MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Third Session
May 10, 2005

The Committee on Judiciary was called to order at 8:11 a.m., on Tuesday, May 10, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Senate District No.7, Clark County (part)
Senator Mark Amodei, Capital Senatorial District
Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County
Senator Warren Hardy, Senate District No.12, Clark County (part)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Risa Lang, Committee Counsel
Judy Maddock, Committee Manager

OTHERS PRESENT:

Alan Glover, Legislative Advocate, representing Nevada Association of Recorders, Carson City, Nevada
Rocky Finseth, Legislative Advocate, Managing Partner, Carrara Nevada, Reno, Nevada
Micki Johnson, President, Nevada Land Title Association, Reno, Nevada
Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, representing the City of Reno, Nevada
Timothy Hay, Legislative Advocate, representing the City Attorneys Office, Reno, Nevada
Katy Singlaub, County Manager, Washoe County
David Humke, Commissioner, Washoe County Commission
John Wagner, Legislative Advocate, representing The Burke Consortium of Carson City
Lucille Lusk, Legislative Advocate, representing Nevada Concerned Citizens
Ted Short, Legislative Advocate, representing Northern Nevada Railway Foundation
Kaitlin Backlund, Legislative Advocate, representing Nevada Conservation League, Reno, Nevada
Nancy Howard, Legislative Advocate, Nevada Leagues of Cities and Municipalities, Carson City, Nevada
Gale Fraser, Legislative Advocate, General Manager Clark County Regional Flood Control District
Greg Salter, Special Assistant for the Community Development Department, City of Sparks, Nevada
Elisa Maser, Legislative Advocate, representing The Business, Residential and Environmental Partnership, Reno, Nevada
Pamela Scott, General Manager, Community Association Management, the Howard Hughes Corporation, Las Vegas, Nevada
Michael Randolph, Licensed Manager of Homeowner Association Services, Nevada Licensing Collection Agency Specializing in Homeowner Associations, Las Vegas, Nevada
David Stone, President and Manager, Nevada Association Services, Las Vegas, Nevada

Kathryn Pauley, Legislative Advocate, Silver State Trustee Services, CAI (Community Association Institute), Las Vegas, Nevada

Chairman Anderson:
[Meeting called to order. Roll called.] I have asked to hand out S.B. 325. There is an alphabetical index and the major sections of common interest. This will be the last bill that we will be hearing this morning.

I will open the hearing on S.B. 64.

Senate Bill 64 (1st Reprint): Makes various changes to provisions concerning conveyance of real property by deed which becomes effective upon death of grantor. (BDR 10-539)

Alan Glover, Legislative Advocate, representing Nevada Association of Recorders, Carson City, Nevada:
Senate Bill 64 was introduced by Senator Rhodes on behalf of some constituents in Elko County. In the 72nd Legislative Session this Body processed a bill to allow for deeds, which we call deeds upon death. You can do a deed leaving your property to somebody who takes title after you have died. This is a clean-up to that section. The heart of the bill is on page 2, Section 1, which indicates that upon death you take title to the property as your sole and separate property. That was a section that the law firm who deals in this was most interested in.

The recorders were interested in cleaning up the process on how it was done. In the bill there is an example of the Deed, and an Affidavit. You come in and record this deed saying you are leaving your property to somebody upon your death. Also, we have made no arrangements on what happened when you actually died, and this bill lays that out. What you do is simply record this Death of Grantor Affidavit along with the death certificate, and a declaration of value, in case there is transfer tax due. Transfer tax will be due if you are leaving the property to somebody other than one of your relatives. Most are leaving their property to a relative, and the idea here is to help avoid probate. It is a very good piece of legislation and the recorders support it. I think it will go a long way to help people transfer property upon their death.

Assemblyman Horne:
I am curious in the transfer of the deed to spouses, and the provision providing that you do not have to do the quitclaim. I thought that under existing law if

you receive an inheritance it is already deemed separate property unless you transmute it in some way.

Alan Glover:
If you leave a will and you leave it to somebody then you do deeds and transfer the property. If you die intestate, then you may have to probate, if you do not hold the property in joint tenancy. Most people avoid probate by holding deeds in joint tenancy, and this bill is fashioned after that provision. If you and your wife are joint tenants with right of survivorship, you file an affidavit of the death of the joint tenant along with the death certificate, and the property is then transferred. This does the same thing for people who do not hold property in joint tenancy, but use this deed process before you die.

Assemblyman Horne:
I was thinking of a situation where a gentleman's mother passes away, and has created a deed to transfer that piece of property that she owns upon her death to him. Upon her death that property is now his as inherited property that does not fall as community property because it is an inheritance.

It seems like we already have this when you are calling for a transfer of sole and separate property if it is a spouse. Is there a distinction between this?

Alan Glover:
What they are looking for is a clean up in order to make sure it is absolutely clear the person who you have named in this deed inherits the property. It would be their sole and separate property without having the issue of a spouse or somebody else make claim to the property. That is the heart of this bill. It is to make sure that is very clear that whoever you named in your will is going to get that property as their sole and separate property. I believe there are situations where that can be confusing.

Assemblyman Horne:
Your sample deed deals with the priority if two deeds are created then the last in time will prevail. I want to make sure that is not going to trump somebody who has paid consideration for a deed. Let's say, you own property. I will give you $10,000 for the property but I will not have it transferred to my name until you die. You create the deed, you record it, but before your death you convey another deed for your son. Now the second deed has transferred after mine. This bill says the last deed will control, but if I pay consideration I think I should have priority.

Rocky Finseth, Legislative Advocate, Managing Partner, Carrara Nevada, Reno, Nevada:
I would direct you to page 3, item 5, line 5, it is the deed that is last recorded before the death of the owner that becomes the effective deed. We were concerned about recordation issues with these deeds, and someone coming in at the last minute without a recorded deed.

Micki Johnson, President, Nevada Land Title Association, Reno, Nevada:
The original piece of legislation that was passed in 2001 made it clear a beneficiary deed could be trumped by a straight conveyance to a bona fide purchaser for value. This piece of legislation cleans up some of those issues and makes it very clear that not only does the beneficiary deed have to be recorded, but it also provides for revocation of that deed. I think that is a piece of this clean-up bill that straightens all those issues out.

Chairman Anderson:
You have put your property up for a sum that is suppose to transfer that property at time of death, and at time of death the property then becomes the deed holder who put the money out. Subsequently, after the event the person who holds the property puts forth a new title transfer that gives the property to somebody else, who holds sway point one or point two?

