

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
February 15, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Monday, February 15, 2021, Online. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator Nicole J. Cannizzaro, Vice Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Pat Devereux, Secretary

OTHERS PRESENT:

Sharath Chandra, Administrator, Real Estate Division, Department of Business and Industry
Adam Clarkson, Community Associations Institute
Chris Hardin, SFR Investments
Michael Kosor

CHAIR SCHEIBLE:

We will open the hearing on Senate Bill (S.B.) 72.

SENATE BILL 72: Makes various changes relating to common-interest communities. (BDR 10-318)

SHARATH CHANDRA (Administrator, Real Estate Division, Department of Business and Industry):

I will present S.B. 72. The Real Estate Division, Department of Business and Industry, includes the Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels. The Office of the Ombudsman oversees more than 3,600 homeowners' associations (HOAs) that include about a half-million residents in the State. The Commission for Common-Interest Communities and Condominium Hotels (CICCH) is comprised of seven members, plus me, appointed by the Governor as an advisory body on HOA regulations.

Senate Bill No. 392 of the 80th Session established an operational task force with a goal of studying the concerns of common-interest communities and recommending legislation to adopt new regulations. The Office of the Ombudsman presented the task force with three top issues received by HOA customer service departments. This provided the Division with potential language to clarify and amend *Nevada Revised Statutes* (NRS) 116. The intention of S.B. 72 is not to overhaul NRS 116 but to clarify four of its areas: fines and continual violations of regulations, foreclosure procedures, attorney-client privilege matters and due process for homeowners in hearings for violations.

After S.B. 72 was introduced, the Division had discussions with HOA industry representatives and the Community Associations Institute, which represents many HOA members. An area of discussion was fines for health and safety violations, which S.B. 72 proposes to uncap. Due to the nature of the violations and the degrees of severity seen across health and safety issues, the Division thought perhaps its Real Estate Commission would be a better venue to deal with the matter. The CICCH could establish regulations and the limitations of violation fines. Regulators could offer a minimum of input and discussion with workshops about what health and safety violations consist of and what their parameters are. Senate Bill 72 has proposed general language to allow the CICCH to make those decisions.

SENATOR SETTELMAYER:

Would all of the changes proposed in S.B. 72 go into NRS 116? Or would it be in a format whereby something problematic could be changed more easily? I would like to see a range of options between giving HOA boards unlimited power to levy fines and the levying of fines being codified in NRS. Sometimes,

with the Legislature meeting biennially, the process would perhaps be better handled in the Nevada Administrative Code (NAC).

MR. CHANDRA:

That is exactly the idea. As written, section 2, subsection 1, paragraph (b), subparagraph (2) of S.B. 72 would put a \$1,000 cap on fines per each health and safety violation. After hearing the background on some of the violations, there are so many degrees of variation, we proposed language to allow the CICCH to establish a tiered structure to set the severity of the violation and attach a fine. Some of the language in the bill that sets violation caps of \$100 and \$1,000 is unchanged. There is clarifying language plus a proposed amendment to remove the \$1,000 cap and instead allow the CICCH to adopt regulations to that effect.

SENATOR SETTELMAYER:

I would still like to see something in NRS to establish an upper threshold for fines. Sometimes, \$1,000 is too low; however, I do not want to suddenly find out that someone received a \$1,000 fine for a single offense in one home.

SENATOR HANSEN:

You mentioned the CICCH is simply an advisory board. Does it not have the power to draft regulations that become part of NAC?

MR. CHANDRA:

The CICCH is simply an advisory commission. During the Eightieth Session, there were discussions about adding complicated regulation statutes. The Director of the Department is the CICCH chair. There is someone from the Office of the Attorney General with HOA experience, the Ombudsman, someone from the HOA industry, two homeowners, a certified public account and an educator plus me. The Office of the Ombudsman receives thousands of calls. If the Ombudsman can filter out some of the pressing issues, that may lead to new regulations or suggestions for NRS changes. Senate Bill 72 is a means to address those issues, not a reworking of NRS 116.

SENATOR HANSEN:

In the Seventy-eighth Session, I sponsored a bill that would have eliminated NRS 116 and sent regulation of HOAs back to the counties. The concerns of Senator Settelmeyer merit discussion by the Committee: do we need to create a regulatory body with the ability to draft regulations to be added to NAC?

