MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY
SUBCOMMITTEE

Seventy-Third Session
March 22, 2005

The Committee on Judiciary Subcommittee was called to order at 1:07 p.m., on Tuesday, March 22, 2005. Chairman Marcus Conklin 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. Marcus Conklin, Chairman
Mr. John C. Carpenter
Mr. William Horne

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblywoman Sharron Angle, District No. 26, Washoe County, Nevada

STAFF MEMBERS PRESENT:

Katie Miles, Committee Policy Analyst
Jane Oliver, Committee Secretary

OTHERS PRESENT:

Tony F. Sanchez III, Legislative Advocate, representing LS Power
Berlyn Miller, Vice Chairman, State of Nevada Economic Development Commission, representing City of Ely and White Pine County
Brian C. Padgett, Attorney, Law Office of Kermitt L. Waters, Las Vegas, Nevada

Mike Chapman, Legislative Advocate, representing the City of Reno, Nevada
Heidi Mireles, Chief Right-of-Way Agent, NDOT [Nevada Department of Transportation]
Joe Ward, Chief Deputy Attorney General, Nevada Attorney General's Office, representing Nevada Department of Transportation
Greg Salter, Special Assistant to the Assistant City Manager, City of Sparks, Nevada
Kimberly McDonald, Special Projects Analyst & Lead Lobbyist, City Manager's Office, City of North Las Vegas, Nevada
Maddy (Madelyn) Shipman, Legislative Advocate, representing Nevada District Attorneys Association
Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Washoe County, Nevada
Michael Foley, Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada
Robert Chisel, Assistant Director for Administration, NDOT [Nevada Department of Transportation]

Chairman Conklin:
[Called the meeting to order. Roll called.]

The purpose of this Subcommittee is to evaluate some of the amendments that have been proposed so far to A.B. 143. We will also take a look at A.B. 194. We're going to start with A.B. 143 today.

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

Chairman Conklin:
I know there are people here who have proposed amendments we want to get on the record. It is my intention to take only testimony that is different from testimony the full Committee has already heard. I'm looking for new information that has not been brought forward on these bills. The hope of the Chair at this point is to get through testimony that we have not heard before and move directly into work session. Those of you who have proposed amendments, please remain in case we have questions as we move into work session.

Tony F. Sanchez III, Legislative Advocate, representing LS Power:
With me today is Brett Scolari, also with Jones Vargas, and Berlyn Miller, representing the Commission on Economic Development.

[Tony Sanchez III, continued.] We have an amendment before you (Exhibit B) on A.B. 143. As the Committee might recall, I spoke only briefly before the full Committee, outlining a concept for the White Pine Energy Station, which is our client, LS Power. They are proposing a Phase One 500 to 800 megawatt coal-fired power plant 35 miles outside of Ely. It's projected to go online mid-2010, with a peak work force of about 1,200 jobs in this community. It's something that the folks in White Pine and Ely have been waiting for, for about 25 years. [See Exhibit C from the White Pine County Board of County Commissioners.] There have been various proposals to put this plant in.

One of the issues, when you're building a coal-fired power plant, is the need to get the coal to the facility. That's where the rail line comes in. Currently the rail line is not in a usable state. There are other industrial uses out there that have wanted to use it, but there hasn't been adequate funding to upgrade the line. The Committee might recall, last session, the $500,000 allocation to the Historical Society and the railroad to assist in purchasing and upgrading the line from Los Angeles Water and Power, which is currently the owner. Those negotiations, I'm told, are underway.

Our amendment today is limited to counties of a population of 100,000 or less. It would allow White Pine County, and any county, to create a redevelopment agency in implementing a redevelopment plan for the Nevada Northern Railway and adjoining areas that need redevelopment. Redevelopment areas would include prospective industrial sites. As industries would be located within the redevelopment area—the White Pine Energy Station—the tax base would grow. A portion of the tax revenues generated in the redevelopment area would fund the redevelopment agency and the implementation of the plan. They would allow the redevelopment agency to secure funding from public or private sources for the railroad upgrades and other improvements in the redevelopment area.

It would eliminate the burden on existing and new industries to fund capital improvements to the railroad. That's going to increase the marketability of the area for further economic expansion; no new taxes and the counties will still maintain their ability to expand services and reduce taxes. Currently, A.B. 143 would propose a list to change the definition of "blighted area," going from a 1-of-9 criteria to a 4-of-10 criteria. This would create its own individual exemption; it's very narrowly tailored to that road facility. We're available for any questions.

Assemblyman Carpenter:
Who owns that railroad now?

Tony Sanchez III:
Currently, it is owned by Los Angeles Water and Power.

Assemblyman Carpenter:
On the entire right of way from Ely to Cobre?

Tony Sanchez III:
Yes, that's correct—120 miles.

Assemblyman Carpenter:
So the right-of-way is still intact. No one has made any moves to take the right-of-way away.

Berlyn Miller, Vice Chairman, State of Nevada Economic Development Commission, representing City of Ely and White Pine County:
We're helping them try to acquire the right-of-way. The right-of-way is actually owned by the BLM [Bureau of Land Management]. It's under lease to Los Angeles Water and Power. There were a couple of railroads that made an attempt to get control of that, as we understand, primarily for the purpose of scrapping it for the scrap value. We think at this point they have probably backed off, and the City of Ely is in negotiations with Los Angeles Water and Power to attempt to buy that.

Assemblyman Carpenter:
A number of miles of that railroad went through private property. That wouldn't be BLM, would it? The railroad had to get a right-of-way through there.

Berlyn Miller:
I'm only aware of the right-of-way lease with BLM, which I've seen. As a matter of fact, my interest in the lease was the part that stipulated the BLM could require reclamation and restoration of the property to its original state, which would probably make it more costly to do that than the scrap value of it. We're trying to use that as an argument to Los Angeles Water and Power, as the reason that they would not want to scrap it. They came up and decided it was worth more to scrap it, so maybe we should. We're currently getting all the information on that and we're talking to the BLM so we can get the facts together. I've talked to the Governor about him calling the manager of the Los Angeles Water and Power and trying to help Ely negotiate. I'm unaware of what portion of it is through private property and what the leases are, Mr. Carpenter.

Tony Sanchez III:
If I might supplement, our amendment in no way enters a benefit or leads to the detriment of the existing property owners. This is only if they're able to negotiate that [right-of-way], and if White Pine County or any other county wants to avail themselves of this opportunity. This does not transfer ownership or affect anybody's property interests.

Chairman Conklin:
Just for my own clarification, Mr. Sanchez, it's my understanding in reading from this that all the eligibilities due to a landowner in the first part of my colleague's bill are standing. The only thing you're doing is changing the terms of "blighted area" before redevelopment of railroads. Is that correct?

Tony Sanchez III
Yes, we're very narrowly adding an exemption to the blighted area for the railroad. It was not our intent, nor do we believe that it impacts the proposed language in A.B. 143.

Assemblyman Horne:
I want to make sure I understand. Since this goes through BLM [land], this would be basically in predication of the least right-of-way. In a redevelopment, that's all the taking you could do.

Tony Sanchez III:
We're not giving anybody a protective property interest; we're not taking away. This is all contingent on negotiations being successful with the City of Ely, the Historical District, and the owner of the line and rights-of-way through the BLM.

Chairman Conklin:
Thank you for bringing the amendment forward.

Brian C. Padgett, Attorney, Law Office of Kermitt L. Waters, Las Vegas, Nevada:
To my left is Michael Chapman. Mr. Chapman is going to be speaking on this point. If there are any questions, I'll be responsive to those questions.

Mike Chapman, Legislative Advocate, representing the City of Reno, Nevada:
Mr. Padgett and I have had the opportunity to discuss a number of the different provisions. We have gone through them, section by section. [Refers to Exhibit D.]

Chairman Conklin:
I don't believe I have a copy of it (Exhibit D). Mr. Chapman, this was the same document that was handed out in the full Committee hearing, is that correct?

Mike Chapman:
Yes.

Chairman Conklin:
Mr. Chapman, before you start in on your testimony, are you speaking on behalf of the full contact list on this proposed amendment?

Mike Chapman:
Perhaps not; I'm speaking on behalf of the City of Reno, with whom I've been able to share my thoughts and my discussions with Mr. Padgett. If other folks from the RTC [Regional Transportation Commission of Washoe County] disagree with anything I say, they would have their right to say that.

Chairman Conklin:
That brings a follow-up question, Mr. Chapman. It's my understanding that the two of you have figured out some common ground on this bill. There's a list of quite a few folks, Henderson, Las Vegas, North Las Vegas, Clark County, Sparks, RTC in Washoe County, NDAA [Nevada District Attorneys Association] in Henderson, not to mention NDOT [Nevada Department of Transportation]. Have you spoken or shared with any of them the information you are about to share with us?

Mike Chapman:
Not since the Committee hearing of last week. However, many of the provisions which are now agreeable between Mr. Padgett and I are the same ones that were proposed on the sheet of paper that they've already signed on. I think I speak for the group of people to at least that extent.

Assemblyman Horne:
Also, you mentioned NDOT. After the amendment, who knows what will happen, but they did come to my office and said they didn't have a problem with the bill initially, so that might change. Do you have someone here from NDOT now?

Chairman Conklin:
Looks like that might have changed. We'll certainly be bringing them up as well.

Mike Chapman:
With respect to the first page of the sheet, where it talks about the changes to Section 2, this deals with the provision of an appraisal report to the owner. Mr. Padgett would find it satisfactory to agree to the recommended changes that the agency group has proposed. This means the owner would get a summary and the opportunity to view the appraisal at the office. This seems to be a compromise between the two original positions.

Assemblyman Carpenter:
How great a detail would a summary provide, as to the actual appraisal?

Mike Chapman:
Sir, the summary generally is one to two pages in length. It provides the pertinent information, such as the value which was determined by the appraisal, the date that the appraisal was prepared, and references that the owner could view a copy of the full appraisal if the owner wanted to do so at the offices of the agency. It's a summary of the salient terms. It would also mention if the property was appraised as a residential property, commercial property, and so on, as the case may be.