Micki Johnson:
Point one would hold sway if that deed was recorded. I think the key here is to getting these documents of public record. If the bona fide purchaser for value recorded that deed, any subsequent deed from the prior owner would be void.

Assemblywoman Allen:
When a person dies intestate, will having this deed help prevent one from going through probate?

Alan Glover:
Yes, that is what we think it would do for you, because that might be the only asset of an estate. This is not meant for people with large estates or trust. This is meant for someone whose only asset is their home, and they want to pass that to someone so you can avoid probate. By doing this deed for your home, in most, unless they have other assets, should avoid probate.

Micki Johnson:
The Nevada Land Title Association fully supports this bill. We are particularly interested in the sections in which the deed can be revoked. The most important part from the title industry is the fact that the death certificate needs to be recorded, and at that point the beneficiary deed that would have been

previously recorded during the owner's lifetime, would become a valid transfer. We feel this will benefit the public greatly. The title companies will not be making ridiculous requirements in order to transfer clear title.

Chairman Anderson:
I will close the hearing on S.B. 64 and open the hearing on S.B. 326.

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

Senator Terry Care, Senatorial District No.7, Clark County (part)
In the government there are a few powers that are reserved for government, even in a democracy that are by any measure extreme. As someone once said, "regrettable, but necessary," is the power of taxation, the power of conscription, the power of incarceration, and the power of eminent domain. I think eminent domain should be used sparingly and judiciously recognizing it is sometimes necessary. It is mentioned in the Fifth Amendment of the *United States Constitution.* Any property taken by eminent domain must be for "a public use," and there must be just compensation to the property owner. I have followed abuse of the eminent domain process in Nevada, primarily in Clark County and the Fremont Street Experience.

I know this Committee had the benefit of having heard A.B. 143 from Mr. Horne. It is my understanding your Committee viewed a video tape from the segment of 60 Minutes which gave you an example of what sometimes can happen when very little thought is given to the exercise of condemnation. I followed the Fremont Street Experience and basically the citizens lost a public street. The Las Vegas Redevelopment Agency entered into a deal with a consortium, a private party of basically downtown casinos, to take property along Fremont Street. The idea was for economic redevelopment and mostly on a theory of "blight" was the reason for taking those properties. That is not all that has happened in the last interim. The *Kelo* case, which arose out of Connecticut, was another case where land was taken from a private land owner and given to another private land owner in the name of economic development. That case is now before the Supreme Court and it will be some time before the court issues its opinion [*Kelo v. New London*, 125 S.Ct. 2655 (2005)].

We have seen some things happen in Nevada recently and you should have some handouts (Exhibit B). One is a newspaper article from the *Review Journal* dated December 18, 2004, which talks about a Supreme Court case where in cases specific to this case only, the court said, "an award of goodwill has to be

computed in just compensation when the taking is of a going business concern."

[Senator Care, continued.] Then I learned about the Ballardini Ranch and there is no way I can discuss this bill this morning although the open space use is coming out of this bill with the amendments I am going to be offering. I learned about that last year when Washoe County voted 4 to 1 to take the Ballardini Ranch. The question arose "when is it proper, if ever for the state or any political subdivision to take for-so-called open space use?" Mr. Chapman, who represented Washoe County when the Senate heard testimony, pointed out that there are a number of states that permit, under statute, "taking for open space use." Colorado permits it and Washington State does not; some do, and some don't. Most states do not address the issue one way or the other. Now it has arisen in Nevada, and I think it is improper. However, I realize that a number of people disagree.

Assemblywoman Leslie and I have discussed this matter and I have come to the conclusion that there is no sense in attempting to push some sort of prohibition on open space use by condemnation with or without the Ballardini Ranch. I realize that Ms. Leslie represents a number of people who are opposed to that notion. We reached the agreement I would pull that portion from the bill, which means that the courts, because Ballardini is in litigation, can do whatever the courts are going to do. It is possible that in 2007, the Legislature will have to revisit the issue, and determine whether that is appropriate. The bill that you have before you in Section 1 will be coming out in what I propose today.

Chairman Anderson:
Is it your intention for me to make this handout (Exhibit B) part of the record? The "Confiscating homes for fun and profit" handout is also yours, Senator?

Senator Care:
Yes. The second one will give the Committee a flavor of what you saw earlier on the testimony on Mr. Horne's bill.

Chairman Anderson:
You have also distributed a memorandum from Mr. Anthony (Exhibit B), relative to eminent domain. Is that a topic that you are going to take up or do you wish it to be made part of the record?

Senator Care:
Yes. It is a topic that I am going to take up. I will make it an exhibit. It goes to a conceptual amendment that I am going to propose as well. The amendment I

have here is something that I received late yesterday and has been a matter of discussion for several days.

Chairman Anderson:
Is this the same discussion that you and I had previously relative to Ms. Leslie?

Senator Care:
That is correct.

Senator Mark Amodei, Capital Senatorial District:
I will defer to Senator Care to describe the proposed amendment. It would be fine if someone would like to add a few comments at the end in terms of what some of the thoughts and perspectives were when this was heard in the Senate Committee.

Chairman Anderson:
I think some of the contentious heat relative to the issue will be taken away with the amendment, relative to the Ballardini Ranch question in particular.

Assemblywoman Sheila Leslie, Assembly District No. 27, Washoe County:
I am here today to support Senator Care in his amendment, and to thank him publicly for listening so carefully to me, to the Chairman, and others from Washoe County who feel passionately about open space, and the Ballardini Ranch in particular. I think the amendment reflects the Legislative process at its best. It is where Legislators can agree to disagree in a very civil manner, have long discussions evaluating certain proposals, and come to an agreement that I think is best for the people of Nevada. I think the agreement that we have reached is a good one, it does not mean that this issue is off the table forever. I think the next few years there will be lots of discussion about this issue. There needs to be lots of discussion with many different parties about the issue of eminent domain and open space.

Senator Care:
In the proposed amendment (Exhibit B) that the Committee members have before them, all of Section 1 comes out. That again is your open space use. We have a new Section 1, where any government entity or political subdivision takes land by eminent domain. Then after it takes the property, it decides it does not need any or some of the property that it has taken by condemnation. There was a case in Mesquite where the state said, "We need to build a highway interchange here," and took property, and decided not to build the interchange. Here the state was left with this property and what to do with it so they decided to sell it. They sold it at public auction. The point is there was no

offer made of first right-of-refusal to the original owner. As a matter of equity it would seem to me that would only be appropriate.

