

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Seventh Session
March 18, 2013**

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 9:04 a.m. on Monday, March 18, 2013, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412 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:

Senator Joseph P. Hardy, Senatorial District No. 12

STAFF MEMBERS PRESENT:

Mindy Martini, Policy Analyst
Nick Anthony, Counsel
Lynn Hendricks, Committee Secretary

OTHERS PRESENT:

Angela Rock, Olympia Companies
Rana Goodman, Chair, Nevada Homeowner Alliance PAC
Jonathan Friedrich
Robert Frank
Norman McCullough
Mike Aupperle

Senate Committee on Judiciary
March 18, 2013
Page 2

John Radocha
Robin Huhn, D.C.
Deanne Downing-DeLaCruz
Paul Murad
Sean Spangler
Perry Schmidt
Tim Stebbins
Joe Nascimento, President, Monument at Lone Mountain Homeowners'
Association
Terry Care, Terra West Management Services
Donna Toussaint
Chuck Niggemeyer
John Mendoza
Valerie Wiener
Scott Black, Detective, Las Vegas Metropolitan Police Department
A.J. Delap, Las Vegas Metropolitan Police Department
Rebecca L. Palmer, Acting State Historic Preservation Officer, Office of Historic
Preservation, State Department of Conservation and Natural Resources
Kristin Erickson, Nevada District Attorneys Association
Delores Bornbach

Senator Kihuen:

I will open the hearing on Senate Bill (S.B.) 222.

SENATE BILL 222: Makes various changes concerning common-interest communities. (BDR 10-102)

Senator Joseph P. Hardy (Senatorial District No. 12):

This bill came out of a comment by Senator Michael A. Schneider last Session. Referring to the City of Laughlin, he said, "I have homeowners' associations bigger than that." The power to take property or levy a fine has the potential for abuse of power, and the debacle of construction defect litigation has led me to fall back upon my local government experience of the Open Meeting Law. At least one homeowners' association (HOA) has adhered to the Open Meeting Law, so it can be done—and not necessarily by force, but by voluntarily letting in the sunshine. Not all HOAs are in support of this bill. I hope we will nudge them toward the sunshine and into compliance with the spirit of the Open Meeting Law.

City councils go into closed meeting sessions when they hear personnel matters. After they hear testimony about personnel matters, they come out and determine a course of action much like a jury would. Sometimes HOAs are in similar situations, where they have personal or personnel matters to discuss in closed session.

Angela Rock (Olympia Companies):

We support S.B. 222. I have a friendly amendment to offer ([Exhibit C](#)). This amendment is phrased in general terms of intent and concepts. We will be happy to work with the Legislative Counsel Bureau on the actual wording.

In section 1, subsection 7 of S.B. 222, we would like to allow unit owners at their expense to audiorecord their portions of hearings on violation matters. Unit owners can audiorecord or transcribe the portion of the meeting that pertains to them. However, the deliberations of the executive board are closed to unit owners and cannot be recorded.

Senator Kihuen:

Are unit owners allowed to audio or video record meetings now?

Ms. Rock:

Homeowners can audiorecord an open session. I do not see that there is any inherent right to record; they can ask for permission to record, and boards then decide if they will permit it.

Senator Ford:

What if someone wants to record on behalf of someone else? Would they be allowed to record a portion of the meeting for another person?

Ms. Rock:

Generally, when an executive board is having a violation hearing, only the executive board, the affected unit owner and attorney, and witnesses are present. Other homeowners are not present unless the unit owner has asked to be heard in an open session. In that case, the meeting is already being audio-recorded, and arguably the homeowner has waived his or her right to privacy.

Section 2, subsection 1 of S.B. 222 should be amended to clarify that a unit owner has the right to attend a meeting of the executive board during open

session. Senator Hardy was concerned that individuals receive the required notice in advance of the meeting, which is already part of *Nevada Revised Statutes* (NRS) Chapter 116. The amendment in [Exhibit C](#) adds language clarifying that unit owners are notified of the meeting and invited to attend the open session.

Section 2, subsection 3, paragraph (a) of the bill should be amended back to its original form, leaving the limited reasons for holding an executive session.

Section 2, subsection 4, paragraph (c) of the bill should be amended back to its original form, indicating that unit owners are not entitled to attend the deliberation portion of the executive board meeting.

It was our understanding from the sponsor that the intent of section 2, subsection 6 of S.B. 222 was to allow unit owners to receive minutes from the portion of an executive session in which their matter was discussed. An individual who is being discussed can obtain his or her portion of the minutes, but a different unit owner would not be allowed to obtain copies of the minutes unrelated to him or her.

Senator Kihuen:

Does this also apply to renters or only to owners?

