

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
May 29, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:18 a.m. on Wednesday, May 29, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Tick Segerblom, Chair
Senator Ruben J. Kihuen, Vice Chair
Senator Aaron D. Ford
Senator Justin C. Jones
Senator Greg Brower
Senator Scott Hammond
Senator Mark Hutchison

GUEST LEGISLATORS PRESENT:

Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Linda Hiller, Committee Secretary

OTHERS PRESENT:

Michael Joe, Legal Aid Center of Southern Nevada
Jonathan Friedrich, Commissioner, Commission for Common-Interest
Communities and Condominium Hotels
Gail J. Anderson, Administrator, Real Estate Division, Department of Business
and Industry
Rana Goodman, Chair, Nevada Homeowner Alliance

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Robert Frank, Commission for Common-Interest Communities and Condominium
Hotels

Garrett Gordon, Olympia Companies

Jennifer Lazovich, Inspirada Builders, LLC

Brett Kandt, Special Deputy Attorney General, Office of the Attorney General

Steve Yeager, Clark County Public Defender's Office

Chair Segerblom:

I will open the hearing of the Senate Committee on Judiciary with
Assembly Bill (A.B.) 370.

ASSEMBLY BILL 370 (1st Reprint): Revises provisions concerning
common-interest communities. (BDR 3-1016)

Assemblyman James Ohrenschall (Assembly District No. 12):

This bill is intended to resolve disputes in common-interest communities before
the cost of resolution becomes too expensive.

Chair Segerblom:

Is arbitration mandatory now?

Assemblyman Ohrenschall:

That is correct. Both parties have to agree.

Michael Joe (Legal Aid Center of Southern Nevada):

This bill changes the way we do alternative dispute resolution for homeowners'
associations (HOA). Arbitration is required now, but this bill makes mediation
mandatory while putting limits on the process.

Chair Segerblom:

Do the parties have to pay for mediation?

Mr. Joe:

The parties do pay, but there is a provision authorizing the Real Estate Division
of the Department of Business and Industry to use monies from a fund within
the Division in some situations.

Chair Segerblom:

What is the cost?

Mr. Joe:

The cost is \$500 for the mediation, which would be \$250 per side. There is a \$50 application fee, which is the same cost incurred now for arbitration.

Chair Segerblom:

How do you get the mediators?

Mr. Joe:

It is similar to the foreclosure mediation program. The Division has a list of trained and experienced mediators who are familiar with HOA issues.

Chair Segerblom:

Can we prevent the arbitrators from being mediators?

Mr. Joe:

The arbitrators can be mediators. Many do both. I think there might be more mediations than arbitrations if we implement this. Homeowners are often afraid to do arbitration because of the expense. Arbitration can potentially cost \$5,000 to \$10,000, and if you lose, you could have to pay both sides, including attorney's fees.

Mediation is quick. Within 60 days of filing a written claim, the mediation should take place.

Chair Segerblom:

I was worried that many of the arbitrators might be biased.

Senator Jones:

Who would conduct a mediation for \$500 for 3 hours, including the preparation time necessary? I do not know that any qualified person would want to do that.

Mr. Joe:

In the foreclosure mediation program, we have 300 mediators working for \$400 per mediation. That job includes a fair amount of preparation and document exchange. Our experience has been that those mediators are happy to do mediations, which are not that difficult. A mediation is limited to 3 hours. If they cannot come to a resolution in that time, the parties are then free to bring a civil action.

Senator Jones:

Maybe I just operate in a different world. I do not know any mediator who would do anything for \$500.

Mr. Joe:

When we started the foreclosure mediation program, we had close to 400 mediators sign up. When I talked to mediators, they were happy to do it because it was simple, self-contained and not that difficult. The mediators in that program could be trained to do mediation in this situation also. They are happy to do it. In the foreclosure mediation program, it was a 4-hour mediation plus preparation time before the mediation and paperwork and follow-up afterwards.

These mediators said they thought it was a reasonable use of their time. Also, we require a fair amount of training for the mediators; there is ongoing continuing education, Webinars, etc.; and the mediators do not complain about this and continue to sign up to work.

The mediation must commence within 60 days, so it is a much quicker process than arbitration, which tends to drag out. When I talked to former Judge Stephen Dahl from the North Las Vegas Township Justice Court, he said the HOA cases came before his bench because the parties told him they thought arbitration would be much more expensive than going to court.

The mediation process is designed to be less expensive and quicker. In 60 days, the parties could get to their mediation and hopefully find a quick resolution. If there is no resolution, the parties can agree to extend their mediation for \$200 an hour.

