MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GOVERNMENT AFFAIRS

Eightieth Session
April 2, 2019

The Committee on Government Affairs was called to order by Chair Edgar Flores at 8:34 a.m. on Tuesday, April 2, 2019, in Room 3143 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/80th2019.

COMMITTEE MEMBERS PRESENT:

Assemblyman Edgar Flores, Chair
Assemblyman William McCurdy II, Vice Chair
Assemblyman Alex Assefa
Assemblywoman Shannon Bilbray-Axelrod
Assemblyman Richard Carrillo
Assemblywoman Bea Duran
Assemblyman John Ellison
Assemblywoman Michelle Gorelow
Assemblyman Gregory T. Hafen II
Assemblywoman Melissa Hardy
Assemblyman Glen Leavitt
Assemblywoman Susie Martinez
Assemblywoman Connie Munk
Assemblyman Greg Smith

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Sandra Jauregui, Assembly District No. 41
Assemblyman Skip Daly, Assembly District No. 31
Assemblyman Chris Edwards, Assembly District No. 19

STAFF MEMBERS PRESENT:

Jered McDonald, Committee Policy Analyst
Asher Killian, Committee Counsel
Connie Jo Smith, Committee Secretary
Trinity Thom, Committee Assistant

OTHERS PRESENT:

Kevin Sigstad, Legislative Chairman, Nevada Realtors
Steven Parker, representing Community Association Management Executive Officers, Inc., Las Vegas, Nevada
Steve Dover, President, Nevada Land Title Association
Garrett D. Gordon, representing Southern Highlands Homeowners Association; and Community Associations Institute
Michael Kosor, Private Citizen, Las Vegas, Nevada
Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry
Warren B. Hardy II, Private Citizen, Las Vegas, Nevada; and representing Nevada League of Cities and Municipalities
Shani J. Coleman, Deputy Director, Office of Administrative Services, City of Las Vegas
Dagny Stapleton, Executive Director, Nevada Association of Counties

Chair Flores:
[Roll was taken and Committee rules and protocol were explained.]

We will be hearing Assembly Bill 335 first, followed by Assembly Bill 379, then Assembly Bill 366. As a point of clarification, we received a conceptual amendment (Exhibit C). Assemblywoman Jauregui has confirmed the conceptual amendment is from her. Committee members, we apologize for getting the amendment this morning. We are in a crunch with time, and we have to make things work sometimes. I will now open the hearing on Assembly Bill 335.

Assembly Bill 335: Revises provisions relating to real property. (BDR 10-287)

Assemblywoman Sandra Jauregui, Assembly District No. 41:
I want to apologize for the conceptual amendment. We are in a crunch and we just finalized some final details for it this morning. I brought copies for every Committee member, as well as copies for the public. I will make sure to email a copy of the amendment to the committee manager also.

I am here to introduce Assembly Bill 335. Assembly Bill 335 would make changes to the procedural part in which residential homes are sold to maximize efficiencies and protect the consumer. Chair and Committee, I would like you to know that the three organizations here

with me today, which include the Nevada Land Title Association, the Nevada Realtors, the Community Association Management Executive Officers, Inc. (CAMEO), and myself, came together to work on this bill. This has been an almost 20-month-long project. We wanted to make sure that everyone who was going to be affected had a seat at the table. Together we respectfully discussed our differences and our needs and, in the end, put together this bill you have before you.

I would first like to walk the Committee through the bill, and then turn it over to Kevin Sigstad with the Nevada Realtors, and Steven Parker with CAMEO, and in the south I have Steve Dover with the Nevada Land Title Association.

Assembly Bill 335 would accomplish two things: One, it will streamline the residential selling process for the organizations who do the behind-the-scenes paperwork. Two, it will help protect consumers from having to overpay for homeowners' association (HOA) resale packages because they have expired. Section 1, subsection 1, paragraph (o), would establish a cap for the HOA account set up. Currently, this is a fee that is paid and varies from HOA to HOA. We have seen some of these fees as high as $700. In this bill, we will be capping them in statute so that there is uniformity and guidelines to follow so HOA account set-up fees, also known as transfer fees, cannot exceed $350.

Section 3 has the bulk of our changes. Change one: Section 3, subsection 3, clarifies that the ten-day turnaround time period is ten calendar days, not ten business days. Change two: Section 3, subsection 4, paragraph (b), sets a cap on what an association can charge for a resale package, capping it at $185. Change three: Section 3, subsection 7, sets a cap on what an association can charge for the statement of demand, which is $165, a $15 increase. Change four: Our most important change is to life expectancy of the resale package. Currently, there is no standard set in statute. The industry standard is that all resale packages are good for only 30 days. The problem here is that the majority of resale transactions take, on average, 44 days to close, meaning that the consumer, in our case the seller of the property, has to pay for these resale packages twice. Currently, with there not being a set cap to them, which is what we are going to fix here and sometimes getting over $185, some HOAs have an HOA and a master HOA. These can get very high if the consumer has to pay for them twice. What we have all agreed on is to extend the life expectancy of a resale package to 90 days. All resale transactions that close on an average of 44 days, or if there needs to be an extension of escrow they will be covered, and the consumer will be protected and not have to pay for these twice.

I have handed out a conceptual amendment (Exhibit C). This is a friendly amendment that is clarifying some agreed-upon language that was left out during the drafting. I would now like to turn it over to Kevin Sigstad to give a few remarks.

Kevin Sigstad, Legislative Chairman, Nevada Realtors:
This is a bill we have worked on for quite a long time. We came up with a concept that maybe if we as an industry came together with title companies, with the association managers, and with the Realtors and agreed on a way to streamline the process, it would

work better for everybody. It would be better than coming here and fighting over it in front of you all and really not getting what anybody wants. This is almost historical. We are all in agreement on the bill. We all support the provisions to add on to what Assemblywoman Jauregui said. Oftentimes the transaction will fall apart, and we have to go out and market it again, put it back into escrow. So we were looking at repeated costs to go out and get these packages. With the extension to 90 days on the resale package, hopefully, that eliminates or at least minimizes those expenses going forward.