Ms. Rock:

I would argue that it is the person subject to the sanction under NRS 116.31031. Anyone who is subject to a fine should have an opportunity to obtain the generally noted minutes of the discussion. Written notice of the results of the deliberations are sent out to those involved as well.

Section 2, subsections 9 and 10 should be amended to conform with the previous amendments. Section 2, subsection 9 talks of an individual's right to file a civil action if he or she objects to the actions being taken by the HOA. The Real Estate Division has certain administrative requirements, and the right to file a civil action under NRS Chapter 38 comes after you have exhausted those administrative remedies. This needs to clarify that an individual claiming a violation of the governing documents or NRS Chapter 116 must first go to the Real Estate Division.

Section 2, subsection 10 relates to attorney's fees. That section should be amended to award attorney's fees to the prevailing party, whether plaintiff or defendant.

Senator Jones:

I had some serious issues with S.B. 222 when I first read it, and your amendment addresses those issues. But with the amendment, what does the bill really do? It seems you have stripped out most of the language.

Ms. Rock:

The bill clarifies situations in which people take liberties with the strict language of the law. For the HOAs that I manage, the amended bill does not do a lot. However, there are HOAs that are misleading in their presentations. The bill is a clarification of important rights.

Senator Jones:

Is there any right to sue for failing to allow someone to come to an executive session in this bill?

Ms. Rock:

If there is a violation of NRS Chapter 116, there is a right to go to the Real Estate Division and file for an investigation and determination. If there has been a violation of the law, the matter is investigated by the Division. Individuals violating that law may be brought in front of the Commission for Common-Interest Communities and Condominium Hotels (CCICCH) for sanctions through that administrative process.

Senator Jones:

If a civil action is filed by a homeowner against an HOA, the HOA attorney's fees are going to be greater than the homeowner's attorney's fees. Is there a risk that by changing the provision in section 2, subsection 10 to "prevailing party," S.B. 222 will change from a consumer-friendly bill to an HOA-friendly bill?

Ms. Rock:

That is always an issue with regard to prevailing party attorney's fees. In some cases, it causes all involved to consider what is occurring. If you are filing for an investigation or an affidavit of a violation of NRS Chapter 116 through the Division, the individual is now turning the situation over to the State to

investigate. That would be a different situation than allowing prevailing parties attorney's fees in a civil action once you actually get to court.

Senator Hutchison:

Are there just two types of HOA meetings, open session and executive session, or are there more?

Ms. Rock:

There are situations in which boards gather for workshops or other referee programs, certain things through the Division. Technically, there are the open session and the executive session.

Senator Hutchison:

On the Commission on Ethics, we did everything in the open. We hired and fired people, we deliberated on whether to impose a fine on public officials and we had full deliberation all in open meetings. What are the policy reasons why HOAs do not have open deliberations in their executive sessions, other than when they are meeting with counsel?

Ms. Rock:

To clarify, open sessions of HOAs are open to unit owners, not to the general public.

With regard to the policy reasons on deliberating in executive session, there are a couple of issues. First, board members are volunteers who want the opportunity to vet ideas and speak freely. They may not want the concerns or issues that often come with threats of defamation or other suits. People can become very impassioned on these topics. An executive session allows boards to deliberate and talk about the issues much like a jury. This is a highly litigious area, and the volunteer board members need to be able to speak freely.

Senator Ford:

We have received an email from the State Bar of Nevada from the Committee on Common-Interest Communities in the Real Property Section ([Exhibit D](#)). Have you worked with or spoken to the members of this body on your amendment? Does your amendment address their concerns?

Ms. Rock:

I have not spoken with them, and I have not seen [Exhibit D](#). I am happy to work with them.

Senator Hammond:

What happens to the recordings of the meetings? Where are they housed? Is there one central repository for all HOA meeting recordings?

Ms. Rock:

There is no central storage location for all HOAs. Recordings are kept by the group or individual who makes each recording. In the HOAs I manage, the management company uses our audio-recording devices and downloads the recordings onto our network servers, which are housed with the management company.

Senator Hammond:

Are you saying that not all HOAs record their meetings?

Ms. Rock:

I did not mean to insinuate that. All HOAs must audio record their open session meetings.

Rana Goodman (Chair, Nevada Homeowner Alliance PAC):

I support [S.B. 222](#) as originally written. I am thoroughly confused by the amendments in [Exhibit C](#). I stand by the adage, "Keep it simple, stupid." I do not understand the change Ms. Rock suggests in section 1, subsection 7 of the bill. I do not understand many of her changes, but I am especially confused by the change to section 2, subsection 10 of the bill. We have been advocating for a long time to allow unit owners to go to small-claims court when the disputed amount and the issue are small. The Real Estate Division, Department of Business and Industry, and the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels take a long time to resolve problems. When it is a matter of neighbor versus neighbor or resident versus the HOA and the money involved is no more than a couple hundred dollars, small-claims court could resolve it quickly and inexpensively. It does not make any sense to go to arbitration, which can take months or even years to settle the issue.

Ms. Rock's amendment returns power to the management companies, which are making money off the HOAs. As it was presented, [S.B. 222](#) is very simple

and straightforward. It brings in the Open Meeting Law and spreads sunshine on the whole process, bringing everything out into the open where nothing is hidden. I would like to see this bill pass just the way Senator Hardy presented it.

Jonathan Friedrich:

I am a homeowner representative on the CCICCH, but I am here as a private citizen today. I support S.B. 222 as originally written. I do not support Ms. Rock's amendment.

There are actually three types of HOA meetings: the executive board meeting, which is open to all unit owners; the executive session, which is closed; and the owners' annual meeting, which is open to all unit owners. There has been a lot of discussion about who chairs the annual owners meetings. It is not clear in NRS Chapter 116.

I have seen what purport to be minutes of an executive session meeting. To say that they are barebones is overstating how much information they contain. They might say, "discussed litigation matters" or "discussed violations," and that is all. If you are not on the executive board, that is all you get to see. Ms. Rock's amendment dilutes this bill to the point that it is useless.

One thing I especially like in S.B. 222 is the teeth in section 2, subsection 9, where it says, "An action taken by the executive board at a meeting conducted in violation of this section or NRS 116.31083 is void." This is a very important feature.

I would like to see section 2, subsection 10 of S.B. 222 follow the American rule: each side pays its own attorney's fees. Most homeowners do not have deep pockets, but the HOAs do. I know of a case in which an executive board passed a resolution requiring homeowners in a nine-member HOA to pay a special assessment fee of \$10,000 each for legal fees. The executive board gave the homeowners 40 days to pay that fee, and homeowners were not allowed to make payments. How many people do you know who have \$10,000 lying around?

I would also like to share with you a situation that occurred on April 24, 2012. At an open session meeting of the executive board of my HOA, William Wright, the HOA's attorney, suddenly insisted that one item be moved to a closed executive session meeting. Months later, we discovered what had been hidden

in that executive session. The HOA is now part of an investigation by the FBI, the State and the Ombudsman. It is going to cost tens of thousands of dollars. The homeowners were misled and kept in the dark about a major screwup at my HOA, and that is now a matter of litigation.

What can be done in the executive session is clearly defined in NRS 116.31085. Everything else is to be done in the open meeting. The problem is that there is no way to tell whether the board is obeying the statute because no one else is allowed to attend the executive board meetings.

I support S.B. 222 the way it is written. I am offering a minor amendment ([Exhibit E](#)) because I knew there would be major opposition to the part about letting the sun shine in on the executive board session.

Senator Kihuen:

Have you talked to Senator Hardy about this amendment?

Mr. Friedrich:

No.

Senator Jones:

With regard to trying to apply the Open Meeting Law to HOA executive board meetings, my understanding is that HOAs, while regulated by the State, are private entities and therefore not subject to the Open Meeting Law. Is that correct?

Mr. Friedrich:

The way I understand it, yes. But these are common-interest communities, and I stress the word "common." They are dealing with a lot of people's money. It could be a nine-member association, or it could be one like Sun City Summerlin or Sun City Anthem, which has 10,000 or 15,000 people.

Senator Jones:

I understand, but no one is compelled to live in a common-interest community in Nevada, correct?

Mr. Friedrich:

I do not know if you could hear it, but there was laughter in the room here when you said that. It is very difficult to find a new home in Clark County without an HOA.

Senator Jones:

Once you join the HOA, you can run for the executive board and change the rules if you want to. Correct?

Mr. Friedrich:

It is very difficult.

Please consider the people of Nevada. Let the sun shine in on these cockroaches and stop the abuses.

Robert Frank:

I am a retired U.S. Air Force colonel and a homeowner representative on the CCICCH. I am not representing the CCICCH, which has not taken a stand on S.B. 222. I am testifying on my own behalf. I have been a member of a large HOA, and I was elected to the executive board, as Senator Jones suggested, after being subjected to some of the abuses of the executive sessions. I have personal experience in what can happen behind closed doors, both as a homeowner and as a member of the board.

I fully support S.B. 222 as originally written. I have serious concerns about the amendment in [Exhibit C](#). I am not sure it is the right move; in fact, certain areas of it take away the value of the bill.

One of the problems that causes a major FBI investigation into HOAs in this State is that Nevada is more regulated in the HOA area than any other State in the Union. That makes no sense at all for the Battle-Born State. We pride ourselves on American principles and being fair. Right now, the balance of power between the HOA boards and the unit owners is out of balance. This bill helps restore some of the balance and put the sunshine on some of the abuses. It is good for business to have more sunshine on what is happening in the HOAs so they are less tempted to abuse the power that we see in the FBI investigation. I strongly encourage the Committee to realize that what you are doing here is restoring American principles to the HOA system, which is now in favor of the people on the executive boards who want to abuse that power.

There are 3,000 HOAs and a million people living in HOAs in Nevada. People have asked if I really think the majority of those HOA boards are abusing their power. My answer is that nobody knows how many boards are abusing their power. Even if only 1 percent are flagrantly violating their power, it is the Legislature's responsibility to try to keep that from happening. Every citizen has a right to fair and equal justice.

I hope you approve this bill with its original language.

Norman McCullough:

I support S.B. 222 as originally written. I have written testimony describing the need for this bill ([Exhibit F](#)).

I would like to tell you about something that happened to me. My HOA charged me with violating a nonexistent portion of the HOA rules and regulations. I was forced to hire an attorney to defend myself, which cost me \$5,000. My attorney was allowed to represent me in the open meeting, but he was not allowed in the executive session. In the executive session, when it was discovered that I had been charged with violating a nonexistent rule, the board invented some other rules that I had supposedly violated. Had my attorney been allowed into that executive session, I would not have to be here today testifying to you.

Mike Aupperle:

I am speaking to support S.B. 222 even though it is not strong enough. It should be a lot stronger to protect the homeowners against the management companies and the HOA boards. I do not support the amendment.

I could tell many stories about what has taken place. Homeowners in these over-55 HOAs especially are more afraid of their HOA boards than they are of burglars or other criminals. These boards and management companies must be exposed through every deliberation they make. Everybody must know what they are doing, and that does not happen now. I have been on both sides of the fence; I was on the board of my HOA, and because I asked questions and tried to expose what was going on, I was removed from the board. This bill does not go far enough to show what is happening to the individual homeowners in all the HOA communities, but especially in the over-55 communities where so many widows live. They are petrified. Make it stronger, and make it more open for the homeowner.

John Radocha:

I support S.B. 222 as written. I disagree with Ms. Rock's amendment, which would mean a continuation of kangaroo courts. I do not want to be intimidated. At the hearings for a unit owner's alleged violation, the decisions are made before the unit owner's hearing. These boards hide behind the so-called privacy act. In my HOA, we do not know who is on the committee that makes decisions on what you can and cannot do, and we do not know what makes them qualified for the position. Perhaps it is the guy up the street who has a disagreement with me. Why are these people on the boards permitted to keep secrets?

I had a hearing in my HOA, and Senator Schneider came to my hearing on his own time. He told the board that their process had many red flags, and they could not do what they were doing to me. They told him, "The people elected us, and we can do what we want."

I ask the Committee to throw the money changers out of the Legislative temple. Keep S.B. 222 as is.

Robin Huhn, D.C.:

I support S.B. 222 as originally written.

With regard to section 2, subsection 9, I do not believe the courts would accept and hear any legal cases. The statute says homeowners and HOAs can take cases to small-claims court, but such cases are immediately kicked out. Attorneys getting paid by the side that wins is unfair. This keeps homeowners from standing up for themselves.

Ms. Rock's comment about board members being volunteers is correct, but whenever I say anything in an HOA meeting, I am told I can move or I should not have bought into an HOA. I say the same to volunteers. They volunteer for all of the stuff that comes with the position; they need to accept that. I joined the HOA board because of harassment. I have not been able to make any changes, and I continue to be harassed. Getting on the board to make changes is next to impossible. Also, especially for my HOA board, if the HOA executive board meetings were made public, they would not be able to make the snide remarks and negative comments they make about homeowners.

Deanne Downing-DeLaCruz:

I support S.B. 222 as originally written. When you move to Nevada and buy into a community, you are required to be in an HOA. How did the HOAs get to this point? We are the voices of the 95 percent of homeowners who cannot leave work to come here and voice their opinions, so that is what I am doing.

Paul Murad:

I serve as a member on the Real Estate Commission. I am not speaking today on behalf of the Commission; I am speaking on my own behalf as someone who has been in the real estate business for over 10 years representing homeowners. I have served on the board of an HOA and lived in HOA communities since 2002. My comments are based on my personal experience.

I am strongly in support of S.B. 222 in its original form. I would oppose any of the amendments presented here by Ms. Rock.

The management of HOAs has become an industry, a well-organized industry focused on profit-making with public companies coming into that business as well. We know what happens when the focus is on profit, shareholder value and increasing revenues. The management companies are able to hire their own lobbyists. Everyone else who has spoken here this morning is a pure volunteer speaking on behalf of the homeowners. I know the executive board members are volunteers. I currently volunteer on the Real Estate Commission, and two of us cannot get together for lunch without the attorney for the Commission being present for the entire gathering. If we do this as Commissioners, there is no reason HOA board members cannot do the same thing.

As far as civil actions, it is paramount that homeowners be allowed to go directly to the small-claims court. Everyone else who has a civil action less than \$7,500 has access to that venue. There is no reason why homeowners cannot have access to the same venue.

I have an email from Jane Armstrong that I would like to submit for the record ([Exhibit G](#)). It describes her experience with her HOA and its executive board and includes a letter from the Ombudsman dated October 10, 2012, in which they promised a letter on the matter in 4 weeks to request a formal conference. That letter has not yet arrived. I appreciate everything the Ombudsman, the Division and Administrator Gail Anderson do for us. They are doing a great job

with a very limited budget. But this is an example of why homeowners need the ability to go to small-claims court. There is no reason why this cannot happen.

In my experience, the boards are heavy-handed. I have attended executive session meetings in which I tried to address an issue of unlawful collections. When the board did not want to discuss that issue any further, they told me to get out immediately or they would call the police. That happened on more than one occasion.

Regarding Senator Jones's comments, I have great respect for Senator Jones; I have shared a meal or two with him. But I believe his comments are influenced by the fact that he works for Holland and Hart, LLP, a firm that represents a number of HOA communities. There are more than 3,000 HOA communities in Nevada, and it is very difficult to find a community without an HOA.

Senator Jones:

I just wanted to put on the record that my statements here today have nothing to do with the fact that I work for Holland and Hart. It has to do with the fact that I've just lived in a homeowner's association [community] for the past 12 years. I've served on my homeowner's association board, and I've studied the law, [NRS] section 241, with regards to Open Meeting Law, public bodies, and don't see anywhere in there where private associations appear in there. If you can show me somewhere, I'd love to look it over.

Mr. Murad:

The purpose of the Legislature is to make the laws. You have the opportunity with this bill to create a new law.

Sean Spangler:

I am a broker-salesman for Realty One Group. I am here to speak about the ripple effect HOAs are having on the economic recovery in Las Vegas. I have had several scenarios recently where the HOA charges on a short sale were as high as \$60,000, an attempt to negotiate a settlement with the HOAs has failed, and the house has gone back to foreclosure. All I do is short sales. Not only do we have to negotiate with the banks and Fannie Mae and mortgage insurance, but once we have gotten through that myriad of issues, we have to deal with HOA issues.

We need to create some transparency on the amount of HOA dues that are finally being collected at the end. We do have a superpriority lien rule for foreclosures, but the biggest issue right now is liquidating homes and getting our economy or our market back into balance. This is creating a huge problem with many of the real estate agents here in Las Vegas.

Perry Schmidt:

I am in a corrupt HOA organization in the northwest area of Las Vegas. I am a simple person, so I have a couple simple solutions for you. Eliminate NRS Chapter 116 and give the homes back to the people. Let the people of Nevada vote on whether to keep the HOA system for owners of single homes. Politicians need to stop listening to lawyers and HOA management people and start listening to HOA members.

Tim Stebbins:

I support S.B. 222 in its original form; I do not support the amendments. I have written testimony describing the need for this bill ([Exhibit H](#)).

Joe Nascimento (President, Monument at Lone Mountain Homeowners' Association):

I am opposed to S.B. 222. We need to have the ability to sue the board. I got elected to the board 2 years ago. We were supposed to have \$380,000 floating around in the HOA's accounts. I went to the bank and found all the accounts were empty. We filed seven complaints with the Division and have not heard anything yet. We have asked for three or four opinions on whether the board's actions were legal. Former board members returned, voted themselves back on the board, and drove everyone else off the board. As far as I know, the HOA is broke.

Senator Kihuen:

Are you opposed to the amendments?

Mr. Nascimento:

I would like to see an amendment to allow homeowners to go to small-claims court.

Terry Care, Terra West Management Services:

We oppose S.B. 222 but favor the amendment in [Exhibit C](#). In light of the dialogue between Senator Hardy and Ms. Rock, I have nothing to add except to say that the amendments look good to us. I will run them by my client.

Donna Toussaint:

I oppose S.B. 222. People who live in HOAs and serve on the boards are neighbors. One of the main reasons the executive session is closed is because that information could be used against someone personally. For example, let us say I have not paid my assessments because I have been out of a job, and I go to the board to explain my situation. I do not want that recorded; I do not want my neighbors to hear it and post it on Facebook. If I am looking for a job and someone pulls up on Facebook that I am bankrupt, my potential new employer might not hire me. I caution you to think long and hard about recording personal information.

Chuck Niggemeyer:

I oppose S.B. 222. I am a homeowner in an HOA on the west side of Las Vegas. I have lived in an HOA environment for 23 years in Nevada and other states. I believe in HOAs. Contrary to what you have heard today, I am happy with my HOA. I have no problems, and I am amazed to hear that the type of abuse that has been described here today allegedly exists. I think the bill should never have been written and should be killed in this Committee. Our procedures today are fine. You hear about the exceptions, but you never hear from the majority who are happy.

John Mendoza:

I oppose S.B. 222. I concur with the statements made by Ms. Toussaint. The information discussed in executive sessions should be private. If the hearings were made public and some of that information were to get out to other individuals, it could cause some damage. In regard to the Open Meeting Law, as Senator Jones said, it does not apply to private organizations.

Senator Kihuen:

I will close the hearing on S.B. 222.

Chair Segerblom:

I will open the hearing on S.B. 237.

SENATE BILL 237: Revises provisions governing certain graffiti offenses.
(BDR 15-71)

Valerie Wiener:

I am a retired State Senator and was the Chair of the Senate Committee on Judiciary in 2011. I was visiting a middle school in 2011, and a young man asked me why the graffiti laws were so tough. I told him that graffiti is theft. It is taking the value of someone's property without their permission, and in devaluing that property it also decreases the value of neighborhood properties. Then I told him, "Don't be surprised if the laws get tougher." That is when I started working with staff to address this very serious concern that has blighted the entire State.

I wanted to see what was working in other places, so we looked at antigraffiti laws in all 50 states. Senate Bill No. 257 of the 76th Session was the product of that work with the collaboration of my colleagues.

In the 2011-2012 interim, I chaired the Legislative Committee on Child Welfare and Juvenile Justice. We had updates on the graffiti issue involving juveniles, and it was our decision as a Committee and mine as the Chair to ask for an amendment to clarify the law where we did not realize we had left a hole. That is the purpose of S.B. 237.

Graffiti vandalism is the largest property crime in southern Nevada and probably the entire State. Conservatively, we estimate it costs about \$30 million a year in damage. Graffiti is a gateway behavior that leads to much more serious crimes, and it is important that our communities and our State are committed to eradicating it and providing the tools to law enforcement to do so.

Chair Segerblom:

Do you have enough specifics on this amendment that we could take a verbal amendment today?

Ms. Wiener:

I believe the amendment is rather simple; it is a tweak. In concept, it is very simple language; it could be a modest amendment.

Scott Black (Detective, Las Vegas Metropolitan Police Department):

I have been a law enforcement officer for 20 years, and for the last 13 of that I have been a graffiti investigations detective for the Las Vegas Metropolitan Police Department (LVMPD). I identify graffiti vandals within Clark County and compile cases against them. I find out who they are and where they are, I arrest them, and I give the district attorney the necessary evidence to prosecute them.

Graffiti vandalism is Nevada's most costly property crime. In recent years, graffiti vandals are increasingly targeting culturally significant and historic locations. They do this because it raises their status in the graffiti world and gives them more credibility among their peers. We have seen some high profile cases recently, including the graffiti in the Red Rock Canyon National Conservation Area in 2010. We have had many other cases in which graffiti vandals have targeted historically significant and culturally important locations. They do this because they want the shock value. They want to do the most costly and offensive graffiti they possibly can.

We support S.B. 237 and the amendment. These vandals are targeting some areas that are not covered by statute. We support the passage of this bill and the amendments because they will give needed protections to the locations these vandals are increasingly targeting.

A.J. Delap (Las Vegas Metropolitan Police Department):

We support S.B. 237. I have an amendment, as mentioned by Ms. Wiener ([Exhibit I](#)). As we were preparing to speak on this topic, I spoke to Rebecca Palmer, who represents the Office of Historic Preservation. As she was looking at the bill, she suggested we make the language as clear as possible. With that in mind, I produced the amendment in [Exhibit I](#) to include the words, "certified local government," which is Las Vegas, Reno, Carson City and Storey County. They have compiled a list of historic resources they find of great value, and that list can be found in pages 3 through 14 of [Exhibit I](#).

[Exhibit I](#) also adds to section 2, subsection 9, paragraph (b), subparagraph (2) to S.B. 237 the phrase, "or any such resource over 50 years in age located in a State or Municipal Park." That is in line with the standard of the National Register of Historic Places.

Senator Hutchison:

Are we looking at the right amendment? [Exhibit I](#) says nothing about "certified local governments."

Mr. Delap:

I apologize. The language we added was "Local Government Register," and that went into section 2, subsection 9, paragraph (b), subparagraph (2).

Senator Ford:

I want to be sure this language is clear enough. "Any such resource over 50 years in age ... " still seems too vague to me. I would like to get Senator Brower's comment on this with regard to prosecution.

Senator Brower:

I would like to back up and ask a more basic question. It seems to me that the new language in subparagraph (2) is already included in the language in subparagraph (1). Subparagraph (1) refers to "Any site, landmark, monument, building or structure of historical significance" Subparagraph (2) just seems to put a finer point on the idea of buildings of historical significance. Why are we adding that language? Maybe I can gain a better understanding of why we are adding subparagraph (2), which might help explain why we are then considering an amendment to subparagraph (2).

Chair Segerblom:

Could you give us an example of a structure we are trying to protect?

Rebecca L. Palmer (Acting State Historic Preservation Officer, Office of Historic Preservation, Department of Conservation and Natural Resources):

A number of resources listed in our state, local or national registers are not necessarily "pertaining to the history of the settlement of Nevada," as it says in subparagraph (1). They are, however, important in the history of Nevada. That is the vagueness we are trying to amend.

Senator Brower:

With respect to the 50 years in age, is there any particular structure or site you have in mind that makes that language important?

Ms. Palmer:

We have resources such as the Spring Mountain Ranch State Park, which is not listed in any state, local or national register but is significant. It is a State park. These resources were made State parks because they are iconic, but they are not listed in any register. The 50-year age requirement is used by the National Register to determine if something is eligible for listing, and that is why we used that rule.

Senator Brower:

That 50-year language is included in [Exhibit I](#), correct?

Mr. Delap:

Yes. We are working in unison on this measure.

Senator Brower:

I do not personally see an issue with vagueness, but I will defer to others if they see something I do not.

When I was the U.S. Attorney, we had a situation in northern Nevada in which some graffiti vandals tagged the side of a mountain and were caught and prosecuted. One of the practical problems with these cases is that catching them and having them pay restitution is all very fine, but how do you restore the structures they have destroyed? When you are talking about the side of a mountain, it is virtually impossible to undo the damage. I appreciate the intent behind this bill.

Senator Jones:

I appreciate the reference to Spring Mountain Ranch. I go there with my family frequently, and I would hate to see anything be damaged there or at other similar locations.

Senator Hutchison:

I appreciate that we are trying to protect historical places, but is there a reason we have to say "any such resource over 50 years in age located in a State or Municipal Park"? Do we not care if they are tagging anything? Would it not be better to say that this penalty will apply if you tag anything in a State or Municipal Park?

Mr. Delap:

It is our intent to be succinct in what we are trying to enforce. We are trying to designate these sites and resources as more significant than a power box in your neighborhood. The designation of sites more than 50 years old is part of the national standard. We believe it is narrow enough that it does not create blanket enforcement and still signifies that this is a concern of our community, and we want to treat it as such.

Ms. Wiener:

There are already penalties in place regarding graffiti that can address the damage of other properties. This particular measure addresses specific types of properties with this level of penalty, and they are substantial. This is one of the toughest graffiti laws in the U.S. We want to get it head-on because graffiti vandalism is a precursor to other kinds of crimes. It is not that there are not remedies in other parts of NRS; it is just that this is a specific area we wanted to address.

Chair Segerblom:

Do we put up signs that say, "Warning: This is an historic structure, and graffiti will be double punishment" or something?

Ms. Wiener:

Not that I am aware.

Kristin Erickson (Nevada District Attorneys Association):

We support S.B. 237 and the amendment in [Exhibit I](#).

Chair Segerblom:

I will close the hearing on S.B. 237.

SENATOR JONES MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 237 WITH THE AMENDMENT FROM LVMPD.

SENATOR FORD SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

Chair Segerblom:

Is there any public comment?

Mr. Friedrich:

Why do we need S.B. 222? This bill would require HOA boards to become completely transparent and let homeowners know what is being done in their communities. There would be no more secret meetings. It would allow homeowners to know how their money is being spent; it would make board members accountable for how they vote on issues that impact HOA fees, raise monthly assessments and cause potential buyers not to purchase; it would allow owners to see how their boards operate. This bill would allow potential buyers to attend meetings prior to buying in an HOA community. It would allow boards to release legal matters discussed in executive session when there is no need to maintain confidentiality. It would assure due process. Any secret actions taken by the boards would be null and void. It would allow for injunctive relief in district court against the board. This bill would finally stop the abuses.