Five days prior to mediation, we require that both sides submit written statements explaining their cases so the mediator can be prepared. There is also an option to go to arbitration if the issue is too complicated for mediation. Arbitration fees are limited to \$300 an hour if both sides agree.

Under the referee program, the Division uses funds from the Commission for Common-Interest Communities and Condominium Hotels to pay the referees. If there are funds available and the Commission approves, the process could be free for the participants. Many people avoid arbitration because of the cost, so this would allow parties to be heard. In general, HOAs are not happy with the

arbitration process and neither are homeowners. I talked to a representative from one of the collection companies, and he said his company has tried to use arbitration as a way to collect funds. Even when he goes to arbitration and the other side does not show, he is charged \$1,500 for the arbitration. It is too expensive for simple issues.

Chair Segerblom:

If you go to mediation and it is unsuccessful, is there a time limit to file in district court?

Mr. Joe:

Within 60 days of the mediation, you can bring a civil action in court after a resolution from the mediator.

Chair Segerblom:

We need to make sure that trigger of 60 days is clear so everyone knows when the clock starts to run.

Jonathan Friedrich (Commissioner, Commission for Common-Interest Communities and Condominium Hotels):

I am a member of the Commission for Common-Interest Communities and Condominium Hotels. On April 26, I was asked by the chair of the Commission to send a letter to Assemblyman Jason M. Frierson. I have submitted that letter ([Exhibit C](#)). I also submitted two charts: one showing the current cost of arbitration ([Exhibit D](#)), and the other a list of fees charged by attorneys representing HOA boards ([Exhibit E](#)).

Chair Segerblom:

Do you support this bill?

Mr. Friedman:

Yes. The only amendment I would ask for is to include a date when the bill would become effective.

Assemblyman Ohrenschall:

I believe the effective date is the default of October 1.

Mr. Friedrich:

Thank you. I support this bill.

Gail J. Anderson (Administrator, Real Estate Division, Department of Business and Industry):

We support this bill. The Commission for Common-Interest Communities and Condominium Hotels is working on a proposed regulation to expand the subsidy program to include mediation. It is LCB File No. R125-12, which is still a work in progress. The Commission was waiting to see what came out of this Session before finalizing the regulation. I have submitted my written testimony ([Exhibit F](#)) and a chart of Alternative Dispute Resolution claim amounts ([Exhibit G](#)).

Chair Segerblom:

We have been told mediation would cost \$500. Would the Commission's subsidy be able to subtract from what the parties have to pay?

Ms. Anderson:

Yes, it could, although the parties would pay the filing fee per section 5 of the bill. If there is a subsidy, that program is under the Commission's regulation. The Commission would have to complete the regulation to subsidize mediation. There is a program now that subsidizes binding arbitration. The Division's program referenced in the bill would be fully supported by this subsidy program save for the filing fees.

Chair Segerblom:

Are you saying the mediation could be free except for the \$50 filing fee?

Ms. Anderson:

It could be if the Commission amends a regulation in *Nevada Administrative Code* 116 to allow subsidy of mediation within the caps it sets for funding. The Commission has already begun discussion on that issue.

Rana Goodman (Chair, Nevada Homeowner Alliance):

We support this bill.

Robert Frank (Commission for Common-Interest Communities and Condominium Hotels):

We unanimously support this bill. It is a breath of fresh air for the HOAs.

Garrett Gordon (Olympia Companies):

We have an amendment ([Exhibit H](#)) that does three things. These same concepts were in A.B. 320, which passed out of the Assembly Committee on Judiciary Subcommittee on April 8 and is now in the Assembly Committee on Ways and Means.

ASSEMBLY BILL 320 (1st Reprint): Revises provisions governing common-interest communities. (BDR 10-737)

I want to bring these three provisions into A.B. 370. The first provision includes allowing a homeowner to be elected to an HOA board when 15 percent of the units are conveyed or 3 years after the first unit is sold. Statute limits homeowners from being on HOA boards until 25 percent of the units are conveyed. The concern is that developers start to build a housing development and then stop. If the developer abandons the project before the 25 percent is reached, there is never homeowner representation on the HOA board.

The second provision is to amend the law so developer control of the HOA board ends after 75 percent of units are conveyed. Larger HOAs have a problem with this because the homeowner-controlled boards are left managing the construction of additional homes and infrastructure. The amendment allows the developer to remain in control at its discretion until 90 percent of the units are conveyed.

Chair Segerblom:

That sounds backwards. Are you giving the developer more control?

Mr. Gordon:

Yes, the idea is to get a homeowner on the HOA board sooner and give the developer the ability to maintain the control of the board longer. This would apply only to larger HOAs where there is additional construction and infrastructure necessary.