In Section 2, subsection 1(b), as outlined in our sheet, the suggestion as included here by the agency group is satisfactory to Mr. Padgett. Following down under Section 2, subsection 1(c), we had an addition of the words, "or served upon." That also is satisfactory to Mr. Padgett. With respect to Section 2, subsections 3 through 5, we have agreed that those would best be eliminated. Those deal with the offer of judgment issues and the allocation of costs and fees between the property owner and the agency, in certain cases.

I think we finally have come to an agreement that the existing law strikes a balance, or a rough balance, and that would be satisfactory to Mr. Padgett. Is that correct?

Brian Padgett:
I believe that Mr. Chapman is correct there. The current case law does strike an equitable balance. At this time, we do agree that those provisions stay with the status quo at this time, in which the judge would review the case law and make a determination on a case-by-case basis.

Chairman Conklin:
Just for the Subcommittee's clarification, you are striking your proposed amendment. But regarding Section 2, subsections 3, 4 and 5, those sections already exist in the original proposed bill. Then the consortium of folks have proposed amending those sections of the bill. Is it my understanding that

you're proposing striking the proposed amendment and leaving the original bill language?

Mike Chapman:
I don't know. Regarding subsections 3, 4 and 5, as contained in A.B. 143, we are proposing striking them in their entirety.

Chairman Conklin:
Just for the Committee's sake, we are talking about Section 2, which is page 3, subsections 3, 4, and 5. This takes you down the whole page 3 and the top of page 4.

Mike Chapman:
Mr. Chairman, we're striking subsections 3, 4, and 5. We're recommending they be stricken from A.B. 143, as drafted.

Chairman Conklin:
As drafted—so that's the compromise. We're taking out the proposed amended language and striking that whole section from the bill.

Mike Chapman:
Correct. The result is that it leaves the law as it is today, status quo. Section 6 of the bill, we've agreed, would be amended as the agency group sets forth in its proposal.

Chairman Conklin:
This is the section which tiers the criteria for redevelopment, is that correct?

Mike Chapman:
Correct.

Chairman Conklin:
So, for the record, we are talking about Section 2, subsection 3, subsection 4, and subsection 5. They are to be stricken in their entirety from the original bill as part of your proposal.

Mike Chapman:
That is correct.

Chairman Conklin:
Now we can proceed.

Mike Chapman:
The next suggestion by the agency group was in Section 3, and it dealt with the second paragraph, which we had recommended striking. Mr. Padgett agrees with that. The obligation of negotiating in good faith with the owner is still in A.B. 143, but it's covered in an earlier section of Section 2. Section 3 deals with the obligation of a third party who wanted to condemn someone's property; that person would have to negotiate with the owner first, and we're leaving that intact.

Chairman Conklin:
This is where the offer of good faith, the first offer, is denied—you want to take out the second paragraph.

Mike Chapman:
Subsection 2 of Section 3, that is correct. On the grounds that, if it is state law that an owner must get a second offer, they're being told essentially to reject the first offer, which is supposed to be in good faith. We think subsection 2 prolongs the negotiations, when the requirement to negotiate in good faith is already contained in Section 3, subsection 1.

Assemblyman Horne:
I read part 2, Section 3, to mean it only seems to direct the parties to continue good faith in negotiation, but it is not mandating that a second offer be presented. I'll take the liberty, being the sponsor of the bill, on the intent. Basically, if an offer is made, and it is rejected, then you don't have the redevelopment agency or private owner saying, "Well, I tried," making one offer and walking away. We have that second paragraph, stating if that happens, show good faith negotiation that you made an attempt.

It doesn't mean you have to come to an offer; you may not. But you gave it another shot and you didn't just make one offer. It was rejected, and you walked away from the table. That's how I intended that to read and that's how I read it. I don't see how it means that it's going to automatically cause a rejection of the first offer.

Mike Chapman:
I don't think we disagree with the intent behind the bill. What gave us pause was where it says, "negotiate in good faith with the owner of the property to develop a subsequent offer." So the owner, by reading the statute, knows that a better offer is coming if he just says no to the first one, even though the first one was made in good faith, according to the requirements of the statute in subsection 1.

[Mike Chapman, continued.] What we thought was that it would require, or rather encourage, an owner to be unreasonable and reject a good faith offer, simply because he knows that the person who seeks to purchase the land is obligated, by state law, to come back with a better offer. We were trying to address that concern.

Assemblyman Horne:
Arguably, couldn't a subsequent offer, if a subsequent offer came, theoretically be identical to the offer that was initially made, or, even worse, an offer that's not as good, if new information came about the property during this negotiation process? It doesn't necessarily have to mean that if there's going to be a subsequent offer, it's obviously going to be higher than the first. I know that's how we tend to think. If you're in negotiations, the numbers are going to keep going up, but it doesn't always happen that way. Isn't that possible?

Mike Chapman:
It's possible, especially in the case of new information. In the absence of new information, would it be considered good faith for a person who seeks to purchase property with the aid of the Redevelopment Agency to come back after making a good faith offer—which is by definition a good faith offer according to the statute—and make a lower offer? Would that second subsequent offer be considered negotiating in good faith to develop a subsequent offer?

I understand your point about having discussions, give-and-take, and not just to make one offer and then go running to the Redevelopment Agency. I think there should be some harder bargaining than that and a requirement for harder bargaining. We just felt that the language "develop a subsequent offer" didn't get to that. Subsection 1 of Section 3 actually accomplishes what your intent would be, to make a good faith offer to purchase the property. Maybe you could say, "engage in good-faith negotiations to develop a purchase price for the property," or something like that.

I think you're right about the give-and-take. We don't want somebody to mail off a letter and then quit negotiating. We think the second subsection encourages people to reject the first offer, even though it is in good faith.

Assemblyman Carpenter:
It's confusing me, what they're doing.

Chairman Conklin:
We're about to, hopefully, figure it out. Mr. Chapman, please proceed.

Mike Chapman:
Our next suggestion was with respect to Section 4, where we recommended striking the entire section. Mr. Padgett is in agreement with that. There are already notice requirements under redevelopment law and under the redevelopment policies that the agencies have. What was objectionable to the agency group on this particular statute was the requirement to record the offer and to contact persons on the property, because it splashes over and has a ripple effect into an area of the law called "pre-condemnation damages."

This was adopted by our Nevada Supreme Court in a case called *State of Nevada Department of Transportation v. Barsy*, [113 Nev. 712, 941 P.2d 971 (1997)] and it dealt with the Spring Mountain interchange improvement in Las Vegas, where Mr. Barsy's property was necessary to be acquired. NDOT [Nevada Department of Transportation] approached the tenants on the property, Decratrend Paints and an electronics store. NDOT informed them of their relocation rights, and the tenants moved out at the end of their leases. Due to funding in the phasing of the project, Mr. Barsy didn't get his property purchased for two-and-a-half more years.

The Supreme Court says that's a problem, because when you have an unreasonable delay after making a Notice of Intent to condemn somebody's property, you then have to pay the rents that he would have received, or, perhaps, other damages.

What this Section 4 does, by requiring notice to people who are not the owners of the property, is directly violates the *Barsy* decision. This puts the agencies, as a matter of law, into a pre-condemnation situation, which the Supreme Court has directed us to avoid. We felt if we dealt with the owner, as contemplated in this bill and prior to filing an eminent domain case, it would help avoid that problem. That's our reasoning behind it, and Mr. Padgett was okay with that.

Chairman Conklin:
Mr. Chapman, would this be the Nevada Supreme Court?

Mike Chapman:
Yes.

Chairman Conklin:
Sometimes we tell them what the law is.

Mike Chapman:
We have made other decisions that you have the right to do this.

Chairman Conklin:
I have some concerns that the original proposed amendment struck Section 4. One of my colleagues brought it to my attention that it's entirely possible my house has been condemned for eminent domain. Between the time that it's been condemned and the time that you come to claim the property, I sell it, because I know that I can get more on the private market than I can get covered under eminent domain. The reason this section is in here is that a person who is buying this property understands that it is in a place of potential loss for them. I'm curious if you have anything to say regarding that particular scenario.

Mike Chapman:
I do, because this has come up in cases before, with existing law that we have on the books requiring that sellers of real estate disclose to buyers certain things that are going on in the neighborhood, particularly, with subdivisions. If there's a freeway coming nearby, for instance, we have the concern of pre-condemnation damages, which basically means that the government is free to plan projects.

But once you go from the planning stage to what you call the acquiring stage, you're in an area where you may incur some pre-condemnation damages. What has been alleged in cases against Clark County Public Works and others in the state is that, for instance, you had a planning meeting where you had a couple of alternative routes for the freeway or interchange designs. The owner of the subdivision, or the developer when he's building houses, has to tell this to buyers. Therefore, as a matter of state law, you have committed a pre-condemnation damage, and you must pay us additional money.

Now the court, at least in the case that I'm thinking of, rejected that, saying, when you're following state law, that's what you're supposed to do. It doesn't give rise to another liability on behalf of the government. The argument has been used against the governing agencies in an attempt to get more money. The notification to the buyer—somebody who's thinking of buying the property and does not know that it's being thought of as condemnation—means the owner of the property should be under an obligation to disclose that to his buyer without creating a recording notice or notice to the tenants who are on the property, causing them to move out. That's where the rub comes.

Assemblyman Horne:
That's what, in Section 4, I'm seeking to avoid. This is directed to the property owner who is trying to, in the stealth of night, pass this property that has been targeted onto an unwitting buyer. There's nothing documented in this change of title to this buyer that this property has been targeted. Now they've not only

acquired property, but the headache of a possible condemnation. I don't see anything where it puts an obligation on the acquiring entity or redevelopment agency to notify that subsequent buyer. This is to direct the current owner to give notice to the subsequent buyer. If I buy your property from you, I can look and see for myself and not count on you to tell me that it's targeted. It may or may not be, but you've received notice that it's being considered for condemnation. You don't think that this accomplishes that?