[Senator Care, continued.] The new Section 1 says, "if the government takes by eminent domain and decides it doesn't need that property, then before it disposes or conveys that property, it must go back to the original owner, his successors in interest, designees, heirs, or whatever, and make an offer."

The handout (Exhibit B) from Nick Anthony, I would point to the Committee's attention. There are some states that say if you take by eminent domain and you do not develop the property within a certain number of years, then you have to sell or reconvey the property back to the original owner. Also, you would have to sell it back for the price at which it was taken years earlier. If I am a particular county or city and I come to you and I say, "I need your land," and we go to court and I take it by eminent domain. Fair market value is when you receive $100 for your property, and the purchaser decides after five years they do not need the property. They give you first right of refusal and sell it back at to you at fair market value. However, some states have recognized what you are really talking about is a right of rescission — just give me back my land, and I will give you back your $100— never mind present day fair market value. Section 1 is intended to do that. There are a number of states that we can look to if the Committee were to feel that fair market value is not appropriate. In fact, what needs to be revisited is the original amount of just compensation that the land owner received, however many years before.

New Section 2 in the amendment, the change is to existing law and that is in subsection 6, page 2. "If a business is conducted on the property sought to be condemned, the amount of compensation that must be awarded to the owner or owners of the business for the loss of goodwill resulting from the condemnation of the property or loss of goodwill." Again, there is that Nevada Supreme Court case that shows under certain circumstances, the Supreme Court has recognized that is appropriate. We do not have a statute that says that, some states do. I would suggest the time has come, if you really want to have just compensation it should include the loss of goodwill. It is not just the parcel you are taking but the income derived from that parcel. That should be computed in any figure of just compensation. That is the intent of the new language, subsection 6 in the new Section 2.

In Section 3 of the amendment, I have deleted the part that says, "if an agency acquires a parcel of property." That goes on to goodwill as well. With the new Section 2 it simply is not needed. I should point out Section 3, even with the deletion, is a new concept. It gets back to the *Pappas* decision [*City of Las Vegas Downtown Redevelopment Agency v. Pappas*, 119 Nev. 429 (2003)],

and the Supreme Court Case involving the Fremont Street Experience and I think this Committee heard the facts in the case. The Pappas family owned three parcels on one block of Fremont Street. There were businesses along that street that were doing fine, they were not blighted. The Redevelopment Agency determined that overall Fremont Street was a blighted area. They used a number of the factors that are contained in statute. Under A.B. 143 there are ten, and the court would have to find that at least three existed, not just one under the present statutory scheme. The new Section 3 would say that a Redevelopment Agency "cannot take on a theory of blight, unless two-thirds of the property contained in the area to be taken is in fact found specifically to be blighted." Let me read some of the words from Justice Leavitt regarding the *Pappas* case:

> "The agency failed to demonstrate that the taking of the Pappas' property was necessary for an effective redevelopment. It demonstrated only that it was desirable. There was no evidence of blight in or around the Pappas property, thus the goal of eliminating blight, which in some cases may be a legitimate public use, is not applicable in this case."

[Senator Care, continued.] I recognize that there may be the situation where it is absolutely necessary to take a square block contained within a Redevelopment Agency area. Also there might be one or two parcels that house a legitimate surviving business and that it would make no sense to take all but those two businesses. What I am saying is you have to find specifically two-thirds of the property in that area has to be blighted under at least one of those factors, and maybe three of the factors, if A.B. 143 becomes law.

New Section 4 says that this would only apply to eminent domain actions filed after July 1, 2005. The reason that is necessary is because the bill in first reprint talked about any pending eminent domain action, and that was in reference to the Ballardini Ranch.

Now you have Section 5 which says "the act becomes effective July 1, 2005."

I am aware of a couple of proposed amendments. One is from the City of Reno, and one is from Clark County. I do not agree with them. Again, this gets into the philosophy of, "what is the proper scope of eminent domain?"

I do not think there is any doubt that the time has come for the Legislature to do something about the abuses that have occurred in eminent domain. The Committee members may have read and heard discussion amongst the folks at the Carson City Hall, about taking by eminent domain the empty WalMart store down the street. Jethro from the Beverly Hillbillies wants to make a casino out

of the store. That building is sitting empty but it belongs to somebody, and somebody has plans for it. It becomes a zoning and use issue. It is not appropriate for a government to simply say, "I know what we will do, we will just create a redevelopment agency and take it that way." That is clearly abuse.

Senator Amodei:
Senator Care's amendment removes the discussion of open space wildlife habitat, as well as Ballardini Ranch.

The downtown redevelopment, in town issue, has been a topic of concern and discussion for several sessions. This is the first time in S.B. 326 we have had an issue that deals with the urban rural interface. Redevelopment is not an issue. We have litigation which this bill is specifically introducing. You now have litigation in the State of Nevada where one side has said, "we think this is available for the purpose of a planning and zoning tool by the local government." If we do nothing on the issue, I suspect many lawyers in the state will now argue that this lawsuit went forward, and the retroactivity provisions were taken out. However, in a going forward we have done nothing either. Therefore, the Legislature looked at it, agreed with the position of the plaintiffs in this action; this is a tool that is unqualifiedly available. It is dangerous regardless of whether you see yourself as pro-environment, pro-property rights, or something in between. As we think about this, and discuss how this bill will come back to the Senate, I want to try to explain what tools are available to the folks who engage in planning and zoning, at the local and regional level in this state.

We talk about things like the master plan process, zoning, hillside ordinances, ridge top ordinances, clean water act, wetlands, archeological protection acts and endangered species acts. Now, all of those sorts of tools are currently on the books for federally, state, or locally planning and zoning. There are lots of tools to address issues when you are concerned about these sorts of things. Our state is 87 percent federally owned. Look at a state in the urban rural interface.

I am a member of the Public Lands Committee. One of the big issues we are talking about is when will the feds straighten up the checker board issue that is along the forest service incorporated city and town areas. BLM [Bureau of Land Management] plays a huge role in what happens or does not happen in Clark County in regards to its growth process. We are talking condemnation which is the death sentence for property rights.

The property rights on the edge of town are every bit as important as those in the middle of town when we are trying to redevelop. The abuses that have

sensitized members of both houses of this Legislature, in a redevelopment context, are every bit as potentially available on the edge of town.

[Senator Amodei, continued.] One of the most environmentally sensitive planning jurisdictions in the nation is known as the Tahoe Regional Planning Agency. This agency accomplishes phenomenal things in protection and promotion of the environment. Also, it does not have an instance where it has used eminent domain to accomplish the goals that are sought in the Tahoe Basin. By the time you designate something based on scientific evidence such as stream zones, steepness, et cetera, they have through their inherit planning and zoning powers taken care of those issues without having the additional tool.

