 HOAs. I believe it would be serving our citizens' interest if we can deal with some fundamental holes in the policy process so we do not have to face them again in the future. I have also talked with a lot of real estate people who are quite concerned that there is kind of a cloud over the real estate market because of the FBI case. It would be really good for business, if nothing else, to try to fill those holes so we could stay in good faith with people who are looking to buy properties. The problems with the FBI case have been dealt with and the Legislature has dealt with these holes and a homebuyer should feel comfortable that those problems have been fixed. That is my belief and what I am trying to do with these amendments.

I will jump into the policy process concerning trustworthy elections. There are quite a few words in the election provisions of *Nevada Revised Statutes* (NRS) Chapter 116 which are very diligent and very detailed concerning the counting day provisions. If one does not study this carefully, they would come to the conclusion, It sounds to me like the election process is under control and very rigorously enforced in terms of integrity for a secret ballot process.

I have 40 years of experience in secure systems design, development, and management, and this is what I bring to the table. You have to be concerned about the end-to-end process that leads up to the counting day on an equal basis. I am suggesting to you that one of the things we learned from the FBI investigation was that there is no audit trail required with HOA board elections. In some cases, an audit may not be necessary because it is such a small group of maybe a dozen homes or even 40 to 50 homes, but when you

get into the hundreds and thousands of homes, the discipline of protecting the integrity of the process prior to counting day is very important. I am suggesting that the policy process needs to be changed and there needs to be a requirement for audit trails. This is very important, because a management company or self-managed HOA, the attorneys, the auditors, the committees, and the committee managers can be shown to have certain conflicts of interest in terms of the outcomes of these elections.

In my judgment, I would encourage you to challenge me if you disagree or if you think there are better ways of dealing with this. I would suggest that just as we require banks to have external audits and audit trails, I think they should be required for board elections also. The members of these associations only get one chance a year to influence the policy and that is when they elect their board members. It is very important that the end-to-end audit trail and the chain of custody records are there so that if a person who feels aggrieved as a result of suspected manipulation of the process has some way to establish whether they have a reason to be aggrieved. Right now, if you complain about a board election, you have no basis because you cannot prove anything. There is nothing that you are allowed to do as a general rule and there is no policy that says they have to do an audit. That is what this amendment concerning elections is all about ([Exhibit C](#)).

From a policy point of view, there should be audit trails with a chain of custody of who handles the records and ballots. There should be the capability for an audit from an independent election supervisor who does not work for the board or the management company and who is independently established in the community or through other sources. The main issue is to try to minimize the chance for a conflict of interest in terms of who is in charge of the election.

One of the problems we have is with the motivation to be a board candidate. Those of you who have been involved in some of these hearings on HOAs hear all the time how hard it is to motivate people to want to run for the board. One of the main reasons I found in interviewing literally hundreds of people is that they do not trust the system and they do not feel they have a chance to oppose anything the board does. They feel uncomfortable; it is so complicated. *Nevada Revised Statutes* Chapter 116 is written by lawyers for lawyers and not for lay people. A lay person finds it very difficult to understand the procedures and the process. If they run for the board and they really feel like it has not been fair or they have suspicions, they really deserve a chance to have an audit trail so they can resolve their concerns.

My second point is that this amendment provides the ability for an appeal process through local mediation—not through the state—so that if a person or a candidate has a concern, they can actually go to local mediation and appeal the certification process. As it stands right now, there is absolutely no recourse for a board candidate if they have any complaints or concerns about the way the election is run or the results. They simply have to take it on blind trust.

The due process change ([Exhibit D](#)) has to do with the fact that if a member of the community is unfairly charged with fines and/or abuse in any other way in terms of the denial of access to services, they really have no recourse except to go to the state or go to arbitration, or to file a lawsuit. After all the years I have been working with HOAs, I feel very strongly that there should be ways to mediate these issues and for the aggrieved people—those who feel very strongly that they have been unfairly charged or fined—to have a chance to challenge the witnesses. Those of you who do not sit on the Commission and do not see these cases do not realize how often the cases that are complained about are direct abuse by the boards on due process. They do not allow challenges to their witnesses; they do not allow questions or any challenges; they usually have a deed restriction committee that will assess the fine and then the board will listen to an appeal. It is rare for boards to overrule their in-house committee who are not elected. The committees are appointed, so I can confirm to you that many of the complaints you hear about, or that we hear that the Legislature is so tired of hearing about, could be resolved if there was more teeth in the policies. The boards cannot get away with just arbitrary treatment of people; they have to mediate those issues.

