

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
April 9, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 2:16 p.m. on Thursday, April 9, 2015, in Room 2134 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 Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Erin McMullen, American Resort Development Association

Chair Brower:

I will open the work session on Senate Bill (S.B.) 99.

SENATE BILL 99: Repeals provisions governing sex offenders which were originally enacted for purposes of the federal Adam Walsh Act. (BDR 14-134)

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Patrick Guinan (Policy Analyst):

Senate Bill 99 as sponsored by Senator Segerblom was heard by this Committee on March 19. I will read from the work session document ([Exhibit C](#)).

Chair Brower:

The Committee's consensus was something needed to be done in this area but not with the bill originally introduced. What we have before us is a different approach to fixing some of the issues with this statutory scheme. The proposed amendment has the agreement of all interested parties.

Senator Segerblom:

This was an excellent opportunity to make a difference because the bill had never been implemented even though it was almost 10 years old. That we had a chance to look at it again and make some corrections was a great opportunity. Senate Bill 99 is not perfect, but a tremendous amount of work went into it and the fact that we are doing anything is a positive step.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 99.

SENATOR SEGERBLOM SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 174.

SENATE BILL 174: Revises provisions governing eligibility to be a member of the executive board or an officer of a unit-owners' association.
(BDR 10-617)

Mr. Guinan:

Senate Bill 174 is sponsored by Senator Hammond. I will read from the work session document ([Exhibit D](#)).

Senator Hammond:

Section 1, subsection 10 of Proposed Amendment 9735 allows flexibility for small associations, or ones that have few people, by allowing people who are married or living together to be on the board together specifically because no one else wishes to be on the board.

We want to make sure people are not colluding together to be on a board and end up with the same type of mess we had in the past with association boards. The amendment clarifies exactly who can be a member.

Chair Brower:

I have not heard from anyone regarding this amendment. Is there opposition to your proposed amendment?

Senator Hammond:

No.

SENATOR HARRIS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 174.

SENATOR FORD SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 306.

SENATE BILL 306: Revises provisions relating to liens on real property located within a common-interest community. (BDR 10-55)

Mr. Guinan:

Senate Bill 306 as sponsored by Senators Ford and Hammond was heard by this Committee on April 7. I will read from the work session document ([Exhibit E](#)).

Senator Harris:

My proposed amendment has three bulleted paragraphs. I have changed the third paragraph. Garrett Gordon, who represents homeowners' associations, has

advised me that associations would forgo collecting homeowners' association fees during the mediation process.

I need Nick Anthony to look into the matter further, but I was told there might have been legislation in the 77th Session requiring association payments be made during the course of mediation. I want the proposed amendment to be consistent with the Foreclosure Mediation Program.

Senator Ford:

I do not have any issues with the amendment proposed by Senator Harris. If Senator Hammond sees the proposed amendment as amenable, I will consider it adopted.

Senator Hammond:

The proposed amendments are friendly amendments. Senator Harris has just reminded me that we discussed changing paragraph two of her proposed amendment. The proposed amendment directs the Real Estate Division Website, under the Department of Business and Industry, to be the recipient of such information. We want to change the Website destination to the Division of Financial Institutions, also under the Department of Business and Industry. Banks are familiar with the Division of Financial Institutions Website and use it regularly.

Senator Harris:

The intent of the required notice is that as long as a registered mail notification on the part of the homeowner is sent to the Division of Financial Institutions' Website, no response is necessary. The bank is deemed to have been served notice because the bank provides the address and the homeowners' association sends the notice.

Senator Segerblom:

That addresses my concern. I had concern from testimony that registered mail is sent but never received because the post office does not send back the form. I thought we would have an electronic acknowledgement by the State.

Chair Brower:

Is legal counsel comfortable with the conceptual amendment articulated?

Nick Anthony (Counsel):

Yes.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 306.

Senator Hammond:

We keep referring to the three amendments proffered by Senator Harris, but the original bill has already been amended. We discussed a proposed amendment at one point, and I want to be sure we are discussing that amendment right now, plus the three amendments from Senator Harris.

Chair Brower:

We had an original bill. At the hearing, a proposed amendment was presented by the primary cosponsors of the bill, and now we have another proffered amendment.

Mr. Anthony:

That is correct. Amendments presented by Senator Harris are in addition to Proposed Amendment 6077 submitted by Senators Ford and Hammond.

SENATOR HARRIS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 320. We will refer to the work session document ([Exhibit F](#)).

SENATE BILL 320: Revises provisions relating to time shares. (BDR 10-1034)

Senator Harris:

The first sentence of my proposed amendment, "The future value of a time-share interest is uncertain" is deleted. The proposed amendment begins with the sentence, "We understand that our membership is for personal use and is not an investment for profit or tax advantage." The rest of the first paragraph will stay as is.

In the second paragraph of my proposed amendment, on the fifth line, the sentence ends after the word "inventory."

In the third paragraph of my proposed amendment, after the word "contract," the words "and governing documents" are inserted. On the third line, the word "brokers" is replaced with the word "agents." On the fourth line, the sentence ends after the word "unit."

The disclosure page will be a separate, stand-alone form on top of, and in addition to, the public statement of offering that is to be signed and dated by the purchaser on the date of purchase.

Chair Brower:

Ms. McMullen, because we want to amend and pass this bill heard earlier today in subcommittee, please confirm that is your understanding of S.B. 320 as amended.

Erin McMullen (American Resort Development Association):

I agree with the changes Senator Harris has proposed with the caveat that I have a membership of association developers I need to notify. I think we would still be in a neutral position to S.B. 320.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 320.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 321.

SENATE BILL 321: Revises provisions concerning real property. (BDR 9-728)

Mr. Guinan:

Senate Bill 321 is sponsored by Senator Harris. I will read from the work session document ([Exhibit G](#)).

SENATOR ROBERSON MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 321.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 395.

SENATE BILL 395: Revises provisions governing domestic relations.
(BDR 11-530)

Mr. Guinan:

Senate Bill 395 as sponsored by Senator Kihuen was heard on April 8. The bill initially revised provisions governing domestic relations. I will not read a brief summary of the original version of the bill, but I will note that the amended version of the bill only keeps sections 1, 4, 27 and 56 ([Exhibit H](#)).

Sections 1, 4 and 56 deal with marriage licensing, displays and fees being charged for marriage licenses in order to generate revenue. Section 27 is a separate section that Senator Segerblom discussed yesterday. Section 27 is retained in S.B. 395. The section comes from the State Bar of Nevada and has been vetted through its committees.

The proposed amendments from Clark and Washoe Counties add to sections 1, 4 and 56, changing "shall" to "may" and providing that Clark County is the only County required to charge the fee. The proposed amendments in the work session document are provided by the clerks of Clark and Washoe Counties.

Senator Kihuen:

I support the proposed amendments.

SENATOR FORD MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 395.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Brower:

I will open the work session on S.B. 447.

SENATE BILL 447: Makes various changes relating to marijuana. (BDR 15-85)

Mr. Guinan:

Senate Bill 447 as sponsored by this Committee was heard on April 6. I will read from the work session document ([Exhibit I](#)).

Senator Segerblom:

I am opposed to the part of the bill dealing with the concentrates. With this section, we get into the same situation we did with cocaine and crack cocaine. Resin is marijuana.

The legalization of marijuana will come, so the fact that an individual has a concentrate opposed to regular marijuana should not have different penalties. I can see criminalizing the making of the concentrate because that might cause a fire in someone's house, but to say possession of resin is stepping too far.

SENATOR HAMMOND MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 447.

SENATOR ROBERSON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR SEGERBLOM VOTED NO.)

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Chair Brower:

I want to address S.B. 352, a bill about which I have received numerous emails. Christopher Corbett of the People Against the National Defense Authorization Act has been lobbying me on this bill; while I appreciate his effort, we will have to agree to disagree, and the Committee will not hear S.B. 352. As opposed to

the hostile emails I have received about this bill, I appreciate Mr. Corbett's earnest and good-faith efforts to have dialogue. This Committee will not hear the bill for the following reasons.

SENATE BILL 352: Enacts the Nevada Liberty Preservation Act. (BDR 15-719)

Senate Bill 352 has the Legislature declare certain sections of the National Defense Authorization Act (NDAA) in violation of certain parts of the U.S. Constitution, the Nevada Constitution and other laws because it allegedly allows the President to indefinitely detain without charge any person, including a U.S. citizen. In addition, S.B. 352 would make it a crime for anyone to implement or enforce these sections of NDAA within Nevada.

The only case in which the legality of the relevant sections of the NDAA has been litigated is *Hedges v. Obama*, 724 F.3d 170 (2013) where the U.S. Court of Appeals, Second Circuit, concluded that the NDAA says nothing at all about the President's authority to detain American citizens. In *Hedges v. Obama*, the plaintiffs allege that the NDAA violates the Fifth and Fourteenth Amendments of the U.S. Constitution because it allegedly allows for the detention of U.S. citizens without charge.

In the 2012 NDAA enacted by Congress, Section 1021 affirmed that the President has the authority to use all necessary and appropriate force pursuant to Congress enacting the 2001 Authorization for Use of Military Force (AUMF).

In the Second Circuit decision of *Hedges v. Obama*, the Court said the following:

We conclude that plaintiffs lack standing to seek preenforcement review of Section 1021 and vacate the permanent injunction. The American citizen plaintiffs lack standing because Section 1021 says nothing at all about the President's authority to detain American citizens. And while Section 1021 does have a real bearing on those who are neither citizens nor lawful resident aliens and who are apprehended abroad, the non-citizen plaintiffs also have failed to establish standing because they have not shown a sufficient threat that the government will detain them under Section 1021.

The Court went on to say:

We thus conclude, consistent with the text and buttressed in part by the legislative history, that Section 1021 means this: With respect to individuals who are not citizens, are not lawful resident aliens, and are not captured or arrested within the United States, the President's AUMF authority includes the authority to detain those responsible for 9/11 as well as those who were a part of, or substantially supported, al-Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners—a detention authority that Section 1021 concludes was granted by the original AUMF. But with respect to citizens, lawful resident aliens, or individuals captured or arrested in the United States, Section 1021 simply says nothing at all.

Based upon this text, I concluded that S.B. 352 was unconstitutional and that this Committee would not hear it. I subsequently discovered that legal staff independently issued a legal opinion that the bill was unconstitutional.

The legal opinion from the Legislative Counsel Bureau ([Exhibit J](#)), authored by Legislative Counsel Brenda Erdoes, states it is the opinion of the office that S.B. 352 presents constitutional problems, specifically, and I quote,

[I]t is the opinion of this office that under the United States Constitution and the Nevada Constitution, the judiciary is the branch of government responsible for determining the constitutionality of a federal or state law. It is the further opinion of this office that to the extent that SB 352 purports to enact a statute declaring that sections 1021 and 1022 of the federal Act violate the Nevada Constitution, United States Constitution and federal law, the bill draft, if enacted into law, would be unconstitutional.

The letter further states, "It is the opinion of this office that SB 352, if enacted, would likely be preempted under each of the following recognized preemption categories." The letter then sets forth those categories.

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The Committee appreciates the concerns raised by Mr. Corbett and others about the National Defense Authorization Act for Fiscal Year 2012, but considering the case that has been litigated up through the U.S. Court of Appeals and the opinion from our own legal counsel, the NDAA is constitutional and S.B. 352, if passed, would be unconstitutional.

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Chair Brower:

I adjourn the meeting at 4:37 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	2		Agenda
	B	3		Attendance Roster
S.B. 99	C	13	Patrick Guinan	Work Session Document
S.B. 174	D	7	Patrick Guinan	Work Session Document
S.B. 306	E	2	Patrick Guinan	Work Session Document
S.B. 320	F	2	Patrick Guinan	Work Session Document
S.B. 321	G	2	Patrick Guinan	Work Session Document
S.B. 395	H	6	Patrick Guinan	Work Session Document
S.B. 447	I	15	Patrick Guinan	Work Session Document
S.B. 352	J	5	Senator Greg Brower	Letter from Legislative Counsel Bureau