What is the proper scope of eminent domain? My comments are in an open space context. One of the areas we need to look at is the area of water rights. When you talk open space, especially in western Nevada where we talk about areas that have been devoted to agricultural use. Just having the land without the water is not of much use if you are used to seeing cultivation. When you talk water rights and condemnation, we have to take a look at what we have done with respect to our fight against Yucca Mountain. The feds have tried to tell us who the proper authority is on water rights. I would suggest that we need to take a look at that also.

There are some serious issues in terms of, "are we going to allow this to be an unqualified arrow in the quiver of local government throughout the state?" Are we going to say this is something as a last resort in terms of after you have used all the other tools at your disposal? What may be good in a redevelopment context downtown in terms of what we are doing and how that block is going to be done, you have an entirely different set of considerations that apply when you start moving out of town. You are talking about multi thousand acre parcels and that is something that warrants some consideration, rather than walking away from it.

Chairman Anderson:
We have received emails (Exhibit C) from Toni Harsh, President, Voice for Truckee Meadows, in opposition. Bill Fine, Executive Director of Impact, in opposition, Bill von Phul in opposition, and Shannon Nicley in opposition. Mitch Brown in support, and Ted Short. We will make these parts of the official record of the day.

Assemblyman Carpenter:
In your amendment, I do not see you have a time limit, and in the handout (Exhibit B) many states put a time limit on it. A lot of them have a time limit of 10 years. Is that something that you could consider?

Senator Care:
Yes. Ever since this bill was introduced I have tried to see if we could come up with something that did not sound so draconian as open space use means the definition contained in NRS 376A.010, to see if we could remove that. The amendment I received late yesterday, and had requested a memo from LCB saying, "What states allow this sort of mechanism?" When the property is going to be sold at auction, it must first be offered to the original owner. Also, is there anything out there that talks about the original purchase price as opposed to fair market value?

Chairman Anderson:
That is a result of part of the discussions that I had with Senator Care relative to the bill. I would point out the one from New Hampshire puts a 10 year without first being offered to the condemned, his or her heirs assigns at the same price to be paid.

Assemblyman Carpenter:
In the amendment it says the "appraised value of the property at the time of conveyance." Is that when the right of first refusal would kick in?

Senator Care:
As drafted that is correct but is under the new Section 1, which this Committee will take a look at the legal memo and say, "maybe we need to work with the new Section 1." At the time of reconveyance the fair market value of the property may have escalated in value 300 percent in 5 years. If you are really looking to rescind, undo the original deal, then fair market value is not the appropriate measure. The other states have looked at that and have said yes, but we are going back to what the original price was.

Assemblywoman Buckley:
Should it be appraised value at the time of the conveyance or should it be whatever was paid? Because, what if there was an appraisal but there was ultimately a court action where the court awarded a different amount?

Senator Care:
We are talking about the reconveyance, the amount that was paid. Yes, that is fine with me and it is precisely what some states have said.

Chairman Anderson:
My question revolves around the "blighted" area and the two-thirds. I see you have removed the "goodwill" question from where it was in one section and you have moved it to another area of the bill. I can see where there would be a section of an overall need that might be heavily "blighted," while in order to

carry the overall impact, you may end up picking up a large percentage of the section that is not "blighted." What would you do there?

Senator Care:
The two-thirds come from statute in North Carolina. I would suggest that the two-thirds figure is fluid. I am simply saying that it is inappropriate for a Redevelopment Agency to look at those nine factors of "blight." A redevelopment agency could look at an entire area and say each one of those is an economic "blight." An economic "blight" is even addressed in Nevada Supreme Court decisions. I came up with the two-thirds figure based on what they do in North Carolina. It is inappropriate to say that we have found one of these nine factors in this entire area, and therefore, we are going to declare all the properties to be "blighted."

The city of Reno had discussed with this Committee an effective date as to Mr. Horne's bill. I am agreeable to making mine compatible with whatever language is contained in Mr. Horne's bill on that issue.

Assemblyman Horne:
I like the revision on the goodwill portion. Did the Supreme Court mention how we would propose to calculate goodwill? Did it give any suggestions at all or are there other jurisdictions that have done it?

Senator Care:
I wish I could address that specifically, I have not read the case. I have a feeling that the court may have remanded with instructions. The Committee may want to look at how the Supreme Court or District Court formulated their calculations.

Nicole Lamboley, Legislative Relations Manager, Office of the City Manager, representing the City of Reno, Nevada:
We have a proposed amendment to Section 2 (Exhibit D). We have been working with this bill since it was in the Senate and we put on record our opposition to Section 2. In looking at the first amendment, provided by Senator Care in the Senate, we still have problems with the amendment in that there are some inconsistencies with the definition of redevelopment area versus redevelopment project. We have provided this proposed amendment. I know Senator Care indicated he did not support the amendment but that was a previous amendment. We since have made an additional amendment and we would like to put that into the record for your consideration.

Timothy Hay, Legislative Advocate, representing the City Attorneys Office, Reno, Nevada:
We have a concern with both the original bill and Senator Care's proposed amendment. The definitions that affect redevelopment are not consistent between the generic redevelopment statute and what is contained in the bill. I would like to preliminarily state we are comfortable with A.B. 143 and it is now pending in the Senate. The criteria contained in the bill is certainly acceptable to us. Senator Care's reliance on the two-thirds of the property within a redevelopment area, although it may sound fine on the surface, creates functional problems. As redevelopment progresses, the number of blighted parcels within an area should be decreasing, as the redevelopment project is developing what formally were blighted parcels. They hopefully will become useful in productive parcels. Over time the two-thirds requirement simply is not going to be functionally able to be applied to a redevelopment project as it moves forward.

I also think it needs to be clarified that the redevelopment area and a particular redevelopment project are two separate geographical areas. The redevelopment area is the entire portion, declared in a plan, to be subject to redevelopment within that area. Many individual projects are undertakings that are the actual functional — on the ground — working of redevelopment agencies and will comprise a smaller part of that area. Those are generally targeted at the worst areas first, and then as those are developed the redevelopment projects can be proposed and plans of the parts of the redevelopment area. So that needs to be clarified and I think A.B. 143 functionally has done that.

The amendment we have proposed is if an agency finds the acquisition of a non-blighted property is necessary to alleviate the condition of blight, the criteria are strong enough to advance the goals. This is the legislation originally sought to produce those results.

