MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-third Session
May 11, 2005

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 8 a.m. on Wednesday, May 11, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven Horsford

GUEST LEGISLATORS PRESENT:

Assemblyman William C. Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Ellie West, Committee Secretary

OTHERS PRESENT:

Robert D. Faiss, Cantor G&W (Nevada), Limited Partnership
Joe Asher, Managing Director, Cantor Fitzgerald
Dennis K. Neilander, Chairman, State Gaming Control Board
Scott Scherer, Diamond I, Incorporated; Diamond I Technologies
Michael G. Alonso, International Game Technology; Harrah's Entertainment
Alfredo Alonso, Nevada Pari-Mutuel Wagering System

William Bible, Nevada Resort Association
Lesa Coder, Director, Redevelopment Agency, Clark County
Dan Musgrove, Clark County
Anthony F. Sanchez, LS Power Development, Limited Liability Company
Karen Rajala, Coordinator, White Pine County Economic Diversification Council
Renny Ashleman, City of Henderson
Stephanie Garcia-Vause, City of Henderson
Lucille Lusk, Nevada Concerned Citizens
Berlyn Miller, Vice Chairman, Commission on Economic Development
James F. Nadeau, Nevada Association of Realtors
Kimberly McDonald, City of North Las Vegas
Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce
John L. Wagner, Burke Consortium of Carson City
Derek Morse, Regional Transportation Commission of Washoe County
Susan Fisher, City of Reno
Mary C. Walker, City of Carson City; Douglas County
Dan Holler, County Manager, Douglas County; Douglas County Redevelopment Agency
K. Neena Laxalt, City of Sparks
Cheri L. Edelman, City of Las Vegas

Chair Amodei opened the hearing on Assembly Bill (A.B.) 471.

ASSEMBLY BILL 471 (1st Reprint): Authorizes use of mobile communication devices for gaming and increases number of members of Off-Track Pari-Mutuel Wagering Committee. (BDR 41-1302)

Robert D. Faiss, Cantor G&W Nevada, Limited Partnership, testified in support of A.B. 471 as counsel together with the company's managing director, Joe Asher. Mr. Faiss read from his written testimony (Exhibit C) and stated the core of the bill was in the first four sections: those provisions allowed the gaming industry to utilize new technology which enhanced the gaming experience. The first four provisions of A.B. 471 defined mobile gaming and authorized the Nevada Gaming Commission to adopt regulations governing the manufacture and sale of mobile gaming systems and their operation in approved areas of nonrestricted gaming establishments which already operated at least 100 slot machines and one other game. Mr. Faiss said mobile gaming did not include the Internet, and approved areas did not include hotel rooms. He explained the

devices would operate only in areas approved by the Gaming Commission, and the devices automatically shut off outside those approved areas. Within the established gaming-control structure, the mobile gaming devices were subject to the same regulation as slot machines and gaming devices, he said. He referred to section 21 on page 11 of A.B. 471, which did not deal with mobile gaming but increased the membership of the Off-Track Pari-Mutuel Wagering Committee from 9 to 11 members. This was a request from the Nevada Pari-Mutuel Association because of the increase over the years in the number of licensed race books, he stated. Mr. Faiss said every provision in the bill was created in consultation with the Gaming Control Board.

He referred to a book (Exhibit D, original is on file at the Research Library) entitled *On Top of the World, Cantor Fitzgerald, Howard Lutnick, and 9/11* by Tom Barbash. He noted Joe Asher was a key executive of Cantor Fitzgerald, whose headquarters were lost during the tragedy of September 11, 2001 (9/11) at the World Trade Center. The book told the story of the determination of Cantor Chairman and Chief Executive Officer Howard Lutnick and the surviving executives to rebuild the company. Mr. Asher had come from New York to tell Nevada lawmakers why the new Cantor Fitzgerald company was interested in Nevada and A.B. 471.

Joe Asher, Managing Director, Cantor Fitzgerald, read from his written testimony (Exhibit E) in support of A.B. 471. Mr. Asher said he was managing director of Cantor Fitzgerald and several affiliates, including Cantor G&W (Nevada); the letters stood for Gaming and Wagering. He said G&W intended to become a corporate citizen of Nevada and was focused on building a gaming business here. Cantor was long committed to the development and utilization of cutting-edge technology. Fundamentally, he said at heart of the matter, a $100-million bond trade was the same as a $10 bet on a football game or on a hand of video poker, because it was all about the real-time, reliable and secure execution of a financial transaction conducted in compliance with law. Mr. Asher said just as electronic trading on computer screens largely replaced voice brokerage in many parts of the stock and government-bond businesses, trading on mobile devices reduced the need for people to sit chained to their desks. Representing a large percentage of Cantor Index trading, the Cantor handheld device was the first real-time mobile trading device anywhere in the world, he stated. Mr. Asher said his company had more experience than anyone in providing wagering on mobile devices. Since the successful deployment of

mobile trading technology, his company aggressively sought to expand the areas where it was offered, he said.

Cantor Mobile wanted to offer regulated mobile gaming in Nevada in partnership with hotels and casinos, Mr. Asher asserted. Cantor Mobile worked with the Gaming Control Board to determine the path to this Legislative Session. Assembly Bill 471 allowed mobile gaming in certain areas of a nonrestricted licensed gaming establishment, he continued. They proposed to offer casino games such as slots, poker, blackjack and roulette on mobile devices such as tablet personal computers or personal digital assistants in public areas of a resort such as the swimming pool or convention center, as approved by the Gaming Commission, he stated.

A customer would deposit money on account to play games in permitted areas. The gaming device would not work outside the permitted areas, he emphasized. The device could be used during downtime, increasing the casino revenues. When finished, the customer returned the device and withdrew the balance from his account. For tax purposes, the devices were treated as slot machines, he explained. He pointed out new jobs would be created in Nevada in the areas of technical and customer support, as well as management.

Mr. Asher addressed the problem of security and said they would work with the Gaming Control Board to make sure they were comfortable with the features in place. He said Cantor Mobile would construct the network and devices for use only in the public areas of the property. He said they had a biometric fingerprint reader that only allowed the customer to use the device. He revealed gambling on mobile devices cut off a bettor after a certain amount of losses were incurred.

He emphasized the reliability of the technology, citing the Cantor eSpeed trading system's core data center on the 103rd Floor of One World Trade Center was destroyed on 9/11. Remarkably, Cantor's trading system never went down because it immediately switched to backup facilities in New Jersey and London; the technology worked flawlessly, he said. He concluded Cantor was excited about becoming a part of the Nevada gaming industry and said he thought they could make a positive contribution to the continued growth of the gaming industry.

Senator Wiener asked how the biometric signature point prevented someone from passing the device to a minor after the fingerprint was entered by the customer.

Mr. Asher replied the device could be set so after a certain period of time, a customer had to re-log onto the machine. Also, he explained, when a device was given to a customer, an agreement had to be signed that the machine was only for that person's use. He explained some devices were equipped with cameras, so a user had to periodically take a picture of himself or herself and submit it for comparison to the photo stored in the database where they acquired the machine.

Senator Care asked if A.B. 471 was enacted, how a customer would know about the existence of the mobile gaming device.

Mr. Asher explained they would use signage around and inside the property, and their marketing standards would be set by the Gaming Commission.

Senator Care asked about how the cages would be utilized for the collection of money and if credit cards would be accepted. Mr. Asher replied cash was required on deposit for using the mobile device. Senator Care asked whether or not the player set his own limit by depositing a finite amount of money he was willing to risk. Mr. Asher responded the player either set his limit or the Gaming Control Board set the limit for the amount of money a person could lose per day using the device. Senator Care asked if the limit related to the player or applied equally to everyone. Mr. Asher said they had not discussed that yet with the Gaming Control Board. He said the Board set limits regarding remote sports betting and expected they might do the same for the mobile gaming devices.

Senator Care explained his concern about the use of credit cards because many people thought of them as not real money and got carried away with spending more than they could afford to pay. He said getting caught up in the enthusiasm of losing or winning could make a player regard his credit card as just numbers, as opposed to putting out real cash. He said he wanted assurance that the player, after reaching his predetermined limit, could not go back to the cage and get his limit raised. Mr. Asher responded the mobile gaming devices were superior to what already existed because, under the current regulations, a person could go to another casino to gamble after losing at a previous casino. He said with the mobile gaming device, a cutoff mechanism prohibited a

gambler from getting an increased limit. Mr. Asher admitted problem gambling was a serious issue and explained his technology reduced the risk of losing more money than one could afford, rather than expanding the risk. Senator Care said he wanted to hear testimony about the limits already in existence from the Gaming Control Board.

Senator Care asked what games the mobile device would contain. Mr. Asher replied, from a commercial perspective, some games worked better on the device than others: slot machines, video poker, roulette and blackjack, whereas craps did not replicate well. He said emotions generated around the craps table could not be replicated on a mobile device, so they would not offer that game. Senator Care pursued the notion of the intangible excitement of the game, and Mr. Asher said he was correct that it would be missing on the mobile devices. Senator Care asked how the programming of the devices, regarding odds and payoffs, would be known to the public as currently advertised by casinos. Senator Care also inquired how the payoff ratio was determined on a mobile gaming device. Mr. Asher said the pay rate would be set, and the payoff rate would be available to the public. He noted an intimidation factor in some games, such as blackjack, in situations where a person requested a card or "hit" when he should have stayed, and other players' hands were messed up as a result. With the mobile device, this situation did not occur, he said. Senator Care inquired how many resorts expressed an interest in employing the mobile gaming devices and wanted to know the demand. Mr. Asher answered three major properties on the Las Vegas Strip had expressed an interest. Senator Care asked if the resorts used the devices, could he foresee one resort advertising a better payoff rate than anyone else offering the mobile devices. Mr. Asher said it was possible.

Senator Wiener asked if Mr. Asher anticipated creating the action through the excitement of noise from the machine, which could be an intrusion on others, or would the mobile device be quiet. Mr. Asher replied the games had an audio function, but it was not loud, and it could be muted or regulated to not intrude on others. Senator Wiener referred to cell phones that constantly rang in inappropriate areas. She asked if the devices transferred among properties with the same ownership. She inquired if the cash limit set at one property for using the device applied to all properties under the same ownership or whether people took the devices to another of the properties to increase their limits.

Mr. Faiss stated A.B. 471 merely authorized an intensive study by the Gaming Control Board and the Nevada Gaming Commission to create a comprehensive framework for this new system, and they had their own questions. He said no one knew all the answers yet, because the Gaming Control Board had not yet set the regulations. He noted the devices had to go through an intensive testing process.

Senator Care said the Legislature needed to focus on the policy and whether the Committee wanted to have these mobile gaming devices in Nevada. Senator Care discussed the history of gaming and said he expected more technological innovations in the future. He asked Mr. Faiss to what extent the Legislature should allow the technology to drive the policy, as opposed to demand. He asked about our policy in regard to reacting to technology and then trying to apply it. Mr. Faiss said the policy had not changed over time, and our gaming control system was the greatest lure for investors from around the world. It was predictable and stable, he said. People knew what to expect when they got involved in Nevada gaming, and no one was going to change the rules without careful study showing merit in the change, he emphasized. Mr. Faiss asserted technology was one of the things driving interest in gaming. He said A.B. 471 was not a major policy change. He explained players gambled anywhere around the casino already, including at slot machines located in the swimming pool areas. This was just another device to accommodate players and did not represent a major step forward, he alleged. The passage of this bill merely authorized a process using the deference the law allowed gaming, unlike any other agency, to do the right thing, he concluded. Senator Care referred to the public policy contained in *Nevada Revised Statute* (NRS) 463.0129, subsection 1, paragraph (e) and quoted:

> To ensure that gaming is conducted honestly, competitively and free of criminal and corruptive elements, all gaming establishments in this state must remain open to the general public and the access of the general public to gaming activities must not be restricted in any manner except as provided by the Legislature.

Senator Care requested an explanation of the portion of the statute that said: “access of the general public to gaming activities.” He inquired if that meant no one could be refused who was of legal age or if it meant any member of the public could walk around the casino and watch the activities of others. Senator Care said if it meant the latter scenario, how would someone with a

gaming device, who was walking around a casino, be monitored by the public. How could the public view the devices which only the player would be watching? he questioned. The public should be allowed to view all gaming activities, he stated. Mr. Faiss said he taught gaming law, and one of his students, in her research, looked at the origin of that policy. In 1931, wide-open gaming was enacted and no longer sheltered from view. He interpreted the statute to mean the public needed to know gaming was there; and the policy statement said it should not be restricted and regulation of it was limited to the Legislature. The Legislature enacted that law, and it had given the State Gaming Control Board the authority to allow a licensee to make an application and absolutely close a section of the casino to everyone except a designated group.

Dennis K. Neilander, Chairman, State Gaming Control Board, said he maintained a neutral position.

Scott Scherer, Diamond I, Incorporated; Diamond I Technologies, said Diamond I Technologies was a small startup company with a wireless fidelity mobile gaming system and hoped to be licensed in Nevada if A.B. 471 passed into law. They sought to operate their gaming system in other jurisdictions around the world, he said, which would expand gaming throughout the world. He said Nevada needed to keep gaming fresh, current and convenient for customers, enhancing the ability to compete with the other jurisdictions. He said it was important that the Board and Commission have the authority to allow the Nevada gaming industry to remain competitive with other gaming industries around the world. Since Nevada visitors spent less time on the casino floors and more time shopping, dining and seeing shows, the new technology enabled visitors to gamble while pursuing other interests. He referred to page 2 of A.B. 471 in section 2, line 18, which listed the caveats and the findings the Commission needed to make. He said Nevada had to maintain its reputation for stability in the gaming industry. Mr. Scherer said he was confident the Commission and the Board would take those things into account while making a determination whether or not to go forward with the use of the mobile gaming devices.

Michael G. Alonso, International Game Technology (IGT), said IGT supported the goal of the Nevada gaming industry to stay on the cutting edge of technology to remain competitive, so IGT supported A.B. 471. He said they looked forward to the opportunity to work with the Gaming Commission and the Gaming Control Board.

Senator Wiener asked Mr. Neilander what changes were made in the Assembly to the original bill. Mr. Neilander replied the majority of the changes were housekeeping in nature. He said a major change dealt with line 18 of page 2. That test was taken from the interactive gaming bill, and the language was clarified. Additionally, the bill included a provision clarifying what authority the Commission had for defining where to permit the mobile devices within the nonrestricted location. Senator Wiener asked what changed in terms of the area where those devices were appropriate. Mr. Neilander replied the bill, as written, referenced nonrestricted licensees with at least 100 slot machines and at least one table game and said those areas had the highest levels of surveillance and internal-control procedures.

Senator Care asked Mr. Scherer and Mr. Alonso about A.B. 471, section 3, line 14 on page 2, regarding a manufacturer, seller or distributor. Senator Care said Cantor Fitzgerald had the product ready to go, as did other companies, and asked for assurance there would be several manufacturers and sellers of the mobile gaming devices. Senator Care said he was concerned the Legislature would approve a product produced by only one manufacturer and one seller. He asked if there was other competition. Mr. Scherer said his clients, Diamond I, Incorporated and Diamond I Technologies, had a mobile gaming device ready to implement in the marketplace. He said his clients intended to compete in that market. Mr. Alonso spoke on behalf of IGT and said his law firm was contacted by others interested in this technology, so competition was definitely at hand. Senator Care asked Mr. Scherer about other jurisdictions and if someone had done research to make sure there was a demand for these mobile gaming devices. He said he hesitated to approve the devices unless there was a demand for them. Mr. Scherer said his client was just beginning to offer the units, so it was too soon to know the response in the marketplace. He said he was not aware of any research, but he did know many new developments in the industry took time for acceptance and cited the Mega-Bucks progressive network as an example.

Senator Wiener asked Mr. Neilander if the mobile device would, at some point in the future, have a game similar to Mega-Bucks, where jackpots grew larger and larger. Mr. Neilander replied not initially because dedicated surveillance was required for the progressive jackpots, but it could be possible in the future. He explained how the present law and regulations affected the limits allowed on the mobile devices and said there was an ability for anyone to prohibit themselves from check-cashing services, issuance of credit and direct mail

marketing. Currently, no limits applied to a player except for those just mentioned, he said. One instance of a $2,200 per day limit involved sports betting allowed by telephone, he added. He concluded if a limit was necessary for the mobile devices, it would apply to everyone. Senator Wiener asked him if the limit was daily per property and allowed people to go to another property on the same day after their limit was reached on the first property. Mr. Neilander said they could only use the device on the property where they put down the cash. If they lost all their money and their limit was reached, they could only go to another property if they had more cash to put down on another device at that location, he said, and noted it was similar to the way sports betting was done via the telephone. Even though a person could set up several accounts, the State Gaming Control Board maintained a log called a biweekly wagering report tracking a person as to his winnings or losses.

Senator McGinness asked Mr. Neilander if he could set the standard for the devices with the manufacturers so they all had to use the same technology, rather than one using wire, another cable, another microwave and so on. Mr. Neilander said the Board had to write a broad regulation to not discriminate among technologies. Senator McGinness asked if different employees would be required to monitor each of the different technologies. Mr. Neilander said his staff was comfortable with the technologies, and they would not approve those that presented a problem. He mentioned a number of these devices were in use in the United Kingdom, and the Board had seen some of this technology employed there. Since these devices posed a policy question, the Board asked the Legislature to decide the issues, he said.

Alfredo Alonso, Nevada Pari-Mutuel Wagering System, read from his written testimony (Exhibit F) and addressed section 21 of A.B. 471 regarding the rate committee consisting of 9 members, with the request to expand the membership to 11 members. He said in 1997, there were 30 sports books and today there are over 75 sports books, so more members were needed on that committee.

Chair Amodei closed the hearing on A.B. 471 and opened the hearing on A.B. 485.

ASSEMBLY BILL 485 (1st Reprint): Revises provisions governing gaming establishments. (BDR 41-1376)

William Bible, Nevada Resort Association, said A.B 485 amended two provisions of NRS 463 where a licensee was not required to be relicensed or meet the room requirements imposed on resort hotels. He noted A.B. 485 intended to clarify the transfer law as the result of many meetings of the Resort Association members throughout Nevada. He said it was amended in the Assembly.

Michael G. Alonso, Harrah's Entertainment, referred to NRS 463.1605, which allowed the Nevada Gaming Commission to grant a nonrestricted gaming license, and said it was enacted in 1995. He said subsection 3 of NRS 463.1605 was enacted in 1995 to recognize when a property was displaced or acquired for redevelopment, so the Nevada Gaming Commission had the authority to grant that nonrestricted gaming license. Harrah's Entertainment proposed adding a provision to the bill limiting the granting of a nonrestricted gaming license if that property was acquired or displaced and moved within the redevelopment area, he said. Mr. Alonso stated there had to be approval by the Gaming Control Board and the local government and compliance with the current law.

Mr. Alonso said the provisions of NRS 463.302 proposed for change were technical cleanup of language to make the bill consistent with NRS 463.1605. He said the meat of the bill was in NRS 463.302 and said there were two provisions. Under section 1, paragraph (a) of NRS 463.302, a person could voluntarily move his license if he was in a redevelopment area with Gaming Control Board approval required as well as approval by the local government for the location, he explained. Mr. Alonso referred to subsection 1, paragraph (b) of NRS 463.302 and said the original statute was expanded regarding Washoe County and now prevented someone from moving out of the redevelopment area. Mr. Alonso said section 2, subsection 4, paragraph (b) of NRS 463.302 applied to Las Vegas, and they proposed to expand the language to include a county, city or town with one or more gaming establishments, hence bringing Clark County, and not just Las Vegas, under the provisions. The rural counties were basically unaffected by the bill, he said.

Chair Amodei asked Mr. Alonso about section 2, subsection 2 of A.B. 485 and said he believed it gave discretion to the Nevada Gaming Control Board to allow a move in Washoe County through general eminent domain factors. Mr. Alonso replied the intent was to deny the ability of a city or local government to

condemn a nonconforming resort hotel and prevent them from relocating anywhere else as approved. Chair Amodei said Clark County was excluded by the language in section 4, paragraph (b), but everywhere else in Nevada, a casino had the option to move within the county in which it was condemned. Mr. Bible said Clark County was interested in an amendment to A.B. 485 to create a carve-out for an application they had within Clark County.

Lesa Coder, Director, Redevelopment Agency, Clark County, said her agency supported A.B. 485 and the closure of the loophole allowing the indiscriminate relocation of nonconforming gaming establishments throughout the State. She referred to their proposed amendment to A.B. 485 (Exhibit G) and said they wanted to secure minimum flexibility to relocate an existing nonconforming establishment in the absence of condemnation. She said it was limited to unincorporated portions of a county and inclusion within a larger redevelopment, so the establishment was not allowed to move on its own. Ms. Coder said the amendment limited the potential flexibility of a property to within 200 feet of its present location. It also limited nonconformity, as current land-use law, to the size and square footage of the gaming areas existing at the time of its nonconformity, she said. The amendment included a public-hearing process, she added. Ms. Coder concluded they were sensitive to adjacent residents and their needs while going through the relocation and integration of a redevelopment project.

Dan Musgrove, Clark County, added they appreciated the efforts of Mr. Alonso and Mr. Bible and realized it was late in the process to bring this amendment. He said he and Ms. Coder were willing to work with the Committee if necessary.

Chair Amodei closed the hearing on A.B. 485 and opened the hearing on A.B. 143.

ASSEMBLY BILL 143 (1st Reprint): Makes various changes concerning community redevelopment and eminent domain proceedings. (BDR 22-44)

Assemblyman William C. Horne, Assembly District No. 34, gave a video presentation (Exhibit H, original is on file at the Research Library) from a news program, *60 Minutes*, which highlighted eminent domain issues in Arizona, Ohio and New York. The video pointed out the government could seize private property for public use, but it also explained the government could seize private

land for private use if the government could prove that doing so served the public good. Cities across America had used eminent domain to force people off their land so private developers could build more expensive homes and offices, which paid more in property taxes than the buildings they replaced. This was morally wrong according to the narration. The program cited examples of people who refused to leave their homes for reasons such as retirement and passing the family home to heirs. Many scenic areas, desirable to builders, were designated as blighted in order to use eminent domain to force the residents to sell their homes. The program included an explanation by a guest speaker who explained the term "blighted" was really just a legal statutory term used to describe an area, to use that area for a higher and better use. The narrator asked her what a higher and better use was, and she responded it was about whether the structures met today's standards. The narrator pointed out the cities set those standards. The owners of the homes and businesses designated as blighted have fought back with ballot initiatives, he said.

Assemblyman Horne referred to his handout (Exhibit I) and referenced a cartoon which depicted the problem of eminent domain he was attempting to alleviate in Nevada. He referred to articles included in Exhibit I; the first article, dated February 22, highlighted the Poletown decision made by the Michigan Supreme Court in the 1980s. The decision allowed a General Motors plant to raze a neighborhood and expand its plant under the guise of public good, he said. The Nevada Supreme Court used this decision as rationale in a Las Vegas ruling, he said. The Michigan Supreme Court overturned the Poletown decision last year, he noted.

The second article, dated February 27, addressed a U.S. Supreme Court case, *Kelo v. City of New London*, Assemblyman Horne said, and was similar to the case of the Ohio couple in the *60 Minutes* presentation, Exhibit H. The decision was not yet rendered, he stated.

Assemblyman Horne reviewed A.B. 143, section 2, subsection 1, which dealt with negotiating in good faith. He said section 2, subsection 2 defined what was required in a written offer such as compensation, the value of the property and delivery of a notice requirement. He referred to section 3, which pertained to persons attempting to expand their property or acquire property in a redevelopment area. He concluded with section 5 and said it defined blight and conditions that had to be met. Assemblyman Horne informed the Committee that an amendment which he supported would be presented by Anthony

F. Sanchez of the Jones Vargas law firm. He said the amendment was presented in the Assembly, and concerns from the Assembly Judiciary Committee had been worked out.

Assemblyman Horne said he had placed a requirement in the proposed amendment to A.B. 143, which included a finding of 4 factors in a list of 10 criteria. He said the cities wanted to reduce that number to three factors.

Chair Amodei asked about section 2, paragraph (a) of A.B. 143 and said one of the requirements was to attempt to negotiate in good faith. Chair Amodei said section 3, page 3, line 33 said a person requesting the redevelopment must negotiate in good faith with the owner of the property and reach an agreement. Chair Amodei asked why the word "attempt" was chosen instead of the words "in fact" to negotiate in good faith. He said what was one person's attempt was another person's absolute failure to meet a criterion. Assemblyman Horne said the language was a compromise, although he wanted it tighter. Chair Amodei referred to page 3, section 2, subsection 2, line 8 of the bill and quoted: "That the agency will provide the owner with a full copy of the agency's appraisal report in exchange for a full copy of an appraisal report of an appraisal performed on behalf of the owner." Chair Amodei asked Assemblyman Horne if that meant in order to see the appraisal report of the government agency, a person first had to hire an appraiser and generate his own report. Assemblyman Horne responded in the affirmative and said that section of the bill dealt with criteria to be met after the negotiations were performed. Initially, only a summary of the appraisal was required to be provided, he explained. As the negotiations progressed, he said, an exchange of the full reports was appropriate.

Chair Amodei said he recalled discussions last Session of the economic means property owners brought to negotiations in terms of generating appraisal reports and to obtain counsel. He asked if there was any consideration of those issues and the economic means of the parties for requiring an appraisal report to be generated initially in order to see the government or the redevelopment agency's appraisal report. Assemblyman Horne said initially, a requirement was amended in a subcommittee meeting. He said a provision asked for property owners to be reimbursed for appraisal and attorney fees in total until the point they declined an offer. If they refused the offer, from that point on, their expenses would become their own responsibility, he said. This language was amended out due to the belief that those expenses would be amorphous and out of control, he

explained. Chair Amodei said the general context of all the discussions was for just compensation. Assemblyman Horne agreed and added counsel working in that area of law had come to the negotiations and was amenable to the amendments.

Chair Amodei asked if the original printing of A.B. 143 included language amended out as a result of discussions. Assemblyman Horne replied in the affirmative. Chair Amodei asked about the notice provision and why actual notice was not required of all property owners. What was the thought process behind not notifying all owners of record for the property? Chair Amodei asked, referring to lines 19 through 21 of the bill. Assemblyman Horne said he could not recall the rationale and reiterated it was just an effort to make the bill more palatable and less burdensome on the city for providing notice. He noted some properties had several owners, which made things more difficult for notification.

Senator McGinness asked Assemblyman Horne if he approved of the two proposed amendments, one from the City of Reno and one regarding the train. Assemblyman Horne said the City of Reno was in the process of defining a redevelopment area, and he approved of that process, which was 90 percent completed. He said he preferred four criteria rather than the three criteria the city wanted. Senator McGinness asked if any property owners were at risk if the date was moved to October 1. Assemblyman Horne said he understood the date was for definition of a redevelopment area only.

Senator Care said, initially, the entire burden should be on the agency, and the methodology was critical. He asked Assemblyman Horne to explain how they arrived at the new language. Assemblyman Horne said the reason was if the government entity was required to give a full disclosure of its appraisal, there could be situations where the property owner's attorney had another document refuting the appraisal and hence asked for another appraisal of their choice, which could find more value. By giving an initial summary, the property owner still had the responsibility to go and get an independent appraisal that would more likely be unbiased, he reasoned. Senator Care said he was going to look at that situation because in litigation it worked differently. He said each party had their own appraiser, who would be their expert witness. Senator Care said in practice, a client would say here is my appraisal and I want your legal opinion. Assemblyman Horne said that during discovery there was an exchange of documents, and that language was included as part of the proposed amendment.

Chair Amodei asked Mr. Wilkinson to peruse the information available regarding the issue of just compensation in terms of the mechanics involved. Chair Amodei said ultimately, whether you were the taker or the property owner, your appraisal evidence had to be persuasive to the finder of fact. So, it was not if your appraiser was assailed by the other side, but when he was attacked and how effectively. Chair Amodei said he wanted to know how to do good-faith negotiations in the dark. He said the bottom line regarded the constitutional provision of what was just compensation. It was whose appraisal information was most persuasive to the finder of fact. Chair Amodei asked Mr. Wilkinson to assist Senator Care in determining how just compensation was potentially arrived at, in a negotiation context, and if the basis of the price offered was obscured. Chair Amodei also asked Mr. Wilkinson to find out if other states compensated the other side and if they were required by statute to get an appraiser to engage in negotiations on just compensation.

Senator Horsford said A.B. 143 was a good bill which helped protect the interests of property owners. He questioned section 5, which dealt with the characteristics defining blight and the increased requirement to 4 criteria instead of the original 3 out of the 10 criteria required to meet those standards. Senator Horsford said he thought the language was broadly defined, and he saw several scenarios where agencies could justify meeting one of those ten characteristics. He asked what the discussion was in the Assembly regarding increasing the number of criteria to four and if Assemblyman Horne thought agencies could meet the criteria as outlined in the bill. Assemblyman Horne replied four criteria would be hard to meet, and many Assembly members thought requiring three or two criteria was enough of a raise over the one criterion that presently needed to be satisfied. He said, as noted in the videotape of *60 Minutes*, Exhibit H, it should be more difficult for government to take your property and that was why he thought four criteria out of ten were not unreasonable.

Assemblyman Horne said he had no problem with eminent domain taking private property for the public good, and that was not the intent of A.B. 143. The intent of the bill was to force government to give a good reason to take property. He also acknowledged redevelopment was important, and said he did not want to hamstring the government too much; hence, this bill was a compromise. Senator Horsford agreed that under certain circumstances, eminent domain was necessary, but he thought it was important to work with the businesses already established before bringing in new enterprises and taking the established business property to do so. Senator Horsford said he wanted to

help those people already established in a community to redevelop their neighborhoods rather than replace them.

Anthony F. Sanchez, LS Power Development, Limited Liability Company, referred to a packet containing two letters (Exhibit J, original is on file at the Research Library): one from Paul Johnson, chairman of the White Pine County Economic Diversification Council, and one from John A. Chachas, chairman of the White Pine County Board of Commissioners. Mr. Sanchez gave some background information about what LS Power Development was working on in White Pine County. He said they had spent 18 months in the planning and design phase to construct a coal-fired power plant that constituted a $1.6-billion investment in White Pine County. The project was proposed 25 years ago by Los Angeles Department of Water and Power. He said the project was located on Bureau of Land Management property. Mr. Sanchez said part of the project required shipping in coal from the Powder River Basin in Wyoming. The Northern Nevada Railroad was 138 miles long, he said, and had not been used in decades. They estimated it required $33 million to reconstruct the track. The funding would come from the tax revenue base the power plant generated, Mr. Sanchez stated. With the new requirement of four criteria as opposed to only one criterion, White Pine County would have difficulty meeting the burden to qualify as a redevelopment area, he explained. Hence, White Pine County had proposed a narrowly drawn 11th factor in their proposed amendment (Exhibit K) that enabled the county to create the redevelopment area. He explained eligible railroads were limited to counties with populations under 100,000, and the railroad had to be owned by a governmental entity, a nonprofit organization or both. The rationale behind those limitations was to regulate the purchase of the rail line to the White Pine Historical Foundation and the City of Ely, that were currently negotiating the purchase with the Los Angeles Department of Water and Power, he explained. Mr. Sanchez referred to section 2 of the proposed amendment, Exhibit K, which referenced that 11th factor. He referenced NRS 279.519, section 1, subsection 4 and said it listed the criteria for redevelopment.

Chair Amodei said he understood this amendment was a consensus to provide rail service to the power plant in White Pine County. Mr. Sanchez replied in the affirmative and said there were other uses for the railroad as well, such as mining and oil development. Chair Amodei said the record should reflect the agreement with the amendment by the prime sponsor. Chair Amodei said the Committee was going to add a definition to redevelopment to enable the use of

eminent domain to acquire a right-of-way. Mr. Sanchez clarified the subject by saying eminent domain was a sensitive topic, this amendment only applied to existing railroad facilities, and eminent domain would not be used to acquire other track. Chair Amodei said the Committee did not usually address redevelopment policy and asked why this issue was before the Committee. Mr. Sanchez indicated Assemblyman Horne's bill, A.B. 143, would have made their project impossible to continue due to the additional criteria proposed, and that was why they proposed their amendment. He stated the blight concerns were designed primarily for cities, as opposed to rural areas.

Vice Chair Washington asked who currently owned the railroad rights. Mr. Sanchez replied the Los Angeles Department of Water and Power purchased the track when it developed its own plant there 25 years ago. Vice Chair Washington asked about the length of the track. Mr. Sanchez said he interpreted the question as the length of track needing refurbishment. He introduced Karen Rajala, Coordinator, White Pine County Economic Diversification Council, who said the track was 138 miles long from Shafter, the connection to the Union Pacific Railroad near Wells, and ran south through Steptoe Valley, McGill, Ely and out to Ruth where the copper mine was located. She said it existed in both Elko and White Pine Counties. Vice Chair Washington asked if A.B. 143 applied to both counties, and Mr. Sanchez replied in the affirmative, stating it applied to all counties with populations under 100,000. Vice Chair Washington asked if Senator Care's bill, regarding eminent domain and open space, was considered when they developed their amendment. Mr. Sanchez replied he was unfamiliar with the intricacies of Senator Care's bill and reiterated their goal was to make their amendment as simple as possible to avoid impacting others. Vice Chair Washington said he asked because Mr. Sanchez said he had almost completed the environmental impact study, so he wanted to know if that had any relationship to open space, endangered species or reclamation projects. Mr. Sanchez said since they were located on federal land, there was a thorough analysis of the consequences to the land and the environment. He said about a year was left before that process would be completed.

Senator McGinness said Ms. Rajala had information on the coal-fire plant, if anyone wanted to access it. He said the railroad was a tremendous asset for that entire area and should be preserved even though it needed a lot of work.

Renny Ashleman, City of Henderson, said he was not here to discuss eminent domain and would like a grant of partial immunity on the redevelopment portion of A.B. 143 because the bill affected the definition of what area could be redeveloped. He stated Henderson supported the requirement for three of the criteria necessary for redevelopment. He stated the problem of requiring 4 of the criteria was demonstrated on page 4, line 12 of the bill and quoted, "An economic dislocation, deterioration or disuse, resulting from faulty planning." He said Henderson was a planned city from inception and making even two criteria stick in court would probably be difficult in the average case. He then referred to page 4, line 14, and quoted, "The subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development." He said since Henderson was a planned city, it would be difficult to make that criteria stick in court. He quoted criterion No. 4 on page 4, line 16 of the bill, "The laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions." He said making that argument would also be difficult. He stated it was the same problem with criterion No. 5 and quoted, "The existence of inadequate streets, open spaces and utilities." He said they could not argue that within Henderson. He referred to criterion No. 6 on line 20 of the bill and said they had no submerged lots in the desert of southern Nevada. He concluded out of the ten criteria available for redevelopment qualification, only five were useful. He pointed out criterion No. 10 should stand alone as well as criterion No. 1. He said two criteria were more appropriate, but Henderson could live with three, if necessary.

Chair Amodei said he knew redevelopment was a new topic in a NRS context, but asked if there was any discussion about reevaluating and amending any of those criteria. He referred to criterion No. 2 and said deterioration was a broad word. He also said it would be difficult for a relocation entity, in conjunction with the jurisdiction-planning entity, to make a specific finding where that very entity had, at some point in the past, engaged in faulty planning. Chair Amodei asked if criterion No. 6, which referred to submerged parcels, could be replaced with something more meaningful. Mr. Ashleman replied yes, to some extent, and said he would be willing to work with a subcommittee to that end.

Senator Care asked if the southeast quadrant of Henderson was a redevelopment area. Stephanie Garcia-Vause, City of Henderson, said the downtown redevelopment area generally consisted of the Boulder Highway and Lake Mead areas and included St. Rose hospital. It extended to the freeway where the Fiesta Hotel and Casino were located and encompassed the

downtown area, she said. Senator Care asked if they needed to exercise eminent domain yet. Ms. Garcia-Vause replied they had managed 3 redevelopment areas, including the downtown, and had acquired over 43 parcels without using eminent domain. She said the criteria expansion concerned Henderson because it impacted eminent domain in redevelopment areas, and it impacted redevelopment areas. Ms. Garcia-Vause said the City was successful so far in the acquisition of properties for improvement in redevelopment areas which benefited the city without the use of eminent domain. Senator Care asked about the downtown area and if the redevelopment area encompassed the two-bedroom homes situated around the Henderson Senior Center on streets named after states. She replied in the affirmative, and said it extended through Water Street from Lake Mead Drive all the way back to Boulder Highway and contained Tin, Lead and Nickel streets. Senator Care asked how many of the ten criteria proposed in the amendment Henderson had utilized, and pointed out under current law, only one was needed. He asked which criteria they functioned under. She said they operated under criterion No. 1 when they established the downtown redevelopment area.

Their concern about the amendment, which Henderson proposed to change (Exhibit L), did not include downtown areas or locales which met three of the proposed criteria, she said. They were most concerned with areas that included the Cornerstone Development or the Tuscany Hills Development, because both regions were gravel pits and had operated for a long time before they were abandoned. Developers approached Henderson and stated they could not afford to provide the infrastructure needed to develop those sites. In that situation, Henderson was able to create redevelopment areas, without eminent domain and use one criterion to establish those redevelopment areas, she said. They were working toward public-private partnerships, one of which was located at the corner of Stephanie Street and the Interstate 215 expressway on the northwest corner. It consisted of 320 acres, which would include a park, commercial offices and major reinvestment that probably would not have happened if Henderson had not helped the developers, she said. Ms. Garcia-Vause said the other site was the old Palm City, which was situated at Lake Mead and Olsen Drives, where an abandoned mining operation from the 1980s had been located. She said in the 1990s, one developer tried to develop a master planned community, but failed due to his inability to afford to provide the infrastructure. A new developer purchased the property, approached Henderson and asked to establish a redevelopment area and work together, she said. The result was the Tuscany Hills development, due to the public-private

partnership. She stated all the benefits such as drainage channels, a park and roads would not have been feasible if Henderson had not helped with the project.

Senator Horsford asked if there was information substantiating the claim that several of the criteria could not be met. If so, he requested it be provided to the Committee for review. Mr. Ashleman replied representations were made to him by their planning department that analyzed those criteria. In Henderson, several of the criteria could not be utilized, and Ms. Garcia-Vause, as a planner, agreed with those assertions, he said. Senator Horsford said the burden of the agencies to qualify for redevelopment should be the same. He said those criteria were part of the burden the agencies needed to satisfy in order to qualify for redevelopment. He remarked the same type of burden should be provided to the Committee to determine the policy change regarding the number of criteria necessary to qualify as a redevelopment area. Senator Horsford stated he trusted Ms. Garcia-Vause's judgment, but said he did not represent Henderson, and so he would like some information for the districts he represented explaining how those criteria could not be met by Henderson. Mr. Ashleman replied he could not speak for others, but reiterated the basic problem for Henderson, stating the criteria related to prior planning in the community could not be utilized by Henderson because the City was a planned community from inception. He said they could not do a redevelopment district based on those ten criteria.

Chair Amodei asked Mr. Ashleman to share any information at his disposal with Senator Horsford or other Committee members before the next meeting, so they could get a feel for those ten criteria before the work session. Chair Amodei asked for suggestions to replace criterion No. 6 that more carefully described conditions in Nevada. He referred to criterion No. 5 and asked for information on the concept of open space in the context of redevelopment. Chair Amodei suggested the information first be shared with Washoe County and said following that, he would consider an amendment which removed that provision from those criteria and changed it to parks or something similar.

Vice Chair Washington said there were several flooded areas in Reno and Sparks recently, so he advocated keeping criterion No. 6, since areas in northern Nevada flooded periodically.

Senator Horsford asked for clarification regarding public and private partnerships, such as the Tuscany Hills development. He asked if that site was made a redevelopment area because of the interest of the developer, who needed help with the infrastructure to make the project economically feasible. Ms. Garcia-Vause replied in the affirmative and said Henderson felt it was in its best interests to work with that developer rather than leaving 800-plus acres vacant. Senator Horsford asked her if criterion No. 1 was used to qualify the property for redevelopment. She replied criterion No. 1 was used for the downtown redevelopment project, but not necessarily the Tuscany Hills development area. Ms. Garcia-Vause followed up on a question Senator Horsford asked of Mr. Ashleman and stated the Tuscany Hills and Cornerstone areas could not have met the burden of four criteria to establish those areas for redevelopment. She continued, Henderson could have met the four criteria for the downtown redevelopment. Regarding the two abandoned mining operations that had no planning and were holes in the community, the redevelopment representatives said they could meet two criteria and, maybe, stretch to meet three criteria, since the definitions were liberal. Ms. Garcia-Vause said another area needed redevelopment in Henderson and four criteria could not be met.

Henderson's proposed amendment added criteria not just for eminent domain, but for redevelopment. She concluded eminent domain and redevelopment married together, but could exist separately. Senator Horsford said the question should be what the characteristics of those neighborhoods were and how the resources were allocated to improve those neighborhoods. Senator Horsford asked if the Committee wanted easily defined criteria that permitted any neighborhood to become a redevelopment area, or if the Committee should narrowly define and create specific criteria to allocate the resources intended for redevelopment in the communities that lacked residential or commercial development. Senator Horsford said the debate should center around those issues because he did not want broadly defined redevelopment that put all the resources into developing new communities and suburbs, while the urban decay that redevelopment was designed to change was ignored.

Lucille Lusk, Nevada Concerned Citizens, said her organization supported A.B. 143 and, in particular, the number of blight factors needed to establish an area as blighted and in need of redevelopment. She read from her written testimony (Exhibit M), and said they had no concerns about redevelopment, which involved willing buyers and sellers, but rather were concerned with eminent domain, which needed restrictions. She expressed concern about the

government's ability to take property from the owner who did not wish to sell. She said the criteria in the bill tightened the problem to some extent, but they were not sufficient to help the small property owner who might have to fight city hall to keep his property. When it was government versus a property owner, the playing field was not even, she said.

Ms. Lusk expressed concern about the railroad amendment and said the exemption did not just apply to the railroad right-of-way, but applied to contiguous or noncontiguous vacant lands located near the eligible railroad. If the government exercised eminent domain at a time when the property was worth the least, it would be grossly unfair to the owners. She asked the Committee to consider the original intent of eminent domain, for roads, airports and schools. It was never intended to transfer private property from one owner to another, but to increase revenue for the government, she indicated.

Berlyn Miller, Vice Chairman, Commission on Economic Development, said the Commission had not taken a position on A.B. 143 yet, but he supported the bill and would ask the Commission for its support, also. He said the railroad and power plant were essential because they would save the State millions of dollars. The power plant would supply tax revenue, helping alleviate the State from supplementing money to White Pine County, the City of Ely and the school district, he explained. He stated the power to exercise eminent domain was essential to ensure the project was completed. He said he supported and recommended giving LS Power tax incentives to help complete the project for the future of the people of White Pine County.

James F. Nadeau, Nevada Association of Realtors, said his association supported A.B. 143 and supported the tightening up of requirements for the taking of personal property.

Kimberly McDonald, City of North Las Vegas, said they never used eminent domain in the City of North Las Vegas. She said they preferred to use the offers of judgment, and it was successful for their city. They were looking into concerns Henderson had regarding the bill, she stated. Ms. McDonald said they were amenable to reducing the number of criteria the bill proposed. She said she would help get the information Senator Horsford requested. Chair Amodei asked what her jurisdiction's plan was regarding redevelopment in the urban core as opposed to the outlying growth areas.

Christina Dugan, Director of Government Affairs, Las Vegas Chamber of Commerce, said the Chamber supported A.B. 143 and supported the four-criteria requirement for redevelopment. She said they endorsed government's role to provide the rules and groundwork for businesses to conduct their daily operations, and tightening that up with the four criteria would help businesses understand their responsibilities in terms of operation.

John L. Wagner, Burke Consortium of Carson City, said he favored A.B. 143, but would like to see section 10 remain the same. He mentioned the situation in Carson City concerning the City Council and the Board of Supervisors disagreeing about the use of property where the old Wal-Mart store was located. He said the use of eminent domain was threatened, and he wanted guidelines for what they could or could not do. He concluded he supported the four-criteria requirement.

Derek Morse, Deputy Director, Regional Transportation Commission of Washoe County, said the Commission supported A.B. 143 in the current form brought to the Committee. He said it was their experience that anything done in this bill regarding eminent domain would set a precedent others would attempt to extend to all eminent domain actions. He addressed a couple issues regarding appraisals. He said the Regional Transportation Commission proposed much of the language in the bill regarding appraisals, and appraisals were supposed to be prepared independently. He said the bill provided an opportunity for a property owner to receive a summary of the appraisal and the opportunity to review the full appraisal at the appraising agency. The Commission's concern was the need for independent appraisals by each party with an exchange of those appraisals resulting in an accurate value of the property, thus enabling a settlement negotiated on that basis. He said nothing in the bill precluded the two parties from releasing further information to others, if the Committee thought it was in the public's best interest, hence hastening the negotiations. He said there was a standing instruction to all their negotiators to consult with a property owner to arrive at an accurate appraisal of value. He stressed the importance of paying the property owner fair compensation, while at the same time protecting the public in arriving at a fair price. He concluded that the language needed to be retained in the bill as stated. Chair Amodei asked Mr. Wilkinson to investigate just compensation and determine how it juxtaposed with any public interests involved in any cases.

Susan Fisher, City of Reno, referred to an amendment from Reno (Exhibit N), and stated Assemblyman Horne agreed to it. The amendment asked the amendatory provisions of section 5 not be applied to a redevelopment area by the governing body until October 1. She referred to Senator McGinness's earlier question regarding the date change and stated there were no takings in this particular redevelopment area they had worked on for the past two years. She said if the bill went into effect now, it would unravel all previous work on the project.

Mary C. Walker, City of Carson City; Douglas County, referred to the counties' amendment (Exhibit O) and stated it proposed reducing the number of criteria needed to be considered blighted from four to three because they did not have the urban densities of other areas, and four criteria were too restrictive. They had vacant lots on their main streets, she said. Ms. Walker emphasized many businesses were leaving Carson City, and they needed every tool they could get to keep businesses there.

Dan Holler, County Manager, Douglas County; Douglas County Redevelopment Agency, said having a clearer process for eminent domain was important for A.B. 143, even though his agency had not used eminent domain. He indicated they were prohibited from using it for residential properties in their redevelopment plan due to the issues raised by residents. He agreed with Ms. Walker that the criteria should be reduced from four to three for redevelopment areas. He said redevelopment was a good tool when used properly and could enhance local government's ability to meet the needs of the citizenry.

K. Neena Laxalt, City of Sparks, said Sparks agreed with most of the concerns the local governments had expressed.

Cheri L. Edelman, City of Las Vegas, said the City of Las Vegas also agreed with most concerns expressed and preferred criteria be limited to three for redevelopment.

Mr. Sanchez clarified the White Pine County Commission did not intend to use eminent domain, and they were willing to work together with the Committee regarding restrictions.

Chair Amodei said a reference in the criteria regarding open space and the provision regarding redevelopment condemnation was specifically mentioned in NRS 37. He said he intended to distribute a copy of a proposed amendment regarding open space, which established criteria for the use of open space issues where eminent domain would be used for open space. The amendment allowed the utilization of eminent domain for the use of open space, and it provided criteria for that use similar to NRS 37.035 concerning conditions for use for monorails. He referred to NRS 37.038 which dealt with conditions precedent for taking property within a historical district, and he said that bill dealt with conditions precedent for redevelopment use.

Chair Amodei adjourned the meeting at 11:04 a.m.

RESPECTFULLY SUBMITTED:

_____
Ellie West,
Committee Secretary

APPROVED BY:

_____
Senator Mark E. Amodei, Chair

DATE: _____