MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-ninth Session
February 22, 2017

The Senate Committee on Judiciary was called to order by Chair Tick Segerblom at 1:36 p.m. on Wednesday, February 22, 2017, 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 Tick Segerblom, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator Moises Denis
Senator Aaron D. Ford
Senator Don Gustavson
Senator Michael Roberson
Senator Becky Harris

COMMITTEE MEMBERS ABSENT:

Senator Aaron D. Ford (Excused)

GUEST LEGISLATORS PRESENT:

Senator Becky Harris, Senatorial District No. 9

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Kate Ely, Committee Secretary

OTHERS PRESENT:

Chuck Callaway, Las Vegas Metropolitan Police Department
Julie Butler, Division Administrator, General Services Division, Nevada Department of Public Safety
Ben Graham, Administrative Office of Courts, Nevada Supreme Court
Lindsay Knox, SAS Institute, Inc.
Eva Segerblom, Nevada Justice Association
Angela Rock, Southern Highlands Community Association
Garrett Gordon, Southern Highlands Community Association; Community Association Institute
John Leach, Common-Interest Community Committee, Real Estate Section, Nevada State Bar
Michael Kosor
Kandis McClure, Howard Hughes Corporation
Donna Zanetti, Community Association Institute
Edward Boyack
Glen Proctor
Tim Stebbins
Paul Kruger
John Radocha
Howard McCarly
Delores Bornbach
Keith Coughey
Richard Travis
Janine Hansen
Lorne Malkiewich, American Resort Development Association
Karen Dennison, American Resort Development Association

CHAIR SEGERBLOM:
We will open the hearing on Senate Bill (S.B.) 35.

SENATE BILL 35: Creates the Subcommittee on Criminal Justice Information Sharing of the Advisory Commission on the Administration of Justice. (BDR 14-261)

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):
When the Criminal Justice Information Sharing of the Advisory Commission on the Administration of Justice convened its interim meetings, a number of

presentations were offered from various entities including, among others, the Las Vegas Metropolitan Police Department and the Washoe County Sheriff's Office. There were discussions regarding the specific information in the criminal history data and what types of information were being collected and housed by the different entities. For example, Clark County's Shared Computer Operation for Protection and Enforcement (SCOPE), which is used in southern Nevada, has certain criminal history information such as tattoos or scars the Central Repository for Nevada Records of Criminal History does not have and vice versa. Northern Nevada utilizes a system called Tiburon, Inc. Concerns and questions focused on whether the criminal history information was shared between SCOPE and Tiburon and the Central Repository for Nevada Records of Criminal History, whether the information was duplicative and the availability or access of the information.

Section 2 of the bill outlines the creation of the Subcommittee on Criminal Justice Information Sharing of the Commission. The Chair of the Commission would designate a chair for the Subcommittee. Other members of the Subcommittee would be appointed by the Chair of the Commission. The Subcommittee would work on ways to improve and enhance information sharing across the State.

CHAIR SEGERBLOM:
Would the Subcommittee have the authority to change the sharing process?

MR. CALLAWAY:
My understanding is the Subcommittee and entities involved could potentially make policy changes if the Subcommittee agreed. The recommendations would be presented to the full Advisory Commission and forwarded to the Legislature for evaluation.

CHAIR SEGERBLOM:
Who appoints members of the Subcommittee?

MR. CALLAWAY:
The Advisory Commission would appoint members of the Subcommittee. The Director of the Department of Safety would appoint a member who would have the ability to use the Central Repository in day-to-day operations, such as determining the eligibility of persons for employment or licensure.

JULIE BUTLER (Division Administrator, General Services Division, Nevada Department of Public Safety):
We are in support of S.B. 35.

BEN GRAHAM (Administrative Office of Courts, Nevada Supreme Court):
We support this whole concept.

LINDSAY KNOX (SAS Institute Inc.):
We support S.B. 35. The SAS Institute just joined a federal team with our state and local government team, and we will discuss any concerns raised.

CHAIR SEGERBLOM:
The hearing is closed on S.B. 35, and we will open the hearing on S.B. 195.

SENATE BILL 195: Revises provisions relating to common-interest communities and time shares. (BDR 10-470)

SENATOR BECKY HARRIS (Senatorial District No. 9):
Senate Bill 195 makes several changes to laws governing both unit-owners' associations and time-share properties. There are also proposed amendments.

CHAIR SEGERBLOM:
Is this bill similar to a bill passed two years ago?

SENATOR HARRIS:
Section 1 is designed to make managing an executive board of a unit-owners' association simpler and more efficient. It would authorize an executive board to fill a vacancy in its membership until either the vacant term expires or there is a regularly scheduled election, whichever comes first. This is beneficial because it will ensure vacancies are filled promptly. The cost savings to the unit-owners' association is eliminating the need to mail multiple notices. These associations have a difficult time filling positions because many homeowners do not typically participate in unit-owners' association elections. It is time-consuming and costly.

Sections 2 and 4 of the bill outline the process for executive board elections. An executive board may determine if there are a number of candidates for a board election equal to, or less than, the number of open seats for the executive

board. Those nominated candidates would be automatically elected. The board would be allowed to fill any remaining vacancies by appointment until the regularly scheduled election.

Section 4 requires the election of directors to coincide with the annual meeting by requiring ballots for board elections to be opened and counted at the annual meeting. There is a disconnect that results in costly mailings and notices. The goal is to streamline board elections.

CHAIR SEGERBLOM:
Can boards change their bylaws to do that?

SENATOR HARRIS:
No. It must be done statutorily.

Section 3 simplifies an element of foreclosure and other involuntary sales. In an involuntary sale, the special declarant's rights will be automatically transferred to a purchaser, unless that purchaser elects otherwise. In this case, the purchaser would be responsible for requesting specific rights, if any, and executing the judgment or instrument necessary for the transfer to be effected.

Section 5 eliminates the requirement to notice the entire unit-owners' membership of an executive board meeting in which the executive session is scheduled pursuant to *Nevada Revised Statutes* (NRS) 116.31085. These are executive board meetings unit-owners' are not allowed to attend. This is another cost saving to the unit-owners' association. The sections clarify notification requirements.

Section 5 exempts an executive board session from the 10-day meeting notice requirement to the entire membership of the unit-owners' association. Instead, it requires the executive board to notify only persons who may be subject to a hearing.

Section 6 requires the executive board to disclose a general description of the matters discussed at an executive board session meeting with the exception of confidential matters. There is an amendment with regard to section 6 because this provision is considered counterintuitive.

Section 7 adds a requirement that directors and officers (D&O) insurance that is a nonprofit organization errors and omissions (E&O) policy in a minimum aggregate amount of not less than $1 million be obtained. It must cover the executive board, officers, employees, agents, volunteers and the community manager of the unit-owners' association and any employees of the community manager. The D&O/E&O insurance covers subordinate agents for alleged wrongful acts which are the source of many claims against unit-owners' associations, including what happened in the wave of wrongful foreclosure litigation filed by lenders. Without D&O/E&O coverage, a unit-owners' association incurs the expense of defending litigation and any adverse judgment leading to additional special assessments that may be assessed as liens against individual properties.

Section 8 enhances a unit-owners' association enforcement power regarding recreational vehicle parking and storage. It specifically provides that the governing documents of the unit-owners' association may authorize the executive board to impose fines for violations of the rules governing these vehicles.

Section 9 should be deleted because (NRS) 116.31175 already guarantees access to these records and the section would be redundant.

In sections 10 through 13, the Legislative Counsel Bureau believed there were issues that both unit-owners' associations and time-share property owners were experiencing, and those were incorporated into S.B. 195. The sections outline consumer protection statements as they relate to time-share purchasers.

