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SENATE JUDICIARY PRESENTATION FOR AB-397

BY: ASSEMBLYMAN WILLIAM HORNE

Mr. Chairman and members of the committee, for the record, my name is William Horne, Assemblyman for Assembly District 34 in Clark County. I appreciate this committee granting me the opportunity to present AB-397.

AB-397 provides for the discontinuation of penalties for failure to meet Offers of Judgments in Eminent Domain actions at trial. For example, when the government exercises its authority and takes a property owner's property for public use, that property owner's constitutional right is to receive just compensation for that property. Sometimes, the landowner and the government have different appraisals of the property and are unable to come

to an agreement as to the true value of the property. At this time, the parties go to litigation.

Under current law, if the landowner fails to meet the offer (Offer of Judgment) of the government, the government can demand attorney's cost and fees. This is a punitive measure that shouldn't exist simply because a property owner has chosen to exercise his/her constitutional rights. This sort of potential penalty can be so costly to a land owner that it can chill the property owners desire to challenge what they believe is an unfair offer for their property.

While there are a few witnesses here to testify more fully in support of this bill, I would like to address a number of the arguments that have been made against the bill. Many of these arguments were not made during the Assembly presentation because only the Washoe Airport

Authority came forth in opposition at that time. However, prior and subsequent to the Assembly Judiciary hearing, ~~the~~ many of the opponents that are here today posed the following arguments to me.

1. There are relatively few cases of property owners being affected by the punitive nature of failing to meet the Offer of Judgment.

I believe this to be speculative at best. There is no way to track or document the number of property owners who have settled with a government entity only out of fear of failing to meet the governments offer. Probably, most adopted the old adage, "You can't fight City Hall", accepted the offer and moved on.

2. Offers of Judgment work to achieve settlement.

I agree. Often times these Offers of Judgment do achieve settlement. However, by what measures? When

the government wants your property for public use, they can, and will, take it. Now, add the hammer of the possibility of having to pay their attorney cost and fees, it's not surprising that they work. I believe in Offers of Judgment, but not in the context of eminent domain because we're dealing with constitutional rights.

3. The Government needs Offers of Judgment to reach settlement.

I disagree. I'm sure you will hear testimony today from attorneys that state they reach settlements quite often without them. Besides, the government is more likely to reach a settlement when they make a fair offer in the first place. I believe this piece of legislation will encourage that.

4. Removing the penalties for failing to meet the Offer of Judgment would increase the cost of government to acquire the property.

I believe the opposite would occur. Without the penalty, the government would be more likely to make a fairer offer. This would facilitate settlement and reduce the need for costly litigation. Even if there were some validity that cost would increase, that burden should not be borne by the property owner. We do not allow the exercise of constitutional rights only if it doesn't cost the government too much to do so.

5. This legislation should only apply to single home residents.

The opposition poses this argument because they believe that those wealthy individuals who own large plots of

land, or those who speculate on the future land values, are not discouraged from challenging the government and can afford the penalties. However, we do not apply the constitution on the basis of your personal wealth. All are entitled to its protection.

Here to make a more thorough presentation is James Jim Leavitt, Esq. and Laura Fitzsimmons, Esq. There will also be testimony from Assemblywoman Vonne Chowning and Amy Tucker. They will can give this committee a first hand account of the chilling effect that Offer of Judgments can have on the exercise of their constitutional right.

Thank you for your time, and I am willing to answer any questions this committee may have of me.