

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
February 22, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:00 p.m. on Monday, February 22, 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
Gina LaCascia, Committee Secretary

OTHERS PRESENT:

Mackenzie Warren, Business Law Section, State Bar of Nevada
Robert Kim, Chair, Executive Committee, Business Law Section, State Bar of Nevada
Albert Kovacs, Executive Committee, Business Law Section, State Bar of Nevada
Paul Moradkhan, Vegas Chamber
Aviva Gordon, Henderson Chamber of Commerce
Kim Perondi, Deputy of Commercial Recordings, Office of the Secretary of State

CHAIR SCHEIBLE:

Anyone intending to testify today may submit written comments. Each person will have two minutes to testify; you may also simply state you agree with a former testifier. When the hearings for the bills are concluded, there will be time

for public comment. To submit written testimony during or after the meeting, the email address is SenJUD@sen.state.nv.us.

Today's hearing on Senate Bill (S.B.) 95 is now open. This is a bill from Senator Ohrenschall and will be presented by Robert Kim, who is the Chair of the Executive Committee of the Business Law Section, State Bar of Nevada.

SENATE BILL 95: Revises provisions relating to business entities. (BDR 7-493)

SENATOR JAMES OHRENSCHALL (Senatorial District No. 21):

I would like to direct the Committees' attention to Proposed Amendment 3113 on S.B. 95 ([Exhibit B](#)). This was prepared by the Legal Counsel Bureau at my request.

This legislation clarifies many points and makes a positive change in Nevada law that affects business entities. [Exhibit B](#) represents discussions with different stakeholders and attempts to address any concerns to reach a compromise.

MACKENZIE WARREN (Business Law Section, State Bar of Nevada):

The Business Law Section is a group comprised of practitioners from every corner of the State who interface with these business statutes and encounter scenarios in their everyday law practice that lend themselves to suggested improvements being discussed with S.B. 95.

These concepts were highly vetted among this group and shared with the other sections of the State Bar of Nevada, and we sought out additional input as well.

The proposed revisions within S.B. 95 have been approved by the Board of Governors of the State Bar. This approval authorizes the Business Law Section Executive Committee to advocate for S.B. 95; but it does not represent the position of the Board of Governors, general membership of the State Bar or general membership of the Business Law Section.

Senate Bill 95 seeks to clarify and supplement primarily *Nevada Revised Statutes* (NRS) 78 and NRS 92A to preserve Nevada's status as having the most modern and innovative business entity laws in the Nation. These amendments provide additional flexibility for Nevada public companies as they navigate the current mostly virtual environment. The bill also adjusts default provisions of Nevada's limited liability company (LLC) statutes to give owners

and management additional clarity in the event the LLC's governing documents are silent or if the LLC has no operating agreement.

While Proposed Amendment 3113 is mostly technical, S.B. 95 does seek to keep Nevada aware of our present environment while keeping an eye to future needs of Nevada business entities.

ROBERT KIM (Chair, Executive Committee, Business Law Section, State Bar of Nevada):

Please refer to the Introductory Statement submitted to the Committee ([Exhibit C](#)).

As in past sessions, we consider input from our own practice, colleagues, peers and other respected business entities. We try to incorporate each view into Nevada's own business statutes—providing the citizens and those who avail themselves to Nevada laws with the most flexible and powerful statutes.

Regarding the term "publicly traded corporation," there is no intention of changing any definitions—only an attempt to allow for users of NRS 78 to easily locate the definition.

The original submission was to move the definition of "publicly traded corporations" from some of the antitakeover statutes embedded within NRS 78 forward because the definition was not limited to those sections. With new laws developing and publicly traded companies being more complex among all of us, it is appropriate to bring that definition forward to NRS 78.010.

In sections 3, 7 and 8, a cleanup regarding "Securities Exchange Act" deletes the words "of 1934." This is being brought forward as well.

Section 4 allows a corporation to include provisions in its bylaws for federal courts to hear matters arising from federal law. This is analogous to what was done during the Eightieth Session in 2019, where a corporation's bylaws included the ability to elect to have matters regarding "internal actions" to have venue for those reserved for state courts or other courts.

We are offering Proposed Amendment 3113 because courts now have been more decided in terms of allowing these types of provisions. This will offer publicly traded corporations the ability to designate the right venue if needed.

Section 5 concerns clarification of fiduciary duties. The feedback received over the years regarding this section is that since it is unique to have a multiconstituency type framework, it is important to inform users of this section that there is no need to be limited to the five factors in the traditional section.

Sections 6 through 14 provide clarity—especially since people are shifting from office meetings to virtual meetings.

Section 15 is meant to include a manager to be indemnified by the corporation. Proposed Amendment 3113 of the bill that Senator Ohrenschall has submitted expands on this section.

Section 16 is a technical amendment in which the Real Property Law Section asked our Business Law Section to outline the certification requirements, which will now be exempt under NRS 116 as detailed in [Exhibit C](#).

Sections 17 through 27 address LLCs and relate to the default rules with respect to how decisions and voting, among other things, are submitted or determined by members of the LLC.

It came to our attention that there were different ways in which the appropriate threshold was calculated, whether it be a member voting for something or an approval being submitted to the members, which were varying standards. Our Section decided to use the contribution standard. The intent here is to say that distributions, decision-making, other things that need member votes or member assessment, would be done based on each member's contributions to the capital of the LLC.

As Senator Pickard pointed out, the word "contribution" in NRS 86.321 has the potential for misinterpretation in that the contribution to capital by a member may be cash, property, services rendered, a promissory note or other binding obligation. The intent here is to have the same default rule with respect to all members of an LLC. This default rule is superseded by any agreement between the members.

Nothing here changes the members' ability or impedes the parties to adopt their own standards.

Sections 28 through 31 and section 37 relate to dissenter's rights and introduce an advance notice statement. This concept will be unique to Nevada in that the process of "advance notice" would allow a party to the transaction to assess the obligations or potential liabilities of the dissenter's rights, including an appraisal demand. This would be a benefit to those who use Nevada corporate law.

[Exhibit B](#) allows parties to approve business combinations that give rise to dissenter's rights but approve the action via written consent versus an actual formal meeting. The ability to obtain advance notice of stockholders who intend to dissent will have a greater amount of certainty versus having to wait to the end of a transaction only to find out that many more parties wish to exercise their dissenters' rights.

Sections 32 and 35 are more of a cleanup amendment and define the term of the use of domestic corporations and publicly traded corporations as it relates to dissenter's rights.

Sections 33 and 34 involve voting requirements for LLCs. This amendment introduces changes similar to the changes in NRS 86, having a standard based on contributions to capital. These changes are necessary for NRS 92A.150 where it relates to business combinations involving LLCs to use that same standard. References in the Proposed Amendment, [Exhibit B](#), include using an intra-standard based on the contribution of capital as a default voting standard.

There is a similar change in NRS 92A.140 relating to limited partnerships so that those entities will have the same default rule as to how voting will be determined in an LLC.

Section 36 clarifies the reference to "action" for dissenter's rights—the trigger for the notice to be given. The intent here is to use the proper date, which is not the written consent action but the date of the consummation of the business action.

Another item on Proposed Amendment 3113, page 22, section 14, subsection 5, relates to voting. Relating to NRS 78.630, we have inserted the phrase "at least" before the preceding 10 percent which is the minimum threshold of stockholder ownership needed to bring an action before the district court

regarding receivership. This is consistent with the amendments to sections 25 and 26 that also provide the reference of 10 percent as a threshold for members of an LLC to bring an action before the district court for receivership or other actions.

This concludes my formal comments, but I am happy to answer any questions.

CHAIR SCHEIBLE:

Senator Ohrenschall, is there somebody else here today to present the bill or should we move on to questions?

SENATOR OHRENSCHALL:

I believe Albert Kovacs has some comments as well.

ALBERT KOVACS (Executive Committee, Business Law Section, State Bar of Nevada):

I have nothing to add to what Mr. Kim just presented, but I am happy to assist in responding to any questions.

CHAIR SCHEIBLE:

That concludes the presentation on S.B. 95. Does the Committee have any questions?

SENATOR PICKARD:

With regard to section 1, I want to make sure that when we strike the words "true and attested," we are not requiring the court clerk to provide an attested copy but expect the serving party to provide a true and accurate copy of the document served so as to avoid any misinterpretation. Under statutory interpretation, when the Legislature strikes a word, knowing that it exists elsewhere in the statutory scheme, the intent is to delete the word from the requirement. Are you intending to strike the phrase "true copies"?

MR. KIM:

Yes. "True and attested" was removed because no one knew exactly what it meant. The intent is to provide "true and correct" copies by the serving party.

SENATOR PICKARD:

In looking at Proposed Amendment 3113, most of the definitions were returned to their original place in the statutory scheme other than the "publicly traded corporation." Is this because it applies in a broader category of cases and not just within the section it was placed before?

MR. KIM:

Yes. It is to make sure it has applicability throughout NRS 78 and not just within the subset of sections where it was previously located.

SENATOR PICKARD:

You changed the definition of "stockholder," dropping the word and adding 16 or 17 more words. Is there a rationale for expanding stockholder to more definitions? Is there a purpose for the lengthy description?

MR. KIM:

This is appropriate because there is a potential for someone to claim that distributions must be made to all stockholders instead of subsets, which other sections of NRS 78 clearly allow corporations to do.

A corporation has delineated those rights in the articles of incorporation—whether through designation or otherwise. It is more precise that NRS 78.191 acknowledges that distributions can be made to one or more classes of series of holders of capital stock because of that ability.

SENATOR PICKARD:

Is the intent not to change any underlining stockholder agreements because all the distributions will be set forth in the shareholder agreements? This would not displace any provisions of an existing stockholder agreement in the distributions but clarify the intent where those operating agreements may be silent as to how that happened—that this is focusing on those where distributions are appropriate. Is that correct?

MR. KIM:

Correct. We are not changing anything already being done or what people are expected to do with respect to distributions to different classes and series.

SENATOR PICKARD:

The definitions in sections 18, 22 and 25, particularly in section 18, do not reference NRS 86.321; although we have it on record that the intent is to include that definition. But the definition changed in section 22 is troubling because you are taking out the vesting language. We are talking about the majority in interest of managers, but it appears to be that where it is managed by the majority in interest, it does not reference a nonmanaging member who would also have a vested interest or the authority. Can you explain the intent of this section so we do not damage the vesting interests of nonmanaging members?

MR. KIM:

As it relates to NRS 86.291, section 22, there was no intention to make amendments to this section. In light of the global concepts we have introduced, being the terms of interest and other similar concepts, these revisions were made to recognize how management would be done on a default rule basis—by a majority of the members of interest.

SENATOR PICKARD:

This is particularly where we are striking in proportion to member's contribution to its capital, which is almost contradicting what we did before. It is important we are clear that we do not intend to change the vesting of authority in members versus managers.

SENATOR HANSEN:

In the Business Law Section that you represent, how many people are on the Executive Committee that assisted in drafting the seven-page Introductory Statement and Memorandum?

MR. KIM:

The Executive Committee consists of 10 to 15 persons and has 13 currently. All members are from firms small and large, north and south, east and west—whoever has an interest in assisting and having direct input in crafting Nevada's laws.

CHAIR SCHEIBLE:

If we do not have other questions from the Committee, we can move on to testimony in support of S.B. 95.

Senate Committee on Judiciary
February 22, 2021
Page 9

PAUL MORADKHAN (Vegas Chamber):

We support S.B. 95. It is a cleanup bill that will help Nevada stay competitive with the State of Delaware.

AVIVA GORDON (Henderson Chamber of Commerce):

The Chamber has a limited opposition to S.B. 95. The Chamber continues to have concerns with section 18 and has submitted its opposition statement to the Committee ([Exhibit D](#)).

KIM PERONDI (Deputy of Commercial Recordings, Office of the Secretary of State):

The Secretary of State has no concerns, nor anticipates any fiscal impact and is neutral to S.B. 95.

Remainder of page intentionally left blank; signature page to follow.

Senate Committee on Judiciary
February 22, 2021
Page 10

CHAIR SCHEIBLE:

That now concludes the hearing on S.B. 95. The meeting is now adjourned at 1:46 p.m.

RESPECTFULLY SUBMITTED:

Gina LaCascia,
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. 95	B	1	Senator James Ohrenschall	Proposed Amendment
S.B. 95	C	1	Robert Kim/Business Law Section, State Bar of Nevada	Introductory Statement
S.B. 95	D	1	Aviva Gordon/Henderson Chamber of Commerce	Statement in Opposition