MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Fifth Session
April 27, 2009

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:15 a.m. on Monday, April 27, 2009, 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) and the Attendance Roster (Exhibit B), 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/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Peter (Pete) Goicoechea, Assembly District No. 35
Senator Dean A. Rhoads, Rural Nevada Senatorial District
Senator David R. Parks, Clark County Senatorial District No. 7
Senator Valerie Wiener, Clark County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Nick Anthony, Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Steven Sisneros, Committee Assistant

OTHERS PRESENT:

Teresa McKee, representing the Nevada Association of Realtors, Reno, Nevada
Keith Munro, First Assistant Attorney General, Office of the Attorney General
Robert Sebby, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada

Chairman Anderson:
[Roll called. Protocol on testifying before the Committee.]

We will open with Senate Bill 106 (1st Reprint).

Senate Bill 106 (1st Reprint): Revises provisions governing the purchase of a home or lot that is adjacent to open range. (BDR 10-497)

Senator Dean A. Rhoads, Rural Nevada Senatorial District:
At its meeting last summer in Eureka, a member of the Legislative Committee on Public Lands identified an ongoing concern of some property owners who purchased their home or parcel adjacent to the open range. At times these property owners have observed livestock grazing in their yards and freely roaming their property. Existing real estate disclosure provisions in Chapter 113 of the *Nevada Revised Statutes* (NRS) set forth a requirement of disclosure to the purchaser that, unless a fence is constructed to prevent it, livestock may enter the property from the adjacent open range.

Testimony indicated that additional clarity was needed in the statutes to ensure that the seller provided a copy of the signed disclosure to the purchaser and recorded the original disclosure with the appropriate county recorder. In addition, it was proposed that the disclosure also include a notice to the purchaser if the parcel is subject to a right-of-way granted by Congress—an R.S. 2477 right-of-way—or any other rights-of-way impacting the parcel.

Assemblyman Peter (Pete) Goicoechea, Assembly District No. 35:
I think there are a couple essential parts of the bill that we really need to recognize. First, it requires that you do in fact file and record a disclosure that the property may be subject to both animal trespass and R.S. 2477. The bottom line is that the parcel "may" be subject to those claims. What has happened, even though we had the disclosure in the past, there was not the requirement that it be recorded or that the document be retained. I do not have to tell the Chairman what happens out in the rural areas. A guy buys his 10- or 20-acre parcel out in public domain. He has his little piece of heaven there until a herd of cows go through his part of the world. Then we end up with some conflicts and, unfortunately, the purchaser would go back to the sheriff and say, "Well, I did not know." Really, the teeth of S.B. 106 (R1) is the fact that you have to file and record the disclosure notifying you that you may be subject to an R.S. 2477 claim and that your property abuts open grazing lands.

Chairman Anderson:
For those of you who are unfamiliar with the term "R.S. 2477," that would be a road that at one time was utilized for and maintained by the federal government as part of an original right-of-way, usually for mail carriage, into some town that is no longer in existence, or to traverse the state. Either county or federal funds have been expended on it. In some cases, I believe the county and the state receive some reimbursement from the federal government for maintaining some of those roads. When the federal government and the U.S. Forest Service decided that some of those roads had to be identified by the counties before they became officially designated as R.S. 2477 roads, some states actively went about identifying those roads. Nevada did not because it felt that it was able to carry on with the existing structure. There have been quite a few claims where a rancher whose land once abutted the road bought land on the other side of the road. Then, when he cut off access, it meant that hunters going out were not able to utilize some of the shorter routes. Will this take care of that?

Senator Rhoads:
About four sessions ago, I got a clause put in place that, in a real estate transaction, you had to notify the owner of the property that it was open range. This bill will strengthen that clause. The buyer will know that there will be cattle, horses, or sheep in the yard.

Chairman Anderson:
Often, it seems to me that when a developer buys the land and subdivides it, that is where some of these problems are coming from. When a developer comes in, purchases a ranch, and turns it over to housing development, all of the sudden he puts his streets where he wants them to be, and someone forgets to inform the cattle that they are no longer welcome.

Assemblyman Goicoechea:
The bottom line on this is the fact that, when Senator Rhoads got the real estate disclosure put in place, there was no requirement that it had to be recorded. The realtors were saying that they gave the disclosure in the stack of paper that was that high [indicated]. Now it requires that it be recorded with the county recorder's office so there will not be the ability for that person to come back after the fact and say that he did not realize that.

