# MINUTES OF THE
# SENATE COMMITTEE ON JUDICIARY

## Seventy-fifth Session
## March 26, 2009

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:43 a.m. on Thursday, March 26, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

**STAFF MEMBERS PRESENT:**

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

**OTHERS PRESENT:**

John P. Rutledge, Real Property Section, State Bar of Nevada
Bill Uffelman, President, Nevada Bankers Association
Scott Scherer, Nevada Registered Agent Association
Derek Rowley, President, Nevada Registered Agent Association
Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Keith G. Munro, Assistant Attorney General, Office of the Attorney General
Allen Lichtenstein, American Civil Liberties Union of Nevada
Cecilia G. Colling, Chief of Staff, Office of the State Treasurer

Robert Krenkowitz, Office of the State Treasurer
Michael G. Alonso, International Game Technology

CHAIR CARE:
We will open the meeting. We do have a work session today. Please recall our discussion about Senate Bill (S.B.) 262 dealing with medical marijuana.

**SENATE BILL 262:** Prescribes penalties for the cultivation of marijuana in greater amounts than is allowable for medical use. (BDR 40-1107)

Senate Bill 262 originally went to the Committee on Health and Education; it has been rereferred to Judiciary. It will appear on Monday's revised agenda.

We have had 67 bills referred to this Committee. We have 19 bills remaining. Prior to today, we have heard 45 bills.

Let us open the meeting on Senate Bill 333.

**SENATE BILL 333**: Makes various changes relating to real property. (BDR 9-865)

JOHN P. RUTLEDGE (Real Property Section, State Bar of Nevada):
I am here for the Real Property Section's Subcommittee on Real Estate Finance. I will read my prepared testimony (Exhibit C).

CHAIR CARE:
Hypothetically, if we do not pass this bill, what could happen that would be of consequence to the lender?

MR. RUTLEDGE:
The statute provides more clarity and notice to both parties of the transaction. Lenders are concerned a notice of termination will slip by one of their entry-level loan administrators. Thereby, future advances they make on a line of credit would be entirely unsecured. This affects the transparency and predictability of the transaction. The proposed amendments, while technical in nature, have the substantive effect of increasing the clarity with which both parties to the lending transaction can participate.

CHAIR CARE:
I think this is the last bill from the Real Property Section that was put together during the interim.

BILL UFFELMAN (President, Nevada Bankers Association):
The bankers support S.B. 333.

CHAIR CARE:
We will close the hearing on S.B. 333.

SENATOR AMODEI MOVED TO DO PASS S.B. 333.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will open the hearing on S.B. 334.

**SENATE BILL 334**: Eliminates the formation of new corporations sole. (BDR 7-1004)

SCOTT SCHERER (Nevada Registered Agent Association):
I want to give you a brief overview. This bill bans the creation of new corporations sole after July 1. Corporation sole is not an issue that comes up often. Under Nevada Revised Statute (NRS) 84.020, a corporation sole may be formed by an archbishop, bishop, president, trustee and trust, president of state, president of a congregation, overseer, presiding elder, district superintendent, other presiding officer or clergyman of a church or a religious society or denomination. The original intent of a corporation sole was to be a religious society or church. Over the years, people have created what they call churches or religious societies to create corporation sole. Those corporations sole have been promoted in a way to avoid taxes, maintain privacy and avoid any kind of government registration or regulation over affairs.

Corporations sole were created originally under canon law, and a charter was granted by the pope for a corporation sole. When the Church of England split

away from the Roman Catholic Church, they were then governed by the common law. The Church of England continued to allow vicars and others to create corporations sole. The idea was to have one person as head of the church who could maintain all the property belonging to the church. The property would pass to his successor as the head of the church, not to his personal heirs. The church would not be liable for the personal debts of the head of the church, and he would not be personally liable for the debts of the church. That was the original intent.

In most states, we now have statutory requirements for corporations, including corporations sole. This is the case in Nevada. The statutory requirements preempt the common law. This history has created the basis for many of the false claims made about corporations sole. Many of the promoters claim that you can create a corporation sole, and you do not have to register with the Internal Revenue Service (IRS) in order to be a nonprofit organization. If you are a legitimate church, you have an automatic exemption from taxes. If you are not a legitimate church, you are not exempt from taxes. Some claims state that a church entity is created under spiritual law and not under temporal law; therefore, you are not subject to the temporal laws of the state. There are promoters who charge from $1,100 up to $10,000 to create a corporation sole.

