EXHIBIT 1

DOC # 4381723
08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

Amended

RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

Amending Doc # 4381444

On November 26, 2012 , Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. **4177148,** Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC**, **Acct#010-74134,** commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By _____
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.

KELLY SCOTT
Notary Public-State of Nevada
APPT. NO. 13-11614-2
My App. Expires September 03, 2017

_____
NOTARY PUBLIC
KELLY SCOTT

DOC # 4381444
08/08/2014 09:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

On November 26, 2012 , Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. **4177148,** Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74134,** commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, the indebtedness evidences by said claim of lien was fully satisfied. In consideration for such payment, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By _____
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.

KELLY SCOTT
Notary Public State of Nevada
APPT NO 13-11614-2
My App Expires September 03, 2017

_____
NOTARY PUBLIC
KELLY SCOTT

DOC # 4381724
08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

Amended

RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

Amending Doc # 4381445

On March 14, 2014 , Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. **4334435,** Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74134,** commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By: _____
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.

KELLY SCOTT
Notary Public State of Nevada
APPT. NO. 13-11614-2
My Appt. Expires September 03, 2017

_____
NOTARY PUBLIC
KELLY SCOTT

DOC # 4381445
08/08/2014 09:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Lawrence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

APN#011-266-17
ACCT#010-74134

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

On March 14, 2014 , Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. **4334435,** Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74134,** commonly known as, **345 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, the indebtedness evidences by said claim of lien was fully satisfied. In consideration for such payment, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By _____
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.

KELLY SCOTT
Notary Public-State of Nevada
APPT NO 13-11614
My Appt Expires September 03 2017

_____
NOTARY PUBLIC
KELLY SCOTT

DOC # 4381725
08/08/2014 04:12:09 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

APN#011-266-17
ACCT#010-74135

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

Amended

RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

Amending Doc # 4381446

On February 23, 2012 , Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. **4086834,** Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74135,** commonly known as, **347 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014,Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By _____
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.

KELLY SCOTT
Notary Public State of Nevada
APPT. NO. 13-11613-2
My Appt. Expires September 03, 2017

_____
NOTARY PUBLIC
KELLY SCOTT

DOC # 4381446
08/08/2014 09:54:32 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

APN#011-266-17
ACCT#010-74135

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

RELEASE OF LIEN CLAIM FOR
RESIDENTIAL GARBAGE SERVICE FEES

On February 23, 2012 , Waste Management of Nevada, Inc., or its affiliates (WM of Nevada, Inc.) doing business as Reno Disposal filed for record in the office of the County Recorder of Washoe County, Nevada a claim of lien for Garbage Service fees. Said claim of lien was duly recorded as Document No. **4086834,** Official Records of Washoe County, Nevada, upon the real property of, **WEST TAYLOR STREET LLC, Acct#010-74135,** commonly known as, **347 TAYLOR ST W, RENO, NV** and more particularly described as follows:

Washoe County Assessor's Parcel#011-266-17

On August 8, 2014, the indebtedness evidences by said claim of lien was fully satisfied. In consideration for such payment, Waste Management of Nevada Inc. does hereby release claim of lien and consents that the same be discharged of record.

DATED: This 8th day of August 2014

WASTE MANAGEMENT OF NEVADA, INC.

By _____
LORI VANLANINGHAM

STATE OF NEVADA)
) SS.
COUNTY OF WASHOE)

On the 8h day of August 2014 personally appeared before me, a notary public, Lori Vanlaningham for Waste Management of Nevada Inc. who acknowledged that she executed this instrument.

KELLY SCOTT
Notary Public State of Nevada
APPT NO 13-11614-2
My Appt Expires September 03 2017

_____
NOTARY PUBLIC
KELLY SCOTT

2175
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
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mhippler@hollandhart.com

Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

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Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited liability company, Plaintiff, vs. WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10, Defendants.	**CASE NO.: CV12-02995** **DEPT. NO.: 4** **WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR LEAVE TO FILE MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 28, 2014 ORDER**

Defendant Waste Management of Nevada, Inc. ("Waste Management"), by and through its counsel of record, Holland & Hart LLP, hereby seeks leave to file the Motion for Partial Reconsideration of the Court's July 28, 2014 Order submitted concurrently herewith (the "Motion for Partial Reconsideration"). Under WDCR 12(8), a motion for rehearing "must be done in

conformity with D.C.R. 13, Section 7."[1] DCR 13(7) provides that: "No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, *unless by leave of the court granted upon motion* therefore, after notice of such motion to the adverse parties." (Emphasis added). Accordingly, Waste Management hereby moves for such leave.

I. AUTHORITY PERMITTING RECONSIDERATION

The Court has the inherent authority to reconsider, amend, modify, or vacate its prior orders. *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975); *see also Harvey's Wagon Wheel v. MacSween*, 96 Nev. 215, 217, 606 P.2d. 1095 (1980) ("Reconsideration of motions is proper if the district judge to whom the first motion was made consents to a rehearing."); *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 119 (1980) ("[u]nless and until an order is appealed the district court retains jurisdiction to reconsider the matter."). Among other grounds, reconsideration of a previously decided issue is appropriate where: (a) "the decision is clearly erroneous" [*Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997)]; (b) "substantially different evidence is subsequently introduced" [*id.*]; (c) "the court has overlooked or misapprehended a material matter" [*In the matter of Dunleavy*, 104 Nev. 784, 786, 769 P.2d 1271, 1272 (1989) (applying NRAP 40(c)(2)]; or (d) "in such other circumstances as will promote substantial justice." *Id*.

II. STATEMENT OF BASIS FOR REQUEST FOR RECONSIDERATION

As detailed further in the Motion for Partial Reconsideration, which is incorporated herein by reference, Waste Management respectfully submits that the Court may have overlooked or misapprehended certain material issues or may have otherwise erroneously reached certain conclusions in the July 28, 2014 Order.

[1] WDCR 12(8) further indicates that such a motion must be made "within 10 days after service of written notice of entry of the order or judgment, unless the time is shortened or enlarged by order." *Id.* To date, no notice of entry of the July 28, 2014 Order has been filed or served upon Waste Management. Moreover, during the July 30, 2014 Status Conference held in this matter, upon being advised of Waste Management's likely intent to file a limited motion for reconsideration, the Court ordered any such motion be submitted for decision by December 1, 2014. *See* Minutes of Statue Conference (7/30/14), attached hereto as **Exhibit 1**. As such, there can be no question that Waste Management's Motion for Partial Reconsideration is timely.

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Las Vegas, NV 89134
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First, the Court determined that NRS 444.520 is ambiguous as to which portion(s) of Nevada's statutory scheme relating to mechanic's liens should be applied to garbage liens. *See* Order (7/28/14) at 11. The Court's conclusion in this regard appears to have been primarily based upon the lack of a citation within NRS 444.520 to *specific* sections of NRS Chapter 108. *See id.* Waste Management respectfully submits that notwithstanding this lack of specific citation, the clear and unambiguous language of NRS 444.520—which is similar if not identical to numerous other Nevada statutes stating how a statutory lien should be foreclosed—permissively incorporates only the "manner . . . provided for the foreclosure of mechanic's liens." The Nevada Supreme Court has recognized that NRS 108.239 governs (i.e., "provide[s]") the procedure (i.e., "manner") for foreclosing a mechanic's lien. *See Simmons Self–Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. Adv. Op. 6, 247 P.3d 1107, 1109 (2011) ("NRS 108.239 governs actions to enforce a notice of mechanic's lien"); *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d 730, 735 (2008) (same); NRS 108.239 (entitled "Action to enforce notice of lien") ("A notice of lien may be enforced by . . ."). Thus, NRS 444.520's permissive incorporation of the "manner . . . provided for the foreclosure of mechanic's liens" clearly and unambiguously incorporates only NRS 108.239 and the procedures thereunder.

Second, the Court determined that given the above mentioned ambiguity, the Court could incorporate and impose upon garbage lien claimants any and all provisions of NRS Chapter 108 governing mechanic's liens, unless the provision is expressly contradicted by NRS 444.520. *See* Order (7/28/14) at 9-15. Waste Management respectfully submits that such an interpretation, however, impermissibly renders the Legislature's chosen language meaningless. For example, mandating that a garbage lien claimant record its lien within the 90 day deadline set forth in NRS 108.226 (or otherwise lose its lien rights), renders the Legislature's use of "may" in NRS 444.520 superfluous and illusory. The Legislature did not use "must", "shall", or any other language mandating the incorporation or application of <u>any</u> portion of the mechanic's lien statutory scheme to garbage liens. Thus, interpreting NRS 444.520 to "require" compliance with the mechanic's lien statutes impermissibly contradicts and renders meaningless the language employed in that statute.

See Karcher Firestopping v. Meadow Valley Constr., 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).

Third, the Court determined that because NRS 444.520 does not expressly provide a specific procedure for customers or property owners to "dispute" the legitimacy of a garbage lien, due process requires provisions other than NRS 108.239 (specifically NRS 108.2275) to be incorporated into NRS 444.520. *See* Order (7/28/14) at 15. Based upon Plaintiff's prior representations both at the time of and in the briefing on the Motion for Partial Summary Judgment that it was not raising due process issues at that time, Waste Management reserved its right but did not address the same in its Opposition. *See* Opposition to Motion for Partial Summary Judgment (3/28/14) at 3 n.2. Because the Court thus did not have the benefit of either party's briefing on that issue, Waste Management respectfully requests the Court to consider its arguments that due process does not require provisions other than NRS 108.239 be incorporated into NRS 444.520.

As discussed in the Motion for Partial Reconsideration, property owners are never dispossessed of their property under NRS 444.520 without notice and an opportunity to be heard. Further, property owners wishing to challenge the lien prior to foreclosure can do so in the exact same manner as Plaintiff has done here (i.e., by pursuing declaratory relief and/or slander of title claims). Both of these available procedures provide the owner a meaningful opportunity to contest the validity of the liens, and thus both satisfy basic due process requirements. *See J.D. Constr. v. IBEX Int'l Group*, 126 Nev. Adv. Op. 36, 240 P.3d 1033, 1040 (2010) ("Due process is satisfied by giving both parties 'a meaningful opportunity to present their case.'"). Indeed, Nevada's mechanic's lien statutory scheme existed for over 100 years prior to the enactment in 1995 of the expedited review procedure created by NRS 108.2275. Prior to that time, owners were able to challenge mechanic's liens through declaratory relief and/or slander of title claims. There is simply no reason to suggest that due process requires anything different here with regard to garbage liens.

Fourth, the Court determined that the requirement in NRS 108.226(1)(a) that a mechanic's lien be recorded within 90 days of certain specified events applies to NRS 444.520, and requires a garbage lien claimant to record its lien within 90 days of a customer's first "delinquency" in payment for services rendered. *See* Order (7/28/14) at 16. Waste Management respectfully submits

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that the word "delinquency" does not appear anywhere in NRS 108.226(1)(a), nor does the statute reference any act or omission by a property owner/customer as being a triggering event for that 90 day deadline. Further, Waste Management submits that imposing a requirement that a garbage lien be recorded within 90 days of a customer's first delinquency in payment will only serve to increase the costs to all parties, while at the same time decreasing the opportunity for the parties to resolve legitimate disputes without the necessity of recording the lien. Such an inflexible and unworkable result is contrary to public policy and the testimony before the Legislature when NRS 444.520 was enacted.

Finally, the Court determined that once a garbage lien under NRS 444.520 is recorded, pursuant to NRS 11.190(4)(b), the lien claimant must institute foreclosure proceedings within two years of the date of recording. *See* Order (7/28/14) at 17-18. Plaintiff did not raise the issue of which limitation period under NRS 11.190 would apply to a garbage lien foreclosure action until its reply brief [*see* Reply in Support of Motion for Partial Summary Judgment (4/11/14) at 9], and thus Waste Management did not have an opportunity to address the same in its Opposition. As detailed in the Motion for Partial Reconsideration, Waste Management submits that the correct limitation period is three years under NRS 11.190(3)(a), because a statutory lien foreclosure action is one based "upon a liability created by statute, other than a penalty or forfeiture."

III. CONCLUSION

Based upon the foregoing, Waste Management respectfully requests the Court to grant it leave to file the Motion for Partial Reconsideration of the Court's July 28, 2014 Order submitted concurrently herewith.

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HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25th day of September, 2014.

HOLLAND & HART LLP

/s/ Bryan L. Wright
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

- and -

Matthew B. Hippler (7015)
5441 Keitzke Lane, 2nd Floor
Reno, Nevada 89511

Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 25th day of September, 2014, I served a true and correct copy of the foregoing **WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR LEAVE TO FILE MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 28, 2014 ORDER** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

C. Nicholas Pereos
C. NICHOLAS PEREOS, LTD.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Telephone: (775) 329-0678
Facsimile: (775) 329-0678
cpereos@att.net

Attorneys for Plaintiff, WEST TAYLOR STREET, LLC

/s/
An Employee of HOLLAND & HART LLP

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

APPENDIX OF EXHIBITS

EXHIBIT 1	Minutes of Status Conference (7/30/14)

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

EXHIBIT 1

F I L E D
Electronically
2014-08-19 11:00:43 AM
Joey Orduna Hastings
Clerk of the Court
Transaction # 4567441

CASE NO. CV12-02995 **TITLE: WEST TAYLOR STREET LLC VS. WASTE MANAGEMENT OF NEVADA, INC., and KAREN GONZALEZ**

DATE, JUDGE OFFICERS OF COURT PRESENT	APPEARANCES-HEARING	CONT'D TO
7/30/14 HONORABLE CONNIE STEINHEIMER DEPT. NO.4 M. Stone (Clerk) J. Schonlau (Reporter)	**STATUS CONFERENCE** Nicholas Pereos, Esq., represented the Plaintiff. Bryan Wright, Esq., represented the Defendants. Respective counsel noted receipt of the decision from the Court on the Motion for Summary Judgment. Counsel further advised the Court that there are issues with the current lien which could cause a Motion to Strike Lien to occur or the Lien may be voluntarily released. Counsel Pereos request additional time to set trial in order to consult and narrow issues. Counsel Wright advised the Court that the defendant's may move to reconsider the decision on the Motion for Summary Judgment. **COURT ENTERED ORDER** allowing additional time to set trial in order for issues to be resolved and/or narrowed. **COURT** directed counsel to submit for decision any Motions that need a ruling prior to trial being set by December 1, 2014. A written decision will be entered prior to the next hearing or an oral decision will be pronounced at the hearing. Additional status conference set wherein trial will be set.	**12/16/14** **2:00 p.m.** **Status Conference**

2645
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
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- and -

Matthew B. Hippler (7015)
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mhippler@hollandhart.com

Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

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Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited liability company, Plaintiff, vs. WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10, Defendants.	**CASE NO.: CV12-02995** **DEPT. NO.: 4** **WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 28, 2014 ORDER**

Defendant Waste Management of Nevada, Inc. ("Waste Management"), by and through its counsel of record, Holland & Hart LLP, hereby files this Motion for Partial Reconsideration of the Court's July 28, 2014 Order (the "Order").

This Motion for Partial Reconsideration is made and based upon WDCR 12(8), DCR 13(7), the attached Memorandum of Points and Authorities, the concurrently filed Motion for Leave to File

Motion for Partial Reconsideration, the pleadings and papers on file, the Declaration of Bryan L. Wright, Esq. attached hereto as **Exhibit 1**, and such oral and documentary evidence as may be presented at any hearing on this matter.

DATED this 25th day of September, 2014.

HOLLAND & HART LLP

/s/ Bryan L. Wright
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

- and -

Matthew B. Hippler (7015)
5441 Keitzke Lane, 2nd Floor
Reno, Nevada 89511

Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
Phone: (702) 669-4600 ♦ Fax: (702) 669-4650

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 28, 2014, the Court issued a detailed Order denying in part, and granting in part, Plaintiff's Motion for Partial Summary Judgment. Waste Management requests the Court to reconsider the following specific rulings made in that Order.

First, the Court determined that NRS 444.520 is ambiguous as to which portion(s) of Nevada's statutory scheme relating to mechanic's liens should be applied to statutory garbage liens. *See* Order (7/28/14) at 11.

Second, the Court determined that given the above mentioned ambiguity, the Court could incorporate and impose upon garbage lien claimants any and all provisions of NRS Chapter 108 governing mechanic's liens, unless the provision is expressly contradicted by NRS 444.520. *Id.* at 9-15.

Third, the Court determined that because NRS 444.520 does not expressly provide a specific procedure for customers/property owners to "dispute" the legitimacy of a garbage lien, due process

requires provisions other than NRS 108.239 to be incorporated into NRS 444.520. *Id*. at 15.

Fourth, the Court determined that the requirement in NRS 108.226(1)(a) that a mechanic's lien be recorded within 90 days of certain specified events applies to NRS 444.520, and requires a garbage lien claimant to record its lien within 90 days of a customer's first "delinquency" in payment for services rendered. *Id.* at 16.

Fifth, the Court determined that once a garbage lien under NRS 444.520 is recorded, pursuant to NRS 11.190(4)(b), the lien claimant must institute foreclosure proceedings within two years of the date of recording. *See id.* at 17-18.

As discussed further below, Waste Management respectfully submits that the Court may have overlooked or misapprehended certain material issues or may have otherwise erroneously reached the above conclusions. Therefore, Waste Management requests the Court to reconsider those determinations as provided for herein.

II. BRIEF PROCEDURAL HISTORY

On March 11, 2014, Plaintiff moved for a declaration from the Court that Waste Management "must comply with the mechanic's lien laws in connection with the recording of a lien for delinquency of garbage services and the collection of that lien." *See* Plaintiff's Motion for Partial Summary Judgment (3/11/14). Waste Management filed its Opposition to Plaintiff's Motion for Partial Summary Judgment on March 28, 2014, to which Plaintiff filed a Reply on April 11, 2014.

Following oral arguments held on May 7, 2014, the Court issued its Order on July 28, 2014. Relevant hereto, the Court made the following findings:

- "[T]he language [in NRS 444.520] permitting the application of the mechanic's lien foreclosure process is clear; however, there is ambiguity as to which portions of the mechanic's lien statutes may be applied since the specific sections are not listed in the language of the statute." *See* Order (7/28/14) at 11:22-25;
- "[N]o portion of NRS 444.520 is rendered superfluous if the statute is interpreted to state that the garbage lien **may** apply the mechanic's liens statutes that addresses procedural requirements not already governed by NRS 444.520." *Id.* at 14:4-6 (emphasis in original);
- "[S]ince NRS 444.520 does not provide an opportunity to be heard if the property owner disputes the lien, but it does incorporate the mechanic's lien statutes, a constitutional interpretation of NRS 444.520 would incorporate more provisions of NRS Chapter 108 than just NRS 108.245 [sic]." *Id.* at 15:2-5;

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- "The Court does not find the permissive application of multiple mechanic's lien statutes to be absurd, as it is the only manner of interpretation that preserves the customer's ability to dispute a lien." *Id.* at 15:9-11;
- "After considering the legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, the Court finds the [sic] NRS 444.520 incorporates the mechanic's lien statutes to the extent that NRS 444.520 is silent on a procedure." *Id.* at 15:11-14;
- "The clear language of NRS 108.226 provides Waste Management with the opportunity to supply notice to its customers within 90 days after each billing cycle becomes delinquent." *Id.* at 16:7-8;
- "[I]mposing the 90 day requirement may encourage the garbage company to send out a 'notice of lien' sooner or to impose a shorter billing cycle." *Id.* at 16:12-14;
- "NRS 108.226 applies to the garbage lien statutes because it was incorporated in NRS 444.520, and it does not conflict with existing statutory language in the garbage lien enacting statute." *Id.* at 16:16-18;
- "[U]nder NRS 11.190, an [sic] '[a]n action upon a statute for a penalty or forfeiture where the action is given to a person' must be brought within two years except when the statute imposing it prescribes a different limitation." *Id.* at 17:21-18:2; and
- "[T]he two year statute of limitations applies to Waste Management's ability to foreclose [its garbage lien], which protects the homeowner from the revival of a lien several years after it was imposed." *Id.* at 18:4-6.

III. LEGAL STANDARD

Nevada law permits a party to seek reconsideration of a court's decision. *See* WDCR 12(8); DCR 13(7); *see also Masonry & Tile Contractors Ass'n of S. Nev. v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *Moore v. City of Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (1976). Indeed, a court has the inherent authority to reconsider, amend, modify, or vacate its prior orders. *See Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975); *see also Harvey's Wagon Wheel v. MacSween*, 96 Nev. 215, 217, 606 P.2d. 1095 (1980) ("Reconsideration of motions is proper if the district judge to whom the first motion was made consents to a rehearing."); *Gibbs v. Giles*, 96 Nev. 243, 245, 607 P.2d 118, 119 (1980) ("[u]nless and until an order is appealed the district court retains jurisdiction to reconsider the matter."). Among other grounds, reconsideration of a previously decided issue is appropriate where: (a) "the decision is clearly erroneous" [*Masonry and Tile Contractors*, 113 Nev. at 741, 941 P.2d at 489]; (b) "substantially different evidence is subsequently introduced" [*id.*]; (c) "the court has overlooked or misapprehended a material matter" [*In the matter of Dunleavy*, 104 Nev. 784, 786, 769 P.2d 1271, 1272 (1989) (applying NRAP 40(c)(2)]; or (d) "in such other circumstances as will promote

substantial justice." *Id*.

IV. LEGAL ARGUMENT

A. THE CLEAR AND UNAMBIGUOUS LANGUAGE OF NRS 444.520 PERMISSIVELY INCORPORATES ONLY THE "MANNER . . . FOR THE FORECLOSURE OF MECHANIC'S LIENS"

In its Opposition to Plaintiff's Motion for Partial Summary Judgment, Waste Management argued that pursuant to the express language of NRS 444.520, only the "manner . . . provided for the foreclosure of mechanic's liens" is permissively incorporated into that statute. *See* NRS 444.520(3) (emphasis added). The "manner . . . provided for the foreclosure of mechanic's liens" is contained in NRS 108.239. *See Simmons Self–Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. Adv. Op. 6, 247 P.3d 1107, 1109 (2011) ("NRS 108.239 governs actions to enforce a notice of mechanic's lien"); *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d 730, 735 (2008) (same); NRS 108.239 (entitled "Action to enforce notice of lien") ("A notice of lien may be enforced by . . ."); *see also Coast Hotels and Casinos, Inc. v. Nev. State Labor Comm'n*, 117 Nev. 835, 841-42, 34 P.3d 546, 551 (2001) ("The title of a statute may be considered in determining legislative intent."). Accordingly, given the plain language of NRS 444.520, Waste Management argued only NRS 108.239, and no other provision of Nevada's statutory scheme relating to mechanic's liens, "may" be applied to garbage liens.

In at least two statements in the Order, the Court seemingly agreed with the propriety of Waste Management's interpretation. *See e.g.*, Order (7/28/14) at 11:22-23 ("the language [in NRS 444.520] permitting the application of the mechanic's lien foreclosure process is clear"); *id.* at 14:1-3 ("Waste Management's interpretation that NRS 108.239 may be applied to govern the foreclosure process for a garbage lien gives proper consideration for each word and phrase in NRS 444.520"). Notwithstanding, the Court found that "there is ambiguity [in NRS 444.520] as to which portions of the mechanic's lien statutes may be applied *since the specific sections are not listed in the language of the statute*." *See id.* at 11:23-25 (emphasis added). Waste Management respectfully disagrees.

The Court is correct that that "the specific sections [of NRS Chapter 108 providing for the foreclosure of mechanic's liens] are not listed in the language of [NRS 444.520]." Nonetheless, as noted above, the Nevada Supreme Court has confirmed that NRS 108.239 governs (i.e.,

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"provide[s]") the procedure (i.e., "manner") for foreclosing a mechanic's lien. *See Simmons Self–Storage*, 127 Nev. Adv. Op. 6, 247 P.3d at 1109; *Barney*, 124 Nev. at 827, 192 P.3d at 735; *see also* NRS 108.239. Conversely, the Court has also confirmed that NRS 108.226—which includes the 90 day deadline to record a mechanic's lien—contains procedural requirements for perfecting a mechanic's lien. *See Schofield v. Copeland Lumber Yards, Inc.*, 101 Nev. 83, 84, 692 P.2d 519, 519-20 (1985) (discussing the fact that "[t]he statutory directives for perfection of a materialman's lien" contained in NRS 108.226 "were followed in all particulars except" those required under NRS 108.226(4)(d)); *see also* NRS 108.226 (entitled "Perfection of lien") ("To perfect a lien, a lien claimant must . . ."). Thus, irrespective of the failure of NRS 444.520 to specifically cite "NRS 108.239" (i.e., the failure to state that "[t]he [garbage] lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens under NRS 108.239"), the Legislature's intent can easily be derived from the plain language actually used. *See State v. Lucero,* 127 Nev. Adv. Op. 7, 249 P.3d 1226, 1228 (2011) (legislative intent is first ascertained from the statute's plain language and meaning).

Moreover, the lack of a specific citation to "NRS 108.239" within the text of NRS 444.520 should not be considered surprising, nor should it be used to cast doubt upon or call into question the Legislature's intent. In this regard, the relevant language used in NRS 444.520, enacted in 2005, is taken directly from prior Nevada statutes. For example, NRS 318.197, enacted in 1959, currently provides in relevant part:

> Upon compliance with subsection 9 and until paid, all rates, tolls or charges [of a general improvement district] constitute a perpetual lien on and against the property served. A perpetual lien is prior and superior to all liens, claims and titles other than liens of general taxes and special assessments and is not subject to extinguishment by the sale of any property on account of nonpayment of any liens, claims and titles including the liens of general taxes and special assessments. A perpetual lien must be **foreclosed in the same manner as provided** by the laws of the State of Nevada **for the foreclosure of mechanics' liens**. Before any lien is foreclosed, the board shall hold a hearing thereon after providing notice thereof by publication and by registered or certified first-class mail, postage prepaid, addressed to the last known owner at his or her last known address according to the records of the district and the real property assessment roll in the county in which the property is located.

NRS 318.197(2) (emphasis added); *see also* NRS 318.197(9) (providing identical perfection requirements as expressly required to perfect a garbage lien under NRS 444.520). Similarly, NRS

244A.549, enacted in 1977, currently provides as follows:

> 1. Until paid, all [waste water or sewage] service charges of the county or the State charged to any person owning or occupying real property in the county constitute a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. This lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, including liens for general taxes and special assessments.
>
> 2. A lien for unpaid service charges **may be foreclosed in the same manner** as **provided for the foreclosure of mechanics' liens**. Before any such lien is foreclosed the board shall hold a hearing on the lien after notice thereof by registered or certified first-class mail, postage prepaid, addressed to the last known owner at his or her last known address according to the records of the county in which the property is located. (Emphasis added)

In fact, it is apparently common for the Nevada Legislature to provide, without reference to any specific statute, that other statutory liens "may be foreclosed in the same manner as provided for the foreclosure" for different types of liens.[1] It does not appear that any of these similar examples have been declared ambiguous, or interpreted to incorporate anything more than the "manner . . . provided for the foreclosure" of the other specified types of liens. Moreover, other jurisdictions that have interpreted similar statutes have expressly refused to adopt portions of the mechanic's lien statutes other than the "manner provided for the foreclosure" of such liens. *See e.g., Skyland Metro. Dist. v. Mountain W. Enter., LLC*, 184 P.3d 106 (Colo.App. 2007) (determining that similarly

[1] *See e.g.,* NRS 104.4504 (following the "dishonor of a documentary draft . . . the presenting bank has a lien upon the goods or their proceeds, which may be foreclosed in the same manner as an unpaid seller's lien.") (emphasis added); NRS 108.665(1) ("A lien for charges owed to a hospital may be foreclosed by a suit in the district court in the same manner as an action for foreclosure of any other lien.") (emphasis added); NRS 108.870 (providing for the "foreclosure upon a lien for money owed to the Department of Health and Human Services as a result of the payment of benefits for Medicaid by action in the district court in the same manner as for foreclosure of any other lien.") (emphasis added); NRS 244.335(7) ("Any license tax levied . . . constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. . . . The lien must be enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien.") (emphasis added); NRS 268.095(7) ("Any license tax levied under . . . this section constitutes a lien upon the real and personal property of the business upon which the tax was levied until the tax is paid. . . . The lien must be enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien") (emphasis added); NRS 612.680(4) ("The lien hereby created may be foreclosed by a suit in the district court in the manner provided by law for the foreclosure of other liens on real or personal property.") (emphasis added); *see also* NRS 562.050 ("All liens provided for in this chapter must be foreclosed in the manner provided by chapter 104 of NRS") (emphasis added).

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worded Colorado statute,[2] which allowed liens for water and sanitation user fees to be foreclosed in the same manner as mechanics' liens, did not also adopt notice of intent to lien required to perfect a statutory lien).

Based upon the plain language of NRS 108.239 and NRS 108.226, the titles the Legislature has given each of them, and Nevada precedent interpreting those statutes, the only reasonable interpretation of NRS 444.520's statement that "[t]he [garbage] lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens," is that NRS 108.239, and only NRS 108.239, "may" apply to such garbage liens. *See Building & Constr. Trades Council of N. Nev. v. State Pub. Works Bd.*, 108 Nev. 605, 610, 836 P.2d 633, 636 (1992) ("When a statute is susceptible to [only] one natural or honest construction, that alone is the construction that can be given."). Accordingly, Waste Management respectfully requests the Court to reconsider its determination that NRS 444.520 is ambiguous, as well as its conclusion based thereon on that "NRS 108.226 applies to the garbage lien statutes because it was incorporated in NRS 444.520." *See* Order (7/28/14) at 16:16-17.

B. INTERPRETING NRS 444.520 TO INCORPORATE MORE THAN NRS 108.239 RENDERS THE LEGISLATURE'S CHOSEN LANGUAGE MEANINGLESS

In reaching the conclusion that provisions of the mechanic's lien statutory scheme beyond NRS 108.239 were intended to be incorporated into NRS 444.520, the Court determined that "no portion of NRS 444.520 is rendered superfluous if the statute [NRS 444.520] is interpreted to state that the garbage lien may apply the mechanic's liens statutes that addresses procedural requirements not already governed by NRS 444.520." *Id.* at 14:4-6 (emphasis omitted). As set forth above, the clear language of NRS 444.520 incorporates only the "manner . . . provided for the foreclosure of mechanic's liens," rather than the "procedural requirements" for the same. Thus, incorporation of those "procedural requirements," such as the 90 day deadline set forth in NRS 108.226(1)(a), would be contrary to the legislative intent in enacting NRS 444.520, as elucidated by the plain language of

[2] *Id.* at 116 ("Under the Act, until paid, a special district's fees 'constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of this state for the foreclosure of mechanics' liens.") (quoting Section 32–1–1001(1)(j)(I), C.R.S.2006) (emphasis added).

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the statute. *See Lucero,* 127 Nev. Adv. Op. 7, 249 P.3d at 1228 (legislative intent is first ascertained from the statute's plain language and meaning).

Additionally, as detailed below, interpreting NRS 444.520 to incorporate more than the manner for foreclosing a mechanic's lien under NRS 108.239 would impermissibly render the Legislature's chosen language superfluous. *Paramount Ins. v. Rayson & Smitley,* 86 Nev. 644, 649, 472 P.2d 530, 533 (1970) ("no part of a statute should be rendered nugatory, nor any language turned to mere surplusage, if such consequences can be properly avoided.") (internal quotation marks and citation omitted); *Karcher Firestopping v. Meadow Valley Constr.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009) ("This court generally avoids statutory interpretation that renders language meaningless or superfluous.").

1. "Imposing" the "Requirements" of NRS 108.226 Renders the Legislature's Use of "May" Superfluous and Illusory

The only reference contained in NRS 444.520 to the mechanic's lien statutes provides that garbage liens recorded under that statute "***may*** be foreclosed in the same manner as provided for the foreclosure of mechanics' liens." (Emphasis added). As stated by this Court, "'may' is to be construed as permissive, unless the clear intent of the legislature is to the contrary." *See* Order at 11:20-22 (citing *Sengbusch v. Fuller*, 103 Nev. 580, 582 (1987)); *see also id.* at 12:3-5 ("the Court finds that standing alone the legislative history of NRS 444.520 provides little guidance as to the application of the mechanic's lien statutes."). Nonetheless, the Court's Order "impos[es] the 90 day requirement" [*id.* at 16:12-13] found in NRS 108.226(1)(a), when it held that "NRS 108.226 governs how far back in time Waste Management is able to notice and record a garbage lien." *Id.* at 16:18-19.

However, "*imposing* the 90 day *requirement*" found in NRS 108.226 would ignore the permissive, rather than mandatory, language used by the Legislature in NRS 444.520. *See* NRS 0.025 ("'May' confers a right, privilege or power . . . 'Must' expresses a requirement . . . 'Shall' imposes a duty to act."). The Legislature did not use "must", "shall", or any other language mandating the incorporation or application of <u>any</u> portion of the mechanic's lien statutory scheme (NRS 108.226 or otherwise) with reference to garbage liens. Instead, NRS 444.520 simply provides

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that the manner provided for foreclosing a mechanic's lien "may" be used to foreclose upon a garbage lien. Had the Legislature intended to "require" garbage lien claimants to perfect or foreclose upon their liens in a specific manner it could have, as it has done in other similar statutes,[3] so provided. *See* Order at 10:3-5 ("'[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done.'") (quoting *McKay*, 103 Nev. 490, 492 (1987)). Thus, interpreting NRS 444.520 to "require" compliance with the mechanic's lien statutes impermissibly contradicts and renders meaningless the language employed in that statute. *Karcher Firestopping*, 125 Nev. at 113, 204 P.3d at 1263. Therefore, such an interpretation should be rejected. *Id.*

2. Imposing the Requirements of NRS 108.226 Negates NRS 444.520(2)'s Provision that a Perpetual Lien is "Constitute[d]" when the Fee or Charge is "Levied"

Interpreting NRS 444.520 to require compliance with NRS 108.226 in order to establish a garbage lien contradicts additional express language of NRS 444.520(2), which provides that "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served[.]" (Emphasis added). The plain meaning of this language provides that once an authorized fee or charge is "levied", such fee or charge immediately "constitutes a perpetual lien" "until paid." As discussed further below, a garbage lien claimant looking at NRS 444.520 has no notice that failure to act within 90 days of a customer's "delinquency in payment" destroys that perpetual lien. In fact, imposing such a requirement negates the plain language of NRS 444.520 that the perpetual lien is "constitute[d]" at the time the fee or charge was "levied". Because statutes should be interpreted so as to avoid negating language used therein [*see Paramount Ins.,* 86 Nev. at 649, 472 P.2d at 533], such an interpretation should be avoided here.

[3] *Cf.* NRS 318.197(2) (A perpetual lien [of a general improvement district] must be foreclosed in the same manner as provided by the laws of the State of Nevada for the foreclosure of mechanics' liens) (emphasis added); NRS 244.335(7) ("The lien [for license tax levies] must be enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien.") (emphasis added); NRS 268.095(7) ("The lien [for license tax levies] must be enforced . . . [b]y an action for foreclosure against the property in the same manner as an action for foreclosure of any other lien.") (emphasis added); NRS 562.050 ("All liens provided for in this chapter must be foreclosed in the manner provided by chapter 104 of NRS") (emphasis added).

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C. DUE PROCESS DOES NOT REQUIRE PROVISIONS OTHER THAN NRS 108.239 BE INCORPORATED INTO NRS 444.520

In the Order, the Court noted that "NRS 444.520 does not address the procedures for a hearing or dispute should the customer assert that her account is not delinquent[.]" *Id.* at 14:12-14. According to the Court, the failure of NRS 444.520 to expressly address such a situation makes NRS 444.520 constitutionally invalid, *unless* the statute is interpreted to incorporate NRS 108.2275, which provides a procedure for challenging frivolous or excessive mechanic's liens. *See id.* at 15:2-5 ("since NRS 444.520 does not provide an opportunity to be heard if the property owner disputes the lien, but it does incorporate the mechanic's lien statutes, a constitutional interpretation of NRS 444.520 would incorporate more provisions of NRS Chapter 108 than just NRS 108.245 [sic][4]."); *see also id.* at 15:9-11 ("The Court does not find the permissive application of multiple mechanic's lien statutes to be absurd, as it is the only manner of interpretation that preserves the customer's ability to dispute a lien.") (emphasis added). Waste Management requests the Court to reconsider this determination, because, as set forth below, NRS 444.520, as drafted, does not violate a property owner's due process rights.

1. Owners are Never Dispossessed of the Property Without Notice and an Opportunity to be Heard

"Due process is satisfied by giving both parties 'a meaningful opportunity to present their case.'" *See J.D. Constr. v. IBEX Int'l Group*, 126 Nev. Adv. Op. 36, 240 P.3d 1033, 1040 (2010) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 349, 96 S.Ct. 893 (1976)). Further, in determining whether a particular procedure satisfies due process, the Court should consider:

> [f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. (quoting *Matthews*, 424 U.S. at 335).

[4] This appears to have been a typographical error, and should instead cite NRS 108.239.

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With regard to foreclosure, as detailed above, NRS 444.520 expressly provides that garbage liens established thereunder "may be foreclosed in the same manner as provided for the foreclosure of mechanic's liens." NRS 444.520(3). The "manner . . . provided for the foreclosure of mechanic's liens," contained in NRS 108.239, expressly requires:

- A judicial foreclosure process [NRS 108.239(1)];
- Detailed notices, including the recording of a *lis pendens* [NRS 108.239(2)];
- The opportunity for all persons holding conflicting interests to join or intervene in the action [NRS 108.239(3) & (4)];
- The judicial declaration of the parties' respective rights after an opportunity to be heard [NRS 108.239(7)];
- Preferential trial settings where requested [NRS 108.239(8)];
- Sale of the property if the lien(s) is/are validated [NRS 108.239(10)];
- The proceeds of the sale must be used to satisfy the lien(s) (and costs of the sale), with all excess proceeds to go to the property owner [NRS 108.239(11)].

The foregoing safeguards clearly provide the property owner a "meaningful opportunity" to dispute and question the legitimacy of a garbage lien. Moreover, until such a foreclosure action is actually conducted, the owner is never dispossessed of, or prohibited from using, its property. Given the foregoing, it is apparent that NRS 444.520 satisfies due process without interpreting the statute to incorporate more than the manner provided for the foreclosure of a mechanic's lien under NRS 108.239.

2. Owners Can Dispute the Validity of the Garbage Lien Prior to Foreclosure in the Exact Same Manner as Plaintiff Has Done Here

The Nevada Supreme Court has recognized that the recoding of a mechanic's lien constitutes a "taking" to which constitutional due process protections apply. *See J.D. Constr.*, 126 Nev. Adv. Op. 36, 240 P.3d at 1040 ("A mechanic's lien is a 'taking' in that the property owner is deprived of a significant property interest[.]"). Importantly, however, the Court has also recognized that such a taking "is nonetheless of relatively minor effect [because] [t]he mechanics' lien . . . does not deprive the owner of the interim possession or use of the liened property[.]" *Id.* at 1041 (quoting

with approval *Connolly Dev., Inc. v. Sp. Ct. of Merced Cty.*, 553 P.2d 637, 652-53 (Cal. 1976)).

In the Order, this Court correctly pointed out that NRS 444.520 does not expressly "address the procedures for a hearing or dispute should the customer assert that her account is not delinquent[.]" *See* Order (7/28/14) at 14:12-14. Notwithstanding this lack of an express pre-foreclosure dispute resolution mechanism, applying the process set forth in NRS 108.2275 for permissible *expedited review* of a disputed mechanic's lien [*see* discussion *infra*] to garbage liens is not "the only manner of interpretation [of NRS 444.520] that preserves the customer's ability to dispute a lien." *See* Order at 15:9-11. In this regard, a property owner always has the opportunity to dispute the legitimacy of a garbage lien through a judicial proceeding similar to what Plaintiff has implemented here; an action for declaratory relief and/or slander of title challenging the basis for and validity of the existing garbage lien. *See e.g., Rowland v. Lepire*, 99 Nev. 308, 662 P.2d 1332 (1983) (homeowner filed slander of title action against contractor following recordation of mechanic's lien); *Caughlin Ranch Homeowners Ass'n v. Caughlin Club*, 109 Nev. 264, 849 P.2d 310 (1993) (property owner brought declaratory relief and slander of title claims challenging propriety of common interest community assessment and resulting lien). Alternatively, the property owner can satisfy the lien and institute an action (likely in small claims court given the relatively nominal amount of such liens)[5] to recoup such payment if the lien was indeed wrongful. Any of those actions would provide the customer the "meaningful opportunity to present their case" as they would have in a foreclosure action under NRS 108.239, thus also satisfying due process. *Mathews,* 424 U.S. at 349; *see also Burleigh v. State Bar of Nev.*, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (1982) ("due process is flexible and calls for such procedural protections as the particular situation demands.") (internal quotations omitted). Consequently, NRS 444.520 is constitutionally valid without imposing the expedited review procedure created for mechanic's liens under NRS 108.2275. Therefore, NRS 444.520 should be interpreted and applied pursuant to its plain language,

[5] The Court will recall that, for instance, Plaintiff initiated this action challenging Waste Management's February 23, 2012 lien in the amount of $489.47. *See* Complaint (12/3/12); *see also* Waste Management's Opposition to Plaintiff's Motion for Partial Summary Judgment (3/28/14), Ex. 6 (the February 23, 2012 Notice of Lien for Garbage Fees – Residential User).

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without resort to incorporating more than the "manner . . . provided for the foreclosure of mechanic's liens" under NRS 108.239.

3. Nevada's Mechanic's Lien Statutory Scheme Existed for Over 100 Years Without the Expedited Review Procedure Created by NRS 108.2275; There is No Constitutional Reason to Require Such Expedited Procedure Apply to Garbage Liens Where the Legislature Did Not Expressly Provide for the Same

NRS 108.2275 permits "[t]he debtor of the lien claimant or a party in interest in the property subject to" a mechanic's lien to bring a motion seeking an order to show cause why a mechanic's lien should not be expunged as frivolous or excessive. *See* NRS 108.2275(1). If the Court determines a hearing is warranted on such motion, the hearing must be commenced "within not less than 15 days or more than 30 days after the court issues the order for a hearing." NRS 108.2275(3); *see also J.D. Constr.*, 126 Nev. Adv. Op. 36, 240 P.3d at 1042 ("While any hearing must be initiated within that time frame, the statute [NRS 108.2275] does not require the district court to resolve the matter within that time frame."). Following such a hearing, the Court must determine whether the lien is (i) frivolous and made without reasonable cause, (ii) excessive, or (iii) neither frivolous nor excessive. NRS 108.2275(6). The procedure outlined in NRS 108.2275 is permissive, rather than mandatory. *See* NRS 108.2275(1) ("The debtor of the lien claimant or a party in interest in the property subject to the notice of lien . . . may apply . . ."). Further, any proceedings conducted under NRS 108.2275 "do not affect any other rights and remedies otherwise available to the parties." NRS 108.2275(7).

To be clear, statutory mechanic's liens have been recognized in Nevada since at least 1875. *See e.g., Hunter v. Truckee Lodge No. 14, I.O.O.F.*, 14 Nev. 24, 1879 WL 3454, *2 (1879) ("This is an action under the mechanics' lien law of 1875 (Stat. 1875, p. 122)"). NRS 108.2275 and the expedited review procedures provided therein, however, were not added to Nevada law until 1995. *See* 1995 Senate Bill 434, as enrolled in Chapter 471 of the 1995 Statutes of Nevada, at page 1505-10, attached hereto as **Exhibit 2**; *see also* Order (7/28/14) at 9 (noting this procedure was first added in 1995).[6] Prior to that time, property owners s disputing the validity of a mechanic's lien raised

[6] The Court's Order references both "Senate Bill 401" and "A.B. 343" as the enacting bill for NRS 108.2275. These references appear to be in error, as 1995 Senate Bill 401 revised portions of ...(cont'd)

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such claims through declaratory relief and/or slander of title causes of action. *See e.g., Rowland*, 99 Nev. 308, 662 P.2d 1332. Indeed, the testimony before the Legislature in 1995 expressly recognized that already existing avenue of relief.[7] Nonetheless, proponents of the Bill testified that the addition of what would later become NRS 108.2275 was warranted "because it provides a means to get liens off houses *in an expeditious fashion*." Minutes of the Senate Committee on Judiciary on June 6, 1995, attached hereto as **Exhibit 6**, at 12 (Senator Adler) (emphasis added); *see also* Minutes of the Senate Committee on Judiciary on May 30, 1995, attached hereto as **Exhibit 7**, at 15 ("Senator Adler voiced approval of the provision to remove frivolous liens because that will enable the close of escrow in a timely manner.").

Given the above, it is apparent that NRS 108.2275 was not added in 1995 to remedy 100 years of perceived inability for an owner to otherwise challenge a mechanic's lien; it was added to expedite resolution of such liens where possible.[8] Notably, however, despite the many forms of statutory liens existing under our laws [*see e.g.,* Footnote 1 *supra*] it does not appear that the Legislature has ever deemed it appropriate to enact similar statutes permitting other liens to be addressed on an expedited basis. Neither Plaintiff's due process arguments nor the text or history of

(cont'd)
Nevada's gaming regulations, whereas 1995 Assembly Bill 343 amended the law relating to the sale of subdivided lands. *See* Legislative Counsel Bureau's Summary of Legislation for the 1995 Legislative Session at pp. 155 and 180-81, excerpts of which are attached hereto as **Exhibit 3**.

[7] *See e.g.,* Minutes of the Senate Committee on Judiciary on May 23, 1995, attached hereto as **Exhibit 4**, at 8 (Harold Jacobsen, "There already exists a remedy to this problem [for frivolous or excessive liens], he told, the ability to sue for wrongful clouding of title."); Minutes of the Senate Subcommittee on Judiciary on May 25, 1995, attached hereto as **Exhibit 5**, at 5 ("Mr. Bennett asserted the goal is to find another device to address conflicts between the contractor and the subcontractors, rather than involving 'innocent third parties' (the home buyers) The discussion of concerns continued, with Mr. [Sid] Perzy pointing out the device exists, and Mr. [Harold] Jacobsen explaining that invalid liens can be addressed through a lawsuit for clouding title.").

[8] The Court correctly noted in the Order that "the legislative history pertaining to NRS 108.2275 specifically states that the legislature designed the procedures for contesting a mechanic's lien with the preservation of due process rights in mind." *See* Order at 15:5-7. To be clear, however, that discussion centered around "the defendant's due process rights" and whether the expedited review violated such rights by providing insufficient "time to answer or gather witnesses or evidence." *See* Exhibit 5 at 9. As a result of the concerns for the due process rights of lien claimants, rather than property owners, the timeframe within which the court was required to hold its hearing was enlarged to be "not less than 10 days, or more than 20 days." *Id.* That period was subsequently enlarged again to the current period of "not less than 15 days, or more than 30 days." *See* NRS 108.2275(3).

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NRS 444.520 support applying such expedited proceedings with respect to garbage liens.

D. THE 90 DAY DEADLINE TO RECORD A MECHANIC'S LIEN UNDER NRS 108.226 IS NOT TRIGGERED BY A "DELINQUENCY" IN PAYMENT

In the event the Court concludes that a garbage lien under NRS 444.520 must be perfected within the 90 day period provided under NRS 108.226, Waste Management respectfully requests the Court to reconsider its determination as to the triggering event for such deadline. Specifically, in the Order the Court held that "[t]he clear language of NRS 108.226 provides Waste Management with the opportunity to supply notice to its customers within 90 days after each billing cycle becomes delinquent." Order (7/28/14) at 16:7-8. The exact language of NRS 108.226(1)(a), which contains the 90 day deadline, however, provides that a mechanic's lien claimant must record the notice of lien,

> [w]ithin 90 days after the date on which *the **latest** of the following occurs*: (1) The completion of the work of improvement; (2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or (3) The last performance of work by the lien claimant for the work of improvement.

NRS 108.226(1)(a) (emphasis added). The word "delinquency" does not appear anywhere in NRS 108.226(1)(a), nor does the statute reference any act or omission by a property owner/customer as being a triggering event. *See id.* Instead, each of the triggering events relates to the date work/materials/equipment were last provided to the construction project (by the lien claimant or otherwise). Thus, respectfully, utilization of the date of the "delinquency" is neither supported by the language of NRS 108.226(1)(a), nor any reasonable inferences drawn therefrom.

In the Order, the Court suggested that "imposing" the 90 day requirement in NRS 108.226(1)(a) based upon the first delinquency in payment "may encourage the garbage company to send out a 'notice of lien' sooner or to impose a shorter billing cycle." *See* Order at 16:12-14. Respectfully, however, imposing such a requirement would only serve to increase the costs to all parties, while at the same time decreasing the opportunity for the parties to resolve legitimate disputes without the necessity of recording the lien. For example, in the case of Waste Management, in 2012, if it was required to go forward with recording a lien following non-payment, Waste Management assessed service charges to the account in the amount of $64.00. *See e.g.,*

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Waste Management's Opposition to Plaintiff's Motion for Partial Summary Judgment (3/28/14), Ex. 3 (Invoices for Account 010-74135) at WM000263; *see also id.*, Ex. 6 (Lien for Account No. 010-74135) (reflecting recording fee). Thus, if a customer missed a single $36.06 quarterly charge—the rate applicable to Plaintiff's Account No. 010-74135 at the time of the February 2012 lien—and the service provider was required to race to the County Recorder's office to comply with the above 90 day deadline, the amount of the customer's "delinquency" would nearly triple as a matter of course.

Further, because of the extremely short duration, the service provider would be penalized if it attempted to work with the customer prior to recording the garbage lien. As the Court noted, the testimony before the Legislature when it enacted NRS 444.520 was that "[c]ustomers receive about six requests for payment before they receive an intent to lien notice." *See* Order at 13:4-5 (quoting Senate Committee on Government Affairs, Committee Analysis of A.B. 354, at 11 (April 6, 2005)). Requiring the garbage lien to be recorded within 90 days of the first delinquency in payment would all but eviscerate any opportunity for the service provider to issue the customer even one-third of the same number of requests for payment before it was required to record the lien (or be forever barred from doing so). Neither the express language of NRS 444.520 nor NRS 108.226(1)(a) expressly call for the imposition of such an inflexible and unworkable system. Waste Management therefore requests that in the event the Court concludes NRS 108.226(1)(a) must be complied with in the context of garbage liens, that the Court—consistent with the express language of NRS 108.226(1)(a)—tie the 90 day deadline to the date on which the service provider last provides garbage removal services to the property.

E. THE COURT SHOULD APPLY A THREE YEAR LIMITATIONS PERIOD TO STATUTORY GARBAGE LIENS

As set forth above, the Court also concluded that a "two year statute of limitations applies to Waste Management's ability to foreclose [its garbage lien.]" *See* Order at 18:4-5. In reaching this conclusion, the Court relied upon NRS 11.190(4)(b), which provides as follows:

> Except as otherwise provided in NRS 40.4639, 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:
>
> . . .

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> 4. Within 2 years:
>
> . . .
>
> (b) An action upon a statute for a **penalty** or **forfeiture**, where the action is given to a person or the State, or both, except when the statute imposing it prescribes a different limitation. (Emphasis added).

Waste Management respectfully submits that the statutory garbage lien created under NRS 444.520 is neither a "penalty" nor a "forfeiture" as those terms have been interpreted in Nevada, and therefore an action to foreclose upon such a lien does not fall within the ambit of NRS 11.190(4)(b).

First, according to the Nevada Supreme Court, "[f]or statute-of-limitations purposes," a "penalty" under NRS 11.190(4)(b) is "a 'punishment for an offence against the public . . . not incident to the redress of a private wrong.' In other words, the term 'penalty' generally is construed to mean something other than damages or pecuniary loss." *Torrealba v. Kesmetis*, 124 Nev. 95, 104, 178 P.3d 716, 723 (2008) (concluding that negligence per se claim brought under NRS 240.150 was an "action upon a liability created by statute, other than a penalty or forfeiture"— subject to a three year limitations period under NRS 11.90(3)(a)—because the liability "would not exist but for the statute", but the action sought redress of a private wrong and thus did not qualify as an action "for a penalty"). Because the foreclosure of a garbage lien does not seek to "punish" a public offense, but instead seeks "redress of a private wrong" (i.e., non-payment for services rendered), such an action cannot be deemed "[a]n action upon a statute for a penalty" under NRS 11.190(4)(b).

Similarly, an action to foreclose upon a statutory lien does not result in a "forfeiture." To the contrary, in *Long v. Towne*, 98 Nev. 11, 639 P.2d 528 (1982), the Nevada Supreme Court expressly held that lien foreclosure sales conducted in compliance with applicable statutory procedures are not forfeitures. *Id*. at 14, 639 P.2d at 530. There, the plaintiffs filed suit seeking to set aside a non-judicial foreclosure sale, conducted under NRS 107.080, foreclosing upon a lien for delinquent common-interest community assessments. Among other arguments raised on appeal, the plaintiffs claimed the foreclosure sale constituted a forfeiture. The Court, however, rejected the argument, noting that:

> the lien foreclosure sale was conducted under authority of the CC&Rs and in compliance with NRS 107.080. The [Plaintiffs] had actual notice of the sale and received the excess of the sale price over the amount of the Association's lien and

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costs. There simply was no forfeiture in this case.

Id.; *see also id.* ("this court [has previously] implied that a lien foreclosure sale conducted in accordance with NRS 107.080 is an equitable alternative to forfeiture") (citation omitted).

The rationale for holding that statutory lien foreclosure sales under NRS 107.080 are not forfeitures applies with equal force to those conducted under NRS 108.239—which provides the manner for the foreclosure of mechanic's liens. Specifically, like foreclosure actions under NRS 107.080, NRS 108.239 dictates that any portion of the foreclosure proceeds exceeding the amount of the lien and the applicable costs of conducting the sale, "must be paid over to the owner of the property." *See* NRS 108.239(11). As quoted above, *Long* concluded that the remuneration of such excess proceeds to the property owner was sufficient to distinguish a statutory foreclosure sale from a forfeiture action. *Long*, 98 Nev. at 14, 639 P.2d at 530; *see also* BLACK'S LAW DICTIONARY 722 (9th ed.2009) (defining "forfeiture" as the "divestiture of property without compensation") (emphasis added). Therefore, actions seeking to foreclose garbage liens under NRS 444.520 are not properly characterized as actions upon a statute for a forfeiture, and the two year limitation period under NRS 11.190(4)(b) should not be applied.

Instead, such actions are subject to the three year limitation period under NRS 11.190(3)(a), which applies to "action[s] upon a liability created by statute, other than a penalty or forfeiture." In this regard, both the Nevada Supreme Court and the Office of the Attorney General—in an opinion relied upon by Plaintiff in its Reply brief[9]—have recognized that actions to enforce statutory tax liens are subject to three year limitation periods. *See e.g., State Tax Comm'n v. Cord*, 81 Nev. 403, 410 n.1, 404 P.2d 422, 426 n.1 (1965) ("We are satisfied that NRS 11.190(3) applies to tax liabilities."); Attorney General Opinion No. 91 (August 10, 1951) (stating predecessor statute to NRS 11.190(3) "was held to establish a limitation period beyond which delinquent taxes could not be collected."). Moreover, when Plaintiff first raised the issue of the what limitation period would be applicable under NRS 11.190, Plaintiff seemingly agreed that NRS 11.190(3), as opposed to

[9] *See* Plaintiff's Reply in Support of Motion for Partial Summary Judgment (4/11/14) at 8:22-24 ("the Attorney General has concluded that there is a time limitation on the property taxes for three years under NRS 11.190. See AGO Opinion 91 (August 10, 1951).").

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NRS 11.190(4), would be the applicable limitation period if NRS 108.233 did not apply (which this Court has already ruled does not). *See* Plaintiff's Reply in Support of Motion for Partial Summary Judgment (4/11/14) at 9:14-16 ("There is nothing to indicate that the garbage lien was intended to last beyond the limitations of NRS 11.080(3) [sic], to wit, the Statute of Limitations.").

Because an action to foreclose upon a statutory garbage lien is neither an action for a "penalty," nor an action for a "forfeiture," Waste Management respectfully requests the Court reconsider the portion of its Order concluding that the two year limitation period under NRS 11.190(4)(b) applies to such actions, and instead confirm that NRS 11.190(3)(a)'s three year limitation period is applicable.

V. CONCLUSION

Based upon the foregoing, Waste Management respectfully requests the Court to reconsider the above discussed portions of its July 28, 2014 Order denying in part, and granting in part, Plaintiff's Motion for Partial Summary Judgment.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25th day of September, 2014.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 25th day of September, 2014, I served a true and correct copy of the foregoing **WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 28, 2014 ORDER** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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APPENDIX OF EXHIBITS

EXHIBIT 1	Declaration of Bryan L. Wright, Esq.
EXHIBIT 2	1995 Senate Bill 434, as Enrolled in Chapter 471 of the 1995 Statutes of Nevada, at Page 1505-10
EXHIBIT 3	Legislative Counsel Bureau's Summary of Legislation for the 1995 Legislative Session at Pp. 155 and 180-81
EXHIBIT 4	Excerpts from the Minutes of the Senate Committee on Judiciary on May 23, 1995
EXHIBIT 5	Minutes of the Senate Subcommittee on Judiciary on May 25, 1995
EXHIBIT 6	Excerpts from the Minutes of the Senate Committee on Judiciary on June 6, 1995
EXHIBIT 7	Excerpts from the Minutes of the Senate Committee on Judiciary on May 30, 1995

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EXHIBIT 1

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited liability company, Plaintiff, vs. WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10, Defendants.	**CASE NO.: CV12-02995** **DEPT. NO.: 4** **DECLARATION OF BRYAN L. WRIGHT, ESQ. IN SUPPORT OF WASTE MANAGEMENT OF NEVADA, INC.'S MOTION FOR PARTIAL RECONSIDERATION OF THE COURT'S JULY 27, 2014 ORDER**

I, Bryan L. Wright, Esq., declare as follow:

1. I am over the age of eighteen years, and have personal knowledge of the matters stated herein, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true. If called as a witness, I would be competent to testify as to the matters stated in this Declaration.

2. I am an attorney with the law firm of Holland & Hart LLP, counsel of record for Defendant Waste Management of Nevada, Inc. ("Waste Management") in the above matter. I make this Declaration in support of Waste Management's Motion for Partial Reconsideration of the Court's July 27, 2014 Order (the "Motion for Partial Reconsideration").

3. A true and correct copy of 1995 Senate Bill 434, as enrolled in Chapter 471 of the 1995 Statutes of Nevada, at page 1505-10, as obtained from the Nevada Legislative Counsel Bureau, is attached to the Motion for Partial Reconsideration as **Exhibit 2**.

4. True and correct copies of pages 155 and 180-81 of the Legislative Counsel Bureau's Summary of Legislation for the 1995 Legislative Session, are attached to the Motion for Partial Reconsideration as **Exhibit 3**.

5. True and correct copies of excerpts from the Minutes of the Senate Committee on Judiciary on May 23, 1995, as obtained from the Nevada Legislative Counsel Bureau, are attached to the Motion for Partial Reconsideration as **Exhibit 4**.

6. A true and correct copy of the Minutes of the Senate Subcommittee on Judiciary on May 25, 1995, as obtained from the Nevada Legislative Counsel Bureau, is attached to the Motion for Partial Reconsideration as **Exhibit 5**.

7. True and correct copies of excerpts from the Minutes of the Senate Committee on Judiciary on June 6, 1995, as obtained from the Nevada Legislative Counsel Bureau, are attached to the Motion for Partial Reconsideration as **Exhibit 6**.

8. True and correct copies of excerpts from the Minutes of the Senate Committee on Judiciary on May 30, 1995, as obtained from the Nevada Legislative Counsel Bureau, are attached to the Motion for Partial Reconsideration as **Exhibit 7**.

I declare under penalty of perjury under the law of the State of Nevada, that the foregoing is true and correct.

DATED this 25th day of September, 2014.

Bryan L. Wright, Esq.

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EXHIBIT 2

9. The Nevada gaming commission, by the affirmative vote of a majority of its members, may remove from its records the name of a debtor and the amount of tax, penalty and interest, or any of them, owed by him, if after 5 years it remains impossible or impracticable to collect such amounts. The commission shall establish a master file containing the information removed from its official records by this section.

Sec. 25. 1. This section and sections 1 to 11, inclusive, and 13 to 24, inclusive, of this act become effective upon passage and approval.

2. Section 12 of this act becomes effective on July 1, 1995.

Senate Bill No. 434—Committee on Judiciary

CHAPTER 471

AN ACT relating to statutory liens; establishing a procedure for releasing or reducing the amount of a lien that is excessive or made without reasonable cause; revising the provisions relating to the priority of certain mechanics' and materialmen's liens; requiring a lienor to record a discharge or release of a lien; and providing other matters properly relating thereto.

[Approved July 1, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 108 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The debtor of the lien claimant or a party in interest in the premises subject to the lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the lien is excessive, may apply by motion to the district court for the county where the property or some part thereof is situated for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted. The motion must set forth the grounds upon which relief is requested and must be supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts upon which the motion is based. If the court issues an order for a hearing, the applicant shall serve notice of the application and order of the court on the lien claimant within 3 days after the court issues the order. The court shall conduct the hearing within not less than 10 days or more than 20 days after the court issues the order.

2. The order for a hearing must include a statement that if the lien claimant fails to appear at the time and place noted, the lien will be released with prejudice and the lien claimant will be ordered to pay the costs requested by the applicant, including reasonable attorney's fees.

3. If, at the time the application is filed, an action to foreclose the lien has not been filed, the clerk of the court shall assign a number to the application and obtain from the applicant a filing fee of $85. If an action has been filed to foreclose the lien before the application was filed pursuant to this section, the application must be made a part of the action to foreclose the lien.

4. If, after a hearing on the matter, the court determines that:

(a) The lien is frivolous and was made without reasonable cause, the court may issue an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant.

(b) The amount of the lien is excessive, the court may issue an order reducing the lien to an amount deemed appropriate by the court and awarding costs and reasonable attorney's fees to the applicant.

(c) The lien is not frivolous and was made with reasonable cause and that the amount of the lien is not excessive, the court may issue an order awarding costs and reasonable attorney's fees to the lien claimant.

5. Proceedings conducted pursuant to this section do not affect any other rights and remedies otherwise available to the parties.

Sec. 2. NRS 108.221 is hereby amended to read as follows:

108.221 **[**The phrase "work of improvement" and the word "improvement" as**]** *As* used in NRS 108.221 to 108.246, inclusive, **[**are defined to mean**]** *and section 1 of this act, unless the context otherwise requires, "work of improvement" or "improvement" means* the entire structure or scheme of improvement as a whole.

Sec. 3. NRS 108.225 is hereby amended to read as follows:

108.225 1. The liens provided for in NRS 108.221 to 108.246, inclusive, are preferred to:

(a) Any lien, mortgage or other encumbrance which may have attached **[**subsequent to**]** *after* the time when the building, improvement or structure was commenced, work done, or materials were commenced to be furnished.

(b) Any lien, mortgage or other encumbrance of which the lienholder had no notice and which was unrecorded at the time the building, improvement or structure was commenced, work done, or the materials were commenced to be furnished.

For the purposes of this subsection, "work done" does not include any work commenced before on-site construction has started.

2. **[**Every**]** *Except as otherwise provided in subsection 3, every* mortgage or encumbrance imposed upon, or conveyance made of, property affected by the liens provided for in NRS 108.221 to 108.246, inclusive, between the time when the building, improvement, structure or work thereon was commenced, or the materials thereof were commenced to be furnished, and the expiration of the time fixed in NRS 108.221 to 108.246, inclusive, in which liens therefor may be recorded, whatever the terms of payment may be, are subordinate and subject to the liens in full authorized in NRS 108.221 to 108.246, inclusive, regardless of the date of recording **[**of**]** the liens.

3. If any improvement at the site is provided for in a contract that is separate from any contract for the construction of a building or other structure, the improvement at the site shall be deemed a separate work of improvement and the commencement thereof does not constitute the commencement of the construction of the building or other structure. As used in this subsection, "improvement at the site" means:

(a) The demolition or removal of improvements, trees or other vegetation from;

(b) The drilling of test holes in;

(c) Grading, filling or otherwise improving; or

(d) Constructing or installing sewers or other public utilities on, any lot or tract of land or the street, highway or sidewalk in front of or adjoining any lot or tract of land. The term includes the construction of any vaults, cellars or rooms under the sidewalks or making improvements to the sidewalks in front of or adjoining any tract of land.

Sec. 4. NRS 108.226 is hereby amended to read as follows:

108.226 1. Every person claiming the benefit of NRS 108.221 to 108.246, inclusive, [shall] *must* record his notice of lien in the form provided in subsection [4, and shall do so:

(a) Before the lapse of] *5:*

(a) Within 90 days after the completion of the work of improvement;

(b) [Before the lapse of] *Within* 90 days after the last delivery of material by the lien claimant; or

(c) [Before the lapse of] *Within* 90 days after the last performance of labor by the lien claimant,

whichever [of the time periods provided in this subsection is the last to expire.] *is later.*

2. The time within which to perfect the lien by recording [of] the notice of lien is shortened if [the provisions of NRS 108.228 are complied with and] a notice of completion is [timely recorded,] *recorded in a timely manner pursuant to NRS 108.228,* in which event [such] *the* notice of lien must be recorded within 40 days [immediately following] *after* the recording of the notice of completion.

3. Any one of the following acts or events is equivalent to "completion of the work of improvement" for all purposes of NRS 108.221 to 108.246, inclusive:

(a) The occupation or use of a building, improvement or structure by the owner, his agent or his representative and accompanied by cessation of labor thereon.

(b) The acceptance by the owner, his agent or his representative of the building, improvement or structure.

(c) The cessation from labor for 30 days upon any building, improvement or structure, or the alteration, addition to or repair thereof.

(d) The recording of the notice of completion provided in NRS 108.228.

4. *For the purposes of this section, if a work of improvement consists of the construction of more than one separate building and each building is constructed pursuant to:*

(a) A separate contract, each building shall be deemed a separate work of improvement. The time within which to perfect the lien by recording the notice of lien pursuant to subsection 1 commences to run upon the completion of each separate building; or

(b) A single contract, the time within which to perfect the lien by recording the notice of lien pursuant to subsection 1 commences to run upon the completion of all the buildings constructed pursuant to that contract.

As used in this subsection, "separate building" means one structure of a work of improvement and any garages or other outbuildings appurtenant thereto.

5. The notice of mechanic's lien [shall] *must* be recorded in the office of the county recorder of the county where the property or some part thereof is situated and [shall] *must* contain:

(a) A statement of his demand after deducting all just credits and offsets.

(b) The name of the owner or reputed owner if known.

(c) The name of the person by whom he was employed or to whom he furnished the material.

(d) A statement of the terms, time given and conditions of his contract.

(e) A description of the property to be charged with the lien sufficient for identification.

[5.] *6.* The claim must be verified by the oath of the claimant or some other person. The claim need not be acknowledged to be recorded.

Sec. 5. NRS 108.228 is hereby amended to read as follows:

108.228 1. The owner may record a notice of completion [as follows:

(a) Within 15 days after the] *after:*

(a) The completion of any work of improvement; or

(b) [Within 15 days after there] *There* has been a cessation from labor thereon for a period of 30 days.

2. The notice of completion must be recorded in the office of the county recorder of the county where the property is situated and must set forth:

(a) The date when the work of improvement was completed, or the date on which cessation from labor occurred first and the period of its duration.

(b) The owner's name or owners' names, as the case may be, the address of the owner or addresses of the owners, as the case may be, and the nature of the title, if any, of the person signing the notice.

(c) A description of the property sufficient for identification.

(d) The name of the contractor, if any.

3. The notice must be verified by the owner [himself] or by some other person on his behalf. The notice need not be acknowledged to be recorded.

4. Upon recording the notice pursuant to this section, the owner shall [immediately] , *within 10 days after the notice is recorded,* deliver a copy of the notice [:

(a) Either in person or] by certified mail, to [any] :

(a) Any general contractor with whom the owner contracted for the work of improvement.

(b) [By certified mail, to any] *Any* person who, before the notice was recorded pursuant to this section, submitted a request to the owner to receive the notice.

Sec. 6. NRS 108.2421 is hereby amended to read as follows:

108.2421 1. The lien claimant is entitled to bring an action against the lien claimant's debtor and to join therein the surety on the bond. *A judgment for the claimant on the bond may not be made against the property.* The rights of the lien claimant include and the court may award to him in that action:

(a) The amount found due to the lien claimant by the court;

(b) The cost of preparing and filing the lien claim, including attorney's fees, if any;

(c) The costs of the proceedings;

(d) Attorney's fees for representation of the lien claimant in the proceedings; and

(e) Interest at [the rate of 7 percent per annum on the amount found due to the lien claimant and] *a rate established pursuant to NRS 99.040* from the date found by the court that the sum was due . [and payable.]

2. Proceedings [under] *pursuant to* subsection 1 are entitled to priority of hearing second only to criminal hearings. The plaintiff in the action may serve upon the adverse party a "demand for 30-day setting," in the proper form, and file the demand with the clerk of the court. Upon filing, the clerk of the court shall, before [Friday next,] *the Friday after the demand is filed,* vacate a case or cases in a department of the court and set the lien claimant's case for hearing, on a day or days certain, to be heard within 30 days [of] *after* the filing of the "demand for 30-day setting." Only one such preferential setting need be given by the court, unless the hearing date is vacated without stipulation of counsel for the plaintiff in writing. If the hearing date is vacated without that stipulation, upon service and filing, a new preferential setting must be given.

Sec. 7. NRS 108.2437 is hereby amended to read as follows:

108.2437 [Within 21 calendar days after a lien of record upon real property provided for in NRS 108.221 to 108.246, inclusive, secured on or after October 1, 1991, is satisfied or discharged, and a written request is received by the lienor for a discharge or release, the lienor shall cause to be recorded a discharge or release of the lien pursuant to NRS 108.2433.]

1. As soon as practicable, but not later than 10 days after a lien of record upon real property pursuant to NRS 108.221 to 108.246, inclusive, is satisfied or discharged, the lienor shall cause to be recorded a discharge or release of the lien in substantially the following form:

DISCHARGE OR RELEASE OF LIEN

NOTICE IS HEREBY GIVEN THAT:

The undersigned did, on the ..... day of ....., 19....., record in Book ....., as Document No. ....., in the office of the county recorder of ..... County, Nevada, its Notice of Lien, or has otherwise given notice of his intention to hold and claim a lien upon the following described property, owned or purportedly owned by ....., situated in the County of ....., State of Nevada, to wit:

(Legal Description or Address of the Property)

NOW, THEREFORE, for valuable consideration the undersigned does release, satisfy and discharge the claim or lien on the property described above by reason of such Notice of Lien, or by reason of the work and labor on, or materials furnished for, that property.

.....
(Signature of Lienor)

2. If the lienor fails to [do so,] *comply with the provisions of subsection 1,* he is liable in a civil action to the owner of the real property, his heirs or assigns [in the sum of $100,] for any actual damages caused by his failure to

comply with [the provisions of this section,] *those provisions or $100, whichever is greater,* and for a reasonable attorney's fee and the costs of bringing the action.

Senate Bill No. 443—Committee on Transportation

CHAPTER 472

AN ACT relating to motor vehicles; regulating their towing and storage; and providing other matters properly relating thereto.

[Approved July 1, 1995]

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 706 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. *The provisions of NRS 706.151 to 706.168, inclusive, 706.311 to 706.453, inclusive, 706.471, 706.473, 706.475, 706.6411 to 706.753, inclusive, and 706.881 to 706.885, inclusive, do not apply to an operator of a tow car.*

Sec. 3. *1. In addition to the other requirements of this chapter, each operator of a tow car shall, to protect the health, safety and welfare of the public:*

(a) Obtain a certificate of operation from the commission before he provides any services other than those services which he provides as a private motor carrier of property pursuant to the provisions of this chapter;

(b) Use a tow car of sufficient size and weight which is appropriately equipped to transport safely the vehicle which is being towed; and

(c) Comply with the other requirements of sections 2 to 10, inclusive, of this act.

2. The commission shall issue a certificate of operation to an operator of a tow car if it determines that the applicant:

(a) Complies with the requirements of subsection 1;

(b) Complies with the requirements of the regulations adopted by the commission pursuant to the provisions of this chapter; and

(c) Has provided evidence that he has filed with the commission a liability insurance policy, a certificate of insurance or a bond of a surety and bonding company or other surety required for every common and contract motor carrier pursuant to the provisions of NRS 706.291.

Sec. 4. *The operator shall maintain a dispatcher's log which shows for each vehicle towed:*

1. The date and time the call to provide towing was received.

2. The name of the person requesting that the vehicle be towed.

3. The date and time a tow car was dispatched to provide the towing.

4. The date and time the tow car arrived at the location of the vehicle to be towed.

EXHIBIT 3

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

(0)-852

NEVADA LEGISLATURE

SIXTY-EIGHTH SESSION

1995

SUMMARY OF LEGISLATION

PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

INTRODUCTION

The 1995 Nevada Legislature considered 1547 legislative measures. Of this total, 730 bills were enacted, and 173 resolutions were adopted. Six bills were vetoed by the Governor: two vetoes were sustained by the 1995 Legislature, and the remaining four will be considered during the 1997 Session.

The *Summary of Legislation* reviews each bill, concurrent resolution, and joint resolution (including the vetoed bills) passed by the 1995 Legislature. These summaries do not constitute legal analyses and are not intended for use by the legal community in place of the actual statutes. Further, each bill contains many provisions that cannot be included in a brief summary; those interested in a particular measure should consult the *Statutes of Nevada 1995* for the entire text. Detailed descriptions of appropriations acts are available in the *Nevada Legislative Appropriations Report*, prepared by the Fiscal Analysis Division of the Legislative Counsel Bureau.

Unless otherwise noted, the measures passed during the 1995 Legislative Session become effective on October 1, 1995.

Occasionally, descriptions of "current" or "existing" law are used to illustrate the changes resulting from a bill. These descriptions refer to the law existing prior to the effective date of new legislation. In many cases, the "current" law so referenced will already have been changed at the time of this document's publication.

Research Division
Legislative Counsel Bureau
August 1995

GAMING

S.B. 399 (Chapter 281)

Senate Bill 399 clarifies the meaning of gross revenue under the gaming statutes. Under this measure, gross revenue does not include the value of a chip won by a casino from a patron for which the casino has not received cash.

Casinos offer various promotional packages, which include "free" gaming chips and tokens to entice patrons into Nevada. Because no cash is received by the casino for these chips, their value should not be included in the calculation of the casino's gross revenue.

This measure is effective on June 19, 1995.

S.B. 401 (Chapter 470)

Senate Bill 401 revises certain provisions relating to the regulation of cashless wagering systems. In addition to defining key terms, this measure clarifies that a cashless wagering system includes computerized systems that facilitate the electronic transfer of money to or from a gaming device. Senate Bill 401 authorizes the State Gaming Control Board to inspect cashless wagering systems and to investigate disputes between a patron and a licensee that are not resolved to the patron's satisfaction.

Finally, the measure raises the annual salary of the chairman of the Nevada Gaming Commission from $42,000 to $55,000. The salary of each member is raised from $30,000 to $40,000.

The bill is effective on July 1, 1995.

S.B. 497 (Chapter 534)

Senate Bill 497 clarifies that the kinds of entertainment not subject to the casino entertainment tax include charitable benefits, museum exhibitions, sporting events, trade shows, films, outdoor concerts, certain other concerts, interactive entertainment, and certain types of music. Also exempt from the tax is entertainment that is provided at private meetings, around a swimming pool or beach, or without the requirement of an admission charge or the purchase of certain items.

Senate Bill 497 requires a gaming licensee to pay the casino entertainment tax on the price for admission to a cabaret, nightclub, cocktail lounge, or casino showroom unless the ticket for admission states whether this tax is included in the ticket price.

more than 1 percent of the purchase price of the real property, whichever is greater, and certain money deposited in the escrow.

S.B. 543 (Chapter 687)

Senate Bill 543 provides that local government purchasing and public works laws do not apply to a contract under which a private developer, for the benefit of a private development, constructs a water or sewer line extension project for which reimbursement will be received. If the developer pays the entire cost of the project, the provisions concerning competitive bidding and prevailing wages do not apply.

This bill is effective on July 6, 1995.

A.B. 47 (Chapter 695)

Assembly Bill 47 amends state law concerning impact fees for new development. The bill deletes a provision requiring local governments to pay impact fees that would otherwise have been collected from a school district. The bill also stipulates that a local government shall, if requested, reimburse a school district for certain costs associated with the construction or dedication of off-site facilities.

A.B. 138 (Chapter 13)

Assembly Bill 138 revises provisions concerning certain arrangements between general improvement districts and private developers. The measure exempts a private developer's contract for a sewer extension or water facility for the development from the provisions of *Nevada Revised Statutes* Chapters 332 and 339, which concern local government purchasing and contractors' bonds for public works. In addition, the provisions of Chapter 338, which concern employment on public works projects, do not apply to a contract for which the developer pays all of the initial construction costs of the sewer extension or water facility. If the developer does not pay all of those costs, then the prevailing wage sections of Chapter 338 are applicable to the contract.

The bill is effective on April 6, 1995.

A.B. 343 (Chapter 228)

Assembly Bill 343 amends the law governing the sale of subdivided land. The bill authorizes the Administrator of the Real Estate Division to impose a fine or to revoke or suspend the property report, permit, partial registration, exemption, or license of a developer who obtains those documents by fraud or misrepresentation or who violates the conditions under which they were granted. The bill also expands the

disciplinary options the administrator may use against a developer who violates the law. The administrator is authorized to impose an administrative fine of up to $5,000 or to require the developer to enter into an agreement to discontinue unlawful activities, pay the costs of the investigation and hearing of a complaint, or return money obtained by unlawful means in lieu of issuing an order to cease and desist.

The bill is effective on July 1, 1995.

A.B. 440 (Chapter 403)

Assembly Bill 440 amends the law regarding escrow agents and agencies. The bill increases the amount of the bond which these licensees must deposit with the Commissioner of Financial Institutions from $25,000 to $50,000 and allows this bond to be held in a form other than a surety bond, such as a certificate of deposit, a United States Treasury obligation, or a municipal bond.

The bill also provides that, when an escrow officer licensed by the Commissioner of Insurance applies to the Commissioner of Financial Institutions for licensure as an escrow agent, the background investigation may be waived. Escrow agents may, however, be licensed as escrow officers without again taking a licensing examination and meeting certain experience requirements.

According to testimony concerning the bill, the increase in the amount of the bond affords greater protection to the customers of escrow agents and agencies. Allowing these licensees to hold the bond in the form of an interest bearing security rather than posting a surety bond reduces the financial burden of providing this security.

At the present time, escrow agents and agencies are licensed and regulated by the Division of Financial Institutions, while escrow officers, who are employed by title insurers or title agents, are licensed by the Commissioner of Insurance. Both types of licensees perform the same functions and meet the same licensing requirements. This bill is intended to simplify the process of changing from one type of license to another.

A.B. 476 (Chapter 334)

Assembly Bill 476 requires sellers of residential property to disclose in writing the condition of the property to buyers or their agents. The Real Estate Division of the Department of Business and Industry is directed to adopt regulations prescribing the format of the disclosure form. The form must provide for the disclosure of the condition of the major mechanical systems of the property, any known defects, and other aspects of the property that may affect its use or value.

The measure requires the seller to complete the disclosure form and deliver it to the purchaser at least 10 days before residential property is conveyed to the purchaser. If a defect comes to light or becomes more serious after the disclosure form has been

EXHIBIT 4

MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-eighth Session
May 23, 1995

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 9:00 a.m., on Tuesday, May 23, 1995, in Room 224 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Maurice Washington
Senator Mike McGinness
Senator Ernest E. Adler
Senator Dina Titus
Senator O. C. Lee

STAFF MEMBERS PRESENT:

Allison Combs, Senior Research Analyst
Lori M. Story, Committee Secretary

OTHERS PRESENT:

Pat Coward, Lobbyist, Nevada Land Title Association
Charles T. Cook, General Counsel, Nevada Title Company, Legislative Chairman, Land Title Association
Mickey Johnson, Lobbyist, Southern Nevada Home Builders Association
Harold Jacobsen, Accounting Manager, Western Nevada Supply Company, Chairman, Credit Managers Association of Southern California, Las Vegas Chapter, Member, Associated General Contractors
Nancy Johnson, Owner, Accurate Lien and Contractors Assistance
Chuck Burr, Credit Manager, Western Nevada Supply Company
James Wadhams, Lobbyist, American Insurance Association
Stan Olsen, Lobbyist, Las Vegas Metropolitan Police Department (METRO)
Joe Evers, Executive Director, Support Operations, Las Vegas Metropolitan Police Department (METRO) Detention Services
Laurel Stadler, Lobbyist, Mothers Against Drunk Driving, Lyon County Chapter

SENATE BILL 434: Makes various changes to provisions governing statutory liens.

The chairman opened the hearing on Senate Bill (S.B.) 434. Pat Coward, Lobbyist, Nevada Land Title Association, introduced the bill, noting it deals with the mechanics lien law. He noted it is a comprehensive bill which will be explained to the committee by Charles T. Cook, General Counsel, Nevada Title Company, Legislative Chairman, Land Title Association, and Mickey Johnson, Lobbyist, Southern Nevada Home Builders Association.

Mr. Cook told the committee the bill attempts to revamp Nevada Revised Statutes (NRS) chapter 108 in order to bring certainty into the statute and to avoid the need for litigation in every instance where liens are placed against property. In formulating the proposed changes, the witness explained, the proponents looked at statutes from other states in the region. These include Arizona, California, Oregon, and Washington, he noted. Nevada's original mechanics lien law was drafted in 1965. Mr. Cook offered to go over the bill by section.

Ms. Johnson explained she also represents the National Association of Industrial and Office Properties, a commercial developers group. She noted the groups she represents have been involved in the drafting of the bill and they approve of the changes that are proposed. She also reminded the committee the issue of mechanics liens is an emotional one, because the real subject is getting the bills paid. She emphasized the home builders do not wish or intend to "obviate" the responsibility of paying for work or materials that are supplied to a project. In fact, she opined, the changes are good for all parties, the builder and the contractor, along with the home buyer.

Mr. Cook proceeded with his overview of the bill, section by section. Noting section 1 is simply an introduction for the bill, he moved to sections 2 and 3 which bring a provision to "bond around" liens without filing a petition with the court requesting an order authorizing the bond. This will provide a second prong to the mechanism for bonding a project. The current procedure will remain in place and the new procedure will allow the recording of a surety bond. By recording the surety bond the lien claimant will have security couched in the recorded bond. Mr. Cook told the statutes already require that the surety bond must be provided through a company that is licensed in Nevada, as well a providing the form the bond must take.

Senator Adler questioned the mechanics of the procedure. He summarized his understanding, offering the example of a lien which is put against a piece of

property that is in escrow. The party attempting to close the sales transaction can acquire a surety bond to cover the amount of the mechanics lien, and the sale can go through?, he asked. Mr. Cook corrected the senator to the extent that the bond must actually be in excess of the lien amount (two times the amount of the lien if it is less than $10,000 or less and one and one-half times the amount if the lien is in excess of $10,000). The senator asked if it would still be necessary to go to court. Mr. Cook replied in the negative.

Ms. Johnson observed, from the home builder's perspective, the goal is to assure the contractors and subcontractors get paid, and the surety bond will facilitate that goal. The bond will release the real property from the effects of the lien, she said, so the home buyer can go forward. In many cases it is the home buyer who suffers when liens are filed because their financial arrangements may be jeopardized, she stated. Senator Adler noted this will keep the closing date intact in the home purchase. She agreed.

Once the purchase closes, Senator Adler asked, the builder will pay the lien, or does the bond pay. Ms. Johnson reported the bond would "kick in." That is, the sale would go through and the lien claimant would execute against the surety bond for payment. If, at this point, the court finds the lien to be legitimate the bond is cashed and the claimant is paid.

Mr. Cook pointed out there is a provision for notice to be served on the lien claimant that a bond has been recorded. This is important because people should know a bond is in place. He stated the mechanism to enforce a lien is the same as is currently in place (i.e., there is a 6 month period in which to bring an action to enforce a lien). The advantage offered by the change is the lien holder would not have to worry about a developer filing bankruptcy because the bond would be in place as security.

In section 4, Mr. Cook continued, there is a provision designed to address liens that are believed to be frivolous. He explained this provision. This provision should offer a method of recourse to deal with claims the parties do not agree about, and to provide the assessment of attorneys fees and costs to the losing party. The hope, according to Mr. Cook, is this will reduce the number of liens filed by contractors against large tracts of developments for claims that are rightly only against single homes or job sites.

Senator McGinness asked the witness what involvement the home owner has in the proceedings, if any. Mr. Cook informed him the home owner could be the one that brings the proceeding. The senator clarified his question, explaining he meant

at the time the home sale is pending and the escrow accounts are hanging in the balance; if the builder claims the lien is frivolous, does it drag out the sale. Mr. Cook replied it could "a little bit," but it is designed to follow a fast track through the court hearing.

Senator Adler asked how the filing fee was set. The witness replied it was taken from another state's statute. He admitted it might need to be more. The senator suggested Mr. Cook contact the court administrator to ascertain a fee level.

Ms. Johnson, addressing Senator McGinness' question, stated frivolous liens are a big problem for the home building industry. Oftentimes the contractors will have a disagreement with the builder and the liens are filed as a tool to delay the sale of the homes. This delay is one the builder wants to avoid and the lien is dealt with in a more expeditious manner, she explained. She offered an illustration of how the liens are used to hinder the builders. This section of the bill is, therefore, of particular interest to the home builders, Ms. Johnson stated. She opined the posting of a surety bond, along with the hearing to address claims of frivolous liens should "obviate that being a problem."

Senator McGinness asked if the surety bond would be posted even if the builder felt the lien was frivolous. Ms. Johnson's response was that posting the bond is an option, should the builder wish to ensure the closing of the sale.

Mr. Cook resumed his overview of the bill with section 5, noting it is a housekeeping measure to unify the proposals throughout statute. Section 6 amends lien priorities, he told, noting priority over any other mortgage, lien or encumbrance attaches once work is commenced. This prioritizing focuses on site improvements, and lien rights accrue from the beginning of the improvement. Mr. Cook said:

> The last work of improvement, the guy who puts the shine on the brass door knocker, has lien rights that go all the way back to the first work of improvement, being the grading of the master planned community. .... [Other states' statutes] have implemented segregation of different works of improvement. Limiting the initial work, or the infrastructure, or the off-site improvement...where there is a separate contract for them, will be accorded a separate lien time period. They will be classified as a separate work of improvement and their lien rights will begin upon the completion of that work of improvement.

The concept is controversial, he admitted, but the consequence of this provision is to bring statutes in tune with developments as they are currently being worked.

Ms. Johnson agreed with Mr. Cook's assessment that today's developments are much different from those of 40 years ago. If an off-site contractor comes in and grades the entire development, then a building contractor attempts to get a construction loan for the first five production houses and the off-site contractor has put a lien on the entire project, the building contractor is precluded from securing his construction loan, and the entire project is jeopardized. The provision separates the off-site and on-site improvements, she stated.

Senator Porter wondered about insolvency of the general contractor. How can a subcontractor collect from a general contractor who is facing insolvency. He speculated as a subcontractor he would wish to put a lien on the entire property. Mr. Cook pointed out the current statute requires the lien holders to allocate liens to property they have actually made the improvements on. Thus, there is no change proposed in that regard. Senator Porter noted the language specifies property. Mr. Cook noted the thing that is avoided is the "back end loading" of liens. The senator agreed there is a double-edged sword playing in this instance because there are legitimate contractors and there are those contractors who are always walking the fine line between solvency and insolvency and the subcontractors are greatly impacted.

Ms. Johnson asserted that current statute requires the owner of the property to pay the lien. The lien carries with the property even through the sale from one party to another. Mr. Cook opined the subcontractor and the lien claimants would know at an earlier date if the developer is bound to go bankrupt. Currently, the developer is able to "string the subs [subcontractors] along with hopes and expectations of being paid." This provision would shorten the period of time for the off-site contractors to file their liens, and this would alert others to the situation sooner, he observed.

Senator Porter told the complaints he usually hears have to do with the owner-contractor or home owner who hires a contractor themselves. He asked how this would impact this type of situation. Ms. Johnson opined the provision would not impact these kinds of situations at all. Mechanics lien law is a singularly American law, unlike any other law people might be familiar with. She explained a house painter who contracts to paint a house and then is not paid cannot repossess the paint, thus he is afforded a means whereby he holds an interest in the property up to the value of his work or the amount of the contract that remains outstanding.

Thus, when the property is sold, the painter is able to collect his pay from the proceeds of the sale. With this explanation, Ms. Johnson said the persons the senator is concerned about will not be impacted by this on-site/off-site differentiation. The senator offered an aside that the recourse available to his constituents seem rather weak, but that can be addressed at another time.

Section 7, Mr. Cook said, refers to works of improvement consisting of one separate building. He stated it has been suggested subsection 4 of that section be removed from the bill. It seems unworkable, he opined, and moved on.

Section 8 of the bill, Mr. Cook reported, removes the 15-day requirement for a notice of completion. He stated it does not make sense to have a cutoff for filing the notice. The second change couched in this section is eliminating the option of personally delivering the notice of completion. Thus, it must be sent by certified mail, which provides a receipt as to when the notice was sent and received, he explained.

Subsection 4 of section 8 should be changed to read, "Any person who, before the notice was recorded pursuant to this section, submitted a written request to the owner to receive the notice." Mr. Cook explained the change is necessary because the provision in section 15, which calls for the pre-lien notice to be recorded, has been removed.

Section 9 works with sections 2 and 3, addressing bonds, the witness continued. It calls for the release of the real property as security, substituting the bond as security in its place, he explained. Section 10 provides for the revision to the amounts required for the bonds. At this point, Senator Adler made the observation that anyone who has dealt with a bonding company will realize they are nearly impossible to collect from. He asked if there is any provision which requires the bonding company to pay when they should. The senator told of a personal experience he had with a bonding company in his law practice.

Ms. Johnson noted a contractor's bond is different from a surety bond. When a builder buys a surety bond, they usually have to pay 10 percent of the bond amount, and this is a nonrefundable payment. The senator opined the bonding company will fight "like a son-of-a-gun" not to pay. He suggested a provision which states if a surety company does not pay the bond in good faith, they will be subject to double damages. He voiced great concern with this issue. Ms. Johnson could not argue, noting she is unfamiliar with the law governing bonding companies.

354, at 12-13 (May 20, 2005). Jennifer Lazovich (hereinafter, "Lazovich"), Legislative Advocate representing the garbage company, Republic Services, Inc., indicated that the garbage lien process had two steps: first, it requires that a notice of an intent to lien be issued. Id. The second step, if the garbage bill remains unpaid, is to record the lien with the county. This lien will be removed off the county's record once it has been paid. Lazovich also indicated that the lien "operates in the same way as a mechanic's lien" which could ultimately end in a foreclosure. However she followed this remark by stating that Republic Services, Inc. had never taken this extreme step and never would. Id. The legislative history did not discuss the applicability of the mechanic's lien statutes any further.

Finally, the Senate Committee discussed that if renters live in a home, the homeowner must take precautionary steps and have the garbage bill sent to the homeowner's residence instead of the rental. Id. This will allow the homeowner to pay the garbage bill and ensure that a lien is not placed on the property, then the homeowner can recover the money by incorporating the garbage bill into the price of the rent. Id.

II. Procedural History of NRS 108 Mechanic's Liens

Of importance to the Court is the legislative intent surrounding the inception and development of NRS Chapter 108, the mechanic's lien statutes. NRS Chapter 108 contains sixty-two individual statutes, many of which provide definitions. The Court has considered the implementation and development of those statutes pertaining to the requirements for perfecting a mechanic's lien, providing notice of the lien, the duration of the lien, and avenues available to refute a lien.[3]

On February 2, 1965, Assembly Bill 236 (hereinafter, "A.B. 236") was proposed in order to add mechanic's liens to the statutory liens found in NRS Chapter 108. After reviewing the bill the Assembly Committee sought to expand the breadth of the mechanic's lien to sufficiently cover the entire construction industry. Assembly Committee on Judiciary, Committee Analysis

[3] Specifically, the Court has analyzed the legislative history for NRS 108.226, NRS 108.227, NRS 108.2275, NRS 108.233, and NRS 108.245. Amendments were made to these statues in the following years: 1967, 1969, 1971, 1979, 1987, 1995, 1997, 2003, 2005, and 2007. The Court considers all of these amendments and their legislative history.

of A.B. 236 at 1-4 (Feb. 16, 1965). The Assembly Committee was also concerned with the fairness of the lien process, focusing on the timing in which a lien could be obtained, the explanatory details that should be contained in the lien to allow the liened party to refute the lien, the time needed to properly notice a lien, and how a lien would apply to multiple properties like tract homes. Id. The Assembly Committee also discussed the importance of creating a bill that protects both the homeowner and the contractor. Id.

The Assembly Committee discussed amendments to A.B. 236, and adopted Oregon law which stated that a lien is not established unless there is proper notice of the lien, and then it specified the lien requirements. Assembly Committee on Judiciary, Committee Analysis of A.B. 236 at 90-92 (March 2, 1965). Discussion also ensued regarding whether notice of a lien should be provided without recording the lien, and the Assembly Committee decided to call Oregon officials to inquire as to the procedures implemented there. Assembly Committee on Judiciary, Committee Analysis of A.B. 236 at 147-49 (March 15, 1965). The Assembly Committee ultimately gave A.B. 236 to the Senate with the intent to add language constructed from Oregon law in the future. This language would require that notice be sent to the owner by material suppliers, but did not require the notice to be recorded. Assembly Committee on Judiciary, Committee Analysis of A.B. 236 at 151 (March 16, 1965). The Senate Committee subsequently reviewed and amended A.B. 236, but no minutes are available from this committee. The amendments made by the Senate Committee added language governing the assignment of a lien and instituted a 20 day timeline for laborers to provide the owner of the property with notice of materials supplied, work performed, or services rendered. *Journal of the Senate* (March 3, 1965).

In 1987, Assembly Bill 220 (hereinafter, "A.B. 220") was introduced in response to a 1982 Supreme Court ruling which found that the mechanic's lien statutes denied the contractor or subcontractor the recovery of profits and overhead. Senate Committee on Judiciary, Committee Analysis of A.B. 343 at 901-03 (March 19, 1979). The mechanic's lien statutes were amended to allow the contractor or subcontractor to recover the terms of the contract and in the absence of a contract to recover for materials, labor, and the fair market value of profits and

overhead. Id. The legislature discussed that this amendment prevent the homeowner for receiving a windfall by only having to pay for materials and labor in the absence of a contract. Id.

In 1995, the legislature proposed a major amendment to the mechanic's lien with Senate Bill 401 (hereinafter, "S.B. 401"). S.B. 401, in part, added an amendment that allowed a party with interest in the premises in which a lien has been filed to appear before the court to assert that the lien was frivolous or excessive. Senate Committee on Judiciary, Committee Analysis of A.B. 343 at 2-10, bate stamp 2613-21 (May 23, 1995). During the Senate hearing it was discussed that the amendments were intended to be good for all parties. Id. The legislature acknowledge that there was a need to speed up the mechanic's lien process, but it also did not want to do so to the detriment of any due process rights.[4]

III. Procedural requirements found in the mechanic's lien statutes may be applied to a garbage lien when NRS 444.520 is silent on an issue.

The extent to which the mechanic's lien statutes are incorporated into NRS 444.520 is a matter of first impression. To determine the interplay between NRS Chapter 108 and NRS 444.520 the Court must interpret NRS 444.520. Words of "a statute should be given their plain meaning." McKay v. Bd. of Supervisors, 102 Nev. 644, 648 (1986). "Where a statute is clear on its face, a court may not go beyond the language of the statute in determining the legislature's intent." Id. "When the statutory language lends itself to two or more reasonable interpretations, the statute is ambiguous." State v. Lucero, 127 Nev. Adv. Op. 7 (2011). When a statute is

[4] As originally purposed, S.B. 401, stated that if an owner wanted to contest a lien, she could do so by motion to the district court, accompanied by an affidavit. If the Court issues an order for a hearing then the hearing was required to take place no sooner than 6 days and no later than 15 days after the Court issued an order. During the Senate hearing, there was testimony that this short window would impact the Defendant's due process rights because it was an insufficient amount of time to answer and gather evidence. SENATE COMMITTEE ON JUDICIARY, COMMITTEE ANALYSIS OF A.B. 343 at 901-03 (May 25, 1995). In response to this testimony, the timeframe was changed to "no less than 10 days or more than 20 days." Id.

ambiguous the Court "will look to legislative history and rules of statutory construction in determining the statute's meaning." Silver State Elec. Supply Co. v. State ex rel. Dep't of Taxation, 123 Nev. 80, 84-85 (2007). "[I]t is not the business of this court to fill in alleged legislative omissions based on conjecture as to what the legislature would or should have done." McKay, 103 Nev. 490, 492 (1987). "When the language of the statute is ambiguous or silent on a particular issue, it should be construed in accordance with what 'reason and public policy would indicate the legislature intended.'" Mineral Cnty. v. State, Bd. of Equalization, 121 Nev. 533, 540 (2005).

Equal weight should be given to each sentence, phrase, and word in the statute to render them meaningful within the context of the purpose of the legislation. Harris Assocs. v. Clark County Sch. Dist., 119 Nev. 638, 642 (2003) (internal citations omitted). "Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results." Washington v. State, 117 Nev. 735, 739 (2001). Nevada law requires that a statute, if reasonably possible, should be construed so as to function in harmony with the Constitution. State v. Glusman, 98 Nev. 412, 419-20 (1982).

West Taylor asserts that in order to foreclose under NRS 444.520, Waste Management must first perfect a proper lien by adhering to the procedural requirements of NRS Chapter 108,[5] which govern mechanic's liens. When applying NRS Chapter 108, West Taylor asserts that Waste Management has failed to properly notice intent to lien prior to recording and failed to follow the necessary timing requirements. West Taylor argues that the garbage lien is an encumbrance on real property so the mechanic's lien statutory structure must be applied as a whole, because independently NRS 444.520 does not provide the constitutionally necessary avenue to dispute the lien.

[5] West Taylor specifically argues the applicability of: NRS 108.239, NRS 108.233 and NRS 108.226

Waste Management argues that the legislative history supports a finding that the garbage company has the power to collect fees for services rendered, in an effort to meet the legislature's environmental and health related goals. Waste Management also argues that NRS 444.520 only incorporates the manner for foreclosing a mechanic's lien (NRS 108.239) and not the manner for perfecting a lien. Additionally, it argues that the language of NRS 444.520 specifically outlines the proper channels and content required to give notice of intent to lien and allows the garbage company to create a perpetual lien against the property. It states that NRS 444.520 contains its own requirements for perfecting a garbage lien when it states that a lien upon the property is not effective until it is mailed to the last known owner, delivered to the county recorder, recorded, and indexed.

Of great significance in this case, is whether only NRS 108.239, relating to mechanic's lien foreclosures, may be applied to the garbage lien or whether the garbage lien can be governed by the entire statutory structure of the mechanic's lien. The Court first considers the plain language of NRS 444.520 which states,

> "[u]ntil paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. The lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, except liens for general taxes and special assessments. The lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens." NRS 444.520.

In applying the principles of statutory interpretation the Court gives equal weight to each word and phrase within the statute. The Court has previously found that the word "may" is to be construed as permissive, unless the clear intent of the legislature is to the contrary. Sengbusch v. Fuller, 103 Nev. 580, 582 (1987). In this case the language permitting the application of the mechanic's lien foreclosure process is clear; however, there is an ambiguity as to which portions of the mechanic's lien statutes may be applied since the specific sections are not listed in the language of the statute. When an ambiguity exists, "a court should consult other sources such as legislative history, legislative intent, and analogous statutory provisions." Madera v. State Indus. Ins. Sys., 114 Nev. 253, 257 (1998).

In this case, the legislative history surrounding the amendments to NRS 444.520 is sparse. A review of the brief legislative history discussed above reveals that the Legislature failed to expressly state to what extent the mechanic's lien statutes should be incorporated; as a result, the Court finds that standing alone the legislative history of NRS 444.520 provides little guidance as to the application of the mechanic's lien statutes. Therefore, the Court will also consider the legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, to determine whether NRS 444.520 permits the incorporation of just one or all of the mechanic's liens statutes. Based on the rules of statutory interpretation, the Court applies the following factors to determine which interpretation of the statute is more reasonable: 1) the legislature's specific interest in drafting the statute; 2) whether any part of the statute would be rendered superfluous by an interpretation; 3) whether a specific interpretation would violate due process rights; and 4) if the result of an interpretation would be absurd. Great Basin Water Network v. State Eng'r, 126 Nev. Adv. Op. 20 (2010).

The Court considers whether the legislature was addressing a specific interest when drafting NRS 444.520. As discussed above, NRS 444.520 was developed as a means for the garbage company to recover money from customers who are delinquent on their garbage bill. The legislature determined that NRS 444.520 created a necessary remedy for the garbage company to collect missing payments because the garbage company was required to pick up the garbage whether or not the homeowner paid the garbage bill. The policy mandating garbage removal was the product of a long history of public health concerns, starting with the prevention of disease epidemics in the late 1800s.

The legislative history demonstrates that NRS 444.520 is rooted in an issue of fairness. While it provides the garbage company with the ability to lien a property, it is important to note that in the development of NRS 444.520, the legislature also considered the interest of the homeowner, focusing at length on the significance of placing a lien on real property.

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Additionally, testimony during the legislative hearings stated that:

> "[C]ustomers are billed approximately $33 per quarter, on a quarterly basis. If they are two quarters in arrears, the lien would be in the amount of $66. Over 75 percent of the people actually pay the bill once they receive a notice of intent to lien. This is a long process. Customers receive about six requests for payment before they receive an intent to lien notice." Senate Committee on Government Affairs, Committee Analysis of A.B. 354, at 11 (April 6, 2005).

This language indicates that the legislature was trying to create a real incentive for homeowners to address outstanding charges when they are notified by the garbage company that they are delinquent on the garbage bill, but also implement a process that allows an opportunity for the deficiency to be cured before foreclosure occurs. The Court finds that an interpretation that the legislature's intent in drafting the statues was grounded in creating a fair system of payment for garbage services comports with reason and policy.

The Court also finds that incorporating the mechanic's lien statutes beyond NRS Chapter 108.239, furthers the legislature's specific interest in establishing a fair system. The legislative history of NRS Chapter 108 is also grounded in creating an equitable system for placing a mechanic's lien on real property when there has not been payment for construction services rendered. In the development and amendments to the mechanic's lien statutes the legislature routinely considered the impacts that the changes would have to all parties involved and tried to maintain a fair system by fine tuning notice requirements, timing rules, and establishing clear content requirements for the lien. Therefore, the application of any statutory requirements from the mechanic's lien statutes to the garbage lien statutes, where the garbage liens statute is silent, would enhance the legislative intent to create a fair system.

The Court next considers whether either of the statutory interpretations supplied by the parties would render any language in NRS 444.520 superfluous. Adopting West Taylor's argument that the mechanic's lien statutes must be incorporated in their entirety would render the word "may" in NRS 444.520 superfluous. Additionally, notice requirements have been written into the language of NRS 444.520, which would be rendered superfluous if compliance with the

notice statute for the mechanic's lien were required. In contrast, Waste Management's interpretation that NRS 108.239 may be applied to govern the foreclosure process for a garbage lien gives proper consideration to each word and phrase in NRS 444.520.

Alternatively, no portion of NRS 444.520 is rendered superfluous if the statute is interpreted to state that the garbage lien **may** apply the mechanic's liens statutes that addresses procedural requirements not already governed by NRS 444.520. This interpretation is in harmony with Nevada law which states that "where a general and a special statute, each relating to the same subject, are in conflict and they cannot be read together, the special statute controls." Laird v. State Pub. Emp. Ret. Bd., 98 Nev. 42, 45 (1982). This interpretation would render the specific requirements in the garbage statutes on topics, such as notice, as controlling while allowing the more generally incorporated mechanic's lien procedural statutes to apply when NRS 444.520 is silent on the issue. To offer a specific example, NRS 444.520 does not address the procedures for a hearing or dispute should the customer assert that her account is not delinquent; therefore, the customer may apply NRS 108.2275 to request a hearing to dispute the lien.[6] But, by that same token, the garbage lien will not automatically fail due to a lien period that runs longer than 6 months[7], because NRS 444.520 specifically creates a perpetual lien.[8]

Next the Court considers whether interpreting NRS 444.520 to only permit the incorporation of NRS 108.245, violates due process rights. NRS 444.520 creates a lien on real property with the ability to foreclose if the delinquent bills are not paid. Under the Nevada Constitution, the due process clause requires notice and an opportunity to be heard before the government deprives a person of his or her property. Nev. Const. art. I, § 8. If possible Nevada statutes should be construed as constitutional, and "[i]n the face of attack, every favorable presumption

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[6] NRS 108.2275, states in relevant part: "The debtor of the lien claimant or a party in interest in the property subject to the notice of lien who believes the notice of lien is frivolous and was made without reasonable cause, or that the amount of the notice of lien is excessive, may apply by motion to the district court for the county where the property or some part thereof is located for an order directing the lien claimant to appear before the court to show cause why the relief requested should not be granted."

[7] This is mandated by NRS 108.233.

[8] The Court will provide additional analysis on this issue below.

and intendment will be brought to bear in support of constitutionality." State v. Glusman, 98 Nev. at 419-20. Therefore, since NRS 444.520 does not provide an opportunity to be heard if the property owner disputes the lien, but it does incorporate the mechanic's lien statutes, a constitutional interpretation of NRS 444.520 would incorporate more provisions of NRS Chapter 108 than just NRS 108.245. Furthermore, the legislative history pertaining to NRS 108.2275 specifically states that the legislature designed the procedures for contesting a mechanic's lien with the preservation of due process rights in mind.

Finally, the Court will consider whether permitting the incorporation of multiple provision of NRS Chapter 108 into NRS 444.520 is absurd. The Court does not find the permissive application of multiple mechanic's lien statutes to be absurd, as it is the only manner of interpretation that preserves the customer's ability to dispute a lien. After considering the legislative history, legislative intent, and analogous statutory provisions of NRS Chapter 108, the Court finds the NRS 444.520 incorporates the mechanic's lien statutes to the extent that NRS 444.520 is silent on a procedure.

IV. NRS 108.226 creates a statute of limitations to notice a lien.

West Taylor argues that Waste Management has failed to follow the statute of limitations outlined in NRS 108.226, which requires the notice of lien to be filed 90 days after the quarterly billing went delinquent in 2007 or alternatively fifteen days after the billing went delinquent per the *1994 Franchise Agreement*. Additionally, West Taylor argues that if Waste Management has an indefinite amount of time after an account becomes delinquent to file the lien, then the general statute of limitations provision in Nevada, NRS 11.190, would have no bearing on the case.

Waste Management contends that the NRS 108.226's statute of limitations does not apply. Alternatively, if the Court finds that NRS 108.226 does apply, Waste Management argues that the 90 day period is not triggered by the date that that payment became delinquent, instead it is triggered by the last date that services were rendered, which essentially resets every billing cycle.

NRS 108.226 states:

> "[t]o perfect a lien, a lien claimant must record a notice of lien in the office of the county recorder of the county where the property or some part thereof is located in the form provided in subsection 5: (a) Within 90 days after the date on which the latest of the following occurs: (1) The completion of the work of improvement; (2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or (3) The last performance of work by the lien claimant for the work of improvement."

The clear language of NRS 108.226 provides Waste Management with the opportunity to supply notice to its customers within 90 days after each billing cycle that becomes delinquent. Currently Waste Management operates on a quarterly billing cycle, this means that a contract starting in January would be billed at the end of March. Failure to pay the March garbage bill would cause the account to fall in arrears at that time. Under the present system the customer would not be notified of the missed payment until the next billing cycle in June; however, imposing the 90 day requirement may encourage the garbage company to send out a "notice of lien" sooner or to impose a shorter billing cycle. Generally speaking, bills are sent out prior to their due date, which would also provide customers with a small window to cure the deficiency before the notice period runs if the notice to lien had not already arrived. NRS 108.226 applies to the garbage lien statutes because it was incorporated in NRS 444.520, and it does not conflict with existing statutory language in the garbage lien enacting statute. Therefore, NRS 108.226 governs how far back in time Waste Management is able to notice and record a garbage lien.

V. After the lien is recorded it exists in perpetuity, but the statute of limitations places a cap on the timeframe that the home may be foreclosed upon under the lien.

West Taylor argues that Waste Management failed to commence an action within six months to foreclose the lien after notice of the lien is sent, therefore under NRS 108.233 the lien has expired. Waste Management asserts that the language of NRS 444.520 can only be interpreted in one reasonable manner, to mean that a garbage lien encumbers a property forever, or until it is paid. Waste Management cites State v. Yellow Jacket Silver Min. Co. to argue that the lien operates like a tax and remains attached to the land, but that the remedy of foreclosure may

expire with the statute of limitations. State v. Yellow Jacket Silver Min. Co., 14 Nev. 220, 232 (1879).[9]

NRS 108.233 states that a mechanic's lien shall not bind a property and shall expire after six months. This language directly conflicts with the plain language of NRS 444.520 which states that the filing of a garbage lien "constitutes a perpetual lien against the property served". Since NRS 108.233 and NRS 444.520 both pertain to the same subject, how long a recorded lien will exist, NRS 444.520 is controlling as the statute that is specific to garbage liens. The language of NRS 444.520 is clear and unambiguous, and allows the lien to exist in perpetuity. In Wasson v. Hogenson, the Court considered the language of a similar statute that provided that "until paid" all charges will constitute a "perpetual lien" against the property served. Wasson v. Hogenson, 196 Colo. 183, 191 (1978). It found that "'[u]ntil' is a functional word to indicate continuance (as of an action, condition or state) up to a particular time. 'Perpetual' means continuing forever; everlasting; eternal." Id. This Court adopts the definitions used in Wasson v. Hogenson and finds that once a garbage lien is recorded it is perpetual.[10]

However, in Yellow Jacket, the Court also finds that even if a tax exists in perpetuity that the remedy to enforce the collection of the tax may be barred by the statute of limitations. Id. Nevada's "statute of limitations embraces all characters of actions, legal and equitable." White v. Sheldon, 4 Nev. 280, 288-89 (1868). Statutes of limitations are generally adopted to serve the individual and not for public policy, and they "[prevent] surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Petersen v. Bruen, 106 Nev. 271, 273 (1990). Accordingly, under NRS 11.190, an "[a]n action upon a statute for a penalty or forfeiture, where the action is given

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[9] West Taylor rejects Waste Management's contention that the garbage lien can be equated to a tax and argues that lien is essentially an encumbrance on real property that requires a forum for dispute resolution. But, West Taylor has elected not to completely brief the constitutional arguments at this time.

[10] *See also*, N. Washington Water & Sanitation Dist. v. Majestic Sav. & Loan Ass'n, 42 Colo. App. 158, 160 (1979)(holding that a tap lien, which could be foreclosed in the same manner as a mechanics' lien, did not have to abide by the six-month time limit required in the mechanics' lien because it was inconsistent with the statutory language that "(u)ntil paid all . . . charges shall constitute a perpetual lien on and against the property serve.")

to a person" must be brought within two years, except when the statute imposing it prescribes a different limitation. In this case, the language of NRS 444.520 does not create a new statute of limitations for foreclosing on a garbage lien nor does it specifically exempt the garbage lien from the standard statutes of limitations found in NRS 11.190. Therefore, the two year statute of limitations applies to Waste Management's ability to foreclose, which protects the homeowner from the revival of a lien several years after it was imposed.

In practice this means that if Waste Management properly notices a lien within the 90 days required by NRS 108.226, it then has two years under NRS 11.190 to pursue the remedy of foreclosure. Should Waste Management fail to foreclose upon the property within two years, the lien will still exist but the remedy to recover the property through foreclosure will have expired. Unless another remedy is available Waste Management will have to either wait for the customer to pay or wait for the property to be sold to collect on its lien. Moreover, the legislative history supports this interpretation of the applicable statute of limitations, because during the Assembly hearing the Assembly Committee discussed at length the importance of providing a significant opportunity for the homeowner to cure the garbage lien and ways to avoid unexpected foreclosures. Accordingly, the Court finds that once a lien is recorded it lasts in perpetuity, but that the ability to foreclose upon that lien expires after a two year statute of limitations.

VI. Conclusion

The Court finds that there is no issue of material fact presented for consideration in the motion for summary judgment, and that the questions before the Court must be determined as a matter of law. Text, context, and history support the constitutionally sound reading of NRS 444.520 that permits the incorporation of NRS Chapter 108 mechanic's lien statutes to the extent that they govern lien foreclosure procedures not addressed by the language in NRS 444.520. Furthermore, the 90 day notice of lien statute of limitations found in NRS 108.226 does apply to garbage liens. After a lien is noticed Waste Management has two years to foreclose upon the

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property, and after that time has lapsed the lien will last in perpetuity but leave Waste Management without the recourse of foreclosure.

Based on the foregoing and good cause appearing,

IT IS HEREBY ORDERED that WEST TAYLOR'S Motion for Partial Summary Judgment is DENIED in part and GRANTED in part. WEST TAYLOR's Motion for Summary Judgment is GRANTED as to any claims for delinquent bills that WASTE MANAGEMENT failed to notice within the 90 day window, but it is DENIED with regard to properly noticed claims.

DATED this 28 day of July, 2014.

Connie J. Steinheimer
DISTRICT JUDGE

CERTIFICATE OF SERVICE

CASE NO. CV12-02995

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 18th day of July, 2014, I electronically filed the **ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Personal delivery to the following: [NONE]

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MATTHEW HIPPLER, ESQ. for KAREN GONZALEZ et al
BRYAN WRIGHT, ESQ for KAREN GONZALEZ et al

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada:

C. Nicholas Pereos, Esq.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502

Marci Stone

ORIGINAL

FILED

2014 SEP -3 PM 3:57

JEANNA HASTINGS
CLERK OF THE COURT

CODE: 2200
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR PLAINTIFF

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

*****

WEST TAYLOR STREET, LLC,
a limited liability company,

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10,

Defendants.
_____/

Case No. CV12 02995
Dept. No. 4

MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff moves this Court for its order for a partial summary judgment in connection with the claims for relief that have been addressed in the first and second claim for relief of the second amended complaint.

This motion is made and based upon the points and authorities submitted herewith.

POINTS AND AUTHORITIES

A. STATEMENT OF PROCEDURAL FACTS.

A second amended complaint ("SAC") was filed on June 27, 2014. The first claim for relief seeks a ruling from this Court as to the recording of certain liens by Defendant as improper and that the liens have no effect and no longer encumber Plaintiff's property. The second claim for relief asked for the Court to make certain determinations and declarations regarding the impact of NRS 444.520. In answering the SAC, Defendant has denied the

charging allegations and plead affirmative defenses consisting of but not limited to the fact that the SAC fails to state a claim; fails to comply with Chapter 30.130; amongst others. A motion for partial summary judgment was filed on March 11, 2014. A decision was rendered by this Court in response to the motion for partial summary judgment. Since that time, Defendant has released the liens.

B. STATEMENT OF FACTS.

There were three (3) liens filed against the properties referenced in the SAC. There are two (2) liens recorded against the property at 345 W. Taylor and one (1) lien against the property at 347 W. Taylor. The first lien was recorded on February 23, 2012, it is Document No. 4086834 and encumbers 347 W. Taylor for an unpaid garbage fee in the amount of $489.47 dated February 22, 2012. (**Exhibit "1"**.) The second lien was recorded on November 21, 2012, it is Document No. 4177148 and encumbers 345 W. Taylor. (**Exhibit "1"**.) It has been replaced by the lien dated March 14, 2014 as Document No. 4334435 for an unpaid amount of $404.88 at of March 14, 2014. (**Exhibit "1"**.) Although these liens have since been removed by Defendant, there is still the outstanding claim set forth in the SAC for which Plaintiff asks a ruling from this Court in connection with the same. Should such a ruling be issued by the Court, the only remaining issue in the SAC is the slander of title claim.

C. ARGUMENT.

In a researched decision issued by this Court in response to the first motion for partial summary judgment, the Court made the findings in the body of its decision that NRS 444.520 incorporates certain aspects of the mechanic lien statutes to the extent that NRS 444.520 is silent on a procedure. (Order, P.15, L.13.)

The order goes on to state: "Therefore, NRS 108.226 governs how far back in time Waste Management is able to notice and record a garbage lien." (Order, P.16, L.18.)

The order goes on to state: "Therefore, the two year statute of limitation applies to Waste Management's ability to foreclosure, which protects the homeowner from the revival of a lien several years after it was imposed." (Order, P.18, L.4.)

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RENO, NV 89502

The order goes on to state: "In practice this means that if Waste Management properly notices a lien within the 90 days required by NRS 108.226, it then has two years under NRS 11.190 to pursue the remedy of foreclosure." (Order, P.18, L.7.)

The order goes on to state: "Furthermore, the 90 day notice of lien statute of limitations found in NRS 108.226 does apply to garbage liens." (Order, P.18, L.24.)

This Court in making its findings and decision adopted the statutory scheme of Chapter 108 in connection with garbage liens. Contained in that Chapter are the remedial provisions in connection with enforcement of the lien. In its order, the Court set forth certain time periods relating to the foreclosure of the lien.

This entire action started by reason of the lien on the property by Waste Management without an opportunity to be heard by the Plaintiff and the allegations of due process rights. As a result of the finding of the Court in response to the first motion for partial summary judgment, the order issued by this Court on July 28, 2014 disposes of the first and second claims for relief set forth in the SAC. In other words, the matter is ripe for a partial summary judgment as it relates to the claims identified in the first and second claim for relief and Plaintiff requests a judgment as follows:

1. A lien for unpaid garbage fees recorded pursuant to NRS 444.520 has a time limitation of two (2) years pursuant to NRS 11.190 by which the purveyor of the lien is to pursue proceeding of foreclosure;
2. Any lien for unpaid garbage fees pursuant to NRS 444.520 shall be for a delinquent amount within a limitations period of ninety (90) days as found in NRS 108.226 from the date that the lien amount became delinquent.
3. The pursuit of a remedy to foreclosure a garbage lien under NRS 444.520 will provide the lien property owner its opportunity to be heard and to contest the legitimacy of the lien as required by Chapter 108 of Nevada Revised Statutes.

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C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 28 day of August, 2014

C. NICHOLAS PEREOS, LTD.

By:
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

C:\Shared\CLIENTS\Waste Management\Pleading\Mtn.Partial.SJ.2.wpd

CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of Nevada, Inc. and Karen Gonzales

DATED: 8-29-14

Sandra Martinez

SCHEDULE OF EXHIBITS

Exhibit 1 ..... Liens

C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502

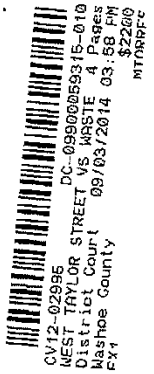

EXHIBIT |

EXHIBIT |

DOC #4086834
02/23/2012 10:10:37 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: $14.00 RPTT: $0.00
Page 1 of 1

APN #011-266-17
ACCT #010-74135

NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statues Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as **347 TAYLOR ST W, RENO, NV** more particularly described as follows:

Washoe County Assessor's Parcel**#011-266-17**

1. The owner(s) or reputed owner(s) of the described real property is/are **WEST TAYLOR STREET LLC.**
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of **$489.47**, no part of which has been paid.

DATED: This 22 day of February 2012

Waste Management of Nevada Inc.

By _____
KAREN GONZALES

STATE OF NEVADA)
: SS.
COUNTY OF WASHOE)

On the 22nd day of February, 2012, personally appeared before me, a notary public, Karen Gonzales for Waste Management of Nevada Inc, who acknowledges that she executed this instrument.

_____
NOTARY PUBLIC

TIFFANY FULLER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 04-90901-2 - Expires October 19, 2014

WHEN RECORDED MAIL TO:

Waste Management of Nevada Inc.
Attn: Karen Gonzales
100 Vassar St.
Reno, NV 89502

WASTE MANAGEMENT

DOC # 4177148
11/28/2012 02:44:57 PM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Kathryn L. Burke - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

APN #011-266-17
ACCT #010-74134

NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statues Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as **345 TAYLOR ST W, RENO, NV** more particularly described as follows:

Washoe County Assessor's Parcel**#011-266-17**

1. The owner(s) or reputed owner(s) of the described real property is/are .
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of **$859.78**, no part of which has been paid.

DATED: This 21 day of November 2012

Waste Management of Nevada Inc.

By _____
KAREN GONZALES

STATE OF NEVADA)
: SS.
COUNTY OF WASHOE)

On the 21st day of November, 2012, personally appeared before me, a notary public, Karen Gonzales for Waste Management of Nevada Inc, who acknowledges that she executed this instrument.

_____
NOTARY PUBLIC

TIFFANY FULLER
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 04-90901-2 - Expires October 19, 2014

WHEN RECORDED MAIL TO:

Waste Management of Nevada Inc.
Attn: Karen Gonzales
100 Vassar St.
Reno, NV 89502

DOC # 4334435
03/14/2014 10:12:28 AM
Requested By
WASTE MANAGEMENT
Washoe County Recorder
Laurence R. Burtness - Recorder
Fee: $17.00 RPTT: $0.00
Page 1 of 1

WASTE MANAGEMENT

When recorded mail to:
Waste Management
Attn: Kelly Scott
100 Vassar St
Reno, NV 89502
kscott13@wm.com

APN#011-266-17
ACCT#010-74134

NOTICE OF LIEN FOR GARBAGE FEES
RESIDENTIAL USER

Waste Management of Nevada Inc., or its affiliates (WM of Nevada) pursuant to the authority conferred by Nevada Revised Statues Section 444.520 and Washoe County Garbage Franchise Agreement section 5.8, claims a lien on the real property known as, **345 TAYLOR ST W, RENO, NV** more particularly described as follows:

Washoe County Assessor's **#011-266-17**

1. The owner(s) or reputed owner(s) of the described real property is/are **WEST TAYLOR STREET LLC.**
2. The garbage services rendered by Waste Management Inc. of Nevada for which this lien is claimed consist of Garbage Service fees and penalties, which have accrued monthly rate as set in the Washoe County Garbage Franchise Agreement.
3. The owner(s) or reputed owner(s) of the described real property has/have failed, neglected and refused to pay to Waste Management of Nevada Inc. the sums due on account of rendition of such garbage services, at the time the same were due and payable.
4. There is due and owing to Waste Management Inc. of Nevada by reason of the rendition of such garbage services, the sum of **$404.88** no part of which has been paid.

DATED: This 14th day of Mar 2014
Waste Management of Nevada Inc.
By _____
LORI VANLANINGHAM

STATE OF NEVADA)
: SS.
COUNTY OF WASHOE)

On the 14th day of March, 2014, personally appeared before me, a notary public Lori Vanlaningham, for Waste Management of Nevada Inc. who acknowledges that she executed this instrument.

KELLY SCOTT
Notary Public-State of Nevada
APPT. NO. 14-11614-2
My App. Expires September 03, 2017

_____
NOTARY
Kelly Scott

2645
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
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- and -

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited liability company, Plaintiff, vs. WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10, Defendants.	**CASE NO.: CV12-02995** **DEPT. NO.: 4** **WASTE MANAGEMENT OF NEVADA, INC.'S OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendant Waste Management of Nevada, Inc. ("Waste Management"), by and through its counsel of record, Holland & Hart LLP, hereby files its Opposition to the second Motion for Partial Summary Judgment ("Second Motion for Partial Summary Judgment") filed by Plaintiff West Taylor Street, LLC ("Plaintiff").

This Opposition is made and based upon the attached Memorandum of Points and Authorities, the concurrently filed Motion for Partial Reconsideration of the Court's July 28, 2014 Order, the pleadings and papers on file, and such oral and documentary evidence as may be presented at any hearing on this matter.

DATED this 25th day of September, 2014.

HOLLAND & HART LLP

/s/ Bryan L. Wright
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
9555 Hillwood Drive, 2nd Floor
Las Vegas, Nevada 89134

- and -

Matthew B. Hippler (7015)
5441 Keitzke Lane, 2nd Floor
Reno, Nevada 89511

Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

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MEMORANDUM OF POINTS AND AUTHORITIES

I. PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT SHOULD BE DENIED AS PROCEDURALLY UNNECESSARY

On July 28, 2014, the Court issued a detailed Order denying in part, and granting in part, Plaintiff's first Motion for Partial Summary Judgment. *See* Order (7/28/14). Thereafter, on September 3, 2014, Plaintiff filed the subject Second Motion for Partial Summary Judgment.

Confusingly, Plaintiff's Second Motion for Partial Summary Judgment requests the Court to find in its favor on the first and second claims for relief contained in the Second Amended Complaint, despite acknowledging that those claims were already resolved in the Court's July 28, 2014 Order on the first Motion for Partial Summary Judgment. *See* Second Motion for Partial Summary Judgment (9/3/2014) at 3:13-14 ("the order issued by this Court on July 28, 2014 disposes of the first and second claims for relief set forth in the SAC."). Further, as indicated in the Plaintiff's Second Motion for Partial Summary Judgment, the three (3) separate liens Waste

Management filed against Plaintiff's Property under NRS 444.520 have each already been released. *See id.* at 2:5; *see also* Amended Releases of Lien Claims, attached hereto as **Exhibit 1**. Thus, Plaintiff is not requesting the Court to apply the July 28, 2014 Order to those liens (as such a request would be moot), but instead appears to request that the Court reaffirm the conclusions already reached in the July 28, 2014 Order. *Id.* at 3. Plaintiff's request is procedurally unnecessary and duplicative, and should be denied accordingly.

II. PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT SHOULD BE DENIED FOR THE REASONS STATED IN THE CONCURRENTLY FILED MOTION FOR PARTIAL RECONSIDERATION

Further, for the reasons set forth in the Waste Management's concurrently filed Motion for Partial Reconsideration of the Court's July 28, 2014 Order, which is incorporated herein by reference, Waste Management requests the Court deny Plaintiff's Second Motion for Partial Summary Judgment, and further reconsider certain portions of the Court's July 28, 2014 Order. Specifically, as detailed more fully in the Motion for Partial Reconsideration, Waste Management respectfully requests the Court to reconsider the following conclusions contained in the July 28, 2014 Order:

First, the Court determined that NRS 444.520 is ambiguous as to which portion(s) of Nevada's statutory scheme relating to mechanic's liens should be applied to garbage liens. *See* Order (7/28/14) at 11. The Court's conclusion in this regard appears to have been primarily based upon the lack of a citation within NRS 444.520 to *specific* sections of NRS Chapter 108. *See id.* Waste Management respectfully submits that notwithstanding this lack of specific citation, the clear and unambiguous language of NRS 444.520—which is similar if not identical to numerous other Nevada statutes stating how a statutory lien should be foreclosed—permissively incorporates only the "manner . . . provided for the foreclosure of mechanic's liens." The Nevada Supreme Court has recognized that NRS 108.239 governs (i.e., "provide[s]") the procedure (i.e., "manner") for foreclosing a mechanic's lien. *See Simmons Self–Storage Partners, LLC v. Rib Roof, Inc.*, 127 Nev. Adv. Op. 6, 247 P.3d 1107, 1109 (2011) ("NRS 108.239 governs actions to enforce a notice of mechanic's lien"); *Barney v. Mt. Rose Heating & Air Conditioning*, 124 Nev. 821, 827, 192 P.3d 730, 735 (2008) (same); NRS 108.239 (entitled "Action to enforce notice of lien") ("A notice of lien

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may be enforced by . . ."). Thus, NRS 444.520's permissive incorporation of the "manner . . . provided for the foreclosure of mechanic's liens" clearly and unambiguously incorporates only NRS 108.239 and the procedures thereunder.

Second, the Court determined that given the above mentioned ambiguity, the Court could incorporate and impose upon garbage lien claimants any and all provisions of NRS Chapter 108 governing mechanic's liens, unless the provision is expressly contradicted by NRS 444.520. *See* Order (7/28/14) at 9-15. Waste Management respectfully submits that such an interpretation, however, impermissibly renders the Legislature's chosen language meaningless. For example, mandating that a garbage lien claimant record its lien within the 90 day deadline set forth in NRS 108.226 (or otherwise lose its lien rights), renders the Legislature's use of "may" in NRS 444.520 superfluous and illusory. The Legislature did not use "must", "shall", or any other language mandating the incorporation or application of any portion of the mechanic's lien statutory scheme to garbage liens. Thus, interpreting NRS 444.520 to "require" compliance with the mechanic's lien statutes impermissibly contradicts and renders meaningless the language employed in that statute. *See Karcher Firestopping v. Meadow Valley Constr.*, 125 Nev. 111, 113, 204 P.3d 1262, 1263 (2009).

Third, the Court determined that because NRS 444.520 does not expressly provide a specific procedure for customers or property owners to "dispute" the legitimacy of a garbage lien, due process requires provisions other than NRS 108.239 (specifically NRS 108.2275) to be incorporated into NRS 444.520. *See* Order (7/28/14) at 15. Based upon Plaintiff's prior representations both at the time of and in the briefing on the Motion for Partial Summary Judgment that it was not raising due process issues at that time, Waste Management reserved its right but did not address the same in its Opposition. *See* Opposition to Motion for Partial Summary Judgment (3/28/14) at 3 n.2. Because the Court thus did not have the benefit of either party's briefing on that issue, Waste Management respectfully requests the Court to consider its arguments that due process does not require provisions other than NRS 108.239 be incorporated into NRS 444.520.

As discussed in the Motion for Partial Reconsideration, property owners are never dispossessed of their property under NRS 444.520 without notice and an opportunity to be heard.

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Further, property owners wishing to challenge the lien prior to foreclosure can do so in the exact same manner as Plaintiff has done here (i.e., by pursuing declaratory relief and/or slander of title claims). Both of these available procedures provide the owner a meaningful opportunity to contest the validity of the liens, and thus both satisfy basic due process requirements. *See J.D. Constr. v. IBEX Int'l Group*, 126 Nev. Adv. Op. 36, 240 P.3d 1033, 1040 (2010) ("Due process is satisfied by giving both parties 'a meaningful opportunity to present their case.'"). Indeed, Nevada's mechanic's lien statutory scheme existed for over 100 years prior to the enactment in 1995 of the expedited review procedure created by NRS 108.2275. Prior to that time, owners were able to challenge mechanic's liens through declaratory relief and/or slander of title claims. There is simply no reason to suggest that due process requires anything different here with regard to garbage liens.

Fourth, the Court determined that the requirement in NRS 108.226(1)(a) that a mechanic's lien be recorded within 90 days of certain specified events applies to NRS 444.520, and requires a garbage lien claimant to record its lien within 90 days of a customer's first "delinquency" in payment for services rendered. *See* Order (7/28/14) at 16. Waste Management respectfully submits that the word "delinquency" does not appear anywhere in NRS 108.226(1)(a), nor does the statute reference any act or omission by a property owner/customer as being a triggering event for that 90 day deadline. Further, Waste Management submits that imposing a requirement that a garbage lien be recorded within 90 days of a customer's first delinquency in payment will only serve to increase the costs to all parties, while at the same time decreasing the opportunity for the parties to resolve legitimate disputes without the necessity of recording the lien. Such an inflexible and unworkable result is contrary to public policy and the testimony before the Legislature when NRS 444.520 was enacted.

Finally, the Court determined that once a garbage lien under NRS 444.520 is recorded, pursuant to NRS 11.190(4)(b), the lien claimant must institute foreclosure proceedings within two years of the date of recording. *See* Order (7/28/14) at 17-18. Plaintiff did not raise the issue of which limitation period under NRS 11.190 would apply to a garbage lien foreclosure action until its reply brief [*see* Reply in Support of Motion for Partial Summary Judgment (4/11/14) at 9], and thus Waste Management did not have an opportunity to address the same in its Opposition. As detailed

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in the Motion for Partial Reconsideration, Waste Management submits that the correct limitation period is three years under NRS 11.190(3)(a), because a statutory lien foreclosure action is one based "upon a liability created by statute, other than a penalty or forfeiture."

III. CONCLUSION

Based upon the foregoing, and as more fully detailed in the concurrently filed Motion for Partial Reconsideration of the Court's July 28, 2014 Order, Waste Management respectfully requests the Court to deny Plaintiff's Second Motion for Partial Summary Judgment, and further to reconsider the above discussed portions of its July 27, 2014 Order denying in part, and granting in part, Plaintiff's first Motion for Partial Summary Judgment.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25th day of September, 2014.

HOLLAND & HART LLP

/s/ Bryan L. Wright
Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
9555 Hillwood Drive, 2nd Floor
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- and -

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 25th day of September, 2014, I served a true and correct copy of the foregoing **WASTE MANAGEMENT OF NEVADA, INC.'S OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

C. Nicholas Pereos
C. NICHOLAS PEREOS, LTD.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Telephone: (775) 329-0678
Facsimile: (775) 329-0678
cpereos@att.net

Attorneys for Plaintiff ,WEST TAYLOR STREET, LLC

/s/
An Employee of HOLLAND & HART LLP

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APPENDIX OF EXHIBITS

EXHIBIT 1	Amended Releases of Lien Claims

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We're talking about taxes.

MR. WRIGHT: So in those cases, they were assessments for -- and I believe one of the cases we cite in our brief is one of those same cases -- they were assessments for water and sewer.

THE COURT: Right, public utilities.

MR. WRIGHT: Public utilities. And I think there's an argument that --

THE COURT: But were they public utility companies or was it the governmental agency?

MR. WRIGHT: I don't recall the answer specifically. My recollection, for full candor, is that they were special assessment districts. So I would call that a quasi-governmental agency. You could think of something along the lines of -- and I apologize, but I'm thinking of all kinds of Clark County agencies and I can't think of one in Washoe, but you have something along the lines of the Southern Nevada Health District or the Regional Transportation Commission, that would be a good example. It's a quasi-governmental agency that's performing a function that is somewhat like a governmental agency.

THE COURT: But it's not for profit.

MR. WRIGHT: But it's not for profit. And I apologize, because I wasn't trying to go down that road and I was the one that said I wanted to make sure we didn't go down there, so I apologize. But we come back to the next question that plaintiff raised as far as how does the statute of limitations actually work. When does it start, when does it stop? I've already explained to you what our position is as to what happens if we don't enforce within the statute of limitations.

I do want to provide the Court with an authority. It's State Tax Commission versus E.L. Cord. It's 81 Nevada 403 and that's a 1965 case, and in that, the Supreme Court was looking at the issue of whether or not an action to enforce -- and again, we're going back to taxes, but whether an action to enforce delinquent taxes was timely under the statute of limitations. And if you start on page -- I believe it's 410 of the Nevada version -- the Supreme Court goes through an analysis of determining whether or not that particular action to enforce a tax lien was timely, and they did it by -- I will submit to you, they did it by a two-step process. Now, in that situation, the

three-year statute of limitation applies. It was a right created under statute, which in Nevada under NRS 11.190 is subject to a three-year statute of limitation. The Supreme Court said -- and I'm going to try and make sure I get the dates right. And I'll back up a little, I apologize. The defendant filed a tax return in 1959 for tax year 1958. The taxing authority didn't file their assessment or their lien for delinquent taxes until 1961, June of 1961, and then didn't initiate the lawsuit until April of 1964. So when the Supreme Court looked at whether or not the lawsuit was timely as far as the delinquency from 1958, the Court essentially applied the three-year statute of limitation twice. They first determined if the tax assessment was made within three years of the delinquency, and the Court answered yes, it was, and then was the lawsuit to foreclose on the tax lien brought within three years, and the Court answered yes. And so based upon that, the Court found that the action was timely. So we would submit that a similar situation would apply here, that what you have to look at first is, was the garbage lien timely within the date of the

delinquency -- and I think we had a dispute as to how you determine that -- and then was the action to foreclose on that garbage lien brought in with the applicable statute of limitation as well. So it's kind of a two-step process to determine whether or not a foreclosure action on these types of liens is timely.

Now, where we get into what I would call some murkiness here is, how do you determine that first statute of limitation? Mr. Pereos has pointed out that the delinquency in this case started in April of 2007, give or take. I think that was when the first charge was. It wouldn't have technically been due until July of 2007, or it wouldn't have been delinquent until July of 2007. Every three months, Waste Management is still providing more services, and you will see through these account histories -- there's one attached to plaintiff's motion as Exhibit 2 and I believe we attached the other account history to our -- actually, no, we did not. So you do have an example of one of the account histories as Exhibit 2 to plaintiff's motion, and you will see in that account history that the balance continued

to grow. Every three months, there's a new charge to that account, one for the continuing services but also a new charge on what's already owed. The testimony -- and I don't want to delve too much into the factual issues, but the undisputed testimony from our corporate representative is that Waste Management, where they can, attempts to apply a payment to the oldest outstanding invoice. So if plaintiff missed an invoice payment in April of 2007 and then they miss it again in July of 2007 and again in October -- and this is hypothetical, let's assume that happened -- and they finally make the payment in December of 2007, Waste Management will, in most situations but not all, apply that to the oldest outstanding invoice. So I think we have clearly a factual question when it comes to these liens in particular, as to whether or not they would be timely under the statute of limitations, because you have to go through the account history and see what payments were attached to which invoices.

So from a purely legal situation, I think the Court is in a position to say how does the statute of limitations work and provide the parties

with the guidance that we're asking for on that, but I don't think you can make that determination at this time as to whether or not the statute of limitations has been satisfied as it relates to filing the lien.

THE COURT: If Waste Management has complete authority to apply the payment to whatever deficiency it was, then wouldn't that be a methodology for Waste Management to never be subject to a statute of limitation?

MR. WRIGHT: That may be one way to look at it. Now, it's not complete discretion. The way the testimony came out is, they apply it to whichever account or invoice the client asks them to and they consider -- let's say when you get a bill and you detach the remittance portion and send that back with your check, they interpret that as meaning the customer has instructed them to apply that payment to that invoice only and so that's what they will do, but if a check comes in without a remittance, they apply it to the oldest invoice for the benefit of the customer, because that pays it off without it incurring more interest. Because you have to remember, throughout this period, this

invoice is incurring more and more interest. So if we applied it only to the newest invoice, that old invoice never gets paid down and the interest keeps going up. So that was their testimony, and Mr. Pereos can indicate if he disagrees, but that's how they would look at it.

So to answer your question, I think you could see a situation where the statute of limitations -- I'm not going to say never is triggered, but although there was initially a delinquency in 2007, the statute of limitations itself may not trigger far after that time frame, because they may have eventually applied a payment, whether it be in 2007, '8 or '9, to that old 2007 invoice. So I think you get into a lot of factual issues, and if the Court is looking at this and going to make an advisory opinion, I think you have everything that you need to do that, to say here's the statute of limitations, here's when it runs, here's how it works. I don't think you can apply that to the facts and say specifically this lien is or is not timely.

So with that extremely long-winded explanation, I will sit down, your Honor.

THE COURT: Okay. Mr. Pereos?

MR. PEREOS: Thank you, your Honor. On that later observation, my motions were intended to be generic versus fact-intensive, because I think there are certain threshold decisions that the Court has to make, which will then be applied to the facts of this particular case. Having said that, the Court might want to think about whether or not a certification under Rule 54 might be in order in connection with those rulings. Now, counsel submits that NRS 444.520 only gives an option to Waste Management to foreclose when it says this lien may be foreclosed. We don't dispute that Waste Management does not have to foreclose the lien, but then how do you reconcile the decisions of the Nevada Supreme Court that say if you're going to pursue a remedy under NRS 108.239, the focus foreclosure statute of the mechanic's lien, you've got to comply with certain prerequisites.

Now, counsel will argue and has argued that when the statute says that the lien may be foreclosed by the mechanic's lien laws, it only intended to incorporate this one statute, NRS

108.239, and nothing else. Well, I would submit that there's nothing either in the legislative hearings or the statute that says that this lien may be foreclosed pursuant to NRS 108.239 -- or there's nothing contained in the statute of the legislative hearings that say this lien may be foreclosed pursuant to the mechanic's lien statutes, except for the requirements to comply with NRS 108.239. One of the issues this Court's going to have to reconcile is, if Waste Management wants to afford itself the benefit of NRS 108.239, is it exempt from the Supreme Court's rulings that say before you can do NRS 108.239, you have to do certain things to get there, to foreclose, because it's a statutory remedy and must be strictly construed. And that is in the case law we cited.

Now, counsel tries to make a distinction between the argument of perfection of a lien, saying that all the other statutes leading up to NRS 108.239 and the mechanic's lien statutes are statutes that discuss perfecting the lien, but NRS 444.520 has its own mechanism for perfection. I will say it's a legitimate argument and it's a well thought-out argument, but I would ask the Court to

think about the argument of perfection as distinguished from the argument of timing in the limitations period, how long do you have. And that leads to the next argument, which counsel says, "We're not saying that we have in perpetuity to foreclose the lien, because we're acknowledging that our remedy might be cut off after a certain period of time, but the lien still exists against the property." So let's look at the burden if we accept counsel's proposition. The Court makes a ruling and says, "Okay, I agree with counsel. The lien exists against the property, but the remedy to foreclose the lien has a time limitation." That's what it basically boils down to. So now the Court's going to invite lawsuits to be filed to remove the lien where the remedy's expired, because how else are you going to get the lien off the property until that occurs. I submit that if you want to accept counsel's proposition that the remedy's been expired, it would seem to me logically that the lien has expired, because they can't do anything with it. If the lien is going to exist even though the remedy doesn't exist, that alone constitutes an involuntary encumbrance

against the property, and, in effect, they're still keeping an interest in real estate without any mechanism or vehicle to resolve a dispute with regard to the amount of the lien. It goes back now to the constitutionality issue of due process. It doesn't happen too often in our careers that we get to argue issues that literally is a first impression.

THE COURT: It never seems to happen to me.

MR. PEREOS: Because a lot of times as lawyers, we just simply get to be mechanics at times.

These issues are going to have to be resolved in order for us to go to the next stage of this particular claim, and that's the legitimacy of these liens and whether or not there's legitimacy to the slander of title claim. I'll be the first to acknowledge that depending upon the ruling of this court may impact the outcome of this lawsuit. Having said that, I don't share Waste Management's position that they have unchecked authority with regard to the recording of the lien, which appears to be the case, but they want it to be totally

unchecked and that the lien can exist in perpetuity. Literally, they're saying "Well, our remedy is gone, but the lien can still exist."

If I argue anymore, I'm just going to be repeating issues that the Court's already heard. So I'm going to sit down at this point.

THE COURT: All right. Well, your briefing was very good and I'm not positive your oral arguments made too much difference, but I did appreciate hearing your words to consider this issue, because it is an issue of first impression. It is clearly one that is going to have to be sorted out carefully. I am going to consider it and probably not rule on it until the status hearing that we have scheduled. I would anticipate that I will be giving a decision then. The invitation to certify my decision under Rule 54 is something you all should talk about and think about that, because Mr. Pereos just provided it. I don't know your position, Mr. Wright. So you may want to think about that in the next 30 days while you are still able to conduct some discovery, so you can keep moving forward.

MR. WRIGHT: Your Honor, if I can ask a

quick clarification. You had indicated earlier that your ruling at the status conference may be oral.

THE COURT: Yes, it may be. It just depends on how our trial schedule goes between now and then and whether or not we can get a written opinion out. If it is oral, then whoever wins will be directed to prepare the written decision.

Okay. Thank you, counsel.

Court's in recess.

(End of proceedings.)

--oOo--

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, ROMONA McGINNIS, official reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That as such reporter, I was present in Department No. 4 of the above court on Wednesday, May 7, 2014, at the hour of 9:00 a.m. of said day, and I then and there took verbatim stenotype notes of the proceedings had and testimony given therein upon the Status Conference in the case of WEST TAYLOR STREET, Plaintiff, versus WASTE MANAGEMENT OF NEVADA, INC., Defendant, Case No. CV12-02995. That the foregoing transcript, consisting of pages numbered 1 to 41, both inclusive, is a full, true and correct transcript of my said stenotype notes and is a full, true and correct statement of the proceedings had and testimony given upon the Status Conference in the above-entitled action to the best of my knowledge, skill and ability.

DATED: At Reno, Nevada, this 27th day of January, 2018.

ROMONA McGINNIS, CCR #269

ORIGINAL

FILED

2014 JUN 27 PM 2:41

JOEY LANDRETH HASTINGS
CLERK OF THE COURT
BY _____ DEPUTY

CODE: 1090
C. NICHOLAS PEREOS, ESQ.
Nevada Bar #0000013
1610 MEADOW WOOD LANE, STE. 202
RENO, NV 89502
(775) 329-0678

ATTORNEYS FOR PLAINTIFF

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

WEST TAYLOR STREET, LLC,
a limited liability company,

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10,

Defendants.
_____/

Case No. CV12-02995
Dept. No. 4

SECOND AMENDED COMPLAINT

Plaintiff, WEST TAYLOR STREET, LLC, by and through counsel, C. Nicholas Pereos, complains of Defendants, and each of them, and for a claim for relief avers as follows:

FIRST CLAIM FOR RELIEF

I

Defendants DOES 1 through DOES 10 are sued herein as fictitious names because their true names and capacities of said Defendants are not now known by Plaintiff and Plaintiff will ask leave to amend the Complaint when it becomes known by it.

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II

At all times herein mentioned, Defendants are agents and employees of the remaining Defendants in each of them acting in the course of scope of said agency and employment.

III

At all times herein mentioned, Plaintiff, West Taylor Street, LLC, is a limited liability company doing business in the State of Nevada and owns that certain real property located at 345 and 347 West Taylor Street, Reno, Nevada with Washoe County Assessor's Parcel Number 011-266-17.

IV

On or about the 23rd day of February, 2012, Defendants did cause to record a notice of lien for garbage fees under Document No. 4086834 at the Washoe County Recorders Office, Reno, Nevada. On or about November 26, 2012, Defendant did cause to record a notice of lien for garbage fees under Document No. 4177148 at the Washoe County Recorders Office, Reno, Nevada. On or about March 14, 2014, Defendant did cause to record a notice of lien for garbage fees under Document No. 4334435 at the Washoe County Recorders Office, Reno, Nevada. Plaintiff is informed and believes and thereon alleges that Defendant will continue to cause to record liens with regard to the properties at 345 and 347 West Taylor Street and that said liens will be the subject of claims set forth herein.

V

Subsequent to the recording of these early liens, Plaintiff made repeated demands upon Defendant for corroboration of the amount set forth in the lien for unpaid garbage fees to which Defendant alleges monies to be due.

VI

On or about November, 2012, Defendants sent corroborative information concerning the basis for the subject lien at which point in time, Plaintiff responded by providing Defendant an accounting of payments that were made that were purportedly the basis for

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the unpaid amounts owed to the Defendants. Plaintiff made demand upon the release of the lien given its incorrect filing and Defendants refuses to release the subject lien.

VII

On or about November 15, 2012, Defendants caused to send to Plaintiff a notice of intent to lien for a different amount on the subject property notwithstanding the earlier lien.

VIII

Plaintiff is informed and believes and thereon alleges that the basis for any lien against the subject property is by reason of Nevada Revised Statute 444.520.

IX

Pursuant to NRS 444.520, any lien against the subject property was to be foreclosed consistent with foreclosure of mechanic's lien.

X

At all times herein mentioned, the recording of the subject liens referenced hereinabove was improper and Defendant continued to record liens for purposes of recognizing the improper nature of its liens previously filed.

XI

At no time has Defendant undertaken a foreclosure of any lien pursuant to the mechanic's lien laws and Plaintiff prays for a declaratory judgment from this Court decreeing and declaring that said lien is of no effect and no longer encumbers Plaintiff's property.

XII

Plaintiff has been required to employ the services of an attorney to file and prosecute this action and is entitled to an allowance of attorneys fees as special damages by reason thereof.

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RENO, NV 89502

SECOND CLAIM FOR RELIEF

I

Adopt by reference and make a part hereof each and all of the statements and averments contained in the First Claim for Relief hereinabove.

II

At all times herein mentioned, the basis for the recording of any lien for garbage fees arises by reason of statutory edict. Plaintiff is informed and believes that said statutory scheme does not provide for an opportunity to contest the legitimacy of the recording of the lien or any opportunity to be heard by the lien debtor and no mechanism for commencement of a dispute resolution concerning the lien or the amount of the lien.

III

The subject statutory scheme of NRS 444.520 mandates service of a notice of lien but does not provide for any mechanism by which there is an opportunity to be heard by the owner of the property, the opportunity to contest the legitimacy of the lien by the owner of the property, or an obligation of the lien claimant a methodology for dispute resolution to an impartial tribunal by reason of the recording of the notice of lien.

IV

Should this Court determine that there is no obligation by Defendant to conform to the mechanic lien laws for the foreclosure of said lien as dictated in the statute of Nevada mandating the commencement of a lawsuit within six months of the recording of the lien, then the recording of said lien deprives Plaintiff of its property by due process of law and the subject statute is unconstitutional according to Constitution of the State of Nevada and these United States.

THIRD CLAIM FOR RELIEF

I

Adopt by reference and make a part hereof each and all of the statements and averments contained in the First Claim for Relief hereinabove.

///

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RENO, NV 89502

II

At all times herein mentioned, Defendants knew or should have known that the recording of the subject lien was without basis or merit and that the recording would impact and impair Plaintiff's ownership of the property. Defendant continues to record liens against the subject property by reason of the impropriety of the recording of earlier liens. Plaintiff is informed and believes that Defendant will continue to record liens against the subject property.

III

At all time herein mentioned, Defendants have caused to slander Plaintiff's title to said property and each recording of the lien constitutes a separate act of slander proximately causing the damages mentioned herein. Plaintiff submits that all future recordings of liens against the subject property constitute a separate act of slander and Plaintiff will ask leave to amend this complaint at the time of trial to show each separate act of slander.

IV

As a proximate result of the foregoing, Plaintiff has sustained special damages consisting of attorney's fees for purposes of removing the slanderous document from Plaintiff's title ownership for an amount in excess of $40,000.

V

As a proximate result of the foregoing, Plaintiff has sustained general damages in a sum in excess of $40,000.

VI

Plaintiff has been required to employ the services of an attorney to file and prosecute this action and is entitled to special damages by reason of the same.

WHEREFORE, Plaintiffs pray for Judgment against Defendants, and each of them, as follows:

1. For general damages in a sum in excess of Forty Thousand Dollars ($40,000.00).

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2. For special damages consisting of attorney's fees for a sum in excess of Forty Thousand Dollars ($40,000.00).

3. For costs of suit herein.

4. For reasonable attorneys fees herein.

5. For such other and further relief as may be just and proper.

6. For a declaration from this Court that Plaintiff was required to comply with mechanic lien laws in connection with the recording of the subject lien referenced herein.

7. Alternatively, for a ruling from this Court that the subject statute is unconstitutional.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 10 day of ~~April~~ June, 2014.

C. NICHOLAS PEREOS, LTD.

By:
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
RENO, NV 89502
ATTORNEY FOR PLAINTIFF

C:\Shared\CLIENTS\Waste Management\Pleading\Complaint 2nd Amended.wpd

CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
HOLLAND & HART
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134
702/669-4600
Attorneys for Waste Management of Nevada, Inc. and Karen Gonzales

DATED: 10-26-14

Sandra Martinez

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Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

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SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited **liability company,** **Plaintiff,** **vs.** **WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10,** **Defendants.**	**CASE NO.: CV12-02995** **DEPT. NO.: 4** **DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendants Waste Management of Nevada, Inc. ("Waste Management") and Karen Gonzales, erroneously sued as "Karen Gonzalez," (collectively, "Defendants"), by and through their counsel of record, Holland & Hart LLP, for their Answer to Plaintiff West Taylor Street, LLC's ("Plaintiff") Second Amended Complaint ("SAC"), admit, deny, and state as follows:

1. Defendants deny all allegations in the SAC not expressly admitted, denied, or otherwise responded to herein.

FIRST CLAIM FOR RELIEF

2. Paragraph I of the First Claim for Relief does not contain any allegations to which a response from Defendants is necessary. To the extent such paragraph could be are construed to contain allegations against Defendants, Defendants deny said allegations.

3. Answering the allegations contained in Paragraphs II, X and XI of the First Claim for Relief, Defendants deny each and every allegation contained therein.

4. Answering the allegations contained in Paragraph III of the First Claim for Relief, upon information and belief, Defendants admit only that Plaintiff currently owns certain real property located in Reno, Nevada, bearing Washoe County Assessor's Parcel Number 011-266-17, upon which is situated a duplex with service addresses of 345 Taylor St. W, and 347 Taylor St. W.

5. Answering the allegations contained in Paragraph IV of the First Claim for Relief, Defendants admit only that Defendant Waste Management of Nevada, Inc. ("Waste Management") recorded a Notice of Lien for Garbage Fees – Residential User, on or about February 23, 2012, as Document No. 4086834, for unpaid balance due for garbage services supplied to 347 Taylor St. W., Reno, Nevada; Waste Management recorded a Notice of Lien for Garbage Fees – Residential User, on or about November 26, 2012, as Document No. 4177148, for unpaid balance due for garbage services supplied to 345 Taylor St. W., Reno, Nevada; and that Waste Management recorded a Notice of Lien for Garbage Fees – Residential User, on or about March 14, 2014, as Document No. 4334435, for unpaid balance due for garbage services supplied to 345 Taylor St. W., Reno, Nevada. Defendants deny the remaining contentions therein.

6. Answering Paragraph V of the First Claim for Relief, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

7. Answering the allegations contained in Paragraph VI of the First Claim for Relief, Defendants admit only that Waste Management has provided Plaintiff with corroborative information supporting the liens, and that Waste Management has not expressly released those liens since they were recorded. Defendants deny the remaining contentions therein.

8. Answering the allegations contained in Paragraph VII of the First Claim for Relief,

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Defendants admit only that they sent a Notice of Intent to Lien to Plaintiff related to unpaid balance due for garbage services provided at 345 Taylor St. W., Reno, Nevada. Defendants deny the remaining contentions therein.

9. Paragraphs VIII and IX of the First Claim for Relief call for a legal conclusion to which no response is required. If said paragraphs are construed to contain allegations against Defendants, Defendants deny said allegations.

SECOND CLAIM FOR RELIEF

10. Answering Paragraph I of the Second Claim for Relief, Defendants repeat and reallege each of the above responses to every Paragraphs within the First Claim for Relief as if fully set forth herein.

11. Paragraphs II, III and IV of the Second Claim for Relief call for a legal conclusion, therefore no response is required. If said paragraphs are construed to contain allegations against Defendants, Defendants deny said allegations.

THIRD CLAIM FOR RELIEF

12. Answering Paragraph I of the Third Claim for Relief, Defendants repeat and reallege each of the above responses to every Paragraphs within the First Claim for Relief as if fully set forth herein.

13. Answering the allegations contained in Paragraphs II, III, IV, V and VI of the Third Claim for Relief, Defendants deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

As their separate affirmative defenses to Plaintiff's SAC, Defendants asserts the following:

1. The SAC fails to state a claim against Defendants upon which relief can be granted.

2. Plaintiff has failed to comply with obligations set forth in Chapter 30.130 of the Nevada Revised Statutes.

3. Plaintiff's claims against Defendants fail for insufficient process.

4. Plaintiff's claims against Defendants fail for insufficient service of process.

5. Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

6. Plaintiff's claims are barred by Plaintiff's unclean hands.

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7. Plaintiff has failed to mitigate any damages and losses claimed to have been suffered, if any, by Plaintiff.

8. Defendants are entitled to a setoff.

9. Plaintiff has asserted its claims in bad faith, without reasonable investigation and for an improper purpose, thereby constituting an abuse of process.

10. There is no basis for recovery of costs or attorneys' fees by Plaintiff from Defendants.

11. Defendants have been required to retain the services of Holland & Hart LLP to defend against these claims and are entitled to an award of their reasonable attorneys' fees and costs.

12. At the time of the filing of Defendants' Answer, all possible affirmative defenses may not have alleged inasmuch as insufficient facts and other relevant information may not have been available after reasonable inquiry, and therefore, Defendants reserve the right to amend this Answer to allege affirmative defenses if subsequent investigations warrants the same.

WHEREFORE, Defendants pray for Judgment as follows:

1. That Plaintiff take nothing by virtue of its SAC on file herein, and that the same be dismissed with prejudice;

2. For an award of reasonable attorneys' fees and costs of suit incurred in this action;

3. For such other and further relief as the Court may deem just and proper.

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The undersigned affirms under NRS 239B.030 that the preceding does not contain the social security number of any person.

DATED this 14th day of July, 2014.

HOLLAND & HART LLP

Gregory S. Gilbert (6310)
Bryan L. Wright (10804)
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Las Vegas, Nevada 89134

- and -

Matthew B. Hippler (7015)
5441 Keitzke Lane, 2nd Floor
Reno, Nevada 89511

Attorneys for Defendants Waste Management of Nevada, Inc. and Karen Gonzales

CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on the 14th day of July, 2014, I served a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT** by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

C. Nicholas Pereos
C. NICHOLAS PEREOS, LTD.
1610 Meadow Wood Lane, Ste. 202
Reno, NV 89502
Telephone: (775) 329-0678
Facsimile: (775) 329-0678
cpereos@att.net

Attorneys for Plaintiff ,WEST TAYLOR STREET, LLC

An Employee of HOLLAND & HART LLP

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3100

IN THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WEST TAYLOR STREET, LLC, a limited liability company,

Plaintiff,

v.

WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 through 10,

Defendants.

Case No. CV12-02995

Department No.: 4

ORDER

On March 11, 2014, Plaintiff West Taylor Street, LLC (hereinafter, "West Taylor"), by and through its attorney, C. Nicholas Pereos, Esq. filed *Motion for Partial Summary Judgment*, and two affidavits in support of the Motion for Partial Summary Judgment: *Affidavit of C. Nicholas Pereos* and *Affidavit of Teri Morrison*. On March 28, 2014, Defendants Waste Management of Nevada, Inc. and Karen Gonzalez (hereinafter collectively, "Waste Management"), by and through their attorney, Gregory S. Gilbert, Esq., Bryan L. Wright, Esq., and Matthew B. Hippler, Esq. of Holland & Hart LLP, filed their *Opposition to Plaintiff's Motion for Partial Summary Judgment*. On April 11, 2014, West Taylor filed its *Reply Argument in Support of Motion for Partial Summary Judgment*, and submitted the matter to the Court.

On May 7, 2014, Nicholas Pereos, Esq. appeared on behalf of West Taylor, and Bryan Wright, Esq. appeared on behalf of Waste Management. The Court heard arguments concerning

the *Motion for Partial Summary Judgment*. At the conclusion of the oral arguments the Court took the motion under consideration.

NRCP 56(c) provides, that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." The District Court is to exercise great caution in granting summary judgment. Posadas v. City of Reno, 109 Nev. 448, 452 (1993). "The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact." Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602 (2007). "If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact." Id.

West Taylor moves for partial summary judgment or in the alternative it moves for the Court to dismiss Defendant's answer to the complaint and enter judgment on liability from lack of standing to record the garbage lien. West Taylor advances four arguments: 1) Waste Management does not have standing to record a garbage lien; 2) the statutory formalities required for mechanic's liens apply to garbage liens because NRS 444.520 incorporates the entire mechanic's lien statutory scheme; 3) a statute of limitations applies to this case; and 4) that the lien should not exist in perpetuity after it has been recorded.

Waste Management argues that it has standing to record a garbage lien because Waste Management acquired Reno Disposal Co., which is the waste management company that contracted with the city of Reno.[1] Waste Management also argues that NRS 444.520, expressly

[1] As a preliminary matter, the Court finds that Waste Management has standing to record a garbage lien. NRS 444.520 provides that the governing body of any municipality which has an approved plan for the management of solid waste may, by ordinance, provide for the levy and collection of fees, and until paid, any fee or charge levied constitutes a perpetual lien. In the instant matter, Waste Management provided a copy of the *1994 First Amended City of Reno Garbage Franchise Agreement* which was entered into by the City of Reno and Reno Disposal Co.. Additionally, an affidavit by David Stratton, Vice President and Assistant Secretary for Waste Management of Nevada, Inc., was filed, stating that around June 1, 2008, Waste Management acquired Reno Disposal Co.. Waste Management also provided a letter from Waste Management to the City of Reno, which extended the 1994 contract for an additional 15 years. Finally, Waste Management filed a copy of the *Exclusive Franchise Agreement Residential Solid Waste and Recyclable Materials* that was signed in 2012 by the City of Reno

states that garbage liens *may* be foreclosed in the same manner as a mechanic's lien, but that the language is permissive and not required; therefore, Waste Management followed proper procedure when filing the garbage lien. Furthermore, it argues that the language of NRS. 444.520 specifically creates a garbage lien that exists in perpetuity if the amount in arrears is not paid.

Neither party argues that there is a question of material fact, therefore the Court will decide the pending questions as a matter of law. The Court will first summarize briefly the history of the solid waste management system and NRS 444.520, and consider the development of the mechanic's lien statutes before addressing the substantive issues in this case.

I. History of NRS 444.520 and the Solid Waste Management System

The legislature initially became concerned with public health in 1893. On March 6, 1893, the Nevada Legislature enacted a statute that required the establishment of a State Board of Health, and instructed the Board to work for the life and health of the inhabitants of the State. Laws 1893, p. 117 c. 112. Specifically, the Board was required to conduct sanitary investigations and inquiries regarding the causes of diseases and methods of prevention. This included research to determine how habitats and circumstances of life impact public health. Id. The Board was given the authority to make regulations for the "better preservation of the public health in contagious and epidemic diseases" and if someone was in violation of these regulations they were notified in writing. If the violator failed to comply within five days of receiving notice, the individual was deemed guilty of a misdemeanor and fined between $100-$500 or imprisoned in the county jail for 50 -250 days. Id. In 1911, the Legislature enacted a second bill that created a State Board of Health focused primarily on identifying and recording the cause of death and the requirements for birth certificates. 1911 Nev. Stat. 392.

In 1971, Senate Bill 490 (hereinafter, "S.B. 490") was proposed to establish a solid waste management system. It provided the governing body of a municipality, in conjunction with the District Board of Health, with the authority to make rules and regulations regarding the

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and Reno Disposal Co., which expires in 2029. Based on these undisputed contracts, the Court finds that Waste Management had standing to record a lien under NRS 444.520 if West Taylor was delinquent on its garbage bills.

management of solid waste. Assembly Committee on Environmental and Public Resources (March 31, 1971). After the first read in the Senate, S.B. 490 was amended to include the following environmental goals: 1) protect public health and welfare; 2) prevent water or air pollution; 3) prevent the spread of disease and the creation of nuisances; 4) conserve natural resources; and, 5) enhance the beauty and quality of the environment. Journal of the Senate, at bate stamp 7 (March 22, 1971).

In the development of S.B. 490, the legislative history reveals that the intent behind this bill was to force the Nevada Department of Health to exercise its preexisting power to regulate the disposal of solid waste. Assembly Committee on Environmental and Public Resources (March 31, 1971). On April 1, 1971, there was a second discussion stating, in part, that S.B. 490 was intended to clean up the dumps, and that it did not apply to private property or agricultural waste disposed on private land, unless a nuisance is being created. Assembly Committee on Environmental and Public Resources (April 1, 1971). The goal was to create a statewide scheme so that Nevada could qualify for federal funding. Id.

On February 8, 1991, Assembly Bill 320 (hereinafter, "A.B. 320") was proposed as an effort to create a basic recycling program and to reduce the disposal of certain kinds of solid waste. The first version of A.B. 320, Sec. 19 (NRS 444.520) imposed a fee for the disposal of solid waste, stating: "there is hereby levied upon the operator of each disposal site a fee of $2.50 per ton of solid waste accepted for disposal or transfer at the site…All claims against the account must be paid as other claims against the state are paid." A.B. 320 (Feb. 8, 1991). Assembly Member Vivian Freeman, who introduced the bill, indicated that the intended effects of this fee were threefold: 1) revenues would help fund recycling programs, 2) the charges would be more reflective of the cost of running a landfill and would assist in funding landfill operations, and 3) the higher disposal rates could have provided a cost incentive that promotes recycling because residents paying for the quantity of garbage being disposed would be more likely to remove recyclable materials. *Assembly Bill Omnibus Recycling*, Assemblywoman Vivian L. Freeman, Assembly Committee on Natural Resources, Agriculture and Mining (March 4, 1991). During a committee meeting it was agreed that the $2.50 fee was excessive, and needed to be eliminated

and re-evaluated after two years. Assembly Committee on Natural Resources, Committee Analysis of A.B. 320, at 11 (April 6, 1991). After two amendments, A.B. 320 read as follows:

> "The governing body of any municipality which has an approved plan for the management of solid waste may, by ordinance, provide for the levy and collection of other or additional fees and charges and require such licenses as may be appropriate and necessary to meet the requirements of NRS 444.460, inclusive. The fees authorized by this section are not subject to the limit on the maximum allowable revenue from frees established pursuant to NRS 354.5989."
> A.B. 320 Reprint with Adopted Amendments, at 6 (May 24, 1991)(emphasis added).

It had been determined that NRS 354.5989[2] would be the only statute to place a fee limitation on the proposed garbage fees. Therefore, the legislature specifically made A.B. 320 exempt from NRS 354.5989 through this amendment. These 1991 amendments are still reflected in the statute today.

In 2005, NRS 444.520 was amended again to create a method of recourse for the garbage company once a customer became delinquent on a bill by allowing the garbage company to place a lien on the property. Senate Committee on Health and Human Resources, Committee Analysis of S.B. 354, at 10-11 (April 6, 2005).

This amendment added the following language in bold:

> 1. The governing body of any municipality which has an approved plan for the management of solid waste may, by ordinance, provide for the levy and collection of other or additional fees and charges and require such licenses as may be appropriate and necessary to meet the requirements of NRS 444.460 to 444.610, inclusive.
>
> 2. The fees authorized by this section are not subject to the limit on the maximum allowable revenue from fees established pursuant to NRS 354.5989.
>
> **3. Until paid, any fee or charge levied pursuant to subsection 1 constitutes a perpetual lien against the property served, superior to all liens, claims and titles other than liens for general taxes and special assessments. The lien is not extinguished by the sale of any property on account of nonpayment of any other lien, claim or title, except liens for general taxes and special assessments. The lien may be foreclosed in the same manner as provided for the foreclosure of mechanics' liens.**

[2] NRS 354.5989 regulates local government imposed fees for business licenses.

4. As a remedy established for the collection of any fee or charge levied pursuant to subsection 1, an action may be brought in the name of the governing body of the municipality in any court of competent jurisdiction against any person who occupied the property when the service was rendered or against any person guaranteeing payment of the fee or charge, or against all persons, for the collection of any such fee or charge that is delinquent.

5. A lien against the property served is not effective until a notice of the lien, separately prepared for each lot affected, is:

(a) Mailed to the last known owner at the owner's last known address according to the records of the county in which the property is located;

(b) Delivered to the office of the county recorder of the county in which the property is located;

(c) Recorded by the county recorder in a book kept for the purpose of recording instruments encumbering land; and

(d) Indexed in the real estate index as deeds and other conveyances are required by law to be indexed.

Senate Bill 354 (March 25, 2005).

The Senate Committee discussed that because of public health concerns the garbage company is required to pick up all garbage, even if a customer's account is in arrears. Id. The proposed amendments would require the homeowner to address the garbage lien, even if a tenant was living on the premises. Id. Ultimately, the Senate Committee decided to omit the following language from S.B. 354:

> "As a remedy established for the collection of any fee or charge levied pursuant to subsection 1, an action may be brought in the name of the governing body of the municipality in any court of competent jurisdiction against any person who occupied the property when the service was rendered or against any person guaranteeing payment of the fee or charge, or against all persons, for the collection of any such fee or charge that is delinquent."

The only explanation for this deletion was that the purposed amendment added "some unnecessary language." Id.

When the Assembly Committee discussed A.B. 354, it recognized that the bill allowed the garbage company to create a lien that could ultimately lead to the foreclosure of residential homes. Assembly Committee on Health and Human Resources, Committee Analysis of A.B.

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 20 2018 03:27 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

WASTE MANAGEMENT OF NEVADA,

Appellant,

vs.

WEST TAYLOR STREET, LLC,

Respondent.

_____/

Supreme Court Case No. 74876

District Court Case No. CV12-02995

JOINT APPENDIX
VOL. 2

APPELLANTS' COUNSEL:

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APPENDIX

DOCUMENT	DATE	VOL.	BATES
Affidavit of C. Nicholas Pereos in Support of Motion for Martial Summary Judgment	03/11/2014	1	JA_0051-54
Affidavit of Teri Morrison in Support of Motion for Partial Summary Judgment	03/11/2014	1	JA_0048-50
Affidavit of Teri Morrison in Support of Opposition to Motion for Summary Judgment	10/18/2016	5	JA_1037-1040
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First Amended Scheduling Order	04/19/2017	5	JA_1060-1066
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Summons (Alias)	06/04/2013	1	JA_0007-8
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Waste Management of Nevada, Inc.'s Motion for Partial Reconsideration of the Court's July 28, 2014 Order	09/26/2014	2	JA_0453-522
Waste Management of Nevada, Inc.'s Opposition to Plaintiff's Second Motion for Partial Summary Judgment	09/25/2014	2	JA_0429-443

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of SIMONS LAW, PC, and that on this date I caused to be served a true copy of the **APPELLANTS' APPENDIX VOL. 2** on all parties to this action by the method(s) indicated below:

☐ by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Reno, Nevada, addressed to:

☐ By electronically filing the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF Electronic Notification System on the date below. The following participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system:

C. NICHOLAS PEREOS, ESQ.
Email: cpereos@att.net

☐ by personal delivery/hand delivery addressed to:

☐ by facsimile (fax) addressed to:

☐ by Federal Express/UPS or other overnight delivery addressed to:

DATED: This 20 day of July, 2018.

JODI ALHASAN

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EDWIN JAMES (Carson Water Subconservancy District):
The amendments stated will take care of most of our concerns. In order to recoup our investments, we release water rights to downstream users. Currently, we are leasing to Carson City. We release the rights wherever the needs are. It is on a year-to-year basis. We try to make sure the water is in flow year-round. Our concern is to establish fair market value. A city would pay much more than a rancher could pay, but the rancher is willing to pay what the city pays for that one-time use.

JOHN SLAUGHTER (Washoe County):
We initially had concerns with S.B. 466 as it was written, so we submitted a document detailing our concerns (Exhibit I). We now support this bill as amended.

CHAIR HARDY:
Hopefully, everyone understands my global concern with this issue as a matter of public policy. We will close the hearing on S.B. 466. We will open the hearing on S.B. 196.

SENATE BILL 196: Revises provisions governing boards of directors of certain water authorities created by interlocal cooperative agreement. (BDR 22-88)

SENATOR MAURICE E. WASHINGTON (Washoe County Senatorial District No. 2):
Senate Bill 196 simply deals with counties having a population over 100,000. It requests that a Legislator be appointed to the board in southern Nevada, as well as to the board in northern Nevada. The Governor would make the appointments. The Legislator who sits on the Board would be a nonvoting member. The purpose of the bill is to give the Legislators an opportunity to know what is taking place on those boards. This will give us all a better opportunity to be aware of what is going on throughout the State. It is important, as we deal with the water situations within the State, that we have a better handle on what is going on concerning all areas of the State of Nevada.

CHAIR HARDY:
Senator Washington, this bill, as currently written, applies to Southern Nevada Water Authority (SNWA) and TMWA. I have dealt with southern Nevada water issues most of my professional career, and we have struck a balance that

works. Would you be opposed to an amendment that would remove the SNWA, if the majority of the southern Nevada Legislators agree?

SENATOR WASHINGTON:
It depends on the Committee members. If they want to amend the bill to remove the SNWA, they may. It is important that at least one Legislator be represented on that Board.

JULIE WILCOX (Southern Nevada Water Authority; Las Vegas Valley Water District):
Although the Legislative Counsel's Digest in S.B. 196 specifically refers to SNWA, the bill as it is written does not affect us. The SNWA is a wholesale water-delivery agency. We have seven member agencies, and each agency has one member on the Board. We have five water entities and two waste water entities that came to the table. Each of those entities is represented.

CHAIR HARDY:
Are you saying this would impact the Las Vegas Valley Water District?

MS. WILCOX:
No, it would not. The county does not have a representative on the board. The county is represented on the SNWA only through the Clark County Reclamation District, which is a separate district.

CHAIR HARDY:
Obviously, it is Senator Washington's intent to have S.B. 196 include the SNWA. We will have you work on that with our legal counsel. Once we have the language to reflect the sponsor's intent, would you have any opposition?

MS. WILCOX:
For the record, the SNWA has monthly meetings open to the public. These meetings are broadcast on our Web site. The SNWA is a consensus-driven organization. When the organization came together, each member agency had water. They were water purveyors with water rights or they were waste water agencies with water rights. Whatever decisions have to be made are done so with specific quorums.

CHAIR HARDY:
Are you saying that you would still have opposition to S.B. 196 when finalized?

MS. WILCOX:
I just wanted to offer that comment. You can watch our meetings on the Web site, right now.

CHAIR HARDY:
Are you not going to answer the question?

SENATOR LEE:
Although the Las Vegas Valley Water District is the largest retail purveyor of water in southern Nevada, would it have its own municipal water system? I am interested in finding out if North Las Vegas would be involved with S.B. 196.

MS. WILCOX:
No, that question would certainly come up if you put a Legislator on the board of the Las Vegas Water District. North Las Vegas is not the largest water purveyor in southern Nevada. Would you then put a Legislator on every municipal water department in the State of Nevada? This is unclear. It is difficult for me to say if we are in opposition or not.

SENATOR WASHINGTON:
The Legislators sitting on those boards would provide the information needed for us to produce effective policies to enhance delivery of water to the citizens of this State. There is no negative side to S.B. 196. It may put the State in a different position, but at least we are participating in the overall use of water in the State.

CHAIR HARDY:
Would the Legislators be paid for their service on the Board?

SENATOR WASHINGTON:
No, we are not asking that they be paid for their services. The appointment is made by the Governor, and it is a nonvoting seat. The TMWA currently has an open seat. Members of that board have been considering a member from the city of Sparks, the city of Reno or one from Washoe County government. They have decided to put a Legislator on that seat. This person could function as a liaison between the Board and constituents.

CHAIR HARDY:
Do you wish to withdraw the amendment?

SENATOR WASHINGTON:
We wish to withdraw the amendment, at this time.

CHAIR HARDY:
Ms. Guinasso, can you address the comments from Ms. Wilcox?

MS. GUINASSO:
Yes.

CHAIR HARDY:
Ms. Wilcox, please provide your contact information to Ms. Guinasso in case she has additional questions.

Committee, are there any further questions on S.B. 196? We will close the hearing on S.B. 196. We had a time certain of 3:30 p.m. to address S.B. 262. We will now revisit S.B. 262.

SENATE BILL 262: Authorizes raising, relocation or compensation for loss of outdoor advertising structures as result of certain governmental actions. (BDR 22-1250)

JOHN M. MOORE (Clear Channel Outdoor):
We request a postponement to work out some of the issues with S.B. 262.

CHAIR HARDY:
A postponement is granted. Friday, April 8, we will bring this back to Committee for discussion. We will close this hearing for now on S.B. 262. We will open the hearing on S.B. 424.

SENATE BILL 424: Revises provision governing authority of governing body of city to abate abandoned nuisance. (BDR 21-343)

MICHAEL BOUSE (Director, Building and Fire Safety, City of Henderson):
The Committee has our proposed amendment (Exhibit J). This bill would amend NRS 268.4126, which deals with abandoned-property nuisance activity. Senate Bill 424 allows cities and counties with populations in excess of 100,000 to adopt an ordinance to deal with those types of properties. The abatement action under that ordinance is done through court action.

The NRS currently provides two criteria have to be met in order for us to seek a court order on this type of property. First, the property must be vacant or substantially vacant for two years. Second, 3 or more abandoned nuisance activities must have occurred within a 12-month period. Senate Bill 424 defines 8 different abandoned nuisance activities. Henderson is in the middle of incorporating the requirements of this statute into a property-maintenance code. Two homes fell into disrepair, but not to the point to declare them dangerous, substandard buildings. We could not take abatement action. Over a period of 18 months, the property owner responded to our notices and boarded the buildings. During those 18 months, citizens of the neighborhood were outraged because they contended the buildings were a hazard. Our hands were tied. We are requesting the statutes be amended to provide that the property has to be vacant or substantially vacant for 12 months, as opposed to 2 years. Rather than having 3 nuisance activities occur within a 12-month period, we are asking the law be amended to read 2 or more nuisance activities within a 12-month period. With that amendment, the city of Henderson could adopt the property and maintenance code provided for a more timely abatement. The language is permissive, and cities can choose whether or not to adopt these types of ordinances.

SENATOR CARE:
Do you have an abandoned nuisance activity the moment the citation is issued? If the citation is contested, at what point does it have to be resolved? When can you determine it is an abandoned nuisance, other than just by looking at the outward condition of the property?

MR. BOUSE:
The statutes are not clear. In order to establish the type of record that the court would require, we would document through the issuance of a citation or notice of violation against the property.

SENATOR CARE:
Would the citation be sufficient?

MR. BOUSE:
It would sufficiently document that one violation.

SENATOR CARE:
Obviously, there is a time period where the property owner has to contest the citation or his rights are waived. Is that correct?

MR. BOUSE:
That is correct. This statute deals with those types of properties where the property owner is totally unresponsive.

SENATOR CARE:
When the citation is issued for the second time, it puts you in a position to say "that's two." Down the road, the property owner contests the citations and the matter is resolved in his favor. We do not want to see that happen.

MR. BOUSE:
The statutes do provide that, upon notice, the property owner does have an opportunity to appeal to the court. The notice has to be sent by certified mail, return receipt requested. The court could authorize the city to abate the violations.

CHAIR HARDY:
I share Senator Care's concern on the definition of "abandoned nuisance." The declaration of abandoned nuisance where two or more activities exist needs clarification. I am not sure I understand your answer to Senator Care. Let us try a real-life example. We have something the city considers an abandoned nuisance activity. The city issues a citation via certified mail to the registered property owner. Is that considered the activity, and is that all that has to occur?

MR. BOUSE:
That is correct. A real-life example would be the two abandoned homes we encountered in Henderson that were vandalized inside. We sent a notice of violation informing the property owner the homes had to be boarded. Ultimately, they were boarded, but the property continued to deteriorate. The boards were removed and vandalized again. The second notice of violation was issued.

CHAIR HARDY:
Is the "activity" the issuance of the citation, or is something occurring on the property considered the activity?

MR. BOUSE:
The statutes indicate that whatever occurs on the property, such as a gang vandalism incident, and the physical condition of the property, is considered the activity.

CHAIR HARDY:
The presence of junk vehicles or vandalism would be the activity. Something proactive has to happen on the property in order to consider it an activity and to issue a citation. You cannot just approach a vacant home and send out a notice of abandoned nuisance.

MR. BOUSE:
That is correct. In the current statutes, that would be allowed to occur three times, and we are requesting it occur only twice.

SENATOR CARE:
Whether or not you have an abandoned nuisance activity becomes a question of fact for the court to decide. The example you are giving indicates the owner of the buildings boarded them, as instructed, and basically moots that activity. A week later, it happened all over again. Then, it would be considered a consistent violation. It is hard to say if that is an abandoned nuisance activity. It would have to go to a judge.

MR. BOUSE:
Correct, everything in terms of enforcement activity is overseen by a court action.

MS. SMITH-NEWBY:
The Las Vegas City Council, as part of a strategic planning process, adopted several priorities for the City. Two of those priorities include revitalizing and invigorating our mature areas in the urban core, and supporting affordability and pride in our neighborhoods. We rise in support of S.B. 424 because we have been proactively seeking to abate abandoned nuisance activity in our neighborhoods.

NICOLE J. LAMBOLEY (City of Reno; City of Reno Redevelopment Agency):
We support S.B. 424.

CHAIR HARDY:
Is there anyone else wishing to testify in favor of or opposition to S.B. 424? We will close the hearing on S.B. 424. We will revisit S.B. 184, if Ms. Vilardo is prepared.

MS. VILARDO:
Most of the governments agree with the proposed changes of S.B. 184. Our proposed amendment definitely needs work. Addressing this proposed amendment in a work session format is acceptable. In the meantime, we will conduct further discussions. I intend to cover the language with legal staff before we bring the proposal back to the table.

CHAIR HARDY:
We will hold a work session and have Ms. Vilardo present her proposal at that time. Are there any questions about the program we need to cover today in this Committee?

MR. LYNN:
I do appreciate the work Ms. Vilardo has done. It was well coordinated and answered a number of my questions. However, my concerns are with establishing or mandating a committee, from a State point of view. I am still confused on some of the financial issues and restrictions. I would like to have my financial staff look at the proposal.

CHAIR HARDY:
We will have staff get a copy of the amended version in your hands as soon as possible. It appears you will have additional questions. The substance of S.B. 184 is the mandating of the committee, at the State level, to the local governments. Is that problematic for you?

MR. LYNN:
Yes, it is.

CHAIR HARDY:
Thank you for agreeing to return for a scheduled work session to cover your proposal. Once you have a completed, satisfactory form to present, we welcome you back to walk us through it at that time. We will make sure everyone will have ample opportunity to comment on and review the new document. Now, I would like to turn our attention to Senate Bill 283.

SENATE BILL 283: Creates Committee for the Economic Diversification of Nevada. (BDR S-801)

CHAIR HARDY:
I will turn this hearing over to Vice Chair Tiffany, while I testify before the Committee on S.B. 283.

VICE CHAIR TIFFANY:
Welcome to the Committee, Senator Hardy.

SENATOR WARREN B. HARDY II (Clark County Senatorial District No. 12):
Our economic diversification became an issue of interest as a result of our interim study by the Committee to Evaluate Higher Education Programs. It is important that there be a level of coordination between our efforts in economic diversification and the efforts of our higher education programs in Nevada. This concept was suggested to me during those hearings. We have discussed for years the peril in having two major industries in our State, should there be an economic downturn. We experienced just that, after the tragedy of September 11, 2001. It really brought home the importance of economic diversification. This committee being proposed is a large move in that direction. Much of the economic diversification efforts in the State of Nevada are sporadic with no real coordination. Senate Bill 283 is a means to coordinate those diversification efforts. I have with me today, Mr. Russell Rowe, who will take us through the bill. The formal manner in which I presented S.B. 283 was simply to illustrate how important this is to the future of our State.

VICE CHAIR TIFFANY:
Are there any questions for Senator Hardy?

SENATOR LEE:
Is the Lieutenant Governor involved in this process through her constitutional office? Will this issue move to committee, and will she lose her responsibility?

SENATOR HARDY:
That is one of the primary objectives of the Lieutenant Governor. This would be an opportunity to enhance and provide some focus to all the efforts going on around the State.

SENATOR LEE:
Would this supersede whatever that constitutional office is doing?

SENATOR HARDY:
I do not know how that would work, constitutionally. I would prefer to characterize it as an enhancement.

SENATOR TITUS:
I agree with Senator Lee. How can you create a committee on economic development without including the Lieutenant Governor, when it is primarily her job? The point that membership from the Legislature is appointed by the majority leader and the speaker concerns me. This happens more and more. It was the case with the tax committee and now it is going to be the case with this Committee. Why not have the commission make those appointments instead of putting excessive power in that leadership position?

SENATOR HARDY:
We want to make this Committee as effective and as useful as possible. We are open to all those suggestions.

SENATOR CARE:
We should have people who can move on business and economic diversification without any consideration of politics. Why do we even need a Legislator on this? The Regent is on the bill because somebody has to speak for the University and Community College System of Nevada. Obviously, I do support S.B. 283, whatever the form.

SENATOR HARDY:
I agree with Senator Care that we need effective individuals on this Committee.

RUSSELL ROWE (American Council of Engineering Companies of Nevada):
This bill emanated from the results of the interim Higher Education Committee. Part of its charge was to evaluate how higher education and economic development work together. When the consultants report and recommendations from that committee came out, we knew the economic-development community had to do something. We took the comments seriously and requested, to Senator Hardy, that we forward the specific recommendations with respect to economic development in a bill. There are three major things the consultants' report found from that Committee. First, the need to diversify is recognized in

this State, but there is no clear, integrated strategy for economic development. Second, there is a need to develop a long-term strategy for expanding and diversifying the economy. Third, there is no consistent, high-level venue to address issues that cut across higher education, kindergarten through twelfth grade (K-12) education and economic diversification. The Nevada Development Authority (NDA) has learned that there are a number of potential industries and technologies in Nevada. We lack a central location in our State to coordinate our development. With S.B. 283, we will establish the needed strategic plan and outline how we can bring these pieces together for integration into a long-term strategy for the State of Nevada. We have outlined our 20-year plan with research focused on economic-diversification development. We are definitely not trying to replace the role of the Lieutenant Governor with respect to economic development and diversification. We have been in touch with her many times concerning the development of S.B. 283. We do expect her to play a role. We purposely tried to have members of the business community on this Committee. The idea is to have it driven by the private economic sector. The business community, university presidents and general business leaders are aware of what is going on, and they are familiar with diversification. We have done our best to involve everyone, and they have all been responsive. Maybe this should be a subcommittee of the Higher Education Committee. We are open to that or whatever works best, and we are willing to put our time into this.

PAT COWARD (Economic Development Authority of Western Nevada):
The Economic Development Authority of Western Nevada (EDAWN) has been involved with the Higher Education Committee. The main focus of EDAWN and its board of directors is a well-overdue strategic plan. It is paramount that we bring economically diverse businesses into the State of Nevada. One of the key factors is an educated workforce. That would be our main thrust.

MS. VILARDO:
I am speaking in support of S.B. 283. Four bills specifically deal with funding and economic development. It points out the need to have a statewide plan. It would cover elementary schools, higher education, the business community and the Legislature. It would be our point of coordination. Senate Bill 283 has our full support and that of the Board.

MR. COWARD:
Michael Pennington, from the Reno-Sparks Chamber of Commerce, could not be here because of schedule conflicts. He asked me to make sure the Committee is aware of his support of S.B. 283.

MR. ROWE:
I would like to address an earlier comment from Senator Titus regarding the membership. I drafted that language, and I used previous bills as my guide. There was no intent other than to draft it using the proper language.

SENATOR TITUS:
I appreciate that. To be more effective, you might want to consider having someone at the head of the university, research and development, or the vice president.

MR. ROWE:
We have actually thought along those lines. The president of the university has offered to serve on the Board. We respectfully declined. We wanted to present to the business community the direction of higher education. There are sometimes disagreements between the University of Nevada, Reno and the University of Nevada, Las Vegas, and we wanted to avoid those situations.

SENATOR TITUS:
The Georgia Institute of Technology has a good program. There is also a collaborative program between the University of New Orleans and the Department of the Navy. There are many opportunities out there we are missing. I just want to get the best people on the committee, so we come up with something worthwhile.

CHAIR HARDY:
There seems to be a strong feeling that we should incorporate the Lieutenant Governor in the drafting of S.B. 283. Those suggestions are appropriate. Please go back to the various boards and have a discussion, in light of the conversations, regarding the makeup of this bill. Be prepared to return with an amendment or something for work session early next week. Right now, we will close the hearing on Senate Bill 283.

Committee, we will open the hearing to address Senate Bill 414. This bill also falls into the category of good ideas from the interim higher education study.

SENATE BILL 414: Creates Nevada Economic Investment Fund. (BDR 18-1062)

CHAIR HARDY:
Assemblyman Seale, welcome to the Senate Committee on Government Affairs. It is nice to have you here.

ASSEMBLYMAN BOB SEALE (Assembly District No. 21):
I came here as the former Treasurer of the State of Nevada, rather than as an Assemblyman. Many of you recognize that during the time I was Treasurer, I pursued economic development for the State of Nevada on many different fronts, with less success than I would have hoped. This bill is intriguing, and I want to have it pursued to the fullest. My interest in economic diversification for the State of Nevada goes to the core of what we do in the State treasury that is bonds and the value that economic diversification delivers to bonds in terms of higher bond ratings and lower interest rates. We have a significant amount of money out there in debt. The rating agencies are always interested and moving toward diversification. There was always the argument that we are not diversified in the State of Nevada. Our State is a single-industry state. My argument has always been that while there has been some significant growth in the area of gaming, the other industries keep up with that growth. However, the State has not been able to move forward. Because we are considering these types of bills, our bond rating will move forward. It will have a significant impact on the State of Nevada and our finances. I am in support of Senate Bill 414; I would like you to look at it closely and make it move forward.

CHAIR HARDY:
Thank you for being here and lending your expertise to this discussion. It is certainly invaluable.

JAY PARMER (Enhanced Capital Partners, Limited Liability Company):
We are here in support of S.B. 414, which is an innovative proposal to allow the State of Nevada to support entrepreneurial activity that would strengthen and diversify our economy. There is a keen interest in economical development this Session for several reasons. First, Nevada is far behind many other states in supporting programs that would foster economic development. Our economy is strong, but it could be made stronger by encouraging further diversification of our economy. Secondly, this State is placing more emphasis than ever on improving K-12 and higher education. Economic growth and diversification must be our next area of focus. The timing of S.B. 414 is critical. How do we prevent

the brain drain from our communities as Nevadans, educated in our State, cross our borders to find gainful employment elsewhere? This is why the time is now for the State of Nevada to address economic development. This bill is a major step in that direction. This proposal creates a vehicle to recruit and retain businesses that pay higher wages, with corresponding benefits. Such jobs will create a better quality of life for Nevadans. Finally, the passage of S.B. 414 does not require a General Fund appropriation.

GINGEE M. PRINCE (Enhanced Capital Partners, Limited Liability Company):
We are a private investment firm based in New York and New Orleans. We have participated in state and federal economic development programs. You have before you a bound presentation (Exhibit K). I would like you to move ahead to page 4 of this presentation and focus on the flow chart. Senate Bill 414 creates a $30-million investment fund. It is capitalized by insurance company investors who receive tax credits for their investments. The tax credits granted by the State total $25 million, but the impact of the credit is delayed by 2 years and then amortized over a 4-year period, from 2007 to 2011, at a rate of 20 percent per year or $5 million per year. If you look at the bottom of page 5, it indicates the tax credits. First, when the fund is actually created and then when the tax credits hit.

This method of providing tax incentives is a proven method for raising up-front capital quickly and then paying for it over the long term. You receive money today for economic development, but you do not have to pay for it until 2007 through 2011. This allows the investment capital to begin working in the economy before the first impacts of the credits occur. After the State authorizes the tax credits, a board of directors is established to oversee the creation and implementation of the program.

We offer an amendment to change the composition of the board (Exhibit L). The board appoints a fund manager. In order to be considered to manage the investment fund, an applicant must meet certain investment criteria. The credit allocation is set forth to enable the fund manager to raise money from the insurance companies. Once the fund manager has collected the money to create the fund, he will then make investments in businesses according to the criteria set forth and after approval of the board of directors. In order to receive any investment under this program, an applicant must be principally located within the State or employ 75 percent of its employees within the State of Nevada.

The company receiving the investment must foster Nevada economic development as determined by the board of directors.

SENATOR TITUS:
This is a good idea. When I tried to put together the economic development trust fund, I wanted the money to be given in grants to public or private entities. The idea was to give some incentive to businesses. I was told that was unconstitutional. The State cannot invest in private enterprise. How is this different?

MR. PARMER:
In 2003, we looked at the opportunity of bringing forward this bill. We ran out of time to structure the bill. We needed a legal opinion stating this program does not violate the constitutional clause that indicates the State cannot lend its equity. This was decided because of the way the money is raised, which is using insurance premium tax credits against the collection of insurance premium taxes by the State. We have an opinion provided by the Legislative Counsel Bureau and supported by outside legal counsel.

SENATOR LEE:
Does this tax credit come off the insurance premium tax? Is that basically where these are applied by insurance companies?

MR. PARMER:
This proposal is called innovative because this fund was created as a result of work done by the National Association of State Budget Officers. What they found, nationally, was that state budget officers were accounting insurance premium tax collections into the states' general funds at a more conservative rate than states actually collect them. Insurance companies are growing, and consequently, their debt obligation, in terms of tax for the state, is growing at a significant rate. There is a difference in the amount of money between what has been anticipated into the general fund and what is coming into the state after the budget process. This fund would be an opportunity to take advantage of that money coming in at a rate higher than the 9.9 percent our budget officer anticipates into the General Fund.

SENATOR CARE:
Who are these entities?

MS. PRINCE:
There are anywhere from six to ten companies, nationwide, that would qualify and that have participated in economic development programs. The number that might apply here would be around four or five companies. They are required to hire local investment professionals and set up a local office. You would have a local fund manager, but that person would be tied to a group with experience.

SENATOR CARE:
Who are the four or five companies that might apply here?

MS. PRINCE:
They are Advantage Capital Partners, Newtek Business Services Incorporated, Stonehenge Capital Corporation and Enhanced Capital Partners; there are a few more that may qualify.

SENATOR RAGGIO:
Where else has a program of this type been initiated? Could you elaborate on their experiences?

MS. PRINCE:
This program is different. Similar programs have been implemented in other states. This program establishes a board of directors to direct the investments within the State of Nevada, unlike other programs. The others allow private investment firms to make investments as they deem appropriate. That process has received criticism in other states. Therefore, what we presented here was a board-approved investment process. There are eight states that have enacted programs similar to this presentation. Louisiana initiated this program in 1987. It has been renewed 14 times and has allocated approximately $750 million to the program. New York just enacted its fourth program, totaling approximately $480 million. The states where Enhanced Capital Partners participate are New York, Colorado, Louisiana, Alabama and the District of Columbia.

SENATOR RAGGIO:
Why is the program for the State of Nevada structured differently?

MS. PRINCE:
We have experienced criticism of economic development in other areas due to the fact that private companies make investments as they deem appropriate.

The structural difference of this presentation is the addition of the board of directors, which has to approve every investment in this program.

CHAIR HARDY:
After going over many of these same questions previously, this approach seems to work best.

MR. PARMER:
Mr. Brown came up from Las Vegas to testify. We had a number of people who were willing to testify from Las Vegas. However, we were unable to obtain the videoconference link. You have some e-mails and letters in support of S.B. 414 that Mr. Brown will address.

JOSEPH W. BROWN (Nevada Development Authority):
I am appearing today as a former executive committee chairman of the Nevada Development Authority (NDA). For the past several years, I have been cochairman, along with Robert Lewis of the NDA Legislative Committee.

For the 25 years I have been connected with NDA, I have come across countless entrepreneurs who had good ideas, boundless enthusiasm and a strong work ethic, but failed because of their inability to secure investment capital from traditional sources. At the NDA, we have had dozens of small but successful companies willing to move their well-paying, quality jobs to Nevada, providing we assist them with capital to move and expand their businesses. We are unable to help and end up losing them to Arizona, Utah and other neighboring states. There are 18 other states offering tax credit programs like this to assist start-up businesses. The concept proposed by S.B. 414 is innovative and presents a real possibility of early-stage funding to small start-up companies. Financial analysts need to carefully study fiscal ramifications and examine how this kind of legislation has worked elsewhere. A couple areas exist where improvements can be made. Targeted investors should be consulted as to whether they would invest their capital under these terms. The proposal seems to have sufficient oversight and control to protect the State of Nevada from financial mishap. No action will be taken without the approval of a well-balanced mix of elected officials, economic development leaders and investment experts. It does not require an appropriation from the State's General Fund. The NDA encourages you to move forward with your sincere consideration of this worthwhile piece of Legislation.

CHAIR HARDY:
Mr. Brown, do you have the written amendments you have just presented? Can you provide them to this Committee?

MR. BROWN:
I do have the proposed amendment in written form, which I will e-mail to you.

CHAIR HARDY:
So often, when we cover economic development in this State, we are concerned with the numbers of people attending. We do not always look at the economic viability of the business succeeding in this environment. That is a missing element. This helps us decide if we are looking at a desirable company to bring to Nevada. We do not want to bring people here to fail. Strengthening the area Mr. Brown talked about specifically would be helpful. As soon as the Committee receives your written proposal, we will take action on this bill.

MR. BROWN:
The two-week provision for the manager to act if he did not have approval is much too short. More time would be needed to bring a quorum together to discuss the merits.

MS. PRINCE:
Mr. Brown, do you have a suggestion on another time frame, other than the two weeks?

MR. BROWN:
Thirty days would be my recommendation.

SENATOR LEE:
In section 15, after the manager has invested $30 million pursuant to section 14 of the act, the manager may invest money from the fund in any person, without approval of the board. I thought we set this board up to oversee where these investments were going. Once we have hit that cap, is there a particular reason why it would bypass the board and go directly to the fund manager?

MS. PRINCE:
There is a tax credit of $25 million associated with the $30-million fund. The idea is to have this bill capped and not continue to go on. When the entire fund has been invested, that fund would usually close down. This provision leaves this option open for the fund manager to continue to make investments rather than to shut down the fund at the end.

SENATOR LEE:
Do we sunset the board at $30 million?

MS. PRINCE:
Yes, that is the obligation of the fund manager. However, they will be allowed to continue to invest if that is what they prefer.

SENATOR TITUS:
Have you tried this in any other state, and if so, which ones?

MS. PRINCE:
We have participated in similar programs that used a like financing mechanism with the tax credits. What differs in this program is the composition of the board and the board's overseeing of the investments. My company participates in Colorado, Alabama, Louisiana, New York and the District of Columbia.

SENATOR TITUS:
Have there been any problems? Has this worked well in those states?

MS. PRINCE:
The program worked well in all of the states in which we participated, except for Colorado.

SENATOR TITUS:
What was the problem in Colorado?

MS. PRINCE:
Colorado split up their allocation of tax credits into two sets of $100 million each. The first allocation was granted in 2002, and the second allocation was

granted in 2004. During the first allocation in 2002, the program had one year to be implemented. In the 2003 Session, the State of Colorado was in a budget crisis. There were groups that wanted to go after that second allocation of $100 million in 2004. This was allowed to happen.

SENATOR TITUS:
Is there any bottom-line assessment of the impact on the State funds over the next biennium?

MR. PARMER:
The National Venture Capital Association made an estimate that for each $30,000 invested in funds like this, you create a Tier 1 job. A Tier 1 job has a high livable wage with corresponding benefits. That is the best number we have seen, so far, given the relatively short time these programs have been working.

SENATOR CARE:
Assuming the occurrence of a problem and the State becoming a party to some action, do the taxpayers have any liability? Have you given any thought to that?

MR. PARMER:
The money in the fund is governed by a five-member board. The way the money is typically used should protect the fund. That is, the money is used to encourage the company to establish 75 percent or more of their employees in this State. That money could be used for equity investments. This fund will not put you in a situation where you create a total loss.

MR. COWARD:
The Board of Directors for EDAWN supports this concept. It would be another economic tool to be used in the State of Nevada.

CHAIR HARDY:
Is there anyone else wishing to testify? We will close the hearing on Senate Bill 414 and return to Senate Bill 354. This is the bill that will bring the county on par with the city, in terms of what remedies are available to enable municipal companies to recover revenue. I will also ask the Committee's pleasure regarding S.B. 424.

SENATE BILL 354: Revises provisions governing municipal solid waste management systems. (BDR 40-1153)

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 354.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

*****

SENATE BILL 424: Revises provision governing authority of governing body of city to abate abandoned nuisance. (BDR 21-343)

SENATOR TIFFANY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 424.

SENATOR CARE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

*****

CHAIR HARDY:
Committee, we will move right on to work session. You have the work session document in front of you (Exhibit M). We will begin with Senate Bill 107 from Senator Titus.

SENATE BILL 107: Requires state and local governments to prepare and report inventories of capital improvements. (BDR 27-31)

SENATOR TITUS:
I will have to request that we hold off on this right now. It will require that I draft another amendment before we continue discussion.

CHAIR HARDY:
We will put Senate Bill 107 aside. Now we will continue with Senate Bill 147 which is sponsored by Senator Rhoads (Exhibit N).

SENATE BILL 147: Increases amount of general obligation bonds that State Board of Finance is required to issue to provide grants to certain water systems. (BDR 30-914)

SENATOR TIFFANY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 147.

SENATOR RAGGIO SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

*****

CHAIR HARDY:
We can move on to Senate Bill 235. We had some discussion about the hospital districts in smaller counties and the requirements to dissolve a district. All that was required was a simple vote of the district. This provides some process and guidelines. There were no amendments or opposition offered (Exhibit O).

SENATE BILL 235: Revises provisions relating to procedure for dissolution of hospital districts in certain smaller counties. (BDR 40-960)

SENATOR RAGGIO MOVED TO DO PASS S.B. 235.

SENATOR LEE SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

*****

CHAIR HARDY:
We will turn our attention to Senate Bill 52, which is being introduced by Senator Townsend on behalf of the city of Reno, dealing with ordinance enforcement by local government.

SENATE BILL 52: Revises provisions relating to adoption and enforcement of certain ordinances by local governments. (BDR 14-369)

CHAIR HARDY:
There was extensive discussion concerning this bill. We received opposition from some owners of classic cars in Las Vegas (Exhibit P). Their primary concern was for actions taken by Clark County. This specifically deals with cities. Correspondence and phone calls from residents of Reno indicate that S.B. 52 is absolutely necessary for them to do their jobs.

MS. LAMBOLEY:
Based on some conversations we have had with members of the Committee and other governmental entities, we propose to increase the maximum daily fine from $500 to $1,000. However, we propose $500 for residential properties and up to $1,000 for commercial and industrial properties. The other amendment would define garbage as defined by health authorities, the specific statutory language that gives health officials the definition of garbage. This would ensure compliance and uniformity with that statutory definition shown in Exhibit P.

CHAIR HARDY:
Ms. Guinasso, are you comfortable with us processing this amendment with the current language.

MS. GUINASSO:
Yes.

SENATOR LEE:
Does this mean the police do not have to be present when a vehicle is removed?

MS. LAMBOLEY:
That is correct. If there is an abandoned vehicle on public property, this amendment would allow code enforcement officers, as one of the defined authorities in statute, to have the vehicle towed.

SENATOR LEE:
Does that give you any other authority?

MS. LAMBOLEY:
No, this would only cover the fact that the police department will not be required to be present when an abandoned vehicle is towed.

SENATOR CARE:
This bill is similar to a bill we heard from Clark County. The language is vague, and I do not know if I would support it on the Senate Floor.

CHAIR HARDY:
We have had this bill since the beginning of Session. We can take more time to consider it. Senator Care, do you feel you need more time?

SENATOR CARE:
I do not want to delay it any further. I had to express those reservations.

SENATOR TOWNSEND:
We can address Senator Care's concerns at a later date. This should move forward today.

SENATOR TOWNSEND MOVED TO AMEND AND DO PASS AS AMENDED S.B. 52.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR RAGGIO WAS ABSENT FOR THE VOTE.)

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CHAIR HARDY:
Are there any further recommendations, suggestions or business for the Committee? As there is no further business, this meeting is adjourned at 5:11 p.m.

RESPECTFULLY SUBMITTED:

_____
Catherine T. Barstad,
Committee Secretary

APPROVED BY:

_____
Senator Warren B. Hardy II, Chair

DATE:_____

EXHIBIT 12

EXHIBIT 12

PROPOSED AMENDMENT TO SB 354

(Offered by Clark County through Republic Services)

April 6, 2005

(New language in **bold** and ***italics***. Deleted language is stricken [~~stricken~~])

Page 2, line 3: delete [~~including~~] and replace with "***except for***"

Page 2, lines 5 – 19: delete all language beginning with [~~Before any such lien is . . .~~]

Page 2, line 25: delete [~~by the governing body of the municipality~~]

Republic Services
Lobbyist contact information:

Mark Fiorentino
Jennifer Lazovich (702) 822-0903
John Pappegeorge
Russell Rowe

EXHIBIT 13

EXHIBIT 13

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES

Seventy-Third Session
May 20, 2005

The Committee on Health and Human Services was called to order at 1:44 p.m., on Friday, May 20, 2005. Chairwoman Sheila Leslie presided in Room 3138 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Sheila Leslie, Chairwoman
Ms. Kathy McClain, Vice Chairwoman
Ms. Susan Gerhardt
Mr. Joe Hardy
Mr. William Horne
Mrs. Ellen Koivisto
Ms. Bonnie Parnell
Ms. Peggy Pierce
Ms. Valerie Weber

COMMITTEE MEMBERS ABSENT:

Mrs. Sharron Angle (excused)
Mr. Garn Mabey (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Barbara Dimmitt, Committee Analyst
Joe Bushek, Committee Attaché

OTHERS PRESENT:

Dave Noble, Assistant Staff Counsel, Public Utilities Commission of Nevada
Jeanette Belz, Legislative Advocate, representing Associated General Contractors of America, Nevada Chapter; and Nevada Alliance for Addictive Disorders, Advocacy, Prevention, and Treatment Service
Mary Wherry, Deputy Administrator, Division of Health Care Financing and Policy, Department of Human Resources, State of Nevada
Michael J. Willden, Director, Department of Human Resources, State of Nevada
Dan Musgrove, Director of Intergovernmental Relations, Office of the County Manager, Clark County, Nevada
Jennifer Lazovich, Legislative Advocate, representing Republic Services, Inc.
Darrell Faircloth, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of Nevada
Rusty McAllister, Vice President, Professional Fire Fighters of Nevada

Chairwoman Leslie:
[Meeting called to order. Roll called.] Today is our final work session, which means we will not be taking any more testimony on bills previously heard. We may ask for a clarification, and you can approach the table if asked. Otherwise, there will be no public testimony taken.

We will start with S.B. 146; it is behind Tab B in your Work Session Document (Exhibit B).

Senate Bill 146 (1st Reprint): Makes various changes concerning detection and marking of subsurface installations. (BDR 40-654)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
Senate Bill 146 involves the detection and marking of subsurface installations; these are utility installations—typically wiring, conduits, piping, et cetera. The bill requires operators to install permanent devices to provide a non-invasive means of locating any new installation that cannot be readily identified above the surface without a marking—for example, PVC [polyvinyl chloride] pipes, and so forth, where they are not magnetic or anything of that nature. The bill provides for additional methods of marking areas where excavations are planned. It also requires an operator marking the location of the subsurface

installation for purposes of letting contractors know where they are, when they are going to dig, and to use identifying criteria and colorings for those marks as set forth in the PUC [Public Utilities Commission of Nevada] regulations.

[Barbara Dimmitt, continued.] The Committee received testimony in support of the bill from the PUC and Southwest Gas. Mark Sullivan of the Associated General Contractors (AGC) had concerns and submitted a proposed amendment. The PUC also submitted a proposed amendment. The issue surfaced around what criteria would be used to develop the regulations and whether changes would be made by regulation or statute. As a result, Assemblywoman Leslie appointed Assemblyman Hardy to chair a subcommittee of one to look at this issue.

The subcommittee's report has been passed out (Exhibit C). It lists the attendees and the issues addressed. There were issues of concern that involved the original bill, and they were able to resolve the confusion over that matter. There were some concerns about what could and could not be put into statute, in terms of incorporating by reference the standards of other organizations. Those concerns were expressed and discussed. Two issues arose. One was liability of the contractors if the markings weren't adequate enough. Would the contractor incur additional liability if he or she accidentally hit one of these installations? There was also some concern over whether regulations or statutes should govern.

The subcommittee and participants did come to an agreement. That agreement is expressed in an amendment at the end of the subcommittee report (Exhibit C). It's after your pink page. I should preface this by saying that Mr. Sullivan of AGC came in with a proposal to amend the bill to take out specific references to the colors and the markings, et cetera, but leave in the list of specific facilities or installations that were going to have to be marked, so that there would be confidence that these would always be marked. However, in discussions, another section of the law was explained that absolves the contractor from any liability if they have followed procedures. So, if no markings are required and they hit something, it wouldn't be their fault. Therefore, the consensus was to leave the bill as is.

If you look on page 1 of the mockup, all the red crossouts in the bill before you take out all those specifics and leave it in more general terms, so that the PUC can accommodate any changes in technology. As a safeguard to ensure that the PUC does follow national standards, the language would say, "The Public Utilities Commission of Nevada shall use nationally accepted standards in developing the regulations referenced in subsection 1." There are several of

those, like American Public Works Association (APWA) and others, that have national standards. So, that was the consensus as far as I understood it.

Assemblyman Hardy:
I would like to thank Barbara Dimmitt for doing such a good job in shepherding this whole process and being able to do such a succinct summary of what happened. Legislative intent is to make sure that we make reference to the *Nevada Revised Statutes* (NRS) 455.150, which allows excavators not to be liable if they have done their due diligence with the "call before you dig" type statutes. That allayed some of the concerns. There are many statutes that apply to and overlap some of this. We came to the conclusion that the more inclusive language would prevent us from having to go back legislatively and try to catch up with standards that leapfrog each other, depending on which organization puts in the new codes, the new colors, the new markings, and those kinds of things.

We made the conclusion that regulation would probably be easier to adapt to any changes that came into those specific things. In statute, there is all-inclusive language for anything that is under the ground; we decided to go with that.

Chairwoman Leslie:
Are there any questions for Dr. Hardy? We appreciate his service on the subcommittee. I don't see any. Let's get a representative from the PUC and the AGC on the record as to whether you agree with the proposed amendment.

Dave Noble, Assistant Staff Counsel, Public Utilities Commission of Nevada:
We are in agreement with the proposed language.

Jeanette Belz, Legislative Advocate, representing the Associated General Contractors of America, Nevada Chapter:
We appreciate Dr. Hardy working with us. We are also in agreement.

Chairwoman Leslie:
Are there any questions for these witnesses?

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 146 WITH THE SUBCOMMITTEE AMENDMENTS.

ASSEMBLYWOMAN PARNELL SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
I'm glad Dr. Hardy was able to facilitate this matter. Let's go to Tab C of the Work Session Document (Exhibit B) and work on S.B. 281.

Senate Bill 281 (1st Reprint): Requires Division of Health Care Financing and Policy of Department of Human Resources to determine certain information concerning uncompensated care percentage for certain hospitals. (BDR 38-42)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This bill requires the Division of Health Care Financing and Policy (DHCFP) to determine the uncompensated care percentage for each hospital in a county with a population of 100,000 or more and determine the arithmetic mean of the average of the percentages of all hospitals in the county. That will provide data that is uniformly collected and calculated on the amount of uncompensated care per hospital. In addition, the bill requires the Division to submit an annual report outlining this information to the Legislative Commission, the Interim Finance Committee, and the Legislative Committee on Health Care. We did receive testimony in support of this from two hospitals. There was no testimony in opposition and no amendments. This bill does relate to DSH [disproportionate share hospitals].

Chairwoman Leslie:
DSH is a code word that tells us what it is about. We heard this on Monday. Are there any comments from Committee members?

Assemblywoman Koivisto:
Who determines the percentage now? Is that the responsibility of the Division?

Chairwoman Leslie:
Let the record show that Ms. [Mary] Wherry is nodding her head; the Division determines it now. My understanding is that this bill does not change in any way the formula or what hospital is going to get what. Mrs. Wherry, please come forward and reiterate for the Committee what this bill does and does not do, so we are all clear.

Mary Wherry, Deputy Administrator, Division of Health Care Financing and Policy, Department of Human Resources, State of Nevada:
This simply is a reporting mechanism. We are not expecting at this point in time to change any formula or distribution of monies from the existing formula. It is merely to collect the information that may be useful in future planning for what uncompensated care does exist. Many states have many types of programs, like the Medicaid Medically Needy Program (Exhibit D), to deal with those issues. This is helping develop a framework for future planning.

Chairwoman Leslie:
My only concern is that we have to deal with DSH again next session. Does this mean we have to revisit it until certain hospitals get what they want?

Mary Wherry:
It may not be dealing specifically with DSH. It may be looking at what kind of public policy we need to deal with the fact that we have so many people who don't have coverage.

Chairwoman Leslie:
Are we going to get reports to the Legislative Committee on Health and Human Services?

Mary Wherry:
Yes. One of our responsibilities is to provide information to the Interim Finance Committee and to the Health Care Committee.

Chairwoman Leslie:
We'll keep track of it in the interim.

ASSEMBLYMAN HARDY MOVED TO DO PASS SENATE BILL 281.

ASSEMBLYWOMAN WEBER SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Let's go to the bill behind Tab D (Exhibit B), which is S.B. 282.

Senate Bill 282 (1st Reprint): Makes various changes concerning certain facilities for persons released from prison. (BDR 40-622)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This measure creates a new category of facility for the dependent, called a "facility for transitional living for released offenders." It requires the State Board of Health to develop standards and regulations for licensure of these facilities. Three subcategories are defined. In addition, the bill specifies that the alcohol and drug abuse programs, except facilities operating by government entities, have to be certified by the Health Division. It also provides that a facility for transitional living for released offenders, when located near property where it may affect the value of the property, is not to be considered material to the transaction. The seller would not need to disclose this, similar to protections in some other types of facilities. Senator Washington testified that the bill resulted from the Criminal Justice System in Rural Nevada and Transitional Housing for Released Offenders interim study.

We received testimony in support of the bill. There's one amendment proposed from Clark County. This amendment deletes Section 11 of the bill, which included these facilities under a provision regarding fair housing and extended to these facilities the protections of the Fair Housing Act [of 1968]. By doing so, that limited the power of localities to determine where the facilities could be located; they basically have control over how close together they can be. The other types of facilities that are given this protection are facilities for the disabled, elderly, and so forth. This amendment would delete any reference to extending that protection to these particular facilities.

Assemblywoman Koivisto:
How is this going to work with Casa Grande? The State is paying for this big transitional housing for offenders; there are 500 of them.

Chairwoman Leslie:
Will it have to be licensed? Is that what you are asking?

Assemblywoman Koivisto:
Why do we need this?

Chairwoman Leslie:
This is directed at those facilities in the community; there will still be a big need for them. Senator Titus talked about the ones in her neighborhood that have caused so much trouble. Senator Washington said the one he was associated with in northwest Reno created huge problems. There are definitely going to be

the smaller ones that will continue; this is directed at that. How Casa Grande fits into this licensing, that I hadn't thought about. Is there someone here from the prisons?

Michael J. Willden, Director, Nevada Department of Human Resources, State of Nevada:
In all our discussions, we never talked about Casa Grande being involved in the licensing. This is more the community group home, residential setting, where the Health Division will charge an annual licensing fee. We will review life, safety, and health code issues. We won't be licensing or overseeing the programmatic content. These are transitional homes that provide life skills, employment skills, in addition to residential services. We have never envisioned Casa Grande in that. These are the residential facilities in the community.

Chairwoman Leslie:
Now that I'm reviewing it, it says, "...except for facilities operated by governmental entities." I think the answer is that Casa Grande would not be included.

Michael Willden:
I don't know if that's a contract entity or whether the prison is directly running that. I don't think we envisioned either way that it would be part of this scheme.

Assemblywoman Gerhardt:
My concern is in housing that's designed to hold the people coming out of prison; what about sex offenders and those types? How does all that work with where these are going to be located?

Dan Musgrove, Director of Intergovernmental Relations, Office of the County Manager, Clark County, Nevada:
We offered our amendment so those types of people located in communities would not be protected under the Fair Housing Act. There are certain things we can and cannot do to keep them out of neighborhoods under fair housing laws. I don't believe sex offenders have that kind of protection. I'm not sure there are any homes for that, but they may be under the radar. We didn't want this type of home to have the same protection as those covered under the Fair Housing Act.

Under the Fair Housing Act, the only thing we can control is the separation distances between those types. If a home comes in and wants to be in a certain neighborhood, and this bill passed as is, released offenders, sex offenders, or any person released from prison could move in. The only thing we could say to

them is, "As long as you are not 660 to 1500 feet from another home, you can locate there." The residents would say, "Local government, why are you allowing them? We don't want them in the neighborhood." We would say, "State law says they deserve the same protections as those under the Fair Housing Act." We wanted to have that ability, as local governments, to say, "This is not an appropriate location, and you need to locate somewhere else."

Assemblywoman Gerhardt:
This would afford our neighborhoods a little more protection in where these are going to be situated? [Mr. Musgrove responded in the affirmative.]

Assemblyman Horne:
My concern is that by allowing that, what neighborhood, city, or county entity chooses not to put in those restrictions? If all of them are going to have these types of restrictions—we are not going to let you apply to the Fair Housing Act, which I don't know whether that act actually excludes released prisoners for these types of homes—then where do they live? Do they live on Boulder Highway? These houses have to be put somewhere. If the county says you can't be in this neighborhood, which is within the access parameters, if it's a sex offender, they have certain parameters that they can't live near schools or playgrounds. Those are built in, but now you want even more restrictions as to where they can't live. What protects other neighborhoods? A neighborhood not as nice as another and doesn't have any political clout ends up housing these people, instead of the other neighborhood. I don't think we want to start messing with that. I don't know if the Federal Housing Act actually excludes these types of homes from their protection.

Chairwoman Leslie:
Isn't that what the amendment does? How does the amendment fit with the Fair Housing Act? Could you clarify that, Mr. Musgrove?

Dan Musgrove:
Chapter 278 relates to local government zoning and planning. If you look at existing statute, other types of homes, like those for people with disabilities, have protections under fair housing. This Legislature has attacked this issue of clustering in numerous sessions, trying to give protections to neighborhoods for the proliferation of numerous homes in neighborhoods. We determined that the only thing we can really do is set up distance requirements.

This new category that is being contemplated under S.B. 282 for transitional living for released offenders does not have protection under the Fair Housing Act. We know that we need in our communities a place for these people to

transition and return back to society. Otherwise, they will impact us in other ways. It is incumbent upon the local government to locate those homes in suitable areas. That's part of the public hearing process, staff recommendations, and looking at trying to determine the best use of any kind of zoning or planning issue. That's why you have elected officials making those decisions when you have zoning and planning meetings, not every two years at the Legislature. Those are issues that occur all the time.

[Dan Musgrove, continued.] We were just hoping this amendment would give that flexibility to the elected officials—who have voices that are diverse—on that city council or county commission, who will advocate on behalf of the residents and these homes, which have a definite place in our community. We just want the flexibility at the local level. That's what this amendment attempts to do.

Assemblywoman Weber:
Did the sponsor indicate support for the amendment? [Mr. Musgrove answered in the affirmative.]

Chairwoman Leslie:
Do you want a separate vote on the amendment? Does everybody understand the amendment that deletes Section 11? There's a statement of intent that outlines pretty much what the amendment is about.

> ASSEMBLYMAN HARDY MOVED TO ADOPT THE AMENDMENT TO SENATE BILL 282, DELETING SECTION 11.
>
> ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.
>
> THE MOTION CARRIED, WITH ASSEMBLYMAN HORNE VOTING NO. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Let's go ahead and take a motion on the entire bill with the amendment.

> ASSEMBLYWOMAN KOIVISTO MOVED TO AMEND AND DO PASS SENATE BILL 282.
>
> ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Mr. Horne voted with a reservation to change later. Let's go to the next bill, which is S.B. 296, under Tab E (Exhibit B).

Senate Bill 296 (1st Reprint): Revises provisions governing abuse or neglect of children. (BDR 38-372)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This bill was introduced to have Nevada's statutes conform to the federal Child Abuse Prevention and Treatment Act (CAPTA), which was reauthorized in 2003. The new provisions relate primarily to infants born affected by illegal substance abuse or who are experiencing withdrawal symptoms as a result of prenatal drug exposure. The bill also makes changes relating to the type of information that must be retained in, and may be released from, the Central Registry, for the collection of information concerning the abuse and neglect of the child.

We received testimony in support from the Division of Child and Family Services (DCFS). Jone Bosworth testified that failure to bring Nevada statutes into compliance with CAPTA could jeopardize the State's receipt of federal funds, which is about $1 million. We have received no testimony in opposition to the measure. However, Committee members had concerns with the requirement in Section 2, subsection 3, regarding the release of information to employers about prospective employees. This would be release of information from the Central Registry. Several members expressed a desire to see more specific language limiting this release. DCFS representatives testified that the intent was to release information only with regard to employees who might be dealing with vulnerable groups.

The Committee wished to have more detail on what that meant. So, we have a proposed amendment from Ms. Bosworth and Theresa Anderson of DCFS. This would add language to the existing subsection 3 of Section 1. What would happen is that the only way the Division "may"—as opposed to "must"—release information contained in the Central Registry to an employer if the employer is required by law to get this information, or if the employee will have either substantial contact with children or the elderly. Under these conditions, the

prospective employee must, as in the existing bill, also provide written authorization. That was the only amendment we received.

Chairwoman Leslie:
Ms. Pierce, I know you had a lot of concerns about this section. What is your feeling on the proposed amendment?

Assemblywoman Pierce:
I liked the amendment.

Assemblywoman Parnell:
I feel more comfortable with this amendment. It is still punitive language, not corrective. When I look at the situation that's creating the need to have this legislation, I would prefer choices that were corrective, helping the vulnerable population that we are talking about. With this language, I will support it.

Assemblyman Hardy:
I want to make sure we include number 4 on the second sheet.

Chairwoman Leslie:
You say second sheet; what do you mean?

Assemblyman Hardy:
On the amendment (Exhibit B), it starts with number 3. There's another sheet in the back included.

Barbara Dimmitt:
It's existing in the bill; it is not being changed.

Assemblywoman Koivisto:
This is another of those situations of the federal government dangling the carrot, saying that you have to do something in order to get a million dollars. It just seems as though, in this case, they're asking to make personal information available. The whole concept that the federal government is getting that involved with state issues concerns me.

Chairwoman Leslie:
I understand what you're saying. It seems to be a trend that is getting worse, not better. We don't like the federal government messing with our business.

ASSEMBLYMAN HARDY MOVED TO AMEND AND DO PASS SENATE BILL 296.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Let's go to Tab F (Exhibit B), which is S.B. 354.

Senate Bill 354 (1st Reprint): Revises provisions governing municipal solid waste management systems. (BDR 40-1153)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This provides that, until it's paid, an unpaid fee levied by a municipality relating to the collection and disposal of solid waste constitutes a lien against the property that is being served. The measure describes the type of lien and requires certain notification and other procedures to occur before a lien may take effect. The Committee received testimony in support by representatives of Republic Waste Services and Clark County. We did not receive testimony in opposition, nor did any amendments get submitted.

Assemblywoman Weber:
If the consumer does have this lien put against their property and they pay it, what assurance do they have that the lien has been taken off their property? How do they know that? Is there a complete cycle?

Chairwoman Leslie:
I'm not sure we had that come up in testimony. Does someone wish to address that issue?

Jennifer Lazovich, Legislative Advocate, representing Republic Services, Inc.:
There are two steps. If they were to send out a notice of intent to lien, and the person pays the bill, it never goes forward to a lien. If it becomes a recorded lien with the county, once the lien is paid, Republic takes the steps to remove the lien off the record from the county.

Assemblywoman Weber:
Republic would send that information back to the recorder. How does the consumer know that it's been taken off of the property?

Chairwoman Leslie:
Is that just like they would any other lien?

Jennifer Lazovich:
I guess the question is whether or not we send a courtesy notice, which I can tell you they would be happy to do. It is one less thing they have to worry about. The other protection they have is, when they get the next bill, it would go back to being the original amount for just that four-month period.

Assemblywoman Weber:
I wanted to make sure there's a complete cycle in the process. If they've done their part, you acknowledge that their part has been paid.

Assemblywoman Gerhardt:
Give me clarification, on the record, about renters. Why is it that someone who is renting a home, if they do not pay their disposal bill, a lien is placed on the property owner who may not have lived at that property or produced any waste on that property for years?

Jennifer Lazovich:
Garbage collection is the one utility you can't stop collecting on the sole basis that they have not paid their bill. Going on that premise, they are required to pick up your garbage whether the bills are getting paid by whoever lives there or not. This was a way for Republic to try to at least collect on fees that weren't paid.

In a situation specific with renters, they do have a method set up internally within the system to stop things like that from happening. If you have a renter who doesn't pay the garbage bill, the owner of the property has no idea they are not paying the garbage bill until, perhaps, they see a lien show up. They are not turning over all the letters to the landlord saying, "I'm not paying the bill, and by the way, they keep telling me I need to pay the bill." What Republic will allow you to do, even if you have multiple rental properties, is to allow a different mailing address for the actual garbage bill. For example, I own five rental properties and my own house in Las Vegas. I could have six garbage bills come to my house where I live.

Obviously, the practical effect of that is I would raise the renter's rent just to be on the safe side, so I know I am not going to have my property liened and that the bills are actually getting paid. It circles back to the fact that they have no other recourse to collect the money to do the service that they are getting that they have to do. That's where this backtracks into.

Assemblywoman Gerhardt:
I'm always concerned about liens on a person's home; that's pretty sacred. I have a problem with putting someone's home in jeopardy for a bill that they are not really responsible for. They didn't produce the trash; they didn't produce the problem. Specifically, tell me how this bill will address those kinds of issues.

Jennifer Lazovich:
That's probably a fundamental difference. Republic goes through several steps prior to going to the extreme step of putting on a lien. More recently, in addition to several letters they send out about you not having paid your bill, they have instituted language within letters, which says that if you don't pay, this will ultimately affect your credit and could be turned over to a collection service. This is an effort not to get to that extreme circumstance of instituting the lien. It's their way of giving many opportunities to try to collect the fees.

I know that may not make you feel better about the fact that a renter is producing the trash and the owner of the property is ultimately responsible for the payment. That's their only way of getting paid. That's why they've instituted the process of allowing the owners, to make sure that the bills are getting paid, to have multiple addresses for their multiple rental properties. They are trying to work with people—in as many circumstances as come up—to ensure they get paid for the services that they are providing.

Assemblyman Hardy:
The intent of the bill is that there will be no lien left on the property if the bill is paid and brought up to date. If you, de facto, get a new bill that says you are up to date on your bill, there is no lien, and therefore, the person doesn't need to be notified, because in the internal workings, Republic has removed the lien?

Jennifer Lazovich:
Correct.

Assemblyman Horne:
These are the types of liens where you can effectuate a sale of property. It's a type of lien where, once the property is conveyed, there is notice saying that people, in a certain order, will get paid out of the proceeds of the sale; is that correct?

Jennifer Lazovich:
It operates in the same way as a mechanic's lien. The ultimate step could take place; foreclosure proceedings could be brought forward. I specifically asked Republic: "Have you ever done that?" The answer was no, and that they never would. They don't need to do it that way; it always worked. By the time they

start sending out those letters, it always gets paid, even if they have taken it to the extreme level of filing the lien. They've never done that.

Assemblyman Horne:
Having rented out myself, I recognize there are certain risks I assume and try to mitigate when I have a renter. This would be one of them. That risk would be assumed by me saying, "Yes, we pay the garbage fee, but that's in your rent. I don't have to worry about that." I can't imagine anybody saying that you have to pay this type of thing yourself and you hope that it gets paid. Things like cable, telephone, and gas are in the renter's name. I can say, "If you want the power turned on in the place, you have to put it in your name." They do that; they live there for a year and don't pay the power, it gets turned off. It's in somebody else's name. I don't have to worry about the lien. In this situation, I don't have a concern with that part.

Assemblywoman Weber:
If there's a recording, there is usually a fee for that. Who will bear the burden of the fee?

Jennifer Lazovich:
I have been told that the garbage company bears that fee.

Assemblywoman Weber:
It will not show upon a bill on top of whatever is owed for the service that was not paid?

Assemblyman Horne:
It could.

Jennifer Lazovich:
I'm looking back to see. I don't know that I have that answer for you.

Chairwoman Leslie:
That might be the decision of the individual garbage company, right? You're not the only one.

Jennifer Lazovich:
Yes, it could be.

Chairwoman Leslie:
I don't know that there's an answer to that.

Jennifer Lazovich:
I don't know it, and I'm sorry.

Chairwoman Leslie:
In southern Nevada, are you the only one?

Jennifer Lazovich:
We are the only one, except for Boulder City. We do not collect trash there.

Chairwoman Leslie:
That's enough on this garbage bill. The Chair would entertain a motion for do pass of S.B. 354.

ASSEMBLYWOMAN KOIVISTO MOVED TO DO PASS SENATE BILL 354.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Ms. Gerhardt would like it noted that she reserves her right to change her vote on the Floor. Let's go to S.B. 396, which is behind Tab G (Exhibit B).

Senate Bill 396 (1st Reprint): Revises various provisions regarding waste disposal and regulation. (BDR 40-401)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This bill amends various statutes concerning waste disposal and recycling programs. It authorizes the State Environmental Commission to impose fees on either the disposal of waste or the issuance of permits in areas outside of Clark and Washoe Counties that have their own solid waste agencies. Some of these changes were necessitated by court cases that called into question, or invalidated, current statutes being amended. The bill replaces outdated language in order to recognize current agencies in Clark and Washoe Counties throughout the chapter of law.

[Barbara Dimmitt, continued.] This bill requires the installation of a liner and leachate collection and removal system in hazardous waste disposal facilities, which differ from solid waste facilities; decreases the time period between reviews of municipal recycling programs—in Clark and Washoe County, it is from 3 to 2 years—requires these counties to provide information about their recycling programs to business license applicants; authorizes the Division of Environmental Protection to award grants to enhance solid waste systems; and eliminates a requirement that the Division develop recycling markets in Nevada.

The Committee received testimony in support of the bill from representatives of the Division, the Bureau of Waste Management, the Nevada Conservation League, the American Ecology Corporation, and the U.S. Ecology Corporation, which testified that they do provide these leachate systems. There was no testimony in opposition, nor have any amendments been received.

Chairwoman Leslie:
Are there any comments or questions from the Committee? Seeing none, I'll entertain a motion. It is tempting to amend Ms. Pierce's bill into this one.

> ASSEMBLYWOMAN PARNELL MOVED TO DO PASS SENATE BILL 396.
>
> ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.

Assemblywoman Pierce:
It would be easy to do. I think all you have to do is put "solid" next to the "hazardous."

Chairwoman Leslie:
We really could.

Assemblywoman Pierce:
The gentleman from NDEP [Nevada Department of Environmental Protection] wouldn't appreciate that amendment.

Chairwoman Leslie:
We want to send a message to the landfills: Ms. Pierce is not done yet. It was a good bill; we do not appreciate that it is not being considered. Is there any further discussion?

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Let's go ahead and move to the next bill behind Tab H (Exhibit B), S.B.420.

Senate Bill 420 (1st Reprint): Authorizes Drug Use Review Board to hold closed meetings for certain purposes. (BDR 19-172)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
Under federal Medicaid statutes, the State is required to have a Drug Use Review Board that holds meetings to identify fraud on the part of either a patient who may be abusing prescriptions or getting too many by going to several different pharmacies, or physicians who may be abusing the system as well. In view of the Open Meeting Law, the Division of Health Care Financing and Policy (DHCFP) brought this bill forth to provide it with the authority to hold these meetings as closed meetings.

There is a bill in the process, S.B. 267, to further amend the State's Open Meeting Law. In anticipation that bill may pass, the Division wanted to amend this bill to expressly state that they do not have to post notices of these meetings in advance or identify the individuals who are being considered. They do have procedures for due process and so forth. These are confidential meetings, and they want it clearly stipulated in the law that they do not have to post them and hold them as open meetings. We received no further amendments.

Assemblywoman Parnell:
On page 3 of the bill, subsection (b), it concerns me that the person receiving benefits—who is discussed during the meeting closed pursuant to that subsection—is not entitled to a copy of the minutes. I do not know of many cases where an individual who has been referenced in a meeting cannot get a copy of what was said about that individual. I have a real concern about that section of the bill.

Chairwoman Leslie:
Mary, would you like to come up and address that?

Mary Wherry, Deputy Administrator, Division of Health Care Financing and Policy, Department of Human Resources, State of Nevada:
The reason we don't want to put the person's name on the agenda or invite them to the meeting is that there are times when the review may consist of evaluating the disease process, other disease processes that they may have, looking at the total person, and how they are being treated. It may end up that the person is not abusing the drug or that the provider is not abusing the prescriptions. It could end up in no action. The intent is just to look at the documents that come from the prescriptions that are filled, to evaluate whether or not we have a provider problem or if we have an individual recipient problem.

If the recipient ended up having a problem, under FOIA [Freedom of Information Act of 1966, 5 USC § 552], we could not absolutely restrict them; it would be questionable. The recipient, if they were going to be restricted in any way or receive a reduction in services of some type, would have their right to a hearing and get the documentation telling them why.

Assemblywoman Parnell:
I understand why you want to err on the side of caution prior to the meeting. Once that meeting has concluded—and it's not an issue of posting or letting the person know that they are going to be discussed—I would almost be certain that individual would know that they were discussed in that meeting. At that time, if that does happen and the person would request a copy of those minutes, I would think that person would have to be granted a copy. The wording in this might make it a legal challenge. I'm uncomfortable with the way it's worded.

Chairwoman Leslie:
Ms. McClain has found something on page 4 that may help you.

Assemblywoman McClain:
If you keep reading, it says that they can't have a copy of the full minutes. If there's something that is applicable to them in particular, they can get a portion of the minutes that applies to that.

Assemblywoman McClain:
My concern is, why would you want to give a set of minutes to anyone that is referring to a lot of other people? It's none of their business.

Assemblyman Hardy:
What Assemblywoman McClain brings up is the crux of the matter. You can't give anybody the minutes on everybody, or you would be violating all sorts of problem laws. We talk about the disease process, and sometimes, the addiction

process has to be looked at. You get into that whole HIPAA [Health Information Portability and Accountability Act of 1996] problem. There are some issues that are reasonable to keep it closed, the way it is suggested.

Chairwoman Leslie:
Dr. Hardy, you are fine with the amendment as it is laid out? Are there other questions?

Assemblywoman Pierce:
In Section 1, subsection 2, line 6, it says that those minutes are not subject to subpoena or discovery. Is it possible to create documents that aren't subject to subpoena or discovery?

Barbara Dimmitt:
The question is whether it is possible to stipulate such a phrase. It is in other laws. For example, the medical malpractice bill contains this in several places. It is in the sentinel events and other areas where documents are not to be discoverable. They are confidential. I have seen this language in other statutes where it's a HIPAA matter. For example, in sentinel events, it was to encourage people to report them; it was done so people would not fear they would be sued every time they reported a sentinel event. Those are not to be discoverable. That data is protected.

Chairwoman Leslie:
Let's hear from the Attorney General's Office on this point.

Darrell Faircloth, Deputy Attorney General, Office of the Attorney General, Department of Justice, State of Nevada:
I'm looking at the sentence you referenced. The intent is to ensure that there can be a candid and open discussion in these closed meetings of HIPAA-protected personal identifiable health information of an individual, as well as, in some cases, prescribing habits of a physician or certain practices by a pharmacy. That's not the sort of information that we would want subject to discovery or to other public inspection. Whether that is enforceable or not is a presumption on your side to start with. As a bill passed by this Legislature, we give it a presumption of validity until it's overturned in a court of law.

Assemblyman Hardy:
This applies to the meeting, not the act or the other parts of it. You could still discover what somebody has done, but the meeting is what is privileged. All of this can be discovered and subpoenaed, but the meeting is where it is discussed in such a way that it's not discoverable. That is where you can make a plan, as it were, in the Board of what your plan of action is, given a practitioner, a

patient, or a pharmacy. That is the difference. It's not that the information is not discoverable, but during the meeting, that is what is protected, if that gives you any comfort.

Chairwoman Leslie:
In rereading, I read it that way also. It says "the meeting" throughout the paragraph. Is there any further discussion?

Assemblywoman McClain:
It refers to the physician, pharmacist, or person receiving benefits. Can I get a copy of the full minutes? Then, we let the physician or pharmacist have a copy of the portion that refers to them. The person receiving benefits, if they are discussed in a meeting, would they even know it?

Chairwoman Leslie:
I don't think they would. That's the whole point.

Mary Wherry:
There may be times when they may discuss a recipient and may decide that this is a pain-management situation, and the recipient is not abusing the drugs. There's no reason to excite the recipient and have them feel accused or persecuted in some way. If, however, the person was going to have a reduction in benefits of some type, they would be noticed, through our normal channels of noticing them, with regard to a decision being made about their benefit. They would have the opportunity to exercise their right to a hearing process.

Assemblywoman McClain:
They would find out if it was personally affecting them.

Mary Wherry:
Exactly.

Assemblyman Horne:
Regarding these people who have addictions due to visiting multiple physicians, what if, during these meetings, it was determined that the physicians should have known? That would seem to be a discoverable event, not so much the process on whether or not this person has an addiction. Now, if I'm the attorney on this and have a client who now has an addiction, and it comes out that, by his own actions, he has some culpability, having gone to multiple doctors, if a doctor or two knew he sought these medications from other doctors as well, but prescribed again, there may be a cause of action there. I can't get to it if we do this. I can't get to that fact out of those records. Am I correct?

Darrell Faircloth:
For clarification, I'm a little unsure of whether you're contemplating a medical malpractice suit or contemplating a criminal conviction for the recipient who is actually taking an excessive amount of prescription drugs.

Assemblyman Horne:
Let's start with medical malpractice.

Darrell Faircloth:
In a situation where there's a medical malpractice suit, certain information would be discoverable through other means. Discussion within the Drug Utilization Review Board would be amongst those doctors who are members of a subcommittee that reviews the prescribing habits of that particular physician. As a result of the discussion of that subcommittee of physicians, they might return to the committee a recommendation that the matter be referred to the Medicaid Fraud Unit or Surveillance and Utilization Review (SUR) Committee of Nevada Medicaid for recovery. The Medicaid Fraud Unit could take action against the physician, as could the SUR unit. These bodies can act independent of the Drug Utilization Review (DUR) Board as well. There are many stops along the way. However, much of the information, in terms of the acts that make up the prescribing habits of the physician, is discoverable information through other avenues.

Assemblyman Horne:
I'm defending in a criminal complaint.

Darrell Faircloth:
I'm sorry, Mr. Horne, the situation where a recipient—say, a Medicaid recipient—would be subject to some sort of criminal prosecution is one that I haven't given a great deal of thought to, because that would indeed be a rare event. These discussions primarily are focused on addressing the situation in an educational venue or mindset, as to Medicaid's recipients, and putting in place those measures that can assure that recipients receive appropriate pharmacy therapy.

If something should come of one of these meetings whereby one of the recipients is referred to the Medicaid Fraud Unit for criminal actions—for procuring large quantities of prescription drugs—there would indeed be a question of whether all that information was available elsewhere. All the data as to just what they had done, where they had done it, and where they had procured prescription drugs would be discoverable through other records that Medicaid has. The only thing that this appears to protect is the discussion amongst the medical professionals of the acts of that particular recipient and

what that particular recipient did. It's their opinion that it's essentially protecting.

Assemblyman Horne:
Would you be opposed to another amendment to this? Basically allow it and have discovery, if criminal proceedings were filed against this person that you are representing. It would then be discoverable—not medical malpractice, but for criminal. From what I heard, there's a possibility it could arise to where they could be charged criminally. They would not be able to get to the records this way. That makes me uncomfortable.

Chairwoman Leslie:
I want to understand what you are proposing in concept. Certainly, you can propose a conceptual amendment. Can you restate what the amendment might be so we all understand it?

Assemblyman Horne:
The amendment would be to allow the prohibition of discovery of these minutes, with the exception of instances where the person is being criminally charged for his acts of Medicaid fraud. He may need those records for his defense.

Chairwoman Leslie:
Do you folks understand the conceptual amendment and have a comment on it?

Mary Wherry:
Just a point of clarification: as Assemblyman Hardy pointed out, this is strictly with regard to the discussion that occurs. With regard to whether a physician or recipient would have access to records that they may need in their defense, those records would be what the prescribing physician has in his office. Those are not things that we would have purview over or even have access to, typically, in our drug utilization review discussion. All we are looking at is claims-paid data to say, based on the diagnosis that we are aware of, and based on the claims that we have paid for these prescriptions, do we perceive that there is a problem that needs to be dealt with, whether through education or otherwise?

Assemblyman Horne:
I'm thinking that if I have to defend somebody and need to get some records to tie things together, there needs to be a chain, and that's a link that is taken away from me. I may have these records showing that Dr. Hardy prescribed this and some other doctor prescribed that, but I don't have everything. What also

helps my client is the discussion that you guys have to say XYZ, and if I don't have that, I can't tie it together and defend my client.

Mary Wherry:
We don't take issue with that.

Chairwoman Leslie:
You're saying that something that happens in the meeting might be something you need?

Assemblyman Horne:
Correct, that I would need for their defense as in a criminal action.

Chairwoman Leslie:
We'll leave that hanging in the air and move on.

Assemblywoman Gerhardt:
If, during the course of this meeting, it is uncovered that a physician is prescribing more than is appropriate to the point where it could put someone's health in jeopardy, with a possibility of an overdose, is there some duty among the other doctors, the other professionals, to report a situation like that? I know that there's a duty to report in other life-threatening circumstances. Maybe you can clarify that for me.

Mary Wherry:
That gets into peer review issues and issues that are probably relevant to the area and purview of the Board of Medical Examiners. However, the intent of the retrospective review, being a board of combined pharmacists and physicians, we would, in fact, notice the provider and tell them that, based on the information we have at hand on our claims data, there is an issue and a concern; we would start off as an educational intervention. We would do our own monitoring, but that would only be applicable to the Medicaid recipients. It's not to say that the board couldn't have a discussion and say that they would like to make a referral to the Board of Medical Examiners or another body for follow-up. That's not our role in the public health arena.

Assemblywoman Gerhardt:
You do have the ability to report to the Board of Medical Examiners, even with the stipulation that we just read, that it's not discoverable? You can take that a step further?

Mary Wherry:
We would be very hard-pressed to report something to the Board of Medical Examiners. We have not had to go to that extent. There are times when we have questions about a specific clinician who has applied to be a provider or has certain practices that we are concerned about, where we may call and ask a question of the Board of Medical Examiners. The physicians who sit on the committee—or if it was a pharmacist who has an issue—certainly have their own professional ability to do something from a peer perspective, should they choose to.

Assemblywoman Gerhardt:
As far as you know, they have no obligation to report to law enforcement or anyone if they see this?

Mary Wherry:
Ethically, a physician would be inclined to make that kind of notice, but our role is to be educational in nature, and if there is an issue of abuse or fraud, then we would have to determine whether we turn that over to the Medicaid Fraud and Control Unit or whether we need to issue some other kind of notice. I would suggest that one of those might include that we would consider, if it were severe enough, doing a cc [carbon copy] to the Board of Medical Examiners when we are notifying the provider of our concern about their practice pattern.

Assemblywoman Gerhardt:
Maybe Dr. Hardy could answer the question from a physician's standpoint.

Assemblyman Hardy:
Doctors do that all the time. We get a report from the pharmacy, and it has the patient name and all the drugs they use. When the physician is concerned about a given person and what the drug usage is, they just ask for a drug utilization report. The pharmacist gets it to us. It has all the providers that have ever written anything for the person, how many pills, how often, and the dates. Then we do an intervention and say, "This is not what you are supposed to do." You also have the opportunity to talk to the other doctors, or let them know, or have the report sent to them at the same time. That's without any law of any kind that I'm aware of. That's what you do. That's part of the care of the patients and the ethics of the profession.

The meeting that you have when you do a peer review or the drug utilization is reviewing material that is not new. You're not hiring an investigator to go out and do something. You have records that are already discoverable, and you are talking about those records that are already discoverable. This particular bill, as I see it, is just about the meeting and has nothing to do with getting more

information than what is already in the purview of the public, the subpoena, or the ability to get to it. The meeting itself is where the physician, pharmacist, and combinations thereof get together and say, "Is this reasonable or not?" If there's concern, then they pursue either through education or "Doctor, are you aware this is happening?" There are two educational issues, the doctor and the patient. Sometimes the doctor won't be aware; sometimes the patient won't be aware that somebody else is involved and has been doing something in a pain-management way. One of the physicians, who is an eye doctor, doesn't know what someone else is doing.

[Assemblyman Hardy, continued.] There's a comfort level for myself being in the industry. Again, what I would go back to: if the person is materially affected in their access to care, then that person gets involved. That's one of the hammers that we have with a person who is tolerant of, addicted to, or dependent on medications. We say, "We are cutting you off." We say, "You are only allowed this many pills for this long." Basically, this is the hammer that we have to hold over the head of the person, so that they actually are motivated to change and give the physician some help. This allows the physician to say, "Okay, they won't let me do that. Too bad. I'm not going to put up with your manipulation." Anytime you're dealing with somebody who is tolerant of or addicted to drugs or alcohol, they can manipulate you. I don't care who you are. Sometimes it's good for this process to take place, so the patient now can't get it, and this becomes the availability that the doctor has to say, "Sorry, I can't do that."

Chairwoman Leslie:
Thank you for summarizing the purpose of the Drug Utilization Review Board. The sticking point is privacy and who gets what records. We have one amendment from DHCFP that is a good one. That cleared up the question we had last time. Everybody see that? Mr. Horne has suggested another conceptual amendment.

Assemblyman Hardy:
If, in the peer review, you have something that is discoverable or not privileged, you have effectively killed your peer review. You will no longer have peer review as we know it. You will have destroyed the concept of peer review. If peer review is subject to discovery and subpoena and is not privileged information, you will have chilled that process to the point where you won't have effective peer review.

Chairwoman Leslie:
To translate that, you do not like Mr. Horne's conceptual amendment?

Assemblyman Hardy:
That's an understatement.

Assemblyman Horne:
I support peer review in the context of civil actions, liabilities, and malpractice. That's why I said, in a criminal context, in order to defend the client. That's the scope of my amendment. Doctors would not be brought in for suit on this. This is used for another purpose. There is nothing to be chilled.

Assemblyman Hardy:
To answer the concern there, the criminality that could be discoverable is discoverable in other ways. We don't bring up anything that is not discoverable in some other way. It is not a criminal investigation; that's how I'll say it.

Chairwoman Leslie:
You still don't like Mr. Horne's amendment?

Assemblywoman Koivisto:
In listening to this conversation, I'm not sure that we know what happens now. Are you unable to now have closed meetings? Or do you have closed meetings and this is just to codify the ability to do that?

Chairwoman Leslie:
That is a good question.

Mary Wherry:
We have historically had open meetings for our DUR Board. Prior to A.B. 384 of the 72nd Legislative Session, we didn't have involvement in the public process. There weren't pharmaceutical representatives; there weren't people who came and attended the meetings or expressed any interest in it. We would post on the agenda that there would be a closed session. It wasn't an issue of confidentiality, because nobody was involved other than the review board members and the staff.

In the last few years, the attendees have grown along with participants, which adds the need for protection. In addition, we now have a point-of-sale pharmacy system and an MMIS [Medicaid Management Information System] that allows us to collect much more data with much greater confidence about what the data may portray. Based on those, what may not have appeared to be an issue before has blossomed and mushroomed to the point we need to protect the integrity of intent of the federal law for the Drug Utilization Review Board to do their job, which is to do retrospective-prospective review of the utilization of drugs as prescribed, dispensed, and used by the recipient.

Chairwoman Leslie:
What would be your position on Mr. Horne's conceptual amendment? Would you lean more towards Dr. Hardy or Mr. Horne? Any comments you have on that idea would be helpful.

Mary Wherry:
As a professional nurse, it makes it hard for me to not agree with Dr. Hardy's statements. Based on my experience working in different organizations—whether a federally managed or private hospital—and working with physicians, there are no records that end up not being discoverable if they are relevant to the case. I don't know what would come from relevance in the Drug Utilization Review Board discussion. Much of it is about understanding the diagnosis. All the Drug Utilization Review Board is getting is an overview. They are not taking the medical records and digging into all of the issues that could contribute to the prescribing patterns. It's very superficial information. That's why Dr. Hardy's point is correct; it is already discoverable. The peer review process is not going to disclose something that is going to make or break a criminal case.

Chairwoman Leslie:
Mr. Horne's position would be to let him decide what is relevant. I think we understand that.

Assemblywoman Pierce:
We are not just talking about whether a doctor is a drug addict, abusing drugs, or something; it is also about fraud. There are a lot of other things here. I like Mr. Horne's amendment. I would be happier to take that phrase out.

Chairwoman Leslie:
Which phrase is that?

Assemblywoman Pierce:
The "not subject to subpoena or discovery" phrase, because there are lots of occupations in which being a drug addict is probably not a good thing. If you're an airline pilot and get called into a personnel session because someone thinks that you're flying a 747 loaded, I'll bet those minutes of that meeting are discoverable and can be obtained with a subpoena. I think that to say that something is "not subject to subpoena or discovery" is a serious step. I don't think that possibly protecting the reputation of one group of individuals who might be abusing drugs, committing fraud, or whatever is too trivial a matter to put this into statute.

Chairwoman Leslie:
Every member has had something to say, and I have no idea where we are. Mr. Horne, do you want to try a motion to see if we have any support?

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 420 WITH THE AMENDMENTS IN THE WORK SESSION DOCUMENT, AS WELL AS THE AMENDMENT ALLOWING FOR THE SUBPOENA OF RECORDS UNDER CERTAIN CIRCUMSTANCES.

ASSEMBLYWOMAN PIERCE SECONDED THE MOTION.

Chairwoman Leslie:
Does everybody understand the motion? We have had a lot of discussion.

Assemblywoman Parnell:
I'm going to vote no; I may switch my vote on the Floor. I need time to digest everything that has been commented on today.

Chairwoman Leslie:
We need to take a vote, or the bill dies today.

Assemblyman Hardy:
I'm trying to find a word for ill-equipped. I don't think this is the forum to decide on judicial things that we are touching on right now. I will be a no on the motion as it stands. I think this is bigger than all of us; this particular issue.

Assemblyman Horne:
We can take out all of that section that deals with it, because that's judicial. As Ms. Pierce suggested, it is discoverable.

Chairwoman Leslie:
Would that make you happier? We can always amend the motion. Any comment on that idea, Dr. Hardy?

Assemblyman Hardy:
When I say this is bigger than all of us, I mean it's bigger than me. There's a lot of debate that needs to happen with this, instead of on the literal eleventh hour, as to what is discoverable and what is or isn't peer review. I think it's a major thing.

Chairwoman Leslie:
I understand, but we have to vote one way or the other.

Assemblyman Hardy:
I'm still a no.

Assemblywoman McClain:
If we remove the words "not subject to subpoena or discovery," that leaves it up to interpretation down the road, depending on what the situation is, right? Then it's up to the Attorney General to decide.

Assemblyman Hardy:
The absence of the definition, again, would bring this meeting into the open, in essence, and that meeting, in a peer review setting, would be problematic.

Assemblywoman McClain:
No, it leaves it as a closed meeting. On page 2, line 6, it says, "All minutes and audiovisual or electronic reproductions are confidential," then you take out that "subpoena" phrase, "and not subject to inspection by the general public." If you just leave out "not subject to subpoena or discovery," it makes you both happy.

Chairwoman Leslie:
A couple of people agree with that. Mr. Horne, what do think of that idea?

Assemblyman Horne:
If you take out that language of "not subject to subpoena or discovery," I would agree with the doctor on the peer review. There should be a level for closing this, but not absolute.

Chairwoman Leslie:
It just leaves it vague. Mary, do you want to comment on that? We need to vote and move on.

Mary Wherry:
Members of the Drug Utilization Review Board would probably be very sparse in their dialogue; they would probably be somewhat guarded in expressing their frank medical opinion.

Chairwoman Leslie:
You prefer to leave it in or take it out?

Mary Wherry:
We would prefer to leave it in; it's not a hill to die on. Certainly, if it is that problematic for the members, we would probably be requested to amend this next year.

Chairwoman Leslie:
Would you prefer to leave it in with Mr. Horne's amendment or take it out?

Mary Wherry:
It's the same issue; it is going to have the same impact.

Chairwoman Leslie:
They don't think taking it out would be helpful.

Assemblyman Horne:
She says if you leave it with my amendment, it wouldn't be helpful either. Both Ms. Wherry and Dr. Hardy made statements on how this stuff could be used legally, and they are both medical professionals. I think they are speaking a little bit outside of their expertise. I am in disagreement with their opinions and would be willing to work with them. I think this is a fair compromise.

Chairwoman Leslie:
We'll leave the motion the way it is.

Assemblywoman Koivisto:
The whole discussion has gone far afield. This is dealing only with the Drug Utilization Review Board for Medicaid; this is just a Medicaid thing. This is not rewriting any kind of medical practice, prescribing practice, or anything. This is just a Drug Utilization Review Board change.

Chairwoman Leslie:
Good point. Anything else that needs to be said, and then we'll take a vote? The motion we have on the floor is to support the amendment that is in the book (Exhibit B) and Mr. Horne's conceptual amendment. Are there any questions on the motion?

Assemblywoman Gerhardt:
The amendment that you proposed is to take out that entire section, or the first one that you talked about?

Chairwoman Leslie:
It's the first one, adding the exception for criminal purposes.

Assemblyman Horne:
The conceptual amendment that I have, on page 2, lines 5 and 6, "not subject to subpoena or discovery," would add in that area—and Drafting can decide how to state it and where exactly to place it—with the exception for the situation in which the targeted individual under discussion is being criminally charged with a crime pursuant to the discussion of Medicaid fraud. In that situation, they could get discovery of it for the defense of a particular patient.

Chairwoman Leslie:
Question on the motion?

Assemblyman Hardy:
That would be limited to the portion of the minutes dealing with that individual, rather than the meeting in total?

Chairwoman Leslie:
Yes. Is there any other question on the motion?

THE MOTION FAILED, WITH ASSEMBLYMAN HARDY, ASSEMBLYWOMAN KOIVISTO, ASSEMBLYWOMAN PARNELL, ASSEMBLYWOMAN PIERCE, AND ASSEMBLYWOMAN WEBER, VOTING NO. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

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ASSEMBLYWOMAN McCLAIN MOVED TO AMEND AND DO PASS SENATE BILL 420 WITH THE AMENDMENT IN THE WORK SESSION DOCUMENT.

ASSEMBLYWOMAN KOIVISTO SECONDED THE MOTION.

THE MOTION CARRIED, WITH ASSEMBLYWOMAN PARNELL VOTING NO. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
We are going to S.B. 458, Tab I (Exhibit B).

Senate Bill 458 (1st Reprint): Makes various changes concerning time within which person who is transported to hospital is transferred to place in hospital where he can receive services. (BDR 40-1321)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This bill provides a limit for the wait time for a person who is transported to a hospital by an ambulance or emergency medical services vehicle for emergency care. The wait time is established as soon as practicable, but not later than 30 minutes after the time at which the person arrives. In addition to this, there is a provision for study that is mandatory in Clark County and optional for the rest of the state. There is another provision, which says that if Washoe County does not elect to opt in to the study and the Health Division determines through their data that there is a wait time problem in that county, the Health Division may require the county to participate.

The Committee received testimony in support of the bill from the Professional Fire Fighters of Nevada, several ambulance companies, and the Nevada Hospital Association. Washoe County supported the concept of the bill but came in with an amendment that has two parts; they are mutually exclusive. The first option would delete the section that would require them to participate if they had not opted to do so on their own. If that was not acceptable to the Committee, they were also requesting that the State Board of Health, rather than the Health Division, be the entity that could require them to participate. The testimony of the Washoe County District Health Department and description of their amendment is on the next page (Exhibit B). We did not receive any additional amendments.

Chairwoman Leslie:
Are there any comments from the Committee?

Assemblyman Hardy:
In the flow of medicine, it's hard to guarantee anything. This may be a goal, but I'm not comfortable with putting in statute 30 minutes, even if we put in "as soon as practicable, but not later than 30 minutes." We don't try to keep people in hospitals on gurneys from the ambulance. I recognize the laudability of this. I really can't vote for something that I know is going to be broken over and over again. I don't have the optimism that this is the direction to go. You don't want to say, "You're a horrible place because you did 31 minutes or 42 minutes." I don't know that it's possible to do. I don't want to put people in the potential position of "I know you can't do it, but I have a law that says you have to."

Chairwoman Leslie:
This bill, as I understand it, is a study. It is not requiring them to do it. It is requiring them to keep track of the time it takes to transfer. It is not requiring 30 minutes.

Assemblywoman Koivisto:
That is exactly right. The purpose behind the study is to have the statistics and be able to figure out how to fix what it is in the system that is creating the holdups, the problems with divert, having to close emergency rooms, and so forth.

Assemblyman Hardy:
I'm reading the bill and trying to figure out where this "study" is. I read "shall" on line 7.

Chairwoman Leslie:
Mr. McAllister, why don't you come up and help us with this? It does say that. Does it set an expectation that it has to happen in 30 minutes, but there's no enforcement provision? Is that what it does?

Rusty McAllister, Vice President, Professional Fire Fighters of Nevada:
That's correct; there is a provision based on the national standard. The national standard is that you transfer care of that patient within 30 minutes. There is no penalty; it is not punitive. The agreement with the Hospital Association was that there would be no penalty involved. We had to have some baseline standard by which to measure ourselves. This is the national standard. That is why that number, in particular, was put in there.

Assemblyman Hardy:
I can create a better way to say it. If it's to be a study or not be onerous, you should change the word "ensure" to "shall attempt" on line 7 of Section 1, subsection 1.

Chairwoman Leslie:
Where it says "shall ensure," you want it to say "shall attempt?" [Assemblyman Hardy responded in the affirmative.]

Rusty McAllister:
To address Dr. Hardy's amendment, we have been attempting to do this for years in Clark County. The attempts have been feeble and have not sustained much success. At this time, we have at least one hospital in the valley that has over an hour drop-off transfer time 71 percent of the time. There has to be a

reason. If we just say, "Let's just attempt," they are going to say, "We are attempting now."

[Rusty McAllister, continued.] We've tried to be very reasonable. We would like to stick with the bill because that is the commitment we made to the Hospital Association that we wouldn't change our part. We believe that it's fair; they agreed to it. In negotiations, they have agreed to this. This is not like we imposed it upon them.

Chairwoman Leslie:
Thank you for the clarification. We understand that there is a time limit. There is no penalty. I was more interested in the study provisions, finding out why this is happening.

Assemblyman Hardy:
That's the heart of the bill; that's where we want to be. We want to find out what it is we need to do and have the opportunity to say, "Yes, these are the times; yes, this is happening," and solve the problem. Next time we visit this, we'll be able to say we did something good. There is more to this than just those 30 minutes. I have a major philosophic, internal personal problem with writing a law that I know is not going to be kept. I know medicine and what I'm talking about when I say there are going to be circumstances where you are not going to be able to keep the law.

Chairwoman Leslie:
I don't want to argue this back and forth. So if you have a comment that is going to help the Committee, go ahead.

Rusty McAllister:
In the Senate, Dr. Heck, who helped bring this bill along, made a comment that was very germane to the conversation. The bottom line is not the ambulance companies, the fire departments, or the hospitals; it is the patient.

Chairwoman Leslie:
We understand, and that's fine. That's not what we are talking about. Dr. Hardy doesn't want to put into the statute something we know won't be met, even though there's no penalty. The other side is saying if we just say attempt, nobody is going to take it seriously. I think that's the crux of it.

Assemblyman Hardy:
That's where I'm coming from; it's the patient. If I get a major trauma in a hospital, I know that I'm not going to pay attention to some of the other things that are happening in the hospital. It's just not going to work.

Chairwoman Leslie:
I understand your objection. I don't think we need to rehash the bill.

Assemblywoman Parnell:
If you just take out subsection 1, the rest of the language sets up the study. I don't know if there's a way to leave the 30 minutes in there as a reference point.

Chairwoman Leslie:
I think they would argue that they need subsection 1, or the whole thing doesn't work. The argument that Rusty is making is that this is the language negotiated with the Nevada Hospital Association.

Assemblywoman Parnell:
It does specify that it does not create a duty of care or grounds for civil or criminal liability. It's clearly stated in the bill.

Chairwoman Leslie:
What I wanted to talk about is the proposed amendment regarding Washoe County. Who else is here from Washoe County? Washoe County is probably not going to be happy, but I would rather keep it consistent for the whole state. I don't think we should be changing it just for Washoe County. Let's try a motion.

> ASSEMBLYWOMAN PARNELL MOVED TO AMEND AND DO PASS SENATE BILL 458 WITH AMENDMENT NUMBER 2 IN THE WORK SESSION DOCUMENT.
>
> ASSEMBLYWOMAN McCLAIN SECONDED THE MOTION.
>
> THE MOTION CARRIED, WITH ASSEMBLYMAN HARDY VOTING NO. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
Let's go to Tab J (Exhibit B), Senate Bill 462. This is the DHR [Department of Human Resources] cleanup bill and the BADA [Bureau of Alcohol and Drug Abuse] transfer issue.

Senate Bill 462 (2nd Reprint): Repeals, reenacts, reorganizes and revises provisions relating to Department of Human Resources and Department of Employment, Training and Rehabilitation. (BDR 38-178)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This bill began as a bill to reorganize and revise numerous provisions of statute regarding the Department of Human Resources. It also affects the Department of Employment, Training and Rehabilitation (DETR). The measure changes the name of the Department and the Welfare Division and consolidates provisions relating to the Welfare Division and the Division of Health Care Financing and Policy (DHCFP) where statutes are currently woven together. It reorganizes provisions related to the Division of Child and Family Services (DCFS) and eliminates obsolete and unnecessary references in the statute. In addition, the bill transfers responsibility for the Bureau of Alcohol and Drug Abuse from the Health Division to the Division of Mental Health and Developmental Services (DMHDS). There are additional provisions regarding the appointing authority of the Director of DHR and makes changes regarding the property tax assistance for senior citizens program.

Michael Willden, Director of DHR, testified that the agency did not support the transfer of BADA at this time. He submitted a proposed amendment, which we are calling amendment number 1. These are in your Work Session Document (Exhibit B). This amendment clarifies the director's appointment authority regarding various positions. Currently, it does not allow the Director to appoint any employees of the Division of Mental Health and Developmental Services, when it should read "only the administrator." I believe this was probably not intended by the original drafting. The same argument could be made regarding the Nevada Indian Commissioner, where the executive director would be the person that is exempt from DHR Director's appointment. Also, the public defender is added in there. That was not in the original version.

The Committee received testimony in support of the bill, including the transfer of BADA, from Senator Randolph Townsend and Senator Joe Heck. There were no opponents to the entire bill. The opposition centered on the transfer of BADA. There were representatives, clients or former clients, of a variety organizations listed in the Work Session Document (Exhibit B).

The second amendment is from Frank Parenti, president of Nevada AADAPTS [Alliance for Addictive Disorders, Advocacy, Prevention, and Treatment Services]. It would rescind the Floor amendment that had put in the transfer of BADA. Mr. Willden has also submitted another proposed amendment on behalf

of DHR. This amendment would leave the BADA transfer in place, but it would change the effective date in Section 219 of the bill, so the transfer would not take place on October 1, 2005. Instead, it would be delayed until July 1, 2006. If you read the conceptual language—this is not legal language, but conceptual language—a transition plan would have to be submitted to the Governor and to the Interim Finance Committee. Since the Governor's review and concurrence would be required for this transition plan, it is conceptual, and I don't know how the rest of that would be worded.

Chairwoman Leslie:
Mr. Willden, would you come up? I'm sure we will have some questions for you. Committee, the last amendment is something I have been working on with DHR and Senator Townsend. It's an awkward situation; we don't want Mr. Willden to lose his cleanup bill. The Senate put on this controversial amendment. We don't need to rehash those issues. I have been working on this issue for years. I like putting it in mental health. I disagree with how the amendment got on the bill, how fast it went, and that there was no open public forum.

In order to protect Mr. Willden's interests and need for the bill, I wanted to see if there was a way we could come up with a compromise so we don't lose the bill. I can tell you that the Senate feels strongly about this. There is a real danger of losing the bill. Another option we can try with the Senate would be to study it for two years and allow for a full process. The thing I don't like about that is that we'll have two years of stalling from the substance abuse providers. I've said it to them, and I'll say it here publicly too. I thought their testimony was just awful.

There are real issues that Mr. Willden brought out in terms of planning and process. The statements made by some of the providers about people with mental health deeply offended me. It proves why we need to put these two agencies together and get past the stigma of "he's a substance abuser and an addict." People are saying, "We're not going to treat that person; he's a methamphetamine addict. We're not going to treat that person; he's a schizophrenic." They fight about who is going to treat the person. Meanwhile, the person continues to decompensate; it's really a big problem.

Those are the choices we have, or we could accept the bill as is, which I, personally, wouldn't recommend because BADA would transfer automatically on October 1. I don't think that provides any planning time. Why don't we go to Mr. Willden to comment on anything I said and your amendment?

Michael J. Willden, Director, Department of Human Resources, State of Nevada:
I know the last time I testified, there were some comments made that my testimony was a bit appalling. I want to say, for the record, if I didn't mention in previous testimony, that I care about the clients we serve, whether from a public health or mental health viewpoint; I care about both deeply.

My only concern all along has been how much we have on our plate. I did meet extensively with our public health staff and our mental health staff; I have great staff. They have assured me that, with adequate planning time, they believe they could make this work. There have been arguments on both sides of the Legislature as to where this can work. I can say it can work anyplace; we are one department. We can make it work. I want to be insistent that we have adequate planning time. What this amendment would offer would be that we delay the start a year; that would allow us to have workshops to work with providers, clients, stakeholders, and all the groups that need to be worked with to develop a transition plan.

There are two budgets we have to look at. We have to unbundle things on one side of the department and rebundle them on the other. There are two budget accounts. There's an alcohol tax collected and used for some of the treatment services. There are federal grants. We need to work through those issues. None of these are big issues; it's just the lead time. Our plan would be that we work through those issues, take the plan to the Governor, and have the Governor review that—similar to everything we do when we go to the Interim Finance Committee (IFC). The Governor would look at it; we'd submit work programs to the IFC for the second year of the biennium to move the budget, to move the appropriate staff personnel, whatever else we need to do, and then we'd be ready to go in the second-half of the biennium.

Again, I am more worried about process, lead time. We don't want to be failing out of the chute, that we don't have stakeholder input and those kinds of things. That's what I have been worried about all along. That's what we could do with this amendment. Again, my staff has assured me they will give it 100 percent effort to be successful. I know them to have been that way in the five years I have been the director.

Chairwoman Leslie:
Thank you for working on this; it's been a lot of work. Are there any comments from the Committee?

Assemblywoman Parnell:
I would only feel comfortable supporting this if we gave it the two years for public input. I don't think the policy has been made. I'm uncomfortable with the

assumption that, in a year, we will be ready to move on this without really knowing if that's what the clients and everyone chose to do after public input. We are making that decision; I would feel more comfortable if the interim was used to gain that information to make that public policy decision, then come back to the next session with a solid plan for the transfer. Otherwise, I would not be supporting the bill.

Assemblywoman Gerhardt:
I agree with Assemblywoman Parnell. It seems as though this is being rushed. I'm concerned that you have enough on your plate at this point in time. That's how I feel about it, too.

Chairwoman Leslie:
My concerns are that Mike loses the whole bill, as well as the stalling we are going to see from the substance abuse people.

Assemblywoman McClain:
I don't want him to lose the bill. It probably would be good to transfer it but, maybe, extend the date. Is it to July 2006? [Chairwoman Leslie responded in the affirmative.] I can support that.

Chairwoman Leslie:
Ms. Pierce, you could support that, too? Where are you before we try a motion? You can support the amendment? [Assemblywoman Pierce responded in the affirmative.] We are going to have a split. Dr. Hardy? Mrs. McClain would go with the amendment Mike produced—the last thing in the book—which puts it out a year, gives them transition plan due by March 31, and then the Governor. There is an opt-out clause here. If the Governor thinks it's not ready, it doesn't go. Is that correct, Mike?

Mike Willden:
Also, if the Interim Finance Committee doesn't think it's ready, it doesn't go. It's a two-step process. The Executive Branch and the Interim Finance Committee have to feel we have an acceptable transition plan, or it's a no-go.

Assemblyman Hardy:
I'm intrigued by the concept that is mentioned about the policy. Is the policy we are talking about to put BADA in with Mental Health, or vice versa?

Chairwoman Leslie:
Correct. It is to transfer the Bureau of Alcohol and Drug Abuse from the Division of Health to the Department of Mental Health. Both divisions are under Mike in the Department of Human Resources.

Assemblyman Hardy:
Inasmuch as that is the policy that we are talking about, I would welcome a straw poll of the Committee as to whether they want to make this transition.

Chairwoman Leslie:
I think the Committee members are saying that they don't know yet. There hasn't been enough public input and discussion to know, and that's a valid point. I understand what you are saying. I have been working on this for eight years. Personally, I am convinced this is the right policy. I can certainly understand that other people are not convinced yet. They are saying they don't know which way to go yet.

Assemblyman Hardy:
I'm not going to force the issue one way or the other. If we don't do anything, my preference would be to move forward judiciously, instead of expeditiously. I don't think we are prepared to do anything by October. If we did something, as Mr. Willden suggests, in a phase-in approved by the Governor and IFC, that gives us some coverage.

Chairwoman Leslie:
The compromise, Mike Willden's amendment, you would support? [Assemblyman Hardy responded in the affirmative.]

Assemblywoman Pierce:
I'm confused about what is in our book (Exhibit B). Are there two amendments from Mr. Willden?

Chairwoman Leslie:
The very first one is not germane to this issue; that is from Mr. Willden, the one with the colors. That is cleanup language we would include when we do these other cleanup provisions. The second amendment is from the Substance Abuse Provider Organization. They don't want it transferred at all. They don't even want a study; they want it left the way it is now. The third possibility is what we have worked out, the very final page. That's the one that provides transition time.

Jeanette Belz, Legislative Advocate, representing Nevada Alliance for Addictive Disorders, Advocacy, Prevention, and Treatment Service (AADAPTS):
I want to make it clear that we would be supportive of a study, have met with each of you individually, and have indicated that.

Chairwoman Leslie:
Your proposed amendment does not include the study?

Jeanette Belz:
That is correct.

Chairwoman Leslie:
That is the point I was trying to make, which I think is indicative of the problem.

Assemblyman Horne:
Is there another amendment?

Chairwoman Leslie:
There is not another amendment. She is saying they would support a study. They would prefer a study as opposed to the compromise amendment. With the study, there's a very real possibility the whole bill dies in the Senate. I don't think the Senate is going to concur with that.

Assemblyman Horne:
I am not in favor of transferring BADA. I like the momentum we've been seeing with mental health. At this stage, I would prefer a study.

Chairwoman Leslie:
We don't really have an amendment for a study. That would be a fourth option, to amend the bill. I'm trying to outline the options. The fourth option would be a conceptual amendment to do a study.

Assemblyman Horne:
Take it all out.

Chairwoman Leslie:
Take it out and just leave it the way it is? We don't have that before us. That would have be option four, to refer it to the Legislative Committee on Health to study it and make a recommendation to the Legislature. That would probably be the most appropriate, unless, Mike, you have a better suggestion.

Mike Willden:
No, that was our earlier suggestion. That's where we suggested it be studied.

Chairwoman Leslie:
On the record, what happens if we do that? There is support on the Committee to do that as a fallback option. Is there a consequence of losing the entire bill? Is it something you can live with or not?

Mike Willden:
I can live with that. This is a cleanup bill. We have had gooped-up statutes for over 20 years, and two more years of doing the scripture chase—we'll do the scripture chase. My big issue is the appointing authority issues, because of the legal issues we have had with appeal rights and termination rights with some of our employees. Hearing officers have ruled that I'm not the boss. If they want to continue ruling I'm not the boss, I guess I'm not the boss.

Chairwoman Leslie:
We'll put that amendment in, send it back to the Senate, see what they do, and continue fighting over it. I prefer the last amendment.

Assemblyman Horne:
Do we want to ask the Senator to come in?

Chairwoman Leslie:
No, I do not want to open it to the Senators at this time. That's not appropriate. We will have plenty of time to talk with the Senators.

Assemblyman Horne:
Did we find out the urgency of making this change?

Chairwoman Leslie:
It just came from the Senate. They reached the point where they think it's time for something to be done. The way this happened is unusual.

Assemblywoman Weber:
I'm one of the greatest advocates of change-management, and let's move it forward if it makes more sense. If you are dragging the team, you aren't going to get the buy-in you would if you take more time. I like the idea you suggested that BADA be housed under Mental Health. If that is going to bring people kicking and screaming, when they could be working as a team, I can see the reason for taking the time.

Assemblyman Horne:
As to your concern about the providers dragging their feet, we could send out a stern letter telling them that this is their time to cooperate, or you may not like the outcome.

Chairwoman Leslie:
Knowing them as well as I do, the amendment that Mike came up with gave them a year. It said it's going to happen; let's cooperate. My fear with the study is that we'll have two years of what we saw the other day.

[Chairwoman Leslie, continued.] There doesn't seem to be support for the compromise amendment. I'll entertain a motion; most people are comfortable with that. We can then send it back to the Senate, and Mike can take his chances. If there is a conference committee appointed, we can continue to discuss it with the Senators.

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 462 WITH THE FIRST AMENDMENT FROM THE WORK SESSION DOCUMENT, AS WELL AS THE CONCEPTUAL AMENDMENT CALLING FOR A STUDY.

ASSEMBLYWOMAN KOIVISTO SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
We have just one more bill to discuss, S.B. 120, under Tab A in the Work Session Document (Exhibit B).

Senate Bill 120 (1st Reprint): Transfers responsibility to establish program concerning treatment of trauma. (BDR 40-885)

Barbara Dimmitt, Committee Policy Analyst, Legislative Counsel Bureau:
This bill would transfer responsibility for establishing a program for treating trauma victims, transporting them, and admitting them to trauma centers from the State Board of Health to the Clark County District Board of Health. The Committee received testimony in support of the bill from representatives of Sunrise Hospital and University Medical Center (UMC), where the two trauma centers are, as well as testimony from Clark County and the Nevada State Medical Association.

Alex Haartz, Administrator of the Health Division, indicated that, as a secretary of the Board of Health, he transmitted their recent establishment of a position that they felt existing law provided enough flexibility to transfer this function by variance, as they had done with Clark County, and allowed for possibility of pulling the authority back if it didn't work out. They felt the transfer of responsibility, by statute, was not necessary at this time. There were no other

people testifying in support or opposition. We did not receive amendments on this bill.

Assemblywoman McClain:
Why fix something that is not broken?

Chairwoman Leslie:
We heard testimony that they would prefer it this way, that it would be a more efficient way to have that part of it under local control. I'm disturbed with the way the trauma center designation happened. I want to float a couple of ideas about amending the bill. One would be to add the requirement that both the State Board of Health and the county health district approve new trauma centers before they are designated by the Administrator. I'm troubled by the fact that there was a local process that was moving along in a judicious manner when the State jumped in suddenly and made the decision. Let me try that one. How do you feel about that amendment? It would be adding both the State Board of Health and county district to approve new trauma centers.

Assemblyman Horne:
I tend to disagree on the approval, that it just won't happen.

Chairwoman Leslie:
It's just added protection, so the local people aren't shut out of the decision that they are most affected by, like what happened.

Assemblyman Horne:
Right. I'm with you on what happened down there.

Chairwoman Leslie:
I'll float another idea. UMC is the free-standing Level One trauma center down there. In Las Vegas, there are going to be more trauma center applications; this is directed towards the future. Since UMC is the Level One, they would be designated as the lead trauma center and have responsibility for approving trauma system plans, including protocols and catchment areas for the area trauma system, to have a coordinated trauma system. We don't want to get in a situation where other trauma centers are located too close and taking the sickest patients. I'm afraid that it's going to get out of control, and everybody will be going after the trauma patients that they make the most money off of and be very uncoordinated. I'll just throw that out as a conceptual idea for the Committee.

Assemblyman Horne:
Would you restate that idea?

Chairwoman Leslie:
That any future trauma centers would coordinate with the Level One trauma center—the highest level—which is UMC right now.

Assemblywoman Pierce:
That sounds good to me.

Assemblywoman McClain:
I don't quite understand what you mean by "cooperate."

Chairwoman Leslie:
They would have the responsibility to approve other trauma system plans, so everybody would agree how trauma center patients are going to be treated, where they will taken to, et cetera.

Assemblywoman McClain:
Basically, you are then going to have a local government entity telling private hospitals what to do.

Chairwoman Leslie:
The top trauma center will coordinate what others do, so they get the patients that they need.

Assemblywoman McClain:
I don't know how we can say that a local government is going to have this authoritarian control over services provided by private hospitals.

Chairwoman Leslie:
Well, over the protocols on how patients are treated.

Assemblywoman McClain:
Approving. If they were helping...

Assemblyman Horne:
It would be an advisory role. We already have standards on what is to be in a Level One trauma center.

Chairwoman Leslie:
Maybe we make it an advisory role, then.

Assemblyman Horne:
If other trauma centers or private hospitals want to build one, in order to implement their trauma center, UMC needs to be in an advisory position to them—help bring them along—so we know that all the standards are the same.

Chairwoman Leslie:
We need some kind of coordination mechanism.

Assemblyman Horne:
I see what you are trying to do to deal with that. I don't think you can mandate that they oversee the process.

Chairwoman Leslie:
How about coordinate?

Assemblywoman Pierce:
About Ms. McClain's concern: we tell and require things of private entities all the time. We make regulations all the time. I don't think that necessarily is a problem in what we are discussing here.

Assemblywoman McClain:
I like your first suggested amendment better. I really don't like that second one.

Assemblyman Hardy:
I'm looking at the bill in the first reprint. I like the concept of having the local board decide and the State Board to adopt regulations to establish the standards and designations. There's a system of trauma that came up in this discussion. I like the State to be able to adopt the regulations, the control to be in the locals, and the locals in the bill are the district board of health in the county. That's Clark County Health District, which has two representatives from the county and two from Las Vegas.

Chairwoman Leslie:
Right. You like the bill the way it is.

Assemblyman Hardy:
I like the bill. I think it's a good bill just the way it stands.

Chairwoman Leslie:
We have people who don't like the bill, people who want to amend the bill, and people who like the bill the way it is. Any other comments, anybody? I would still like to make a pitch for my first amendment.

Assemblywoman Koivisto:
I don't think there's anything wrong with the bill. It was an issue the way the second trauma center was established. The State Board just totally bypassed the locals who were already working on the issue.

Chairwoman Leslie:
You like the first amendment then? My amendment would have both the State Board of Health and the county health district.

Assemblywoman Koivisto:
I don't think the State Board would have anything to do with it.

Chairwoman Leslie:
You want to change it to only locals?

Assemblywoman Koivisto:
Yes. It's a local issue.

Chairwoman Leslie:
What's in the bill is transferring part of it; it would still be up to the State to decide where a trauma center goes.

Assemblywoman Koivisto:
It's like saying we need a certificate of need. Clark County has gone beyond having to have the certificate of need.

Assemblyman Hardy:
In the first reprint, as I read it, the Clark County Health District is in charge of approving; the State Board of Health is in charge of setting up the regulations that would be the template for which something would be approved. The approval process is in the hands of the locals.

Chairwoman Leslie:
I don't think that's correct. I will entertain a motion, if you're ready.

ASSEMBLYMAN HORNE MOVED TO DO PASS SENATE BILL 120.

ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.

THE MOTION CARRIED. (Assemblywoman Angle and Assemblyman Mabey were not present for the vote.)

Chairwoman Leslie:
There is nothing else that needs to come before the Committee. Thank you for your service this session. We won't meet again unless, by some reason, we get referred a bill. With that, we are adjourned [at 4:05 p.m.].

RESPECTFULLY SUBMITTED:

Joe Bushek
Recording Attaché

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Sheila Leslie, Chairwoman

DATE:_____

EXHIBITS

Committee Name: Committee on Health and Human Services

Date: May 20, 2005 **Time of Meeting: 1:44 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 120 S.B. 146 S.B. 281 S.B. 282 S.B. 296 S.B. 354 S.B. 396 S.B. 420 S.B. 458 S.B. 462	B	Barbara Dimmitt / Legislative Counsel Bureau	Work Session Document
S.B. 146	C	Assemblyman Hardy	Subcommittee Report
S.B. 281	D	Mary Wherry / Division of Health Care Financing and Policy	Informational Handout on Medical Programs

CODE: 3795

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ATTORNEYS FOR PLAINTIFF

IN THE SECOND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * * * *

WEST TAYLOR STREET, LLC,
a limited liability company,

Plaintiff,

vs.

WASTE MANAGEMENT OF NEVADA, INC., KAREN GONZALEZ, and DOES 1 THROUGH 10,

Defendants.
______________________________/

Case No. CV12 02995
Dept. No. 4

REPLY ARGUMENT IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

A. INTRODUCTION.

The issue before this Court is the application of the language in the enabling statute of NRS 444.520 that states that the lien is to be foreclosed in the same manner as provided for the foreclosure mechanic's liens. Does the statute for foreclosure of mechanic's liens provide an opportunity to resolve disputes? Does the statute for foreclosure of mechanic's liens provide a time period for which these disputes are to be resolved? Is the lawsuit of this nature the only vehicle available to a property owner when the property owner disputes the legitimacy of the lien? Another issue before the Court is the time period by which liens are to be filed. Is the time period unlimited? Is there a limitation on the time period? Does the mechanic's liens foreclosure statutes provide guidance on the limitation of the time period?

At this stage of the case, Plaintiff has not yet addressed the legitimacy of the quantitative amount of the liens that have been recorded against this property. Plaintiff is addressing the methodology and procedures that are to be undertaken by the lien claimant in enforcing the garbage lien. Defendant advances the position that its garbage lien exists in perpetuity if it elects never to foreclose the garbage lien and does not have to comply with the mechanic's lien statutes except as they relate to securing a judgment of foreclosure. The Defendant takes the position that its garbage lien exists for unpaid garbage fees in perpetuity even if it does not record a garbage lien. Meanwhile, this stated argument doesn't even exist for real property taxes as will be discussed hereinafter.

B. REMARKS TO FACTUAL STATEMENT.

A franchise agreement attached as Exhibit 2 to the reply argument is informative. Plaintiff is not disputing the existence of the franchise agreement. However, the language of the franchise agreement is harmful to Defendant's position. Article 5.6 of the franchise agreement (Page 13) discusses that Reno Disposal can only apply the residential rate whenever there is an accumulation of garbage from the premises. It goes on to state:

> "(ii) Billing for residential service shall be in advance ... on a quarterly basis, and such charges shall be due and payable on the first day of each billing period. The bill or charge for residential service shall be delinquent if not fully paid on the last day of each quarterly period.
> ...
> (iv) In case any person shall fail to pay the charges for residential or commercial service, within 15 days after the same become delinquent, franchise holder shall be entitled to charge interest on such delinquent accounts...
> (v) All charges and penalties provided for in the franchise shall constitute a debt and obligation of the owner or reputed owner of the real property..."

By executing the franchise agreement, Defendant has acknowledged that an account is delinquent after the expiration of fifteen days following the end of the quarter if the amount claimed to be due is not paid!

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C. **ARGUMENT.**

1. **Summary Judgment Standard:** A summary judgment under NRCP 56 is appropriate when there is no genuine issue of fact and the moving party is entitled to a judgment as a matter of law. Salas v. Allstate Rent-A-Car, 116 Nev. 1165, 14 P.3d 511, 513 (2000). The matter before the Court for decision regards application of the law so that a jury in this case can be appropriately instructed. This motion is a partial summary judgment asking the Court to make certain legal rulings which will define the nature of the claims to be presented to the jury.

2. **Statutory Interpretation:** Judicial construction and intervention in interpreting statutes arise from the intrinsic difficulties of language and the emergents situations after enactment of the statutes not anticipated by the most gifted legislatures. These situations demonstrate ambiguities in a statute that compel judicial intervention. The purpose of construction is to ascertain meaning of every consideration brought to bear with regarding to the statute for the solutions of the problem at hand. (Some Reflections on the Reading of Statutes, by Justice Felix Frankfurter, presented at the Benjamin Cardozo Lecture before The Association of the Bar of the City of New York (1947) (See **Exhibit "1"**, Page 215.)) We agree with the proposition advanced by Defendant on Page 7, Line 20 of its brief wherein Defendant states:

> "Statutes within a scheme and provisions within a statute must be interpreted harmoniously with one another in accordance with the general purpose of those statutes and should not be read to produce unreasonable or absurd results." Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1136 (2001).

In other words, the judicial branch of the government interprets the statute in the context of the events before the Court and if the statute does not address those events, the statute is to be interpreted harmoniously with other statutes that are a part thereof. When Defendant advances a proposition that the lien exists in perpetuity without any limitations, is this harmonious with the statutes of Nevada? When the Defendant advances the proposition that the debt of the garbage lien lasts in perpetuity, is this harmonious with Nevada law?

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The issue before the Court is not the public policy supporting the collection of refuge (garbage) in residential districts. The issue before the Court is a methodology for resolution of disputes created by the filing of a garbage lien. Defendant wants unchecked authority to record a garbage lien against property and not be held accountable for the amount set forth in the garbage lien. Defendant wants this Court to accept the proposition that the statute enabling it to record a garbage lien gives it unchecked authority without accountability. Even the county government in regard to collection of real property taxes does not have such authority as is discussed hereinafter.

The legislative hearings that are referenced as Exhibits 10, 11, 12 and 13 do not address any of the issues before this Court. If one reads through those hearing transcripts, it is evident that Republic Disposal wanted protection for a garbage lien for unpaid fees notwithstanding the relationship that existed between an owner and a tenant. The legislature agreed by giving Republic Disposal the right to record a garbage lien. The legislature did not address the issue of dispute resolution. The legislature did not indicate that the garbage lien was to have the same protections as a real property tax. In fact, the comments of Assemblywoman Gerhardt, made on Page 15 of Exhibit 13 are informative:

> "I'm always concerned about liens on a person's home; that's pretty sacred. I have a problem with putting someone's home in jeopardy for a bill that they are not really responsible for."

The response of the Representative of Republic Disposal is informative. Jennifer Lazovich states:

> "Republic goes through several steps prior to going to the extreme step of putting on a lien. More recently, in addition to several letters they send out about you not having paid your bill, they have instituted language within letters, which says that if you don't pay, this will ultimately affect your credit and could be turned over to a collection service..." (Page 15 of Exhibit 13.)

In response to inquiry by Assemblyman Horne, Jennifer Lazovich states:

> "It operates in the same way as a mechanic's lien. The ultimate step could take place; foreclosure proceedings could be brought forward... By the time they start sending out those letters, it always gets paid, even if they have taken it to the extreme level of filing the lien." (Page 15-16 of Exhibit 13.)

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The testimony is indicative of the attitude that Defendant seeks the unilateral right to lien a person's property without accountability. But the committee hearings do tell us that the committee never addressed the issue of dispute resolution before or after the recording of the lien. The hearings with regard to Senate Bill 354 were primarily focused on the issue of responsibility between the tenant and the landlord which Defendant acknowledged when it emphasized in its brief on Page 11, Line 4, that "the owner of the property will have to ultimately address the lien, even if he had a tenant in violation." The issue before this Court on this pending motion has nothing to do with an owner versus a tenant. It has to do with the methodology for dispute resolution of a garbage lien that has been placed against a parcel of property. The facts in this case will show that there was an attempt to address this issue before and after the recording of the lien with no success.

3. **Statutory Language in NRS 444.540:** There is no dispute that NRS 444.520 enables Defendant to record a garbage lien. Now the issue is what happens with the lien after it's recorded? The statute tells us that the lien may be foreclosed consistent with the foreclosure mechanic's liens. However, a mechanic's lien cannot be foreclosed until there are certain events that occur prior to the foreclosure. If this "garbage lien" is to be foreclosed in the same manner as provided for the foreclosure of mechanic's liens, there are certain prerequisites that have to be followed by lien holder.

The Nevada Supreme Court has repeatedly held that there must be strict compliance by the moving party with statutes creating a remedy particularly the foreclosure of mechanic's lien. In the case of Schofield v. Copeland Lumber, 101 Nev. 83, 692 P.2d 519 (1985), the Nevada Supreme Court reversed the decision for summary judgment in an action filed by a contractor to foreclose the mechanic's lien. In discussing the complaint of foreclosure, the Supreme Court observed:

> "The mechanic's lien is a creature of statute, unknown at common law. Strict compliance with the statute creating the remedy is therefore required before a party is entitled to any benefits occasion by its existence.... If one pursues his statutory remedy by filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the statutory prerequisite giving rise to the cause of action." Id. at Page 84.

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Although the Nevada Supreme Court has recognized that strict compliance with the language of the mechanic's lien is not required in connection with the content of the lien, the same does not hold true in connection with compliance with the statute to perfect and foreclose the lien. In Fisher Bros., Inc. v. Harrah Realty Co., 92 Nev. 65, 545 P.2d 203 (1976). Harrah's contracted with Stolte, Inc. Stolte engaged Terry Construction. Terry Construction engaged Fisher Brothers. Harrah paid Terry Construction. Terry Construction did not pay Fisher Brothers. In an action to foreclose the lien, the Court observed:

> "Strict compliance with the statutes creating the remedy is therefore required before a party is entitled to any benefits occasioned by its existence [citation omitted]. If one pursues his statutory remedy by filing a complaint to perfect a mechanic's lien, he necessarily implies full compliance with the statutory prerequisites giving rise to the cause of action." Id. at Page 67.

In Hardy Companies, Inc. v. SNMARK, Inc., 126 Nev.Adv.Op. 49, 240 P.3d 1149 (2010), the court noted:

> "Failure to either fully or substantially comply with the mechanic's lien statute will render a mechanic's lien invalid as a matter of law." Id. at Page 155.

There is additional case law from other jurisdictions that indicate that failure to comply with a mechanic's lien statute's procedural provisions will preclude the lien's validity and enforcement. In Rollar Construction and Demolition, Inc. v. Granite Rock Assoc's, LLC, 891 A.2d 133, 135-36, (Conn.Ct.App. 2006), the court stated:

> Although the mechanic's lien statute creates a statutory right in derogation of the common law . . . its provisions should be liberally construed in order to implement its remedial purpose of furnishing security for one who provides services or materials. . . . Our interpretation, however, may not depart from reasonable compliance with the specific terms of the statute under the guise of a liberal construction.

(Citations omitted.) The court further noted:

> General Statutes Sec. 49-34 includes five requirements to filing a valid mechanic's lien. If any of those requirements fail, the lien is invalid.

Id. at FN 7. Similarly, in Westcon/Dillingham Microtunnelling v. Walsh Constr. Co. of Illinois, 747 N.E.2d 410 (Ill.Ct.App. 2001), the court stated:

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> The purpose of the Act is to protect those who, in good faith, have furnished materials and labor for the construction of buildings or public improvements. Section 39 of this Act states that "[t]his act is and shall be liberally construed as a remedial act." 770 ILCS 60/39 (West 1998). Nevertheless, because the rights created are statutory and in derogation of common law, the technical and procedural requirements necessary for a party to invoke the protection of the Act must be strictly construed. . . . Once a plaintiff has complied with the procedural requirements upon which a right to a lien is based, the Act should be liberally construed to accomplish its remedial purpose.

Id. at 416 (citations omitted). Further,

> It is well established that the creation of a mechanic's lien is entirely governed by the Act, and the rules of equity jurisprudence are irrelevant at this stage.

Id. *See also* Crawford Supply Co. v. Schwartz, 919 N.E.2d 5, 12:

> Because the rights under the Act are in derogation of the common law, the steps necessary to invoke those rights must be strictly construed.

(Citing Westcon/Dillingham, *supra*.)

In National Lumber Co. v. Inman, 933 N.E.2d 675 (Mass.Ct.App. 2010), the court noted that the purposes of the mechanic's lien statute "include the protection of the owners' real estate," and that "the statute contains filing and notice requirements to protect the owner and others with an interest in the property."

In In Re Trilogy Development Co., 468 B.R. 854 (W.D. Mo. 2011), the court noted that while "mechanic's liens in Missouri are remedial in nature and should be liberally construed for the benefit of the lien claimants," it further stated that "this liberal policy is not open-ended and does not relieve a lien claimant of reasonable and substantial compliance with statutory requirements." Id. at 862 (citations omitted).

Finally, in Southern Management Co. v. Kevin Willes Constr. Co., Inc., 856 A.2d 626, 637, (Md.Ct.App. 2004), the court held:

> Mechanic's liens, as they exist in this State, are creatures of statute, and, thus, to be entitled to a mechanic's lien against property in Maryland, a claimant must satisfy the procedural criteria set forth in the statute.

See also Freeform Pools, Inc. v. Strawbridge Home for Boys, Inc., 179 A.2d. 683, 685 (Md.S.Ct. 1962)(stating that "a mechanic's lien is a claim created by statute and is

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obtainable only if the requirements of the statute are complied with.")

Defendant disputes the necessity to perfect the garbage lien as required by the mechanic's lien law statutes. Instead, Defendant argues that NRS 444.520 provides its own methodology for perfecting the lien by mailing and recording which would inherently include delivering and indexing. Let us assume that this Court accepts that proposition, to wit, NRS 444.520 provides its own methodology for perfection. It still does not address the issue of dispute resolution after the lien has been perfected? It does not address the issue as to the time periods of placement of a garbage lien? At least the Defendant acknowledges that it has a requirement to perfect the lien!

4. **Time for Recording of Lien:** Defendant submits that it can perfect its lien through compliance of NRS 444.540(4). However, this statute does not address the issue of timing in connection with the recording of the lien. NRS 108.226 mandates that a lien be recorded within ninety (90) days after the date of completion of work. According to the franchise agreement, Defendant is entitled to payment by the end of each quarter in which the billing has occurred. In other words, the account becomes delinquent after the calendar quarter when there has not been a payment. Defendant is entitled to his payment on a quarterly basis because he has completed services for that quarter. Defendant ignores the franchise agreement which clearly defines when the payment is due. The legislative intent nor the statute support the interpretation advanced by Defendant that they have an indefinite period of time after the account goes delinquent by which to record the lien. Under that interpretation, NRS 11.190 would have no bearing on this case! The county government does not even have this unlimited right. As it relates to real property taxes, the Attorney General has concluded that there is a time limitation on the property taxes for three years under NRS 11.190. See AGO Opinion 91 (August 10, 1951). This ruling by the Attorney General was made notwithstanding the language set forth in the real property statutes of NRS 361.450 which provides that real property taxes are a perpetual lien against the property. More importantly, Defendant's argument ignores the Nevada case law that clearly holds that if you are going to foreclose a mechanic's lien pursuant to

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the mechanic's lien law statutes, you must comply with the enabling statutes that permit you to create a mechanic's lien so that you can record one. Furthermore, the legislative intent does not support the interpretation advanced by Defendant, to wit, Defendant has an indefinite period of time after the account goes delinquent by which to record the lien. There is nothing contained in NRS 444.520 that exempts it from NRS 11.190. On the contrary, the incorporation of foreclosing a garbage lien in accordance with the mechanic's lien laws would by definition incorporate NRS 108.226 after the debt became due. Similarly, Defendant's argument with regard to timing of the recording of a garbage lien smacks of the language set forth in the franchise agreement.

5. Duration of the Recorded Lien: Defendant's argument is that NRS 108.233 is not controlling as the legislative intent was to only incorporate NRS 108.239 and submits that the arguments made earlier in its brief support this proposition. In reviewing the minutes of the legislative hearings, there is nothing indicating that the garbage lien after recorded was designed to last in perpetuity. There is nothing to indicate that the garbage lien was intended to last beyond the limitations of NRS 11.080(3), to wit, the Statute of Limitations. There is nothing to indicate that the legislature intent was that only a portion of the mechanic's lien law statutes apply when they incorporated the language in the statute that the "lien may be foreclosed in the same manner as provided for the foreclosure of mechanic's liens." Its simply not in the minutes anywhere! More importantly, the argument ignores the fact that in order to implement the foreclosure of the mechanic's lien under NRS 108.239, you must comply with the earlier provisions set forth in Chapter 108 of Nevada Revised Statutes to include the filing of a lawsuit within the six month window after the recording of the lien. (See, Pages 5 through 7 of this brief.)

Defendant goes on to argue that the language of the statute provides that the garbage lien is to exist in perpetuity. If the Court accepts this argument, here lies one of the problems with this case. A lien against property is an encumbrance. A lien is a charge or encumbrance against property, binds the property to a debt. See Black's Law Dictionary, Rev. 4th Ed., Page 1072. The statute provides no mechanism for dispute

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resolution with regard to that encumbrance. (The Constitution issues will not be briefed at this time so as not to impose an unfair advantage on other counsel.) Meanwhile, Defendant's argument ignores the fact that the enabling statute discusses a foreclosure of a mechanic's lien as being the methodology for enforcement of the lien and does not isolate only part of Chapter 108 as a means of that enforcement. According to the Defendant's argument, there would be no limitations as set forth under NRS 11.190. According to the Defendant's argument, even NRS 11.190 did not provide a time limitation on the life of the garbage lien, ergo, you would have an interpretation of NRS 444.520 which would be inconsistent with NRS 11.090. Defendant relies upon the case cited in Colorado of N. Washington Water and Sanitary District v. Majestic Sav. and Loan Ass'n, 594 P.2d 599 (Colo.App., 1979), to support its proposition that this garbage lien equates to a tax. However, there are some major differences with regard to that case. First, the water district secured a judgment after filing a lawsuit several months after the account became delinquent. The Court did not address with the issue of the time life of the garbage lien. After securing the judgment, the water district then filed a lawsuit for foreclosure recording a lis pendens against the property within one year after providing subject services. In this case, Defendant wants this Court to believe that the garbage lien exists in perpetuity. Majestic did not record its mortgage until after the filing of the lis pendens and second lawsuit. Clearly, Majestic was on notice of the earlier claims from the lis pendens being earlier in time. Third, Majestic was a mortgage lien holder to be distinguished from an owner of the property. As a lien holder, Majestic did not stand in the shoes of an owner. Fourth, we do not know the intent of the legislature in Colorado when it passed the statute or its legislative intent. It is not discussed in the Colorado case. Meanwhile, we do know that the legislative intent in this case and it never discussed or consider this lien as a tax against the property.

Defendant has another major problem with its argument that this garbage lien is to exist in perpetuity. Defendant would like this Court to equate the lien as a tax. Meanwhile, the tax statutes of Nevada mandate the filing of a lawsuit to collect delinquent tax. See

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NRS 361.635. If you look at the tax statutes, the property taxes are classified as being a perpetual lien, NRS 361.450(1), but these liens have a limitation of life according to the Attorney General's opinion. See AGO 91 (August, 10, 1951). In other words, the unlimited life argument of the garbage lien is not supported by the other statutes of Nevada, the other laws of Nevada, and the Attorney General's opinion.

6. **Conclusion:** The Court is facing the following issues for resolution:

1. What is the significance of the incorporation of the mechanic's lien law statutes in connection with the garbage lien?

2. How far back in time can the Defendant go when it records a garbage lien? Is there a time limitation?

3. After recording of the lien, does the lien exist in perpetuity or is there a time limitation with regard to its enforcement? What is the time limitation?

These issues are not factually intensive and are ripe for a decision and a partial motion for summary judgment.

The undersigned affirms that the foregoing pleading does not contain a social security number.

DATED this 11th day of April, 2014

C. NICHOLAS PEREOS, LTD.

By:
C. NICHOLAS PEREOS, ESQ.
1610 MEADOW WOOD LANE
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ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF SERVICE BY MAIL

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on this date, I deposited for mailing at Reno, Nevada, a true copy of the foregoing pleading addressed to:

Gregory S. Gilbert
Bryan L. Wright
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702/669-4600
Attorneys for Waste Management of Nevada, Inc. and Karen Gonzales

DATED: 4-11-14

Sandra Martinez

SCHEDULE OF EXHIBITS

Exhibit "1" ..... Some Reflections on the Reading of Statutes

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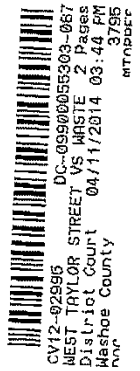

EXHIBIT

EXHIBIT

men. The area for judicial construction may be contracted. A large area is bound to remain.

The difficulties are inherent not only in the nature of words, of composition, and of legislation generally. They are often intensified by the subject matter of an enactment. The imagination which can draw an income tax statute to cover the myriad transactions of a society like ours, capable of producing the necessary revenue without producing a flood of litigation, has not yet revealed itself. (See 1 Report of Income Tax Codification Committee, Cmd. 5131, (1936) pp. 16 to 19.) Moreover, government sometimes solves problems by shelving them temporarily. The legislative process reflects that attitude. Statutes as well as constitutional provisions at times embody purposeful ambiguity or are expressed with a generality for future unfolding. "The prohibition contained in the Fifth Amendment refers to infamous crimes—a term obviously inviting interpretation in harmony with conditions and opinions prevailing from time to time." Mr. Justice Brandeis in *United States* v. *Moreland*, 258 U. S. 433, 451. And Mr. Justice Cardozo once remarked, "a great principle of constitutional law is not susceptible of comprehensive statement in an adjective." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 327.

The intrinsic difficulties of language and the emergence after enactment of situations not anticipated by the most gifted legislative imagination, reveal doubts and ambiguities in statutes that compel judicial construction. The process of construction, therefore, is not an exercise in logic or dialectic: The aids of formal reasoning are not irrelevant; they may simply be inadequate. The purpose of construction being the ascertainment of meaning, every consideration brought to bear for the solution of that problem must be devoted to that end alone. To speak of it as a practical problem is not to indulge a fashion in words. It must be that, not something else. Not, for instance, an opportunity for a judge to use words as "empty vessels into which he can pour anything he will"—his caprices, fixed notions, even statesmanlike beliefs in a particular policy. Nor, on the other

IN THE SECOND JUDICIAL DISTRICT COURT

STATE OF NEVADA, COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

WEST TAYLOR STREET, LLC,

Plaintiff,

vs. Case No. CV12-02995

WASTE MANAGEMENT OF NEVADA, INC., Dept. No. 4

Defendant.
_____/

TRANSCRIPT OF PROCEEDINGS

STATUS CONFERENCE

MAY 7, 2014

APPEARANCES:

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MOLEZZO REPORTERS
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RENO, NEVADA, WEDNESDAY, MAY 7, 2014, 9:00 A.M.

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THE COURT: The next matter is West Taylor Street versus Waste Management of Nevada.

MR. PEREOS: Nick Pereos on behalf of the plaintiff, your Honor.

MR. WRIGHT: Good morning, your Honor. Bryan Wright on behalf of the defendant.

THE COURT: Good morning. This is an interesting date and time for you all. As I was preparing for today's hearing, it became clear to me that you all have actually agreed to allow West Taylor to amend the pleadings, as long as you can continue to move forward and do some other things. Is that correct?

MR. PEREOS: I would say that's a fair characterization, but I'll let the defendant respond.

MR. WRIGHT: With the caveat that it's amend to add the Attorney General's Office as a party if this hearing doesn't go the way Mr. Pereos was hoping for. So we've allowed them to amend. They had filed recently to address a new lien that

my client filed in March of this year. I don't know if the amended complaint's already on file for that.

MR. PEREOS: No, not yet.

MR. WRIGHT: So that might be what you're talking about, and I apologize.

THE COURT: No. I was talking about the agreement to bring in a party of the Attorney General's Office, and then I perhaps misunderstood. I thought the agreement was that you were going to do that, but you were all in agreement that it made sense to do that before a ruling was entered on the summary judgment.

MR. PEREOS: Let me clarify, if I may, your Honor. I think where the confusion is this: Since the last amendment to the complaint and since the last time I petitioned the Court to extend the time frame in which to bring the Attorney General along, there was another lien recorded. So then I made a motion to amend my complaint, the purpose of which was to include all liens and whatever liens would be recorded. That's what's now pending. I believe counsel and I stipulated that I can go ahead and file that amended complaint. In that

same stipulation, we both agreed on another issue, that the case shouldn't go forward yet to the trial until you've made some preliminary rulings from the bench, because it's going to impact the outcome of the case. Now, I hadn't filed that amended complaint pending the order, and I'm still waiting -- we're kind of still waiting on the order vacating the trial date, because that hasn't been issued yet.

If I may, one more thing. In that same stip, we also agreed to continue certain aspects of discovery, because the discovery cutoff had expired and counsel wanted leave to pursue some discovery issues with regard to the new lien that precipitated the new amended complaint.

THE COURT: Okay, that hasn't been filed.

MR. PEREOS: That has not been filed yet.

THE COURT: Do you foresee needing a ruling from me prior to bringing in the Attorney General's Office and having them weigh in on the issue that's before me?

MR. PEREOS: I don't see the Attorney General having to weigh in on the issues that are before you now. Depending upon your ruling, it

will have an impact -- the way I see it is this. If this court rules that these liens exist in perpetuity, as argued by the defendant in their brief, then there's the issue of due process because then there's no cutoff with regard to the life of the lien. That's the way I see it. Under that set of circumstances, the issue of constitutionality may be raised, but then counsel may in turn say, "Well, no, it's not really unconstitutional to allow you due process." The Attorney General does not have to come into the case.

MR. WRIGHT: It's my understanding, your Honor, is that I had always looked at this as a two-step process, with today being step one and the first issue being, How does the mechanic's lien statute impact the garbage lien statute? If your Honor, the way I had interpreted it, follows Mr. Pereos's interpretation of the mechanic lien statute and the garbage lien statute, then we move forward and there's no need for the Attorney General's Office to be a party or to weigh in on anything. My understanding is that if you agree with our position, then Mr. Pereos's next argument

is going to be, well, if that interpretation is correct, then the statute is unconstitutional, at which time the Attorney General's Office would need to be added before we could go any further with the rest of the trial, as far as the slander of title and is the lien good in the first place monetarily. So that's how I understood it. I'm hopeful that's correct.

MR. PEREOS: I would affirm that --

THE COURT: All right. So let's start with the things that we need to do either way, which is to continue the trial date. Correct?

MR. PEREOS: That's correct.

THE COURT: So based upon that stipulation and the request, the Court is going to grant that request. Then the request to extend discovery -- there is no opposition with regard to the limited amount of extension that you're requesting, and depending on whether or not the Attorney General gets involved, we're going to have to deal with a new scheduling order anyway, if that were to come to pass. So --

MR. PEREOS: If I may, your Honor -- and I never mean to be rude by cutting the Court off, but

I believe that in the stip, counsel put in 90 days to extend that discovery versus an unlimited amount of time, which is okay with me, the unlimited amount of time versus the 90 days, whatever the Court wants to do.

THE COURT: Well, 90 days -- when were you counting it?

MR. WRIGHT: So -- and this creates a bit of an issue -- what happens if the Attorney General's Office comes in? And my thoughts as far as setting a new trial date and all those things, I don't know if they're premature today, because if your Honor rules in a way that has Mr. Pereos deciding he wants to bring the AG's office in -- if I'm the AG, my first response is I want a new trial date, I want discovery, I want to start anew, and I don't want the Court to have to set a third, fourth trial date because we're in that position. So I don't know if we're premature in trying to set something today. Going to your original question, the 90 days, I had asked for 90 days off of the existing discovery close date, because what I'm asking for in terms of additional discovery, for me personally, is limited to this new March 2014

garbage lien and anything that relates to that. So I don't need more than 90 days, but the Attorney General might.

THE COURT: All right. What I think makes sense today is I'm going to vacate the jury trial, and at some point today, we'll set a status hearing to decide what we're going to do after that, and at that status hearing, we can see where we're at. With regard to discovery, I don't see any reason why I can't lift the discovery cutoff now, knowing that I may impose a short end to it sometime in the future at our status conference. So, for now, you can conduct your discovery while we're waiting. I'm going to hear your oral arguments today and then I'm going to anticipate ruling at the status conference, if not before. So I may rule in writing before, but it's possible that I won't enter a ruling until I see you at the status conference we're going to set today, which we'll try to set it within 30 days, 45 days, whatever the calendar shows, and then I may give you an oral decision, at which point we can decide where we're going to go from there. Is that the housekeeping issue that you --

MR. PEREOS: Yes, I believe that takes care of all the housekeeping issues.

THE COURT: So the clerk is looking now for a possible status hearing and then we can go forward with the argument.

THE CLERK: July 30th at 9 o'clock. That's on a fast calendar.

THE COURT: And now let's proceed with argument on the motion. Mr. Pereos? And if you want to use the lectern, you can.

MR. PEREOS: No, I'm okay. I don't think I'm going to be more than 15 minutes anyway, given the briefing that's occurred. What I've proposed to the Court is asked the Court several questions that I think the Court has to address, that I think the Court may consider addressing. That is, how long can the defendant wait before filing a lien when the account goes delinquent? And I'll discuss delinquency in my argument. The next question I have for the Court is, how long can the defendant wait after the filing of the lien to foreclose on the lien? And the last question I have is, in responding to these questions, does the mechanic's lien law affect the Court's decisions on that?

Now, having said that, I would like to submit to the Court that the defendant, in their reply brief to the motion, advances the argument that they have an unlimited amount of time after the account goes delinquent before it has to record its lien. It also advances the argument that it has an unlimited amount of time after the reporting of the lien to pursue a foreclosure of the lien. In effect, it's basically saying, "We can put a lien against the property, no matter when we desire, based upon the delinquency that's occurred, and we don't have any time constraints as to when we have to pursue a foreclosure of that particular lien." These are the issues that I think the Court will have to address. In connection with the delinquency, when does the garbage bill become delinquent? Under the franchise agreement, it specifically states -- and I cited the authority and the page number in the franchise agreement -- it says the delinquency is defined as occurring or having occurred if the bill is not paid at the end of the quarter. What the evidence will show, which I believe is undisputed, is that the residential garbage bills are billed quarterly. Let's keep it

simple for now; let's say the quarter starts in January. For the service period of January, February and March, the bill goes out in January. Under the franchise agreement, if the bill is not paid at the end of March, it's delinquent. In fact, the franchise agreement goes a step further and says if the bill is not paid within 15 days of the end of the quarter, interest may then accrue on the bill. So I submit to the Court that under the franchise agreement, the franchise agreement defined delinquency and when it occurs.

Now, the defendants take the position that after that bill becomes delinquent, I still have an unlimited amount of time in which to record my lien for that delinquent bill. So if the bill were delinquent for six years, seven years, they can still record the lien. We submit that at a minimum, if you apply the contractor statutes, that they cannot go any later than 90 days. Now, if the Court says, "No, I don't believe that the entire scheme of Chapter 108 was intended to be incorporated in the statute of 444.520, in terms of the foreclosure of the lien," we would then submit that under NRS 11.190, the statute of limitations

statute, the bill would become delinquent or the delinquency would have to be pursued within three years. Either way, defendants argue that they have in-perpetuity. Now, one of the arguments that they raised in their reply brief was -- plaintiff was advancing the position that the mechanic's lien statutes apply in the total scheme of the mechanic's lien statutes; that is, after it becomes delinquent within 90 days, you have to pursue your mechanic's lien, and defendants argued saying, "No, no, no. If we apply the entire scheme of the mechanic's lien statutes, our argument is we don't have to pursue the mechanic's lien for a delinquent bill as long as we're providing services, because the mechanic's lien statute says that the lien is to be recorded within 90 days after the last provision of services." Now, I don't dispute that interpretation of the mechanic's lien statutes, but here's where defendant has an inconsistent argument and the argument's inconsistency is as follows: The thrust of defendant's argument is that they are only confined to enforcing their garbage lien through 108.239, not the total scheme of the mechanic's lien statutes, only that isolated

statute was what was intended. That's their argument. Well, if that's the case, then you're not entitled to the benefit of the statutes earlier on that advance your argument that you could record the lien any time within 90 days after you stop providing services. There's an inconsistency in position on that.

It is our advanced position that if the Court adopts the mechanic lien global statutes -- which the Supreme Court has indicated is applicable when it comes to foreclosing under NRS 108.239 -- that the defendant has to record its lien within 90 days after the debt becomes delinquent. In addition to the issue, the argument as to how long the defendant has to pursue an action to foreclose the lien after the recording of the lien, defendant advances the position that they have in-perpetuity to do so. We submit that if you want to foreclose under NRS 108.239, you're bound by the case law of the Supreme Court that says not only do you perfect the lien according to Chapter 108, but you've got to foreclose within the six months.

Now, defendant advances an argument of statutory interpretation, and one of the things we

acknowledge with defendant is, yes, the statutes have to be harmoniously interpreted together. So what was the legislative intent when they said the lien may be foreclosed in the same manner as provided by the foreclosure mechanic's lien? Did they mean that means you only have to follow NRS 108.239, or does that mean that if you're going to foreclose the mechanic's lien, you incorporate all of the laws that discuss the foreclosure of a mechanic's lien? Now, I read the hearing minutes that were advanced and my opinion is you're not going to find much information, because in those hearing minutes, the argument that was advanced by Republic Disposal was that they wanted the owner liable for the lien versus the tenant, and that's not an issue. We're not arguing on that here. The only thing that I found informative when I read the minutes was the remarks by one of the representatives, who commented that in giving the lien right to the disposal company that, in turn, will impact the property owner is pretty drastic, and we cited that conversation that occurred in the legislative hearing as giving rise to the passage of this statute. Where this ties into the Attorney

General is that, concededly, if there is some time limitation placed on defendant disposal company, it will, in turn, negate the position or the claim of constitutionality issues with regard to the statute. On the other hand, if that lien can exist in perpetuity without any accountability for the placement of that lien, then it's going to impact whether or not there's a due process issue here. I once heard Pete Echeverria say in a statement many years ago when he was giving a statement to the bar, he said lawyers have a tremendous amount of power by virtue of the fact that we can issue subpoenas that can compel anybody, except the president of the United States, to show up at a place. That is a pretty high-wielding set of powers for a lawyer, and I kind of agree with that observation. Think about the power and the authority that has now been given to Waste Management with regard to liening a piece of property. That lien is an encumbrance. Now, putting aside the issues of legitimacy of the lien, because I don't think we're here to argue those at this time, how about the accountability? How about whether that lien is going to exist indefinitely

and continue encumbering the property. Even if the Court were to contemplate that position, you would be giving Waste Management more authority than you would be giving to the county governments, because the Attorney General issued an opinion that said that the counties did not have an indefinite period of time with regard to property tax liens, that they had to pursue the enforcement of that property tax lien within the three-year window defined by NRS 11.190, and that AG opinion alone goes to the heart of the argument advanced by the defendant that they have in-perpetuity. I'm not going to start citing the cases, because I believe the briefs are before the Court. And I do compliment my counsel on the other side; he did an excellent job on his briefing and he made me read the legislative hearing minutes after he cited them.

That's all I have at this point, your Honor.

THE COURT: Okay, thank you.

Mr. Wright?

MR. WRIGHT: The first thing is I'll apologize to Mr. Pereos for making him read legislative history.

THE COURT: You better apologize to the law clerk too.

MR. WRIGHT: And I apologize to the Court and to your law clerk as well.

I'll go through a couple of things here, and I want to start with where this started and how the argument has changed, because I think there are some statements that were made about what positions defendant is taking that are not correct as to what we're actually saying. So I want to clarify that. I'm going to start with what the motion for summary judgment originally stated. The motion for summary judgment said the mechanic's lien statute has to apply to the garbage lien statute in a couple different ways. One, you have to file a notice of intent to lien; two, you have to file your lien within 90 days of the delinquency; and three, after you've recorded your lien, you have to start a lawsuit within six months, and our opposition goes through and it explains why we disagree with that. We haven't taken the position that we have forever to file a lawsuit. That's not the position that we're taking, and I think, without jumping ahead, plaintiff's own authority supports what I'm going

to go through and explain as to how we understand these statutes work in the context of the statute of limitations, which wasn't an issue that was raised until the reply brief. So I haven't had a chance to respond to it until now.

I'm going to start first with the original issue, and I notice plaintiff hasn't taken an issue with it today on the requirement to file a notice of intent to lien. The first thing I want to point out on that is, there's actually no dispute here that Waste Management did serve notices of intent to lien before each of these liens. Mr. Pereos has produced them in his production. It's not something that was raised in briefing, because from a fundamental perspective, the statute doesn't require a notice of intent to lien. NRS 444.520 only incorporates the manner of foreclosure of a mechanic's lien statute, and it's permissive. It says you may foreclose in the same manner as provided for the foreclosure of a mechanic's lien. It doesn't say that you have to perfect the garbage lien in the same manner that you perfect a mechanic's lien. So where we get into our dispute with plaintiff's position is the manner for

foreclosure of a mechanic's lien, which is provided in one spot and one spot only, NRS 108.239. All of the requirements that plaintiff is trying to enforce upon Waste Management -- be it a notice of intent, the 90-day deadline or the six-month deadline -- all of those come from other places, the first two coming from what is required statutorily to perfect a mechanic's lien. And by the plain language of NRS 444.520, the Nevada legislature didn't incorporate the requirements for perfecting a mechanic's lien into the requirements for perfecting a garbage lien. So our argument is that the notice of intent and the 90-day deadline simply don't apply at all.

Now, we're not arguing that there's no deadline to file a mechanic's lien -- or, I'm sorry, to record the garbage lien. We've never raised that. That's not the point we were trying to make in our opposition. The point we were trying to make in the opposition is that the 90-day deadline under the mechanic's lien statutes doesn't apply, and I think there are a number of good reasons. One is, obviously, you have the plain language, which I've already talked about, but then

you get into the issue of plaintiff's interpretation of when does that 90-day deadline start. Well, plaintiff wants to say it starts once the bill becomes delinquent. So going back to what Mr. Pereos said -- and defendant is billing on a quarterly basis. So if we accept plaintiff's interpretation and say that you have to file a mechanic's lien within 90 days of a delinquency, by the time you get your January bill, it becomes 90 days past due and that's when you're finally getting your next quarterly invoice. So what Mr. Pereos's interpretation would say is that at the time that you've missed your first payment -- and sometimes people miss payments. You go on vacation and you don't see the bill, since you're only getting it once every 90 days; you may not notice that you haven't paid it yet. So by the time you get your notice of delinquency, your next invoice that says, by the way, you never paid us for the last quarter, Mr. Pereos's interpretation would say we also have to serve you with a lien and we have to rush to record that lien, which only serves to increase the burden both on the customer and on Waste Management. And so from a public policy

perspective, I don't think that's what the legislature intended and I don't think there's anything in the legislative history with plain language saying that that's what the legislature wanted.

Now, aside from the 90-day deadline, we then get into this concept of the six-month deadline to foreclose upon a lien once it's filed. A few things on that. First, I'll go to the fall-back argument that there's nothing within 444.520 that says you have to foreclose the lien within the same time period that you would foreclose the mechanic's lien. Again, you go back to the language and it says it may be foreclosed, it doesn't say it must be foreclosed. It only says that it may be foreclosed in the same manner, not that it must be foreclosed within the same time frame. And this is an important distinction, because if you look at the mechanic lien statute that imposes this six-month deadline -- that's at NRS 108.233 -- you see something that you don't see with other types of liens. The legislature specifically put language in NRS 108.233 that says that a mechanic's lien cannot bind property for

more than six months, unless a foreclosure action has been initiated or the owner agrees to extend the time frame. That same statute, 108.233, says that the lien shall be deemed to have expired as a lien against the property after the lapse of that six-month period. That language is very unique to a mechanic's lien. You don't see that with other types of liens, whether it be a special tax lien or an improvement district lien, a sewer fee lien. You'll never find the same type of language in those statutory schemes. The plaintiff is attempting to apply it here to a garbage lien because of that one reference to the manner of foreclosure in NRS 444.520. We submit to you and it's argued in our briefs that that's not what the legislature intended, and you can tell that that's not what the legislature intended because it's not the language they used. They said that unlike a mechanic's lien, which eventually expires after six months if there hasn't been a foreclosure, the garbage lien exists until paid as a perpetual lien. The plaintiff says that my argument here means that I'm saying we have forever to foreclose and that's not what I'm saying. I'm saying from a very

straightforward look at the statute, the lien itself exists in perpetuity until it's paid.

Now we get to the next question, which was raised in the reply. Well, okay, let's assume the lien does exist in perpetuity. Does that mean you can foreclose and that you have the right to enforce that in perpetuity? And the answer is no, we don't have the right to foreclose in perpetuity, and that's not what we're arguing. If you look at that Attorney General opinion that Mr. Pereos cites from 1951 -- it's Attorney General Opinion 91, and if the Court would like, I do have copies for your convenience.

THE COURT: That would be okay.

MR. WRIGHT: May I approach?

THE COURT: Approach the law clerk.

MR. WRIGHT: It's a very short opinion, and really in sum and substance, all it says, in one paragraph, is that the county must institute an action to enforce its tax lien within the time frame set in the statute of limitations. That's now NRS 11.190, and for that proposition, it cites one case, State versus Yellow Jacket Silver Mining Company, and that's at 14 Nevada 220. It's an old

case, but it's still good law. And if the Court would like, I do have courtesy copies of that as well.

THE COURT: I already have it.

MR. WRIGHT: Okay. And in Yellow Jacket, the Court was given the almost identical issue that Mr. Pereos raised in his reply of how you reconcile the language of a statute that says that the lien exists in perpetuity with a statute of limitation. So, there, the Court was dealing with liens on a mine and mining claims, the proceeds that are generated from a mine and mining claims. And the statute that existed at that time stated that the lien shall not be satisfied or removed until the taxes are paid. So in that case, the taxing authority weighed in -- and I apologize because I don't remember the answer, but it was more than three years to institute the foreclosure action. And the defendant came in and said, wait a second, the three-year statute of limitations are used in enforcing this tax lien, and the taxing authority's response was, well, the statute says the lien exists until paid. And here's where you get the answer to that reconciliation. The Nevada Supreme

Court essentially said, "Both of you are right to a certain extent." The way the Nevada Supreme Court looked at that statute -- which, again, is very similar to the statute we have here, where it says the lien exists until satisfied or paid. And starting on page seven of the Westlaw version -- and I apologize if you have a different version, because mine did not give the Nevada Reporter page numbers; so I'm just going off of page seven of the Westlaw version. The Nevada Supreme Court points out that all that can be claimed under the statute quoted, which is the lien statute that I just mentioned, is that the lien created continues indefinitely until the tax is paid or the property is sold under a tax sale. So the Supreme Court recognized that the taxing authority was correct, that the lien itself does exist in perpetuity, but the Supreme Court pointed out that the lien cannot be enforced and the property cannot be sold without the aid of the remedy provided, which is a suit to foreclose, and if the suit to foreclose is barred, the remedy is lost, although the lien may remain. So what the Supreme Court -- and there's other good language in here, but the holding of the Yellow

Jacket case is that the lien itself, which was the original issue raised in plaintiff's motion, does continue in perpetuity, but the ability to foreclose or to actually do something with it, like force the sale of the customer's property, is subject to the statute of limitations. And so we recognize that that is what Nevada law says.

Each of the garbage liens that are at issue in this case were filed in February of 2012. So we would argue, unlike plaintiff's argument that you have six months, because the mechanic lien statute says it's six months, to initiate a foreclosure action or the lien expires, we would argue that the correct interpretation is that we have -- depending on which statute of limitation applies, it's either three or four -- and I can explain why I think there's some room for argument on both, but you have either three or four years from the date of the recording of the garbage lien to initiate your foreclosure action. Now, according to the Yellow Jacket Mining case, if you don't file within the statute of limitations period, the lien doesn't just disappear, it still remains. It will remain indefinitely until the tax

is paid or the statute is -- one of the things that they say in there is, or the statute creating the tax lien is abolished by the legislature. And so that's what we have here. The lien will continue to exist against plaintiff's property, but we can't do anything to enforce it if we don't enforce it within the statute of limitations period. That is how Nevada law currently sits.

THE COURT: When you say "enforce it," you're talking about selling it.

MR. WRIGHT: Actually filing a lawsuit to sell plaintiff's property.

THE COURT: But you do enforce it if the plaintiff wants to sell his property. You have a cloud on the title.

MR. WRIGHT: And that is an interesting issue, because if you look to page eight of the Yellow Jacket case, the Court -- here's a quote from it, talking about the statute of limitations. It says, "The statute does not destroy the right, but only bars the remedy. Hence, if the plaintiff has any means of enforcing his claim, other than by action or suit, the statute of limitations cannot be set up to prevent his recovery by such means."

So according to the Yellow Jacket decision, in a situation where -- let's assume there's a three or four-year statute of limitation and it has passed, Waste Management would not be able to do anything to initiate a lawsuit to force the sale of plaintiff's property, but the lien continues, and if there are other means beyond filing a lawsuit to force payment, there is nothing within the statute of limitations that prevents that or that can bar that. The lien continues. And I understand that may create issues from the plaintiff's perspective, and those issues -- we're going to get into the due process constitutionality and so I won't get into that today, but what we would submit to you is that other courts have looked at the same issue and have held that that is acceptable. It may be an oddity, but that is the way the statutes are read.

THE COURT: Which cases are you talking about where they determined that it's acceptable?

MR. PEREOS: That it's constitutionally acceptable? Because we agreed that that wouldn't be raised now, I'm just foreshadowing it, if we get to that point.

THE COURT: But none on a garbage lien.