Chair Segerblom:

That could be almost forever.

Mr. Gordon:

It depends on the development.

The third provision addresses a concern Mr. Friedrich had regarding the statute of limitations on filing alleged violations. Currently, homeowners have a year to file with the Real Estate Division for their alleged violations. This amendment increases that time period by 6 months, which could prevent mediations and arbitrations and give homeowners time to work out issues with HOA Boards.

Chair Segerblom:

Ms. Anderson, have you seen these changes? Are you okay with them?

Ms. Anderson:

I do not have a problem with the 18 months filing, or with the 15 percent, but I do have a problem with the 90 percent transition. The Division has had complaints with the transition at 75 percent with a minority representation on an HOA board and developer control.

Jennifer Lazovich (Inspirada Builders, LLC):

We support this amendment.

Assemblyman Ohrenschall:

We did a lot of compromising on this bill in the Assembly. I still think it will save homeowners and HOAs money while disputes get resolved more quickly, avoiding arbitration and court.

Senator Hammond:

You said there is a trigger to initiate the mediation process, and you mentioned another trigger 60 days after that. Can you clarify what those triggers are?

Assemblyman Ohrenschall:

Mediation is mandatory, and arbitration is optional if both sides agree. We are not eliminating arbitration, but both sides need to agree to it.

Senator Hammond:

Then do the parties have to file for arbitration within 60 days?

Mr. Joe:

After the parties file their written claims, the mediation must be held within 60 days. After the mediation is over, the second trigger is when the parties can file a civil action. That trigger is 60 days after the mediator's statement.

Chair Segerblom:

If you mediate and then want to arbitrate, what is the deadline?

Mr. Joe:

The parties can elect arbitration, and there is no time limit. Some of the arbitrations seem to go on for years.

Chair Segerblom:

I am more concerned that if you file for arbitration, does that toll the right to get into court. Does it start a new 60 days? We need to make sure it is clear.

Mr. Joe:

When you do a mediation, you have 60 days after that to file for arbitration. If you start arbitration, I believe you get a new opportunity to go to court afterward.

Chair Segerblom:

I will close the hearing on A.B. 370 and open the work session with A.B. 67.

ASSEMBLY BILL 67 (2nd Reprint): Revises provisions relating to crimes.
(BDR 3-403)

Mindy Martini (Policy Analyst):

I have a work session document ([Exhibit I](#)) for this bill pertaining to the crime of sex trafficking. There are four amendments. The first three were discussed at the initial hearing of the bill on May 28. We just received a conceptual amendment ([Exhibit J](#)).

Brett Kandt (Special Deputy Attorney General, Office of the Attorney General):

We indicated yesterday and reiterate today that to the extent sex offender registration is a consequence of a conviction under *Nevada Revised Statutes* (NRS) 201.320, our bill was never intended to change that. Alternatively, to the extent sex offender registration is not a consequence of a conviction under that statute, we did not intend to change that either. Does that make sense?

Chair Segerblom:

Do you feel what is on this conceptual amendment, [Exhibit J](#), adequately explains that?

Mr. Kandt:

The first paragraph indicated that we agreed that NRS 201.320 should not be included in various sex offender registration requirements to the extent that it is not already required. To the extent that it is required as a consequence of conviction, we never intended to remove that consequence.

Steve Yeager (Clark County Public Defender's Office):

I agree with Mr. Kandt. The real issue is probably section 27 in the conceptual amendment, which proposes adding a reference that was not already there. That could potentially have an impact on whether registration is required for certain types of convictions under this statute. I have no problem with leaving the language in section 28 and section 45 because it looks like that language is already in statute. I request the language be taken out of section 27. Section 49 can be left to the Committee. I do not think that section has anything to do with registration. It just has to do with how victims of a crime are treated under the law.

Senator Hutchison:

What is the Attorney General's position on this? It sounds like what you are saying is that your bill does not change the status quo in terms of who needs to register as a sex offender. Your intention is not to add some new circumstance under which someone has to register as a sex offender. Is that correct?

Mr. Kandt:

Our bill in part enacts the new crime of sex trafficking. We intend to require that anyone convicted of sex trafficking has to register as a Tier II sex offender as a consequence of conviction. We believe that is consistent with this Legislature's past decisions as to what types of crimes require sex offender registration. It is consistent in that the federal crime of sex trafficking requires registration as a Tier II offender. Additionally, the failure to require someone convicted of the new crime of sex trafficking to register as a Tier II offender could impact our compliance under the Adam Walsh Child Protection and Safety Act.