Mike Chapman:
It may very well accomplish that. It raises very interesting policy questions which we face in these lawsuits all the time, from either the owner's side or the agency's side. The owner will typically make the claim that you put a cloud over my property by telling everybody that it was subject to condemnation. When the condemnation didn't occur for a year, or two years—let's say the government is still in the planning process, because sometimes these things change—I have now suffered a damage. Not only have my tenants been run off, but now potential purchasers of my property have been run off. When you protect the future buyer of the property, you injure the current owner of the property. The way we read it, looking at it through the agency's eyes, this will create a claim by the current owner of the property that we've committed a pre-condemnation damage, potentially, by putting a cloud over the property. While it may warn away future buyers, that's exactly the basis of the damage that the property owners will claim.

Assemblyman Horne:
I haven't read *Barsy*, but from your first description, *Barsy* doesn't protect you from that type of claim?

Mike Chapman:
To a certain extent, yes it does. What *Barsy* requires is that, not only have you entered the acquiring stage of the property, but the property owner must prove either that there's been an unreasonable delay—which typically has to be a pretty long time, maybe five to ten years in some of the cases—or you have to take oppressive acts toward the property, which has happened in cases in other states. You don't see that much anymore. *Barsy* does try to strike a balance, you are correct. This potentially upsets the balance; that's why we recommend eliminating it, to stay with the status quo as the law is now, dealing on a case-by-case basis.

Assemblyman Horne:
Mr. Padgett, since you represent property owners who are defendants in these actions, you would be comfortable with the deletion of Section 4 in its entirety, and the status quo?

Brian Padgett:
Mr. Chapman's right, it rubs both ways. If you give notice to the landowner and the tenants, often the tenants will leave and cause a hardship on the landowner. Yet at the same time, I agree exactly with the reason for your placing this language in here. There is some relief provided for now, when the judge reviews it on a case-by-case basis, so we are neutral on Section 4. Mr. Chapman recommended striking it. As I said, it goes both ways, so we will stay neutral on that, but I understand exactly where you're getting at, and there are some absolute positives for this language. We would be fine with what this work session holds.

Assemblyman Carpenter:
When does one of these actions become public knowledge?

Mike Chapman:
Do you mean, when does the possible project become public knowledge?

Assemblyman Carpenter:
That you're going to be purchasing property for a project.

Mike Chapman:
Fairly early in the planning process, potentially. Let's take the Las Vegas Beltway as an example. The project begins with an Environmental Impact Statement, which is required by law, especially if you need federal funding. In that process, several routes are laid out. Early on, you may have your property within the alignment of a potential freeway, which may or may not ever be built. What the Supreme Court says is that's still the planning process. If you go to the other extreme, when the agency passes its condemnation resolution, that would be a notice of an intent to condemn the property, because it's an actual grant of the county commission or the governing body to condemn the property.

When it becomes known is always a question of fact, which is different on each case. Knowledge that planning of a public project is going on is not enough to trigger pre-condemnation liability, but it triggers the argument of a pre-condemnation liability.

Assemblyman Carpenter:
What about the situation where I get this notice that you're going to buy the land, and you send the summary of the appraisal. Where does that put me if I don't tell my tenants about that? You're probably not going to back out of that, or you don't want to.

Mike Chapman:
The *Barsy* decision comes from a California case called *Klopping v. City of Whittier* [8 Cal.3d 39 (1972)]. There's a whole body of case law in California, because they're so active that has built up an interpretation of that *Klopping* case. What the California cases have held is that negotiating with the owner, putting the property on a map as in the path of a possible acquisition, are not activities which cause an agency to leave the planning process. Potentially, if the owner received a letter and a summary of the appraisal, and rejected it, it's conceivable that the project may change. Maybe the agency decides not to go forward, in which case there would be no pre-condemnation liability. If the transaction goes forward, and you come into the acquiring stage, and especially if there's no agreement, then the agency files a condemnation case. You're in the acquiring stage at that point.

Chairman Conklin:
I'm going to stop you right there. Section 5, based on all the changes that you've proposed, should we get that far, would be a drafter's nightmare. You don't have to change anything there; drafting will know which section to roll in. Please proceed to Section 6.

Mike Chapman:
Section 6 of A.B. 143 was grouping the criteria for finding a blight to establish a redevelopment area into a couple of categories. The first is Tier 1. It is related to public health and safety. The other two are blight factors that are less related to health and safety, requiring one factor in Tier 1 and two factors in Tier 2. I've reviewed this with Mr. Padgett, and he had no problem with it from his perspective.

Chairman Conklin:
I'm curious as to why the distinction.

Mike Chapman:
The distinction is matters that affect the health and the safety of the community, as opposed to something that is not so compelling but rather desirable. It would be better, in our view, to have one factor trigger the ability to establish redevelopment for that item, as opposed to two. That's the reason.

Assemblyman Carpenter:
It mentions all these things about conducive to ill health, transmission of disease, infant mortality, and juvenile delinquency for crime. It seems to me that some of those factors do not rise to that high of a standard that would cause disease and things like that; for example, faulty arrangement of the interior and

spacing of the building. I really can't see what that has to do with some of these things.

Mike Chapman:
It seemed to us that it did. It's a matter of judgment and discussion, but this is the way we felt that it broke down.

Assemblyman Carpenter:
I can see environmental contamination, age obsolescence, dilapidation, and things like that. Isn't this where we get into a big argument about what we saw in the movie that day, and were talking about how they want to take this person's property? It seems like some of these things are exactly where all the argument was coming from. I don't feel comfortable putting all those things in there.

Mike Chapman:
Some of it was in the *60 Minutes* piece. I took the *60 Minutes* piece to deal more with a public use type of argument. Is it a public use to tear down somebody's house, which is in good condition, simply to build another house, a condo, or whatever? This is not really directed to public use so much as it is to identifying specific criteria. In our view, the ones that we've listed under Tier 1 do have more to do with health, safety, and welfare of the overall community than the other two. So we're suggesting one in Tier 1, and two factors in Tier 2.

Assemblyman Carpenter:
In that *60 Minutes* story, it seemed like they were saying the area was blighted, and, of course, the owner didn't think that. It looks to me like that's the heart of the argument.

Mike Chapman:
Yes. And *60 Minutes*, as it usually does, chose the most extreme case, an area which really wasn't blighted. Whether you have a one-car garage or a two-car garage shouldn't dictate whether your house gets torn down to make way for another house. Now, if it was a public building or a freeway, that's a little easier to see the public use. Redevelopment agencies do a lot of good, in terms of revitalizing an area, and not just through eminent domain, but through lending of money and things like this. In order to solve a more critical problem, we've tried to break it into two criteria: Tier 1, which would require 1; and Tier 2, which would require 2. We think it makes some sense.

Assemblyman Horne:
I would agree. I remember sitting down with the group on this proposed amendment, and Mr. Ashleman [Renny Ashleman, City of Henderson lobbyist] requested an opportunity to break this down into two tiers, as was done here. I was open to that, but after seeing the two criteria, to me it seems overly complicated, convoluted, cumbersome, and many of the terms are vague in how the current statute reads in NRS 279.388. It seemed more streamlined. Also, those nine criteria are the very criteria that redevelopment agencies have been using. The only thing that I've done in my bill is to add one, and then the number needed to find the blight.

In this amendment, Mr. Carpenter makes a good point: faulty arrangement of the interior, open spaces, or utilities? What if the utility hasn't reached that area yet? I can understand making the argument that four out of ten may be too much; I don't think two is enough. Definitely one is not enough. In the *60 Minutes* piece, that was a public use versus public good argument. But on the issue of defining blight, we just want property owners, whether they are homeowners or business owners, to have a little more security knowing that one indicia is not going to be a burden that the government has to clear. I know we haven't gotten to that stage yet, but I'm not in favor of this breakdown. I think it's cleaner in the original statute.

Brian Padgett:
It looks like, in Mr. Chapman's revisions, there was not the paragraph 10 that Mr. Horne had put in regarding the environmental contamination of buildings or property. We feel that should be added; it looks like it has been. Maybe there's an accord or middle ground that can be stricken that allows for more of these criteria to be found before blight is assessed.

Chairman Conklin:
Mr. Horne, do you want to follow-up on this issue or take it up in work session?

Assemblyman Horne:
We could take it up in work session. I wanted that to be in the record, and I had the feeling that my colleague there on the far left might be in agreement with me.

Chairman Conklin:
I think we'll find some consensus on this one. Mr. Chapman, Mr. Padgett, is there anything else to add?

Mike Chapman:
Yes, Mr. Chairman. Section 8, subsection 3, can remain the same as it is in existing law. We don't need any changes. We are recommending that there is a new section to the bill (Exhibit E), to be put in, which would read, "the amendatory provisions of Section 6.... " It's being handed out to you now. "The amendatory provisions of Section 6 do not apply to a redevelopment project area adopted by the governing body as of October 1, 2005 or any annexation thereto." The purpose of this is to follow the standard of legislative practice that the bills be prospective.

Chairman Conklin:
It was my intention to call Janine Hansen next, but it looks like she's left the building. She has put in a document (Exhibit F) and her business card—I want to make sure that's entered into the record. She's in support of the bill. I also, at this time, want to make sure that the list of check-ins for those that are for, against, and neutral for the bill in the Subcommittee also be entered in the record for the Subcommittee.

I have six folks representing NDOT here. It would be my hope that not all six of you are coming up, but I wanted to make sure you have the opportunity. We'll start with Mr. Ward and Ms. Mireles, and we'll go from there.

Heidi Mireles, Chief Right-of-Way Agent, NDOT [Nevada Department of Transportation]:
I want to give Mr. Horne a little more relief.

> [She read from prepared testimony, Exhibit G.] I'm here to oppose the proposed amendment introduced by Mr. Padgett, which would make the Nevada Department of Transportation subject to this bill. I'm here today to explain what the department does in the process of acquiring right-of-way. The acquisition of right-of-way by NDOT is already governed by a multitude of rules and regulations, including, but not limited to, the *Code of Federal Regulations*, the *Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970 as amended*, *Nevada Revised Statutes*, *Nevada Administrative Code*, the *Uniform Appraisal Standards for Federal Land Acquisitions*, the *Uniform Standards of Professional Appraisal Practice*, and others. It is the policy of the Nevada Department of Transportation to make every reasonable effort to expeditiously acquire real property by negotiations and agreement with the property owner.