Violations, fines and disputes should be handled by courts because dealing with them every two years is wrong. Bills concerning HOAs were the most controversial ones I saw all session when I served on the Assembly Committee on Judiciary. Once, in a meeting attended by about 800 people, there was a huge fight on where to place garbage cans. We should consider expanding the power of the CICCH and converting it from an advisory board to a full-blown regulatory board. It makes no sense to wait two years to make relatively minor changes in HOA regulations. Bills contain excessive minutiae and are focused on specific HOAs, instead of the industry.

MR. CHANDRA:

The CICCH is responsible for adopting regulations and imposing discipline. Homeowners' association licensees are regulated like community managers.

SENATOR HANSEN:

So there is a regulatory board, correct? I thought there was only an advisory board without teeth.

SENATOR PICKARD:

I have a lot of experience with HOAs. I resist giving HOA boards more power or the ability to empty homeowners' pocketbooks, sometimes over small issues. We should not increase the amount of impact boards may have.

In section 2, subsection 1, paragraph (b), subparagraph (2) of S.B. 72, boards are granted the ability to fine up to \$1,000 for each violation "if the violation poses an imminent threat of causing a substantial adverse effect on the health, safety and welfare of the units' owners." This is surprising because almost all HOAs exist within an area covered by either a county or municipal ordinance that allows code enforcement agencies to address such issues. This constitutes effective double jeopardy: whereas, an HOA board may have a municipality going after it over a code violation, a civil fine may be imposed. Why do we have to boost the per violation fine to an excessive \$1,000?

MR. CHANDRA:

There is no cap on fines for health and safety violations and no guidance on how to administer them in NRS 116. Issues like discharging firearms and dumpster fires are not addressed by the Office of the Ombudsman, but they often occur. The goal was to create a framework of how to address such issues for the CICCH but not put a cap on violation fines. Otherwise, the regular fine is

\$100; after that, it is capped at \$1,000. Everyone interprets the cap differently, so the bill intends to build a framework specifically around the health and safety violations.

SENATOR PICKARD:

Caselaw is sparse on violation fines. District court rulings suggest a fine without guidance needs to be reasonable, with suggested caps of \$100 to \$1,000. Senate Bill 72 would increase that tenfold without losing the "reasonable" factor. Is there empirical data to suggest \$1,000 is the right number to disincentivize these kinds of egregious violations? Instead, is that amount arbitrary?

MR. CHANDRA:

You are correct. Section 2, subsection 1, paragraph (b), subparagraph (2) of S.B. 72 says,

If the violation poses an imminent threat of causing a substantial adverse effect on the health, safety or welfare of the units' owners or residents of the common-interest community, the amount of the fine must be commensurate with the severity of the violation and must be determined by the executive board in accordance with the governing documents ...

The degrees of severity are unknown, so we thought of moving it to adding a regulation whereby the CICCH could hold a workshop to elicit public comment. Then, as Senator Settlemeyer said, when the bill sets a cap on violation fines, that discussion would be at a lower level, not at the legislative level.

SENATOR OHRENSCHALL:

In section 3, subsection 3, paragraph (a) of S.B. 72, language about proposed or pending litigation is deleted. Does that mean HOA executive boards could meet privately with attorneys or law firms soliciting their business? Would those meetings not be open to all HOA members?

MR. CHANDRA:

The language in NRS 116 is narrow. The only time an HOA board could meet privately with an attorney is about matters of proposed or pending litigation. The new language would allow boards to meet with attorneys on any issue involving attorney-client privilege as defined by NRS 49.035 to NRS 49.115.

Any other business must go through the regular process. The language only covers existing attorney-client relationships, not when a board is considering things like bidding or soliciting business. That must go through the regular process.

SENATOR OHRENSCHALL:

Can a board only meet privately with an attorney with which it has an existing relationship, not for the purposes of hiring for an HOA?

MR. CHANDRA:

Yes.

CHAIR SCHEIBLE:

Is the Division open to amending S.B. 72?

MR. CHANDRA:

Yes, we will amend the language concerning limitations on violation caps.

CHAIR SCHEIBLE:

Which commission would evaluate the limits? We have heard testimony about commissions at different levels within different agency divisions.

MR. CHANDRA:

As per NRS 116, the CICCH adopts regulations, sets fines, hears complaints against licensees, including disciplinary complaints, and advises the Division. The bill would allow the Department Director to establish a task force comprised of himself or herself, the Ombudsman, me, a representative from the Office of the Attorney General, industry officials and an educator. The CICCH only meets quarterly to hear many cases. The task force will provide an additional level of help.

CHAIR SCHEIBLE:

Would the upcoming amendment provide that questions from the task force will be sent to the Real Estate Commission?

MR. CHANDRA:

No, they would go to the CICCH.

CHAIR SCHEIBLE:

Would they go to the seven-member board you just described?

MR. CHANDRA:

Yes.

CHAIR SCHEIBLE:

Would the questions have to go through the task force?

MR. CHANDRA:

They could go through the task force, but it would be better if they went through the CICCH. The task force is essentially temporary, while CICCH members are appointed by the Governor for a three-year term. The language of the proposed amendment may dictate the CICCH would establish limitations on fines, as opposed to the \$1,000 cap.

CHAIR SCHEIBLE:

What is the relationship between the Real Estate Commission and the CICCH?

MR. CHANDRA:

The CICCH is the same as the Real Estate Commission except it only deals with the provisions of NRS 116 and NRS 116A. The Real Estate Commission covers issues in NRS 645. The Commission of Appraisers of Real Estate covers NRS 645C. The CICCH and the Real Estate Commission have the same function.

CHAIR SCHEIBLE:

Do they have the same function with different members?

MR. CHANDRA:

Yes.

CHAIR SCHEIBLE:

Is there an overarching regulatory body over the three commissions?

MR. CHANDRA:

No. The task force assists in providing input to the Division and CICCH.

ADAM CLARKSON (Community Associations Institute):

The Community Associations Institute supports S.B. 72 and its proposed amendment. It would make things run more smoothly for HOAs. I am a member of the Division's HOA task force.

CHRIS HARDIN (SFR Investments):

You have my statement in opposition ([Exhibit B](#)) to one provision of S.B. 72. I do not support lifting the violations fine from \$1,000 to a higher figure. I want to reduce the incidence of HOAs profiting from ongoing code violations and keep the focus on resolving them. Homeowners' association fines are often dubious and do not specifically solve the violations.

I have experienced instances that took several years to resolve in which a master HOA demanded a certain type of foliage in a homeowner's front yard while a sub-HOA wanted a different type. No matter what we did, we were fined. Another problem involved houses with swimming pools. Some HOAs require architectural permission to install a pool, even if the pool had been there for years. I suspect this is because my client's HOA was inventing a reason to charge the \$400 architectural permission fee. If a weed pops up one month, is plucked then emerges again, this can constitute a continued violation with fines—even though the weed only appears three to four times a year when it rains. The focus of S.B. 72 should be on resolving violations, rather than continually piling on fines that no one can pay.

MICHAEL KOSOR:

You have my amendment statement ([Exhibit C](#)) on the proposed amendment ([Exhibit D](#)) for S.B. 72. I oppose removal of the language in section 3, subsection 3, paragraph (a). Homeowners' association executive sessions are intended to be narrow in scope and include discussions with counsel. There are limited litigation circumstances beyond those identified in the section in which attorney-client privilege precludes speaking to attorneys during executive sessions.

Under the bill, any discussion held in an executive session could be withheld from homeowners simply by including counsel. That opportunity is created by the definition of what is legally "confidential" in NRS 49.05. Senate Bill 72 would make any communication arguably confidential, given an HOA board's intent that it be undisclosed. If the Committee decides to expand already permissible attorney-client consultations during executive sessions, please add

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additional exceptions specifically enumerated in NRS 116, instead of eliminating the exclusion with S.B. 72.

Changes to allowable board discussions should be conservative; any errors should be made on the side of homeowner transparency.

I have submitted a proposed amendment ([Exhibit E](#)) to NRS 116.3109 involving executive session quorums.

CHAIR SCHEIBLE:

We will close the hearing on S.B. 72. Seeing no more business before the Senate Committee on Judiciary, this meeting is adjourned at 1:38 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
S.B. 72	B	1	Chris Hardin/SFR Investments	Opposition Statement
S.B. 72	C	1	Michael Kosor	Amendment Statement
S.B. 72	D	1	Michael Kosor	Proposed Amendment
S.B. 72	E	1	Michael Kosor	Proposed Amendment to NRS 116.3109