Assemblyman Carpenter:
Would you explain to me exactly what you are trying to accomplish with your amendment?

Timothy Hay:
We are indicating if a redevelopment agency determined the acquisition of a non-blighted parcel or property is necessary to fulfill the purposes of the redevelopment plan in that area, it may allow acquisition by eminent domain. I might indicate that in the case of northern Nevada our redevelopment agency has been very sparing in its utilization of eminent domain. You can certainly have a project area that encompasses a number of properties with a proposed development within that project area that needs a non-blighted parcel. It might

be in order to either create a contiguous parcel of land for a larger endeavor or a number of other circumstances. We believe the criteria are adequate to protect the public interest and also to promote the ability of a redevelopment agency to fulfill the purpose which the state enabled it to function under. This replaces the two-thirds.

Chairman Anderson:
What it does is eliminate the two-thirds blighted statement. It says that the redevelopment project can move forward if the city gives notice, if it is part of that redevelopment project and they need this to complete their piece.

Timothy Hay:
That is correct.

Nicole Lamboley:
In the Senate testimony, Senator Care indicated that there are many states that had a two-thirds rule. In our research, we did find there are two-third rules but they do not necessarily relate to the acquisition of parcels. Many of them deal with the two-thirds voting rule, to enact eminent domain powers. North Carolina does use a two-thirds rule, but states the Planning Commission must determine at least two-thirds of the number of buildings within the area are of the character described to their standards of blight. One concern we had with the two-thirds rule is we did not find other states that used two-thirds as an assemblage of parcels; it was more on the voting requirements.

Chairman Anderson:
In our discussions, we clearly recognized that eminent domain is the big hammer the State gets to use here. The question is what happens if there is a political change in the governing Body. You have this potentially valuable piece of property, having cleared it of its blight, and its value thus becomes greater. Now, a new political Body decides to get rid of it for the good of the citizens because the money goes back into the coffers of the city. They want to solve their problems by recouping their loss. What about the question of use within a reasonable time period of 10 to 20 years before you turn the offer back to the original owner? What are your feelings about that question?

Timothy Hay:
The life of a redevelopment agency is provided in NRS Chapter 279 and is up to 45 years. These are long ongoing projects, designed to rehabilitate and revitalize an urban core that has degraded over time. When you look at a specific project, those tend to happen on a much shorter time frame. If property were to be acquired for the purposes of a specific project, you would be looking at a shorter period of time then the 45 years an agency can be in existence. You are

looking at probably 5 to 10 years on average would cover most of the redevelopment projects that are planned or underway in Reno.

[Timothy Hay, continued.] Under our plans it is very unlikely that a parcel would ever be acquired by eminent domain, unless absolutely necessary. That would imply that it is likely to be needed for relatively immediate use in a redevelopment project. I think the hypothetical may be there, but the practicality is it is unlikely a political shift or some other factor would indicate a parcel acquired needs to be disposed of later on. One of the benefits to redevelopment financing, granted to redevelopment agencies by the authority of the state, allows for long-term planning and financing of projects. If the acquisition of the parcel is inherent to a particular project, it is likely there are going to be bond covenants, and other legal criteria. They will assure that the project goes forward whether or not there is a change in other circumstances. I would characterize the chance of a parcel acquired by eminent domain as ultimately not being needed, as being extremely remote, in our circumstances.

Chairman Anderson:
I come from a community that has the oldest redevelopment district in the state. The redevelopment project was originally intended to take only 25 years. I think the community is in their third plan and have yet to accomplish their original intent as to what they were planning to do. The land is still vacant and has not returned to the public roll, which is what everyone was anticipating. The public does not have much confidence in the state and if they are using eminent domain properly.

Assemblyman Horne:
The amendment states (Exhibit D), "an agency may exercise the power of eminent domain to acquire property for a redevelopment project only if the agency adopts a resolution that includes a written finding by the agency that a condition of blight exists for each individual parcel of property to be acquired, unless the agency finds and declares the property sought is necessary for assembly of a larger parcel for development in accordance with the adopted redevelopment plan." It says we have to find blight for each individual parcel unless we make it for a larger parcel, am I wrong?

Timothy Hay:
I think your reading is correct. The issue here is you may have a particular property within the boundaries of a project that in itself is not blighted. Even the property interest may be an easement or some other property interest that needs to be acquired by eminent domain. It may not be subject to blight, but it is the essential if you are going to put in a theater complex. If you have an encroachment or property interest in the center of that project, that in and of

itself is not blighted, but may be required to acquire in order to complete the development of the blighted parcels surrounding the property. This is a rare circumstance, but you could have a small and not a very valuable parcel of property that if it is not acquired would in effect prohibit the redevelopment of the surrounding areas. That is one of the reasons we appreciate the approach in A.B. 143, already processed. This language is targeted to a fairly limited set of circumstances, but if you have a development project going on that needs that smaller property in order to make it financially or physically viable, it would help.

Assemblyman Horne:
It then takes away the criteria in which we are looking for. It says "you can be a property owner if you are within this redevelopment project, just because you were there your property may not have blight, but we are going to take it because we have a larger issue." The other bill you referred to in the other House calls for criteria to be found for such property.

Timothy Hay:
Yes. The issue here is you have a very limited circumstance where you have blighted or other property that is subject to a redevelopment plan surrounding a non-blighted parcel. In order to do that, and get the scale of a development to interest developers, you need to be able to present clear title to adequate property. If you have a coffee kiosk in the middle of a blighted area, the coffee kiosk itself may be a viable business and not necessarily blighted in itself, but the acquisition of that parcel or property interest may be essential to do a development that encompasses what otherwise would be a large contiguous piece of property. It is a very limited circumstance we are trying to address.

Assemblyman Conklin:
When I read this amendment I see an opportunity for a government entity as opposed to finding a blighted area that needs to be redeveloped, using this language to capture a large part of land. An example would be if you have a project you would like for redevelopment, but you need a space for it. This amendment says you do not have to find a large nine-acre parcel; you only need to find a one-acre parcel that is blighted. Then you can take all the eight one-acre parcels surrounding the property in order to make your redevelopment possible. Does that make sense? What this does is says you only have to find one parcel that is blighted and you can take every parcel that is attached to it for redevelopment if necessary. If I am an aggressive government entity, and I want to redevelop something and put in a new project, I do not have to find the total land blighted. I just need to find a piece of it blighted, and once I find my blighted piece, I can take everything around it. That is what bothers me with this amendment. What assurance does the public have or the consumer of government have that this measure will not be abused by government entities?