Section 10 adds required disclosures to a developer's public offering statement. One statement addresses a buyer's possible expectation that a time-share interest will appreciate in value over time. Time-share properties do not appreciate. Valuation is based on a vacation or leisure concept. Another disclosure statement addresses restrictions and challenges owners may be subject to should they choose to resell their time-share interests. These disclosures are beneficial to consumers because they would correct any expectations individuals may have with regard to the value of their time-share interests when evaluated in divorce or bankruptcy matters.

Section 11 adds a notice to purchaser that a developer or sales agent must provide to a buyer prior to executing the sales contract. The buyer must initial

each paragraph to evidence the buyer's acknowledgement and understanding of the disclosures. One disclosure states the contract is perpetual, with no termination, and is binding on all heirs. Not all time-share contracts are perpetual and this disclosure would not be necessary.

Section 11, subsection 1, paragraph (c) outlines difficulties that may occur in the event an owner would want to sell the time-share interest. The disclosure must include statements that proceeds may be less than the original sales price and a sale may be subject to many restrictions. The buyer must acknowledge that he or she has been advised by the developer of all available divestiture programs and whether those programs are available. The buyer must acknowledge various documents have been made available for inspection. Finally, a reminder urges buyers to read and understand all relevant documents and seek assistance prior to purchase.

Section 12 applies to existing limitations on the time-share instrument during which a developer may control a time-share association, a developer's reserved rights and right to relocate certain time-shares. Those limitations include 120 days after the conveyance of 80 percent of time-shares in 5 years after the developer has ceased to offer time-shares, or 5 years after any right to add new time-shares was last exercised.

Section 13 authorizes a majority of the board of a time-share association, or a majority of the owners, to refuse renewal of a contract with the manager of a time-share plan. This section also requires the manager to report annually to the board all fees, compensation or other property the manager is entitled to receive for services rendered.

EVA SEGERBLOM (Nevada Justice Association):
We support S.B. 195. This is a very commonsense approach because it clarifies many complex problems with the provisions of NRS 116. Chapter 16 of NRS governs common-interest communities generally, but it does not apply to limited purpose associations which are associations just for landscape or drainage, for example. Chapter 16 of NRS does not apply to very small or very old associations, particularly those created before 1992 in rural Nevada with counties less than a certain population. It does not apply to associations for commercial properties. The provisions in S.B. 195 will not be onerous because there are numerous exemptions that apply to various associations.

Section 3 makes it easier for a developer to complete a project and subsume what is known as special declarant's rights. The provisions produce a win-win for both the developer and the homeowners because it creates certainty. Additionally, there is room for them to opt out or reject certain special declarant's rights.

Section 7 is a benefit to unit-owners' association members in that they will not bear the burden of expenses they may incur as a result of litigation or a judgment.

ANGELA ROCK (Southern Highlands Community Association):
We support S.B. 195.

CHAIR SEGERBLOM:
Do you support the amendments as well?

MS. ROCK:
Yes.

GARRETT GORDON (Southern Highlands Community Association; Community Association Institute):
We support S.B. 195.

JOHN LEACH (Common-Interest Community Committee, Real Estate Section, Nevada State Bar):
The Common-Interest Committee of the Real Property Section of the Nevada State Bar is in favor of this bill. The Committee, through the Executive Board of the Nevada State Bar, reviewed the bill and believes it is very helpful.

Section 3 benefits developers and associations but also lenders because oftentimes it was the lender foreclosing on the developer during the downturn of the economy. Lenders had assets that they wanted to sell to a developer, but because they had not included the transfer of the special declarant's rights, they could not transfer something they did not have.

With respect to section 7, please note that NRS 116.31037 already requires an association to indemnify and defend its officers and directors and hold them harmless. We are favor of the bill, as well as the proposed amendment for section 6.

MICHAEL KOSOR:
I support the bill. Since section 9 has been deleted, it appears that all provisions are advantageous and should be supported.

I have submitted a written proposed amendment (Exhibit C) which addresses section 13 and adds an additional statement on the homeowners' association side.

KANDICE MCCLURE (Howard Hughes Corporation):
We support S.B. 195.

DONNA ZANETTI (Community Association Institute):
We support S.B. 195.