[Heidi Mireles, continued.] It is the goal of this policy to avoid litigation, to assure consistent treatment for the individual property owners in dealing with the Nevada Department of Transportation, and to promote general confidence in state government's land acquisition policies and practices. Our acquisition process is outlined in the booklet, "Nevada Highways and Your Property" (Exhibit H). This booklet is given to every property owner from whom we need to acquire property.

For example, on the U.S. 95 widening project in Las Vegas, it was necessary to acquire 214 single-family residences, 30 improved commercial properties, and 4 vacant commercial properties. I'm proud to say that, of the 214 residential acquisitions, it was necessary to file eminent domain proceedings on only 2 parcels, and we negotiated settlements prior to going to court.

I have also provided you with a copy of our booklet entitled, "Relocation Assistance in Nevada" (Exhibit I). This outlines the benefits and services a relocated person can expect if they qualify. Briefly, we provide information on comparable houses which are currently available; we buy down mortgage rates; we provide packing and moving; we pay utility connection fees; and a host of other things.

In an effort to successfully negotiate commercial acquisitions for the U.S. 95 project, I personally took over the negotiations on several of the most complex properties. I'm proud to say that, although our project schedule required the filing of eminent domain actions, I was able to successfully negotiate the acquisitions. Currently, out of 34 commercial acquisitions, we have successfully negotiated 21, and are still negotiating on the remaining 13. While there will always be instances where we are unable to meet some property owner demands, and litigation is necessary, we pride ourselves on successfully negotiating acquisitions.

Before a parcel is considered for referral to condemnation, it has been appraised by an appraiser with the appropriate state license. The appraisal is reviewed by a qualified review appraiser who sets just compensation. After an offer is made, a property owner must have at least 30 days to consider NDOT's offer before the internal condemnation process begins. An Internal Condemnation Review Board reviews the acquisition to assure that everything has been done to settle the acquisition by negotiation. If approved by the

> Internal Condemnation Review Board, the Transportation Board of Directors must approve the condemnation.
>
> [Heidi Mireles, continued.] This Board has also Open Meeting Law requirements, in addition to the notification requirements in NRS [*Nevada Revised Statutes*] 241.034. Condemnation does not happen without a number of safeguards for the property owner. We are opposed to the proposed amendment, which would make the Nevada Department of Transportation subject to this bill.

I would be happy to answer any questions you might have; however, Joe Ward to the left of me would like to speak to the issue of offer of judgment.

Chairman Conklin:
Because so many amendments have been proposed, which amendments specifically are you talking about?

Heidi Mireles:
I am specifically speaking of the six-page amendment (Exhibit J), which suggested changes to pages 3 and 4, that was introduced by Mr. Padgett's office, I understand. Our main concern, coming from the Department of Transportation, is on page 3, number 5, "The offer of judgment provisions found herein shall apply to any and all eminent domain and inverse condemnation proceedings instituted in the State of Nevada." Would you like me to bring it up there? I'd be more than happy to.

Chairman Conklin:
Would you give that to the secretary?

Assemblyman Horne:
Mr. Padgett, I was under the impression that this document they're bringing out was for the initial hearing on the bill. But that's not what you're proposing today, correct? Do you have any concerns with what they proposed today?

Heidi Mireles:
I just want to make sure that we do not lose the tool regarding "offer of judgment," and that's what Joe [Ward] is going to speak to next. I wanted you to see how far the Department [of Transportation] has come, and how we acquire rights-of-way.

Assemblyman Horne:
I appreciate that.

Chairman Conklin:
Just for the record, Mr. Padgett, could you come up here for a second? So that everybody can follow along, on page 4 of the original bill, there was a proposed amendment to strike subsection 5 at the top of the page, lines 4, 5, 6, 7, 8, 9, and 10, and insert—Mr. Padgett, this was your originally proposed amendment—the following language, "The offer of judgment provisions found herein shall apply to any and all eminent domain and inverse condemnation proceedings instituted in the State of Nevada." That was the proposed amendment that Ms. Mireles is talking about. It's my understanding, based on testimony today, that subsections 3, 4 and 5 as originally written in the bill, including what would have been the striking of 5, and the insertion of the language I just mentioned, are now not proposed by either party. Is that correct?

Heidi Mireles:
We're very happy.

Joe Ward, Chief Deputy Attorney General, representing Nevada Department of Transportation:
In light of the changes posed, and hopefully embraced by this Body, by Mr. Padgett, and Mr. Chapman, I just wanted to parrot what's been said. I am in favor of those changes; I think "offer of judgment" is a good litigation tool. It should be a mutually reciprocal tool available to expedite litigation and avoid congestion in the courts, and it's something to encourage settlement. I submitted something earlier in the form of proposed testimony. That was in light of the earlier proposed amendment, which has been taken off the table by Mr. Padgett.

Chairman Conklin:
Mr. Ward has provided two documents, both dated March 22. I would like to have those entered into the record (Exhibit K and Exhibit L). I would also like to have it noted into the record that these documents pertain to the offer of judgment section proposed by Mr. Padgett, and so long as that is not being considered, these documents pertain exclusively to that.

Is there anybody who provided the original, proposed amendments for A.B. 143 of the following group: Stephanie Garcia-Vause, Nicole Lamboley, Ted Olivas, Kimberly McDonald, Dan Musgrove, Neena Laxalt, Stan Peck, Madelyn Shipman or Renny Ashleman? Do any of you have concerns that have not been brought forward that are different from those originally proposed, that you need to bring before the Committee at this time?

Greg Salter, Special Assistant to the Assistant City Manager, City of Sparks, Nevada:
We support the changes that were brought to the Committee today by Mr. Chapman, and we would like to provide some additional testimony with the support of the idea of striking Section 2, subsection 3 of the bill. The additional testimony would be as follows: A typical negotiation scenario with a redevelopment agency involving commercial property would entail, if we want to acquire some property that we would go get an appraisal. We would go to the owner of the property and offer at least the appraised amount for the property.

Sometimes the property owner will go see a lawyer, and the lawyer says, "I will work an arrangement with you where I will take a contingency fee for half of any greater amount than the offer that was given to you." For example, on one deal we did, the agency offered $1.3 million for the property. They came back and said they wanted $1.5 million. The agency, considering the cost of litigation and the cost of condemnation, agreed.

How this section would apply to that scenario is one of two extremes. The first extreme would be that the section says if the owner accepts a written offer of compensation, the agency shall pay the owner all the reasonable costs, attorney fees, and so on. In this particular case, the agency made an offer. The property owner rejected the offer and made a counter-offer, which the agency accepted. A literal reading of Section 3 means that the owner is not entitled to any compensation, because he never did accept an offer. He, in fact, rejected one.

The other extreme is as follows: A deal was made for $300,000 more than the original offer. The attorney gets 50 percent of that under the contingency arrangement. Does that mean, under this section, that the agency would have to pay $150,000 in attorney's fees to the attorney? For those reasons, we suggest that subsection 3 be stricken, because it isn't going to work the way it was intended.

Kimberly McDonald, Special Projects Analyst and Lead Lobbyist, City Manager's Office, City of North Las Vegas, Nevada:
We have appreciated working with Assemblyman Horne on this bill, and we do concur with the amendments as proposed by Mike Chapman and Mr. Padgett.

Assemblyman Horne:
Mr. Salter, I'm kind of fond of Section 3. We'll see if there's any way [they can draft language] for the clarity for the Committee. The intent is to provide, if the property owner receives notice of condemnation or interest, that action may not have been taken but their property is being considered. If that property owner

were me, the first thing I would do is to hire an attorney, and get an appraisal. I want to see if what they're potentially offering me is within the ballpark of what my appraiser might find, and that my attorney tells me if it seems to be a good offer or not.

[Assemblyman Horne, continued.] That first initial out-of-pocket expense should not be borne by me. It should be borne, in my opinion, by you, if you brought me to the table. If I do my due diligence and my attorney says, "This is a pretty good deal, you should take it," if I take my attorney's advice, I should be cut a check for the offer and for my out-of-pocket expenses for my due diligence. How do I get that language in here?

Greg Salter:
We agree with you. We think that an attorney representing a property owner provides a valuable service early in the negotiations, because the attorney can provide advice as to whether or not the agency has done things correctly. The attorney can provide advice about what blight is and what the alternatives are. We agree that there probably should be a way, if it is desired as a matter of policy to have some of these attorneys' fees paid. We would suggest a couple of things.

We would suggest that the language in subsection 3 be changed to say, "if the agency and owner agree on a price," then the attorneys' fees would trigger. We would also recommend, [because of] the second extreme that I gave on the $150,000 attorneys' fees, a cap. There would be an initial visit, and then the attorney would want to research, check the minutes, and that sort of thing. We would think that the property attorney fees for advising a property owner as to the initial offer shouldn't be much more than $2,500. We would suggest that, in order to provide the property owner with the level of protection that you have in mind, you could put something in the bill that, if a deal is reached, the agency would pay the first $2,500 of the property owner's legal fees. We would agree that all of the appraisal fees would be probably a proper item of payment for the agency.

Assemblyman Horne:
Wouldn't it be problematic if you do a cap of $2,500? If the taking is of a house, it would be a simple appraisal and [could] fall well beneath the $2,500 range. But if I'm the owner of the commercial center—a large shopping center area—that might be more detailed, and the attorney's time in preparing an opinion to their client may exceed $2,500, because of the complexity of that type of taking.

Greg Salter:
Maybe not, so early on. The initial visit with a lawyer by a property owner is to ask, "What are my rights? What are the obligations of the agency at this stage of the game, what are they supposed to do? What can I do in response?" The complexity of a commercial transaction arises in the competing appraisals that go on. At the initial stage, where a property owner is meeting with his or her lawyer at the very beginning, he or she hasn't even seen an appraisal. So the complexity in the transaction occurs after some of the initial visits, where the property owner is given the initial advice.