Timothy Hay:
I think you have to look at the entirety of NRS Chapter 279 in order to put this into context. Part of the philosophy of redevelopment is that first of all you establish a redevelopment area that could be a relatively large geographic area. It contains the statutory criteria subject to redevelopment once that area is established and there has been a long process in order to do that. Then you move to the step of identifying particular redevelopment projects within that area, hopefully prioritized by the most degraded or most blighted portion of the redevelopment area. You are looking at components within an area that has been adopted and then a redevelopment project proposed within that area. You are focusing on narrow or narrow geographic areas once you get to the point where you have a project going forward. You could have this circumstance arise where there was blighted area that may contain a non-blighted parcel within it that is necessary for the acquisition.

There are many procedural steps from the establishment of the broad area and then move down to the more narrowly focused actual project areas. There are procedural protections built in to each of those so this would be something that would occur well down the road. Our agency would provide ample opportunities for negotiations and other methods to acquire such a parcel and eminent domain would be the last resort. We think a very rare, but potentially necessary, last resort, under very specific circumstances.

Assemblyman Carpenter:
I think Mr. Conklin is reading this amendment the same way I am. I saw on television where the city of Reno does not have any money for extra policemen, but they are going to put $800,000 into the redevelopments.

Assemblywoman Ohrenschall:
I agree with Mr. Conklin and Mr. Carpenter but I want to go a step further in the bottom of this amendment where it says, "acquire property for development only if and unless the agency finds." So, I am not sure they even have to find one parcel that is blighted. I would be very leery of this amendment.

Katy Singlaub, County Manager, Washoe County:
We appreciate Senator Care's amendment to remove the reference to open space. We do not support efforts to include open space and wildlife habitat in this bill or any other bill restricting uses of eminent domain. We are very concerned about preventing use of eminent domain by governments as a last resort, so local governments can protect the statutory definitions referenced in the bill; flood control, stream zones, water sheds, historic preservations, et cetera. Even though as Senator Amodei said, "Tools do exist to protect

certain sites without the tool of eminent domain." Private interest could lock out access to public use, recreation, public safety or other critical purposes.

[Katy Singlaub, continued.] Washoe County is willing to support a right of first refusal in the legislation. It would give owners whose lands have been acquired through condemnation the right to reacquire their property if the government is unable to use the lands as intended. We want some extended period of time, such as 10 years. We do feel the property must be able to be conveyed without right of first refusal to another public entity such as a flood district, state or the U. S. Army Corp of Engineers in the case of our flood control project. We would request a clarifying amendment and would be happy to work with staff on this issue. Possible language might be something added at the end of Senator Care's new Section 1, subsection 2 ends with the sentence, about "seeks to convey the right, title and interest in all or part of that property in an amount equal to the appraised value of the property at the time of conveyance."

We would certainly support Ms. Buckley's concern about not just the appraised value but the value adjudicated at the time of the conveyance. We would add to that, provided however, "that the right of first refusal shall not be applicable in any instance of a transfer of property acquired by eminent domain to another governmental entity, state, federal or any subdivision, there of." We would like to have that on the record.

In addition we are concerned about Senator Care's new Section 2, subsection 2 which states that "the property sought to be condemned constitutes only a part of a large parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned" We are concerned about having to pay damages on a portion we would not be condemning. We think there is a compensating damages and benefits balancing that occurs in his subsection 4. That is a better way to handle the issue. We would request deleting subsection 2, under the new Section 2 of his amendment. We understand the concerns for due process for private property owners, and we support common sense steps, and findings. The eminent domain process requirements in A.B. 143 have been unanimously supported by the Washoe County Commission.

David Humke, Commissioner, Washoe County Commission:
I listened with care to Senator Care's testimony. I heard in that testimony nothing inconsistent with these amendments that the county is offering. We could give numerous examples of how we might start the process on behalf of the County of Washoe. We might then convey the plan to the Corps of Engineers or another federal agency, a piece of land which is needed for a specific public purpose.

Chairman Anderson:
I presume, Ms. Singlaub, that you have the county's proposal in writing so that we can present it to staff.

David Humke:
We could have our counsel look it over and then we will submit it to you later today.

Chairman Anderson:
We would like it in the conceptual idea of more than the actual language, because the more attorneys touch it, the more difficult it becomes to read. I do not think there is a concern from all of us that if the acquisition took place and is going to be moved to another governmental entity. I think our concerns rest in a couple of other areas. There was a video we all saw some time ago that dealt with the taking of gas stations and other kinds of businesses. After taking these businesses, the redevelopment agency would turn around and sell them to other businesses.

I am concerned about the building of the V & T Railroad. I think we are concerned that it is going to move forward. We are trying to encourage it to take place but at the same time recognize they are finally going to put those tracks down, and they don't want a T-Shirt Shop standing in the middle of where they are planning on putting the tracks. Unfortunately, there are some bad examples here in Nevada that is necessitating this and of course nationally there are more. We would like to make sure that we do not follow the bad examples that have been set in taking, because it is a taking of privately owned property.

Assemblyman Mortenson:
I am bothered by the idea that we took this land for development of a new flood control district and yet we decided we do not want it for flood control and we are going to give it to the Fire Department or some other entity. The chances that piece of land will be optimal for some other purpose is just about negligible. To me if you do not use it for what you said, it should revert back to the person that you took it from. If another entity wants to administer eminent domain in a different form of more optimal for its use then it should do it again. It all should be in a time frame so that if you made it 10 years then it should take place within that time.

About three sessions ago in Government Affairs, there was a question about eminent domain taking far more land then they need. I know specifically of a case where a parcel of 50 acres was taken by eminent domain, and the purpose was to install a small section of a clover leaf for the freeway. Less than

one-third of that property was used for its intended purpose, and many years later the government entity sold off the remaining land for a huge increase in profit. In Government Affairs Assemblyman Brown suggested that the remaining land should go back to the person that it was taken from, and at the price that it was originally taken.

David Humke:
County Manager Singlaub has written on the amendment language and has added the words, "for the adjudicated public benefit." It is our intent if we convey as a county to another government agency, that is the plan, and the public benefit for which we condemned does not change.

John Wagner, Legislative Advocate, representing The Burke Consortium of Carson City:
I am in support of this bill, and I support what Senator Care has put into it. As far as the property at the end of town which WalMart sold to Jethro, the city is talking about seizing it under eminent domain because they are saying it is blighted. That particular building is only one business out of about nine who have moved out. Are they going to condemn the remaining eight as well? It now seems that WalMart wants to put a Sam's Club there and they want to buy it back from the city. It may be the best for the city because they are thinking they can make more money off of WalMart then we can off the hotel-casino theater complex that Jethro wants to put in. We have not taken a position on whether Jethro should or should not be in there. Our position is that eminent domain should not be used for this particular purpose. I think the city needs to get together with Jethro and they need to do their own thing together and not by eminent domain.

Lucille Lusk, Legislative Advocate representing Nevada Concerned Citizen:
We are here in support of S.B. 326. The issues of eminent domain have been adequately explored so I will not go through those. I will express some concern about some of the amendments that have been offered. Senator Care's amendment is fine. Although I prefer it in its original form, it is still a good bill with those amendments especially if the issue of the right of reconveyance includes reconveyance at the price that was originally paid.

Some of the other amendments that have been offered cause great concern. The one from the City of Reno removes the two-thirds and it was repeatedly stated it would be very rare that there would be a non-blighted parcel ever taken. By removing the two-thirds the implication is that more than one-third would not be blighted. In addition, a request was made to remove subsection 2 from the new Section 2, in existing law. It would remove a requirement to address the question of what damage is caused to the remaining portion of a

property when only part of a property is taken. I can give an example of a neighbor of mine whose property had 20 feet taken off the backyard for the freeway that was needed. The money they offered him in no way compensated for the property that he was left with and what it would now be worth with 20 feet removed from his back yard. Through negotiation he was able to work it out and ended up selling the entire property at a reasonable fair market value. So, it creates real problems if the two-thirds should be removed.

Ted Short, Legislative Advocate, representing Northern Nevada Railway Foundation:

I would like to speak about how it is used in Washoe County for the public good. A recent example is the first installment in getting the V & T Railroad running. We currently have gone to bid and are under construction on the first 1.4 miles of the railroad. This track goes across the Overton Pit and in the 1.4 miles there were 95 separate parcels that had to be appraised. Some of these parcels were purchased at their full appraised value, while other parcels were donated. However, the 95th parcel was a hold out. Without our existing eminent domain law, the V & T would never have run. The parcel was purchased for the right of way at the full appraised value.

Another example of where this has been used for the public good was in Washoe County in the 1950s. Skiing started to become popular in this country and we have some pretty good mountains. It was impossible to get to Slide Mountain because Mr. Redfield owned the whole mountain at Mt. Rose. He bought all the sections of land that came up for tax sales. At one time you could walk on his property just below the tree line at Galena all the way over to Donner Summit. He refused to sell a piece of his property and the city and county fathers did not want to make a large investment without some control over it. So 120 acres of this land was taken by eminent domain. The Reno Ski Bowl later became Slide Mountain. In 1960 the downhill for the Olympics and the slalom course for the Olympics' runs were laid out on this mountain because Squaw Valley had less snow. Until just at the last minute when it snowed, they were able to hold them at Squaw Valley. This has since transferred over and the Mount Rose Ski Area took over the lease and it is getting worldwide publicity.

I am in support of what County Manager Singlaub and Commissioner Humke said. The Ballardini Ranch property abuts the Mt. Rose wilderness area. The property on the lower part has always been the winter range for the Mt. Rose deer herd. Chris Healy of Nevada Wildlife told me that during the snowstorm of 2005, 100 deer were hit on the streets and freeways in the greater Truckee Meadows. If this piece of ground were to be subdivided and paved over, all of those deer in the Mt. Rose wilderness area would end up on the streets. If this land were lost there would be a real public safety issue.

Chairman Anderson:
The eminent domain law was used in Clark County to the detriment of several people rather extensively. We cannot go back to the way it was. There has been some severe abuses, and I think that is a level of concern. In Elko County, there have been some examples with the state highway system that have raised questions. Especially when the property is divided and who should control it afterwards. There are issues we have been dealing with for some time in trying to find common ground for everyone.

Kaitlin Backlund, Legislative Advocate, representing Nevada Conservation League, Reno, Nevada:
We would like to go on record in support of Senator Care's amendment. We would say that if the Committee chose to adopt that amendment our position would go from opposed to neutral.

Nancy Howard, Legislative Advocate, Nevada Leagues of Cities and Municipalities, Carson City, Nevada:
You mentioned earlier that maybe this would go into a work session. We appreciate the opportunity to work with this Committee and the sponsors on this measure.

Chairman Anderson:
Whatever is presented here we will take to the work session. It will be what this Committee decides to do when we get to it. Those amendments will be adopted fully on the floor when they come from the Committee.

Nancy Howard:
Local governments have stated their position on this. I was concerned because of the one possible amendment that was addressed here that is not here in print.

Gale Fraser, Legislative Advocate, General Manager Clark County Regional Flood Control District:
We have a very aggressive program in Clark County. We have done a lot of property acquisitions, and not too much condemnation. We do support Senator Care's amendment, specifically the deletion of the open space in NRS 376A.010. That will allow us to continue to implement our programs and projects in Clark County.

Greg Salter, Special Assistant for the Community Development Department, City of Sparks, Nevada:
I ask that you approve the amendment that was proposed by the City of Reno so that we can remove more than one third of the blight from our redevelopment area. We accomplish redevelopment in projects, a project at a time. Under the present version of S.B. 326, if we get lucky with a project or remove half the blight from a redevelopment area we cannot go any further because we cannot make the finding that two-thirds of the area remains blighted. So we ask that you approve the amendment that has been offered by the City of Reno.

Elisa Maser, Legislative Advocate, representing The Business, Residential and Environmental Partnership, Reno, Nevada:
The Business, Residential and Environmental Partnership are working to implement the flood control project in the Truckee River. You have a copy of my comments (Exhibit E) so I will not go into them extensively. On the Truckee River we are taking a flood control approach that embraces a living river. It does a lot of ecosystem restoration, and uses open space and natural areas to actually provide a flood control. Any changes that you would make to eminent domain, we would ask you to keep in mind that in some cases the open space is what you would consider the traditional infrastructure. We hope that you keep that possibility as a last resort for communities that want to embrace their natural systems.

We have three local governments working on this project in cooperation with us. We are also working with Storey County, and the Pyramid Lake Paiute Tribe. It is quite conceivable that we would acquire a parcel and then need to transfer it to a flood control district at a later time. We support Washoe County's concept of transfer from one government agency to another for the purpose stated.

Chairman Anderson:
We will make as part of the rules of the day the letter (Exhibit E) from the Truckee River Community Coalition from Ms. Maser, and will ask you to scan in this document (Exhibit F).

