

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
April 15, 2011**

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 7:10 a.m. on Friday, April 15, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Orrin J. H. Johnson, Washoe County Public Defender's Office
Keith Lee, Lawyers Title Insurance Corporation; First American Title Company
Michael Buckley, Commission for Common-Interest Communities and
Condominium Hotels
Pamela Scott, Howard Hughes Corporation
Renny Ashleman, City of Henderson

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CHAIR WIENER:

We will begin this work session with Senate Bill (S.B.) 103. The State Gaming Control Board brought S.B. 218 as the regulatory agency bill. Senate Bill 103 was brought, and everything from S.B. 103 was moved into S.B. 218, which was passed out of this Committee. One portion of legislation was moved from S.B. 218 into S.B. 103 that dealt with the Live Entertainment Tax. That is what we have before us today.

[SENATE BILL 103](#): Authorizes a licensed interactive gaming service provider to perform certain actions on behalf of an establishment licensed to operate interactive gaming. (BDR 41-828)

[SENATE BILL 218](#): Revises provisions governing the regulation of gaming. (BDR 41-991)

LINDA J. EISSMANN (Policy Analyst):

The amendment you received this morning ([Exhibit C](#)) is identical to the amendment in the work session document ([Exhibit D](#)), pages 2 through 8.

CHAIR WIENER:

Senate Bill 103 clarifies the Live Entertainment Tax.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 103 AND REREFER TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR ROBERSON VOTED NO.)

CHAIR WIENER:

We will address S.B. 150, which deals with public storage facilities. I am concerned about protected property and how to ensure that property is kept safe. This includes medical, insurance and financial records. People store their records in boxes, and we want to ensure those records are secure and treated with respect. This will be a model bill for the Country in terms of steps taken to hold people accountable for this important information. Bradley Wilkinson will go over the amendment.

SENATE BILL 150: Revises certain provisions governing liens of owners of facilities for storage. (BDR 9-907)

BRADLEY A. WILKINSON (Counsel):

The amendment changes the definition of "electronic mailing" in conjunction with the definition of "verified mail" ([Exhibit E](#)), page 3. To be an electronic mailing, there must be an electronic confirmation of receipt of the message. The reference to electronic mail is removed from the definition of "verified mail," which would include actual mailing for which evidence is provided, such as certified, return receipt requested or registered mail.

The next change relates to some of the definitions of "rental agreement" and "occupant," page 4, [Exhibit E](#). This conveys that the law will continue to apply. These rental agreements will apply to one space at a time rather than multiple spaces.

Section 14 contains changes to protected property, page 4, [Exhibit E](#). As part of the rental agreement when occupants store protected property, section 14 requires they clearly and prominently label that property as protected property. The general type of protected property must be identified, such as medical records or legal records, etc. If the occupant is subject to regulation by a licensing board—a doctor, for example—he or she is required to provide the licensing board with written notice that protected property is being stored at the facility. The occupant must provide contact information for the facility and for a secondary contact.

Section 16, [Exhibit E](#), page 5, includes provisions relating to protected property and a specific priority for disposition when the owner of a storage facility finds protected property. It provides the owner can first contact the occupant and return the protected property to the occupant. If that does not work, the owner would try to return the property to the secondary contact listed in the rental agreement. If that fails, the owner would contact the appropriate state or federal authorities, which might include a licensing board, and ascertain whether it will accept the protected property. If so, the owner would deliver the property to the authority. If those attempts fail, the owner would destroy the protected property in a manner that ensures it is completely destroyed and cannot be accessed by the public.

Section 19, [Exhibit E](#), page 7, relates to protected property and states that if protected property is found and subject to a sale, the person who purchased the property in good faith has a duty to return it to the occupant. If that fails, the purchaser would return the property to the owner of the facility who would dispose of it in the priority just discussed.

CHAIR WIENER:

By notifying a licensing board that protected property is stored at a facility, it is on notice that a license holder is possibly violating a requirement of licensure because he or she is not securing the documents of his or her clients or customers by being in arrears or abandoning the storage unit where protected documents are stored. We wanted to hold the occupant accountable because he or she is not being responsible for the records. We have done everything we can to protect records for people who do not know they are in jeopardy.