Mr. Nascimento:

I was elected president of my HOA approximately 2 years ago. We were supposed to have \$360,000 in our bank accounts. I was asked to sign off on some invoices, so in April 2011 I went to the bank with the vice president of the HOA to see our balance. The account was empty. We elected a new treasurer who was an accountant, and he looked at the books and quit. The next thing I know, all the old board members want back on the board. They voted themselves back on the board from the audience and took over the board. We fired them; they refused to leave. We fired our attorney; he refused to leave. We have all of this on videotape. We provided the video to the Division.

The board holds the meetings at the houses of nonboard members, and everyone else has been driven off. They bring so many guns to meetings that we are not allowed to hold meetings at the YMCA. The LVMPD does not do anything because it says we need a decision from the Division. We have filled out four requests for a decision as to whether board members who resign can vote themselves back on the board. We have had no help. We have seven complaints pending. On February 1, I dropped off a letter to Bruce Breslow, the Director of the Department of Business and Industry. He sent us an email telling us to put it in writing. We have a 4-inch binder with minutes where people vote themselves on the board from the audience and emails where they talk about changing the minutes.

We need some help. There needs to be a provision where you can sue the board members in small-claims court. Our HOA is Monument at Lone Mountain. I would like some assistance from the director of the Division.

Mr. Stebbins:

I want to emphasize that under the current law, so much abuse goes on in executive sessions that I very much welcome opening up and getting rid of that abuse. The board members in my HOA have received instructions and discipline from the Division twice, and they continue to abuse the executive session meetings. The Division has even issued an advisory opinion to try to rein in the abuse that occurs in our executive session meetings, and all of that has really not been very successful. We need some help from the Legislature, and S.B. 222 goes a long way to provide that help and stem the abuse that occurs.

Col. Frank:

It is common for folks who are happy with their HOAs to say they represent the vast majority, but in fact nobody knows how much dissatisfaction there is in HOAs. There are no surveys, and no data are collected. I have never seen a poll of the members of HOA satisfaction. The Division says that there are 3,000 HOAs in Nevada, and 500,000 Nevada residents own property in HOAs. That is a very large group, and we do not know what is going on. They are all equal citizens; they all pay taxes. This open meeting idea is valuable because homeowners feel intimidated about speaking up out of fear of retaliation.

Why are these executive sessions confidential in the first place? Why are they not open by standard, and why are the members who want to be heard in private not required to request a confidential hearing? That would be a better way of handling the confidentiality question than objecting to the bill.

Ten years ago, there were not as many complaints about HOA misconduct because when people got into a bad HOA environment, they just sold their homes and moved; they traded up and made a few bucks on the transaction. You cannot do that anymore. The housing market is such that people are stuck and have to make it work. That is why you are seeing a rapidly growing number of people who say, "I just can't stand this bullying board. You have to help me do something about it," as opposed to just moving.

Chair Segerblom:

We appreciate the irony of complaining about too many laws for HOAs in support of a new law for HOAs.

Col. Frank:

I concur. I just worry about the fact that the laws we have put the homeowner at a disadvantage. Either remove the laws we have that are causing problems or revise them so they are more balanced.

Delores Bornbach:

I spent 44 years teaching first and second graders. When children are upset, they do not learn well. There are many children in the HOA where we are situated. When parents get notices of fines and talk about them in front of their children, my thought is, what happens to the children? I know Nevada's educational system is not supposed to be very good, and maybe the children come to school with some of those worries on their shoulders. Maybe they should take that into consideration. Is it not all about the children?

Mr. Radocha:

I have a problem digesting some of the things that go on. What value is the Division when it takes months and years for them to get things done? You need to give them more money so they can get some people with good investigative skills.

My biggest mistake with an HOA was to go to the meetings and ask questions. My advice to any elderly person in an HOA is do not go to the dog and pony show and ask questions, because they will come after you.

Senate Committee on Judiciary
March 18, 2013
Page 25

Chair Segerblom:

The meeting is adjourned at 10:37 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

| <u>EXHIBITS</u> | | | | |
|------------------------|----------------|----|-------------------------|---|
| Bill | Exhibit | | Witness / Agency | Description |
| | A | 1 | | Agenda |
| | B | 7 | | Attendance Roster |
| S.B. 222 | C | 1 | Angela Rock | Proposed Amendments to SB 222 |
| S.B. 222 | D | 12 | Senator Aaron D. Ford | Email from the State Bar of Nevada, Real Property Section, Committee on Common-Interest Communities |
| S.B. 222 | E | 1 | Jonathan Friedrich | Friendly Amendment to SB 222 |
| S.B. 222 | F | 1 | Norman McCullough | Written testimony |
| S.B. 222 | G | 3 | Paul Murad | Homeowner/HOA Disputes Email |
| S.B. 222 | H | 1 | Tim Stebbins | Written testimony |
| S.B. 237 | I | 14 | A.J. Delap | Proposed amendment |