MINUTES OF MEETING - COMMITTEE ON COMMERCE - 55TH NEVADA ASSEMBLY SESSION - FEBRUARY 12, 1969

Present: Wood, Bowler, Torvinen, Hafen, Mello and Capurro

Absent: Espinoza

Also Present: Mr. W.K. Woodburn, Attorney at Law
Assemblyman Hilbrecht

Chairman Wood convened the meeting at 11:30 a.m. and Mr. Woodburn was introduced to the Committee.

A.B. 111: Provides for restriction of transfer of corporate securities. Mr. Woodburn stated that this bill gives the company the right to enter into an agreement with an officer or director of the company that if stock is issued and they terminate their employment, the company has the first right of refusal of the stock. He noted that NRS 104.820(4) provides that such a restriction is not valid on any person without notice, however, Mr. Woodburn said he has given several opinions to clients as the law is written now that they can do this without notice. Companies feel that if they can do this, it should be spelled out in the law.

Mr. Torvinen stated that he had heard from Chairman Hawkins of the State Bar Association regarding this bill and there were no objections.

Mr. Hilbrecht noted that it had been his opinion that the companies had this right anyway and Mr. Woodburn said that this bill just clarifies the law.

A.B. 113: Requires notice by stockholder for cumulative voting in corporate election. This bill provides that if the charter of a corporation states that a stockholder is entitled to the right of cumulative voting, then not less than 48 hours before the meeting is to convene, if notice has been received 10 days prior to the meeting; or not less than 24 hours before the meeting convenes if notice was not received 10 days prior to the meeting, a stockholder shall give notice to the president or secretary of the corporation in writing, his intention to vote cumulatively. The purpose, of course is merely to avoid setting up the complicated machinery necessary to handle cumulative voting if it is not needed. Mr. Russ McDonald has handled these matters and it is a tremendous job. One company had three annual meetings in a row involving some 4 million shares which had to be set up each time using this expensive procedure; requiring Mr. McDonald's services, First National Bank and Ernst and Ernst, accounting firm. This A.B. 113 does not take away anything, but if someone asks for the cumulative voting method, the company is alerted and can be prepared.

Mr. Capurro asked Mr. Woodburn to explain "cumulative voting" and he stated as follows: Let us assume you have 1,000 shares in a company and there are 10 directors at the annual meeting. Cumulative voting, which is not ordinarily used, has to be set forth first in the charter or the articles of incorporation. You could arrive at the meeting and announce that you are casting your votes for a certain person. The number of your votes would be equal to the number of your shares multiplied by the number of directors, in this instance being 10,000 votes. If you preferred not to cast all your votes for one director, you could split them up between as many as you wanted. A.B. 113 does not prohibit this action, it only allows the company to have time to set it up.

Mr. Torvinen noted that in small business companies, the individual stockholder does not have independent legal advice. Most of them are participants of the business to some extent and he asked Mr. Woodburn if cumulative voting would not let the group of majority stockholders cut the other men out.

Mr. Hilbrecht agreed with Mr. Torvinen's thought, however, he felt that in the first instance when the right of cumulative voting was put into the articles of incorporation there should be more consideration given to the matter.

Mr. Woodburn stated that A.B. 113 was based on Ohio law to the best of his knowledge and it appeared it did limit the rights of the minority voter.

Mr. Hilbrecht asked Mr. Woodburn if a minority stockholder elects to vote cumulatively, does it also pertain to other classes? If a percentage figure has been set up in the articles, for instance a requirement that 15% of the stockholders must want the cumulative vote, then the company must meet this percentage. One person could not ask for the cumulative vote. The percentage method most likely originated in California where they now require all foreign corporations to have cumulative voting. However, that is not the case with A.B. 113.

Mr. Hilbrecht then noted that this presents a rather hazardous situation to the stockholder during the meeting. The intent of this is to protect the minority interests. "I wonder, if I got a notice that one of the other stockholders was going to vote cumulatively, maybe I would do it too; if only to protect my own right to vote either with him or against him" It seems that the notice provision would sometimes cut out the class of stockholder which it was put there to protect. Mr. Torvinen stated that in that event, he would most likely have given notice and played it by ear.

Mr. Torvinen then inquired if these problems applied to public companies or large private corporations and Mr. Woodburn stated that it was mainly public corporations. It does not apply to any company not listed on the public stock exchange.

Mr. Woodburn offered to have the amendment drawn up and forwarded to the committee for further consideration and action.

A.B. 104: Broadens provision for indemnification of corporate officials against liability and legal expense. Mr. Woodburn stated that the old law covered most of this but A.B. 104 covers employees and agents as well. This new bill allows the company to purchase liability insurance covering any lawful acts of the company and any one affiliated, including employees and agents..

A.B. 110: Regulates offers to purchase control of Nevada corporations. This bill provides that if you want to buy or purchase 10% or more of a company, you must give notice and source of funds. Notice can be given to the resident agent of the company and the reason for this is to protect the company from take-over by raiders. It applies to unlisted companies. Mr. Woodburn stated that before the Williams Act was adopted, a company might very will find that they had been completely taken over by unknown persons. It also gives management the ability of explaining to the stockholders what he is getting.

A.B. 112: Clarifies restrictions upon corporate transactions involving interested directors or officers. This bill merely broadens the present statute to include officers as well as directors to set the amount of compensation for services if it is set forth inthe articles incorporating.

A.B. 103: Provides that single trustee for insolvent corporation has powers equivalent to group of trustees. This bill is corrective legislation only. Corrects terminology in Subsection 3 to coincide with that of Subsection 2.

Mr. Wood thanked Mr. Woodburn for his assistance on these bills and Mr. Woodburn was excused.

Mr. Torvinen then moved that the following bills be given a Do Pass:
A.B. 103
A.B. 104
A.B. 110
A.B. 111
A.B. 112

Motion was seconded by Bowler;
Unanimously carried.

Floor assignments were given by Chairman Wood; Bowler moved for adjournment and unanimously approved.