We think it is a great bill, and we support it. We want to thank everybody who has worked to bring it this far and thank Assemblywoman Jauregui for her efforts as well.

Steven Parker, representing Community Association Management Executive Officers, Inc., Las Vegas, Nevada:
I do not have a lot to add to that. The one thing that I would emphasize that Assemblywoman Jauregui already mentioned is, there is only one fee that is not currently regulated for the management companies and that is the set-up fee. Trying to be a good player in the industry, we think that should be regulated at a reasonable fee, and that will stop some of what you see in these egregious fees that are reaching very high numbers. We support this bill and are excited to work with Assemblywoman Jauregui, Nevada Land Title Association, and Nevada Realtors.

Steve Dover, President, Nevada Land Title Association:
We, too, fully support this bill. As was previously mentioned, we have been working for many, many months trying to come to a good agreement that is going to work for consumers and for the industry so we can help close our real estate transactions more smoothly. This 90-day extension is a huge help in that regard. We very much support this bill and appreciate Assemblywoman Jauregui for bringing it forward. Thank you for listening.

Assemblywoman Jauregui:
We are open to any questions.

Chair Flores:
Committee members, I know that some of you just now had an opportunity to look at this. With that said, I would like to open it up for questions.

Assemblyman Carrillo:
Regarding the time, how long should this take? Should there be a time limit for the association to get this information to the unit owner?

Assemblywoman Jauregui:
That was one of the clarifying changes we were making. One of the issues that the industry was having was the ten-day turnaround time for the information when it was requested by a title and escrow company. So we wanted to clarify that it was ten calendar days, which was the original intention when it was first put into statute. Just saying ten days ended up being

interpreted as ten business days, which became the industry standard. We are clarifying that. Now it has to be a ten-calendar-day turnaround time.

Assemblyman Carrillo:
I understand the average time you were saying is 44 days. Why pick 90?

Assemblywoman Jauregui:
We had originally thought a 45-day turnaround time would be appropriate, since the average transaction closes in about 44 days. Any extension would have been great compared to what the industry standard is. We came to an agreement and decided on a 90-day extension should there be a situation, which is very common in this industry, where a home falls out of escrow. Maybe a buyer could not get the financing and it falls out. In that case, we find a new buyer; sometimes there are backup offers. We go back into escrow but, by this time, the resale package has expired. Ninety days was going to give us sufficient time so that the seller, the consumer, did not have to pay for this resale package twice. If they did find a new buyer in an appropriate amount of time, the resale package they had originally ordered would still be good to cover the new escrow.

Assemblyman Carrillo:
With that being said, if it did fall out of escrow, would the seller be responsible for paying that fee again, even though it is still good and within the 90 days?

Assemblywoman Jauregui:
The seller pays for the resale package. So this is a fee that is usually paid for by the seller, and that is why we thought it was important to have it go the 90 days so the seller did not have to continuously pay for these fees. For example, if a seller had an escrow and it went the 44 days, they would have had to pay for it once. If it extended past the 30 days, they would have had to pay for it twice. If it fell out of escrow, there is a good chance they would have had to pay for it again. This is saving the seller, our consumers, some money.

Assemblyman Leavitt:
You mentioned that all the other fees are regulated in association with this type of transaction. What are those other fees that are already being regulated? Are they comparable to this fee that you are trying to regulate currently?

Assemblywoman Jauregui:
Right now, there is the resale package fee, the demand fee, and the one that we are regulating is going to be the account set-up fee, also known as the transfer fee. The resale package and the demand package are currently regulated. The only one we are going to add to this to regulate is the demand, and that is the one that does not currently have any caps on it. That is the one that can go sometimes from $300, $350, up to $700. We want to make sure we are capping that one at a reasonable rate so that it never gets up to $700. The other fees are capped so we wanted to be uniform.

Assemblyman Leavitt:
Who currently sets that fee?

Assemblywoman Jauregui:
The associations currently set the account set-up fee.

Assemblyman Leavitt:
For clarification, the fee that is currently being charged is set up by the HOA? Would the market not dictate whether that fee is high or low, depending on whether they want to sell homes or not?

Assemblywoman Jauregui:
Right now, the fees are set based on what the associations feel it should be set at. What we are changing it to, and I will read to you from section 1, subsection 1, paragraph (o): "May impose a reasonable fee for opening or closing any file for each unit. Such a fee must be based on the actual cost the association incurs." We are setting a reasonable fee and capping it. They can charge up to $350, and that is where we are capping it. It just varies so much from association to association. When we all met together, even CAMEO, which represents the management company executive officers, agreed that there needed to be some sort of ceiling to what they could charge. The standard was that there was a ceiling to what they could charge for the other fees, which are the demand and resale package. We felt that we should put in statute a ceiling for what they could charge for the account transfer fee as well.

Assemblyman Leavitt:
What if the cost, say a substantial expensive high-rise condo and their cost of doing whatever they have to do, exceeds $350. Are they able to charge more than that, or are they going to take a loss on that?

Steven Parker:
The cost associated with the set-up fee is the same whether it is a $2 million home or a $200,000 home; there is no difference in the cost.

[Assemblyman McCurdy assumed the Chair.]

Assemblywoman Bilbray-Axelrod:
I probably receive emails from constituents on a daily basis about affordable housing, and this is an important part of that piece of the puzzle. I recently had a constituent tell me they were a first-time home buyer, so they were not putting that 20 percent down, and their closing costs were close to $15,000 on a starter home which, for many people, could be the end of that. I think this is an important first step, but, more of a comment, I would like to continue to work with you to see if we can tighten this up a little more to make sure that we have that American dream—that people can get into houses and build into their community and have that community pride. Thank you for bringing these stakeholders to the table. This is a great piece of legislation.

Assemblyman Hafen:
I had a question on how this would work, starting in section 1, subsection 1, paragraph (o), of the original language. I do not know if that has changed.

Assemblywoman Jauregui:
If you refer to your conceptual amendment (Exhibit C), there is a slight change. We are just clarifying that it cannot exceed $350, and then adding in, "The association is prohibited from assessing this same fee to both the buyer and the seller." It can only be charged to either the buyer or the seller or split among both parties. The amendment continues: "This fee may increase on an annual basis and shall be tied to the Consumer Price Index."