The issue that Assemblyman Gardner talked about is that the Commission could do a lot better job if they used the subpanels that are authorized under the statute. I am encouraged that there are investigations looking into it to be able to resolve these issues quicker and less expensively. My take on how that might work is in the third amendment ([Exhibit E](#)), and I hope that Assemblyman Gardner will look at it carefully.

Chair Seaman:

Is there anyone else in Las Vegas in opposition to A.B. 359?

William Wright, Private Citizen, Las Vegas, Nevada:

I am with the Wright Law Firm, Ltd. and also a member of the State Bar of Nevada's Real Property Law Section Common-Interest Community Committee. I am not here representing them today as they have already submitted comments. I am encouraged to hear that most of this bill has been stricken, which is good. The comment I would have made about the earlier sections was that there was an identical Legislative Counsel Bureau file, R065-14, that

was put forth by Jonathan Friedrich to the Commission at the end of December 2014. The Commission unanimously voted to go no further with that regulation. It was pretty close to word for word, so I am glad to see that it is also being taken out of this bill because the Commission has members who are closer to the industry that deals with these issues on a day-to-day basis. The Commission thought this was a bad idea.

Chair Seaman:

That was stricken. Are you opposed to the rest of the bill?

William Wright:

I am not sure how much of the bill is left. I am glad to see that the last portion is stricken as well. I am concerned about section 4, subsection 3, on page 11, that I have not heard anyone discuss yet, which appears to be a per diem for board members, which would be a sea change.

Chair Seaman:

That has been stricken as well. Assemblyman Gardner, would you like to come up and answer some of these questions?

Assemblyman Gardner:

Yes, it has been stricken.

William Wright:

It appears that everything I had an objection to might have been stricken. I have not had an opportunity to thoroughly read Mr. Frank's suggestions and amendments, but I will get to that.

Assemblyman Elliot T. Anderson:

Would you give me a list of the sections that have been stricken? I am not seeing an amendment.

Assemblyman Gardner:

Please give me a moment.

Chair Seaman:

While we are waiting for Assemblyman Gardner, is there anyone else in Las Vegas who is in opposition to A.B. 359? [There was no one.] Is there anyone in Carson City who is opposed to A.B. 359?

Garrett Gordon, representing Community Associations Institute, Southern Highlands Homeowners Association, and Olympia Companies:

Today on behalf of the Legislative Action Committee, Community Associations Institute, Southern Highlands Homeowners Association, and Olympia Companies, I will be very brief given there are substantial amendments to the bill. I have been working with the sponsor and really appreciate his time and efforts over the past week or so going over the various sections and working on the language and compromises. I will continue to do that, and look forward to a final version we can look at and hopefully support. At this point we are opposed, but we will keep working with the sponsor.

Michelle Goodell, Director of Community Management, Terra West Management Services:

I am the Director of Community Management for Terra West Management Services, a licensed supervising community manager, and a homeowner in Eagle Canyon North. I spoke with Assemblyman Gardner before we started, and I appreciate the fact that the bill is being revised. Based on his suggestion, I am going to share our concerns with section 2 and the various subsections since we do not have the amendments to them.

In section 2, subsection 5, requiring the names of the members of the board or the hearing committee would be problematic since knowing who those members are going to be at least 30 days out might be difficult. In addition, it opens the door for harassment and retaliation. Requiring the notice to be mailed certified mail and return receipt requested is not necessarily a problem in and of itself, but the language as it reads now requires you to mail it to the address of the owner and to the last known address of the owner. It strikes the requirement to send it to the unit address; however, we really feel that that is important, because a lot of times it will be a tenant or a resident, and having that information go to them is helpful. If we have to mail the notice certified mail and return receipt requested to three different addresses, we are talking about \$21 per notice per violation. Requiring a 30-day notice before a hearing is an issue as most of us use the 10- to 15-day reasonable time frame period, and a 30-day period would allow the violation to continue, not to mention the fact that the current language also requires at least one 30-day extension. Now you are looking at 60 days for a violation to continue before you can address it.