If your concern is to provide some additional compensation during a period when the appraisals are exchanged and the experts are prepared, perhaps we could add some language along that line. But the more you get into the competing appraisals, the more you get into an adversarial position and, eventually, the battle of the appraisers is always resolved by litigation. That's when subsection 4 would take effect, in which case, the property owner would not be reimbursed.

I think one of your ideas, in subsection 3, is to encourage people to negotiate a settlement. To the extent that we allow a large amount of attorneys' fees, we encourage battle. If we limit ourselves to informing the property owner as to what his or her rights are and whether or not the agency, at this stage of the game, has done right or done wrong, then, at that point, the property owner can make an intelligent decision. I'll get my appraisal; I'll look at the two and then make a decision. Hopefully, the decision would be to negotiate an amount. If that's the case, the attorney's involvement won't be too complicated.

Maybe $2,500 is not an appropriate cap; maybe what you might want to do in the bill is say that redevelopment agencies have to prepare relocation policies, and you could provide in the bill that the redevelopment agency must provide an attorney's fee amount, and it's written policy. That policy has to be adopted by ordinance when the redevelopment agency does relocation policies for redevelopment areas.

Chairman Conklin:
Is there anyone else wishing to speak on A.B. 143 at this point? Seeing none, I'm going to close the hearing on A.B. 143.

I'm going to open a work session on A.B. 143. I'm going to look for some Committee input, but before I do, I want to make a few remarks on the bill. I liked the bill the way it was before anyone proposed any amendments, quite frankly. Everybody has amendments which were originally proposed, and now

we have additional comments on top of those, plus an amendment by LS Power.

[Chairman Conklin, continued.] I am relatively okay with the proposed amendments and to have a summary appraisal report at the time offer was made. Those amendments were offered by the group, originally, for Section 2 of the bill. I have some concern over Section 2, subsection 3, and I understand from the line of questioning that Mr. Horne does as well. There seems to be some heartburn in Section 3 over the negation of subsection 2, and I would be open for clarifying language there. I am wide open, on Section 4 and 6 of the bill, for Committee input.

Assemblyman Horne:
I don't have a problem with Section 2, the area on providing the summary appraisal report time offer. However, in the proposed amendment on the second page, "Nothing in this chapter shall be construed as creating in any condemnation proceeding brought by the power of eminent domain any element of damage not in existence immediately prior to October 1, 2005 …."

Chairman Conklin:
So I can clarify, we're talking about the work session document. This is a mockup of the proposed amendments to A.B. 143. Mr. Carpenter, you have a copy of it? On page 2, line 21 through line 24, language has been deleted and new language has been entered. Mr. Horne, you are suggesting that you're not fond of that particular language.

Assemblyman Horne:
What particularly concerns me is the October 1, 2005 date. I understand what they're trying to do; they're trying not to have any existing deal on things that are going on right now. My concern is, once we pass this out of the Legislature and it's signed by the Governor, there's a period of time. I don't want new actions to be brought under the old policy. Would it be proper to have this as "upon passage?" When we sine die June 6, if this were to be written October 1, we have that entire period. Let's say there are some properties that have not been targeted or negotiated and there's no action being brought, but in that time frame, it could be. Under this, it would fall under the old policy. If we put "upon passage," anything new would apply to what we've passed.

Assemblyman Carpenter:
I agree with that, "upon passage and approval."

Chairman Conklin:
The sooner we stop it, the better—that would be my opinion. If we are going to take action on this particular item, there are several sections we need to look into. We would need to fix the proposed amendment, or leave the language as it was originally sought in Section 2, subsection 2, paragraph 5. Page 2, lines 21 through 27, will need to be fixed. If we make it "upon passage and approval"—and that sounds like it's the direction the Committee wants to go—then we also have to fix the end of the bill, Sections 10 and 11. Is that correct?

Assemblyman Horne:
Does anyone have any heartburn over that? Did I derail this train with that suggestion?

Mike Chapman:
Maybe I need to understand exactly what you're doing. Our concern here was that the original language stated any resulting damage to the remainder. What I wanted to alert the Committee and the Subcommittee to was that language could be construed as creating elements of damage or compensation which do not exist in eminent domain law at the present. I took this language we have suggested from NRS 37.110 and from the Federal law 42 USC 4602, subsection 1, the Uniform Relocation Assistance and Real Property Act of 1970, which makes it clear that the owner is going to be paid. We're not creating something brand new that people were never compensated for before. It's a cautionary statement.

Assemblyman Horne:
That's what I'm talking about. The language isn't so much, it was the date.

Chairman Conklin:
Mr. Horne, my interpretation is that, under Section 2, subsection 2, paragraph (b), lines 21 through 27, you like the amendment with the exception of "not in existence immediately prior to October 1, 2005"; it will be "not in existence immediately prior to passage and approval." Correct?

Assemblyman Horne:
Correct. Let's see if I understand this correctly. I don't really have a problem with subsections 3, 4, and 5, and the proposed 5 with the offer of judgment; I'm not fond of the phrase, "The offer of judgment provisions found herein shall apply to any and all eminent domain and inverse condemnation proceedings." Mr. Padgett said that was withdrawn. I know that NDOT also said that as long as the offer of judgment is not in there, that's fine.

[Assemblyman Horne, continued.] However, if you remember my testimony in prior discussions when talking about offers of judgment, we are the only jurisdiction that had the offer of judgment apply to the property owners having that hammer over their head. I think it was Ms. Shipman who mentioned that, if we do eliminate offer of judgment, we eliminate it both ways, and we didn't hear anything on that discussion. My gut would be to eliminate it both ways, instead of [keeping the] status quo, but if it's the Committee's desire to take NDOT's recommendations and keep it status quo in order to keep the bill moving, I'd be fine with that.

[Rephrasing for Assemblyman Carpenter.] Originally, Mr. Carpenter, my intention was that "offer of judgment" means if you don't meet the offer that they made to you at trial, you could pay attorney costs and fees. We are the only jurisdiction, according to our research and the Institute of Justice, who does that. I wanted to eliminate that provision. It was suggested that if we eliminate it, it should be eliminated both ways, meaning that if the government didn't meet the offer as well, they didn't have to pay attorney costs and fees. Did I say that correctly, Ms. Shipman?

Chairman Conklin:
Ms. Shipman, please be sure, for the record.

Maddy (Madelyn) Shipman, Legislative Advocate, representing Nevada District Attorneys Association:
I had conversations with Assemblyman Horne on this. The original bill, as I understood it to read, meant that the offer of judgment that normally could be put in place by the governmental entity could potentially help the property owner if the offer isn't met properly under Rule 68. It could end up with the property owner having to pay attorneys fees and costs. It eliminated it on the part of the government.

The original bill also contained a provision that said that we would not have to pay for the appraisal or for the attorney fees if our appraisal—that's just for the pre-condemnation, not subsequently—had been based on a highly qualified appraisal. My conversations with Mr. Horne were based on those understandings, with the opportunity for a property owner to do an offer of judgment in a court proceeding against the property owner. I said that if it's going to be eliminated by the government against the property owner, it should be eliminated both ways.

That's the explanation; the offer of judgment can go both ways. Rule 68 does not say that it only goes from the defendant to the plaintiff. In the case of eminent domain, it's the plaintiff to the defendant. The rule can be used by both

sides of any dispute in an attempt to resolve and settle it. My understanding, based upon Mr. Chapman's and Mr. Padgett's discussions and with the NDOT input today, is that everyone, other than this Subcommittee, feels that the whole reference to "offer of judgment" should be removed from the bill.

Assemblyman Carpenter:
We heard testimony that it's easier for the entity or the government to pile on all kinds of costs and, therefore, put the owner of the property at a disadvantage. What is really wrong with each side standing their costs?

Maddy Shipman:
I think that I would rather have Mr. Peck or Mr. Chapman answer that. They are the ones who do regular government condemnation work, and I think they have a better handle on it than I do.

Mike Chapman:
The rational behind it is recognized, not only in Nevada, but in other states as well. We are not the only state which will assess costs and fees to a property owner. Michigan, Texas, Louisiana, Nebraska, and Alaska—at least on appeal—are some of the states which do. The rationale is that it is a tool which can be used by both the owner and the government. I have used it successfully on behalf of owners against the government, and it compels people to be reasonable.

The safeguards are set forth in a Nevada Supreme Court case called *Beattie v. Thomas* [99 Nev. 579, 668 P.2d 268 (1983)], where it says that the rejection of the offer must be grossly unreasonable in order to have an award of cost against you, whether you're on the government's side or on the property owner's side. It is a tool which is available to both sides to encourage reasonableness and settlement.

Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Washoe County, Nevada:
I testified earlier on this bill and would represent that the Regional Transportation Commission is a major player in condemnation proceedings. I wanted to speak in reference to the fact of whether or not this should be disbanded or discarded from both parties. First and foremost, I don't think property owners would favor that because, assuming that they've made a reasonable offer to settle this case to the government, they would like to know that they have an opportunity to recover their costs and potentially their fees, from the government.

[Stan Peck, continued.] If the government rejected their compromise offer and decided to proceed to trial, conversely, I think that's the same for the government, in making a reasonable offer to the landowner. I think Ms. Mireles' testimony, as well as my own, would be that we probably settle 90 percent of our cases, so we never get to this point. It's only the most difficult cases that end up going to trial.

I agree with Mr. Chapman. This is a viable tool that enables and encourages by and between the parties. It is not a hammer. In fact, in my more than 25 years of trying condemnation cases, I've never had an occasion where the court has awarded attorney's fees against the landowner that went to trial.

As Mr. Chapman said, there is a laundry list of criteria that the court would have to find before they would award attorney's fees to the government. Frankly, it's pretty onerous and totally unreasonable. If there's good faith on the part of the owner, going forth with the trial, it is unlikely that they are going to have any attorney's fees awarded. It's pretty well built-in protection for everybody concerned.

Assemblyman Carpenter:
Can you get a copy of that, what the judge has to consider before…?

Stan Peck:
It's the *Beattie v. Thomas* case. We could certainly provide a copy of that case to the Committee. It's about five different criteria that the court looks at when considering whether to award fees or not.

Chairman Conklin:
My hope is that Ms. Yeckley can get some clarification on those five specs. Mr. Padgett, did you have something specific to add to this issue?