Assemblyman Hafen:
I think that addresses my concern because I was concerned that when we are saying, "May impose a reasonable fee for opening or closing," then they could charge both the buyer and the seller, so I appreciate that clarification. You were saying that your concern is that the fees do not exceed $700. Are we approaching that with these caps? I keep seeing $350, and then another $350, then $185. If you add all that up, I just want to make sure that we are not increasing it from the current $700 to $885, because I do appreciate the affordable housing concerns. Could you clarify that?

Assemblywoman Jauregui:
Yes, that is clarified in the conceptual amendment. If you see, we removed the last section which referred to, again, the $350 set-up fee at the very end of the bill to clarify that there was only one. There are only three fees that we are capping here into statute, which are:

- The one-time account set-up fee that can be charged with a cap of $350;
- The resale package at $185; and
- The demand at $165.

Also, we are removing their ability to charge—because they are required by statute to send it in electronic format—$20 for sending an email.

I would like to turn this over to Steven Parker for further clarification.

Steven Parker:
The $700 that you were referencing was being charged for just the one fee—that was not $700 total. Some are charging $700 for that fee plus the additional fees. So the regulation at $350 will not allow the $700 fee for just the one set-up fee.

Assemblyman Hafen:
Thank you for that clarification and making sure we get that amendment language in there to clarify that.

Vice Chair McCurdy:
Are there any additional questions from the Committee? [There were none.] We will invite all those who wish to testify in support, either here in Carson City or in Las Vegas, to please take one of the seats up front. We would ask that you limit your comments to two minutes. [There were none.] Those who wish to testify in opposition, please make your way up.

Garrett D. Gordon, representing Southern Highlands Homeowners Association; and Community Associations Institute:
I am a lawyer representing two clients today: Southern Highlands Homeowners Association, a 10,000-unit master planning community in Las Vegas, and the Community Associations Institute. The Community Associations Institute is a membership organization dedicated to building better communities. The Association was founded in 1973 and has over 30,000 members across the United States. I represent the Nevada chapter and have been working on homeowners' association issues addressed in *Nevada Revised Statutes* (NRS) Chapter 116 for five legislative sessions.

Certainly, we respect and appreciate everyone's efforts to put together this bill. I come up in opposition, reluctantly, because I know a lot of work was put in. I have a few suggestions that we think would be helpful clarifications. The first one is in section 3, subsection 3, now that we are going from ten business days, or then we say—it is silent—ten days. Some people interpreted the ten days as business days, some interpreted the ten days as calendar days. If we are going to use calendar days, I would make two suggestions. One would be that the clock does not start ticking unless two things occur: One, a payment is made for the package because the problem is, if you release the package, now you are chasing the unit's owner. If they do sell, who knows where the unit's owner went, or, if it does not sell, now you are chasing for that fee. So we would ask that you can go online, request that resale package, make the payment, and then the process starts to create it.

Number two is just as a timing perspective. We have gotten requests from a Realtor at 6 p.m. on a Friday when an email comes in saying, Hey, I need a resale package. Then if we are going to ten calendar days over a holiday weekend, now we have lost Saturday, Sunday, and Monday. When they get back to the office on Tuesday, the Realtor is three days behind. We would ask that the ten days start, if the request is made during a weekday, during normal business hours because we are on the clock on weekends now.

Two more comments: You certainly can appreciate increasing the 30-day time limit. I heard that 44 days was the average. I met with the sponsor last week. I intend to meet with her again and, hopefully, work through a couple of these clarifications. I really appreciate her time. Going all the way to 90 days concerns us. Budgets are created every December for the amount of assessments from the following year. For example, if a resale package was requested in October, it would be good from October to November to December and now January, where assessments are, typically, modified in December and effective in January. You may have a disconnect. We would ask that 45 days might be more reasonable—or even 60 days. We think 90 days is a little far, but I will work with the sponsor and respect what she decides.

Finally, this was not addressed in the original presentation, but there is a new definition of "interested parties," if I can turn your attention to section 3, subsection 7, paragraph (b). Under current law, a statement of a unit's owner's file can be requested by three people:

1. A unit's owner;
2. An authorized agent of a unit's owner—a lot of times the real estate agent will provide their listing agreement to say that I am authorized to request this information on behalf of Mr. and Mrs. Smith; or
3. The holder of the security interest; the bank.

Nevada Revised Statutes 116.31175 makes it a violation if the association turns over the records of a unit's owner to anyone else. In this bill, the definition of interested parties is created and now expands that an association is required to provide this information to the unit's owner. That makes a lot of sense to us, but it also adds the "prospective purchaser of the unit and all other persons known to the association who have a financial interest in the potential sale of the unit."

We feel like we will be in a little gray area. On one hand, you have a statute that says we cannot turn the information over to anyone other than to cure the interest holder, authorized agent unit's owner; now we have a prospective purchaser. That puts the association in an awkward position. They have to ask for the purchase agreement, verify who the purchaser is; if the purchaser is say, a limited liability company or a trust, confirm that person actually is a trustee who is allowed this information. If that purchase agreement has expired, is there an amendment to figure out if that person is still a live purchaser. So we have always liked to say, the unit owner requests the information or their authorized agent, or their bank, and we are happy to provide it—but expanding that definition gives us some concern. Now you are putting the burden on us to figure out who is a prospective purchaser. Determining if there are any other people who have a financial interest in the sale is a little difficult to interpret for an HOA and a management company.

With those three clarifications, I know I am on the sponsor's calendar to meet with her again, and I will meet with the parties. I appreciate the intent of the bill, and I am happy to answer any questions.

Assemblywoman Bilbray-Axelrod:
I think you make a valid point in your last point, especially. What is really the problem with a potential purchaser—do you think that due diligence really has to be done? If someone says they want a resale package, is that really that big of a problem? Are we looking for a solution to a problem that is probably not a problem? I get what you are saying, and it makes sense. Is this happening a lot or do you anticipate this happening a lot where someone might think, I want a resale package, and request it?