Section 2, subsection 9, begins to start turning what is currently a friendly neighborhood discussion into a court of law hearing, which makes it very difficult. Part of this section requires both parties to send essentially what amounts to discovery to each party, and part of that is requiring the name and place of employment of the witnesses. I think that is unnecessary and, again, it is opening the door for harassment and retaliation, especially given their place of

employment. This would also put an end to homeowner involvement as no one is going to want to be put in that position.

This section also allows for the accused owner to request an open hearing five days before the hearing. This is an issue with the rest of NRS, as any open meeting requires a ten-day notice, so if we hear five days before the hearing that they want an open meeting, we are again delaying the situation because we are going to need to create and send out proper notice for an open meeting.

Section 2, subsection 10, allows an accused owner to challenge any member of the board or committee, and we think this is an issue. It is going to open the door for quorum issues. It does not address how we would handle it, or how we would be able to figure out who to replace that member with. This is often an issue since the violations are confidential.

Section 2, subsection 11, requires at least one 30-day extension that I referred to earlier. This would open the door for at least a 60-day window before a violation could be addressed.

Section 2, subsection 12, allows the owner to bring any person to represent them no matter who they are. This is an issue as that person may or may not have any knowledge of the HOA, the rules, the governing documents, et cetera. Allowing cross-examination is putting this perilously close to a courtroom hearing and, again, homeowners are not going to want to participate for fear of retaliation. Allowing the accused to be present during all of the hearings, which would also entail deliberation by the board, is a very uncomfortable situation and we think it is inappropriate. Allowing an audio recording of the proceedings is a concern as executive sessions are not allowed to be audiotaped elsewhere in NRS, and not having any control over the dissemination of that recording is a concern for various reasons.

With regard to section 2, subsection 13, I am not exactly sure how we would provide a transcript of the hearing as this again is not a courtroom.

Overall, I am completely against the direction this is taking the HOA hearing process. This is essentially taking what was once a fairly informal meeting to address a concern or violation in order to find a remedy to now holding what is essentially a courtroom hearing including witness lists, cross-examination, evidence, discovery, and even jury creation. We are not a courtroom and no board, committee, or manager is equipped with the knowledge or power to hold a hearing of this magnitude. This whole process comes perilously close to an association having to hire an attorney to oversee and process all hearings.

Speaking for myself as a manager, I am required to not act outside of my expertise and to be careful to never give advice or direction that may be perceived as practicing law or giving a legal opinion. I do not see how I could possibly be expected to follow this process and not blur the line between being a manager and being a legal representative. Should this pass as written, I would definitely have to consider what actions I could take and still be within my expertise as a community manager.

Assemblyman Ohrenschall:

Section 2 proposes to amend NRS 116.31031 and on page 5, lines 12 through 17, currently the notice is not required to be sent certified mail or registered mail. Do you know if Terra West, or most associations, sends it by one of those forms of mail, or do they just send it regular mail?

Michelle Goodell:

A lot of associations send it certified mail, but we send it certified only to the owner.

Assemblyman Ohrenschall:

At the unit's address? What address?

Michelle Goodell:

We usually mail it to the unit's address, but not necessarily certified mail.

Assemblyman Ohrenschall:

If it comes back or is not picked up or is undeliverable, do you proceed? What is common in the industry?

Michelle Goodell:

Every association is different, of course. I cannot speak for everyone but yes, we would proceed. It is the owner's responsibility to provide us with a good address. Again, typically a lot of us do send it certified mail to the owner. We just send it regular mail to the unit address so that the tenant has the opportunity to know what is going on as well and hopefully correct it before we reach the hearing stage.

Chair Seaman:

Are there any other questions from the Committee? [There were none.] Is there anyone else in opposition to A.B. 359? [There was no one.] Is there anyone in Las Vegas in the neutral position to A.B. 359?

John Radocha, Private Citizen, Las Vegas, Nevada:

I am a down-to-earth homeowner. Last Thursday, I was for A.B. 359. Now with all of these changes, I feel a homeowner like me is left twisting in the wind. I would like to make you aware of what has happened in my HOA. Since 2001, the only item we get to vote on is for board members. That is it. They spend as much as \$50,000, and we do not get a chance to vote on the expenditures. Now you have people saying, "capital improvement." I agree we have capital improvement but it is like it goes in one ear and out the other. This one size fits all does not work, in my opinion. You need to start going \$500, maybe \$2,000, and keep going and say that these are your rules.