Brian Padgett:
Yes, Mr. Chairman. If we abolish it for both sides and don't give the landowner the opportunity to recover his or her fees and costs in taking an eminent domain case to trial, you get to the point where whatever the landowner's award is at trial—if that award that a jury determines is just compensation for a landowner is then subtracted by the landowner's fees and costs in taking that case to trial—then the landowner is not left with just compensation. That's why we have recommended that we do keep the status quo, or at the very minimum, allow the landowner to make an offer of judgment.

It seems like, for all sides, there's new case law out there, wherein it was very pro-landowner for fees and costs. The government entities don't seem to be

opposed to leaving the status quo, and we are of the same thought at this point. That will allow the landowner to obtain just compensation, in that the landowner can recover the fees and costs. So the landowner is not penalized for seeking constitutional just compensation by taking the case to trial, if he or she feels that the government's offer of just compensation is not sufficient to put that person back in the situation they would have been in had their property not been taken.

Chairman Conklin:
Is that sufficient, Mr. Carpenter?

Assemblyman Carpenter:
I think Mr. Padgett clarified that.

Chairman Conklin:
After all that, do you have a feeling on those issues discussed in subsections 3, 4, and 5?

Assemblyman Horne:
After all that, and the recommendation to delete subsections 3, 4, and 5—I'm okay. Section 3, on part 2, the part that's deleted— I'm okay if we're going to keep subsection 1, and they want to delete subsection 2. I reserve the right to change my mind in Committee.

Chairman Conklin:
I'm a little uncomfortable with that as well. Are you open to crafting language that talks about negotiating in good faith, with the understanding that's from start to finish?

Assemblyman Horne:
I would very much like that.

Chairman Conklin:
Mr. Carpenter, are you good with that?

Assemblyman Carpenter:
I'm good with what you said.

Chairman Conklin:
If we're going to strike subsection 2, maybe one paragraph in Section 3 could clearly state, on line 39, "the person requesting the redevelopment must," and instead of having subsection 1, continue the sentence "negotiate in good faith

towards the purchase of property from the owner of that property" or something like that.

Assemblyman Horne:
There was talk about language we could possibly draft in Section 4, dealing with the recording of a notice that a property is being considered and dealing with subsequent purchase from the landowner. I failed to write it down.

Chairman Conklin:
Mr. Chapman, I have a question regarding this. When a new bar wants to come into my little area of the city, I get a notice in the mail saying there will be a public hearing. What happens in an eminent domain case once a territory is identified? Where does it get posted? How is somebody to know that they have to do research if the homeowner is not being honest?

Mike Chapman:
Typically, when a redevelopment district is formed in the first place, there are public hearings and notices given. If you are contemplating buying a piece of property, you can find out if you are in a redevelopment district or not. If you are wondering if the property is currently under discussion with a government agency to be acquired for some purpose—and the owner does not want to tell you that—I think the owner can make direct inquiry with the agencies.

It sends you on a hunt, because you don't know whether to go to the RTC [Regional Transportation Commission], the city, or the county. If it is in a discussion, it will not show up on a title report because there's no place for them to get their records from. The buyer is not going to be on notice for that. General real estate disclosure laws, which are already state laws, require the owner, under penalty, to provide that information.

If he does not, and the buyer buys the property and then finds out later that these negotiations were going on, he can perhaps have a cause of action against the seller for misrepresentation or violation of those statutes. The owner is under the same rights as the previous owner to receive just compensation for the property from the agency, and the purchase price would be perfect evidence of what it was worth.

Chairman Conklin:
Does he or doesn't he have a course of action?

Mike Chapman:
Yes, if the buyer is under an obligation to disclose things, and they do not, then you have a right of action under the statute. You also have a right of action under common law, for misrepresentation.

Chairman Conklin:
That was a lot of help.

Brian Padgett:
It looks like there's going to be notice one way or the other. I'm not opposed to putting in language that does give notice. One way or the other, the landowner is going to have notice, and the tenants are going to have notice. Mr. Chapman is correct. There is redress if a landowner is not forthright about potential clouds on the title. I think putting language in Section 4 doesn't hurt anything.

Assemblyman Horne:
We operate from the position that a subsequent purchaser of property would have a cause of action to the seller, if the seller failed to disclose that their property had been identified as potentially being subject to condemnation. No condemnation action had been taken yet, but basically I wanted all of you in agreement that a subsequent purchaser would have a cause of action to that seller, in that situation.

Mike Chapman:
I was passed a note which states that inclusion in a redevelopment district does show up on a title report, so a purchaser would know that they were in a redevelopment district. Redevelopment agencies do have the power to redevelop and condemn property. Our concern on Section 4 is that it would create pre-condemnation liability. If the Committee and the Subcommittee wanted to have some sort of notice to a buyer, it might be appropriate to add language here which would say that following this statutory requirement does not create liability to the redevelopment agency for following that statute, pre-condemnation or otherwise.

Stan Peck:
I would concur with the representation that a cause of action would exist under the real property disclosure statement. I also agree that, potentially, Mr. Chapman's suggestion, regarding the inclusion of language that specifically states that following the process, as outlined in the bill, would not give rise to pre-condemnation damages. It would certainly be one potential alternative and/or something that would require the owner to potentially notify.

[Stan Peck, continued.] The concerns that I have are that the state statute talks about an expression of intent to condemn, or an official act to condemn, as generating potential pre-condemnation damages. Certainly, if this process were followed as drafted, without the exclusion that Mr. Chapman has suggested, then that puts the public and the condemning agencies in the posture of potentially having to pay those pre-condemnation damages. I have two cases with Mr. Padgett's office, and both of them have pre-condemnation damage allegations in them. It's becoming a prevalent issue. I'm speaking specifically as it relates to Chapter 37 as opposed to the redevelopment law, but that aspect is becoming very prominent for the public to deal with.

Brian Padgett:
Mr. Chairman, I'm concerned about Mr. Chapman's suggestion that, if they give notice, there be no liability. I'm afraid that would leak over into whether or not the governmental agency is in the planning or the acquiring process. In that case, they could use this language to shield themselves from actually being in the acquiring process and liable for any damages there. I think the thing to do is strike that. If we add any of that language that Mr. Chapman suggests, I think we're going to be materially prejudicing the landowner.

Assemblyman Horne:
Let's strike it. I reserve my right to change my mind.

Section 6, that's the blighted language. As I mentioned earlier, I don't like the breakdown regarding Tier 1 and Tier 2. Since they're going by what's currently in statute, that seems to work fine. This gets too convoluted. I'd like it as I have it written; whether or not it's 4 indicia of 10 or 3 indicia of 10, I think it's the pleasure of the Committee.

Chairman Conklin:
With respect to the rest of the bill, as you originally had it, and with the exception of October 1, 2005, which you want to change, are you good?

Assemblyman Horne:
Also, we had Mr. Sanchez' amendment that he wanted to add, from LS Power.

Chairman Conklin:
You're in support of that?

Assemblyman Horne:
I'm okay with that.

Chairman Conklin:
Mr. Carpenter, I'm going to turn the floor over to you. Where do you stand with respect to this bill?

Assemblyman Carpenter:
We're lucky out in the rural areas that you can't use eminent domain for redevelopment. I really have a problem with the blighted criteria. After Legal has put all this together, we can see how it comes out. It's my feeling that redevelopment agencies do some good, but on the other hand I think they get carried away sometimes. That's why we need to be aware and concerned of what we do here.

Chairman Conklin:
I'm going to turn the floor over to Ms. Miles with regard to Mr. Carpenter's question earlier on the criteria.

Katie Miles, Committee Policy Analyst:
In *Beattie v. Thomas*, the Nevada Supreme Court stated that the trial court should consider the following factors in exercising its discretion regarding an award of attorneys' fees:

1) Whether the plaintiff's claim was brought in good faith;
2) Whether the defendant's offer of judgment was reasonable and in good faith in both its timing and amount;
3) Whether the plaintiff's decision to reject the offer and proceed to trial was grossly unreasonable or in bad faith; and
4) Whether the fees sought by the offer are reasonable and justified in amount.

Chairman Conklin:
Mr. Carpenter, I believe at the time we were talking about offers of judgment.

Assemblyman Carpenter:
Maybe we could get it printed out so we'll know what it actually says.

Chairman Conklin:
Are we ready to move on this bill, or do we want to sit on it awhile? Mr. Horne indicates he's ready to move on the bill. Mr. Carpenter?

Assemblyman Carpenter:
I think I'm ready to move, except on the redevelopment criteria; I have a problem with that.

Assemblyman Horne:
That's short of new information coming. If Chairman Anderson wanted to move this tomorrow, as is with the changes, I would vote and approve on what we've done here today. I guess that's what compromise is. Mr. Carpenter, I don't want to speak for you, but our big concern right now is that we haven't finished up with the blighted area.

Chairman Conklin:
Mr. Carpenter, it's my opinion that we leave the blighted area the way it was in the original draft of the bill.

Assemblyman Carpenter:
If we're going to do that, I'm fine. I don't like the way it's written here.

Chairman Conklin:
If I might summarize a motion that we could make, it looks something like this. From the proposed amendment to A.B. 143, which is the mockup provided to us March 18 by the Research Division (Exhibit J), this is the document we're working from. Gentlemen, you're now about to figure out why it's been so complicated for us. An amendment to the original bill looks like this, with the following changes:

- No changes on page 1—that means we are accepting the green amendments proposed by the consortium.
- Changes to page 2 begin on page 21 through 27 and the only change here is to accept the green language, with the exception that we are changing the very end from "October 1, 2005" to "upon passage and approval."
- We are striking subsection 3 in its entirety, so lines 40 on page 2 through line 35 on page 3 will be stricken.
- In Section 3, on page 3 of the work session document, we are going to ask Legal to redraft Section 3 to read something to the effect of, on line 39, "The person requesting the redevelopment must negotiate in good faith to purchase the property from the owner of the property," or something like that.

Ms. Miles, do you have better language than that?

Katie Miles:
I will leave that up to [LCB Legal Analyst] René Yeckley; she is listening. I'll bring these notes to her and leave that up to her drafting choice.

Chairman Conklin:

- We will strike Section 4 in its entirety; that would be line 44 on page 3, continuing on to line 4 on page 4.

- Section 5 on page 4 are drafter's choices, and since we've stricken several sections, it's going to be fixed by the bill drafters.
- All of the proposed amendments in Section 6 of the bill will not be accepted. It will read the way it currently reads in statute, with the exception of subsection 10 on page 5 being stricken. We will accept a subsection 10 stating the environmental contamination of buildings or property.
- Section 6 will look exactly like the bill currently reads in its original draft. Yes, it will be four criteria, but we may throw out the option of three.
- On page 5 of this work session document, we want to accept the original bill in Sections 7 and 8, which includes page 6, lines 7 and 8, stating that "such a finding is to be made by the judge, not the jury."
- A change by the drafter, however they choose, to Sections 10 and/or 11, noting that we have changed the date to be "upon passage and approval".
- Finally, the acceptance of the amendment by LS Power to A.B. 143, creating another section to the bill adding for the redevelopment of eligible railroads.

Assemblyman Carpenter:
I have a question for Legal. "Eligible railroad" means a railroad that meets the following criteria: located in a community with a population of 100,000 or less. This railroad goes in White Pine County, but a lot of it's in Elko County. I don't know if we want to put counties there, because just a very small portion of it is actually located in Ely.

Chairman Conklin:
Mr. Carpenter, is it your interpretation that this would not allow them to exercise their right in those counties, because they are larger than 100,000?

Assemblyman Carpenter:
No. When it says community, I don't know whether that covers counties or just a city. I think that Legal needs to look at it and make sure that it would cover what I'm talking about, because it's in both counties.

I'm going to vote for it. I just want that part clarified.

Chairman Conklin:
You just want that clarified before Committee?

Assemblyman Carpenter:
Yes, to make sure we're okay.

ASSEMBLYMAN HORNE MOVED TO RECOMMEND TO THE COMMITTEE TO AMEND AND DO PASS ASSEMBLY BILL 143 WITH THE AMENDMENTS AS PREVIOUSLY STATED.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chairman Conklin:
I'm going to close the work session on A.B. 143.

[Opened the hearing on A.B. 194.]

Assembly Bill 194: Revises provisions governing amount of interest paid by plaintiff in action relating to eminent domain. (BDR 3-850)

Using the Chairman's prerogative, I'm going to take a brief amount of testimony before we take action in this Subcommittee, and I am going to go with the opposition first.

Michael Foley, Deputy District Attorney, Clark County District Attorney's Office, Las Vegas, Nevada:
There's been a proposed compromise to make this apply just to straight condemnation cases; that's where the government is the plaintiff and they file on a piece of land. Let's exempt the compound interest from inverse condemnation cases; that's where there's a regulatory taking. In Clark County, we have a lot of them with the airport, where they're claiming height restrictions are a taking, and the property owner actually is the plaintiff. They file, not the government. I don't have a problem with that, but what they were talking about was to make a record rather than change the bill.

If you do want it plain that this doesn't apply to those regulatory takings, then we should add three or four words in front of it, such as, "except in inverse condemnation cases" and then have "the interest must be compounded .... " There is a reason those inverse condemnation cases come up as important in these cases. The county asked me to tell you about a couple of the cases.

There was one in June of 2003 where the verdict was that the property owners were owed damages to the tune of $6.5 million, but the interest going back under the statute was prime plus 2 percent. The interest for about 10 years was actually $8 million, on a $6.5 million judgment. That's pre-judgment interest. If it were compounded, instead of paying $8 million, it would have been over $12 million. This language, in this one case in one year, can add $4 million to a

county budget. There's another one in November 2001, and it was a $12.6 million verdict. Pre-judgment interest on that was $7.9 million using the prime plus 2 percent, under the statute. The judges, in inverse condemnation cases, adopt Chapter 37 statutes. In that case, it would have been over $2 million more if it were compounded.

[Michael Foley, continued.] You have in some cases a statute of limitations going back 15 years on these; they at least claim that. Some of them go back 5 years. It makes a huge difference. Proponents have said, what's the difference? On a regular case, this alone would only go a year-and-a-half or so. And it won't matter much if you're thinking of a mom or pop losing the front 10 feet of their yard for widening the street. If the State came in with a $20,000 offer and the verdict ended up being $50,000—more than double—the amount of interest compounded already over the time that it takes to go to court and get paid, would be in the hundreds [of dollars], maybe $1,000. But that's not why they're proposing this.

This is for the big land developers who will get millions of dollars in judgments over several years if you compound it year after year. You've all paid mortgages and you know you end up paying, over the life of the mortgage, a lot more than the principal. There's a problem with that. You might have to send us to Ways and Means if you're really going to just pass it as is. Even in a regular case, it could sit there for a couple of years. It may be another year before you go to trial. So you may have interest over five years. If you compound it, it can be sizeable if it's one of these million-dollar cases.

As far as the merits of it go, back in 1999 you had two sets of interest. The regular interest statutes applied for injury cases, contracts, and regular business cases. That was set at prime plus 2 percent, and it changes every six months. The eminent domain statute had it tied to the Federal T-bill rate, which was lower. Property owners' proponents were saying that's not fair; you should have the same interest for every kind of case. The Legislature agreed and they adopted into NRS 37.175 the language that you have now, saying that you apply the regular interest rate that you apply to other cases, which is fair. It adds up, but it adds up in other cases too.

From a personal standpoint, I have trouble with this because, if you pass it as is, you're going to have a Nevada law that is more like 17th century Europe, where the landowners have superior rights over nobodies. If you run over somebody and take away their legs, or you commit fraud on a business, or somebody sues you because they got fired due to their race, religion, or whatever—the Legislature only gives you simple interest. If you're a landowner, you get compound interest.

[Michael Foley, continued.] Mainly, the problem that the county has is on these big inverse condemnation cases. You see it mostly with the airport, but we're also involved in flood control, roads, and so forth. If you are going to consider the compromise that it will not apply to inverse condemnation cases, I think you have to put that in the bill.

Assemblyman Horne:
I'm curious. Where there's a taking in this, even though the plaintiff may win, you know you're going to have to pay something to the landowner for the property. Is there a bond, or an account, that money is deposited into while litigation is going forward, especially if you know it's going to be a two-year ride? If I know that it's going to be a minimum of $1 million, it seems to me that I put some portion of that away where it is accumulating interest, to mitigate some of my potential costs down the road. Am I right?

Michael Foley:
There isn't a sinking fund or a bond fund, like you said, but we do, on a regular taking, file a condemnation action under NRS 37.100. We get an order from the court giving us temporary occupancy immediately. As a condition, we have to put up a bond. Usually we put up a cash bond that we pay in, and that's the amount of the state's or the county's appraisal. If our appraisal says it's a $1 million take, we pay in $1 million, and at the end of the case, if they do better than that, we only pay interest on the difference.

Assemblyman Horne:
And what's the interest when you put it in? Currently, is that simple interest?

Michael Foley:
Yes, it's regular simple interest, prime plus 2 percent. It is the same as it would be in any kind of litigation. Under Chapter 17 of NRS, you pay interest from the time of filing the complaint until you get a verdict, which is pre-judgment interest at prime plus 2 percent.

Assemblyman Horne:
Are there no current mechanisms where that $1 million you put away would receive compound interest?

Michael Foley:
The property owners get it at that point. They can draw it out, so they have use of the money. They can earn interest on it, buy other property, or whatever they want to do.

Assemblyman Horne:
They wouldn't get it until after the completion of litigation?

Michael Foley:
When you get occupancy of the property, we pay into the court. The property owner, at the point, can draw it out. They have use of the money from then on. [He illustrated by example.]

Maddy (Madelyn) Shipman, Legislative Advocate, representing Nevada District Attorneys Association:
You just heard from one of the district attorney representatives who did have a concern. I was not aware of it when I was here at Committee previously. I worked with Ms. Fitzsimmons after the hearing last week, in an attempt to address some of the issues that Mr. Foley raised, which is the inverse and regulatory takings. I want to try to answer one question that has come up. The money deposited in court is typically done—it doesn't have to be done but it is—in a traditional takings case/condemnation action.

When you have a regulatory taking or an inverse condemnation—an inverse is the physical, actual occupation of land by government—and the property owner says you didn't have the right to do that; understand, that could happen in a simple way. It could happen as it did in *White Pine Lumber Company and Lake Ridge v. The City of Reno* [106 Nev. 778, 801 P.2d 1370 (1990)]. I was the unfortunate attorney having to deal with that 15-year statute. In *White Pine*, it was a typical tentative map processing where there was a requirement of dedication of right-of-way for McCarran Boulevard. Eight years later, the property owner decided that had been a taking and sued as a taking, as an inverse action.

A regulatory taking is more the airport case, where you pass a regulation that says you can't build above a certain height and they make the allegation. Mr. Foley was trying to deal with the issue of when the money gets deposited. On an inverse or on a regulatory taking, usually you have defenses and you're not sure that there's even a taking until there's been a judgment rendered by a court. For instance, on the inverse case of right-of-way, you have a better idea. You know that you've actually occupied that property. On a regulatory, normally you don't know it until somebody comes forward and requests an

approval of a project and somebody says no. Then they say you've destroyed all viable use of their property.

[Maddy Shipman, continued.] The bottom line is you don't know until the end of the route that you have any liability to that property owner. That's why compound interest exacerbates the issue. Usually, the courts decide on a case-by-case basis as to whether or not, or when, the taking actually occurred in one of those cases.

Chairman Conklin:
I have an email from you that I understand went to all Subcommittee members. It is a forwarding of a previous email.

Maddy Shipman:
What I had talked with Ms. Fitzsimmons about was trying to put on the record a statement that the amendatory language of this bill does not apply in an inverse or regulatory taking case. There was no way, in a short time frame, that you could ever come up with language that would deal with the issue of when such a taking would take place. Mr. Foley did make a good statement too; that maybe it should be put in the bill. The compromise that we had in the DA's association, with the exception of Mr. Foley, was to allow it to go forward on that basis.