Garrett Gordon:
You would be surprised what happens out there. That particular statute that says we are not allowed to turn over information about a unit's owner is, in fact, cited in an affidavit to the

Real Estate Division, Department of Business and Industry, about complaints. So I would say yes. Not only does a resale package include what the assessments are, but it could also include a history of a fine or what have you. There could be more information in there than bland information, which is why the Legislature, five sessions ago, said this information should be confidential to the unit's owner. That is why we are happy to comply with law and turn it over to the unit's owner or their authorized agent. But now, putting us in an awkward position of who else deserves it? We would ask that it be the unit's owner or their agent.

Assemblyman Ellison:
Did you come to the table in favor or in opposition? I did not hear that. I can understand where you are coming from. There are some tweaks in here that might need to be addressed, but the sponsor of the bill has already made one amendment. Have you been working with her at all up to this point?

Garrett Gordon:
When the bill came out ten days ago, I read it and approached the sponsor last week with our concerns. She asked me to email them to her. I got them to her yesterday. I just saw her in the hallway and informed her I was on her calendar to meet again to tweak the language. I was not part of the working group over the last couple of months, but I am happy to roll up my sleeves and join in and be reasonable with some of these clarifications.

Assemblyman Hafen:
Thank you for bringing up the interested party definition. I had not really thought this far ahead, but I wanted to ask your opinion. Would the way that the other persons who have financial interests start rolling into utility companies that are owed money? I know a lot of times what happens is, people are selling the property and they just skip out on their final three-month bill, and the utility company ends up absorbing that cost. Would that open the door for the utility companies to come in and say, Hey, association, whenever you have a sale we want to be notified?

Garrett Gordon:
Yes, I think that is one example of how broad this language is written as to who has a financial interest. There is already in statute the requirement to give the mortgage holder this information, so that would be clear, and we agree with that. But utility companies, a painter, an uncle who loaned the buyer the down payment—I hate to make up all these examples, but I think there are a lot of examples—that just puts associations in an awkward position to try and figure out who has a financial interest and how do we prove that. Now we can say, Unit owner, or real estate agent, here is your information. We would respectfully request this be considered.

Vice Chair McCurdy:
We encourage you to continue to work with the sponsor of this bill and make sure we get something back that we can all live with. We will now go to Las Vegas, and anyone in Carson City wishing to testify in opposition, please make your way to the front.

Michael Kosor, Private Citizen, Las Vegas, Nevada:
I live in Las Vegas, and I have been serving on a board as the treasurer for the last six years. I come here generally in favor of what I believe is the apparent attempt to cap fees and to limit the fees to the consumers. However, I must sit here today opposed to the bill as written. I agree with some of the changes Mr. Gordon has suggested. However, without some changes, I must be opposed.

The first couple are more technical than anything. Section 1, subsection 1, paragraph (o), of the bill, that is actually in a section that is subject to the declaration and is a power to the board. As most of you probably know, the declaration could override that altogether. My question is, it is probably in the wrong place.

The second two sentences really are not powers at all and probably should not be in that section because they show up in section 4 as well. If there was a recommendation here and something for the Committee to consider, the "subject to" is a big concern to me but is an aside for what this bill is intended to do. I see the powers should be limiting an association to that maximum necessary, but again, that is an aside for what we are here for today.

In section 1, subsection 1, paragraph (o), the word "file" may be technical, but has no definition under NRS and so potentially exists for a file for regular assessments to be opened, as well as a file for fines and penalties. I guess, for clarity, there should be only one file per unit in this discussion.

Next, I call your attention to the actual cost versus the reasonable cost. Both of those terms are used in the bill and used actually in the same provisions. For the vast majority of HOAs, the actual cost they incur to charge and open an account is merely the fee that is contained in the contract they negotiate with the management company to do that function. It is nonetheless a cost to the association. Controlling the cost will be controlling the fees that the management company actually ends up contracting with the association.

Section 4, subsection 13, looks to impose a reasonable fee on a file. I bring this up more importantly as I see the function of starting and ending a file, frankly, as part of the regular course of an HOA and should not incur additional fees. The association already pays for the general administration of the community. Today, however, it is generally accepted as a common fee charged by the management companies. So the cat is out of the bag here. But it does open up other fees such as maybe a fee to send a discretionary letter for something as an inspection or possibly even a fee to send an owner correspondence, which obviously I am not in favor of.

The bill, as envisioned, I fully support. However, I do not think it is going to accomplish long-term what it is intended to do, and that is cap these fees. So I respectfully recommend that the bill be amended so that each HOA files annually as part of its current annual reporting to the Real Estate Division (NRED) within the Department of Business and Industry the files it charges for the full set of a la carte fees. As part of this, require the association to certify the fees are reasonable or actual costs, and not just set out in some

management contract. That would put the responsibility back where it belongs, in my opinion, on the management companies working with each association board. The NRED in turn should be tasked to provide adequate information to the HOAs to assess the actual—or may I recommend reasonable—cost, publish something of the average fee schedule, or possibly more to aid the boards. As for addressing the outliers, which I think this is designed to do, who may elect not to exercise proper authority.

Vice Chair McCurdy:
I just wanted to let you know that the two minutes are up, but if you will, please follow up with the sponsor as soon as you can. Thank you for your opposition. Is there anyone who wishes to testify in opposition before we move to neutral? [There was no one.] All those who would like to come up in neutral, please step forward, either here in Carson City or Las Vegas. [There was no one.] We will ask the sponsor to come up and provide closing comments.

Assemblywoman Jauregui:
Thank you, Vice Chair McCurdy and Committee, for hearing the bill. The idea for this bill started at the end of last session when one of my constituents called me, upset, because she was selling her home. She lived in an HOA that had a master HOA. The combination of fees for the account set-up fee and resale on demand was $1,200. Her file did not close on time. Her escrow did not close on time. She had to repay for some of those fees twice—that is almost $2,400 for a seller who might be short-selling or for any homeowner. That is money out of their pocket going to the HOA for unnecessary reasons because some of the fees were not set in statute or capped. What this bill is trying to do is put a ceiling on the mandatory fees, which we can do: the mandatory fees, which are the account set-up fee, the resale package, and the demand. All other fees we cannot mandate. If an HOA decides it wants to charge a discretionary fee for something else, we cannot mandate that, but we are trying to do something about the fees that we can do something about.