The past board would not accept proxies from the homeowners, and we had quite a bit on some of this. They have the attitude that they were elected by the owners and they do what they want. This attitude opened the door for theft and fraud, and retaliation of homeowners.

Mark Leon, Private Citizen, Las Vegas, Nevada:

I am a homeowner and a volunteer board member on both my subassociation and my master association. I have switched from being against the bill to being neutral because all the things that were frightening are being rewritten.

One thing I wanted to touch on regards the hearings. I am one of the people who participates and sometimes conducts these hearings. I would have to say that for those homeowners who actually do show up, the first words that they speak are, So how does this work? I would ask that as you are rewriting the section on hearings that you try to make it as easy as possible for homeowners and board members to understand.

Gary Solomon, Private Citizen, Las Vegas, Nevada:

I have analyzed this and have had an opportunity to look at both sides. I would say that at this point it is a fairly even base that neither side is going to have a positive impact and that until such time as we are willing to look at the health, safety, and welfare issues within the communities, none of these actions really have any value.

Chair Seaman:

Is there anyone else in Las Vegas in the neutral position? [There was no one.]
Is there anyone in Carson City in the neutral position? [There was no one.]

Assemblyman Gardner:

I will continue working with anyone who wants to work on this bill. I have already talked with the Real Estate Division, Bob Frank, Jonathan Friedrich, and anyone who will talk to me about this bill to try and get it right.

Assemblyman Elliot T. Anderson:

Do you have a list of the sections you are striking? Would you email them to me?

Assemblyman Gardner:

Yes.

Chair Seaman:

I will close the hearing on A.B. 359. I will now open the meeting for public comment.

Assemblyman Ohrenschall:

Earlier we talked about the mediation program and Mr. Decker talked about how even though it is in its infancy, it seems very successful. I also talked about working with the Legal Aid Center, but I was also privileged to work with Mr. Gordon, who spent countless hours working with Michael Joe at the Legal Aid Center and Mr. Friedrich. We all collaborated on it, and I was very pleased to hear that it is working and it is trying to keep some disputes out of arbitration and out of court.

William Wright:

I wanted to congratulate Joseph Decker and the Division on the changes that have occurred since he came in. I think the comments that were made earlier about not needing sections 11 through 21 are accurate. I have seen a tremendous change at the informal mediation program that is being talked about. I have participated in quite a few of those, and they have some excellent mediators on board. Kudos to the Division for making some of this unnecessary.

Jonathan Friedrich:

My concern was when the Division dumped 200 complaints. I heard Mr. Decker's valuation of them, but those 200 people took the time and effort to fill out and send an intervention affidavit or a statement of fact. Those are the two different forms that you have to fill out if you have an issue. They were denied their right, and they are paying for that right to issue a complaint either against the community association or a board. They were denied justice, and I find that a very bitter pill to swallow.

John Radocha:

I have a problem with the NRED people, or I did, and I have not used them since because I have been disappointed. The association took my assessment money and put it towards my fine—not once or twice, but six times. I thought, Wait a minute, this is not right. What are they trying to do here? So I sent an

affidavit for intervention to NRED, and what happened? I waited, and I waited, and I waited, and all of a sudden I get a letter that says, "Lack of sufficient evidence and your case is dismissed." If I had gone before a judge after I had hit someone a couple of times, the judge may say that it was accidental. But if I smacked someone six times, I would think he would rule in that party's favor. I am beginning to wonder when we homeowners are really going to get something that is of benefit to us and help us out with all these problems. They are out there. I am not the only one. Let us try to get the homeowners on board with some of this.

Chair Seaman:

We will close the hearing and are now adjourned [at 7:22 p.m.].

RESPECTFULLY SUBMITTED:

Linda Whimple
Committee Secretary

APPROVED BY:

Assemblywoman Victoria Seaman, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary Subcommittee

Date: April 2, 2015

Time of Meeting: 6:29 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 359	C	Robert Frank	Proposed Amendment
A.B. 359	D	Robert Frank	Proposed Amendment
A.B. 359	E	Robert Frank	Proposed Amendment