It is well established in both federal and State caselaw that registration as a sex offender is not intended to be punitive; it is intended for public safety. That is why registration for a conviction of sex trafficking was always intended. However, it was never our intent with regard to a conviction under NRS 201.320 to change the status quo with regard to whether or not there are requirements to register as a sex offender.

Senator Hutchison:

The conceptual amendment says, "Section 27 adds a new reference to NRS 201.320 within the definition of 'sexual offense.'" Is that accurate in terms of what your intent is?

Mr. Kandt:

I have consulted with the Committee's Counsel. It appears that adds a new reference, and that was never our intention.

Senator Hutchison:

Then it says, "It appears that by inserting this reference within 179D.097, it may cause a person convicted of living off the earnings of a prostitute to register as a sex offender." You are saying that is not your intent?

Mr. Kandt:

To the extent such persons did not have to register previously, that was not our intent.

Senator Hutchison:

Mr. Yeager, are you in agreement that the intent of the AG is not to have somebody register as a sex offender if it was not required previously in terms of living off the earnings of prostitution?

Mr. Yeager:

Yes. I am in agreement with that intent. In terms of the conceptual amendment, removing that new language from section 27 would take care of that concern.

Senator Hutchison:

So the AG is okay with that?

Mr. Kandt:

For the reasons stated, it was never our intent to add a new registration requirement for a conviction under NRS 201.320.

Chair Segerblom:

The other dispute seems to be over section 49. Mr. Yeager, do you want to change that section?

Mr. Yeager:

I do not think that section is of any significance because it just defines who is a victim of human trafficking. That section would not have any implication on whether a sex offender registration is required. That was my primary concern with the conceptual amendment, [Exhibit J](#). I have no position on that.

Mr. Kandt:

Recognizing that it is the Committee's pleasure, we would submit that there are probably some fairly sound public policy reasons for allowing a victim living off the earnings of a prostitute to be able to file a fictitious address and keep certain information confidential for the victim's safety purposes, as noted in section 49 of [Exhibit J](#).

Chair Segerblom:

Other than this amendment, does anyone have any other positions on the three amendments in the work session document, [Exhibit I](#)?

Senator Brower:

I would try to simplify this and say that Mr. Yeager's points are very well taken, but I think this bill has been massaged enough. My position is that any of the amendments the AG thinks are friendly should be added, and those the AG does not consider friendly should not be included.

Chair Segerblom:

I think Mr. Kandt's position is that only section 27 is agreed to by the AG.

Mr. Kandt:

That is accurate.

SENATOR BROWER MOVED TO AMEND AND DO PASS AS AMENDED
[A.B. 67](#).

SENATOR JONES SECONDED THE MOTION.

Chair Segerblom:

Before we vote, I want to put on the record that it is important we distinguish between pandering and sex trafficking. There is a lot of gray area and we will be looking at this issue in the future, especially regarding the sex crimes aspect.

Many people came to me and said we cannot change sex crimes because that is part of the punishment.

As Mr. Kandt said, being a registered sex offender is not a punishment; it is something for society. We are not adding this as a punishment for these people, but we are saying that if they commit this crime, they have a mindset and we need to protect society from them. We have to watch this area and I hope that Mr. Yeager's office will monitor it.

If it turns out to be too broad and that guy in the hotel bar making propositions to someone gets caught in the net, that is not what we are looking for. We are looking for people who are finding women and girls, training them and bringing them into prostitution in a way we do not condone. We realize this is Nevada. It is a society where prostitution is legal in some places and illegal in others, but we do not want to put someone away for life for that. With this bill, pandering is still out there. It is illegal, but that is not what this bill is about. It addresses the more serious sex trafficking crime.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Segerblom:

Seeing no more business or public comment, I will close the work session and hearing of the Senate Committee on Judiciary at 11:25 a.m.

RESPECTFULLY SUBMITTED:

Linda Hiller,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	5		Attendance Roster
A.B. 370	C	1	Jonathan Friedrich	Letter
A.B. 370	D	1	Jonathan Friedrich	Current Cost of NRED HOA Arbitration Program for Disputes
A.B. 370	E	1	Jonathan Friedrich	Fees Charged by Attorneys Representing HOA Boards in Arbitration Cases in FY 2010
A.B. 370	F	1	Gail J. Anderson	Testimony
A.B. 370	G	51	Gail J. Anderson	FY 10 to FY 13 Closed ADR Claims
A.B. 370	H	1	Garrett Gordon	Proposed Amendment to AB 370
A.B. 67	I	16	Mindy Martini	Work Session Document
A.B. 67	J	1	Mindy Martini	Conceptual Amendment to A.B. 67 (R2) by Chair Segerblom