EDWARD BOYACK:
This is a positive step in reducing costs, improving efficiency and helping boards and associations work more effectively. I support S.B. 195.

CHAIR SEGERBLOM:
Do you have any idea how easy it is to obtain D&O/E&O insurance and whom does it apply to?

MR. BOYACK:
Going forward, there are challenges in obtaining this insurance even as critical as it is. Very few carriers are writing policies in Nevada due to the history of claims, different exclusions as they relate to wrongful foreclosure actions and high deductible issues.

GLEN PROCTOR:
I support the bill particularly since section 9 has been withdrawn.

TIM STEBBINS:
We are opposed to section 5, subsection 3 because it removes the requirement to provide notice and an agenda to all members when an executive session meeting is scheduled. We urge this section be removed from this bill.

CHAIR SEGERBLOM:
Do you believe notice must be by mail?

MR. STEBBINS:
Not necessarily, it could be in the newsletter or by email if everyone is on the list. Our concern is that homeowners know there is a meeting and the agenda is available for their review.

PAUL KRUGER:
I have submitted written testimony on behalf of Jonathan Friedrich (Exhibit D).

CHAIR SEGERBLOM:
His comments are in the record.

JOHN RADOCHA:
These boards should not be allowed to operate in secrecy. The Astoria Trails North Board has discussed bids, election issues and made improvements without the knowledge of its members. We do not support S.B. 195.

HOWARD MCCARLY:
Generally, I am in favor provided it is with the addition of the amendment language that Mr. Kosor has proposed.

DELORES BORNBACH:
Section 5, subsection 3 should be omitted from S.B. 195.

KEITH COUGHEY:
I support S.B. 195 and the amendments proposed by Mike Kosor.

RICHARD TRAVIS:
I support S.B. 195.

JANINE HANSEN:
There are concerns regarding eliminating the necessity to send notices to members who cannot attend executive board sessions because there are subjects to be discussed that are not appropriate.

LORNE MALKIEWICH (American Resort Development Association):
We are neutral. Sections 1 through 8 do not affect the time-share industry. However, we would like to continue working on sections that do affect the time-share industry.

KAREN DENNISON (American Resort Development Association):
Sections 10 and 11 deal with time-shares and disclosures, which would be added to the disclosures already furnished to prospective time-share purchasers. The public offering statement is a comprehensive document. Consistent with federal securities law, a time-share is not purchased as an investment. It is purchased for personal use, such as a vacation home, and most developers do include that disclosure. We are fine with having that disclosure added.

The second issue relates to time-share resells and possible challenges. We are happy to work on language to address this issue. We feel strongly that there should be one disclosure document and that it should not be two separate documents.

With respect to the developer control period, 80 percent for time-shares has been recognized since 1983 when the time-share act was originally passed. Certain things should not terminate at 80 percent control, such as being able to maintain a sales office, the right to complete improvements, and the right to add and withdraw units based on market conditions.

Another issue addresses downsizing older projects that have been around for a long time and are suffering from attrition and reduced membership. Developers are allowed to downsize a time-share project so that the owners who are left are not burdened with a huge special assessment. Time-share projects have to be kept to certain standards established by exchange companies, and the purpose was to address aging time-share projects. If this right were terminated at 80 percent, that would not address the very foundation of the bill.

With regard to section 13, we believe owners should vote on the manager and whether a manager should be retained. We will continue to work with Senator Harris to develop language.

CHAIR SEGERBLOM:
The hearing is closed at 2:40 p.m.

RESPECTFULLY SUBMITTED:

_____
Kate Ely,
Committee Secretary

APPROVED BY:

_____
Senator Tick Segerblom, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	**Exhibit / # of pages**		**Witness / Entity**	**Description**
	A	1		Agenda
	B	5		Attendance Roster
S.B. 195	C	3	Michael Kosor	Proposed Amendment and Written Testimony
S.B. 195	D	7	Paul Kruger	Written Testimony from Jonathan Friedrich