I received an email yesterday with some of the changes that Mr. Gordon would like to make. We have a meeting scheduled. I am definitely open to tightening language to make sure that my intent is clear in this bill. I want to thank you again for the opportunity to present Assembly Bill 335. If you have any questions for me, please let me know.

Vice Chair McCurdy:
In Las Vegas, are you looking to say something?

Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry:
I want to testify as neutral, and we are here to answer any questions. The Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels in the Real Estate Division wanted it on the record that we are neutral for this bill.

Vice Chair McCurdy:
We will close the hearing on Assembly Bill 335 and open the hearing on Assembly Bill 366. Will the sponsor please come forward.

Assembly Bill 366: Requires the Division of Emergency Management of the Department of Public Safety to establish a program to provide assistance to persons who own and occupy certain damaged homes. (BDR 36-1077)

Assemblyman Chris Edwards, Assembly District No. 19:
Thank you for the opportunity to present Assembly Bill 366. Today's bill was inspired by something that happened in my district but, frankly, could happen—and probably does happen—more than you know in each of your districts. While I was out campaigning in the Moapa Valley—not Moapa City—part of my district, I was tramping through some muddy roads. I spoke to one of the residents and was told why the streets were so muddy. About 85 years ago, a company built some retaining ponds upstream. As you would imagine, the retaining ponds collected and held water from the spring rains which would evaporate during the summer. The company had gone out of business about 25 years earlier. However, gravity did not. As you can imagine, the ponds were still there, still collecting water, and the water would ultimately evaporate. However, along came the State Engineer and he saw the ponds. He assessed that if the ponds broke, there would be catastrophic flooding downstream. He may have been correct. His solution was to make holes in the ponds so that the water would flow out. Well, gravity works, and where he expected the water to go, it went. It was not diverted. There was no way to prevent the housing below from actually avoid being flooded, and so it flooded—year after year.

Each year, the folks in the community were flooded with, literally, inches of mud in their yards and all around. The residents had trouble getting to their homes, even with a four-wheel drive vehicle. As you know, a water-damaged home is a costly affair, and when they asked for help from the state, there was no help from anyone. The residents asked for a short drainage pipe to divert the water into the Virgin River. It probably would have been all of about 200 feet. They were denied. Then they asked if they could move a berm from one side of the street to the other. The state would not do it. The State Engineer caused the problem, but no one was willing to help the homeowners who were hurt by it. I found out about it and I tried to help out, but I hit a brick wall. I decided to create the help that they should have gotten.

That is what Assembly Bill 366 is all about. It requires the state government to adopt regulations to establish a program to provide assistance to people like my constituents. When the state, county, or city creates a problem and the people incur the costs, the state, county, or city should make those people whole again. We pay them to make these kinds of mistakes, but being fair, people are not perfect—we are human—and mistakes do happen. That is exactly why there has to be a way to fix the problems and take care of the people who were hurt by these imperfections and failures. The people should not have to spend tens of thousands of dollars to go to court to sue the state in order to get compensated and, frankly, many of them cannot afford it. The state, county, and city must provide a way for the

property owners to be compensated for the damage that they cause. This also requires the state to come up with a plan to fix the problem that created the damage in the first place. I think that is just a logical step.

As you can imagine, this is going to happen in all parts of the state. Take, for example, Lemmon Valley here in the north—a housing division was allowed to be built without considering how the rainwater would flow after the houses were built. Gravity works in the north just like it does in the south and, sure as could be, the people down in the valley endured flooding as the water was channeled into their neighborhood. In Lyon County, a golf course was constructed. Again, the engineers failed to analyze the water flowing. Homes were flooded year after year.

I am pretty sure that each of you could find examples like this in your districts. It is sad that there is probably no relief for your folks either. Simply put, we pay the county, the state, the local government engineers to properly assess designs and take the actions to ensure that these things do not happen. When they fail to get it right, the government owes people compensation for repairs when possible or to offer to buy their damaged property at fair market value. Assembly Bill 366 provides our constituents with a way to be made whole again.

Within the bill itself, there are three quick sections. Under section 1, it simply says the Division of Emergency Management, Department of Public Safety, has to adopt regulations to create this program. The regulations under section 2 have to include certain things like the ability to have the home purchased if the damage cannot be repaired. The third is that they actually prescribe a way to fix the problem that caused the damage in the first place. With that, I will take any questions you may have. [Written testimony from Assemblyman Edwards was submitted (Exhibit D).]

Assemblyman Ellison:
You see this more often than you do not. The state, if they allowed for this pond to go through, or the county, somebody had to put up a bond when the levee was built. If the levee is leaking then they are responsible to maintain this. If they are not, I think that the homeowners should ask for a hearing between the state and the county and whomever at that time to come forward. If not, this is the only recourse you have other than a lawsuit. The impacts, you see this a lot. It might have happened 30 years ago. They still have to maintain these. We have seen this in Elko. I thought there would be enough language already existing to protect this.

Assemblyman Edwards:
I would have thought so too, but I could get no help for my constituents. What this does is tap into funds that are available within the state government. This is designed more for when the state takes an action or creates a failure that causes the problem. For example, it is not a matter of something that is not maintained. The ponds in my example in my district—the ponds were doing fine, having been there for 85 years. There was no reason to touch them other than the State Engineer got it wrong. When the state takes a proactive measure that

creates the problem, the state owes people compensation for whatever the problem is that cost them damage to their homes. That is what this is focused on.

Assemblywoman Munk:
You said that a 200-foot pipe going to the Virgin River could possibly have solved the issue.

Assemblyman Edwards:
Yes.

Assemblywoman Munk:
If the properties are that close to the Virgin River, is that not in a flood zone already? Would the property owners have to have flood insurance on that?

Assemblyman Edwards:
The flood zone was about three blocks over.

Assemblywoman Munk:
You said this happened 15 years ago. Have there been new buyers move in since then?

