MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
March 15, 2005

The Committee on Judiciary was called to order at 8:18 a.m., on Tuesday, March 15, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, 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:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Garn Mabey
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Mrs. Sharron Angle (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, and White Pine Counties, and Portions of Churchill, Humboldt, Lander, and Washoe Counties

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
René Yeckley, Committee Counsel
Judy Maddock, Committee Manager
Katie Miles, Research Analyst

OTHERS PRESENT:

Brian Padgett, Legislative Advocate, representing Land Owners of the State of Nevada
Lucille Lusk, Chairman, Nevada Concerned Citizens
Christine Dugan, Director of Government Affairs, The Las Vegas Chamber of Commerce, Las Vegas, Nevada
Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association
Stephanie Garcia-Vause, Legislative Representative, City of Henderson, Nevada
Michael Chapman, Legislative Advocate, representing the Redevelopment Agency, City of Reno, Nevada
Nicole Lamboley, Legislative Relations Program Manager, City of Reno, Nevada
Lesa Coder, Director of Operations, Clark County Redevelopment Agency, Las Vegas, Nevada
Tony Sanchez, Legislative Advocate, Representing LS Power Development
Cheri Edelman, Assistant City Engineer, Public Works Department, City of Las Vegas, Nevada
Derek Morse, Deputy Executive Director, Washoe County Regional Transportation Commission, Reno, Nevada:
Stan Peck, Chief Legal Counsel, Washoe County Regional Transportation Commission, Reno, Nevada
Greg Salter, Special Assistant to the City Manager, City of Sparks, Nevada

Chairman Anderson:
[Meeting called to order and roll called.] The Chair will entertain a motion for the introduction of BDR 23-684.

- BDR 23-684: Revises provisions governing the rights of peace officers. (ASSEMBLY BILL 207)

ASSEMBLYMAN MANENDO MOVED FOR COMMITTEE INTRODUCTION OF BDR 23-684.

ASSEMBLYMAN HORNE SECONDED THE MOTION.

THE MOTION PASSED. (Mrs. Angle was not present for the vote.)

Let us then turn our attention to Assembly Bill 143, requested by Mr. Horne.

Assembly Bill 143: Makes various changes concerning community redevelopment and eminent domain proceedings. (BDR 22-44)

Assemblyman William Horne, Assembly District No. 34, Clark County (Part):
I appreciate this Committee granting me the opportunity to present Assembly Bill 143. I would like to begin my presentation with a video from the news program "60 Minutes" (Exhibit B). This segment will highlight eminent domain issues in three states: Ohio, Arizona, and New York. After the video clip, I will walk through the bill and answer any question for the Committee that they have. I've provided the Committee with a folder (Exhibit C). Inside the folder, you'll find two articles on eminent domain.

The first article dated February 22 primarily highlights the *Poletown Neighborhood Council v. City of Detroit* [304 N.W.2d 455 (1981)] decision. This decision allowed GM [General Motors] to raze a neighborhood to expand its plant under the guise of "public good." This is the court decision that the Nevada Supreme Court used in its rationale in ruling against the *City of Las Vegas Downtown Redevelopment Agency v. Pappas* [76 P.3d 1 (2003)] case in a "taking proceeding" in Las Vegas. The *Poletown* decision was overturned by the Michigan Supreme Court last year.

The second articles address a U.S. Supreme Court case heard in February of this year. That case is *Kelo v. City of New London* [843 A.2d 500 (2004)]. The facts of that case are similar to the facts of the Ohio couple you just viewed in the "60 Minutes" segment. The Court decision is expected to be delivered in May of this year. I invite you to read these two articles when considering Assembly Bill 143. In Section 2, part 1, that deals with negotiating in good faith and provides owners with written offer and a copy of the appraisal. As you saw on the segment, what I'm attempting to do here is: if a private entity wants your land, I think they should come to you first, make an offer, sit down, and negotiate in good faith, before going to a government entity in an attempt to receive that land through eminent domain, as you saw in the issue of Mesa,

Arizona. The Ace Hardware owner didn't even sit down and talk to the brake store owner for this property.

[Assemblyman Horne, continued.] Section 2 defines what is required in a written offer: the compensation, the value of the property, delivery notice requirements. Section 2, part 3, conditions when the property owner is entitled to reasonable cost and attorneys fees. Basically, if the government comes to you with a notice of offer for compensation for your property, you should proceed with due diligence, get an appraisal, and hire an attorney to see if everything is as the government says it is. At that time, if you decide to take that offer, I think in addition to what they've offered you, you should be compensated for what you paid for your attorney and that appraisal because they brought you to the table. You didn't put a "for sale" sign on your property. I think that's only fair.

Part 4 of Section 2 results in you declining that offer. Basically, if you declined that offer, then it goes on from there all the way down to trial and a decision, regardless on a decision whether you prevail or not. Each party, if they walk away, pays their own attorneys costs and fees. You're no longer entitled to that out-of-pocket appraisal and attorneys cost. That goes into Section 2, part 5, eliminating the offers of judgment. This was brought up last session. In Nevada, if you fail to meet what the offer is in court, they can come and ask for attorney's costs and fees. I think this is over burdensome to a property owner whose only exercising their Fifth Amendment right to "just compensation" in a takings proceeding. I actually spoke to Dana Berliner of the Institute of Justice by phone, and our Research Division here, and we are the only jurisdiction in the country who would require a property owner to pay attorneys costs and fees if they do not prevail in court, in an eminent domain proceeding in court.

Section 3 deals with persons attempting to expand their property and acquire property in a redevelopment area.

Section 4 deals with recording of the offers and compensation and providing notice to business owners who are lessees. If you're given an offer by the government entity redevelopment agency, I want there to be some place where if you tried to sell it to a subsequent purchaser that they know that your property is being looked at off the table, so you can't slide out from underneath and place the burden on somebody else. They should have notice of it as well.

Section 6 defines "blight. In Nevada, there are 9 indicia of which only 1 has to be found in order to determine blight. I've added a tenth indicia, and asked that the government show 4 of the 10 before your property can be determined as "blighted."

[Assemblyman Horne, continued.] That concludes my presentation. I would like to inform the Committee that there will be a number of amendments presented. I've worked with a number of parties, particularly the city representatives, on possible amendments. Some amendments, I have no problem supporting. Others, I will not be able to support. I plan on continuing to work with them on trying to find resolutions on some of these. I'm sure if the Committee so wants to do this, we'll have a work session and decide for ourselves on what amendments to adopt or not.

Assemblyman Carpenter:
This may be covered in some amendments, but as I read it, it says, "If they make you an offer, then they don't have to provide a copy of the appraisal unless you request it, and then you are given 15 days to do that. Why is the appraisal not provided the same time that they make you an offer so you know what's going on?

Assemblyman Horne:
On the 15 day part, I'm not sure if drafting brought that from another part of the NRS [*Nevada Revised Statutes*]. In my theory, it's just giving the entity time to get documents together and provide you with the appraisal. There will be an amendment coming on providing a copy of the appraisal. There are some questions on whether or not a summary of the appraisal will be more appropriate than a copy of the entire appraisal. In negotiating between the parties, getting a copy of that appraisal before you get your own appraisal would give you an unfair advantage in the negotiations.

Assemblyman Carpenter:
It seems to me the advantages most always go with the entities, so I think they should come forward with whatever they have when they make the offer.

Brian Padgett, Legislative Advocate, representing Land Owners of the State of Nevada:
I'm here to testify with regard to this redevelopment bill, and advise the Assembly of two new Supreme Court decisions supporting landowners' rights in just compensation cases. Based on these cases, I'm here to support A.B. 143 in part and also urge that changes be made to A.B. 143 in any other part. I believe a packet is being handed out to you with our proposed changes at this time (Exhibit D). Before I begin and specifically address those changes, I would like to quickly discuss the process of eminent domain. The government has police power according to the *U.S. Constitution* to take private property, but that right is tempered by the Fifth Amendment to the *U.S. Constitution* that says that if private property is, in fact, taken, landowners should be paid just compensation for that taken property. Now, here in Nevada, just compensation is noted as,

under the *County of Clark v. Alper*, [100 Nev. 382, 685 P.2d 943 (1984)] and the *Stagecoach* case [*Stagecoach Utilities v. Stagecoach General Improvement District*, 102 Nev. 363 (1986)] as, "That compensation which places the landowner back in the same position he or she would have been in had their property not been taken in the first place."

[Brian Padgett, continued.] Now, there are two cases that have substantial impact on these rights to "just compensation," and I think they're very important to this bill. Prior to one case, *Clark County v. Monument Point*, the landowner was always in jeopardy of not, in fact, being put back in the same position he or she was in prior to the taking of his or her property. Specifically, I'm addressing paragraph 5 on page 4 of A.B. 143. Prior to the *Clark County v. Monument Point* case, you have what you called an "offer of judgment rule" whereby one side or the other can tender a final offer, per se, of settlement before the case goes to trial. If one side rejects that offer of judgment, then that side rejecting it—let's say the government offers a landowner $100,000 in final offer of settlement prior to trial and if the landowner rejects that offer of judgment and goes to trial and gets less than $100,000, lets say $99,000—could be liable to pay the government's fees and costs at trial. If a jury determines that the landowner's entitled to $99,000 in compensation, yet the land owner has to pay the government's fees and costs of $65,000, then obviously the mandated "just compensation" set by the jury would not be paid to the landowner. The landowner's compensation would be subtracted by those fees and costs. What we feel is this chills landowner rights to go to trial because they would be in fear that the offer that they're tendered with, even though it may not be "just compensation." If they were charged with fees and costs, they might be better off taking that offer, even though they feel it does not represent "just compensation."

Then, in the case of *Clark County v. Monument Point*, the landowner rejected the offer of judgment and got less than the offer of judgment at trial. Clark County then sought to tax the landowner with fees and costs. I think the landowner received as "just compensation" slightly less than $200,000. Clark County sought to tax the landowner with $400,000 in fees and costs, which would have rendered the landowner a debtor. Therefore, based upon this unpublished decision at this time, the Supreme Court in the appellate decision affirmed the lower court's ruling it would be unjust to make the landowner pay fees and costs in this case, rendering the landowner a debtor and not giving him "just compensation." That decision went before the Nevada Supreme Court and on appeal from both sides, and it was in fact affirmed that the landowner should not be entitled to pay fees and costs. So, we strongly support paragraph 5 on A.B. 143. However, we ask that an amendment be made directly after it noting that the landowner should not have to bear the burden of the government's fees

and costs in an eminent domain proceeding for not only redevelopment cases, but for all eminent domain and inverse condemnation cases.

[Brian Padgett, continued.] Next, I'd also like to suggest that paragraph 4 in the proposed A.B. 143, pages 3 and 4 be stricken. The reason for that is this: In a recent Nevada Supreme Court decision, *State Department of Transportation v. Cowan* [103 P.3d 1 (2004)], the Supreme Court found that the landowner would be entitled to the payment of fees and costs from the government even though the landowner declined the government's earlier offer of compensation prior to trial. In *Monument Point*, the Supreme Court found that it was unjust to tax the landowner with fees and costs because it would take away their "just compensation."

In this particular case, *Cowan*, the Supreme Court found that the landowner should be entitled to fees and costs to not take away from "just compensation." If paragraph 4 were to stand, the landowner would not in fact—as long as the landowner was tendered a certified appraisal, and the landowner rejected that offer from the governing body or the condemning agency—be entitled to fees and costs if the landowner prevailed at trial. We feel that is unfair, and it violates their Constitutional rights by chilling those rights to go to trial and seek just compensation, because we find that the government agencies have very deep pockets and they can afford many expert witnesses, and they can afford to support their evidence with many exhibits at trial. So, the landowner needs to match that tit-for-tat, pound-for-pound with experts and with exhibits.

We often find that if the landowner is not entitled to recover their fees and costs at the end of trial and then if the landowner were say to receive $100,000 in "just compensation," and the fees and costs of the case were $40,000, the landowner would be giving their property to the government for not $100,000 that the jury deems "just compensation," but rather $60,000. We feel that this is a violation of their Constitutional rights, and we strongly recommend that paragraph 4 be stricken.

Lastly, we'd also like to state that we do not feel that certified appraisals are infallible. That's a good reason why this paragraph should be stricken. I'll give you an example. In the last 6 months, our office has closed up in the "just compensation" for landowners, and in 3 different occasions, and in those occasions, we've gotten more than the government's initial certified appraisal: 40 percent more in one case, 400 percent more in another case, and 350 percent more in another case.

Therefore, we're asking you today to in fact strike paragraph 4, as we feel it takes away from the landowner's "just compensation," and allow landowners in

all eminent domain proceedings to be able to recover fees and costs at the conclusion of a trial.

[Brian Padgett, continued.] Also on the page 4 and the page 5, we're suggesting changes to certain provisions.

On page 2 of 2 (Exhibit D), we ask that a fourth paragraph be included that would allow a landowner to have a preemptory challenge of any district court judge or senior judge, and one preemptory challenge of any sitting Supreme Court Justice or senior Supreme Court Justice, if the case goes up on appeal. Presently at the district court level, a landowner can make a preemptory challenge of a judge. We ask that that be extended in eminent domain matters to the Supreme Court, and the landowner be allowed to have one preemptory challenge of the sitting Supreme Court Justices.

Next, we also ask that an addition (Exhibit D) be made to NRS [*Nevada Revised Statutes*] 37.120 subsection 1, paragraph 1, and this is regarding a new trial date and evaluation. If the case is remanded from the Supreme Court to the district court, then we asked the following language to be included: "If a new trial is ordered by a court, the date of evaluation used in the new trial must be the date of evaluation used in the original trial." We would like to add, "Unless the new trial is ordered in the favor of the defendant landowner, in which case, the date evaluation may be the new date of trial or that date of filing a complaint against the landowner at the landowner's election."

Those are the changes we would like to propose at this time. We don't want to take up the Committee's time anymore.

Assemblywoman Ohrenschall:
Currently, what procedures, if any, are there to get a preemptory challenge of a Supreme Court Justice?

Brian Padgett:
Presently, there are no such provisions to challenge a sitting Supreme Court Judge to seek a preemptory challenge. As you know, there are a number of Supreme Court Justices sitting. Typically, one when recuses, they bring in a sitting district court judge from another county.

Assemblywoman Ohrenschall:
So, this really would be breaking with old tradition.

Brian Padgett:
What we feel is that it would be consistent with the district court procedures.

Assemblyman Carpenter:
I wanted to ask the same question that was asked of the sponsor of the bill. As I read this, they make you an offer, they don't have to give you the appraisal, but then you can ask for the appraisal after, and they have 15 days to provide it. I wonder why they don't provide it at the same time that they make an offer?

Brian Padgett:
That's a very good question. There's no actual reason for it. There's nothing that a government agency can stand behind to not tender that appraisal. If the landowner asks for it, it's a public record, and it must be provided.

Assemblyman Carpenter:
Why couldn't it be that they just have to provide it to you and then make the offer?

Brian Padgett:
That should be the case, and there should be legislation enacted to provide for that. If the landowner is faced with condemnation, that landowner should be tendered that appraisal immediately so he or she can evaluate the price offered and determine whether or not they should settle that case immediately or proceed to have their property condemned and then on to trial to seek "just compensation."

Assemblywoman Ohrenschall:
I'm just concerned about the provision in here that if there are several owners of a parcel or a surrounding parcel that notice to one is good enough to be notice to all. I can see a situation where you would have multiple owners who wouldn't necessarily have the same interest in how a piece of property is going to be used or sold.

Chairman Anderson:
Possibly the author of that bill would be in a better position to respond other than Mr. Padgett. Since he's not the person who wrote the actual...

Assemblywoman Ohrenschall:
You're right. I thought he was just defending the bill as a whole.

Chairman Anderson:
He did an excellent job relative to presenting an amendment; however, I believe that's part of the question of the bill as a whole.

Assemblyman Horne:
Ms. Ohrenschall, that issue was brought up in the discussion with the representatives from the [Nevada] League of Cities and such. It's being addressed in an amendment to address those concerns.

Chairman Anderson:
Other questions for Mr. Padgett. Mr. Padgett, if you want to take a shot at it, we'll surely give you that opportunity because you are in front of us, and the questions was really directed toward you, but as Mr. Horne had indicated, his desire to speak to it.

Brian Padgett:
Mr. Horne's statement was appropriate. Multiple property owners and one appraisal being tendered to one of the landowners; I would tend to agree with you if there are multiple property interests or fee interests in a parcel of property. Each fee owner should be made aware of the offer, and be able to object or accept to that appraisal individually. However, if you get into a case where you have a piece of property owned by an LLC [Limited Liability Company], and you have a managing member, and sometimes I feel it would be in certain cases appropriate to tender an appraisal to the managing member, as that managing member would then have certain obligations and duties to tender that to other members of the LLC. Then there would be voting on that obviously to determine whether or not to accept or reject that offer of compensation.

Assemblywoman Ohrenschall:
I see that, but there you're also dealing with the fiction of the law.

Chairman Anderson:
Mr. Padgett, if you have a written statement that you read from or used, we ask that you submit it so we can have it as part of the permanent record over and above the information. Put your name on the handouts and we will put them in a folder relative to potential amendments that are going to be placed. Any other questions from members of the Committee? Is anyone here who wishes to speak in support of the legislation without amendment?

Lucille Lusk, Chairman, Nevada Concerned Citizens:
I will be extremely brief. We simply want to add our voice to support the bill, and to Mr. Horne's intent to make improvements in the eminent domain laws to avoid the misuse of those laws for taking private property from one private property owner and to transfer it to another more favored property owner for the increase in taxes.

Christine Dugan, Director of Government Affairs, Legislative Advocate, representing the Las Vegas Chamber of Commerce:
We're not opposed to the amendments, though we haven't been able to see them thoroughly and go over them, so we would like to speak to the bill in its entirety. The Chamber of Commerce is a very strong supporter of preserving Nevada's property rights. We believe that property rights are at the heart of our political and economic system, and this bill moves forward the ability to preserve those rights both for businesses and individuals and the issue of eminent domain and redevelopment areas. We're very supportive of Assemblyman Horne and his efforts, and we are asking you to consider weighing the costs that some of the county governments and local governments would come forward with respect to the issues of the settlements with the need to preserve property rights. We would argue that the need to preserve those rights are fundamental to every citizen, and therefore the costs that may be incurred in that are something that we as a society really should bear the burden of in order to move forward. I would very quickly just leave you with a quote from our former President, Calvin Coolidge, who noted that, "Ultimately, property rights and personal rights are the same thing," and that is where the Las Vegas Chamber of Commerce is coming from with respect to our efforts today. If you have any questions.

Chairman Anderson:
Anybody else who wants to speak without amendment to the legislation?

Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association:
[Distributed Exhibit E.] I'm being a scribe for all of the groups that you see listed on this groups and entities that are represented on a contact list for some proposed amendments to Mr. Horne's bill. I came prepared to go through these proposed amendments to indicate what we were trying to do in support of the concept of Mr. Horne's bill. We did speak with him as a group last week, and I met with him yesterday afternoon very briefly. We would like the opportunity to continue to work on amendments. It may be more pertinent to this Committee to hear from people who have some specific points because I was just going to go through the amendments.

Chairman Anderson:
Let me indicate to Committee, it's my intention to put this into a subcommittee, and I'm trying to get all of the amendments in front of us as quickly as we can so that when we put it into subcommittee, they'll have those documents that are prepared.

Madelyn Shipman:
I was acting as scribe, but I'm thinking that because you have limited the time on this bill, then other people have more pertinent statements to make, and I would like to submit the amendments to a subcommittee as the cumulative thinking process of all of these groups that tried to do it in one setting so that we didn't have different sets of amendments coming forward to work with. Hearing testimony, you may have other thoughts too. So, I will defer to Ms. Garcia-Vause, and also to Ms. Lamboley, Mr. Chapman, and Mr. Salter from Sparks, to speak more directly to the issues that you think they should be addressing in the bill.

Stephanie Garcia-Vause, Legislative Representative, City of Henderson, Nevada:
Mr. Chairman, I would actually like for Mr. Chapman to go first. I'm speaking to Section 6, and it may make sense, unless you want me to start with Section 6.

Chairman Anderson:
Mr. Chapman, have you seen these amendments or are yours a different set of testimony?

Michael Chapman, Legislative Advocate, representing the Redevelopment Agency, City of Reno, Nevada:
You mean those submitted by Mr. Padgett?

Chairman Anderson:
No, the ones that were submitted by Garcia-Vause, Lamboley, Olivas, McDonald, Musgrove, Laxalt, Beck, Shipman, and Ashleman (Exhibit E).

Michael Chapman:
Yes, Mr. Chairman, I've seen them.

Chairman Anderson:
Then, why don't we move to you.

Michael Chapman:
I'm going to comment on 4 points of the bill specifically. Then, I will be available to answer any questions. On the draft amendments you just referred to, on page 2, we have a recommendation in the third paragraph down for amending paragraph 2(b), and what we recommend is that nothing in this chapter shall be construed as creating any condemnation proceeding, any element of damage not in existence immediately prior to October 1, 2005. Now, I paraphrased that language from federal law, which is specifically the Uniform Relocation [Assistance] and {Real Property] Acquisition Policies Act of 1970. They call it the "Uniform Act." What concerned us is in the language that we've

lined out there, it states if the agency acquired less than the entire property, which quite frankly, happens many times. There are many partial acquisitions, to compensate an owner for any resulting damage for the remainder of the property. Under the current law, the owner is entitled to what is called "severance damage." That is the drop in the market value of the remainder of the property. That has been the law at the federal level and at the state level for 200 years at the federal level and since 1864 here in Nevada. The language in the bill as it is currently drafted arguably expands and makes other items of damage which are not compensable in eminent domain at the present time compensable in any given case. We just want them to bring that to the Committee's attention and make sure that we weren't inadvertently expanding remedies beyond what we thought we were going to do. The next several amendments...

Chairman Anderson:
Let me stop you there for a second. Let me make sure I understand. So, here I have a piece of property and the city wants 1/3 of it or maybe 2/3 of it. Let's say they take away 1/3 of it. The remaining parcel, the other 2/3 of the piece of ground, I'm not going to be compensated for, even though I may not be able to use it in a fashion that I was able to use it for prior to this time?

Michael Chapman:
Depends on the case. If we take an extreme case where the remaining property was rendered useless, what they call an "uneconomic remainder" in the Nevada statutes, you would be paid for the entire property, and the agency would just make it a total take. If, for example, you had a ten acre property, one of the acres was taken and the other nine acres remain perfectly usable, but let's say your access is disturbed in a certain way that would lower the market value $.10 a square foot or something, whatever the appraiser will come up with. Your property is not useless, but you would be paid that $.10 a square foot as a severance damage.

Chairman Anderson:
What happens if that third you've taken is through the exact center of the 10 acre parcel thus dividing it into two clearly usable sections, but not in the same ability as a whole?

Michael Chapman:
And that happens sometimes. You'll end up with two remainders instead of one. The analysis would be the same. The appraisers would take the value of the property before, and then they would compare the value of the two remainders in the before condition versus the after condition. If there is a difference in the market value, that would be a severance damaging. There are

certain things, however, that you are not paid for. You're not paid for personal annoyance and inconvenience, say during the construction of the project. If there is a loss of business, you have a restaurant and you get 10 customers less a month, you are not paid for that under the current law. We wanted to make sure we had some language in there that made it clear the Legislature is not changing that law, unless the Legislature wants to change that law. That's our point.

Chairman Anderson:
So, I can see the scenario already. So, my friend here on the far left is not going to be able to get to the other 8.3 acres of ground because you have the front half of the acreage cut off. He's not going to be able to be compensated for the access to the other acres, unless, of course, the Legislature so chooses to make that a repayment?

Michael Chapman:
No, Mr. Chairman. I don't think so. You changed the hypothetical just a little bit. If an owner's property was completely taken temporarily, in other words, access completely blocked, and he was unable to use his land for any purpose whatsoever, but he was going to be restored to his land in the after condition when the project is over, he would be paid for a temporary taking in that case. It is generally measured upon the fair rental value of his property over that period of time. Then, he would be getting the property back afterwards. In the case where he never got his property back, was landlocked forever, and it was of no use to him, then the government under the current law, would be required to pay for his property and take title to it.

Chairman Anderson:
You will be available when we put this bill into the subcommittee?

Michael Chapman:
Yes, Mr. Chairman. The next point is discussed generally in our proposed amendments from the bottom of page 2 to the bottom of page 3, and it deals with the issue of offers of judgment. I'll just kind of deal with it all together. The offer of judgment is a policy tool which has existed in our statutes for many decades. What this means is that any party to a civil litigation, including an eminent domain case, can make an offer to the opposing party to settle the case. The government can make an offer to the landowner, the landowner can make an offer back. If the person who receives the offer rejects it, and does not do better in court, it gives the judge the power to do a few things, one of which is by statute. The person who rejected the offer does not get to recover any of their fees, that's automatic. The judge then has the discretion to award the costs of the offering party against the party that rejected the offer. The cost

means a whole variety of things which are defined in the statute. From photo copies to fees for the jury, expert witnesses, things like that. The third thing that the judge can do is order the party who rejected the offer to pay the attorney fees of the other side. This is a very stiff standard under a case that the Nevada Supreme Court determined a couple of decades ago called *Beattie v. Thomas* [99 Nev. 579 (1983)]. You have to prove that it was grossly unreasonable to reject the offer, and several other difficult standards.

Chairman Anderson:
Let me just indicate to you, and your time may be better spent with the subcommittee than what we're going to end up doing here. The information is all contained here in the amendments that you obtained from the Committee.

Michael Chapman:
I was not going to specifically state that. I was just simply going to state some of the policies for the benefit of the Committee today. Then let me cut through to the bottom line on the offers of judgment. Right now there is a policy set up that has pretty much of a level playing field, where both sides can use the offer of judgment. They are a device, which has been endorsed by our Supreme Court as an element to advance settlements. I do not agree with Mr. Padgett's analysis of the *Monument* case where he said that case stated you can't impose these costs on the landowner. In that case, Judge Douglas, who was then on the district court bench, partially imposed the offer of judgment by refusing to let Monument Point collect its own costs. The Supreme Court affirmed that judgment. In an earlier case called *Walker Martin v. Nevada Power Company*, however, the Supreme Court said that there is no constitutional infirmity to offers of judgment in an eminent domain case. We need to caution the Committee that both *Monument* and *Walker Martin* are not published decisions. It's background, but they cannot be cited or used in a court case. Before I move onto my next section, is it appropriate to ask if there are questions?

Assemblyman Carpenter:
I thought Mr. Padgett's testimony had some validity to it. It seems to me that if you and I get in a scrap and we go to court, and I make an offer and you don't accept it, and you make an offer and I don't accept it, I think that's a little different than eminent domain where you're playing against the entities out there. I think that maybe it would level the playing field a little bit if the entities knew that they had to pay the cost no matter what the outcome might be. Just my opinion.

Michael Chapman:
There are states that, in fact, will ask the government to pay the landowner's fee. I think Florida is one of them. There are some cases where the landowner

does not get the fees, but that's a policy choice. Whenever you unlevel the playing field, and I'm defining level as what we have now in our current system, and you require more dollars to be paid to a landowner, the taxpayers are paying those dollars, so it becomes a choice along those lines as well. Really, the offer of judgment only affects people if they are unreasonable, if they unreasonably reject a settlement offer. In the case that Mr. Padgett talked about in *Monument*, we tried that case opposite Mr. Padgett's firm on behalf of the Public Works in Clark County. We had made an offer of judgment of $400,000 when our appraisal was $8,600. Very generous offer, we thought. Their testimony at trial, however, was $4.6 million for a 549 square foot acquisition of land out of a 14 acre parcel, a subdivision. What we would have ended up with is paying about $6.6 million in that case, so our offer was very generous. In a case like that, when you have developers in multimillion dollar parcels of land who do not want to be reasonable, the way the law is now, there is no criminal prohibition if we have an offer of judgment rejected. To go to the court and ask the judge to make a decision, if it would be appropriate in that case to award the costs and the fees, they didn't award them, but that's a right that the taxpayers had.

[Mike Chapman, continued.] That concludes my offer of judgment section, but I wanted to address two other items just briefly. Under Section 4 of the proposed bill is a requirement that when a preliminary offer of compensation is made to a property owner, which would be before an eminent domain case was even filed, that offer be recorded with the county recorder. What disturbs us there is that conflicts or brings into play another law, which has been enacted through case law in *Nevada Department of Transportation v. Barsy* [113 Nev. 712 (1997)] called "precondemnation damages", and what that means is when there is an official expression of an attempt to condemn someone's property, if you do not condemn quickly, and you have an unreasonable delay, you will pay damages precondemnation. We don't want the recording of an offer to somebody to be construed as an official declaration of an attempt to condemn, which I can pretty much predict would occur. The bill as currently written also requires that any kind of tenants on the property be given a notice at the time of the offer, and that's what happened in *Barsy*. The Nevada Supreme Court held that NDOT [Nevada Department of Transportation] had to pay precondemnation damages in that case because the tenants left the property even though the condemnation did not occur for a year or two after that.

My final point is in Section 8, and this is a section that deals with a finding by the agency of public use and necessity. This is what the "60 Minutes" piece dealt with. Is it really a public use to acquire somebody's house in Lakemont [Lakewood, Ohio] or the brake store in Mesa? That is a finding that is made legislatively. Under eminent domain law, this Legislature has that authority,

which the Legislature delegates to state agencies, cities, and others. It is a legislative function to make that decision, which the judges give respect to. This finding, if it is to be made, and judges can review this and in extreme cases overturn it, but these are things that are made by the judge, not the jury. We want to avoid a situation where, hypothetically, we just finished acquiring property for the ReTRAC [Reno Transportation Rail Access Corridor] project. There were 33 acquisitions. We would not want to be in a position where a jury independently in each case decides whether they like the project or not. In other words, has a veto over the project. That would need to be made in the first instance by a judge, consistent with the way the law is at this present time.

Stephanie Garcia-Vause:
I'm representing Section 6 right now. Although we would prefer to see no changes to the Section where "blight" is determined or defined by one criteria, we recognize that Assemblyman Horne, the sponsor of the bill, would like to tighten up the term, and ensure that there is more information to define "blight." For that reason, before you go see tier one and tier two criteria, tier one criteria, we feel, can stand alone. If a situation were to meet one of the two criteria listed under tier one, that they would in fact define "blight." The criteria under tier two are more numerous through the old section, but that some of those could be combined. Two or more of those could be combined to define "blight." Blighted areas can work with both eminent domain and redevelopment, and irrespective of each other, although in this section, they are married, so we wanted to make sure the Committee knew that. We'll be available to answer any questions later on.

Chairman Anderson:
Would you be available, Ms. Garcia-Vause to work with the subcommittee? In other words, are you here in Carson City, or are you back in Henderson?

Stephanie Garcia-Vause:
I'm here, Mr. Chairman, so I would be available to work with the subcommittee.

Nicole Lamboley, Legislative Relations Program Manager, City of Reno, Nevada:
For the record, the council asked me to let you know that in its current form, we do oppose the bill. We have been working with Assemblyman Horne, and we are committed to working with Assemblyman Horne in the subcommittee to make this a bill that we think we could accept. We have our expertise with Mr. Chapman and would provide that to the subcommittee.

Chairman Anderson:
Thank you for making Mr. Chapman available, and thanks to the city. Ms. Coder in Clark County you have indicated a desire to speak in favor of the bill with amendment. Do you have an amendment that you wish to submit?

Lesa Coder, Director of Operations, Clark County, Nevada Redevelopment Agency, Clark County, Nevada:
We too have been working through Dan Musgrove, our lobbyist, and other members including Ms. Vause from Henderson, Maddy Shipman, Renny Ashleman, so I would reserve comment at this time. It would suffice to say that we do applaud the efforts of Assemblyman Horne who has introduced the bill to try to make this particular process more fair and equitable both to agencies throughout our state as well as property owners. If it does go to subcommittee, we'd be happy to participate in any way possible, but at this point in time, I would reserve comment.

Chairman Anderson:
Is there anybody else that has a written amendment who are in favor of the bill? I know I had several people who are neutral on the bill. It was my intention to kind of move to them.

Tony Sanchez, Legislative Advocate, representing LS Power Development:
In looking at the bill, we're not so much opposed, but just expressed a concern that the law of unintended consequences would limit the ability of this power project in terms of it utilizing the railroad line coming in to transport the coal, and that we not be drafted out of the ability to eventually become a redevelopment agency in conjunction with the City of Ely and White Pine County. We have indicated, in general, some language to the Vice Chairman and would endeavor to work with him on that, and could get something in writing to him as soon as this afternoon.

Chairman Anderson:
So, am I to understand, Mr. Sanchez, that LS Power has some proposed amendments that have been submitted to Mr. Horne but have not yet been submitted to the Committee?

Tony Sanchez:
We verbally indicated they went to Mr. Horne and could actually submit them right now in a very draft form.

Chairman Anderson:
I would suggest that you might want to make them available to the subcommittee that will be created in order to hear the remaining testimonies on the bill.

Cheri Edelman, Assistant City Engineer, Public Works Department, City of Las Vegas, Nevada:
We are in support of A.B. 143 with the amendments that were presented by Maddy Shipman with all the entities that were involved. However, the bill as currently written and the amendment as currently written presupposes that an appraisal is always required, and we just want to continue to work with the Committee to possibly come up with some verbiage to allow us to essentially not have to have an appraisal in the event that we're just taking a very small portion of land, and we can use comparables for that land in the areas such as easements or small slivers. With that language, we would be happy to work with the Committee.

Derek Morse, Deputy Executive Director, Regional Transportation Commission, Washoe County, Nevada:
I have here today our chief legal counsel, Mr. Stan Peck. I'll try to be very brief. We did understand coming into this meeting that the proposed legislation concerned redevelopment, which we do not participate in. However, I think it's very clear that this Legislature and future legislatures and the courts will be urged to apply the precedents in this legislation to all eminent domain proceedings, and that concerns us greatly. The RTC [Washoe County Regional Transportation Commission], because of our duty to the public to create and provide transportation systems, is looking at $240 million worth of property acquisition in the next 25 years, and that's a conservative estimate. Because this is public money for a public interest, the public's interest should also be protected. The playing field should be level, and we're concerned about the precedents in this legislation that would tilt that playing field away from level and too much in favor of the property owner to the detriment of the public. I will make no further comments. I just want to express that concern. We will participate in the subcommittee hearings. I would like this opportunity for Mr. Peck, because he's had great experience in this area, to express a couple of thoughts that may be of interest to you.

Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Washoe County, Nevada:
We are a major player in the field of eminent domain, as Mr. Morse alluded to. At the present time, I have a trial scheduled for Monday morning. I have eight other condemnation cases in the wings. As Mr. Morse indicated, we have some concerns about this bill. Not so much as it relates to Chapter 279, because we

don't get involved in that field, but the overflow or expansion of the provisions of that bill into Chapter 37, which is the principle eminent domain chapter that regulates eminent domain actions. Those concerns have been confirmed largely by Mr. Padgett's presence, and some of the requests that he's made as it relates to the amendments to this bill that also continue over into chapter 37. Specifically, one of our major concerns relates to the provision of an appraisal report and a commencement of negotiations.

[Stan Peck, continued.] Let me say at the outset that we're all very concerned about the rights of the landowner. It is our practice in Washoe County and with the Regional Transportation Commission to provide the owner with a letter from the appraiser detailing, in summary form, the various aspects that were taken into account in arriving at an opinion of just compensation.

We also provide the landowner an opportunity to come into the RTC offices to review the appraisal report just so the letter can be substantiated, for lack of a better word, but not in favor of giving the appraisal report to the landowner for a couple of good reasons. First and foremost, appraisals, and condemnation proceedings: if it gets down to that they are adversarial proceedings, certainly, we all want to get to a fair settlement. The reality of it is if the landowner is dissatisfied with information that he receives from the public agency, in this case the Regional Transportation Commission, he has an opportunity to go out and get another appraisal report to see if that appraisal will verify his opinion of value. It's supposed to be an independent appraisal report, and my experience in more than 25 years of doing this work is that if the appraisal report is provided to the landowner, it always ends up in his appraiser's file. Therefore, it sets the baseline as to what the value's going to be in the case, which is obviously in my mind not in the best interest of the public who's paying this money. If you have two independent appraisals, then the probabilities are that maybe you'll have an opportunity to get to a resolution of the case for a fair and just amount.

The other part of this is the fact that the basic unfairness of that is recognized in the court rules, and the fact that the district court rules provide for expert writings and reports to be exchanged between the parties at a particular point in time. That keeps it level and keeps both sides negotiating, hopefully from points where they've been objective and have gotten objective opinions, as opposed to establishing the baseline and having the number be much higher because the landowner had the report and also the ability to pick apart and/or to discover points that may be of interest to the appraiser that he may have not otherwise received, et cetera. That's really all I have to say about that.

The second part relates to the offers of judgment. I want to endorse emphatically all the statements made by Mr. Chapman. I think he covered this

area very well. Mr. Padgett gave an example without giving you the demands of the landowner. I think it was good Mr. Chapman apparently participated in that case and had that information, so you could see the extreme nature of the demands of the landowner in that case, and probably why it was appropriate to make an offer of judgment and the court to have the ability to reward costs and fees, when that case didn't settle and the jury came in at a figure that was lower than the offer made by the acquiring agency.

[Stan Peck, continued.] That's been my experience as well. I have a case that is scheduled to go to trial Monday morning. It's a case in which there are two expert witnesses, the expert witness for the Regional Transportation Commission, and the expert witness for the landowner. The landowner wants $300,000 more. The value as determined by the RTC's appraiser is $400,000; the landowner's appraiser is $500,000 and the landowner wants $800,000. Now, that to me doesn't seem reasonable, particularly when the landowner lacks qualifications of any substance to arrive at an opinion of value in a case where we are talking about improved property which has had rental properties on it and requires a greater degree of evaluation and education than what the owner normally has. So, without the ability to make an offer of judgment in the case, it's very difficult to get to a place where you can have a settlement of the case.

If in every instance, the only person who could make an offer of judgment was a landowner, and the agency or the public was potentially responsible for payment of fees and costs, there would be very few times when cases got resolved, because there would be little or no downside to the landowner to proceed into trial. He could afford to be unreasonable in his demands because it would be all upside potential and very little downside potential. Again, this is taxpayer money. We're talking about one landowner in the context of the condemnation case, but collectively, we're talking about all the residents of the state of Nevada who are landowners and paying taxes and are paying those costs as well. We think the law should remain as it is with both sides having an opportunity to make offers, and I think that encourages settlements of these cases.

Chairman Anderson:
Mr. Peck, would you be available to the subcommittee to work on language?

Stan Peck:
I am the office, for purposes of the legal staff at the RTC, Mr. Chairman, but I will make myself available assuming that I am not in trial or have some other commitment.

Vice Chairman William Horne:
Just on the one question on offers of judgment. In my testimony, I stated that we're the only jurisdiction that uses it, and that was according to our Legislative Counsel and the Institute of Justice, but Mr. Peck mentioned Florida. That given, Nevada and Florida, it seems that the rest of the country gets through their eminent domain proceedings and the like without the offer of judgments. Why do you think that Nevada would be unique in not being able to do it without?

Stan Peck:
I'm not convinced that's an accurate statement you received that offers of judgment are only available in Nevada and potentially Florida. I think Mr. Chapman could speak to that. Be that as it may, we want to be fair, and I recognize that the *Constitution* provides for just compensation to the owner, but again, we're talking about extreme cases where attorney's fees and costs of it will be awarded. As Mr. Chapman alluded to, there's a reasonable criteria that the court takes into account. It's not an automatic. It's not as simple as has been projected to be the case. I think the courts are very concerned and aware of the requirements of the *Constitution* and are not going to enter into a decision to award lightly substantial costs and fees where the facts don't demonstrate that they're warranted, as was the case that Mr. Chapman referred to with Mr. Padgett on the other side where the demand was $4,600,000, and the offer was $400,000, and the appraisal was substantially less. It's a matter of policy again. Do we want to take taxpayer money that we only have so much of for purposes of building improvements, roadways, or whatever it may be, in order to pay exorbitant costs and fees, or do we want to use that money to build infrastructure that we need in the state of Nevada.

Chairman Anderson:
I appreciate the argument that you're trying to put forward in front of us.

Greg Salter, Special Assistant to the City Manager, City of Sparks, Nevada:
The city supports the bill with amendments. We'd like to participate in the workshop proceedings.

Chairman Anderson:
You would be available for that?

Greg Salter:
Yes, sir.

Chairman Anderson:
We'll close the hearing on A.B. 143. It is the intention of the Chair to put this in a subcommittee. I'm going to remove A.B. 155 from the schedule for today, and I'm going to move it to next week. It is my bill.

Vice Chairman William Horne:
Let's bring this work session to order. We're going to start this Committee work session with Assembly Bill 47 (Exhibit F). Ms. Combs.

Assembly Bill 47: Requires screening of certain delinquent children for mental health and substance abuse problems. (BDR 5-194)

Allison Combs, Committee Policy Analyst:
Assembly Bill 47 is a measure within the last work session document, and Chairman Anderson offered to meet with Ms. Bosworth from the Administrative Division of Child and Family Services (DCFS), and Leonard Pugh with the Nevada Association of Juvenile Justice Administrators to try to clarify some of the amendments on this bill. The bill currently requires the juvenile court to order a delinquent child to undergo screening when the court commits the child to a detention facility or a correctional care facility to decide whether a child was in need to mental health services or is an abuser of alcohol. There were concerns raised regarding the timing for the screening as well as the overall regulatory process for approving the screening tools. The Chairman did meet with the two individuals, and the following amendments are proposed for the Committee's consideration.

First of all, on page 3, number 1 (Exhibit F), the youth to be screened, the proposal is to amend the bill to provide that the screening be required for the child in two different time periods. The first one when the child is taken into custody and then detained for the detention hearing that is currently required under Chapter 62 of NRS [*Nevada Revised Statutes*]. The facility in which the child has been detained must conduct the screening as soon as practicable after the child has been detained at the facility. The second time frame for the screening would be for a child who is adjudicated and committed by the Juvenile Court to the custody of an appropriate facility or the Division of Child and Family Services. Then, as in A, the screening would take place as soon as practicable after the child has been committed.

The second portion of the proposed amendments relate to the selection of the screening tool. Under the bill originally, the Division was required to develop the regulations determining which screening tool would be used. The proposal

would revise these provisions in the bill and adopt regulations as follows: requiring the local detention facility and the regional facility to use a screening tool DCFS has determined is a research-based tool that is reliable and valid for identifying adolescents. The procedure would be that each local detention facility and regional facility would submit its screening tool to DCFS for approval based on these requirements, and then the facility would be required to initially submit a screening tool for approval by July 1, 2006, and then every five years thereafter or when a facility wishes to use a new screening tool. If DCFS doesn't approve the screening tool, and the facility doesn't submit a new tool for approval, then the Division must notify the appropriate board of county commissioners or the chief judge in the appropriate judicial district. Upon such notice as the facility's failure to obtain approval, the board of county commissioners and/or the chief judge would take appropriate action to make sure the facility complies with the requirements of the law. The purpose of the bill as it was proposed by the interim study committee on juvenile justice was designed to provide uniform screening throughout the state. Mr. Pugh and Ms. Bosworth are here.

Assemblywoman Buckley:
It looks like the Chairman and the folks who worked on this came up with a good compromise, so I would recommend amend and do pass.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 47.

Vice Chairman Horne:
Everyone does know that this has to be referred to Ways and Means.

> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mrs. Angle was not present for the vote.)

It will be referred to Ways and Means. Let's jump to Assembly Bill 88.

Assembly Bill 88: Allows possession of certain rifles or shotguns that have been determined to be collector's items, curios or relics pursuant to federal law. (BDR 15-983)

Alison Combs:
On page 6 of the work session document (Exhibit F), A.B. 88 is set forth. This is a measure addressing Nevada's current law that prohibits short barrel rifles

and short barrel shotguns with certain exceptions for peace officers and licensed collectors and dealers. The bill would allow the possession of these items if they're determined to be collector's items, curios or relics pursuant to federal law. In one of the handouts, included with the work session documents is a rather thick document entitled, "Firearms and Curios or Relics List" from the Bureau of Alcohol, Tobacco, and Firearms (ATF) website (Exhibit G). It was taken off their website this week and provides both the overview of the determination procedure at the federal level as well as the items that have been determined and are on the list as of today. There were no proposed amendments during the testimony on the bill.

Assemblywoman Buckley:
So who determines if they are collector's items? I'm sure it's in the document, but is it the ATF?

Vice Chairman Horne:
We'll have Mr. Goicoechea answer that question.

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, and White Pine Counties, and Portions of Churchill, Humboldt, Lander, and Washoe Counties:
I'm not an expert on it, but the list is amended by either petitioning the secretary or attorney general and the ATF is how the list is amended.

Assemblywoman Buckley:
The Bureau of Alcohol, Tobacco, and Firearms. They don't do it on a case-by-case basis. They've already determined that those on this list are, and if there's a move to add more, then they go through a rule-making procedure.

Assemblyman Goicoechea:
That is correct, the way I understand it. You would petition then to incorporate it, if you had one that wasn't in this list. I believe because the list hasn't changed for so long, and I think that most of them that can qualify are in fact qualified.

Assemblywoman Buckley:
The only thing that I was thinking about the language is that it would be clearer if it said, "the possession of any short-barreled rifle or shotgun that is included and referred to in this document whether they are determined to be a collector's item." Maybe that's over-thinking it too much. Maybe it's clear enough.

Vice Chairman Horne:
I am a gun owner, and I had concerns, but Legal advised. At first, I asked them to put an amendment referring to it, and they thought it's addressed in the bill and the procedures, and doing that would muddle it. I've signed off on it.

Assemblyman Carpenter:
I'll move do pass on Assembly Bill 88.

Vice Chairman Horne:

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS ASSEMBLY BILL 88.

ASSEMBLYWOMAN ALLEN SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Angle was not present for the vote.)

Vice Chairman Horne:
[Returned the Chair to Mr. Anderson.]

Chairman Anderson:
I'm putting Assembly Bill 91 back on my board (Exhibit F). It has the need for additional issues that have been brought to my attention. There's nothing wrong with the bill itself; however, it needs to be a vehicle to solve some other issues that have been brought to my attention, and so we need to repost so that we can have an additional hearing on A.B. 91 for the fees of court reporters. Mr. Conklin, is your subcommittee report ready to go?

Assembly Bill 91: Revises provisions governing fees of reporters of district courts. (BDR 1-472)

Assemblyman Conklin:
I would believe we're ready to go. If it's your intention to move with it today, and I believe it's your intention to move, it's in this work session document. If either Research or Legal could go over the documents, then maybe I'll make some final remarks.

Chairman Anderson:
Let's turn our attention to the work session document (Exhibit F) from the Subcommittee on Assembly Bill 51.

Assembly Bill 51: Provides procedure for parties to adoption to enter into enforceable agreement for postadoptive contact. (BDR 11-457)

Katie Miles, Research Analyst, Legislative Counsel Bureau:
If you'll turn to the first page of the ivory paper (Exhibit F), that's the report of the Subcommittee on A.B. 51. The Subcommittee met on February 28, 2005, and March 4, to hear additional testimony and discuss proposed amendments to A.B. 51. The Subcommittee received additional testimony concerning the bill and proposed amendments to the bill from Cynthia Lu, Washoe County Public Defender, Lucille Lusk, on behalf of Nevada Concerned Citizens, Helen Foley, who is a private citizen, Justin Jones, on behalf of Families Supporting Adoption, Lesa Coder, private citizen, David Arnold, private citizen, Rick Perry on behalf of Latter Day Saints Family Services, Chris Escobar, a private citizen, Amy Turner, private citizen, Angela Chalmers-Howald, private citizen, and Kevin Schiller on behalf of Washoe County Social Services.

On a motion from Mr. Anderson seconded by Ms. Allen, the Subcommittee voted unanimously on March 4, 2005, to represent to the full Committee to amend and do pass Assembly Bill 51. The recommendations for amendments are contained in the following document. Also, following the adjournment of the Subcommittee, Kevin Schiller from Washoe County Social Services indicated to Mr. Anderson that many adoptions occur interstate, and although the initial proceedings begin in Nevada, they're not finalized in Nevada. However, Mr. Schiller indicated Washoe County Social Services does not feel an amendment is necessary at this time. Washoe County Social Services intends to implement a policy of notifying natural and adoptive parents that upon moving to another state, the agreement may not be enforceable. Now, I will turn it over to Ms. Yeckley to discuss the proposed amendment.

René Yeckley, Legal Division, Legislative Counsel Bureau:
What I'm going to do is just quickly review the bullet points of the amendment that was passed by the Subcommittee. You can find those as listed as pages 1 and 2, in the ivory papers in your work session document (Exhibit F). The first provision that was to be included in the proposed amendment is a provision that was already in the bill. It's a provision dealing with the authority of natural parents and prospective adoptive parents of a child to be adopted to enter into an enforceable agreement that provides for postadoptive contact between the parties.

The second provision was to include an enforceability provision, and this would provide that an agreement to the postadoptive contact is enforceable, if it is

included in the adoption decree. This is consistent with the relevant Supreme Court decision. That is also already in the bill.

[René Yeckley, continued.] The third provision deals with the required elements of the agreement. This Subcommittee wanted to set forth the agreements for postadoptive contact must be in writing, must be signed by the parties, and not provide for monetary damages for noncompliance. We did that in the proposed amendment. The only change to this was in drafting. We moved the third item, the item prohibiting monetary damages for non-compliance with the postadoptive contact agreement to another section because it's a substantive prohibition.

The other provision the Subcommittee wanted in the proposed amendment also is another provision that is currently included in the bill. It deals with the identity of the natural parent not being included in the agreement, and if this is the case, the natural parent must identify somebody who can receive service of process for the natural parent.

The next provision deals with the duty to inform the court of the agreement. This is a new provision that is not currently included in the bill. The adoptive parent, the adoption agency, and the attorneys to the adoption proceedings are required to inform the court if the parties had entered into such an agreement for postadoptive contacts. Further, a new provision would be to require the court to canvass the adoptive parents, the adoption agency, and the attorneys to the adoption proceeding as to whether the parties have entered into such an agreement.

The next provision requires that the agreement be included in the adoption decree if the court determines that the parties have entered into such an agreement, the court shall include the agreement in the adoption decree, which thus makes it enforceable. On the next page at the top, there are provisions dealing with the birth parents' rights to petition the court. The birth parents may, for good cause shown, petition the court to prove the existence of an agreement, and for the enforcement of the agreement. For example, the parties who were canvassed had lied about the existence of the agreement, and the adoptive parents had violated that agreement. The birth parent may petition the agreement to prove that the agreement does, in fact, exist and request that the court include that agreement into the adoption decree for it to become enforceable. Further, the Subcommittee voted to provide a civil cause of action for the birth parent in the event the parties that have been canvassed by the court had lied about the existence of that agreement.

[René Yeckley, continued.] The next provision deals with modifications and termination of the agreements. The adoptive parents may petition the courts for modification or termination of the agreement. This is new for the bill in the sense that it is now limiting the right to modify or terminate the agreement to only the adoptive parents. The natural parents would not have that right. Further, the modification may only limit or decrease the contact provided for an agreement and not in any way increase or expand the obligations of the adopted parents.

The next provisions deal with remedies. The remedies as is currently in the bill would be left silent, and, therefore, would be left primarily to the discretion of the court. The exception to this is in Section 6 of the proposed amendment. We set forth that any violation of the postadoptive agreement would not be grounds for revoking or nullifying or setting aside any valid release, consent, or relinquishment for adoption, nor would it be grounds for setting aside an order or decree for an adoption, and it would not be grounds for awarding any monetary damages for any violations of the agreements itself.

The next provision deals with the statute of limitations, this is a provision that is currently included in the bill. This provision provides an action to enforce the agreement and must be brought within 120 days after the breach of the agreement.

The next provision deals with the presumption in favor of the adoptive parents. Currently, the bill includes a presumption that if the parties had entered into such an agreement, there's a presumption that the contact provided for in the agreement is in the best interest of the child. This new provision would, in a sense, flip that presumption so that if an adoptive parent requests a modification or a termination of the agreement, there is presumption the modification or the termination would be in the best interest of the child.

On the top of page 3, there is a provision for the affirmation of the adoptive parents' rights as the legal parents of the child. We've added a provision that the establishment of an agreement for postadoptive contact does not affect the rights of an adoptive parent as that child's legal parent as set forth in NRS 127.160.

The next provision is also a new provision. It deals with the consideration of the wishes of the child who is involved in the agreement. There is a provision that provides that in determining whether to modify or terminate an agreement the court may consider the wishes of the child who's involved in that agreement.

The next provision is a provision that is already in the bill. It has to do with the adoption being unaffected by any noncompliance of the agreement.

[René Yeckley, continued.] In the final provision, it deals with and provides for the court's jurisdiction. It supports that the court provide jurisdiction over this matter until the child reaches 18 years of age, and the child becomes emancipated. In the new provisions, item 3 is a clarification that the court retains jurisdiction until the agreement has terminated. You can see on the following pages the actual text for the provisions I just described.

Assemblyman Horne:
I was curious, was there a discussion on the consideration of wishes of the child on age?

Chairman Anderson:
Mr. Conklin, will you please answer that?

Assemblyman Conklin:
There was, and I believe in the original document that we agreed upon, the age was 12. There was a request to amend that. The language specifically said, "The court shall consider the wishes of a child 12 years or older." There was a motion and it passed in Subcommittee to make that "may consider the wishes," and it was a drafter's choice to take off "12 years old" in place of "may." I do understand that there might be some heartburn, and I do have no opposition to leave the word "may", but include the word "12 years old" in there if that so suits the Committee. One way or the other, we may find that captures more of our Committee members.

René Yeckley:
I just want to clarify why that drafting choice was made. Once the Subcommittee had decided to make it discretionary for the court to consider the wishes of the 12-year-old or the child who is 12 years old or older, we thought it was best not to leave that in there to leave an implication that the court would not be able to consider the wishes of the child who may be 11 or 10 years old. We could certainly amend that, if that's your desire.

Assemblyman Horne:
My concerns were envisioning some 5-year-old on the stand stating what their wishes were or not. Could it be possible to say 12-years-old or a child deemed to be mature by a judge, because judges do *in camera* interviews of juveniles? A judge may deem that a 10-year-old can properly voice their desires where another 10-year-old could not.

Chairman Anderson:
Mr. Horne, my feelings were that if we allow the judge to make the determination as to whether the child was capable of reaching a decision, regardless of their age, that they were putting our responsibility on the judge to weigh that question as to whether a child has matured, just because he's over a particular age that we chose. I still think that would be something that the judge will have to take up, of course that was my feeling on the particular issue.

Assemblyman Oceguera:
Actually, I had a different question, but I can weigh in on that as well. I kind of agree with Mr. Horne, for instance, in the situation where we have a child left home alone. We talk to the child and find if they're competent to be home alone. I kind of would equate this to that. If a child was 10 and was competent to make that kind of decision, I would equate it the same way. I don't think we would put an age there, but whatever your wishes are.

Assemblyman Conklin:
I almost wish we had a judge here because I certainly understand the concerns of my colleagues. I'm wondering if it's implied in that sentence, because it uses the word "may." It is at the discretion of the judge to decide if that child is ready.

Assemblywoman Buckley:
In my other job, we have a unit in our office that does nothing but represent abused children; "may" just implies that the judge could do it, and the judge already considers, on a case-by-case basis, the maturity of the child. Some 11-year-olds, due to the abuse in their home are like 30-year-olds. There are some 11-year-olds without any maturity. I think it's better just to leave it up to the judge. What the judge usually does is bring the child into their chambers. It's then video conferenced to the courtroom. The attorney for the parents is there. The attorney for the child is there if they have one. The judge just really talks to the child. The attorneys are present, rights are protected, and they just do it when they really think they need the child's input. Otherwise, the child's attorney, if they have one, will kind of say the child thinks this is a good idea, and that's it.

Assemblyman Oceguera:
I just had a question, and maybe I'm missing something, but on page 1 of the [ivory pages in the] work session document (Exhibit F), it talks about the duty to inform the court of the agreement, and it uses the term "shall"; canvassing of the parties, and it uses the word "must"; and then "the agreement must be included in the adoption decree." But then on the next page, the birthparents right to petition the court. I'm not understanding why that section needs to be

there when you: "shall inform the court," "you must canvass the parties," and you "must include it in the adoptive decree."

Chairman Anderson:
I'm sure Assemblyman Conklin is prepared to answer this question, and so is the Chair. Mr. Conklin.

Assemblyman Conklin:
That was probably one of two great compromises on this bill. One of the biggest heartburns of the original bill was that all parties had to disclose even if they were not offering postadoptive contract agreements as part of their adoptive procedures. In their eyes, they were telling people about something that they weren't going to offer them in the first place for reasons of choice. So, in order to get around that and still protect the birthparent from giving up their child by an agreement that is not enforceable, we obligated those parties when they come to court because the birth parent does not come to court when the adoption is made final. We've obligated them to have a positive obligation to disclose to the court that such an agreement has been entered into. That disclosure by them and then in turn the court has an obligation in canvass to make double certain that if an agreement was entered into, it is put into the document.

If the question becomes, what if somebody lies? Then that person has a right to petition the court for good cause to bring that case forward, if the agreement was entered into and it was signed by both parties.

Assemblyman Oceguera:
That makes sense. It just seems, though, that the first two I have mentioned are the "shalls" and "musts," it must be included in the adoption decree. So, it's there.

Assemblyman Conklin:
It's only there if the parties have come to court. Remember that the birth parents are not there. If they've come to court and disclosed like they were supposed to or if they did not disclose, then the birth parent, because they are not present at that time, needs to have that ability to go back to court and say, "Wait a second, this was part of the agreement. Here's my signed document by all parties involved." Am I answering your question?

Chairman Anderson:
Let me try it again. The assumption is that the only people who are in court are the new adoptive parents and the child. The only time that the birth parent is going to have any action or knowledge is when they are dealing with the

agency when they gave up the child. Therefore, the assertion in front of the court has to be made by the adoptive parents and then in order for the trigger to take place, the birth parent has to come back to court and wave the document in front of them that they have, or whatever agreement. That's the reason for the burden. Before, we made it very, very clear in the adoptive agreement in these kinds of things. Now, they will not be there, and that is what the compromise is about relative to the fact. However, the adoptive parents now have an obligation of disclosure, and the court has an obligation of canvassing the individual. Mr. Oceguera, does that clarify?

Assemblyman Oceguera:
Thank you, Mr. Chairman. That's good; I just didn't understand it completely.

Assemblywoman Buckley:
I think this is a tremendous compromise. My only question was that, especially for children in the foster care system who are older, they have an attorney representing them. So, you probably would want that attorney listed with the other attorneys. Usually, a newborn being adopted doesn't have one and that doesn't come up. They're not appointed one. So the statute is consistent, we might want to add that part in.

Chairman Anderson:
Which section of the potential amendment?

Assemblywoman Buckley:
It would be wherever the other attorneys are referenced. For example, Section 4, "the court must personally address," it would be an attorney representing a child, if there is one, just so it would be consistent. If that's not too much trouble. I don't want to interrupt this great work by any means.

Chairman Anderson:
Clearly Ms. Yeckley has done far and beyond what any of us had anticipated here with what I think is a pretty strong piece of legislation. But I think the key here is that it clearly asserts the right of the new, adopted parents in a stronger fashion then they currently are. It clearly gives them status that they did not have before. The only way the birth parent has an opportunity to address her question is relative to the fact that there was an agreement, and it wasn't entered at the time of judgment. Ms. Yeckley, do you think those accommodations for Ms. Buckley's point can be made?

René Yeckley:
Yes, we could easily add that to Sections 3 and 4 where there are references to the other attorneys.

Chairman Anderson:
I'm waiting to make sure that there are no other questions from members of the Committee to Mr. Conklin, the Chairman of the Subcommittee to a bill that I feel so strongly about.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS ASSEMBLY BILL 51.
>
> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mrs. Angle was not present for the vote.)

The Chair will take the bill. Let's turn to Assembly Bill 21. When we heard this bill originally, we looked at three bills: Assembly Bill 7, Assembly Bill 10, and Assembly Bill 21.

Assembly Bill 21: Prohibits civil compromise of certain misdemeanor offenses. (BDR 14-846)

Allison Combs:
The bill is the first one on the work session document on page 1 (Exhibit F). I wish to provide some background on the legislation itself, which proposes to prohibit civil compromises in misdemeanor cases involving acts of domestic violence. Page 2 of the work session document provides some amendments that were discussed during the hearing based, as the Chairman indicated, on two other bills that were proposed including, A.B. 7 and A.B. 10. Do you want me to go over those?

Assembly Bill 7: Prohibits civil compromise of certain misdemeanor offenses. (BDR 14-104)

Assembly Bill 10: Prohibits civil compromise of battery that constitutes domestic violence. (BDR 14-342)

Chairman Anderson:
Please.

Allison Combs:
The first one there indicated that A.B. 7, which was a similar piece of legislation heard that same day and proposed by the Attorney General, also included a prohibition on compromises, civil compromises, and offenses committed against persons 60 years of age or older. Then, the second bill, A.B. 10, was distinct in that it proposed to limit the prohibition on civil compromises to batteries that constitute domestic violence, rather than any act of domestic violence, and these just involve misdemeanors.

Chairman Anderson:
Ms. Gerhardt, is there any other piece of information that you feel the Committee needs to get clarity to before we proceed?

Assemblywoman Susan Gerhardt, Assembly District No. 29, Clark County:
I just wanted to note out of the three possible bills, that we really took the best out of each one, and came up with a version that addresses everybody's concerns. The second amendment addresses some of the concerns that we heard when we first heard the bill, and that was we're limiting it just to battery. We are not just talking about all misdemeanor offenses, which would have included assault. We're narrowing it to just the battery issue.

A couple of other things that I think need to be addressed: When we originally heard the bill, there were some concerns by the Department of Corrections that there might be some impact to them, and Mr. [Fritz] Schlottman emailed me recently and said that was no longer a concern. He had done a little further research, so I feel good about that.

There were also a couple of concerns about the flexibility in domestic violence. There were a couple of points that I wanted to make. First of all, arrest is mandatory, but only when an officer has probable cause to believe that the domestic battery has been committed. After talking with officers on the street, they made it clear to me that they don't always make an arrest. That would only be if there was probable cause to believe that a crime had occurred.

Secondly, a case can be dismissed if the prosecutor knows or it's obvious that a charge is not supported by probable cause or it can not be proved at trial. Again, there is some flexibility there.

Lastly, the prosecution has discretion not to charge in the first place, which I think is important. Nothing has removed the prosecutor's discretion not to bring charges. The law has only limited the prosecution's discretion once charges have been brought. There really is some discretion with battery domestic violence cases.

Chairman Anderson:
If I'm to understand, what you're suggesting is on page 2, lines 14 to 15 of A.B. 10, "committed is a battery that constitutes domestic violence," pursuant to NRS [*Nevada Revised Statutes*] 33.018. We can amend that into A.B. 21, so that the battery element is handled here. Then, we would narrow that part of the statute to those things that actually constitute battery. At the same time, hold on to violation of a temporary extended order of protection against domestic violence, which would extend it into this area. It seems to me that we could then pick up, and I appreciate the senior citizen issue relative to the document, but maybe that would be an issue that we would have to address at some future time, whatever your pleasure is Ms. Gerhardt, as to include it or not. It's not necessary, but we can include it at your discretion.

Assemblywoman Gerhardt:
I think it's an important addition, if the Committee would consider it.

Assemblywoman Buckley:
I think that limiting it to battery, to assuage some of the concerns, is fine. On the senior issue, I would defer to you and the will of the Committee. It's a good bill. You always worry a little bit about expanding it too much. But, I think it's at the pleasure of the Committee.

Assemblyman Carpenter:
I believe it should be just limited to the domestic violence issue. If we expanded it, the domestic violence issue, we have the elderly, and sometimes the disabled and a lot of other people subject to this. I think we ought to limit it at this time.

Chairman Anderson:
Mr. Carpenter, are you of the opinion that we should narrow it to battery that constitutes domestic violence, or do you believe a broader statement is more important.

Assemblyman Carpenter:
I believe that battery is a good idea.

Assemblywoman Gerhardt:
It's not do or die, on this particular issue with the seniors. I would be satisfied to withdraw it.

Chairman Anderson:
I kind of like the idea of the senior citizens, but I don't want to harm the bill and would indicate a need for its passage. Anyone else wish to testify? The Chair will then entertain a motion on A.B. 21, being an amend and do pass. The

amendment is to change the definition of line 14, as determined by the bill drafter, relative to the proper battery that constitutes domestic violence pursuant to the statute, which is the same one mentioned here already. It's the addition of the terms of battery.

Assemblywoman Ohrenschall:
It was for purposes of making the motion, if you're ready to take one.

Chairman Anderson:
Ms. Yeckley, you wanted to make sure of something.

René Yeckley:
I wanted to make sure that I understand what the amendment would be. Instead of any act that would constitute domestic violence under NRS 33.018, we're going to limit it to a "battery that constitutes domestic violence."

Chairman Anderson:
We are going to limit to a battery, thus broadening the opportunity for the police officer at the scene to make a determination if that is what the practice is in reality. Any other questions? Ms. Yeckley, we're only giving you a concept. We want to make sure that you are comfortable with it.

Assemblywoman Ohrenschall:
As you defined it, Mr. Chairman, before, and as Ms. Yeckley repeated those details.

Chairman Anderson

> ASSEMBLYWOMAN OHRENSCHALL MOVED TO AMEND AND DO PASS ASSEMBLY BILL 21 WITH THE AMENDMENT LANGUAGE:
> - A BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE.
>
> ASSEMBLYWOMAN GERHARDT SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mrs. Angle was not present for the vote.)

Assembly Bill 155: Revises criminal penalties to create consistency in statutes. (BDR 15—2) (Not Heard)

[Chairman Anderson, continued.] We are having a work session on Monday, so we will take these to the work session on Monday. [Adjourned at 11:03 a.m.]

RESPECTFULLY SUBMITTED:	RESPECTFULLY SUBMITTED:
Judy Maddock Recording Attaché	Michael Shafer Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 15, 2005 Time of Meeting: 8:18 a.m.

Bill #	Exhibit ID	Witness	Dept.	Description
N/A	A	Judiciary Committee	N/A	Agenda
A.B. 143	B	Assemblyman William Horne		Video Cassette containing a segment of "60 Minutes"
A.B. 143	C	Assemblyman William Horne		Articles relating to Assembly Bill 143
A.B. 143	D	Brian Padgett, Attorney at Law	N/A	Suggested changes for A.B. 143 and NRS 37.120
A.B. 143	E	Madelyn Shipman, J.D.	N/A	Proposed Amendment to A.B. 143
A.B. 21 A.B. 47 A.B. 51 A.B. 88 A.B. 91 A.B. 92 A.B. 124	F	Judiciary Committee	N/A	Work Session Document
A.B. 88	G	Allison Combs	LCB	Website print out of firearms curios and Relics List