As it pertains to R.S. 2477, most of the rural counties prior to 1979 put a county road map in place that claimed most of those R.S. 2477 roads as county roads, especially those rural counties in eastern Nevada. However, that does not stop another person from fighting a claim that they do have an established R.S. 2477 right-of-way. Again, there is not a requirement under R.S. 2477 that it be mechanically established. You can establish an R.S. 2477 road just with foot traffic. That right-of-way only pertains to that person who has established and used it. You will probably end up in court, even with this passing, but the bottom line is you will be aware of it at the point that you buy the property because it does require a recorded disclosure.

Chairman Anderson:
I know as Washoe County has grown out into the area bordering Storey County, it has become a big problem, as well as in Carson City and Douglas County. Access to the federal forest lands and to other public lands has greatly diminished. In most cases, it is because a developer has come in and not informed a homeowner that their driveway may end up being used by somebody other than themselves.

I will close the hearing on S.B. 106 (R1).

Let us open the hearing on Senate Bill 253 (1st Reprint).

Senate Bill 253 (1st Reprint): Makes various changes to provisions relating to common-interest communities. (BDR 10-18)

Senator David Parks, Clark County Senatorial District No. 7:
Today I come before you with S.B. 253 (R1), a common-interest community bill. By way of background, this bill has had a very long history. Hopefully the third time is the charm. In the 2005, this bill was Assembly Bill No. 290 of the 73rd Session. It passed both houses but died as a result of an amendment being added to the bill on the floor of the Senate. In 2007, this bill was Assembly Bill No. 11 of the 74th Session. It ended up being added into Assembly Bill No. 396 of the 74th Session, which we all know was vetoed by the Governor.

Senate Bill 253 (R1) does a couple of different things. First of all, in section 2, the bill provides additional ethical requirements for members of an executive board of a unit-owners' association by requiring a member who stands to gain any personal profit or compensation from a matter before the executive board to disclose the matter to the executive board and to abstain from voting on the matter.

With some exceptions, existing law requires an executive board to hold open meetings, including meetings to consider a contract. Sections 3 and 5 of this bill require an association that solicits bids for association projects, including projects that involve maintenance, repair, replacement, or restoration of any part of the common elements, or which involve services provided to the association, to both consider and open the bids during a meeting of the executive board of the association.

Existing law provides that except as otherwise provided in the declaration, an association may not require a unit's owner to secure or obtain any approval from the association in order to rent or lease his unit. Section 6 of this bill provides that unless, at the time of a unit owner's purchase of his unit, the declaration prohibited the unit's owner from renting or leasing his unit or required the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit, the association may not: prohibit the unit's owner from renting or leasing his unit; or require the unit's owner to secure or obtain any approval from the association in order to rent or lease his unit.

Section 6 also provides that if, before October 1, 2009, a declaration contains a provision establishing a maximum number or percentage of units in the common-interest community which may be rented or leased, that provision of the declaration may not be amended on or after October 1, 2009, to decrease that maximum number or percentage of units which may be rented or leased.

Section 7 of this bill makes the provision allowing the transient commercial use of units within a planned community that is restricted to residential use in certain circumstances applicable in all counties rather than just in larger counties.

Existing law requires a unit owner or his authorized agent to furnish to a purchaser a resale package which includes certain documents relating to the association. Section 8 of this bill requires the unit owner to furnish the resale package at his own expense and requires the disclosure of any transfer fees, transaction fees, or other fees associated with the resale of the unit.

Section 9 of this bill increases the amount of the administrative fine that may be imposed against a person who engages in certain activity without holding the required certificate or permit from $5,000 to $10,000.

Assemblyman Horne:
I remember this bill, but one part I do not recall: in section 6, on the maximum number of units able to be rented, I am trying to see how this would work, particularly in older units. If you can be prohibited from renting your unit out, but later the association can vote to provide limits on the number of rentals permitted on the property, and if so, how would that work if some unit owners may be precluded from exercising their right to rent their units because so many of them have already done so? For instance, if you have a 500-unit association and you set your maximum at 100, but 110 people want to rent out their place, those other 10 persons would be out of luck?

Senator Parks:
The intent of this legislation was to have homeowners' associations establish a number—in some cases it is like 10 percent. When times are good, there seems to be an effort toward limiting the number of units and when times get bad, units become vacant, and association fees do not get paid, then the association tends to be a little more willing to increase the numbers. The history has been that new board members come on and they decide that they do not like having a renter next door and units being rented, so they want to restrict all the units to being owned by an owner-occupant. This is trying to say that the boards have to set a number and then live by it.

Assemblyman Horne:
My concern is for various reasons someone may need to rent his home, not necessarily for a profit motivation. You could have a senior who may need assisted living but wants the property to stay within his estate. He may be precluded from renting it under some of these provisions or circumstances. He would be forced to sell that property when he does not want to. He may be

forced to sell it during a down economy as opposed to renting it and keeping it part of his estate, to leave to his heirs, which may be of value to him. That is the only part of this bill that gives me some concern.

