MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION

Seventy-Ninth Session
May 11, 2017

The Committee on Taxation was called to order by Chair Dina Neal at 4:12 p.m. on Thursday, May 11, 2017, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/79th2017.

COMMITTEE MEMBERS PRESENT:

Assemblywoman Dina Neal, Chair
Assemblywoman Irene Bustamante Adams, Vice Chair
Assemblywoman Lesley E. Cohen
Assemblyman Edgar Flores
Assemblyman Al Kramer
Assemblyman Jim Marchant
Assemblywoman Ellen B. Spiegel

COMMITTEE MEMBERS ABSENT:

Assemblyman Paul Anderson (excused)
Assemblywoman Teresa Benitez-Thompson (excused)
Assemblyman Jason Frierson (excused)
Assemblyman Keith Pickard (excused)

GUEST LEGISLATORS PRESENT:

Senator Mark A. Manendo, Senate District No. 21

STAFF MEMBERS PRESENT:

Russell Guindon, Principal Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Gina Hall, Committee Secretary
Olivia Lloyd, Committee Assistant

OTHERS PRESENT:

Dawn Lietz, Administrator, Motor Carrier Division, Department of Motor Vehicles
Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada
Garrett D. Gordon, representing Community Association Institute
Edith González Duarte, representing Republic Services
Samuel P. McMullen, representing Nevada Bankers Association
Michael E. Buckley, Chair, Real Property Law Section, State Bar of Nevada

Chair Neal:
[Roll was taken and Committee rules and protocol were reviewed.] We have two bills today. I will open the hearing on Senate Bill 64.

Senate Bill 64: Revises provisions relating to the distribution of the proceeds of taxes on aviation fuel and fuel for jet or turbine-powered aircraft. (BDR 32-222)

Dawn Lietz, Administrator, Motor Carrier Division, Department of Motor Vehicles:
Senate Bill 64 revises provisions for the distribution of proceeds on aviation fuel and fuel for jet or turbine-powered aircraft. Current law requires the revenue from the taxation of aviation or fuel for jet or turbine-powered aircraft be distributed to the county in which the airport is located. Distribution of this tax to the county does not ensure the airport where the fuel is sold receives the proceeds of the tax as required by federal law.

Senate Bill 64 transfers the distribution of the tax from the county directly to the airport where the fuel is sold to ensure the funds are properly distributed when an airport is privately owned or may otherwise not be receiving its allocation from the county. Governmental entities operating the airport will continue to receive the allocations as they have always received them. Senate Bill 64 will only affect the distribution to those airports that are privately owned.

In November 2015, the Department of Motor Vehicles (DMV) received notice from the Federal Aviation Administration (FAA), giving the state until December 2017 to show that we are in compliance with the federal law (Exhibit C). Currently subsection 1, paragraph (c) of *Nevada Revised Statutes* (NRS) 365.545, transfers the allocation of the proceeds of the taxes on aviation and fuel for jet or turbine-powered aircraft—collected at a privately-owned airport—to the county where the airport is located. By correcting the distribution of funds for privately-owned airports to the airport itself, the State of Nevada is not responsible to show how the proceeds were spent by that airport, and the privately-owned airport will be responsible for proving compliance to the FAA for the expenditure of funds. I would be happy to answer any questions.

Assemblyman Kramer:
Does this mean a lessening of the amount of money that will go to the Civil Air Patrol? If so, has there been any talk about how to replace that money?

Dawn Lietz:
It will not affect the Civil Air Patrol at all. The money that is allocated to the Civil Air Patrol is specifically for the Civil Air Patrol and goes directly to them.

Assemblywoman Bustamante Adams:
How many privately-owned airports do we have in the state?

Dawn Lietz:
I would have to look at the list again. I do not know offhand. It is very small. I am aware of one in Elko County for sure. I would say it is fewer than ten we are going to have to do a change in distribution for. I can get back to you on that number if you would like.

Assemblywoman Bustamante Adams:
Yes, that would be helpful. For those individual entities that are privately owned, are they going to have to provide the information in order to be in compliance?

Dawn Lietz:
Yes, that is correct. The money will go directly to that local airport, and they will have to report to the FAA how they spent that money, as opposed to the county reporting how they spent it.

Assemblyman Marchant:
Will this bill help the local, private airports? Is it designed to get the tax money from the fuel to them?

Dawn Lietz:
The money is already going to the county, and the county is required to distribute it to the airport. With the distribution at the county level, it makes the counties responsible for how those local airports spend that money. The FAA requires the money go directly to the local airports, so they are the liable party. Nobody is really going to get any more money from it. Instead of it going through the hands of the county first, it will go directly to the local airports.

Assemblyman Marchant:
What is the reason for this bill? Who brought this bill forward?

Dawn Lietz:
The Department of Motor Vehicles brought this bill forward because we administer the distribution of the funds. The reason for it was a letter we received in November 2015 (Exhibit C). It basically indicated that states had until December 2017 to get that distribution corrected. To comply with that letter, we brought forward S.B. 64.

Chair Neal:
Are there any additional questions from the members? [There were none.] I will now take testimony from those speaking in support of S.B. 64. [There was no one.] I will now take testimony from those speaking in opposition to S.B. 64. [There was no one.] I will now take testimony from those who are neutral on S.B. 64. [There was no one.] Ms. Lietz, would you like to come back to the table for closing remarks?

Dawn Lietz:
I want to thank the Committee for your time today.

Chair Neal:
I will close the hearing on S.B. 64 and open the hearing on Senate Bill 281 (1st Reprint).

Senate Bill 281 (1st Reprint): Revises provisions relating to real property. (BDR 32-99)

Mike Randolph, Manager, Homeowner Association Services, Inc., Las Vegas, Nevada:
Thank you for the opportunity to bring this bill forward. I have spent the last 17 years managing a collection agency that assists homeowners' associations (HOAs) in recovering their delinquent accounts. I have also served on the board of my own HOA for 15 years.

The problem we are addressing today is that when a county forecloses and sells real property at tax auction, the HOA of that property has their lien and their collection process wiped out. They have to completely write off the account as a bad debt. That puts pressure on their budget, and the loss is then passed on to every other owner in the association in higher assessments—good people having to pay for the bad.

What this bill does is add a common-interest community—an HOA—to be able to file a claim for the excess proceeds that are received after a property is sold at auction for past due property taxes. Since properties sold at tax auction are sold free and clear of all liens and encumbrances, investors bid up the properties over what the county is owed. Those funds are referred to as "excess proceeds."

At the tax sale the county recovers all taxes, charges, and fees due, plus they get the first $300 and then 10 percent of the next $10,000 of the excess proceeds recovered. The remaining funds are then available to claims from nine specific classes of creditors. An HOA is a secured creditor of the property by virtue of their covenants, conditions, and restrictions (CC&Rs), and they must provide services and amenities to all properties in the association, whether the homeowner pays or not, which they are required to do. Under NRS 116.3116, subsection 1, it states, "The association has a lien . . . ." There is no question that they are a creditor against that property. They should likewise be added to the list in NRS 361.610, as their uncollected delinquency is wiped out by the tax sale with no other hope for recovery, even though they still must provide services and amenities. Presently, a defaulting owner is number one on the list and can file a claim for those funds; however, the association cannot, even though the owner still owes the money to the association.

This bill allows an association that has filed a notice of default against the property to be added to the list. This association must be actively pursuing their own collection of past due money, not just sitting and waiting to hit a jackpot if the county sells the property. At the present time, a property tax sale wipes out the association's lien. This bill just adds the association to the list of who can file a claim against those funds.

Prior to the tax sale, once a tax deed has been taken by the county against the property, the delinquent taxes must be paid in full prior to any other creditor exercising their right to foreclose. The association must redeem the property from the county before taking the property to foreclosure sale themselves. Associations normally cannot afford to do this in most cases and are fearful that the homeowner may file for bankruptcy between the time the association advances the tax money and the actual association's foreclosure sale. If bankruptcy happens, the association is then out that money advanced and has to hire a lawyer to try to get it back through the bankruptcy court, making the problem even worse.

An example of this problem occurred with that Winterwood Village Homeowners Association. It is a 214-unit mobile home community in Las Vegas. In December of 2014, a property was sold for delinquent taxes. The association filed a notice of default against the property, trying to collect $2,533.88 in past due charges, but they were unable to advance the $7,881.21 due in delinquent taxes against the property, so they could take the property to foreclosure sale themselves to recover their money, and the funds they would have advanced for the taxes to the county. This association's assessments are only $55 per month. After the sale of that property by the county to a third-party purchaser for $17,000, the association paid an attorney to file a claim against the excess proceeds, only to be denied, even though there was enough money to pay them from the excess proceeds. Under current law, they are not listed. The prior owner can file a claim, get the money, and the association gets stiffed. The association lost out on $2,500 plus attorney fees they paid on that unit.

I am aware of another property in a different association that owes the association over $3,000. That association could foreclose to recover those fees, but the association cannot afford to advance the $13,490 in delinquent taxes, so they could foreclose. If Clark County decides to take this property to tax sale at their next auction, this looks like another Winterwood-type case.

There are presently 32 properties with excess proceeds available listed on Clark County's website, representing over $715,000 of excess proceeds being held by the county from properties sold in May 2016. These have to be claimed by June 8, 2017, the expiration of the claim period. There are 17 properties that were just sold on May 4, 2017. There are currently 3,172 registered associations in Nevada, containing 526,585 residential units, according to the Nevada Real Estate Division's website. I am sure the two associations I mentioned are not the only cases like this.

We have worked with all interested parties, bankers, and credit unions and have gotten consensus. We have taken suggested verbiage from the Clark County Treasurer's office to add clarification to the existing statute. We are also proposing a change, requested

by Republic Services, to be added to the list. Section 2.5, subsection 4, paragraph (b) amends NRS 116.3115 to allow the association that has advanced funds paid for the taxes or utilities to assess those charges back against the property itself, instead of making it a common expense shared by all other owners in the community.

Associations are not trying to own properties. We are not affecting all the hard work done on Senate Bill 306 of the 78th Session. We are not attempting to change the super-priority lien issue. We are just asking that associations get listed to be able to file a claim against the excess proceeds after a tax sale if there are any funds available. Please help these communities by passing this bill and putting the associations' names on the list. I am happy to answer any questions you may have.

Chair Neal:
Senator Manendo, would you like to come to the table for any additional opening remarks?

Senator Mark A. Manendo, Senate District No. 21:
Thank you for hearing S.B. 281 (R1) today. My apologies for not being here at the beginning of the hearing. I was literally walking to the witness table in the Senate on an Assembly bill I am supporting when I got the text saying this bill hearing was starting.

I am grateful to Mr. Randolph for doing such a wonderful job with the opening statement. He represents some of my constituents. We have the same type of job, only a little bit different. My constituents brought this to my attention and put me in communication with Mr. Randolph to have a discussion about a problem. Our responsibilities are to bring forth legislation. We bring it to the able minds of the Legislature to have the discussions whether the Committee feels there is merit to this particular piece of legislation. Not only will this affect constituents in my district, but yours as well. It seems reasonable to add HOAs to the list for possible recovery of some funds.

I should disclose that I live in an HOA. I do not serve on the board of the HOA where I currently live. I have served on HOA boards before, and I currently serve on the board of another HOA where I own a condominium. Thank you very much for hearing this bill.

Assemblyman Kramer:
I notice the absence of anybody from the Association of County Treasurers, who would normally do the work on a sale like this so, with your permission, I am going to fill in the blanks. If I were up here testifying as a county treasurer, I would actually have no problem with this bill. This does give a little more clarification. I would ask one thing though. Section 2, subsection 6, paragraph (a) talks about the order of priority of the liens recorded or perfected before the sale. "Priority" has a couple of different meanings. It could mean the time it was recorded, meaning the earlier ones have a higher priority than the later ones. My understanding was, with HOAs, they had a little higher priority than a mortgage because they were maintaining the property.

What is the intent when you bring HOAs into this? Is there a change in the definition of "priority"? The reason that is important is because you have put HOAs as second and third on this, as opposed to first. If it is a timed-based priority, you are likely to have filed your lien much later than the mortgage, in which case, sometimes the mortgage wipes out the value left after the sale.

Are you suggesting another definition for the word "priority"? I think I would want to put something in there that recognizes the nature of an HOA lien and give it a priority that says an HOA can get theirs before the mortgage company gets theirs. If the mortgage company was really interested in it, they would pay it off, and then they would foreclose. You are in a different position and can only go back a certain amount of months.

You talked about sales coming up. You have an act that becomes effective on July 1, 2017. I would say to make it effective upon passage. I have worked this chapter of NRS and these sections a number of times. I do not think you have made your case strong enough. There are a few tweaks you could make that would probably better protect the public, would not hurt the county treasurer's office, and would give clarity when the treasurer and a deputy district attorney sit down to decide who is in the position to take those proceeds. I think this bill needs some work. I do not think they have helped themselves enough if they want to go forward the way it is.

Chair Neal:
I agree with you, but probably not for the same reasons. I like that you were asking the question on "recorded" or "perfected" because they have distinctly two different meanings. We have someone at the table who would like to speak to some of your questions.

Garrett D. Gordon, representing Community Association Institute:
The Community Association Institute (CAI) is made up of board members, homeowners, industry professionals, and associations. This might help give Assemblyman Kramer some background. On the Senate side, this bill started out with being both a reconveyance and an excess proceeds bill. There was some opposition from the banks and the credit unions about the reconveyance piece. The Clark County Treasurer's Office introduced an amendment to provide clarity to their office that removed the reconveyance language and proposed exactly what you see here today, and that came verbatim from the Clark County Treasurer's amendment.

The reason why we were comfortable and the banks got comfortable is this does not touch Chapter 116 of NRS and any of the priorities whatsoever. We all worked very hard last session. During the Senate Committee on Revenue and Economic Development meeting, Senator Ford asked me, on the record, if this impacted Senate Bill 306 of the 78th Session—did this impact super-priority? The answer was an absolute "no." This just gives the association, in the event there are excess proceeds, the ability to recover. The current priority is any county liens or waste management systems get paid first.

I think that is the current law. There is a clarification amendment (Exhibit D), which we are neutral on to confirm that. Associations just get their nine months of assessments, and then the banks get paid. If there were any excess proceeds after that, which is unusual, they would flow down.

We were comfortable with the language. The working group on the Senate side got comfortable. We used the language from the Clark County Treasurer's Office. I spoke to the Clark County Treasurer's deputy district attorney, who was comfortable.

Madam Chair, to your point about "recorded" or "perfected," it is a very good one. The testimony on the Senate side reflected there was concern if, after a sale occurred or after an action by the Treasurer's office, associations would race to the recorder's office to record. They would not be eligible. The intent here is an existing recorded lien, as is very straightforward in Chapter 116 of NRS of how that occurs, would make you eligible for excess proceeds. I am here for any additional questions you may have.

Chair Neal:
Thank you for that information. Does Mr. Randolph in Las Vegas have an interplay here with answering questions since he is the collection agent for an HOA? I am wondering who is supposed to respond to the questions?

Garrett Gordon:
It is at your discretion. I was in the working group up here and had a little bit of the background. It is up to you who you want to hear from.

Assemblyman Kramer:
If Chapter 116 of NRS gives the HOA a priority over mortgages, then my questions pretty much go away. That is where I wanted you to be—having that position. Chapter 116 of NRS is not a chapter I am really familiar with although I understand there was a lot of excitement about it last session. I would still suggest this be one of the bills that becomes active when passed, instead of waiting for July 1, if indeed there are sales getting ready to take place.

Garrett Gordon:
To provide clarification, which I know the banks will appreciate, we only have the super priority for the nine months. After that, the banks come in, and then us. That is in Chapter 116 of NRS, and we are not amending, deviating, or changing that whatsoever.

Chair Neal:
Are there any additional questions? [There were none.] On page 3, lines 15 through 18, they can come in and get a bite of the apple. Are they able to then go after the homeowner for a third try for any other money? There is the super-priority lien for nine months. This bill would allow them to come after the excess in their priority order. Does that eliminate their right to continue to go after the homeowner for a third try to collect any additional money, or is the right extinguished?

Garrett Gordon:
My understanding, in regard to the lien, is it would be terminated, and there would be no further rights to any proceeds on the real property. If there are CC&Rs which are a contract between the homeowner and the association, I image there would be some contractual dispute, but in my experience of doing this for five sessions now, I have never heard anyone at the Community Association Institute talk about a contractual claim for past due assessments. It has always been tied to the property and these liens.

Chair Neal:
I am glad you understand that because I understood it differently—if the excess did not cover any money due, they still have the right to go after the homeowner. For example, if there is a $1,100 lien, and in the nine months they were able to capture $900, and excess gave them $100, there is still $100 left due. Some of the CC&Rs do have that contractual language, so the HOA would be able to come in and have two bites at the apple and still potentially have a third bite. There is nothing that is extinguished, not in the law or the amendment you are offering, that says after you get the excess you are done. That is what it should say, but that is not what it says.

Garrett Gordon:
I would like the opportunity to go back to the industry professionals and confirm that. In my experience, it is tied to the property, and once that lien has been paid, even a portion of it, there is no longer any money due. I have never heard of any small claims court action for breach of contract under the CC&RS to get the deficiency of that balance—but let me confirm that—and if there is a provision in Chapter 116 of NRS that may absolve the homeowner of any additional responsibility.

Chair Neal:
I believe it is in Chapter 116 of NRS. I was going over this bill with our Legal Division, and they said they still get a third bite unless somehow, through this legislative session, there is an aggregation of that contract to say it is extinguished after you get that excess.

Garrett Gordon:
I am happy to work with you and the Legal Division and with the lawyers who do this on a daily basis to give some clarity to that issue. This is the first time it has come up for me in the last couple of sessions, so I am happy to work with you to get you an answer.

Chair Neal:
Yes. That was a huge concern for me because they did not have the right to get the excess. My understanding is their initial right was just under the super-priority, and then they could go after the homeowner and try to capture it, because they did not have the access to get the excess. That does not go away just because we added an additional threshold.

Mike Randolph:
In all sets of CC&Rs, there is the right to lien the property. There is always another section where it is the owner's personal obligation to pay. When the tax sale wipes the lien off the property, the excess proceeds are available. Other than that, you cannot enforce any lien for any funds after that. Could we go after the homeowner under their personal obligation to pay? Yes, we could. As a 26-year manager of a collection agency, I have looked very closely at this. The only way to pursue that would be if we could find the owner who has lost the property to taxes. If we could track them down, then we would have to hire an attorney to sue them in court. To be quite honest, walking into court, trying to sue a homeowner who has already lost their property for past due assessments, is not going to enable any judge to feel sorry for us. There is no way, after that, where it gives the authority for the collection agencies to make any money whatsoever in trying to recover those funds. Therefore, if I cannot make a dime doing it, I cannot find a way to do it.

Chair Neal:
Thank you for that information. If I amended this bill to say they get the super-priority lien—get the excess, and after that there are no more bites at the apple to capture money—would you be okay with that? Technically I would be walking back, touching on the contract, and aggregating it through the Legislature.

Mike Randolph:
I would be open to it. As I am not an attorney and do not know all the ramifications, I would have to work with Garrett Gordon on that a little closer, but I would not have a problem with it.

Chair Neal:
Thank you. I am just checking the temperature. I know Mr. Randolph explained page 5, but I would like another explanation for the members of the Committee who arrived late, and then we can get into the two proposed amendments to this bill. Could you explain how page 5, lines 28 through 33 work, just for a recap for the members who arrived late?

Garrett Gordon:
Page 5, lines 28 through 32, amends the definition of "common expenses." What it does is add into that definition any taxes paid by an association on behalf of the unit owner or any utilities paid on behalf of the unit's owner by the association. It is most associations' understanding that they could not pay the past due property taxes because they were not identified on the list of entities who had a reconveyance right. In talking to the Clark County Treasurer's Office, they said they would accept money from anyone. It goes to the county coffers first, so if an association wanted to come in and pay off delinquent property taxes for a past due unit owner, they would accept it. Given that associations are nonprofits, their revenue has to equal the expenses, we added if that did occur—it would happen in a very small set of circumstances, when the finances made sense—there would be the opportunity to recover it as a common expense.

Let me be clear, it would not be recoverable as super-priority. Super-priority is still nine months, the bank comes next, then the lender. If there were any proceeds thereafter, then in fact, there would be an opportunity for a recovery in the common expense. This would normally happen in the small circumstances of the house being paid off—when there is no lender. That language was put in on the Senate side, given the Clark County Treasurer's amendment, and given communications with the Clark County Treasurer about how this is actually happening in their county.

Assemblywoman Bustamante Adams:
Can you remind me what the order is in a super-priority lien?

Garrett Gordon:
The priority goes as follows. The municipal lien for waste management would come first. Second would be the HOA's super-priority lien, which is nine months. Following that would be the lenders and any deeds of trust recorded by a lender on the property. Following that would be the common expenses, if any, owed by the association. After that, it would be the order of recordation by any mechanics liens or any other kinds of liens for painters or anyone else, as first in time as you go down that list. Obviously the top two or three are what we are focused on because, 99.9 percent of the time with the excess proceeds, you are not going to get further than the first couple of folks.

Chair Neal:
Are there any additional questions? [There were none.] I want to go through the two amendments before we hear testimony in support. We will start with the Republic Services amendment (Exhibit D), and then we will go over the amendment from the Bankers Association. Walk us through your amendments, and help us understand how they work.

Edith González Duarte, representing Republic Services:
Our amendment (Exhibit D) is mostly just to prevent any ambiguity between the two statutes. Under NRS 444.520, we already maintain priority superior to all other liens, except for taxes and special assessments. We just want to make sure we also maintain that priority in this statute. It does not in any way change or touch any of the other liens, the taxes, or the special assessments. It only applies to excess proceeds.

Chair Neal:
What I am looking for you to say is the order. Assemblywoman Bustamante Adams asked about the order. If you look at section 2, subsection 6, paragraph (a), subparagraph (1), it states "persons specified in paragraphs (b), (c), (d), (g), (h), and (i) of subsection 4 of NRS 361.585." Would you then hold your place through NRS 444.520 above HOAs?

Edith González Duarte:
Correct. That is what I did in the amendment I submitted (Exhibit D).

Chair Neal:
What threw me off in your amendment (Exhibit D) was the highlighted portion at the bottom of page 1—the perpetual lien language. Were you just highlighting that for us to understand that language, or did you need us to think about something?

Edith González Duarte:
That was just to highlight the fact that it is only taxes and special assessments we go after. I apologize for the confusion.

Chair Neal:
Just out of the excess?

Edith González Duarte:
Correct.

Chair Neal:
Are there any questions from the members on the amendment (Exhibit D) from Republic Services? It is basically changing the order that is in the original bill. Would you have the order be NRS 361.585, subsection 4, paragraphs (b), (c), (d), (g), (h), and (i); then Republic Services; then the HOA?

Edith González Duarte:
Republic Services would be first. That is just to maintain consistency between the two statutes—that we do have the priority.

Chair Neal:
So it would be Republic Services; then those specified in NRS 361.585, subsection 4, paragraphs (b), (c), (d), (g), (h), and (i); then the HOAs. Then in section 2, subsection 6, paragraph (b) of the bill, (a) represents the owner, (e) represents the person to whom the property was assessed, and (f) represents the person holding a contract to purchase the property before its conveyance to the county treasurer. Would this be the flow now?

Edith González Duarte:
Yes.

Chair Neal:
Are there any questions from the members?

Assemblywoman Bustamante Adams:
In both instances, the order Mr. Gordon subscribed and then also for the excess, waste management is first?

Edith González Duarte:
Yes.

Chair Neal:
You said it applied to the excess only, right?

Edith González Duarte:
Yes. This amendment only applies to NRS 361.610 and would only be for the excess.

Chair Neal:
Mr. Nakamoto is saying I have the order wrong. In the excess I did not put the HOA beneath Republic Services because we have not given them the right to the excess currently. Technically, that is what the bill is asking for, but we have not actually agreed to that.

The order is Republic Services, HOA, then those in paragraphs (b), (c), (d), (g), (h), and (i) of subsection 4 of NRS 361.585. Is that correct?

Edith González Duarte:
Yes. Solid waste haulers first.

Chair Neal:
I just wanted to clear that up since I said it out of order.

Garrett Gordon:
For the list of excess proceeds, what you are referring to is not the priority list. That is the list where it says "recorded or perfected before the sale." That refers to paragraphs (b), (c), (d), (g), (h), and (i) of subsection 4 of NRS 361.585. It also refers to the HOA and to waste management. I would argue that is just a grouping of folks who have liens that are eligible for the excess proceeds. In the language you identified, "recorded or perfected," that would then kick you into the lien order in Chapters 116 and 444 of NRS for waste management. It does not change it. You would still have waste management, super-priority HOA nine months, lender, then us in the other statutes. This is just saying what pool of people are eligible, assuming those liens are on that particular property.

Chair Neal:
Thank you for that correction. What would be the hypothetical order if the bill passes? Because it is based on existing law, which are the existing priorities that they have now. Hypothetically, if this bill passes, we would be looking at what arrangement?

Garrett Gordon:
Let me start from the beginning. First would be taxes—any taxes or tax liens by a county. Second, you heard the term "special assessment," so that would be like a redevelopment assessment or a police assessment. Next would be the waste management lien on the property, followed by the HOA's nine months of assessments. Next would be any lenders on the property with recorded deeds of trust. Following that would be the association, any additional proceeds left after the super-priority. After that, I would say it really depends on who has recorded and perfected liens at that time. If you go to the reconveyance statute, the paragraphs (b), (c), (d), (g), (h), and (i) of subsection 4 of NRS 361.585, it could

be a creditor who has won a judgment in court. It could be the Director of Health and Human Services if they received Medicaid benefits. It could be a number of other situations—the first in time after that.

Chair Neal:
Thank you for that correction, and I apologize for any confusion that gave to the members. In section 2, subsection 6, paragraph (a), subparagraphs (2) and (3), is that when the HOAs may be able to step in for the excess if they recorded or perfected after the tax sale?

Garrett Gordon:
It allows both association liens. It allows the nine months of assessments and then, if there is a recorded security instrument, a deed of trust by a lender on the property, it would frankly wipe out the rest of any excess proceeds; but assuming there were pennies left after that, it would be any remaining balance to the association, anything owed after nine months, or any other common expenses that have been incurred and defaulted on.

Chair Neal:
I understand.

Assemblywoman Spiegel:
Thank you for the clarifications, Mr. Gordon. I know there are often instances where homes are located in more than one association. There could be a master association and a subassociation, or a master association and two subassociations. I was wondering what the order would be in those cases?

Garrett Gordon:
My understanding, and I will confirm this, is that if there is a master association with a set of CC&Rs recorded and a subassociation, it would be nine months of assessments for each one. Nothing more until after the lender was paid. It would be similar to if there was a second or third deed of trust on the property. If there is a secondary lender, then they would get paid—first lender, second lender, and then association—anything after that.

Chair Neal:
Are there any additional questions? [There were none.] Now we have Mr. McMullen's amendment to the bill (Exhibit E), which does something entirely different.

Samuel P. McMullen, representing Nevada Bankers Association:
I would like to say that we support the bill as it came over to you. First and foremost, we felt it was very responsible. We agreed to it in the Senate and wanted to make sure our support was on the record.

In the context of what this bill dealt with, it came to our attention that some of our banks used to have a relationship with recovery companies that would routinely look at tax sales. These are basically tax sales where there has been a deed by the homeowner. Unfortunately, this is sad territory, but there has usually been a deed by the homeowner to

the county treasurer's office. To get that transferred into some sort of value dollars for the county, they will put it up for sale. That is what we are talking about. When it is sold, there will be an excess over and above what is owed the county in section 2, subsection 10, that I am going to speak to. They take their money. If no one else shows up to get the additional excess funds based on the liens they might have, then that money will go to the county in a year. If in that year people show up and say they have money owed to them too, they could get their share of the excess.

I believe this is totally germane. I have tried to talk to everybody who has been involved in it. The only person who did not get my full explanation is Senator Manendo. I want to make sure he is okay as well. The HOAs, CAI, I believe Mr. Randolph, and the State Bar of Nevada, who put a piece in this legislation, are at least neutral on it without a problem.

What I am trying to do is continue what happened in 2007. In 2007 there was a change in the law made to assure a natural person who ended up getting excess funds, that someone who is collecting it could not get more than the statutory cap of 10 percent of the proceeds through the excess funds and pay that as a fee to anybody. If they did not do it themselves—if they did it through a commercial entity or a vendor—they could not be paid more than 10 percent. That is the natural person who is the owner at the time of the sale.

Everybody has a right to do this—banks, credit unions, mortgage lenders, HOAs. They could have a different agreement. What happened before 2007, instead of putting "natural person" in the law, they put "person," which made it apply to anybody who tried to collect excess funds. They limited the fee to 10 percent. Sometimes these people do an awful lot of work. First of all, they are the people who track the treasurer's sales, the proceeds, and they figure out who are the lienholders. Sometimes the banks have relationships with people who do this routinely for them. We are trying to reinstitute that system but still protect "natural person."

I would like to take you through the amendment (Exhibit E). It pertains to section 2, subsection 10 of NRS 361.610 in the bill. I tried to indicate the lines, page 3, line 41 through page 4, line 5. What it says is you can have an agreement to go in and get the excess proceeds. It is as it is listed in subsection 6 of the bill, which is the correct test for the first reprint of the bill, but we have gone through that. For everyone, it should be in writing and be signed by the person. However, in paragraph (c), if it is signed by a natural person who was the owner and occupier of the property at the time of sale, then the prior law—and the law we want to continue—was that the fee cannot be more than 10 percent of the total remaining excess proceeds of the sale due that natural person. For everyone else, they can strike a different deal. It is to try to get the world back to where it was in 2007, where they tried to protect natural persons from any excess fees, but gave the world the commercial reality of how these things would happen between businesses, et cetera. I hope that is clear. I would be happy to answer any questions. We would really like you to add this amendment in to the bill, and I believe I have everybody's approval on that.

Chair Neal:
This should be of interest to you, Assemblyman Kramer. This was your bill in 2007 [Assembly Bill 585 of the 74th Session], and it was amended—the 10 percent language—in a conference committee.

Assemblyman Kramer:
The first part of that amendment (Exhibit E), says it must be in writing. There is a sale, and if you want somebody to collect that money, then the agreement has to be in writing. You are saying that subsection 10 of NRS 361.610 is protecting the person, so they do not get ripped off and do get 90 percent of the money that is actually collected.

Samuel McMullen:
That is in subsection 10, paragraph (c) of NRS 361.610.

Assemblyman Kramer:
In *Nevada Revised Statutes* (NRS) 361.610, subsection 10, paragraphs (a), (b), and (c), (a) says it is writing, (b) says it is signed by the person, and (c) says it can only be 10 percent. You are saying, instead of saying just 10 percent, it has to be the natural person? The reason for that is so that a non-natural person—a company that is doing this—could actually pay the actual charges involved with that. Is that correct?

Samuel McMullen:
Exactly.

Assemblyman Kramer:
I do not have a problem with that, but we have found that it is actually NRS 361.610, subsection 11, that gets used more than subsection 10 when it is natural persons. Somebody comes along and says they can find that money for you, sign this paper so I have power of attorney to act for you. Then their agreement is such that it is a lot more than 10 percent. I know this has been a discussion among treasurers in the past to where it is NRS 361.610, subsection 11 that needs to be changed. However, having said that, I would have no problem with the changes you have to subsection 10, paragraph (c).

Samuel McMullen:
We do not have a problem on subsection 11. When I looked at subsection 11, I thought that was a supplement to this, that there had to be an agreement, but then you could possibly give someone a power of attorney to go ahead and execute that. I may be too lawyer-like, but I thought to protect these people you had to have something in place where no one is out doing it for you, unless there is an agreement. Even if they do have one, they cannot get more than 10 percent. Subsection 11 would kick in with some of the tools, but I do not have your practical experience.

Assemblyman Kramer:
The finders, as it turned out, did not come to us with subsection 10. They came to us with subsection 11, and thus, we found the person who used to own the property signed their rights over to this other person. They would come in and basically get all of it, except for a small amount they paid the first person. They seldom came to us with subsection 10, where they are just getting 10 percent. However, I see what you are saying. If you are doing it through the purview of the person and you are a company, then you have to cover your costs, and 10 percent is not enough in many cases.

Samuel McMullen:
This goes back to the information Assemblyman Kramer added earlier. The specific section referred to in NRS 361.610, section 10, paragraph (b)—the lines that talked about those priorities and about HOAs—that is the section that prescribes the priorities as well. It could be that some language added in there, that it is not only referred to NRS 116.3116, subsection 2, and you could add the language in "the priorities ascribed therein." A bill drafter would do it better than me, but that would clarify that it is that section, and the priorities as they are established under that section because that is where the HOAs priorities are established. If you want that kind of clarity, that is just another suggestion.

Chair Neal:
Thank you for that information. Are there any additional questions? [There were none.] I understand what Assemblyman Kramer said, but it seems like the 10 percent cap would only apply to the owner because now you are saying the natural person, and then everyone else who hires a third party to collect is not under a cap.

Samuel McMullen:
That is what I am presenting. We are trying to make sure there is a cap for the natural person, but any other person can enter into an agreement and process things, and even under subsection 11, issue a power of attorney, under whatever commercially real terms they want to. In 2007, this was meant to protect natural persons, so they could not get pushed beyond 10 percent.

Chair Neal:
That leads me to my other questions. This is a foreclosure on a tax lien, and then we have a foreclosure under NRS 40.463. The foreclosure under NRS 40.463, when a third party collects, the fee can exceed $2,500 and is capped, or it has to be reasonable. Why would we not have the same type of protection we have on a bank foreclosure versus a foreclosure on a tax lien. Why would we not try to mimic, or at least have what is reasonable or a fee that exceeds $2,500 that is done by a third party? An unlimited cap by a third party does not seem reasonable.

Samuel McMullen:
It is going to be a business-to-business transaction. It is usually a commercial lender and a commercial company that has a service for recovery. It is going to be the kind of thing we are totally comfortable setting the price for and agreeing to. It will not happen unless we agree. It is going to be a mutual deal. The part we are asking for will be controlled by agreements.

I want to make sure we understand exactly where we are. Again, this is a very sad moment in some homeowner's life, but there has been a tax problem. There are unpaid taxes, and there has been a deed transferred to the county treasurer for the taxes. The house is actually transferred. At this point, the homeowner has pretty much given up the house, and the deed goes to the county treasurer's office. Then what happens is they sell the property to try to get the money into the bank account for the county because they do not want to own property.

That is totally different, Madam Chair, than everything that happens under the normal foreclosure rules, and even the rules under Chapter 116 of NRS, for foreclosure based on a homeowner's lien or anything else. It is important to keep those separate.

The second thing I would say, and I was not here in 2007, and I do not remember being in the hearing, but words like "reasonable" get used against people all the time. It becomes an argument, becomes a lawsuit, and my experience in this building is they said they were not going to leave it to "reasonable." We are going to say you cannot go over that. They hopefully deliberated, as it was a conference committee, and figured out what was a reasonable cap—the maximum that natural person, the prior homeowner, should pay.

Chair Neal:
In 2007, with A.B. 585 of the 74th Session, where the 10 percent was added, and you say it was an error, but it applied to all persons. That seemed reasonable to say 10 percent no matter who it is—the bank, the homeowner—this is it. Now we are saying 10 percent for the homeowner and no cap on everyone else, and this is the third party who is doing the activity. I think it is a legitimate question to ask, at least in instances from 2007 to present, where this particular provision came from A.B. 585 of the 74th Session, and caused either consternation, issues, or dilemmas in the third party being able to reasonably be getting a fee.

Assemblyman Kramer:
Let us take a step back. What we are dealing with is the house has been sold, money is sitting in an account, and up until now no one has made a claim on it—or if there has been a claim they are waiting to see if any other claim has come down. There is a one-year period and then a 30-day period after that. We are looking to see who is going to make a claim against this property. If indeed the homeowner makes the claim, he can make it himself. If there is a company out there—making their money by trolling lists like this—who goes to that person and makes the agreement for 10 percent, he puts in a claim, that is one thing.

For instance, if you have someone in the business of finding people who used to owe money to Bank of America and they approach the homeowner—I think what Mr. McMullen is saying is this homeowner can make his own agreement with Bank of America—it may well be for more than 10 percent. If Bank of America is willing to pay them more than 10 percent, that homeowner can get that amount from the funds that are released to Bank of America. If there are multiple people who have put forth claims, then the only part that homeowner is going to get more than the 10 percent of is the part that is released to Bank of America. As I would understand it at this point, if the homeowner were sitting there and all of it went to Bank of America—that is how much the mortgage was—then that is fine. They would get that amount. If the owner actually got part of this because Bank of America got their piece, then the most anybody could get out of the part that goes to the homeowner would be the 10 percent, and they probably did it themselves anyway.

Samuel McMullen:
If they do it themselves, there is no fee. This is only if they choose to use a commercial entity. Again, I think trolling might be a good word. That is not what we are looking for. I think this is to try and regulate how much those people can charge them if they do in fact agree.

Chair Neal:
Thank you for that information. It is not that I do not understand. I just think that the entity who can come in and make a contract between Bank of America and themselves, can ask for whatever they want. If it was the homeowner who was trying to do the same thing, it would be 10 percent. I think it is unequal, and I do not like having an unlimited cap. I understand what you are trying to do. I just do not understand why I have not heard problems that were occurring under the 10 percent cap that has been in play for ten years now.

Samuel McMullen:
I tried to say that in my testimony. After 2007, this business basically collapsed as a commercial business for banks and lenders. There was not a chance for them to get a deal that would work for the bank and get their cost back at 10 percent. Once again, what we are talking about is the reduction from what the lender at this point gets back as their proceeds, if they are willing to give up 30 percent, although I do not think it is that high. It is usually actual costs plus a couple of percentage points. Again, we are fine with that. What we are trying to say is that we are reducing the part that is taken off the top of the prior homeowner, so the maximum they have is 10 percent. They get 90 percent. If the bank wants to take less than that, that is up to them.

Chair Neal:
Okay. I am going to leave it alone. I know you are in support of it. Do the members have any additional questions on the two amendments (Exhibit D and Exhibit E)? [There were none.] I will now accept testimony from those in support of S.B. 281 (R1).

Garrett Gordon:
We are in strong support of the first reprint of the bill. I guess technically we are neutral on both amendments. We certainly would not want one or the other to drag down this bill moving forward. There was a lot of work done on the Senate side. I appreciate your time.

Michael E. Buckley, Chair, Real Property Law Section, State Bar of Nevada:
I am speaking on behalf of the members of the Executive Committee of the Real Property Section of the State Bar of Nevada, not the State Bar and not the Section itself, just our Executive Committee members. We support the concept that the associations should be able to stand in line with other lien creditors to be able to have a shot at those tax sale proceeds. We do not have a position on any of the other changes.

Chair Neal:
Is there anyone who would like to testify in opposition to S.B. 281 (R1). [There was no one.] I will now take testimony from those who are neutral on S.B. 281 (R1). [There was no one.] Does the bill sponsor or presenter have any closing comments?

Mike Randolph:
Thank you for the opportunity and all the work done today. I am also neutral on both of the amendments. I do not have a problem with either of them. We look forward to seeing this bill move forward.

[(Exhibit F) was presented but not discussed and is included as an exhibit for the meeting.]

Chair Neal:
I will close the hearing on S.B. 281 (R1). I will now open the meeting for public comment. [There was none.] I will close public comment. Seeing no further business, we are adjourned [at 5:25 p.m.].

RESPECTFULLY SUBMITTED**:**

_____
Gina Hall
Committee Secretary

APPROVED BY**:**

_____
Assemblywoman Dina Neal, Chair

DATE: _____

EXHIBITS

Exhibit A is the Agenda.

Exhibit B is the Attendance Roster.

Exhibit C is a copy of a letter of compliance from Byron K. Huffmann, Acting Director, Office of Aging Compliance and Management Analysis, U.S. Department of Transportation, Federal Aviation Administration, presented by Dawn Lietz, Administrator, Motor Carrier Division, Department of Motor Vehicles.

Exhibit D is a proposed amendment to Senate Bill 281 (1st Reprint), presented by Edith González Duarte, representing Republic Services.

Exhibit E is a proposed amendment to Senate Bill 281 (1st Reprint), presented by Samuel P. McMullen, representing Nevada Bankers Association.

Exhibit F is a statement in support of Senate Bill 281 (1st Reprint) submitted on behalf of members of the State Bar of Nevada, Real Property Section, Common-Interest Communities Committee, submitted by Karen D. Dennison, Esq., Holland & Hart LLP.