SENATOR GUSTAVSON:

I am concerned with section 14 of the bill where a person must disclose to the owner what he or she is storing or clearly mark the boxes as protected property. An occupant must clearly mark the boxes as containing medical, legal or financial records; pharmaceuticals; alcoholic beverages or firearms. I would not want to label my boxes with their contents. People break into storage units quite often, and this will make it easier for them to locate what they might steal. We should not be going in this direction. I cannot support the bill.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 150.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND
ROBERSON VOTED NO.)

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CHAIR WIENER:

We will address S.B. 283, which relates to postconviction petitions for habeas corpus where the petitioner has been sentenced to death.

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SENATE BILL 283: Revises provisions governing the appointment of counsel for a postconviction petition for habeas corpus in which the petitioner has been sentenced to death. (BDR 3-1059).

Ms. EISSMANN:

I have a work session document ([Exhibit F](#)). Two amendments were offered and are included in [Exhibit F](#). I have received nothing else.

SENATOR GUSTAVSON MOVED TO AMEND AND DO PASS AS AMENDED S.B. 283, INCLUDING AMENDMENT 6215.

SENATOR ROBERSON SECONDED THE MOTION.

CHAIR WIENER:

This will retain law stating there must be an appointment. However, it will include the education requirements.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 347. We have a conceptual amendment I worked on with the sponsor of the bill. This relates to allowing the Aging and Disability Services Division of the Department of Health and Human Services to use a subpoena to access financial records to determine whether it has probable cause to go after other information it needs. The sponsor agrees with this amendment.

SENATE BILL 347: Authorizes the issuance of a subpoena to compel the production of certain financial records as part of an investigation of the exploitation of an older person. (BDR 15-1075)

Ms. EISSMANN:

I have a work session document ([Exhibit G](#)).

SENATOR ROBERSON:

This bill is unconstitutional.

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MR. WILKINSON:

This amendment might eliminate concerns about constitutionality because there would be no administrative subpoenas. This person would be law enforcement and would have to seek a warrant with probable cause like any other law enforcement officer.

ORRIN J. H. JOHNSON (Washoe County Public Defender's Office):

When we talked with the people in the Aging and Disability Services Division who are trying to get this information, their problem was not that they did not want to get a warrant. The problem was they could not get a warrant because no one in the office had the power to apply for it. There was an administrative hurdle to get to the judge. I wanted a magistrate to look at it before a search or seizure was conducted. This bill allows that to happen, and everyone is happy with that. We have no problem with the amendment.

CHAIR WIENER:

Does this amendment address everything you suggested?

MR. JOHNSON:

Yes.

SENATOR ROBERSON:

This amendment does require a warrant?

MR. JOHNSON:

Yes.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 347.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 356. I moved this bill forward to add the word "monetary." We have a work session document ([Exhibit H](#)).

[SENATE BILL 356](#): Establishes the crime of stolen valor. (BDR 15-999)

SENATOR COPENING MOVED TO AMEND AND DO PASS AS AMENDED
[S.B. 356](#).

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

CHAIR WIENER:

We will address [S.B. 174](#). We received a mock-up of what we have discussed and paperwork we received ([Exhibit I](#)), and we have a work session document ([Exhibit J](#)).

[SENATE BILL 174](#): Revises provisions relating to common-interest communities.
(BDR 10-105)

SENATOR COPENING:

I want to bring your attention to page 25 of [Exhibit I](#). I worked with people for many hours going over this bill to ensure there were no misunderstandings about what the bill does. One of the comments was to make sure we included an amount in the collections portion. The cap of \$1,950 appears on page 25 of [Exhibit I](#), line 16, which is the wrong place. This was added to mirror what the Commission on Common-Interest Communities and Condominium Hotels adopted to cap the collection fees. It should be on page 26 of [Exhibit I](#) at line 4 in the subsection relating to collection costs, which says this is the maximum that can be collected. Other than that, we reviewed all these things.

CHAIR WIENER:

I sent a letter to Michael Buckley and met with the Chair of the Legislative Commission regarding my concerns about this issue. In my letter, I requested to start at the difference between the measures we considered, which would be \$1,500. My intention was to make it lower. I have received a response from Mr. Buckley that will be presented for consideration.

SENATOR KIHUEN:

For the record, under this bill the fees cannot exceed \$1,950. We will not have bills of \$40,000 and \$50,000 for late charges, etc. I want to confirm costs will not exceed \$1,950. I would prefer a lower amount, but inserting a cap solves the problem for now because there is no cap.

SENATOR COPENING:

These are the costs a collection company can charge. A homeowners' association (HOA) can retain an attorney to foreclose on a home, for example, and it is part of the superpriority lien. We are not changing law. However, a board of directors of an association can charge whatever they want for attorney fees. Therefore, we included "reasonable" attorney fees. "Reasonable" is defined in statute. The court goes by a median price for attorney's fees, depending on the kind of work the attorney is doing. We wanted to make sure we included the word "reasonable."

SENATOR KIHUEN:

Aside from reasonable attorney fees, will \$1,950 be the absolute cap on any other fees?

SENATOR COPENING:

I believe so, but I am not an expert in this area.

KEITH LEE (Lawyers Title Insurance Corporation; First American Title Company):

When a decision is made to issue a notice of default and go forward with a sale, *Nevada Revised Statute* (NRS) 116 requires notice be given to everyone in the chain of title and everyone who has requested special notice of any proceeding against that particular title. We issue a trustee sale guarantee (TSG) that ranges in fees from \$290 to \$400, depending upon several factors. My understanding was we would be carved out of this cap. In reviewing this, I am not sure we are carved out.

In direct answer to Senator Kihuen's question, the intent was the fee would be capped at \$1,950, but the TSG and other items necessary to ensure clear title would be in addition to that. That is what the regulation says. The title fees are capped by the rate schedule filed with the Division of Insurance, Department of Business and Industry.

That would be additional cost if we go forward with the intent during our negotiations and the pending regulation.

SENATOR KIHUEN:

Aside from the \$1,950, there would be these additional charges you are discussing, the \$290 to \$400?

MR. LEE:

Yes. That was the understanding. I do not know if that is still the intent because I do not see that carveout in this mock-up.

MR. WILKINSON:

I was trying to ascertain exactly what the intent was. We are talking specifically about the items included in the superpriority lien, not necessarily the cap on fees set forth in NRS 116.310313. Presumably, those could be different. I have not studied this language carefully enough to determine that. We can do whatever the Committee desires. We can draft this in a manner that would include those costs or not include them.

SENATOR KIHUEN:

I would prefer we cap it at \$1,950 with all the fees included. This has been my concern. People are struggling, and these management and collection companies have been abusing people. I want to make sure there is an absolute cap aside from the reasonable attorney fees.

SENATOR COPENING:

Our intent was to mirror the Commission's regulations. The Commission's regulations say collection fees are capped at \$1,950. Those are the fees a collection company can charge. The foreclosure process includes other fees, such as title company fees, the collection company is not privy to. Those are costs of doing business the HOA must pay if it is going through the title process. The money does not go into the pockets of the collection companies. I realize now by including what we did in this bill, we are creating an unintended consequence because NRS 116.310313 is the regulation. We thought by making it well known that we did not want collection companies getting more than \$1,950, we may be doing the wrong thing regarding other charges that may come with a foreclosure.

If we can pass this, we will fix it on the Senate Floor with whatever you need, Senator Kihuen, to make sure we know collection costs are capped. Anything a collection company can get is capped at \$1,950.

MR. LEE:

If it is any solace to you, the way the regulation is written and everyone involved in the collection process agreed, the title company charges—\$290 to \$350—are absolute charges. No surcharge can be placed on that. Neither the collection agency nor the HOA can bump that amount so as to realize something. The HOA or debt collection agency could do a title search and come up with the names, but title searching is not easy. Title companies have been doing this for years and have a system that works. Most important, they give a guarantee, the TSG, that the information they have is correct. They insure that up to a certain amount, usually in the range of \$50,000. There is recourse if a mistake is made so there is no cloud on title. There is no risk that sometime down the road there might be a break in the chain of title causing difficulty with the way the title goes forward.

MR. WILKINSON:

This provision in [Exhibit I](#), page 25, line 10 refers to the "cost of collecting a past due obligation which are imposed pursuant to NRS 116.310313." *Nevada Revised Statute* 116.310313 states:

"Costs of collecting" includes any fee, charge or cost, by whatever name, including, without limitation, any collection fee, filing fee, recording fee, fee related to the preparation, recording or delivery of a lien or lien rescission, title search lien fee, bankruptcy search fee, referral fee, fee for postage or delivery and any other fee or cost that an association charges a unit's owner for the investigation, enforcement or collection of a past due obligation

This type of fee would be included in that definition and would therefore be included within the \$1,950 cap.

SENATOR ROBERSON:

It is unclear to me where this language should be. If we are being asked to vote on this now, it would help to see where the language should be.

I received an e-mail the day before yesterday regarding a friend who lives in Anthem. We have a serious problem with collection agencies. This person bought an existing home in Anthem nine years ago. The original owner lived in the home and had landscaping installed. When my friend moved in, he received a notice from the HOA requiring a landscaping plan. He said he did not have one because he bought an existing home with landscaping. He was assessed a fine of \$400. That is the only documentation he received from the HOA or management company for nine years. He went to pay off the loan on his home and received a letter from Associated Community Management wherein that \$400 is now \$27,827. This is a problem.

The proposed language does nothing to prevent this problem because it appears the \$1,950 cap does not include reasonable attorney fees. The word "reasonable" does not give me a lot of comfort. I do not see where management or collection companies would be prevented from continuing to charge large amounts of money for attorney's fees, whether they are attorneys or they hire an attorney. I do not see how this closes that hole allowing management and collection companies to charge outrageous fees.

I asked the other day if S.B. 195 was going to be heard for a vote. I was told no, we are not going to institute caps because the regulators are going to handle that. I am confused because we have a cap of sorts in S.B. 174. In this case, we are not waiting for the regulators to make this decision. I do not understand that.

SENATE BILL 195: Revises provisions relating to the costs of collecting past due financial obligations in common-interest communities. (BDR 10-832)

SENATOR COPENING:

You are right. We did say we were not going to do that. I am open to removing it. I was working with some of my colleagues who wanted that. We wanted to make sure it could not be raised, but our intent was to lower it. That was important to Senator Kihuen. We can take it out, but I do not want to do that without Senator Kihuen. That was where his comfort level was.

SENATOR ROBERSON:

The point is, we are not being consistent. When it comes to Senator Elizabeth Halseth's bill, we want to wait for the regulators to decide. When it comes to your bill, it is okay to put in the cap. I have a problem with this.

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SENATOR KIHUEN:

Page 26, lines 3 and 4 of the mock-up, [Exhibit I](#), say, "... any reasonable attorney's fees and other fees to cover the cost of collecting a past due obligation" If we were to put in this cap of \$1,950, would it cover those fees?

MR. WILKINSON:

As Senator Copening pointed out, that language would fit better on line 5, page 26 of [Exhibit I](#). If the cap was there, it would include attorney's fees and other fees to cover the cost of collecting. We would have to be careful of the wording and make it clear on the record. It refers specifically to NRS 116.310313. I would read those things together to mean everything authorized under NRS 116.310313 would be capped at \$1,950.

SENATOR KIHUEN:

That is my concern. We agreed on the reasonable attorney's fees. Many attorneys have abused the word "reasonable." I am not comfortable with the other fees. If the \$1,950 cap would cover these other fees, it would make me feel better. It would not please me 100 percent, but I just want to make sure the cap will cover those fees.

MR. WILKINSON:

It is important to make it clear on the record regarding the amount of the superpriority with respect to attorney's fees and all costs if the intent is to cap it at \$1,950. We can draft that in a manner to make it clear.

CHAIR WIENER:

Are the other fees concerning you because the bill says reasonable attorney's fees and other fees? It is the other fees you want addressed in the \$1,950?

SENATOR KIHUEN:

Yes.

CHAIR WIENER:

Reasonable attorney's fees would be separate?

SENATOR KIHUEN:

Other fees are not defined.

MICHAEL BUCKLEY (Commission for Common-Interest Communities and Condominium Hotels):

Mr. Wilkinson is clear that if the \$1,950 is moved to page 26 of [Exhibit I](#), it would be everything. It would include title costs, attorney's fees and everything within the \$1,950. It would be an absolute cap. That is not the same as the Commission. As Mr. Lee pointed out, the Commission distinguished between out-of-pocket amounts—the recorder's fees, title fees, etc. We included those as separate costs because of the concern that anything not recovered comes back to the other owners who are paying their dues and would be picking up the slack for those who are delinquent.

SENATOR COPENING:

We have established we are okay with keeping the reasonable attorney's fees separate. We are concerned about the other fees that are undefined. Since we know the other fees could be passed along to all the homeowners, what are they?

PAMELA SCOTT (Howard Hughes Corporation):

The other fees were probably included to address the \$200 that can go to a management company for preparing a file to turn over to collection. That would come under the \$1,950. I understand Mr. Lee's concerns, and the associations should have the same concerns because it does cost to record and send registered mail. That is a hard cost. It does not go to the collection company. The association will have to eat that cost if it is included in the \$1,950.

SENATOR ROBERSON:

Mr. Buckley is under the impression the \$1,950 would include reasonable attorney's fees, or it would include attorney's fees generally. Senator Copenig is saying it would not; that would be outside of the \$1,950. We are not all comfortable with that. We need to get a handle on who is correct in the interpretation of this amendment.

CHAIR WIENER:

That is what we are deciding. They will take their lead from whatever we decide to include in this amount. Based on the conversation we just had regarding Senator Kihuen's concern about other add-on fees, reasonable attorney's fees would be outside that. As we discussed in Committee, the word "reasonable" is not addressed. That is where some of the egregious charges come from. There are legal standards for "reasonable." Courts have evaluated what "reasonable"

should be. We added "reasonable," which we have not had before. Is your concern the hard cap of collection and other fees and "reasonable" attorney's fees being outside the cap?

SENATOR KIHUEN:

Yes. Ideally, I would want to cap 100 percent of everything, but I understand a definition for "reasonable" attorney's fees is in statute. I am not happy with the \$1,950. I would prefer a lower amount. Some fees in the regulation—\$150 for a lien letter and \$400 for a notice of default—could be lower. There is no cap now. I would rather have something than nothing in this bill.

SENATOR ROBERSON:

I hear the argument that if these fees are charged and a collection company is not able to collect on them, all the other homeowners who are paying their dues would have to absorb those costs. That misses the point. We should be looking at the HOA management companies and boards. The boards have a fiduciary duty to the residents of their communities. They need to do a better job in negotiating agreements with collection companies so the law-abiding homeowners are not stuck with the bill. We are looking at the wrong issue when we say bills like this will protect the homeowners who pay their dues. That makes no sense.

A judge will decide whether attorney's fees are reasonable. If a homeowner gets stuck with a \$27,000 lien, does he or she have to hire an attorney and go to court to argue with the collection company over whether its attorney's fees are reasonable? For practical purposes, how often will a homeowner be able to do that? Will the homeowner have to take it because he or she does not have the money to argue their position in court? I can assure you, the collection company attorneys have the money. They can tie this up in court forever. It is more and more put on the backs of homeowners. The word "reasonable" attorney's fees does not give me a lot of comfort because the homeowners will ultimately have to fight that in court.

The superpriority question seems to be the big issue. It is being proposed we codify that the fees, potentially the attorney's fees, have a superpriority lien. It is my understanding this issue is being debated in the courts. I am concerned because the collection companies want this bill. I would like Chris Ferrari's comments about this new language we have just seen.

CHAIR WIENER:

We have had debate on this issue. This is probably the only new language putting in a cap, and there are often caps in statute. I do not want to rehear a bill. We need to move forward. We have had two days of hearings on this and a day of hearing on each other bill.

SENATOR ROBERSON:

Senator Copening, how do you see this working if a homeowner gets a bill for \$27,000 or \$2,700, and it includes attorney's fees? How is that homeowner supposed to dispute whether those attorney's fees are reasonable? Must they hire an attorney and spend more in legal fees to argue with other attorneys about whether those attorney's fees are reasonable?

SENATOR COPENING:

We wanted to make sure the word "reasonable" was included regarding attorney's fees so HOAs, boards and management companies could not go crazy with attorney's fees. Including "reasonable" attorney's fees is a protection for homeowners.

The Commission adopted caps that must be approved by the Legislative Commission. Those caps will preclude costs of collection from being more than \$1,950. Our Chair sent a letter to the Commission saying this Committee is not satisfied with that and would like a lower cap. I expect the Chair of the Commission will take that into consideration and probably hold additional hearings. *Nevada Revised Statute* 116 allows aggrieved homeowners to go before the Commission, and it includes many steps—mediation and arbitration—at no or very low cost. We are trying to include these caps so egregious fees do not occur.

Originally in this bill, we struck the first section. The first section included an extra step of due process by allowing a homeowner to appeal to the Commission if he or she received an unfavorable ruling from the Ombudsman's Office. We received approximately 15 e-mails from people who did not like section 1. We tried to do what the homeowners wanted, and we struck section 1. Administrator Gail J. Anderson from the Real Estate Division created a bill allowing that extra due process because it is good for homeowners. Attorney's fees are part of the superpriority. People do not like it, and it is being disputed in court.

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SENATOR ROBERSON:

Where are attorney's fees already part of the superpriority in this statute?

SENATOR COPENING:

It is not in my bill. It is already in the law.

SENATOR ROBERSON:

Where, other than new language, does it say attorney's fees?

MR. BUCKLEY:

There is a decision in the Eighth Judicial District Court that attorney's fees and collection costs are part of the superpriority. There are a number of lawsuits dealing with this issue. There are decisions on both sides. It will not be settled until the Nevada Supreme Court makes a decision or this legislation addresses it. We are only talking about the superpriority. In cases of a delinquency, the association will most likely be paid when the lender forecloses. Senator Roberson's issue of the fine is not addressed in this bill; it is a separate issue. It cannot be foreclosed. It is a lien but cannot be foreclosed.

To put this into context, S.B. 254, which would create mediation at a reduced cost and speedy arbitration, would create a forum where people could use the Real Estate Division or speedy arbitration to resolve an issue on attorney's fees. But remember, fines cannot be imposed unless a hearing is held with due process. If there was not a hearing, a fine would not be right. This bill only deals with the superpriority amount, and it would include everything capped at \$1,950.

SENATOR ROBERSON:

This is about superpriority. Attorney's fees are not included in superpriority in statute. As Mr. Buckley pointed out, this issue is being litigated in the courts. What we are doing today is fundamentally changing statutory law to allow attorney's fees in the superpriority lien. For those of you on this Committee who are concerned about homeowners being stuck with attorney's fees in the superpriority, this does not help. This statutorily blows a hole wide open to allow attorney's fees whether reasonable or not. We can debate that. But for the first time, we are allowing attorney's fees to be included in the superpriority lien by statute. That is my problem with this bill.

SENATOR COPENING:

It is law that they are awarded. I will point to the e-mail sent about Paradise Spa in Senator Roberson and Senator Breeden's district. The HOA was raided. An investor bought the majority of the units. He foreclosed on them. He stopped paying his assessments before foreclosing approximately two years ago. Paradise Spa, which is mostly senior citizens, is nearly broke. On April 18, the gas, which is on one meter owned by this investor, will be shut off. The residents got an extension. It was supposed to be shut off on April 8 in 261 units where mostly senior citizens live.

I have stayed on top of this to ensure these senior citizens are not out on the street. The unpaid assessments are nearly \$1 million. This facility has gone downhill. In a few days, the gas will be turned off. I do not know when these people will be evicted. They have accumulated significant fees. They are chasing past due amounts of nearly \$1 million, and their collection costs are way beyond \$1,950. They had to enlist the help of an attorney to get this investor out of their unit. He has been arrested. These people do not have the money to come up with \$1 million and pay the gas bill of \$41,000. The gas will be turned off unless people help them. If you take this away, they are done. These are your constituents, Senator Roberson.

SENATOR ROBERSON:

That is a complete red herring. There is allegedly criminal activity going on. We do not need this statute to deal with that. I do not see how this statute helps that situation. They are my constituents, but that is a false argument.

RENNY ASHLEMAN (City of Henderson):

The mock-up includes language never discussed that is contrary to my agreement with the working committee. The working committee agreed to the language, "unless a person has accepted the responsibility." On page 11 of [Exhibit I](#), section 6, subsection 1 says, "... unless a governmental entity has accepted responsibility" This is a concern to the City of Henderson. It should say "person" rather than "governmental entity." These walls are not on our property. They are not our responsibility. We were only interested in the issue because they were a safety concern on our right-of-way.

CHAIR WIENER:

That was agreed to.

MR. ASHLEMAN:

It was agreed to. The language in lines 24 through 27 on page 11 of [Exhibit I](#) was not agreed upon by anyone and does not appropriately describe the relationship between the people. There are thousands of these walls. You can imagine us having to accept or deny responsibility for interior walls. We did not build them. They are not on our property. We did not ask anyone to do anything about them. Please remove that language.

CHAIR WIENER:

You want the word "person" at line 14 on page 11 of [Exhibit I](#)?

MR. ASHLEMAN:

Yes. I do not want the new language on page 11 of [Exhibit I](#), lines 24 through 27.

MR. WILKINSON:

This is an important distinction, and it is a drafting issue. It needs to be clear. The term "person" as used in NRS does not include a governmental entity unless we specifically state that it does. If the desire is to exclude "governmental entity," the effect of using the term "person" would be to entirely exclude "governmental entities" unless we said "person," and then we further said as used in the statute that a "person" includes a "governmental entity."

CHAIR WIENER:

My understanding was that sometimes a municipality does need to get involved. Sometimes, it is the complex itself. I do not remember entirely excluding a municipality. It would be if it is appropriate to bring in the municipality; if it is appropriate, it is the complex. It was not just one or the other.

MR. ASHLEMAN:

I have no objection to using the word "person or other entity." Would that pick up the municipalities?

SENATOR COPENING:

You are right. This is wrong. We took all the amendments we went through the other day and asked our legal staff to include them in a mock-up. They misunderstood, and we got it this morning. I can see there are things missing in the portion saying, "not the responsibility of the unit owner." It is not in here.

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There are mistakes. I apologize. Did you review the amendments we went through?

MR. ASHLEMAN:
Yes.

SENATOR COPENING:
Were they good?

MR. ASHLEMAN:
I had agreed to the one Mr. Buckley presented.

SENATOR COPENING:
That is what was supposed to be in [Exhibit I](#). We will fix this section. If [Exhibit I](#) does not match up to the amendments we reviewed two days ago, we need to match them so we do not include something incorrect.

CHAIR WIENER:
In the work session, we went through item by item what the parties agreed to.

SENATOR MCGINNESS:
You recognize the problem, but everyone who has a part in this has not been able to come to the table. We got this amendment this morning just like Mr. Ashleman. I am concerned we will try to fix it on the Senate Floor or fix it in the other House. That makes me nervous.

CHAIR WIENER:
I am ready for a motion on the bill with the amendments as we discussed in our work session document, [Exhibit J](#). We walked through each one two days ago with the addition of the cap. We need clarity on the \$1,950 cap on page 26 of [Exhibit I](#), "any reasonable attorney's fees" and capping all other fees at \$1,950. Is that the intention?

SENATOR BREEDEN:
There is nothing in statute; it is just status quo. We have heard from many constituents who have been affected by these escalated fees. We need a starting place to help our constituents. This is a good start.

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

SENATOR COPENING SECONDED THE MOTION.

SENATOR KIHUEN:

For the record, I will support this bill now because it puts a cap on the fees. I am not 100 percent comfortable with the cap, but it is better than the status quo. I reserve my right to change my vote on the floor. I want to consult further with my constituents who will be directly impacted by this bill before I vote on the Senate Floor.

SENATOR ROBERSON:

This is not a good start. It is a step backward because under the statute, there is no provision allowing attorney's fees to be included within the superpriority lien. Today, we are taking a step in the wrong direction by allowing attorney's fees, for the first time in statute, to be part of the superpriority lien.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

CHAIR WIENER:

We will address S.B. 185. We have a work session document ([Exhibit K](#)). I am requesting a one-week waiver.

SENATE BILL 185: Makes various changes relating to real property. (BDR 10-23)

SENATOR COPENING MOVED TO REQUEST A ONE-WEEK WAIVER FROM SENATE LEADERSHIP ON S.B. 185.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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CHAIR WIENER:

We will address S.B. 204. We have a work session document ([Exhibit L](#)). This bill enacts amendments to the Uniform Common-Interest Ownership Act. We have had other uniform acts before the Committee. We have not updated our uniform acts since 1991. Most of this bill consists of technical changes and updates to the Uniform Act.

SENATE BILL 204: Enacts certain amendments to the Uniform Common-Interest Ownership Act. (BDR 10-298)

MR. WILKINSON:

Most of the changes are technical in nature, and they are not substantive. They are changes in internal references and include drafting issues and minor changes the Uniform Law Commission made to the Uniform Act to update it.

CHAIR WIENER:

Has the 1991 law been worked on since then? We have not joined the other states?

MR. WILKINSON:

Some efforts were made last Session, in particular, to include some of the changes from the Uniform Act. This is the first time those things have been carefully looked at. The Uniform Law Commissioners approved the final version in 2008. This is the most comprehensive review of that.

MR. BUCKLEY:

Mr. Wilkinson is correct.

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 204.

SENATOR KIHUEN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND ROBERSON VOTED NO.)

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CHAIR WIENER:

We will address S.B. 254. We have a work session document ([Exhibit M](#)). This bill relates to alternative dispute resolution. You have a handwritten markup of the amendments, [Exhibit M](#), pages 4 through 30. We have a mock-up of the amendments to S.B. 254 ([Exhibit N](#)).

SENATE BILL 254: Revises provisions relating to common-interest communities.
(BDR 10-264)

SENATOR COPENING:

We went through the proposed amendments, and we put them into a mock-up version, [Exhibit N](#). Mr. Buckley and some not on the working group worked on these amendments.

MR. BUCKLEY:

We went through all the amendments included in [Exhibit N](#).

SENATOR BREEDEN MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 254 WITH AMENDMENT 6327.

SENATOR COPENING SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS GUSTAVSON, MCGINNESS AND
ROBERSON VOTED NO.)

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CHAIR WIENER:

Is there any public comment? There being nothing further to come before the Committee, we are adjourned at 8:33 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 103	C	Linda Eissmann	Proposed Amendment 6332 to SB 103
S.B. 103	D	Linda Eissmann	Work Session Document
S.B. 150	E	Bradley A. Wilkinson	Work Session Document
S.B. 283	F	Linda Eissmann	Work Session Document
S.B. 347	G	Linda Eissmann	Work Session Document
S.B. 356	H	Valerie Wiener	Work Session Document
S.B. 174	I	Senator Valerie Wiener	Proposed Amendment 6328
S.B. 174	J	Senator Valerie Wiener	Work Session Document
S.B. 185	K	Senator Valerie Wiener	Work Session Document
S.B. 204	L	Senator Valerie Wiener	Work Session Document
S.B. 254	M	Senator Valerie Wiener	Work Session Document
S.B. 254	N	Senator Valerie Wiener	Proposed Amendment 6327