Senator Parks:
I concur entirely with that. My attempt here is to try to keep that from happening, as you indicated.

Chairman Anderson:
Some of my concerns rest in that area as well. If the homeowners' association is not informed that a property owner is going to lease the property and there is no requirement for reporting, how will the association keep track of the percentage of units that are being leased?

Senator Parks:
As a practical matter, when a tenant moves into a facility, he normally has to get gate keys, register license plate numbers, and do a variety of activities like that. He needs to get a mailbox key and do other related things, unless the development does not have restricted entry. Normally, we find this occurs more in a condominium or townhouse than we find it happening as far as a free-standing structure. That is where the major concerns seem to lie.

Assemblyman Carpenter:
On page 4, section 6, subsection 3, it says that they may not decrease that maximum number that may be rented after October 1. Will that enable a lot of these communities to decrease the number that can be rented or leased before October 1?

Senator Parks:
Yes, this would provide a period of time for a homeowners' association to set an amount if they did not have one or to amend an amount if the association so chose. This seemed to be a much bigger issue two and four years ago than I think it is today. We tend to see a greater acceptance of renting units today as opposed to keeping units vacant and not paying for the association dues.

Assemblywoman Parnell:
I have a friend who lived in a common-interest community. She took a teaching job in Elko and was caught in this very same situation: she was not allowed to rent her unit. She had to pay the mortgage on that property plus living expenses in Elko for about a year. Finally, she worked hard enough to get an exclusion. She finally has that property rented. One thing she ran into was the association said 10 units could be rented but the developer of that complex actually owned the 10 rental units. Is there any way to address that situation?

Senator Parks:
I do not know that there is. What I was trying to get at was that in some cases a homeowners' association, or maybe just the manager at an association, was making unilateral decisions and even going so far as to tell an owner who had a long-term tenant that, effective July 1, he can no longer rent his unit. I do not know how—this was certainly an attempt to resolve that issue to at least some extent.

Assemblywoman Parnell:
I am sure that is happening elsewhere; the developer, the manager, someone, has control of those rental properties, and probably making a profit on them. Other folks, due to whatever extenuating circumstances, are left out of being able to do that. I would like to make sure that we are taking care of those folks.

Chairman Anderson:
I think Senator Parks would like to take care of those folks, too, but I am not sure this bill does it under its current language. I am not sure we can craft a solution. We do put a limit on the developer before he can release it, he has to stay in holding for a period of time, but he ends up holding the bottom end of his properties as part of his overall profit. The responsibility for paying for the fees ultimately still rests with the unit owner, even though it may be leased or subleased or rented out? This does not change that responsibility, correct?

Senator Parks:
That is correct.

Assemblyman Manendo:
On section 2 of the bill, I have a question. I see that the bill says "personal profit or compensation," but will this also reach family members? An example is one of the homeowners' associations (HOA) in my district: the president of the board employed her daughter to run the management company and lied about it for 2 1/2 years. The groundskeeper was a member of her family. The guy who went around writing tickets was a cousin. The pool guy was a second cousin. It just went on and on and on. If anything, they should at least disclose. When it all came out, the woman claimed that she did not gain anything from it but it was all family members. I am just wondering, for sunshine, do we maybe change it to include family members as well? I do not know if you had any discussion on the Senate side about that.

Senator Parks:
There has certainly been some discussion on it, but not to the extent that you indicate as far as this particular scenario. The intent is that it covers any

personal profit or compensation. I would presume that if it was an immediate family member, then it would be for compensation to that member of the family. I think that certainly a disclosure would be required. In this particular case, I think that the bill as written would touch on that.

Assemblyman Manendo:
I just want to make sure because it was a huge issue. They did their research, found out there were ties, and she denied it for the 2 1/2, almost 3 years that she was president on the board. They just wanted "yes or no," and she would not tell or would say "no," and finally they found out. They felt that was part of the dialogue as far as when the contracts were awarded that it was not her personally but it was her daughter and her nieces and nephews and a whole litany of family members.

Chairman Anderson:
If I am to understand this section correctly, we are going to be both disclosing the matter and then abstaining from voting. In light of Mr. Manendo's question, is there going to be the option of disclosing but still being able to vote? Having a family member might be a necessity in some communities. It may be to the advantage of an association to hire family members. This does not restrict you from disclosing and, as a result of giving a disclosure, not being able to offer a contract? That is not your intent, right?

Senator Parks:
We could certainly look at adding that provision of disclosing. The bill says the person must abstain from voting. If it is a direct personal profit or compensation, you would have to abstain, but if it was a family member or close enough family member for just simply disclosing under the criteria, I am sure wording could be added that would provide that category.

Chairman Anderson:
Mr. Anthony, if you will look at that for us.

Assemblyman Carpenter:
Do you know whether a lot of the associations in their declarations prevent renting or leasing of these properties? Is that normal or out of the ordinary?

Senator Parks:
I can tell you that the declarations and the covenants, conditions, and restrictions (CC&Rs) for common-interest communities vary extensively. How prevalent it is, I am not certain that I know. Perhaps someone from the real estate community might be better able to answer that question.

Teresa McKee, representing the Nevada Association of Realtors, Reno, Nevada
We stand fully in support of this bill. As to the prevalence of rental restrictions in homeowners' associations, it is quite common. I do not have a percentage or a number to give you because the Nevada Association of Realtors does not track which homeowners' associations certain questions come from, only the realtors who call in. It is quite a common problem which is why we requested this portion of the bill to come through.

We understand the situation described by Assemblywoman Parnell, but what we were trying to reach here is that investors have come into homeowners' associations and they agree to a contract. They do their due diligence, look at the declaration and CC&Rs before they purchase, and they see the rules that are in place then. And at that point, they understand from the contract that they are entering into that there is room for an investment property in this association, and therefore, they can buy it to have a renter come in. What happened, especially in the good times a few years ago—but also right now where investors are buying up properties, hopefully to get this real estate market moving again—that homeowners' associations, their boards, or unilaterally the common-interest community managers were changing those rules after the point of the contract being entered into. That made a great deal of difficulty for investors who came in thinking they had a contract with certain terms, and then those rules were changed on them. That is also why we asked that the restriction apply only to decreases in those rental restrictions. We can see, in the type of market that we have now, that it might be good for a homeowners' association to allow more rentals. To have someone enter a contract thinking he could have a rental, and have that rule change on him, was a problem we were seeing quite frequently.

Chairman Anderson:
I will close the hearing on S.B. 253 (R1).

We will have Mr. Anthony look at the issues raised by Ms. Parnell. Anyone else have any concerns? Mr. Horne, you were concerned about…?

Assemblyman Horne:
I do not know how to craft it, and I certainly do not want to put the bill in jeopardy, but some type of hardship exception for the type of situation that I had articulated would be helpful. I would be more than happy to speak to the sponsor on that. I know it may give other members some pause.

Chairman Anderson:
Perhaps looking at how many are owned by the holding company as opposed to individuals.

Assemblyman Horne:
I believe that was Ms. Parnell's concern. My concern was with the person who needs to move into assisted living but wants to keep the property in his estate. If a community is at its limit of rentals but a person can show a hardship, that exception can be made.

Chairman Anderson:
That may create a problem in some communities because you would still wind up with the responsibility of being the owner even though it may be leased out.

Let us open the hearing on S.B. 223.

Senate Bill 223: Revises the provisions relating to certain crimes involving credit cards and debit cards. (BDR 15-73)

Senator Valerie Wiener, Clark County Senatorial District No. 3:
It is interesting to see the history of tech crimes. The very first measure I brought when not on this panel dealt with credit cards and the swiping and reencoding of information off of a credit card for illegal purposes and certainly with the intent to do something illegal with that information. As I look at the Legislative Counsel's digest on the bill, most of those measures that are in current law are measures that I have dealt with in past sessions in my connection with the Technological Crime Advisory Board.

This bill brings us closer to all of these issues by adding the provision that in any of these situations, and those others that would arise, we do not recognize credit or debit cards just in the physical sense but also in the electronic version. It is ironic that it took until now for us to see that this was an important measure to address since we are dealing with technological crimes. This particular bill includes electronic versions of a debit or credit card in terms of identifying information that may be procured for illegal purposes.

Chairman Anderson:
I think it is a reflection of the fact that we are getting the law to be much more specific than general since we first began doing this. Credit cards have been in existence for some time. Mr. Munro, is there anything you need to add?

Keith Munro, First Assistant Attorney General, Office of the Attorney General:
No, I could not have said it any better than Senator Wiener just did.

Robert Sebby, representing the Las Vegas Metropolitan Police Department, Las Vegas, Nevada:
I am here to answer any technical questions that you may have.

Chairman Anderson:
This is the area that you work in?

Robert Sebby:
Yes, sir.

Chairman Anderson:
Are you on the cybercrime task force?

Robert Sebby:
My sheriff is. I am his designee whenever he is out of town.

Chairman Anderson:
I see no questions. I will close the hearing on S.B. 223.

The Chair will entertain a motion.

ASSEMBLYMAN HORNE MOVED TO DO PASS SENATE BILL 223.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION

THE MOTION PASSED UNANIMOUSLY.

We are adjourned [at 9:06 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Committee Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Editing Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 27, 2009 **Time of Meeting: 8:15 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster