MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
May 19, 2005

The Committee on Judiciary was called to order at 8:25 a.m., on Thursday, May 19, 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
Mrs. Sharron Angle
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:

None

GUEST LEGISLATORS PRESENT:

Senator Steven Horsford, Clark County Senatorial District No. 4

STAFF MEMBERS PRESENT:

Risa Lang, Committee Counsel
Allison Combs, Committee Policy Analyst
Carole Snider, Committee Attaché

OTHERS PRESENT:

Cheryl Blomstrom, Legislative Advocate, representing Nevada Consumer Finance Association
Karen Dennison, Legislative Advocate, representing Sempra Generation
Richard Peel, Legislative Advocate, representing Sheet Metal Air Conditioning Contractors' National Association, National Electrical Contractors Association of Southern Nevada, and Mechanical Contractors Association of Nevada
John Slaughter, Legislative Affairs Manager, Office of the County Manager, Washoe County, Nevada
Brian Hutchins, BH Consulting LLC, Carson City, Nevada
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada

Chairman Anderson:
[Meeting called to order. Roll called.] We have a Work Session Document. I'm not going to take them in that order. We'll start with S.B. 172.

Senate Bill 172 (1st Reprint): Revises provisions relating to sale of real property under deed of trust. (BDR 9-1029)

Allison Combs, Committee Policy Analyst:
Senate Bill 172 revises provisions relating to the sale of real property under deeds of trust. This was heard in Committee last Friday. During the hearing, there were amendments proposed by the proponents, who explained that the bill targets certain abuses in these types of sales. Due to concerns raised in the hearing, revised proposed amendments were submitted by the proponents; they are in the Work Session Document (Exhibit B).

The first change amends Section 3 in the bill. Its new language provides that all sales of real property under deed of trust must be made at auction to the highest bidder in the county in which the property, or some of it, is situated.

The revised amendment adds language on page 1 of the mockup (Exhibit B) to specify that the agent holding the sale must not become a purchaser at the sale.

[Allison Combs, continued.] There was an issue raised during the hearing about the original proposed amendment, which would have added new language authorizing the sales to be made at the office of the trustee. There were concerns regarding this provision, and the new amendment doesn't include a reference to that language. The new language simply states that it must be held at a public location in the county in which the property is located.

The next amendment primarily affects Section 7 of the bill, which sets forth the trustees' power of sale, required notices, and the effect of sale amending existing law. The first reprint adds specific provisions to subsection 4 governing the notice of sale of real property under deed of trust. On page 6 of the mockup (Exhibit B), there are five changes that require the trustee—or person authorized to make the sale—to give notice, before making the sale, of the time and place by recording the notice of sale. It deletes the term "judgment debtor" and replaces it with new language: "a trustor or any other person entitled to receive notice." It requires publishing the notice in a newspaper of general circulation in the county—instead of in the township or city—and deletes new language from the bill that would require publishing of the notice in a newspaper where the property is to be sold.

The revised amendment adds new language. "If, at the time of the scheduled foreclosure sale, the sale is postponed for any reason..." This language mirrors language in the new Section 4 regarding postponements. It also adds new language to subsection 5. The sale of property under this section doesn't create a status of a bona fide purchaser for value. Any purchaser in the sale must be considered void or voidable if the notice requirements of this statute have not been substantially met.

There was another issue raised during the hearing, which is not contained within the amendment: the suggestion to require a time frame for notice of the postponements under Section 4 of the bill. There's also a time frame that the Committee requested for these types of sales.

Chairman Anderson:
Documents added this morning include the general timeline worksheet [Nevada Trustee's Timetable, Exhibit C] used by companies that do this and an example of the notice of trustee's sale of real property (Exhibit D).

The bill looks good, but there are concerns. Mr. Carpenter pointed out that in smaller counties, there isn't a problem to make sure these sales take place at

the county courthouse. We wouldn't want one title company to have it one place and another to have it someplace else. In the mockup it says, "All sales of real property must be at a public location." Can we make that clearer?

Allison Combs:
The discussion was to target that language "public location" and, instead, state that the sale must be at the courthouse or another single location designated by the governing body of the county. There was discussion about whether or not it could be a population requirement; in counties under 100,000, it would be solely at the courthouse.

Assemblyman Carpenter:
In counties of less than 100,000, it works well at the courthouse. Over that, it needs to be at a public place that people know. What's happening here is we're selling someone's home, or maybe someone's farm. If you start holding it anywhere, it might be held in some hole in the wall, and people don't know where it is.

One of the reasons you want people to know is so bidders can be there. If the person being foreclosed upon doesn't have the money to redeem the property, but there are enough bidders, and they bid over and above the amount of the loan, the proceeds could go to the person losing the property. It's important to have this at a public place that everyone knows about.

Chairman Anderson:
We should designate that in counties of less than 100,000, it remains at the county courthouse; in counties of 100,000 or more, it is the county commission that selects a public location for their convenience—as long as it's a single place. I don't want the opportunity for two or three simultaneous sales; the more bidders you have at one sale, the greater opportunity to get a good price.

Assemblywoman Buckley:
Existing law allows sales to be at a trustee's office; isn't that correct? Yet, we still have them on the courthouse steps.

Cheryl Blomstrom, Legislative Advocate, representing Nevada Consumer Finance Association:
The language in Chapter 21, which deals with the executions of judgment, references sales at the courthouse. It doesn't say courthouse steps, but that's traditionally where they've been held. I believe there are sales held at trustee's offices.

Karen Dennison, Legislative Advocate, representing Sempra Generation:
The provision allowing a sale at the trustee's office is contained in NRS [*Nevada Revised Statutes*] Chapter 107; that would have to be checked.

Assemblywoman Buckley:
NRS 21.150 is under execution. You could argue if it's in a deed of trust under NRS 107, then you don't have to go through the judgment and execution. I was confused, because I thought it was always done at the courthouse, and we were changing that.

Chairman Anderson:
Is the time and place specified in the notice? Is this in covenant number 6?

Allison Combs:
It's in two sections. In the mockup, it's Section 6 (page 5 of Exhibit B). One of the covenants references "at a public auction at the time and place specified in the notice in the county, or the property situated at the principal office of the trustee." That language is stricken in the proposed mockup.

Chairman Anderson:
Under existing law, they could do it at either the county courthouse or the lienholder's office? In Clark County, the concern was that they didn't want people showing up on their courthouse steps. They saw the crowd increasing from 20 to 30 people to 230 to 240 people.

Assemblywoman Buckley:
I think "at the office" is limited to those who fall under NRS 107. If you don't fall under NRS 107, then you have to do it at the courthouse steps. If it's an execution and it's not through a deed of trust, the sale is conducted pursuant to NRS 21.150. If it's through a deed of trust, then it's wherever indicated in the notice of sale (Exhibit D).

Chairman Anderson:
If we are to be consistent, then we would have to change NRS 107 to make it also at the courthouse steps.

Assemblywoman Buckley:
If all the sales under NRS 107 are done in trustee's offices, you're going to see a big increase in the volume on the courthouse steps in Clark County, which are already crowded. If public policy is that it be at a public place, then you might want to have the county commissioners designate where. Under NRS 107, they can do it at the offices now; if we change existing law requiring everybody to go to one place, we're going to see an incredible volume increase.

Chairman Anderson:
Won't we do that with the withdrawal of the word "either" from Section 4 and Section 6, when we substitute "either" and "at a public location"? Isn't that the intent of the bill, so it does take place in the county where the property is located? The normally assumed public location for such sales would be the county courthouse under NRS 21.150.

In counties over 100,000, it would be as designated by a political body of that county as to what the location would be. I would prefer a single location, not multiple locations, but I'm open to the debate. Mr. Carpenter, does that meet the standard you are looking for?

Assemblyman Carpenter:
Yes, sir, that's fine. I think the county commissioners can decide that location. I think, because there are so many of them, it's important to bring them to a central location so everyone knows.

Risa Lang, Committee Counsel:
That's fine, if you want to have the smaller counties going to the courthouse and, in the larger counties, the governing body of the county designate a location for that purpose.

Chairman Anderson:
Mr. Horne, you brought up concerns relative to S.B. 172. Would you like to clarify your concerns about the bill?

Assemblyman Horne:
Originally, my concerns were why we didn't provide a notice of postponement of the sale, if we had that problem, and make it 24 to 48 hours prior to postponement. After further clarification on the process, this limit of three may solve that problem. If it doesn't, we could revisit it later.

Chairman Anderson:
It's not unusual for someone to get back on their payment schedule; then they fall off, and in some cases, it's a reoccurring event over several years. If we are re-noticing after every third postponement, we're in good shape. Are all the issues covered in the mockup, including Mr. Horne's notice of postponement?

Allison Combs:
That is not.

Chairman Anderson:
The recommendations for changes to Sections 3 and 7 are covered in the mockup. The mockup would then reflect the suggested amendment of the Committee with further clarification that, in counties of 100,000 or more, the county commission may designate a location for such sales.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS SENATE BILL 172.
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> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
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> THE MOTION CARRIED. (Assemblywoman Ohrenschall was not present for the vote.)

Chairman Anderson:
We'll turn our attention to S.B. 175.

Senate Bill 175 (1st Reprint): Revises provisions governing motor vehicles. (BDR 43-700)

Allison Combs, Committee Policy Analyst:
Senate Bill 175 (Exhibit E) revises provisions relating to motor vehicles and makes multiple changes. It was heard at the end of April, 2005. It requires the appropriate law enforcement agency, upon request from a person who claims damages from a motor vehicle accident, to provide, within seven days, a copy of the accident report. It makes an exception for cases that involve serious bodily injury or death, or certain other exceptions involving felonies.

Upon written request, the bill requires the DMV [Nevada Department of Motor Vehicles] to conduct an investigation to determine if a seller, or person who has a security interest in the vehicle, has failed to provide the certificate of title to the appropriate party within 15 days after the contract or security agreement was satisfied. If a violation is determined to have occurred, DMV must impose a $25 administrative fine for each day the secured party is in violation.

There was testimony in support of the measure stating that it is designed to facilitate certain administrative procedures. There was a group representing towing companies, banks, insurance companies, and law enforcement who requested the opportunity to work on an amendment, which has been drafted by Legal. I will defer that to Ms. Lang for the explanation of the amendment.

Risa Lang, Committee Counsel:
The first amendment (page 2 of Exhibit E) was to Section 2, to change to whom the fines go; they are now deposited with the State Highway Fund instead of the State General Fund. Sections 3 and 4 were proposed to be deleted and moved to Chapter 706, where it would be more appropriately addressed.

There's a new Section 10, amending NRS 706.4479. It provides a different timeline for notification if a vehicle is towed after an accident at the request of law enforcement. On the next page (page 3 of Exhibit E), you'll see that the storage fees and administrative or processing fees for a car that's towed at the request of law enforcement after an accident [are not charged] for 14 days after it has been towed. The fees would commence after the fourteenth day.

Chairman Anderson:
We took this into a work session, and all the parties agreed to the amendments. The movement of the dollars from the State General Fund to the State Highway Fund is the way those fines have traditionally been handled and represents no change in current practice.

> ASSEMBLYMAN OCEGUERA MOVED TO AMEND AND DO PASS SENATE BILL 175.
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> ASSEMBLYMAN CONKLIN SECONDED THE MOTION.
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> THE MOTION CARRIED. (Assemblywoman Ohrenschall was not present for the vote.)

Chairman Anderson:
[Opened the hearing on S.B. 234.]

Senate Bill 234 (1st Reprint): Revises qualifications for Supreme Court Justices, district judges and justices of the peace. (BDR 1-775)

Allison Combs, Committee Policy Analyst:
Senate Bill 234 (Exhibit F) was heard in early May. It revises the qualifications for Supreme Court justices, district judges, and justices of the peace. Essentially, for those who are currently required to be attorneys, it adds a time frame for which each must be licensed before they are eligible to serve on those courts. For the Supreme Court, it's a ten-year period; for the district court judges, it's a five-year period of licensure, as well as for the justices of the peace. The bill doesn't apply to the current term of any justice, district judge, or

justice of the peace who is serving in office on October 1, 2005. There was testimony in favor of the measure from the sponsor, indicating the policy decision to require that judges have a certain amount of experience prior to being elected.

[Allison Combs, continued.] At the hearing, there was a proposed amendment from the sponsor, relating to the applicability to the justices of the peace currently in office. It would amend the bill—page 3, Section 3, line 28—to specify that those requirements do not apply to any person who held the office of justice of the peace on June 30, 2001, rather than the provision currently in statute of July 30, 1999.

There is a second proposed amendment from Chairman Anderson, requesting the Supreme Court to revisit Nevada's needs for an intermediate appellate court and report those findings to the 2007 Legislature. Another request is to examine growth and caseloads, as well as to provide a time frame, if such a report is recommended to be created, along with the number of qualifications of judges for such a court.

Chairman Anderson:
One of the issues in the past was the possibility of creating an intermediate court. The process for that, and the need for guidelines, should be addressed. If we're going to process this legislation, it would be important to include reference to the possibility that an appellate court might be coming along.

However, I think we need to ask the court to set up guidelines for an appellate court. What would be the qualifications? I think the timelines need to be stringent. Before becoming a member of the Supreme Court, fifteen years of judicial experience would not be unrealistic, with ten years of judicial experience on the district court level, and five years for a justice of the peace.

Passing the Bar Exam does not necessarily guarantee good conduct of a judge or that they're going to be competent. I think we have to set a minimum. I would feel comfortable with the bill, although I know that common sense precedes the holding of a degree. What is the pleasure of the Committee?

Assemblywoman Buckley:
I didn't see the additional five years for the Supreme Court. Where was that?

Chairman Anderson:
It was out of the top of my head. 15 years for the Supreme Court, and 10 years for district judge.

Assemblywoman Buckley:
Usually folks have put in a lot of years before they consider a run. I'll accept that.

Assemblyman Carpenter:
I don't see how this is going to work. It says at the time of his election, he has to be an attorney licensed and admitted to practice law in parts of this state or another state. Down below, it says he has to be a bona fide resident of this state for two years. It seems to me that when they run for office, they should be licensed to practice law in this state for the two years that it says they have to be a bona fide resident.

Chairman Anderson:
I don't know why they included the District of Columbia in that statement.

Risa Lang, Committee Counsel:
They have a separate licensure requirement. The way this works is that they would have to be licensed and admitted to practice in the courts of this state at the time that they run, but the experience component should have been obtained during years that they were licensed, either here or in another state.

Chairman Anderson:
If my initial practice was in California for two years and I came to Nevada and practiced law for seven-and-a-half years, I would not be eligible to run for office because I would not have the full ten years in?

Assemblywoman Buckley:
Legal is right. You have to be licensed in this state. It's important that you could have the years of experience in another state. If we're too restrictive on how long you've practiced in this state, you implicate a right to travel under the *Constitution* that might raise some issues. If you have actual years of experience on issues, you have to count it all. It would hurt the bill if we tried to say [the experience had to all be obtained] in Nevada.

Chairman Anderson:
If we required this much in Nevada, we would want to move to the original number in the bill.

Assemblywoman Allen:
I applaud the sponsor's effort to make our judiciary stronger and better, but I don't like the fact that our judiciary is elected. Our legislative body is elected. The top of the Executive Branch is elected. Our judiciary should be appointed, perhaps with some sort of Missouri-style plan tailored for Nevada. Those who

are running should be vetted by the voters as to whether or not they're qualified. Therefore, I will oppose the bill.

Chairman Anderson:
Ms. Allen favors a modified Missouri plan. We had an opportunity to look at that when Chief Justice Rose made it part of his Rose Commission study, related to reforms needed in the court. I recommend that would be a good document to reference, if you're looking for modification of a potential bill draft for a future session. This would be a good intermediate step.

Assemblywoman Buckley:
I think the public would be better served with a modified Missouri plan as well. That's why I voted for it a few sessions ago, but it lost. If we don't have that, this bill would be a good alternative. While it's true that someone with two years of experience may have more common sense than someone who's been practicing for 15 years, there are certain things you only learn by seeing legal issues develop. This causes you to go back to the statutes to relearn an issue. Look at how much we've learned in the Legislature. The same is true for the practice of law. I see this as being a practical way to improve the experience and caliber of the judiciary in the absence of being able to move to a Missouri plan model.

Assemblyman Carpenter:
During the two years you have to be a resident of this state, you should also be licensed and admitted to practice in this state. Those things work in concert.

Chairman Anderson:
Whatever our residency requirements have to be, they have to be the same residency requirements for other elected officials. We can't have a higher standard for somebody else than we do for ourselves, in terms of how long you're a resident of an area.

Risa Lang:
I'm not sure that we're changing the residency requirement. He's referring to the number of years that they would have to be licensed in this state. The licensure would match the residency requirement that's currently in statute. If you moved here from another state, you could live here for a couple of years and not be licensed. If that were their livelihood, it would be likely that they would get licensed, but it's not necessarily true.

Chairman Anderson:
Under (c), "Unless he is qualified and has been a bona fide resident of the state for two years preceding the election..." is already in current statute. Are we

okay there? Mr. Carpenter, I'm trying to understand how you would modify this. You want these folks to be attorneys; in addition, they would have to be an attorney of this state for two years?

Assemblyman Carpenter:
Sure. It should be "licensed and admitted to practice law in this state for the two years preceding the election," the same as the residency requirement.

Assemblywoman Buckley:
We could include that and have Legal look at it to see if it's constitutional. If it's not, we could bring it back to the Committee. If it is the will of the Committee to include it, I'll support it.

Assemblyman Horne:
I would like clarification as to current sitting Supreme Court judges if they don't meet these qualifications upon their re-election. Currently, there is at least one person that may not meet the qualifications upon his re-election. I don't see how they would be grandfathered in.

Chairman Anderson:
We're going to apply this to any person who has held office or justice of the peace prior to June 30, 2001. In northern Nevada, is it the district court judge you're concerned about?

Assemblyman Horne:
No. It is a justice of the peace; they serve 6-year terms. By default, they would meet the five years at the end of their term. I'm concerned whether there is language that would grandfather anyone who would not meet the qualifications upon their election. I know there have been issues of whether or not judges are qualified; that's why this was brought up.

Chairman Anderson:
I don't believe we would want to make it retroactive, and that's not the intent of the chief sponsor. The chief sponsor's purpose is to make sure that the qualifications are clearly laid out for the current justices of the peace, by county or population, which will change in 2010 in district and justice courts. My concern is, do we believe there is going to be an appellate court someday? We would put the appellate court in place, and those guidelines will be clearly set. The Supreme Court can report back to us, and the Legislature will have an opportunity to see exactly what was going to take place at that court level.

In terms of the timeline, one of the arguments from several judges was that it should be a higher level. That was the reason for my indication with the

Supreme Court and district court judges that 15 years' and 10 years' experience would be an easier fit. What is the pleasure of the Committee? Mr. Carpenter suggested that we further amend the bill relative to the length of time of residency. Mr. Carpenter, do you feel that is a necessary part of the bill?

Assemblyman Carpenter:
Yes, Mr. Chairman, I do. Our laws are so much different than other states. They should be practicing here for those two years that they're required to be residents.

Assemblywoman Buckley:
At least two years of that required experience would be required to be in Nevada? I move to amend the motion to include that requirement.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS SENATE BILL 234 WITH THE FOLLOWING AMENDMENTS:
>
> - APPLICABILITY TO JUSTICES OF THE PEACE CURRENTLY IN OFFICE
> - STUDY OF THE NEED FOR AN INTERMEDIATE APPELLATE COURT.
> - THE SUPREME COURT WOULD CHANGE FROM 10 YEARS TO 15 YEARS AT LINE 9, PAGE 1
> - CHANGE THE 5 YEARS TO 10 YEARS AT LINE 30 ON PAGE 2.
>
> ASSEMBLYMAN MORTENSON SECONDED THE MOTION.
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> THE MOTION CARRIED, WITH ASSEMBLYWOMAN ALLEN, ASSEMBLYWOMAN ANGLE, AND ASSEMBLYMAN OCEGUERA VOTING NO. (Assemblywoman Ohrenschall was not present for the vote.)

Chairman Anderson:
Assemblyman Conklin reserved his right to vote no on the Floor. Let's turn our attention to S.B. 287.

Senate Bill 287 (1st Reprint): Prohibits person from leaving child who is 7 years of age or younger in motor vehicle without certain supervision. (BDR 15-14)

Allison Combs, Committee Policy Analyst:
Senate Bill 287 prohibits a person from leaving a child in a car under certain circumstances. This was heard in early May, and support was presented from the sponsor, the Nevada Trial Lawyers Association, law enforcement, and the District Attorneys Association.

Based on concerns raised in the hearing, there is a proposed mockup (Exhibit G) that has amendments for consideration. The first change would require that the person act knowingly or intentionally. The second change would delete the phrase "in the motor vehicle," with regard to the supervision, so the person isn't actually required to be in the vehicle to be supervising that child.

The third change would add additional circumstances regarding the elements of the crime to provide that conditions present a significant risk to the health and safety of the child—the engine of the motor vehicle is running or the keys are in the ignition. The fourth suggestion is to specifically include language that this subsection does not apply to situations in which a person accidentally locks the child in the motor vehicle.

The next suggestion is to provide that the penalty is solely a fine of $100. It would not involve imprisonment as a possibility. These changes are based upon discussion at the Committee hearing, a review of existing law in California, which is also provided here behind the tab (Exhibit G), as well as suggested model law from an organization called Kids in Cars.

Finally, the issue was raised on the age of a person who can supervise, which was 12 years of age. There aren't any suggested amendments regarding the age, but that was an issue raised during the discussion.

Chairman Anderson:
The chief sponsor indicated that one of the primary goals was to raise public awareness of leaving your child unsupervised in the car on a hot day, where the ambient temperature is going to raise dramatically higher than the outside temperature. Particularly with children younger than five years of age, the health hazard that high heat represents is such that we cannot be anything but compassionate about the question of responsibility. When those tragedies take place, the ones that catch our attention are those that were unintended. It's a completely different set of circumstances when someone intentionally does this. If you leave your child in the car while you sit in 7-Eleven and play the slots, there's something wrong.

Assemblywoman Angle:
Now that we have "knowingly and intentionally" and the $100 fine, when you intentionally endanger a child, the penalty should be more stringent than a $100 fine. We've given them a way to plea-bargain something that I think is a greater crime. I have difficulty with the bill as it is written, but the way we're amending it, I'm having even more difficulty. I need clarification on what we're doing with the penalties. Intentionally leaving your child in the car while you're gambling is reckless endangerment and should carry more penalties than just a $100 fine.

Chairman Anderson:
Do we need to add "unless a greater penalty exists," or is that necessary?

Risa Lang, Committee Counsel:
On page 2, subsection 4, it says, "No person may be prosecuted under this section if their conduct will give rise to prosecution under any other provision of law," which I think is intended to get those folks who would be liable under the heavier penalty.

Assemblyman Holcomb:
I liked Assemblywoman Gerhardt's suggestion about the visual, in the case of the person walking into a 7-Eleven. I don't see that incorporated or even suggested. Is there a reason that it wasn't incorporated?

Allison Combs:
"Line of sight" was the phrase used. These are options for the Committee to consider. The idea was, unless the child was being supervised by a person at least 12 years of age, it would leave discretion for law enforcement to determine if they were in the line of sight, which may be appropriate. If you were 30 yards away, however, do you still have line of sight? It's the Committee's choice whether they want that in.

Chairman Anderson:
Ms. Gerhardt, do you want to clarify?

Assemblywoman Gerhardt:
That was my concern too. During the Committee hearing, we were talking about somebody who goes to the mailbox or somebody who is pumping gas—things of that nature. If you have a visual on that car and those kids, I thought the clarification was important.

Chairman Anderson:
How would we put it in, Ms. Lang?

Risa Lang:
We may be able to clarify it further. The way it's presented here, it would have to be that the conditions present a "significant risk" to the health and safety of the child. If you're right there and can see them, it probably doesn't pose a "significant risk." If you wanted to be more specific about supervision, we could work on the language.

Chairman Anderson:
Regarding the condition of a "significant risk" and the health and safety of the child, is somebody who is that far away not a risk; whereas, if I'm sitting here playing video poker, it is?

Risa Lang:
That would be a question of fact. If you go to your mailbox and the car isn't turned on, it's not presenting "a significant risk" to the child. The way this is put together, it says, "If they would be unsupervised by a person who is at least 12 years of age; if the conditions present a significant risk to the health and safety of the child; if the engine is running; or if the keys to the motor vehicle are in the ignition," you'd have to meet all those conditions.

Chairman Anderson:
Up here in the north, when it's a cold day and I want to keep the car warm, I leave it running when I check the mailbox.

Risa Lang:
If the engine is running, and the child is unsupervised, you would probably fall into this.

Assemblywoman Gerhardt:
As it is, it's subjective. I was hoping to give for law enforcement more clarification. There are many of those real-life scenarios that law enforcement will encounter.

Assemblyman Horne:
I have an interest in this bill, so I may be biased. This bill doesn't have any incarceration in it; it's a fine. It's supposed to be a wake-up call that you may be placing your child in danger. As for providing a road map for law enforcement, I thought law enforcement agencies across the state and across the country are hiring more intelligent law officers than they had in the past.

We have law officers who, day in and day out, make decisions on when they're going to give a ticket or make an arrest when a violation has occurred. We can try to craft all our laws to give them a checklist, but I don't think we want to do

that. We can say "what if" and present a bill that is three inches thick. We need to look at the true intent of this bill—the protection of our children—and trust law enforcement officers that they are not going to use this as a mechanism to be abusive to parents or to write tickets to pad their statistics.

Chairman Anderson:
I realize you're an advocate for the bill. What we're trying to do is get it into comfortable language. Ms. Gerhardt, the more specific the elements that we put in here, the more unlikely the bill will pass. We'll have to give some discretion to the police officer.

With all due respect to Mr. Horne, police officers have been sensitive to this issue, and that's why this particular piece of legislation is in front of us. They would like something in their hand that they can approach the people with. They would like to help that child. We'd like to say this is parental responsibility and they should be aware of this, but unfortunately, they don't seem to be. I want to make sure we move the bill if we can.

Assemblywoman Gerhardt:
I absolutely support the bill. If this is a meaningful first step, we can see how it unfolds. If it needs to be revisited next session and tightened up, that's fine.

Assemblyman Holcomb:
It makes it more palatable to the public. We're micromanaging their behavior. My position is, if you have kids in the back, they might be put in harm's way when you pull into a gas station where lots of cars are coming in.

Assemblywoman Buckley:
What's difficult about the bill is there are so many scenarios, from standing next to your car pumping gas with your child in the car, to leaving your child in a dangerous situation and being gone. I would suggest that we add a sentence on if the child is within your "line of sight." It clarifies that you are supervising your child and not presenting "significant risk."

It doesn't become a concern to you when it is 30 degrees outside to leave the kids in the car as you pump gas or check the mailbox; you don't want your kids to get cold. With regard to Assemblywoman Angle's concern, if we are making this bill apply more towards those who have unacceptable behavior, you're right about the fine. We would want them to get the misdemeanor, but you get those folks under child endangerment, which is what they currently get them under. Then, if anyone else gets swept up in this, we have the lighter penalty available for those situations. We try to balance it that way, because for folks who

gamble, we don't want them to pay $100. We want them to get the tougher penalty.

Assemblyman Mabey:
I need reassurance that "knowingly or intentionally" isn't going to get somebody off the hook. As I read subsection 2, they would be guilty of a misdemeanor. They could still go to prison, but the fine wouldn't be more than $100. I really liked the original bill. I'm not going to vote no, because I need something to happen. These kids shouldn't be left in the car seat. I liked the first bill much better; "knowingly or intentionally" gives me some angst.

Chairman Anderson:
I don't see jail time for this infraction.

Assemblyman Mabey:
Can't you have jail time with a misdemeanor? It's up to six months for a misdemeanor.

Chairman Anderson:
You're right.

Risa Lang:
Although a misdemeanor can be up to six months or a fine, if we specified in statute what the penalty is, you've limited to that penalty. Here you're limiting it to the fine.

Chairman Anderson:
The educational program is in place, but he can waive the fine. It's a fine of $100 and/or an educational program. The educational program is one of the more important aspects of this bill. The police officer gets the discretion here.

Assemblywoman Buckley:
One of the reasons that "knowingly and intentionally" was suggested was the case where the parent left the child in the car and did not mean to. It's a horrible tragedy; their life is ruined and they are so remorseful. Do you want to charge them with a misdemeanor? I think "knowingly and intentionally" was to cover mistakes. We should clarify the "line of sight" issue and, instead of going with a $100 fine, go back to the original provisions of the bill with regard to the education and other penalties being available if it is intentional. Then, perhaps, we've done a good thing.

Chairman Anderson:
So the change is, "…shall be punished by a fine of not more than $100." The court may reduce or waive the fine; that would be eliminated for economic hardship? We would clarify the points in Section 1, "knowingly and intentionally," and we would include language relative to "line of sight." We would follow language in Kids and Cars and the California existing statute. Apparently, California law allows for what happens in a subsequent event. That wasn't in the original bill.

Assemblyman Carpenter:
I like the part with the $100. The way I read it, if they go to class, the $100 is not going to be assessed. If they don't go to class, they need to pay the $100, if they have intentionally or willfully done this. I like the way the amendment is written; it gives a better option.

Risa Lang:
We can do it either way. If you leave in the $100, that limits it. That was put in place so that there wouldn't be any jail time involved. It provides for a $100 penalty, but that could be waived if the person does the educational program that's satisfactory to the court. Or you could go back to making it a misdemeanor, leaving all the options available for penalties under a misdemeanor—again, with the potential waiver.

Chairman Anderson:
With this particular misdemeanor statute, there's no prison time involved. What is the feeling of the Committee?

Risa Lang:
We could define supervision for the section as "line of sight." We want to make sure we're talking about the person who is in the position to supervise, that they can see the child or the vehicle. I'm not sure which we're going for here; I think we're probably talking about the child.

Chairman Anderson:
Ms. Buckley, are we talking about being able to see the car or the child?

Assemblywoman Buckley:
It's within line of sight of the child. We'll see how Legal can draft it. We know what our intent is; [the vehicle is] close, and you can see the vehicle and the child inside it.

Assemblyman Manendo:
I still have concerns about the age of 12. I'm going to vote yes, because we need to do something. I had several constituents contact me in the last week regarding the age, the 12-year-old being the responsible individual who's going to supervise somebody younger than they are. Mom and dad go gamble, and the kids are in the car for 8 hours; but since one is 13 years old, they can do that. Twelve is too young; maybe we'll look at it again next session.

Chairman Anderson:
I don't understand why a police officer would not be able to give them a child endangerment citation. There's a question of child endangerment there, and I'm surprised that the casino doesn't take responsibility for their property. It's a common-sense kind of question.

Assemblyman Manendo:
I agree.

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS SENATE BILL 287 WITH AMENDMENTS PROVIDED, INCLUDING "LINE OF SIGHT" CLARIFICATION, PENALTIES FROM THE ORIGINAL BILL, AND AN EDUCATIONAL PROGRAM INCLUDED.
>
> ASSEMBLYMAN MABEY SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:
Let's look at S.B. 353.

Senate Bill 353 (1st Reprint): Makes various changes to provisions governing guardianships. (BDR 13-462)

Allison Combs, Committee Policy Analyst:
Senate Bill 353 makes various changes relating to guardianships. It addresses public professional guardians, and it defines that term as a person receiving compensation for caring for three or more wards not related to the person. It provides that if a natural person has to be qualified to serve, it must be a registered guardian or master guardian—unless it's waived by a court finding that good cause exists.

There were questions raised during the hearing with regard to the qualifications. The next page (page 2 of Exhibit H) includes the qualification requirements for the National Guardianship Foundation, which is referenced in the bill as the organization who would do the qualifying. There were no amendments proposed to the bill. The testimony indicated that this was the first step to ensure professional guardians are truly qualified.

[Allison Combs, continued.] There is one technical amendment (page 1 of Exhibit H) to specify a reference to the successor of the National Guardianship Foundation, which is language typically included when these organizations are referenced.

Chairman Anderson:
The guardianship qualifications are listed for your reference; I don't believe they're specified in the law. Are there questions from members of the Committee in S.B. 353?

> ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS SENATE BILL 353.
>
> ASSEMBLYMAN HORNE SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Assemblywoman Gerhardt was not present for the vote.)

Chairman Anderson:
Let's turn our attention to S.B. 343.

Senate Bill 343 (1st Reprint): Makes various changes to provisions related to mechanics' and materialmen's liens. (BDR 9-787)

Chairman Anderson:
We had an opportunity to look at this amendment (Exhibit I) yesterday. There have been additional questions raised relative to how this would affect a regular mechanic's lien. Would you like us to move it or hang on to it?

We have a letter (Exhibit J) dated May 18 from Mr. [Renny] Ashleman. It is signed by Mr. Ashleman, Mr. [Richard] Peel, and Mr. [Steve] Holloway. There were some concerns by other groups who hoped would be changed in the law, which are neither part of the current legislation nor part of the current law. They were anticipating we were going to include them (Exhibit K), but we did not. I've not seen any suggested amendment that could be agreed to.

Assemblywoman Buckley:
How does this affect residential folks? The first portion of the bill talks about a lessee doing improvements; so it isn't applicable in a residential situation. The only other portions in the bill that deal with residential are the stay issues and the bond amounts. When I asked about the bond, which was one-and-a-half times the lienable amount contained in Section 19, I got the answer, "That's existing law." In checking existing law, I know there's NRS [*Nevada Revised Statutes*] 108.235, but I don't know if that statute applies in a residential setting. I support the bill, but I want to make sure, when we're talking about an individual homeowner, that their rights are going to be taken care of.

Richard Peel, Legislative Advocate, representing Sheet Metal Air Conditioning Contractors' National Association, National Electrical Contractors Association of Southern Nevada, and Mechanical Contractors Association of Nevada:
Is your question concerning NRS 108.235?

Assemblywoman Buckley:
No, it concerns NRS 108.2415.

Richard Peel:
NRS 108.2415 gives any owner or principal on a commercial or residential project the opportunity to obtain and post a mechanic's lien release bond. We're amending the statute so that there are two different ways that you can do it. You can prospectively waive lien rights before the improvements start on the project by recording a mechanic's lien release bond with the county recorder, or if a particular mechanic's lien is recorded with respect to a given project, then you can bond around that lien at that point in time.

As far as residential projects, it's an opportunity for a natural person to remove liens by bonding around them, as a commercial owner could.

Assemblywoman Buckley:
What's the public policy in requiring a residential homeowner to post one-and-a-half times the bond, as opposed to covering the bond itself?

Richard Peel:
The public policy behind the one-and-a-half times is to provide adequate security for the principal amount of the lien, plus any attorney fees, costs, and interest that would otherwise be occurred in foreclosing upon that lien.

That particular legislation has been around for over 15 years. That legislation has been valid and effective with respect to residential and commercial projects during this entire time.

Assemblywoman Buckley:
The current law requires a residential homeowner to post one-and-a-half times the amount of the bond?

Richard Peel:
It does not require it. It gives a residential homeowner the opportunity, in the event that they want to get a lien off their property and instead have the lien attached to a bond, to be able to obtain a bond.

Assemblywoman Buckley:
Up until now, you had to bond for the amount of lien, not one-and-a-half times the amount of the lien; correct?

Richard Peel:
No, it's always been one-and-a-half times.

Assemblywoman Buckley:
Where is that in the law?

Richard Peel:
It's in NRS 108.2413 or 108.2415, through 108.243. That particular series of sections talks about the bonding of liens and how they affect the rights of contractors, subcontractors, suppliers, et cetera. It's codified in NRS 108.2415, in the form of bond required.

Assemblywoman Buckley:
Page 17, line 28 of the bill, right?

Richard Peel:
I'm looking at the actual statute. The second full paragraph says one-and-a-half times the lienable amount.

Assemblywoman Buckley:
The only other provision affecting residential is the waiver of the stay; is that right?

Richard Peel:
With respect to your question about a natural person's rights, it affects their opportunity to challenge a lien through what's called an "order to show cause."

The order to show cause is allowed by NRS 108.2275. In particular, a natural person homeowner or a commercial owner can file a motion with the court, asking the court to find the lien to be excessive or frivolous. If they're successful in their challenge, they're entitled to their attorney's fees and costs for bringing that particular motion. If the lien is not dismissed from the property, then the owner has the right to appeal that particular decision. The new language is intended to stop situations like we had on the Venetian, where the Venetian challenged all the liens.

Assemblywoman Buckley:
I don't have a concern on the commercial aspect, only on the residential. If they appeal to the Supreme Court, does that mean that they could try to enforce the lien and force the sale, pending the outcome of the appeal for a resident?

Richard Peel:
It would not stop the underlying case from going forward and being heard before the district court. Ultimately, the Supreme Court would have to rule before the foreclosure sale occurred. That would be my interpretation of the statute.

Chairman Anderson:
Is there any more discussion on S.B. 343?

> ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS SENATE BILL 343 AS AMENDED IN THE WORK SESSION DOCUMENT.
>
> ASSEMBLYMAN CARPENTER SECONDED THE MOTION.
>
> THE MOTION CARRIED UNANIMOUSLY.

Chairman Anderson:
We have S.B. 150 today. I'm working on language to get that to a workable position, because I'm still uncomfortable with what's there. That leaves us with two bills. Let's take up S.B. 445.

Senate Bill 445: Revises various provisions related to State Board of Pardons Commissioners. (BDR 16-659)

Allison Combs, Committee Policy Analyst:
Senate Bill 445 relates to the State Board of Pardons Commissioners and makes some changes with regard to that Board. One of the changes includes the clarification that a person who is granted a full unconditional pardon by the Board is restored to all civil rights, and the Board must give the person official documentation stating that he has been granted a pardon.

There was testimony on behalf of the State Board of Pardons Commissioners that this bill revises some of the administrative procedures of the Board and clarifies the section mentioned on the restoration of civil rights. There is a proposed amendment that was presented during the hearing, which is included in the Work Session Document (Exhibit L), along with a letter (page 3 of Exhibit L). The letter is from the State Board of Pardons, to clarify issues that came up with regard to the Board's authority to issue a conditional pardon.

The amendment relates to the restoration of civil rights and would add new language to S.B. 445 that would do a couple of things outlined on page 1. The first would be to eliminate the requirement to present a document of proof of restoration of civil rights, and the second would be to authorize persons dishonorably discharged to apply to the Division of Parole and Probation, from the date the bill is effective until July 1, 2008, to change that dishonorable discharge to an honorable discharge in certain circumstances. If that change is made, then their civil rights are restored as if the person received an honorable discharge.

The third change under (c) (page 2 of (Exhibit L) would reduce the time before which the person could petition the court to have his criminal record sealed for certain offenses. For a Category E, the period is reduced from ten years to seven years after release from custody or discharge from Parole and Probation. For misdemeanors other than a battery that constitutes domestic violence or a conviction for DUI [driving under the influence], the period is reduced from three years to two years. Finally, the proposed amendment would allow a person to petition for restoration of civil rights in a court of competent jurisdiction. There were questions raised with regard to the amendment during the hearing. The first was with regard to the limitation on those who could request the change for the dishonorable discharge; someone who has committed a new crime during the period of parole and probation could not apply. There is a suggestion to exempt from that language traffic violations.

The third amendment is to clarify the date for submitting the report required concerning restoration of civil rights. The report would be required on January 1, 2009, rather than January 1, 2008. The letter addresses a concern

raised with regard to the Board's ability to issue a conditional pardon; there were no formal amendments proposed for that issue.

Chairman Anderson:
This amendment goes a long way to solving some problems that have been raised about this needed piece of legislation. Mr. Horne, you had concerns?

Assemblyman Horne:
There were issues that I had with the opinion of withholding firearms. That can't be fleshed out with the time that we have, and I don't think it's necessary to hold up the bill because of it. It may be something to look at another time, but not at this juncture.

Chairman Anderson:
Mr. Carpenter, I'm not sure I understand number three—the amended language under Section 11—in the proposed mockup, to require the Division of Parole and Probation to submit the report concerning restoration to the Legislature in 2009, instead of 2008. You don't want them to come back until after the next Legislature; you want it two sessions away? Ms. Combs, could you clarify?

Allison Combs:
The bill allows a person to come back and request the change from a dishonorable to an honorable discharge through July 1, 2008. The report is required back to the next legislative session. If it were January 1, 2008, it would still be within that period where someone can come back and request restoration of their civil rights. Therefore, the suggestion was to evaluate the whole period and move it to six months after that period ends.

Chairman Anderson:
Mr. Horne, you were the chair for this particular hearing in the other House. What are your feelings on the bill and the amendments that are suggested?

Assemblyman Horne:
I think the amendments suggested are appropriate. There wasn't any heated discussion.

Chairman Anderson:
I will surrender the chair to you, so you can control the questioning on how the bill will proceed.

Vice Chairman Horne:
We have a question from Mr. Mortenson.

Assemblyman Mortenson:
I definitely agree with the proposed amendment that a traffic violation should not violate your ability to apply for restoration of the civil rights.

Assemblyman Carpenter:
There is a sunset on this bill. We were asking them to come up with statistics so they could apply until July 2008. It says that the report must be filed by January; that would be six months before the sunset when these apply. To make it work together, we need to have the date of the report as January 2009.

Assemblyman Holcomb:
In Section 11, it says that a person must request that his dishonorable discharge from probation or parole be changed to an honorable discharge from probation or parole. Does that mean before he's made full financial restitution?

Risa Lang:
Under subsection 3, it requires the Division to adopt regulations to establish the guidelines for carrying it out. It says the regulations must require that to be granted a change of the discharge, if an applicant failed to make full restitution, he must have made, or be making, an effort in good faith and satisfactory progress towards making that restitution.

Assemblyman Holcomb:
By that language, he can be in the process of making full restitution and not have completed full restitution. Is that correct?

Risa Lang:
That is correct; that's the language currently in the statutes for an honorable discharge.

Assemblyman Mabey:
On page 3, in blue, the first paragraph seems to contradict subsections 2 and 3. "A person who is granted a full, unconditional pardon of the Board is restored to all civil rights and is relieved of all disabilities incurred upon conviction"; then, "A pardon granted by the Board shall be deemed to be full, unconditional pardon, unless the official document issued pursuant to subsection 3 explicitly limits the restoration of civil rights of the person or does not relieve the person of all disabilities incurred upon conviction."

I understand subsections 2 and 3, but I don't understand why the part above was inserted. They just seem to contradict each other.

Senator Steven Horsford, Clark County Senatorial District No. 4:
The provision you're talking about was recommended by the Pardons Board. It was language that was part of their original bill. It's not something we were recommending in the amendment.

Risa Lang:
The language in the first paragraph is saying that, if it's an unconditional pardon, you're restored to all of your civil rights. Subsection 2 says that unless it says something else, it should be deemed to be a full, unconditional pardon. Unless they actually write it on the document, it will be deemed to be unconditional.

Assemblyman Carpenter:
It says, "A person who is restored to his civil rights pursuant to this section will not be required to present the official documentation." When you register to vote, you sign that you don't have a felony or whatever that prevents you from registering to vote. Then—not only in the bill, but also in the amendment—it requires that an official document needs to be provided that he has received an honorable discharge from probation or parole.

I wonder if we should have something that requires they have the document. I don't know whether the affidavit you sign when you register to vote takes care of it. They're requiring the Board or the Commission to give them this paper to present when they go to register to vote. I put that out there for discussion.

Vice Chairman Horne:
There will be times when they may not have received that official document from the Parole Board. We'll also let Senator Horsford speak on that issue.

Senator Horsford:
Assemblyman Carpenter, you are correct. All voters are required, when they register to vote, to sign an affidavit or disclosure on that registration form that indicates they are an eligible voter and have the right to register to vote. To sign that disclosure on that registration form, knowing that you have not been restored to your rights, is an offense and could be punished.

The intent behind not requiring the documentation to vote is because those individuals who have been released after 2003 have been given this documentation that indicates which rights were restored on which date. Prior to 2003, that documentation was not required; it was inconsistent as to whether offenders were provided that documentation. The intent is that there is a disclosure. You are signing it, and if you do so knowing that you do not have the right to vote, based upon the process that is in place with most registrars

and law enforcement, they purge ineligible voters, including those offenders whose rights have not been restored.

[Senator Horsford, continued.] There's a process in place, and we're trying to take the onerous part away. If a person has documentation that states their rights have been restored, and they are challenged that they are one of the people who are not eligible, then they would be able to produce that document. If they don't have a document, they would still have to get that document in order to be eligible to vote, if they are on that list. I hope that answers your question.

Assemblyman Holcomb:
They are making a good faith effort at restitution, given an honorable discharge, and given back their civil rights, including the right to vote. Subsequently, they decide this is too onerous, so they're not going to make full restitution. Where do we go from there? Do we have any leverage to require that they continue restitution?

Senator Horsford:
The language in subsection 3, as your counsel indicated, is consistent with how honorable discharges are treated now. There are individuals who have made a good effort and consistently paid toward their restitution, and by the time their discharge period comes up, they have not made their final payments. Based upon their track record, the recommendation of Parole and Probation is that they get an honorable discharge.

Once that discharge is made, there is nothing that Parole and Probation can do, unless the victim proceeds through the judicial process. Based upon my discussions with Parole and Probation, they would not recommend a conversion from a dishonorable to an honorable unless either the payment was made in full, or they had made great strides toward making that restitution. That would be left within the regulations adopted by the Parole and Probation Division in carrying out the provisions of this bill.

Vice Chairman Horne:
We also passed a bill out that called for civil liability for unpaid restitution. You'd still have that civil liability remaining. Are there any other questions?

> ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND DO PASS SENATE BILL 445.
>
> ASSEMBLYWOMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION CARRIED, WITH ASSEMBLYWOMAN ALLEN, ASSEMBLYWOMAN ANGLE, ASSEMBLYMAN HOLCOMB, AND ASSEMBLYMAN MABEY VOTING NO.

Chairman Anderson:
Thank you, Mr. Horne, for taking care of S.B. 445. There is a document in the front of your binder (Exhibit M) relative to S.B. 423. It is not in today's work session, but it may be helpful in understanding that bill. Let's turn to S.B. 326.

Senate Bill 326 (1st Reprint): Makes various changes to provisions governing eminent domain. (BDR 3-78)

Chairman Anderson:
This is on eminent domain, an important issue of this session. Mr. Carpenter has an ongoing discussion about this because of things that happened in eastern Nevada. Mr. Horne has an important piece of legislation.

Allison Combs, Committee Policy Analyst:
In the Work Session Document (Exhibit N), there are several proposed amendments that were discussed during the hearing, as well as one that has been modified or added since then. The first amendment was presented by the sponsor of the bill, who indicated a desire to make modifications. The draft you have from Senator Care includes these proposals.

The first amendment deletes Section 1 relating to open spaces, addresses just compensation, and includes a new section regarding the loss of goodwill, with compensation for that. It also addresses the finding of the condition of blight, retains the two-thirds requirement currently in the bill, and clarifies that this requirement applies at the time of the creation of the redevelopment project.

In D, at the top of the second page (Exhibit N), it specifies that if property taken by eminent domain is not used within ten years after it's acquired, the original owner or successor in interest would be given the right of first refusal. That land must be reconveyed to the original owner or successor in interest at the price at which it was earlier paid for by the entity. It also specifies that the failure to put the property to use within ten years would include the failure to substantially implement the public use within that time. Finally, it provides that the reconveyance within ten years to another governmental entity was not a permitted exception. It provides the bill to be effective upon passage and approval.

[Allison Combs, continued.] The second amendment on the second page (Exhibit N), regarding the finding of blight, was a proposal from the City of Reno discussed during the hearing. It's included here for consideration. The third one on the list involves the right of first refusal. During the hearing, there was a verbal suggestion from Washoe County to specify that the right of first refusal shall not be applicable in any instance of a transfer of property acquired by eminent domain to another governmental entity. Finally, with regard to open space, there have been two additional amendments submitted. One is from Washoe County, which is included here in the document, and one is from the Nevada Conservation League.

Chairman Anderson:
Senator Care wanted to make it clear that he did not want to move into the question of open spaces. In addition, we note that Mr. Horne's bill was amended yesterday in the Senate to pick up some of the language. I've asked for it to be distributed to the Committee (Exhibit O). We're trying to reduce conflict ahead of time, because this will end up in a conference committee.

The question of open spaces has to be dealt with. I particularly like the idea that if you acquired land for open spaces, you had to hold onto it for a certain period of time.

John Slaughter, Legislative Affairs Manager, Office of the Washoe County Manager, Washoe County, Nevada:
To address the open space issue, we understand that the Legislature this session has a desire to deal with eminent domain and open space. We looked at Mr. Horne's bill, A.B. 143, and the language concerning redevelopment and eminent domain. We thought that it provides a process that makes sense for local government prior to filing eminent domain proceedings. That makes sense for redevelopment issues, and it would also make sense in the case of an open space issue.

On the last page in your Work Session Document (Exhibit N), we took that language and, where appropriate, inserted the words "open space used" or "open space," thinking what that outlined was a process. If we are not today following that process, we should be.

Assemblyman Conklin:
Section 1(c) of proposed amendment number 2 and proposed amendment 4(a) are both dealing with the exact same issue. I point that out so we understand that we can't pass all of those. It also points out another thing; the most important part of this bill is the determination of blight and what properties can

be taken once blight is determined. I've said this before: this is the section that has to be retained in the bill.

[Assemblyman Conklin, continued.] It was put forth by the City of Reno: "…non-blighted property in a project area only if the agency finds and determines that the acquisition of non-blighted property is necessary to alleviate or remedy the conditions of blight as defined in NRS Chapter 279 and found to exist by the agency at the time of creation of the project area." Basically, it means that if it's non-blighted and doesn't meet the requirements, we can still take it if we decide to do so. I'm very concerned about that. I point that out in case others on the Committee find this particular section as important as I do.

Vice Chairman Horne:
That was the City of Reno's proposed amendment. I had concerns with that as well. The way they have the amendment drafted basically undoes the intent.

Assemblywoman Buckley:
Washoe County said that at the hearing. Mr. Slaughter, are you withdrawing that comment and instead relying on the written document you've attached?

John Slaughter:
I believe the topic that you're discussing now on the blight conditions was requested from the City of Reno.

Assemblywoman Buckley:
I would agree that I won't support that either.

Vice Chairman Horne:
That seems to be the feeling of the Committee. Back to open space. Are you familiar with the amendments Senator Amodei placed on A.B. 143 and his comments when this bill had a hearing?

John Slaughter:
We have been tracking both bills, and we are familiar with amendments that are now being proposed on A.B. 143.

Vice Chairman Horne:
What parts of that conflict with what you're proposing today? As you said, open space is going to happen. Senator Amodei said that we can't walk away from it at this juncture. We'll try to get it as close as possible to something workable.

John Slaughter:
There are several onerous requirements that, in our mind, would make it nearly impossible to use eminent domain in an open space case. One is a requirement in that amendment that requires a negotiation of 24 months. In our amendment, we give the property owner 30 days to respond. Twenty-four months to us would be fairly unreasonable. There are many entitlements that can be obtained on a property in that period of time.

Another requirement in the amendment to A.B. 143 deals with the property being zoned, master-planned, and included in an open space plan prior to filing an eminent domain proceeding. At that point in time, there could be a claim that once you've zoned it for open space, there is a taking. The clock starts running at that point in time.

Vice Chairman Horne:
In the proposed amendment to A.B. 143, those are some of the changes that we're speaking on now. They first started off at not less than 30 months, and it was amended to 24 months. That's on open space that is less than 40 acres. We're talking about negotiation time and large parcels of land. Long periods of time generally happen when you're negotiating. I think taking it to 30 days would be problematic.

Assemblyman Mortenson:
I'm very much in favor of protection for people in the city, where the city wants to take over by eminent domain and make a commercial enterprise out of lesser commercial enterprises. I approve of most of the provisions that have been suggested restricting your ability to do that with blight, but I'm worried about open spaces, if you're out in the middle of nowhere and you want to have a half-square-mile of open space, and there are no structures in that area. You want to acquire the land, which I think is a great idea, because we're getting so crowded in this state that we need open spaces. There's no blighted land there. Is this going to hinder you from acquiring land for open spaces? There are no buildings and no structures there. What can you do to acquire this land under some of the rules that we're proposing?

John Slaughter:
In the particular wording that we've provided, we use the definition of "open space use" that's included in NRS 376A.010, which provides that open space use includes land that needs to be preserved, conserved, enhanced for natural or scenic resources, protecting streams and stream environment zones, watersheds, viewsheds, natural vegetation and wildlife habitat areas, to maintain natural or manmade features that control floods, to preserve natural resources and sites that are designated as historic by the Office of Historic

Preservation, and for the development of recreational sites. That gives us guidelines for the types of open land or open space that we would be targeting for protection under these provisions.

Assemblyman Mortenson:
What you're saying is that this will be an entirely different situation. You will not be judged by whether the land is blighted or not, as to whether or not you can acquire it.

John Slaughter:
That's my understanding, yes.

Vice Chairman Horne:
Mr. Slaughter, is that definition you just read the same as Ms. [Kaitlin] Backlund's? You have a proposed amendment that defines open space. Was that the same?

John Slaughter:
Those definitions do differ. We looked at NRS 376A—that was the original cite—and we agreed that was a good definition of open space use. I hesitate to try to explain Ms. Backlund's definition, although we agree that her definition also covers many of the things we would be looking to protect.

Assemblyman Holcomb:
The items that you mentioned seemed like passive activities—watersheds and things like that—and leaving it in its natural condition. Could you state what activities you would have to perform on that open space that would not require you to relinquish that property within ten years? In other words, would you have to put in trails? When you do put in trails, you could say you've used the property for public use, and therefore, you don't have to give up the open space.

John Slaughter:
Included in the open space use definition is the terminology "for the development of recreational sites." In this situation, on an open space piece of property, we would view that as hiking trails, equestrian trails, biking trails, and bicycle trails. Where there are historic sites, there may be interpretive centers put in, wildlife viewing areas, and those types of uses. Upon putting in trails and things like that, you've satisfied that condition as far as public use.

Brian Hutchins, BH Consulting LLC, Carson City, Nevada:
I'm a consultant for Washoe County in this matter. For 25 years, I was with the Attorney General's Office and recently retired. For the last 15 years, I was with

the Department of Transportation as their chief counsel, working in the areas of eminent domain. Let me specifically address your question.

[Brian Hutchins, continued.] Mr. Slaughter told you the kinds of uses he would foresee for open space use. One of the difficulties in this proposed language is that if there's a failure to use the property for the public purposes for which it was acquired, then there may be a possibility that it should be returned to the previous owner. This is something new to eminent domain in the state of Nevada, when there's a failure to use it for the public purpose for which it is acquired.

This is a new concept, so it hasn't been tested in the courts, to my recollection, and it would be something that you would have to figure out as you go. What is the standard that anybody would be held to, and who determines whether they've used it appropriately or not? Does this create a cause of action; does it foment more litigation? Does it mean somebody can bring a cause of action in the court and litigate this issue? Then, who has to prove whether or not the property has or hasn't been used for the particular purpose for which it was acquired? Those questions are not answered by the proposed legislation that you see. Does that answer your question?

Assemblyman Holcomb:
Yes. I was hoping there would be an answer, but apparently it's not in here. It's something that the courts have had to make that determination or interpretation on. Thank you.

Vice Chairman Horne:
When you talk about taking someone's property, there are going to be legal disputes and challenges. What is the pleasure of the Committee to move this bill? Do you want to start walking through the sponsors' proposed amendments?

Assemblyman Carpenter:
I hate eminent domain. I love open space. I have a conflict here. It seems to me that before an entity thinks about using eminent domain, they have to get some kind of will of the people—a vote, or something that says the people are willing to put up money to acquire this property. I think I'd be more comfortable with something like that.

Vice Chairman Horne:
That would probably require a constitutional amendment, because the *Constitution* says the government can do a taking for public use. If you're going

to change that standard to say that they can't, unless they get a vote of the people, it may be something to explore down the road.

Assemblyman Conklin:
I hate eminent domain, and I am for open spaces. You could drive any direction from here and find lots of open spaces. The problem is, none of it's controlled by anybody that lives in this state. I'd be for an eminent domain bill that gives the State the right to exercise eminent domain over any federal property.

Vice Chairman Horne:
That would be even more problematic, the state taking land from the federal government. We have this bill before us with proposed amendments by the sponsors and others. Is there a desire to move this legislation?

Assemblyman Conklin:
I like the amendment Senator Care has provided, but I'm concerned that if we delete open space, we're capturing a lot of other potential eminent domain as well. What kind of problem does that create?

Vice Chairman Horne:
We can add open space as part of the amendments.

Assemblyman Conklin:
We could leave Section 1 in the bill.

Vice Chairman Horne:
We could put it in Section 1 of the original bill. Basically, it bans the use of eminent domain to acquire open space. The proposed amendments, and what was done, were not a complete ban of eminent domain for open spaces, but criteria that has to be involved before you can take for open space.

Assemblyman Mortenson:
I'm confused on what the bill says now about open spaces. I know the original bill explicitly denied it, but are we still impeding the acquiring of open spaces? With all the amendments, I do not know how I would vote on this.

Vice Chairman Horne:
We could get clarification from Legal, but how I see it is currently in the bill—if it's amended with open space, with the amendments proposed—then they would be able to use eminent domain to acquire open space. There would be certain criteria that would have to be met in order to do the taking. You're raising the bar for government. I don't know about impeding, but you would be making it more difficult.

Assemblyman Mortenson:
Those criteria are important, though. What are those criteria? Which one of the amendments are we going to use, if we're going to pass this? That's what I want to know.

Vice Chairman Horne:
That is the pleasure of the Committee as to which one we want to use. Mr. Slaughter just walked us through the Washoe County proposed amendment, which is in your Work Session Document (Exhibit O). The City of Reno made a proposed amendment that Mr. Conklin, Ms. Buckley, and I do not like. Then we have the proposed language that Senator Amodei added to A.B. 143.

We have definitions by Ms. Backlund defining open space. If you look at your document, Section 8, subsection 1, I like that part that deals with more than 40 acres. In part (a), where it deals with negotiating in good faith—"the agency has negotiated with the owner of the property in good faith, for a period of not less than 30 months"—they changed it to 24 months. Mr. Slaughter has said he thinks that's too long, and he said something about 30 days. I think that's too short. I wouldn't be inclined to go less than 18 months.

Further down in part (c), "Each acre of property is necessary for the purpose of open-space use and will be devoted in perpetuity to open space ..." I think "in perpetuity" is a little long. Fifty years was whispered in my ear. For 50 years you're not going to convey it to another private party; you're stuck with it for 50 years. Some of the amendments were proposed by the sponsor of the bill—those would be my suggestions. Mr. Slaughter, you know we're not taking testimony. You're here for clarification.

John Slaughter:
If we could, we'd respond to the 30 days versus 18 months. Maybe Mr. Hutchins could explain some of the difficulties in that process.

Vice Chairman Horne:
That would be testimony, wouldn't it? I know you have problems with that, and you already have 24 months in the bill that's moving through the Floor on the other side. If you're paying attention to the body language in both committees, I don't think you'll get anywhere near 30 days.

Assemblyman Carpenter:
These things go on for years. 24 months is proper.

Assemblyman Holcomb:
This is a question for clarification. I'm in favor of open space. I've lived in Sacramento, and as far as the eye can see, you have homes. You drive down to Los Angeles and see the same thing. Did you suggest that if open space was taken for parks, trails, et cetera, that it only be for 50 years? Is that your amendment? Could you clarify that?

Vice Chairman Horne:
That was suggested in Kaitlin Backlund's proposed amendment.

Assemblyman Holcomb:
Why 50 years? Perpetuity is a long time; 50 years is a short period of time. One hundred years is longer.

Vice Chairman Horne:
Mr. Holcomb, are you trying to clarify a question in particular?

Assemblyman Holcomb:
I think 50 years is an extremely short period of time for future generations. I'm also opposed to deleting Section 1 on open space, which was originally proposed. I'm in favor of the original Section 1 proposed by Senator Care.

Vice Chairman Horne:
The original Section 1 forbids taking open space by eminent domain.

Assemblyman Holcomb:
That was his first amendment.

Assemblyman Anderson:
Mr. Holcomb, I believe the idea of 50 years is predicated on the belief that if a public body took land in the name of open spaces, it would be required to hold to that agreement. In other words, the public body would be required to hold it for a minimum time of 50 years. It could hold it for 100 years, or even perpetuity, but if it acquired land in the name of open spaces, it could not divest itself of that land in any time that is less than 50 years.

I have no objection to that, because I believe that if you're putting to the public that you're going to use open space for a particular purpose, it should be held for that purpose. I strongly support the fact that you, as a public body, determine that the first offer of refusal should go to the people that they acquired it from. I know that causes problems because it's been held off the public tax rolls for some time.

Assemblyman Holcomb:
Thank you for the clarification.

Brian Hutchins:
I have a point of order. You're talking about the right of first refusal; there is the oral request made by Washoe County in the Work Session Document (Exhibit O) that requested the county or government to have the ability to transfer that property for a consistent use to another governmental entity. I haven't heard that mentioned.

Vice Chairman Horne:
That is correct. This would be right of first refusal before transferring it to a private party, not to another government entity. That's how I understood it.

Assemblyman Anderson:
Mr. Hutchins, we were not trying to preclude the ability of government to—having utilized the right of eminent domain to acquire property—move it to another equally important governmental body. In other words, if the State acquired it and then moved it to the Department of Parks, it would make sense if it had been acquired as part of a right-of-way for a highway; then there's a place to put a baseball field in. I would hope we would not be precluding that from taking place by putting a time element in there.

Brian Hutchins:
That's certainly the difference with Senator Care's proposed amendment. It doesn't specifically mention the possibility that it could be transferred to another governmental entity. It says that there is a right of first refusal on the prior property owner. However, the page in your Work Session Document (Exhibit O) talks about the oral request by Washoe County to make sure that was clarified.

Assemblyman Anderson:
I would hope we would make it clear that it would not be available to be sold to a private individual or private corporation. If the park becomes so popular that you have to put in a cloverleaf on the outer edge, you'll have to do that to facilitate the usage of the park. If, on the other hand, I'm going to sell the outer quarter section to McDonald's, that's a private owner and constitutes different usage than the public was under the impression that they were acquiring it for. If there's going to be an economic benefit, it should come back to the private landowner or their successor, if we go to the 50-year window of time.

Vice Chairman Horne:
Let's see if we can move this bill. I'm looking for a motion on Senator Care's proposed amendments with a change in Section 2, subsection 2, where it deals with the right of first refusal, a clarification that does not preclude the government from transferring said property from one government entity to another.

Brian Hutchins:
If I may suggest, Senator Care's proposed amendment—Section 2, subsection 2—currently says, "...seeks to convey the right title or interest in all or part of that property to any person or governmental entity." It sounds like you're suggesting to strike the phrase "or governmental entity." You could, in its place, put "any person other than a governmental entity."

Vice Chairman Horne:
Ms. Lang, do you understand the intent and what we are trying to achieve here?

Risa Lang:
Yes, I understand. We'll put it together appropriately.

Vice Chairman Horne:
Section 3 deals with the loss of goodwill. The testimony was of the gas station that sits off the expressway corner. Sometimes there is no other corner, not like that one, and you do lose. Businesses have goodwill and it does have value, which should be compensated. I like that amendment.

Assemblyman Carpenter:
I agree with the provision that if you don't use it, the former owner gets the right of first refusal. I'm wondering whether 10 years is too short. That would be my only concern, because it takes a lot of time.

Vice Chairman Horne:
Are you suggesting another amount of time, Mr. Carpenter?

Assemblyman Carpenter:
I think 15 years or so would be more logical. It gives the Legislature a chance to look at it later on.

Vice Chairman Horne:
Mr. Carpenter has suggested 15 years instead of 10 years for the time period for right of first refusal—Section 4, subsection 5, part 1.

Risa Lang:
Section 4 is added as something you would need if you passed Section 2. That's just the drafting.

Vice Chairman Horne:
So, we're good there.

Assemblyman Anderson:
"The blight existing for at least two-thirds of the property within the redevelopment area of the area existing at the time of the creation of the redevelopment project"; is two-thirds too high a standard for reality in a redevelopment agency?

Vice Chairman Horne:
In A.B. 143, we did a number of criteria for the redevelopment area, four out of ten. They since have passed this out of Committee with an added eleventh indicia. For consistency, we could use that same language.

Assemblyman Carpenter:
If we use four out of eleven, that's 40 percent.

Vice Chairman Horne:
This is four out of ten. If you remember, it was requested that we only use three indicia. Some were requesting only two of the factors. In the Senate side, that was the same request, and I went forward with my bill and said I wanted four, but I wouldn't lose any sleep over three. It was the pleasure of the committee, and that committee chose to do four. The chairman of the committee added an additional factor that may be determined, and I don't recall what that factor was. Currently, they only have to find one.

Assemblyman Carpenter:
You're talking about the criteria they use to find the blighted area, the four out of eleven. I'm talking about the definition of "blighted" for at least two-thirds of the property, a percentage instead of a number.

Assemblyman Anderson:
I think that we're talking about two-thirds of the property by area, as opposed to the number of elements of criteria, four out of eleven. The two-thirds question is what I'm trying to broach.

Vice Chairman Horne:
The problem is that if it's two-thirds of the total area, that's a high burden. It was stated that, once you eliminate blight in part of it, it makes it more difficult to find two-thirds of the whole.

Assemblyman Anderson:
You could approach a connection of properties where the first one was 100 percent blighted, the next piece 75 percent blighted on either side, and the next piece less than 20 percent. If you were going to do an entire area, and you fixed up the first three pieces, you'd never get to the two outer pieces, which may be needed for the project as a whole.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, City of Reno, Nevada:
As Senator Care has proposed in his amendment, there are inconsistencies. I think Chairman Anderson is correct. Our concern is, at what point—as you improve the redevelopment area—do you diminish the two-thirds blight factor of the total area? That is the goal of redevelopment, but there is an interchanging of language here. We sometimes refer to it as a "redevelopment area" and then a "redevelopment project." They are two definitions in statute. As we read it, it's a little confusing, because it talks about two-thirds of the redevelopment area at the time the redevelopment area existed, and of creation of the redevelopment project. You can't do that.

It has to be at the time of creation of the redevelopment area that two-thirds of blight exists. The purpose of the amendment we proposed was trying to show that there may be a necessity of a non-blighted parcel that is necessary for the assemblage of a larger project. I think what we're looking for is clarification on whether the two-thirds exist to the redevelopment area at the time of creation—which, with A.B. 143, would be created with before-blight standards—or are we talking about the two-thirds of the project area or the redevelopment project? That's where the confusion lies.

Vice Chairman Horne:
If it said "project area," would that solve your concerns on the inconsistency? You wouldn't have to worry about diminishing that two-thirds of the area.

Nicole Lamboley:
At the time of creation, because most areas, when they are created, are greater than two-thirds as you improve the area. When we talked to Senator Care, he indicated there might be a factor. I don't think, the way the bill reads, it could hold up in court.

Vice Chairman Horne:
Ms. Lamboley, have you seen Senator Care's proposed amendments?

Nicole Lamboley:
We have, this morning.

Vice Chairman Horne:
Ms. Lamboley seems to think an inconsistency exists with the language interchanging redevelopment area and redevelopment project, and whether the two-thirds is going to be applied to the project of a redevelopment area. It has to apply to just the redevelopment area. Is that a fair summary?

Risa Lang:
I think that the way this amendment is drafted, it would say that you're acquiring the property for the redevelopment project and that two-thirds of the property within the entire area, as the area exists at the time of the creation, must have the condition of blight. The property is acquired for the project, but the entirety of it would be the area. We could change all of this to say "for the redevelopment area," if that makes it clear.

Nicole Lamboley:
If you look at the last line of that amendment, the bottom line—if you added "as the area existed at the time of creation" and dropped the "of the redevelopment project," it would be more clear. It does state that you can use eminent domain for a redevelopment project, as long as you make a written finding that two-thirds blight existed in the redevelopment area—where the redevelopment project will exist—at the time of creation.

Vice Chairman Horne:
"...at the time of creation of the redevelopment area." We need to move this along. Let's go on to the open space issue. That's in the document that they did on A.B. 143—more than 40 acres and not less than 24 months. "Each acre of property is necessary for the purpose of open space use and will be devoted in perpetuity"—change "in perpetuity" to 50 years, under subsection (c).

There is one last issue that I want to bring up. The flood control district has a problem with this, and you came very late to be exempted. As of right now, we're going to move this bill, and I don't think we should address this issue. A Floor amendment can be done later, if the Committee sees fit to do so.

Assemblyman Anderson:
I suggest we ask Ms. Lang and Ms. Combs to work with the proposals so we get all of it into a single document. We'll ask for it to be the first thing that we

take up at our work session tomorrow. I think that would make everybody more comfortable, if there's an issue that the water folks have discovered that is absolutely unaddressed.

Vice Chairman Horne:
I would suggest that you get your concerns for possible proposed amendments to Ms. Combs in the next half hour, so she can work on them. We'll take this up first thing tomorrow on what we've proposed so far.

Brian Hutchins:
There wasn't much discussion about the goodwill portion. I haven't heard testimony on either side on that. How would one of my clients or another agency make a record as to their opposition to portions of that goodwill?

Vice Chairman Horne:
The sponsor of the bill proposed this amendment during his testimony when this bill was heard. That was the time to make an opposition to that.

Brian Hutchins:
I think they were caught unaware. It was the last day it came in.

Vice Chairman Horne:
I understand, but we don't hold these meetings in secret. We put them out there, and they're covered.

Assemblyman Anderson:
Maybe Mr. Hutchins achieved the goal he wanted. You've gone on record indicating that there's a concern about the ambiguity on the issue of goodwill, and I think the Committee has noted there may be difficulty in trying to assess what goodwill means. We can have a long discussion on it, but not today.

Vice Chairman Horne:
Are there any other concerns? Then we're done with S.B. 326 for today.

Chairman Anderson:
Are there any other issues? We are adjourned [at 12:13 p.m.]

RESPECTFULLY SUBMITTED:

Carole Snider
Recording Attaché

RESPECTFULLY SUBMITTED:

Victoria Thompson
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 19, 2005 **Time of Meeting: 8:00 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
S.B. 172	**B**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 172	**C**	Chairman Bernie Anderson, Assembly Judiciary Committee	Nevada Trustee's Timetable
S.B. 172	**D**	Chairman Bernie Anderson, Assembly Judiciary Committee	Notice of Trustee's Sale
S.B. 175	**E**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 234	**F**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 287	**G**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 353	**H**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 343	**I**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 343	**J**	Renny Ashleman, Legislative Advocate for City of Henderson	Letter to Chairman Anderson, dated May 18, 2005, regarding S.B. 343
S.B. 343	**K**	Stephen M. Rice, Legislative Advocate for NAIOP (National Association for Industrial and Office Properties	Memo to Chairman Anderson, dated May 18, 2005, regarding S.B. 343
S.B. 445	**L**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19,

			2005
S.B. 423	**M**	David Smith, Management Analyst, Board of Parole Commissioners	Memo to Chairman Anderson, dated May 18, 2005, regarding S.B. 423
S.B. 326	**N**	Allison Combs, Legislative Counsel Bureau	Work Session Document May 19, 2005
S.B. 326	**O**	Legislative Counsel Bureau	Proposed Amendment to A.B. 143 for Comparison Purposes