Mike Chapman, Legislative Advocate, representing the City of Reno, Nevada:
I wanted to amplify a couple of points that Mr. Foley made. Prime plus 2 percent is the current rate, and it applies to every litigant in Nevada equally. It is above market. Even a 30-year Treasury bond is still less than 5 percent. It's not a bad or non-market rate that the Legislature has prescribed already. The amendment does treat landowners better. I would offer that, whichever route the Committee and Subcommittee take on this bill, we add the usual legislative direction that the amendatory provisions of this Act apply to an action in eminent domain that is filed on or after October 1, 2005, so that the action is prospective rather than retroactive.

Assemblyman Horne:
I'm still curious whether this was compound before and then got changed, or was it a deliberate change, or was it not intended to be changed but was changed anyway?

Chairman Conklin:
There's some legislative history, Mr. Foley, that predates 1991. Are you familiar with it?

Michael Foley:
There have been changes throughout, I think, going back even in the 1980s.

Chairman Conklin:
Specifically, what was the rate prior to 1991 and what was the rate between 1991 and 1999?

Michael Foley:
It was at least 2 or 3 sessions ago. It was tagged to the federal [Treasury Bill] rate. It was a floating rate, so every 6 months it would be adjusted. I know in the 1980s and before it was—and so was the general interest statute—set at 7 percent or 9 percent; and then they raised it to 12 percent.

Chairman Conklin:
But it is your understanding that, between 1991 and 1999, the T-bill rate prevailed and that T-bill rate was less than prime plus 2 percent.

Michael Foley:
Correct.

Chairman Conklin:
The difference between prime plus 2 percent, as we currently have it, and the T-bill rate was that you had a lower rate of interest under the T-bill, but you had compound.

Michael Foley:
I believe it was compound.

Chairman Conklin:
Under the current statute, you have a higher rate of return, but it is not compound. [Michael Foley indicated that was correct.] It would then be my understanding that, if you had a settlement in a short-term case, they benefit better under the current scheme because they get higher interest early on. If you had a big case that went a long, long time, you'd get better return under the T-bill. Even though it's a lower rate of interest, it would be compounded year after year. Is that correct?

Michael Foley:
With the T-bill rate, I still don't know if you'd make as much as prime plus 2 percent. T-bill interest typically is, I believe, less than prime.

Chairman Conklin:
You're not going to make the same rate. That's not the question here. The real question is, when compounding after a certain number of years, though your rate of return is less, you're gathering interest on a larger sum. Therefore, eventually, you're going to eclipse the prime plus 2 percent return.

Michael Foley:
That's the issue. I don't know how many years it would take. Early on, I know you're right. Prime plus 2 percent is better for one or two years than it is to have the T-bill compounded.

Chairman Conklin:
Mr. Chapman, did you have anything to add to that? Does that strike correctly in your mind?

Mike Chapman:
To the best of my memory, yes. The rates have been changed by the Legislature a number of times. The Legislature removed the compounding at one point in time, and after that, eminent domain condemnees were treated the same as everyone else for that case.

Chairman Conklin:
Do I have anybody else who wishes to testify, who is uncertain if they are for or against this bill?

Robert D. Chisel, Assistant Director of Administration, Nevada Department of Transportation:
Our official position on this bill is to be neutral. However, we wanted to make it clear that there will be a fiscal impact on the Department of Transportation. We were not asked to provide a fiscal note. That's all.

Chairman Conklin:
Last request; is there anybody who is either opposed or uncertain with respect to A.B. 194? Seeing none, I'm moving to those in favor of the bill. As a courtesy to my colleague, Mrs. Angle, do you have any remarks to add, for the record? [Assemblywoman Angle indicated no.]

Brian Padgett:
Members of the Committee, I am in full support of this bill. I am speaking in favor of Mrs. Angle's bill and in favor of giving the landowner compound interest. The reason for that is this: if a landowner has his or her property taken, then that landowner needs to be constitutionally put back in the position they would have been in had their property not been taken. If a condemning agency

offered the landowner $100,000, but the landowner obtains $200,000 in a jury trial, that landowner should have, theoretically, had that money at the very beginning when the property was condemned, because that's what a jury determines is just compensation. That landowner could have put those funds into a simple investment vehicle which would have given them a compounding rate of interest.

[Brian Padgett, continued.] Therefore, it seems logical that the landowner be allowed to have a compounding rate of interest at a rate of prime plus 2 percent. I understand that the language has changed since 1999; however, if we go back, what was the practical application of that? If we look at the fiscal impact on governmental entities, one of the governmental agencies, and I believe it was NDOT, stated that, along U.S. 95, 214 houses were acquired. They could not reach settlement with only two of those, and the landowner had to go to condemnation. Those two cases were settled prior to trial.

If we look at it, there are a very small proportion of cases that actually go to condemnation, and go to a jury trial. I don't feel that changing the language to give the landowner a compounded rate of prime plus 2 percent would substantially impact a governmental entity. We do feel that it's important to place the landowner back in the position that he or she was in prior to the taking, so I'm in full support of this.

Assemblyman Horne:
You said that there were investment vehicles that the landowner would be able to use. Give me one.

Brian Padgett:
If the landowner were to drop the award into a simple savings account, put it into a simple mutual fund, or put it into a first deed of trust lending, they're going to get compound interest. There are more vehicles out there for a landowner to choose from offering compound interest, than not.

Assemblyman Horne:
Also, you mentioned what was testified on regarding the two that NDOT eventually settled on. Let's say they settled the day before trial; would that be compound interest or simple interest—which would apply at that time? Does interest apply to those settlements?

Brian Padgett:
That entirely depends on the settlement. Yes, that is a vehicle that they consider for settlement purposes. However, it's entirely depending on the

parties negotiating the settlement. Does our law office always bring that up? Yes, we do.

Chairman Conklin:
Mr. Padgett, I'm going to follow-up on one of my colleague's questions, because I have concern here. You mentioned a savings account; a good savings account has compound interest, but at a rate that's far below a prime plus 2 percent. Even if you have $10,000 in your savings account, you're still looking at 3 percent, if you've got a good bank. I'm curious if you think 3 percent, compounded annually, is better than 7 percent? Is what you're asking here is that you get 7 percent, compounded annually, which would give the impression that you're asking for more than double what would be considered market?

Brian Padgett:
The point was that there are many vehicles where a landowner can obtain compound interest, a savings account being one of them. Most landowners, I think, would not deposit their funds into a savings account as the smartest means of accruing interest. Assemblyman Horne asked me what vehicles were out there. I do believe most people would put it into a vehicle that would give a higher yield yearly, rather than a savings account.

The landowner should have the opportunity to make the decision as to where he or she would wish those monies to go. We understand that the market rates fluctuate, but if higher rates are available, I would imagine that the landowner would install those monies in a vehicle with a higher rate.

Chairman Conklin:
Is there anyone else testifying in support of this bill? No. We're closing the hearing on A.B. 194.

We're going to open the work session on A.B. 194.

Assemblyman Carpenter:
There's a letter from Laura Fitzsimmons that says that she would not object if the bill was amended to expressly exempt cases in which landowners file complaints alleging regulatory takings of their property. That might be one way to do it. I don't know whether that means inverse condemnation or not. We could find out.

Chairman Conklin:
Mr. Carpenter, it was my understanding that we'd be excluding inverse condemnation and regulatory taking cases. Everyone else who files civil action

in every way, currently in this state, gets prime plus 2 percent simple interest. We are now going to take eminent domain and give them, not a market rate at compounded interest, but prime plus 2 percent compounded. If my memory serves me correctly, that means your money doubles every seven to eight years. I would love to have that guaranteed vehicle out there in the marketplace.

Assemblyman Horne:
I think you hit the nail on the head, Mr. Chairman. That would be a pure policy call and for the Committee to decide, whether or not we want eminent domain property owners in a special category when it comes to interests. Someone might argue that constitutionality is involved with takings and that puts it in its own category to begin with. I think it is probable that the Committee will make a recommendation.

Chairman Conklin:
Why don't we re-refer this back to Committee and take no action on it. Is that okay with you? I'll take a motion to refer this bill back to the full Committee.

ASSEMBLYMAN HORNE MOVED TO REFER ASSEMBLY BILL 194 BACK TO THE FULL COMMITTEE.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Chairman Conklin:
Is there any public comment prior to closure of this work session? Seeing none, I'm going to close this work session on A.B. 194. I'm going to go ahead and adjourn the Subcommittee on A.B. 143 and A.B. 194. [The meeting was adjourned at 4:16 p.m.]

RESPECTFULLY SUBMITTED:

_____
Jane Oliver
Recording Attaché

_____
Victoria Thompson
Transcribing Attaché

APPROVED BY:

_____
Assemblyman Chairman Conklin, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 22, 2005 Time of Meeting: 1:00 p.m.

Bill	Exhibit	Witness / Agency	Description
A.B. 143	A		Agenda
A.B. 143	B	LS Power	Proposed amendment.
A.B. 143	C	White Pine County Board of County Commissioners	Letter of support.
A.B. 143	D	Mike Chapman and Brian Padgett, City of Reno	Proposed amendments.
A.B. 143	E	Mike Chapman	Proposed amendment.
A.B. 143	F	Janine Hansen, Eagle Forum	Paper by Janine Hansen.
A.B. 143	G	Heidi Mireles, Chief Right-of-Way Agent, NDOT [Nevada Department of Transportation]	Testimony from Heidi Mireles.
A.B. 143	H	Heidi Mireles, Chief Right-of-Way Agent, NDOT [Nevada Department of Transportation]	Pamphlet – *Nevada Highways and Your Property.*
A.B. 143	I	Heidi Mireles, Chief Right-of-Way Agent, NDOT [Nevada Department of Transportation]	Booklet – *Relocation Assistance in Nevada*.
A.B. 143	J	Assemblyman Conklin.	Proposed amendment.
A.B. 143	K	Joe Ward, Chief Deputy Attorney General, Transportation and Public Safety Division	Proposed testimony.
A.B. 143	L	Joe Ward, Chief Deputy Attorney General, Transportation and Public Safety Division	Fiscal note.