Assemblyman Edwards:
No, this was not 15 years ago.

Assemblywoman Munk:
You said that the State Engineer decided 15 years ago he was going to change the water flow.

Assemblyman Edwards:
If I said 15 years, I was mistaken.

Assemblywoman Munk:
That is what you have on your letter. The reason I am asking is, I would think if people have moved in or moved out that their Realtor, if this area is flooding, would have to disclose that as part of the real estate contract that you are in a flood zone.

Assemblyman Edwards:
I correct myself on that. It was about 15 years ago when they did it; however, they did not have the kind of catastrophic flooding that they have had in more recent years. It was not a problem, and the flood zones that were, again, in a government-produced plan indicated that these houses were not in a flood zone.

Assemblywoman Munk:
Do you know if any of the homeowners who had moved in since this had received a disclosure that this area does flood?

Assemblyman Edwards:
To my knowledge, most of them had been there for a long time. It is one of those communities that once you move in, people do not move out.

Assemblywoman Bilbray-Axelrod:
You said that the flooding is happening more regularly. Climate change is wonderful, is it not?

Assemblyman Edwards:
I think about that every afternoon when it warms up.

Assemblywoman Bilbray-Axelrod:
You mentioned the golf course. Was the State Engineer involved with the golf course in Lyon County? Was that not a private engineer and company? Is it a public golf course?

Assemblyman Edwards:
I am not 100 percent sure. I think it was a county government rather than the state.

Assemblywoman Bilbray-Axelrod:
I am just curious. Have you been working with the State Engineer? Have you had conversations?

Assemblyman Edwards:
Yes, I contacted him, and I could get no help from him.

Assemblywoman Bilbray-Axelrod:
As far as I know, having worked with the State Engineer in my other committees, they do not just go willy-nilly and decide to drain a pond. There must have been some sort of thought behind that. I would encourage you to work with the State Engineer. I think as a member of our Committee, I would have liked to have heard from the State Engineer today. If we could try to get some of these answers, I would really appreciate it.

Assemblyman Edwards:
My understanding is that the State Engineer thought that if the ponds were to break all by themselves, that it would be a catastrophic event where all the water would gush down into the community creating not just damage to property but deaths as well.

Assemblyman Carrillo:
I was a little confused because it seems that this would be adding more government than you would want to see, so I am confused as to the reason for the bill. How often would a state agency be considered to have damaged property?

Assemblyman Edwards:
We really do not know.

Assemblyman Carrillo:
Would this apply to a home that is owned but rented to another party?

Assemblyman Edwards:
Yes.

Assemblyman Hafen:
For clarification, what your bill is doing is allowing an affected party to go to the Division of Emergency Management to try and resolve the issue rather than taking it directly to court. Is that correct?

Assemblyman Edwards:
Yes.

Assemblyman Hafen:
It is a mediation or an arbitration prior to taking the county or municipality to court, correct?

Assemblyman Edwards:
Yes.

Assemblyman Smith:
If this were to pass, my concern would be the ramifications to the department or to the public safety folks. How do they pay for that? How does this get paid for down the road?

Assemblyman Edwards:
Actually, that is where we tap into the Emergency Assistance Account that has already been established. Under section 2, subsection 3, paragraph (c) of the bill, it talks about providing assistance to a person in accordance with the program established. Essentially, we are tapping into a source of money that is already there for these types of purposes. There is no real increase in taxes. There are no other funds that are being accumulated anywhere. There is already a fund to do this. We just need to make sure that people are directed to access this in a way to compensate them for the damage done to their property.

Assemblyman Leavitt:
This is one of those things where, I think, we are legislators. We listen to our constituency and they have a problem, and the constituent does everything he or she can to solve that problem. Then they run into roadblock after roadblock so they call us. I think this is a perfect example of that. Was every box checked before they got to this point before legislation would be required to solve this problem? Did they really make every effort to do so before this legislation was brought forth? I am not disagreeing with the legislation at all. I think if that is the case, then this is why we do what we do to try to help the constituency when they cannot help themselves.

Assemblyman Edwards:
I totally agree. The property owners had been struggling with the city, the county, and the state government, trying to resolve this and trying to make sure they provided all types of information when it was requested. They simply ran into roadblock after roadblock of denial of any kind of help. You are exactly right. This is where our constituents bring a problem to us that cannot be solved any other way and, unfortunately, it takes a whole other law to do it. This is to do exactly that: to take care of our constituents who get no relief anywhere else.

Vice Chair McCurdy:
Are there any additional questions from the body? [There were none.] We will go to testimony in support of Assembly Bill 366. If there is anyone here in Carson City or in Las Vegas who wishes to testify in support, please come forward. [There was no one.] If there is anyone here who wishes to testify in opposition to Assembly Bill 366, please come forward. [There was no one.] We will now go to neutral. Is there anyone wishing to testify in the neutral position on A.B. 366? Please come forward. Please state your name for the record, and keep your comments to two minutes, please.

Warren B. Hardy II, Private Citizen, Las Vegas, Nevada:
As the former representative of the Moapa Valley area that Assemblyman Edwards addresses, the only reason I am coming in neutral instead of in support is I have not had a chance to read the entire bill, except for this morning. I can tell you this has been an ongoing issue for that community. There are a lot of conversations about relocating and moving there. Many of these are in very economically depressed areas and, frankly, quite a ways from the site of the problem. When we have a 100-year flood, for example, which we had a couple of years ago, it is devastating for the community. Again, I did not see this bill until this morning, so I am here in neutral because I do not know all the details, but I do want to attest to the challenge that is being created for that community.

The other thing we grapple with in this Legislature is how to make folks whole because of the tort limits that are placed on state governments and local governments. This is a mechanism, in my opinion, to help make these individuals whole when those caps kick in. It is something that ought to be considered. The problem is real. It impacted my former district. Former Senator Titus and I worked together trying to find some resolution after a very specific flood occurred that I think was in 2007. It is a real challenge, Mr. Vice Chair, so I appreciate the opportunity to put my two cents in, and I would be happy to answer any questions.

Assemblywoman Munk:
You were saying this was an ongoing issue for that specific area. You were saying it flooded. Did the ponds flood or was it the Virgin River that flooded?

Warren Hardy:
That is a great question. When it is these 100-year floods that we talk about, and when the last one occurred, which was devastating, it was a combination. The flood helps the river overflow. There are also some dikes and some dams and things that are corroding. When

then-Senator Titus and I attempted to deal with it and, again, I do not want to say that clearly, because my recollection of 15 years ago is that it was then-Senator Titus and I who worked on this together, so do not hold me to that. It is a bigger problem than just this. That community needs some help in addressing the core fundamental problem here, and that is the flows that are occurring during 100-year floods. One hundred percent, Mr. Vice Chair, and I appreciate Assemblywoman Munk bringing that up because these people are impacted. Unfortunately, often they are not economically able to move away from the problem and just have to sit tight and rebuild. Some of these homes are 100 to 150 years old, so they are not able to relocate. That is a great question, and I am glad you brought it up, Assemblywoman Munk, because it is a variety of different challenges that community has and needs help with.

Vice Chair McCurdy:
We will ask the bill sponsor to come forward and give us some closing comments.

Assemblyman Edwards:
I would like to thank you for the opportunity to present the bill. Hopefully we can work together to help our constituents because this may be focused on my district, but I know it will affect yours as well.

Vice Chair McCurdy:
We will now close the hearing on Assembly Bill 366, and now open the hearing on Assembly Bill 379. Will the bill sponsor please come forward.

Assembly Bill 379: Revises provisions relating to local governments. (BDR 20-638)

Assemblyman Skip Daly, Assembly District No. 31:
Where I am trying to go with Assembly Bill 379 is that we have the hierarchy—we have the federal government that gives authority, occasionally in regulations and various things. I only have a couple of examples. The federal government will say that the state can do something, and I just wanted to make it clear that when they say the state, I think they mean the state, and if a local jurisdiction wants to exercise that authority, they should get permission from the state. Really, that is the whole bill. It is pretty narrow. In section 1, subsection 1, paragraph (f), where it says "Exercise any power or right granted to this State by federal law or regulation," the federal law or regulation has to say "State." If it says that a local jurisdiction can do it, or they are mandated, then we have to do it. I know when we get mandated to do something by the federal government, it says the state has to do it—and the state has to do it. Now if we push it down, the state's doing it but, nevertheless.

I would point out that page 2, line 18 states, "Except as expressly authorized by statute, a board of county commissioners shall not;" and on page 3, line 20 it states, "Except as expressly authorized by statute . . . the governing body . . . shall not." So all the things that they can already do, they can still do under this. We are not trying to take anything away. When I went to the Legal Division of the Legislative Counsel Bureau and asked them to draft this bill, I did not want to take away from some of the flexibilities that had already been given under Dillon's Rule in 2015 and in previous sessions and various things. I was not

trying to take away any of that, but when the federal government says the state has the authority to do this, we just want to be clear that it is the state and we do not have a subjurisdiction trying to claim the authority of the state.

Some of you are familiar with the two examples I have. The federal Occupational Safety and Health Administration says that the federal government is going to have this workforce safety program and they promulgate standards for minimum levels of safety on jobs and various things. But it also says in that statute that a state may exercise that authority if they, by statute, carry out a few things and set up a state-run program, which we have done in this state. It is more efficient for us. We have better safety coverage because the feds are spread thinner than you might think. So we have done that. We ripped the cover off their book and put the State of Nevada cover on that. A state can do that but I do not think the federal government meant that a lower jurisdiction could.

The other example is their similar setup under apprenticeship programs as well. The federal government says, We are going to have an apprenticeship program. They want to partner with the states and the states can set up a state apprenticeship council, rather than have a bureau of apprenticeship training.

Those are a couple of examples. That is all we are trying to do. We are not trying to take anything away from what the county or city can do now or a general law city. But if there is something in authority that is granted to the state, and they want to try to exercise that, I believe they should come back to the Legislature to get that authority—and that is the whole bill. I am happy to answer any questions.

Vice Chair McCurdy:
Committee members, are there any questions?

Assemblyman Leavitt:
Is this granting power to the state to delegate certain authorities to the counties or county commissioners?

Assemblyman Daly:
No. It is saying that if the federal government, by regulation or statute, has given some authority to the state, the state is not delegating it to the county. The state could. We are saying that the county cannot claim that power and exercise it without the approval of the state.

Assemblyman Carrillo:
To follow up on Assemblyman Leavitt's question, currently it is not in statute, but does it need to be put in statute? Maybe you could give an example of where this has been an issue.

Assemblyman Daly:
To my knowledge in the state of Nevada, it has not been an issue. The theory is, if the federal government says the state will have this authority, it means either the county, the city,

or the state. The answer to that question of just a minute ago was, no. If you are not the state, why would you want to claim authority of the state? All this bill is doing is fixing the problem that if the county or the city want to have that authority, they should get authority from the Legislature. That is all we are trying to fix.

Vice Chair McCurdy:
Are there any additional questions from the Committee? [There were none.] We will invite all those wishing to testify in support of Assembly Bill 379 to come forward either here in Carson City or Las Vegas. [There was no one.] We will go to opposition. All those wanting to testify in opposition, please come forward, either in Carson City or Las Vegas.

Warren B. Hardy II, representing Nevada League of Cities and Municipalities:
This is a very interesting topic that has been in this Legislature for many years with regard to state control versus local control. The Nevada League of Cities and Municipalities has the philosophy that when possible, we ought to try to resolve the problems of government at the level of government closest to the people. Through the years, historically, the Legislature has kind of endorsed that concept and that idea. There are certain laws and certain things in state law that the Legislature reserves appropriately for itself. But there are things that have been given to local governments. It is my understanding in terms of how the federal government utilizes the term state when they grant authorities to the state, they are not necessarily speaking specifically about the state branch of government, but rather providing those powers to the state to handle—whether it is handled at the local level or the state level. Those are discussions that ought to occur in this Legislature and in this Committee about which powers can be granted.