In recent years, the federal government has taken more of an interest in these entities. The federal government is concerned about money laundering, terrorist financing and the scams perpetrated on people who buy these entities. These people think they are going to be tax-exempt, but they are not because they are not a legitimate church.

I have a packet of information for you (Exhibit D, original is on file in the Research Library). The first item is a press release from the Secretary of State from the State of Washington. The Washington Legislature is hearing a bill which will ban the creation of all new corporations sole after August 1. The second item is an IRS news release concerning the scams that have been perpetrated. The third item is a revenue ruling regarding the actual tax status of corporation sole. The fourth document shows a Website and the claims being made about corporations sole. The last item, an article titled “Corporation sole, freedom or a ticket to jail?”, discusses corporations sole and the scams being perpetrated.

I would like to turn the testimony over to Derek Rowley. Mr. Rowley has been more involved with the federal government and the IRS on these issues and can give you their concerns with regard to corporations sole and why we think they are giving Nevada a black eye.

DEREK ROWLEY (President, Nevada Registered Agent Association):
The Nevada Registered Agent Association is all about promoting Nevada as a place to file business entities. A bill that would eliminate the filing of some entity may seem a little counterintuitive. For our Association, S.B. 334 is about protecting Nevada's reputation as a favorable jurisdiction to attract legitimate business filings.

The Legislature, our Association and the Office of the Secretary of State have done much in recent years to provide unique benefits to Nevada's incorporation laws, making us a premier jurisdiction to attract legitimate businesses from across the country. Those filings generate significant fund revenue for the State without any significant associated costs. In our effort to make Nevada a recognized and preferred jurisdiction for legitimate small business filings, it becomes increasingly important for us to address this issue of corporation sole. Corporation sole has a negative impact on the reputation of Nevada as a haven for legitimate business.

It contributes to a stigma and a perception that Nevada is a haven for noncompliance for abusive practices or scams.

In 2004, the IRS first issued the revenue ruling about abusive practices related to corporations sole. This ruling can be found on pages 5 through 8 of Exhibit D. There are 15 states that offer corporation sole statutes; there used to be more. In recent years, several states are getting away from the corporation sole statute. Those legitimate organizations, that might otherwise consider organizing as a corporation sole, have other nonprofit forms under which they are commonly organized today. The corporation sole is becoming a less frequent choice of entity for legitimate new churches.

In 2004, corporations sole first appeared on the IRS "Dirty Dozen" list of abusive practices. This list, published every year, targets the top objectives for the IRS in addressing abuse and noncompliance. In 2006, the IRS started a series of promoter investigations among registered agents in the State of Nevada who represented corporations sole. A corporation sole is required to be

filed with the State. The Office of the Secretary of State accepts those filings which are required to have a registered agent. Those agents who found they represented corporations sole received document request letters and subpoenas from the IRS under promoter investigations that have cast a negative light on our industry and the State of Nevada. We would like to clean this up.

In 2006, the United States Senate Committee on Homeland Security and Governmental Affairs, their permanent subcommittee on investigations, held hearings in which Nevada was singled out and targeted as a state that promotes some of these abusive practices, including corporations sole. In those hearings, K. Steven Burgess, the Director of Examination for the Small Business/Self-Employed Division of the IRS, testified that up to 90 percent of these types of entities have been found to be abusive. There are about 950 corporations sole in good standing in the State of Nevada. None of those in existence would be impacted by this bill. Senate Bill 334 would place a moratorium on the filing of new corporations sole to avoid promoting Nevada as a haven for future abuse.

The one recommendation we have for S.B. 334 would be amending the effective date to read, "upon passage and approval." This would help to eliminate a flood of filings coming in under that deadline.

CHAIR CARE:
The 950 corporations sole you are talking about have existence and perpetuity, but if they dissolve or the charter is revoked, then that is it?

MR. ROWLEY:
Correct.

SENATOR WIENER:
When did Nevada first add corporation sole to the statutory scheme?

MR. SCHERER:
They have been codified in the statutes since 1915.

SCOTT W. ANDERSON (Deputy for Commercial Recordings, Office of the Secretary of State):
The Secretary of State supports the effort to minimize the use of these Nevada entities for illegal purposes. In 2006, we participated in hearings in front of the United States Senate Permanent Subcommittee on Investigations. During those

hearings, the IRS and Department of Treasury reported on the abuses relating to corporation sole. The National Association of State Charity Officials has also reported similar abuses. If there are federal abuses, you can be assured that there are abuses on the state and local levels concerning nonpayment of taxes and required fees.

While S.B. 334 prohibits the creation of new entities, it will allow for those currently on file to remain as such. We do not have the authority to investigate these entities, and we do not have the authority to verify the validity of these corporations sole. Idaho and Utah have already abolished the corporations sole entity. North Carolina and Washington are both looking at the same issue.

We are in support of this measure. Senate Bill 334 allows Nevada to maintain its business-friendly environment, minimizing the potential for abuses and gaining a reputation as a possible scam haven versus a place to do business.

SENATOR WIENER:
There are about 900 or more corporations sole in Nevada?

MR. ANDERSON:
There are approximately 950 currently on file and in good standing with our office. We file 100 to 200 corporations sole a year.

SENATOR WIENER:
We also heard an estimate that 90 percent might be questionable.

MR. ANDERSON:
We have no idea as to the validity of that number. I have heard percentages ranging from 50 percent to 90 percent.

SENATOR WIENER:
You mentioned that other states have abolished the corporations sole. Were the existing corporations sole grandfathered in?

MR. ANDERSON:
I believe Idaho had a complete abolition. If I recall correctly, Utah passed a moratorium abolishing the creation of any new entity.

SENATOR WIENER:
The only way we would continue to have the 950 corporations sole is if they continue to pay their fees and play by the current rules. Once they are gone, they are gone. Is that correct?

MR. ANDERSON:
That is correct.

CHAIR CARE:
We will close the hearing on S.B. 334. There is a proposed amendment to make it effective upon passage and approval. Nobody testified against the bill.

> SENATOR WIENER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 334.
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> SENATOR AMODEI SECONDED THE MOTION.
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> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We will open up the work session and take the bills in the order they appear on the agenda. To the public, we do not normally take testimony during a work session. However, if we have questions of those who previously testified, we may consult with you during the course of the work session.

If you turn to your binders **(**Exhibit E, original is on file in the Research Library**)**, we will go ahead and take S.B. 82.

**SENATE BILL 82**: Makes various changes relating to technological crime. (BDR 14-266)

There is an 11-page mock-up contained in the binder. Turn to page 5 of Exhibit E. There is an amendment to section 1, subsection 2 proposed by the American Civil Liberties Union (ACLU) to permit government secrecy about seizure of electronic communications only in situations where a showing is made to a court that secrecy is warranted in an individual case. Are there any

comments on that section? May I poll the Committee as to agreement of the adaption of that amendment? No comments? We will come back to it.

Let us go to page 7 of Exhibit E. There is another amendment proposed by the ACLU to delete subsection 11 of section 1. This section permits 90-day extensions of secrecy orders. Are there any comments on this amendment?

We have more thoughts proposed on pages 8 through 12 and a deletion of sections 5 and 6 on page 13 of Exhibit E. We have had this bill for quite awhile; Today is the proper time to address S.B. 82. Page 5 of Exhibit E contains the amendment proposed by the ACLU to section 1, subsection 2. I am agreeable to this amendment. Are there any comments?

SENATOR COPENING:
Since we just received this binder this morning, I have not had a chance to look at all the amendments. It would be helpful for me to know if all the stakeholders are in agreement with these amendments, and if not, for what reason.

CHAIR CARE:
Okay, we can do that. Senator Copening asks if the parties have reached any agreement. Have there been any post-hearing discussions?

KEITH G. MUNRO (Assistant Attorney General, Office of the Attorney General):
There is an agreement that sections 2, 3 and 4 are fine, and section 5 should be deleted. Section 1 represents a difference of opinion.

CHAIR CARE:
There is agreement on which sections?

MR. MUNRO:
Sections 2, 3 and 4 are okay. We have agreed to delete sections 5 and 6.

ALLEN LICHTENSTEIN (American Civil Liberties Union of Nevada):
Since I was not personally involved in the discussions, I will accept that as the case.

CHAIR CARE:
We are in agreement on sections 2, 3 and 4 and the deletion of sections 5 and 6. Let us go back to section 1. As Mr. Munro said, there may be a difference of

opinion. I have given the Committee my thoughts on section 1, subsection 2. Let us focus on that first. I will welcome any discussion. Let me poll the Committee. As to the amendment offered by the ACLU regarding section 1, subsection 2, all those in favor of the amendment, let me know. This is not a formal vote; I need to know where the Committee stands.

SENATOR WASHINGTON:
Does this mean it requires a warrant?

CHAIR CARE:
Let us get an interpretation of the amendment from the Office of the Attorney General and the ACLU. What would the deletion and the additional language do?

MR. MUNRO:
The best explanation is on page 14 of Exhibit E in the section titled Text of Repealed Section. The Nevada Legislature has already decided as a matter of policy that law enforcement agencies can utilize a subpoena to get this type of information from Internet service providers. The federal government says we need to have more restrictive procedures. In section 1 of our bill, we have tried to put more restrictive procedures that comply with the requirement of the federal government. The ACLU wants to reject the policy this Legislature has established for a subpoena by wiping that out and putting in a search warrant. That is the proposed amendment by Lee Rowland of the ACLU.

CHAIR CARE:
Mr. Lichtenstein, do you want to offer your interpretation?

MR. LICHTENSTEIN:
The particular interpretation is not much different. We want to make certain there is oversight so there is not the kind of unbridled discretion that law enforcement might have to go after these particular things. In these circumstances, we are not talking about exigent situations where time is of the essence. The purpose of this is to provide court oversight by getting a warrant for this kind of search because the State of Nevada tends to look more towards protecting privacy rights than perhaps the federal government does in the USA Patriot Act. It is not a particular onerous requirement; it is a fairly easy requirement.

CHAIR CARE:
Does anybody else on the Committee need further explanation of section 1, subsection 2? Are you inclined to agree or disagree with the amendment offered by the ACLU?

SENATOR WASHINGTON:
I am fine with the existing language in the current bill.

CHAIR CARE:
Let us take a vote. The sentiment of the Committee is that this amendment would be rejected on a 5-2 vote.

The remaining issue on this bill that we have to deal with is section 1, subsection 13, paragraph (b), subparagraph (4) on page 8 of Exhibit E addressing the issue of law enforcement including school district law enforcement. Are there any thoughts from the Committee on this issue?

LINDA J. EISSMANN (Committee Policy Analyst):
Mr. Chair, when we considered this bill earlier, we had an amendment that included school district. There was concern that this was too broad, so it was refined to read school district law enforcement unit.

CHAIR CARE:
I need to know all those in favor of the inclusion of school district law enforcement unit as part of this bill. I am the only one opposed. The vote is 6 to 1. Committee, I would entertain a motion to amend and do pass. The amendment would be all of the existing language in the mock-up without the ACLU's amendment in subsection 2 of section 1. Sections 5 and 6 are out. I hope that is clear for the record.

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 82.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
Now let us go to S.B. 121.

**SENATE BILL 121**: Makes various changes concerning the sale of subdivided land in certain circumstances. (BDR 10-250)

CHAIR CARE:
Senator Washington, I think this is a bill you requested.

SENATOR WASHINGTON:
Mr. Darren Proulx, Chief Executive Officer of Land Resource Investments, Inc., and Gail Anderson, Administrator of the Real Estate Division, Department of Business and Industry, worked out the amendment, and both of them are in agreement with the amendment. It sets up an exemption for the sale of subdivided raw land with another state. I think both parties are happy, and we can pass this bill out of here.

CHAIR CARE:
Is there anything further to add?

MS. EISSMANN:
Mr. Chair, the amendment Senator Washington is referring to is the amendment from the Real Estate Division handed out by Ms. Anderson this morning (Exhibit F), not the amendment on pages 16 and 17 of Exhibit E.

SENATOR WASHINGTON:
That is correct.

CHAIR CARE:
We have a motion to amend and do pass. The amendment is the one handed out this morning, Exhibit F, from the office of Gail Anderson, Administrator of the Real Estate Division.

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 121.
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> SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
Let us move to S.B. 130.

**SENATE BILL 130**: Revises certain provisions governing certificates of permission to perform marriages. (BDR 11-468)

SENATOR AMODEI:
I spoke with Shirley Parraguirre and George Flint and looked at the e-mail sent to Senator Parks. I also looked at the notary suggestion from the ACLU and spoke with people from the Office of the Secretary of State. We have a mock-up of the amendment from the Office of the Secretary of State on pages 24 through 28 in Exhibit E. Some changes in the amendment where there is reference to one copy need to be stricken.

I was interested in the idea of including the secular information, but after talking to Ms. Parraguirre, who provided alternative language to making all notaries available, and together with Mr. Flint's input, the fear was there would be considerable room for unattended consequences, such as the YMCA and the Elks. We do not want to regulate these organizations. My recommendation is take the amendment from the Office of the Secretary of State, tune it up by getting rid of the one copy item in section 9, subsection 1, paragraph (d) on page 24 of Exhibit E and section 10, subsection 1, paragraph (c) on page 25 of Exhibit E. If they want, they can continue working on something secular that does not ipso facto create all notaries in the state the ability to perform marriages on something that does not bear reference to secular organizations. This could potentially put the Eagles Lodge, the Veterans of Foreign Wars and others in the marriage business, which is not the Committee's intent. Bring something narrower forward as the process continues.

For the purpose of processing S.B. 130 today, I agree with Ms. Parraguirre's suggestions in the bill and the Secretary of State's amendment. My recommendation is to amend and do pass the bill with the amendment from the Office of the Secretary of State.

CHAIR CARE:
For the record, it is only the amendment from the Office of the Secretary of State contained in the motion that you feel should be passed?

SENATOR AMODEI:
Correct. I should also indicate that after his discussions with Ms. Parraguirre, Mr. Flint has decided that his concerns are addressed the way the bill sits now. He has requested that consideration of his amendment be withdrawn.

CHAIR CARE:
He did. That is noted on page 21 of Exhibit E.

> SENATOR AMODEI MOVED TO AMEND AND DO PASS AS AMENDED S.B. 130, EXCLUSIVELY USING THE AMENDMENT FROM THE SECRETARY OF STATE.
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> SENATOR McGINNESS SECONDED THE MOTION.
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> THE MOTION CARRIED. (SENATOR CARE VOTED NO).

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CHAIR CARE:
I am going to look at the bill further. I am not going to commit as to how I will vote on the floor. I am opposed to the bill and will discuss my opposition with the sponsor.

Let us move to S.B. 167.

**SENATE BILL 167**: Makes various changes to provisions governing unclaimed property. (BDR 10-396)

CHAIR CARE:
I submitted the proposed language from International Game Technology (IGT) to the Chicago Office of the Uniform Law Commission. Their response memo is contained on pages 41 through 43 of Exhibit E. It addresses IGT's amendment section by section and gives the position of the Uniform Law Commission. This

is something you may want to consider. This morning, we received some deletions and additional language to the bill proposed by IGT (Exhibit G). Let me first hear from the Office of the Secretary of the State. Have you had an opportunity to review the language from IGT?

CECILIA G. COLLING (Chief of Staff, Office of the State Treasurer):
Yes, Mr. Chair. We received it this morning, and I have briefly reviewed it. We still have some concerns about the language in the bill. Some of the additions are contradictory. They present problems for us with auditing regarding third-party individuals, such as transfer agents. It presents problems for us with out-of-state audits; it tends to prohibit them. This language drives up the costs of audits unnecessarily. It looks like we would lose about $5 million annually through the remaining amendments. We have problems with the proposed amendment in terms of verifying information from the owners. There is some prohibitive language. We are not in agreement with the reduced audit period. If you would like specifics on that, I do have individuals here to talk about that with you.

CHAIR CARE:
This is complex, and I want the Committee to have a comfort level. Welcome back, Robert Krenkowitz. Please elaborate on your reaction to the most recent amendment from IGT, Exhibit G.

ROBERT KRENKOWITZ (Office of the State Treasurer):
I am an attorney in private practice in Tucson, Arizona. I have worked in the field of escheats and unclaimed property for over 34 years. I have been involved with the proceedings before the National Conference of Commissioners on Uniform State Laws which led to the adoption of the 1995 Act.

In new section 6 of Exhibit G, the addition of the materials, “error” and “mistakes,” would be an affirmative defense. These additions do not create any problems even though they are not in the Uniform Act. It is saying that once an audit has been conducted and if the holder has evidence of these mistakes, the holder has the obligation to come forward with that evidence. This happens ordinarily in the audit process. Before an audit finding is made, you present the findings to the holder. If the holder cannot show the check was canceled and a new one issued, it is then ordinarily removed because it is no longer unclaimed. In that situation, the burden is still on the holder and not on the State. I do not see that as a problem.

CHAIR CARE:
Which section was that?

MR. KRENKOWITZ:
It is Nevada Revised Statute 120A.550. The first material, error or mistake places the burden of proof upon the holder. If the holder can prove that, then the property is legitimately not unclaimed.

The next sentence in green in section 6 of Exhibit G talks about proof of an ongoing relationship. In the 1981 Act, the Uniform Law Commissioners had a similar provision in the banking and financial institution section where if a depositor had more than one account in the bank and there was activity in one account but not in the other, the inactive account was not deemed unclaimed property. This is much the same as what IGT is proposing. In 1995, the drafting committee deliberately took that provision out of the statute. According to the transcripts of the proceedings of the committee as a whole, they did so because they felt the purpose of unclaimed property was to give notice to every single kind of property. It benefits the owner because the owner must be told that the property is inactive, and they must do something with it. They extracted all of that. If the Committee were to adopt this new section 6, you would be going back one step.

The additional problem with the language is it talks about communications with the alleged owner. The alleged owner is not a term of art in unclaimed property. Alleged owner is not defined. An apparent owner is the person shown on the records who is entitled to the property. If the Committee were to utilize this new language, I would suggest deleting the use of the word alleged and use the word apparent.

Further, I would suggest if the Committee was of a mind to use this multiple account provision, the Committee look back to section 6 of the 1981 Act and adopt that process. The 1981 Act stated there has to be a specific communication in writing about the property. You cannot send a letter and say:

> Dear Sir, we don't think you owe anything. Do you agree? You want a letter that says, Dear Sir, My books and records show that I have an outstanding credit to you of $150 for which has been on my books for the last three years. Do we owe you this money?

That is the kind of affirmative response you would want. If the Committee was of a mind to do this, I suggest you pick up the language from section 6 of the 1981 Act.

The last sentence of section 6 of Exhibit G is problematic. It says that the administrator cannot require more proof of ownership than what the administrator required from the holder. The information that the administrator is extracting from the holder and the information that the administrator would want from an owner making claim are two entirely different things. In the holder situation, you are looking to see if a check or stock was issued or if a dividend was paid. Who was the last record owner? Has the three-, five- or seven-year abandonment period expired? Has there been due diligence in trying to communicate with the owner to prevent the presumption of abandonment from vesting?

CHAIR CARE:
I recall your testimony. This is a work session; it is not quite the same as a hearing on a bill. You are a resource for us at this point. Let me take you to section 7, subsection 2 of NRS 120A.680 of Exhibit G. This shortens the period of statute of limitations from ten to seven years.

MR. KRENKOWITZ:
The Uniform Law Commission used ten years, as indicated in Legislative Counsel's communication, because the IRS revision is the same amount. It can be reduced to seven years because it only operates in that situation where the holder has specifically identified the property in a report that has been filed or in some communication. By specifically identifying, you just do not say, "I am holding stock, and I am not going to give it to you." You have to say, "I am holding so many shares in the name of such and such who last was known to reside at such and such an address."

Once you have that kind of specific reporting, the State has an obligation over a period of seven years to address that issue. If the holder has never reported the property or if the holder had 100,000 shares and only talked about 1,000 shares, then there are no limitation periods. This is the point the Uniform Law Commissioner has made. Where there is a failure to identify and produce information, the holder should not expect any protection from the statute of limitations because it is being used as a sword rather than a shield against stale claims.

CHAIR CARE:
I show some additional language concerning examinations conducted within the State of Nevada in section 8, subsection 2 of Exhibit G. Do you see that?

MR. KRENKOWITZ:
The problem with section 8, subsection 2 is that it ties into section 9, subsection 1 of NRS 120A.720. This requires any intergovernmental interstate audits to be conducted pursuant to the requirements of NRS 120A.690. The requirements of NRS 120A.690 bring you back to having a qualified accountant licensed in Nevada. When conducting multistate examinations, the probability is that few may be done in Nevada. Many will be done in some other location. For example, if an examination is being conducted of a rebate for a house in Florida, these two sections state that you must have a Nevada-certified accountant conduct the examination, but the accountant cannot go to Florida where the records are located. Those records have to somehow get back to Nevada, and that will never happen.

CHAIR CARE:
I gather you see all the deletions that follow in the subsequent sections, so there is no point going into any of those. To summarize your testimony, the only thing you would reasonably agree to would be the language, "error or mistake (including but not limited to bookkeeping and administrative errors and mistakes)," in new section 6 of the bill, under NRS 120A.550.

MR. KRENKOWITZ:
Yes, sir.

MICHAEL G. ALONSO (International Game Technology):
I appreciate your follow-up with the Uniform Law Commission. We looked at the letter and had some conversations with the Office of the State Treasurer, but we did not get very far. I want to clarify in section 5 of Exhibit G, I am not deleting subsections 1 through 7 that is in current law, just subsection 8 which is the business-to-business exemption.

The Office of the State Treasurer had an issue with section 6 of NRS 120A.550. We would be happy to look at the 1981 Act on that language. I have no problem changing "alleged" to "apparent" if that would make the Office of the State Treasurer more comfortable.

In section 7 of NRS 120A.680, we took out all of the language the Uniform Law Commission objected to and changed the ten years to seven years. You still have a dormancy period to deal with, so it is really longer than that. In some cases, you are going to get ten years and the three-year dormancy period. With records retention policy, we are not violating anything with the seven years. We are just shortening the period and making it more manageable.

In new section 8 of NRS 120A.690, the Uniform Law Commission provides that these are not substantive changes. For in-state audits, we are trying to not use the contingent fee. We understand it is tougher to do on out-of-state audits if the State of Nevada is teaming up with other states to do the audits, so maybe the contingency fee makes sense. I do not have any problem in working out language that makes sense.

In the rest of the amendment, we took out the extrapolation in subsection 8 of new section 8, the appeal period and the rest of new section 10. Under the letter, as I read it, we are talking about what the Uniform Law Commission determines are nonsubstantive changes. They made this determination on the bill to begin with, without any of our amendments, so those are nonsubstantive.

SENATOR AMODEI:
I look at this in NRS 120A.690 and recall some of the testimony. When talking about examining records and auditing, I look at language in Exhibit G, section 8, subsection 2 that reads, ..."may examine the records of any person if the administrator has reason to believe that such person has failed to report property ... ." That standard is, as standards go, not a standard. I do not know what one of these audits entails, but audits in other contexts can be significant. We must include language that says we are going to pay the auditors hourly. It is no secret to anybody in the State that unclaimed property is now a big deal in terms of resources. For my purposes, for this section, I am okay with audits. They should not be conducted at whim; they should be regularly scheduled. The people who are conducting the audit should be paid what the audit is worth; it should not be a cut of the action.

SENATOR COPENING:
I agree with Senator Amodei.

SENATOR WASHINGTON:
I agree, too. You deleted the business-to-business relationship from your mock-up. Can you reiterate why you deleted that section?

MR. ALONSO:
We understand that maybe all of this was too much at this time. Senator Wiener expressed some concerns about the business-to-business relationship. To alleviate her concerns, we would have to do some major surgery to that section. The Uniform Law Commission discouraged that section as well, and I know that is important to Chair Care. We felt more comfortable creating a new section 6 with writing that would get us closer to the same place without the Committee having to swallow the whole business-to-business exemption.

CHAIR CARE:
The drafting committee for the various versions of the Uniform Act has had extensive discussions on this very subject. Property does go unclaimed, even when proper notices are sent out in an attempt to notify the true owner of the property. It can amount to a lot of money. I would like to move the bill today so I will entertain a motion of some sort.

SENATOR WIENER:
I heard Mr. Alonso say there was some difference of opinion. I know you want to move the bill, but there seems to be some conversation that Mr. Alonso invited to meet on some of the differences he offered. I would be willing to work on those differences. In recent years, for whatever reason, we have put a spotlight on this issue. Because of Mr. Alonso's willingness to address some of the concerns raised by the Office of the State Treasurer, let us take a few days to see if they can massage this a bit more to provide something cleaner.

SENATOR AMODEI:
I also want to do something with the Uniform Act. My comments should not be misconstrued as having a problem with doing something in the context of the Uniform Act. I share your desire to move the bill. I am not opposed to auditing people, but there needs to be a schedule of auditing. This current language strikes me as completely unfettered in any kind of notion of administrative due process or reasonable administrative discretion.

CHAIR CARE:
The language, as it exists, is uniform, and we adopted the revised act two years ago. Let us do this. We can make this a single bill on a work session early next week after we have hearings on bills. Correct? What do we have on Monday or Tuesday? How do those days look?

MS. EISSMANN:
We will have three bills on both of those days as soon as we get Senator Copening's bill referral today on the floor. We could do it, depending on the amount of discussion.

CHAIR CARE:
Let us set it for Tuesday. We will not be taking any testimony. Bring your ideas to the Committee, and if there is something you have in writing, give that to Ms. Eissmann for distribution. I do not see any further reason to have any more testimony. We will close the hearing on S.B. 167.

We will now move to S.B. 169.

**SENATE BILL 169**: Enacts the Revised Uniform Unincorporated Nonprofit Association Act of 2008. (BDR 7-674)

SENATOR WIENER MOVED TO DO PASS S.B. 169.

SENATOR AMODEI SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
We now have S.B. 176.

**SENATE BILL 176**: Makes various changes relating to time shares. (BDR 10-692)

CHAIR CARE:
Karen Dennison is here. Does anyone need additional testimony from Ms. Dennison?

SENATOR WIENER:
Ms. Dennison came by my office and explained how the amendment in the mock-up on pages 54 and 55 of Exhibit E addresses a proportionate sharing of responsibility. I had some concerns about cost-sharing. If there were five tenants in a 50-unit building, those tenants would pay their accumulation of a 10-percent responsibility and the other 90 percent would be covered by the people responsible for the rest of the building. That addressed my concerns about cost-sharing.

CHAIR CARE:
What do we have, Ms. Eissmann?

MS. EISSMANN:
I will defer to Bradley Wilkinson since he did this mock-up. We are looking at the mock-up dated March 25, which was handed out separately today (Exhibit H).

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):
That is correct.

CHAIR CARE:
Does anybody have additional questions about this bill and this most recent mock-up? If not, the Chair will entertain a motion.

> SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED S.B. 176.
>
> SENATOR PARKS SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
Assembly Joint Resolution 3 of the 74th Session is all or nothing.

**ASSEMBLY JOINT RESOLUTION 3 OF THE 74TH SESSION**: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

I am unaware of any bills out there now that address eminent domain. Senate Bill 245, introduced by Senator John J. Lee, has been assigned to the Senate Committee on Government Affairs.

**SENATE BILL 245**: Makes various changes relating to regional transportation commissions. (BDR 22-585)

The power of eminent domain is discussed in that bill. That would be subject to the provisions of the existing law which is the People's Initiative to Stop the Taking of Our Land (PISTOL) and then A.J.R. 3 of the 74th Session, were this to become law. Are there any comments from the Committee?

SENATOR WIENER MOVED TO DO PASS A.J.R. 3 OF THE 74TH SESSION.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR CARE:
I do want to say that we reviewed a legislative history of two years ago when Kermitt Waters explained there had been the deal described earlier by Senator Warren B. Hardy II and Assemblyman William Horne.

MS. EISSMANN:
I want to remind everyone that we are adding S.B. 262 to Monday's agenda.

CHAIR CARE:
Thank you, members of the Committee. We are adjourned at 9:57 a.m.

RESPECTFULLY SUBMITTED:

Janet Sherwood,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: