Background notes

By Mike Kosor

Intro- The bill as amended is desperately needed. It is only one of many needed changes to Nevada's HOA laws. It addresses acknowledged ambiguity in the current law, will save money, and improve/reduce owner apathy and board accountability via greater transparency. I have tried to limit the scope of the bill and proposed amendment to avoid opposition assertions of micromanaging associations. However, owner apathy or a feeling by owners they cannot effect change, is real making HOAs vulnerable. Owners cannot be shut out, believe their involvement in the governance of the community is too hard, a waste of time, or in a worst-case could lead to retaliation. If so, they are sure to become discouraged, continue to demonstrate a reluctance to serve on boards, and more. The apathy cycle will be reenforced.

NRS 116.31086 was first added with SB 253(2009)-sponsored (among other bills) by Sen Parks following a major and highly publicized Nevada HOA board scandal. Language applicable to and amended in the present bill required "if" an association solicited bids the bids must be opened during a meeting of the board. The word "if" has created ambiguity, resulting in noncompliance, that remains today.

NAC 116.405(8)(d) allegedly attempted to address the statues ambiguity. Unfortunately, the regulation's language "when practicable" adopted by the CIC Commission in issuing the regulation and later by NRED with Opinion 11-02 (Sept 2011) have not been effective.

NRED is capture by the industry it regulates. It has refused to address the acknowledged ambiguity of NRS 116.31086. NRED's position currently serves as a "shield" for association boards that do not exercise sound business practices, managers who do not want the additional work, albeit nominal, while financially advantaging community management firms. It is a rainmaker for attorneys. Expect opposition- see below.

NRS 116.31086 was amended only once with AB 238(2019) – sponsored by Assemblymen Dooling. The bill added criteria for soliciting bids, "when reasonably possible", and that bids be "read aloud" during a board meeting. AB 129(2025) as amended clarify the original objective the statute to require multiple bids for large contracts/projects.

The bill addresses the loophole of the statute created by the "when reasonably possible" wording. It is deleted. Bids are required for associations that meet the threshold criteria, except in an emergency.

Second, the bill seeks to add clarity to the requirement to "read aloud". The bill provides bids can be "summarized aloud". The reading of the entire bid is overly burdensome and adds no real value to the intent of providing transparency. It is an unnecessary announce. Reading a summary of the bid is sufficient to foster transparency intended by AB 238(2015)- see the legislative minutes. It is not clear to me why this was not addressed in the multiple amendments to AB 238(2015) after addressed in testimony. It can be deleted if opposition dictates. A provision was added allowing owner inspection of the bids submitted.

Other changes proposed in the amendment are:

3- permit approving a project with only a single bid. The statute will continue to require an association "solicits for bids"- more than one. Unfortunately, for a number of reasons, some that can be addressed

by legislation, associations often receive only one or two “responsive” bids. See point (7) below for more.

4- adds language restricting a board approving contracts where the majority of directors can be appointed by the declarant. The bill as amended would prohibit approving a contract for the association’s community management where the person(s) or entity are affiliated with the declarant. Rational- During the period of a declarant’s control the only truly independent fiduciary for owners is the licensed community manager. Expect strong opposition, likely out of the public eye, by a select group likely led by Garret Gordon or developer representative(s).

5- expands the definition of “association project” requiring bids for “common expenses” (differing from “common elements” currently in the statute).

6- changes subsection (2)- now (6) closing the loophole permitting associations avoid bidding services contracts by using/approving contracts with “evergreen” provisions or automatic renewal clauses -that automatically renew a contract after a set period of time unless one party gives notice to terminate.

7- amends NRS 116.643 adds direction NRED assist both associations and HOA vendors in meeting bidding requirements of the statute (for example, make available approved RFP formats, facilitate vendor listings, board education, or other things under NRED leadership). Rational- Associations are non-profits governed by volunteers- typically having little to no contracting experience. The same could be said of small vendors that could provide value to associations if engaged. NRED is funded by associations and should provide easy to use RFP formats, provide education, and even facilitate a “market” for the typical services contracted by associations- particularly those from providing professional serves such as accountants, lawyers, and collectors that are otherwise not motivated to assist boards in this effort. This could improve competition, provide some greater transparency in pricing, and more. Small and large vendors often put off by bids would also benefit from standardizing and/or education in the bidding process.

Opposition

Despite addressing acknowledged ambiguities in existing law, added consumer protection, and reducing no-value added requirement(s), expect opposition from the industry players- primarily CAI (Community Association Institute), a lobby organization primarily supported by management companies, large landscape vendors, and attorneys who specialize in HOA law.

I have provided minutes from the last effort to amend this statute. I suggest you read it. I have provided a link to AB 238 in Nelis https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=519

As a former CIC Commissioner testified, “the industry and [from] attorneys [who] object to having competition for spending the people’s money.” (see March 26. 2016 minutes, pg 24)