We are concerned about the overbroadness of this and the ambiguity. One word in particular gives us pause where it talks about exercising power [section 1, subsection 3, paragraph (f); and section 2, subsection 3, paragraph (f)]. It prohibits the county and the cities from exercising any power or right granted to this state by the federal government. I do not think the federal government always contemplates when they grant the rights to the state that they are contemplating giving it to the state government necessarily. We think the laws that we have in the state of Nevada relative to the Nevada Legislature's control over government entities, government entities are the creation of the Legislature, and it is appropriate for the Legislature to step in and retain those powers. This might have the impact of an overly broad brushstroke in how courts and others interpret this. We are concerned about the broadness of it and would like some additional time to work with the sponsor to try to get to the specific concern that he has.

Shani J. Coleman, Deputy Director, Office of Administrative Services, City of Las Vegas:
We echo the concerns stated by Mr. Hardy. We believe that this is overly broad. As the bill's sponsor pointed out, there are no examples of where the law is currently broken, where it is currently not working. We also agree that when the federal government says state, they are, at times, using the word generically. It is something that they do not want to do but it does not necessarily mean that it is required by the State of Nevada. We do not think this law

is broken or that there needs to be a fix. We believe it is overly broad and for that reason, we oppose this bill.

Vice Chair McCurdy:
We would ask that you continue to reach out to the sponsor and work with Assemblyman Daly. Are there any others who wish to testify in opposition to Assembly Bill 379? [There was no one.] We will now go to neutral. All those who wish to testify in neutral, please come forward.

Dagny Stapleton, Executive Director, Nevada Association of Counties:
We wanted to provide some information on the record regarding this bill. First of all, the statute that A.B. 379 addresses is the home rule statute. Nevada is not a home rule state. What that means is that local governments cannot take any actions that are not expressly authorized by the state, including those that may be delegated by the federal government to the state. A city's powers can be a little more broad, based on what their charters say. Counties can only do those things that the state gives them the permission to do that the Legislature gives us the permission to do. The exception to this is regarding matters of local concern or administrative issues that are within certain areas only. That is the limited area where we have home rule.

Because we have worked on this statute over the years, and it is basically the one that gives us our authority, we wanted to get on the record to provide some background from the county perspective. We discussed the bill with the sponsor and, as always, he had an open door and was willing to talk, and we thank him for that. The examples he cited included the Occupational Safety and Health Administration and apprenticeships. Those are not things that counties have any interest in taking on.

Also, we think that the change proposed to this chapter is very broad. The powers granted to this state by the federal government are many. It is hard to say which of those might impact counties if some of those powers are things that counties do and were pre-empted.

Counties do many different things, as well as cities. It is not exactly black or white. There are areas where the state and counties are partners. The same with federal government and the state, so it is not exactly black or white that you can always say the federal government, state government, or local government.

When we were reading this bill, we thought about the many functions that counties perform, including care for the indigent; we thought about county airports and their interaction with the Federal Aviation Administration. We also thought about other things that the federal government tells the state to do that counties would have no interest in taking on. Some examples of those include food and meat inspections, air quality in Nevada's rural counties, in addition to the Medicaid requirements that we already have. We would have to look at each of these programs individually in light of this chapter to determine if there would be a specific impact from the proposed language change. At this time we have not confirmed

any, so that is why we just wanted to provide some information and testimony in neutral today.

We would be happy to work with the sponsor if there is a specific issue that he would like to address. As always, we want to thank him for having an open door and we would be happy to answer any questions and also work with the sponsor.

Assemblyman Ellison:
I am glad that the Nevada Association of Counties and the League of Cities and Municipalities came forward. For many years we tried to work on Dillon's Rule and everybody that sits on this board or legislators represent cities and counties one way or another. It is important that they have a voice. That is why we put Dillon's Rule in there. Dillon's Rule gives the people a chance to work on a different scale. There are 17 counties out there; there are not two that are identical. It is so important that we have a voice. To me, this is so broad it could actually hurt the counties again. I am glad you guys stepped up and, like I said, I hope you can figure out what the problem is and what Mr. Daly is trying to do. As the bill is right now, it is so broad, that we could take the powers away from the cities and the counties. That is the way I feel.

Vice Chair McCurdy:
Are there any other questions from the Committee at this time?

Assemblyman Ellison:
I am sorry: I said "Dillon's Rule," I meant "home rule." I apologize. "Home rule" is where we put the power back with the people and let them make some of the decisions they need.

Vice Chair McCurdy:
Are there any others who wish to testify in neutral at this time on Assembly Bill 379? [There was no one.] We will ask the sponsor to come forward and give some closing remarks.

Assemblyman Daly:
I talked with Ms. Stapleton and I said, Okay, if you have concerns, try to give me an example, the same as they asked from me; they did not really come up with any. That does not mean that they will not. I also went back with their concerns when I talked to the Legislative Counsel Bureau when they were drafting this. I said, I am not trying to undo what we did on some of the home rule to give people a little more authority. I did not want to do that. This bill was put in before session started—one of the last ones we got. I said, How come it took so long? They said, We wanted to make sure we got it right. I asked them to look for these things. I went back and asked them, Are we going to take away anything that they can do or are doing now? The indication was, no—to the best of their knowledge, obviously, and to the best of my knowledge, as well. I am happy to talk. I think it is pretty narrow. It only says that when the federal government says the state, they mean the state, and if local jurisdiction wants to then exercise that, they would have to come to the Legislature and get permission—that is it.

Vice Chair McCurdy:
Committee members, are there any questions? [There were none.] We will close the hearing on Assembly Bill 379 and now open the hearing for public comment. Is there anyone who wishes to testify or provide public comment, either here in Carson City or in Las Vegas? [There was no one.]

The meeting is adjourned [at 9:52 a.m.].

RESPECTFULLY SUBMITTED:

_____
Connie Jo Smith
Committee Secretary

APPROVED BY:

_____
Assemblyman Edgar Flores, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a proposed conceptual amendment to Assembly Bill 335, presented by Assemblywoman Sandra Jauregui, Assembly District No. 41.

Exhibit D is written testimony dated March 28, 2019, presented by Assemblyman Chris Edwards, Assembly District No. 19, regarding Assembly Bill 366.