We will close the hearing on S.B. 326. We will open the hearing on S.B. 153.

Senate Bill 153 (1st Reprint): Revises provisions relating to management of common-interest communities. (BDR 10-830)

Senator Warren Hardy, Senatorial District No. 12, Clark County (part):
Senate Bill 153 was a concept that was brought to me that caused me a great deal of concern. I learned that in certain circumstances, common-interest community managers were able to position themselves to benefit financially from fines and other things, levied against homeowners. The original purpose of the bill was to prohibit these fines levied against homeowners. We figured out that there were a couple of other things that we could clean up. I appreciate Ms. Pam Scott for her expertise in helping me in understanding these and also her help to clarify the language.

Section 1 covers how the fines will be accounted for and what they were used to pay, since there was not any specification in laws before. The books of the association shall account separately for fees and assessments for other charges. It also allows a homeowner to be able to specify that they would like a fee to go towards the payment of a fine or some other specification.

Section 2 of the bill speaks to the prohibition against a community manager from benefiting essentially from the fines that in some case both impose and collect. It does not, however, prohibit them as part of their fixed price contract from being able to conduct those services.

The third portion of the bill indicates that the definition of a collection agency does not include a unit owner or association except in foreclosure situations. In that case they must go through the same standards and guidelines as a collection agency.

Chairman Anderson:
We see that the association manager is prohibited from applying any part of the fee or other charges toward applying or the costs of collecting a fine. Only if the owner has provided authorization, would it be allowed. Apparently that would be by the CC&Rs [Covenants Conditions and Restrictions] when you originally sign your letter in the very beginning. Is it a fine print kind of question?

Senator Hardy:
Sometimes individuals will send a fine in and they may have an outstanding assessment due. The association will then attribute that to the assessment, but not to the fine, so that the penalties associated with the fine continue to accrue. This allows them to say, "this money is for my fine and I am sending it for my fine."

Pamela Scott, General Manager, Community Association Management, The Howard Hughes Corporation, Las Vegas, Nevada:
Just as a clarification, I think it was back in 1997 when an issue came up where people were sending money in to pay their monthly assessments and they were getting applied to fines. That is when they put that short section in NRS 116 that prohibited an association from applying any assessment to a fine. The intent in 1997 was to say, the owner needs to give you direction where they want that money to go.

The way it has been applied in reality over the years is that unless the owner tells you if he is paying his fine all money gets applied to the monthly assessment. This is so they are not incurring late charges, and going forward to liens and foreclosure. You cannot foreclose for a fine but you can foreclose on assessments.

The first section of this is to clarify that persons can send money to pay their fines. Those people who send the money need to make it clear where their money was to go. Also, it makes sure that the association is keeping track separately of the difference in the two assessments on their books so an owner can clearly look at their account history and figure that out.

Chairman Anderson:
What is the purpose of removing the "assists another person in performing his function?" Why are you taking that out? It seems that a large community manager would possibly need several assistants to carry out the multi-functional responsibilities of the job. It also probably breaks it down depending on what the violations of the CC&Rs are. Why would you not want to allow your subordinates the ability to carry out what jobs you are assigning them?

Pamela Scott:
That amendment is for Section 3, subsection 3 (Exhibit G), and that is the section that defines a collection agency, under NRS Chapter 649. I did not have a lot of problem with the way it was written, but sometimes the attorneys get involved and interpret it differently. In Summerlin we never get into the foreclosure business. If we need to send something out for lien it goes to a licensed collection agency. Some management companies are starting to provide that service themselves. The intent of this section is to say, "If you are going to provide that service, then you are a collection agency." Some attorneys in Clark County were interpreting the assist language to say, "If the management company goes so far as to provide the records, and copies of letters, et cetera, they are now assisting in the foreclosure process." I do not personally agree with that, but I do not want to take the chance that later that will be the interpretation, because I believe that is not Senator Hardy's intent.

Chairman Anderson:
We like our bill drafters to have the freedom of being the final word.

Senator Hardy:
I will accept whatever our legal counsel advises.

Chairman Anderson:
So it is not an amendment that is essential, but one that would be helpful to clarify the legal brains of the Howard Hughes Corporation.

Pamela Scott:
Actually it is not the Howard Hughes Corporation, it is other attorneys in the industry.

Assemblyman Manendo:
As far as community managers, soliciting, accepting of gifts or compensation, is there any instance where community managers can accept any type of gifts or compensation from an association? If there is a common-interest community that is into litigation as far as construction defect? Does the property manager receive a free trip, gifts or other items to change lawyers in mid stream, is that appropriate?

Pamela Scott:
No. That is not allowed in the current law, and it is not allowed under the standards of practice under the Commission for Common-Interest Communities. It is definitely an ethical violation.

Assemblyman Conklin:
I understand there is a reserve account that gets set up whenever a common-interest community gets formed, is that correct?

Pamela Scott:
Yes, that is correct.

Assemblyman Conklin:
Is that reserve account fully funded by the people who buy into the common-interest community? Does the developer who set up the common-interest community initially put money into the account?

Pamela Scott:
It is a combination. The builders, once they close on the land, are paying as though every house already sits there. A portion of the monthly fee goes into the reserves and that is how they are funding their portion. When they sell that

home, and the homeowner takes over, then through their fee they are funding the monthly portion.

Assemblyman Conklin:
Is the purpose of that reserve for repairs to the common portion of the common-interest community?

Pamela Scott:
It is for repairs to the major components; it is not allowed to be used for day-to-day maintenance. It is there to replace a community building, private streets, walkways, all major components that have a 30-year life.

Assemblyman Conklin:
If part of that community is town homes, and each of the homes have a common roof for four homes, is the roof covered by the common interest?

Pamela Scott:
I believe you are speaking not as a condominium form of ownership. If the roof is being covered over four units, then yes, that would be common area, and that is exactly why you would have reserves set up. However, some town homes are planned unit developments and they are not a condominium. In those cases, each unit owner would be responsible for the roof over their own unit.

Assemblywoman Allen:
In my area of southern Nevada, Sun City, Summerlin had a special assessment of about $900 which went directly into the reserve fund, because the reserve balance got too low. I do not believe there were any matching portions from the builder. The folks in Sun City have divested themselves from The Howard Hughes Corporation. They are independent and had to assess the residents because the reserves were too low. It was very hard on some people with limited income on social security.

Michael Randolph, Licensed Manager of Homeowner Association Services, Las Vegas, Nevada:
I am fully in favor of this bill requiring management companies to be licensed as collection agencies. At present the Ombudsman's Office is not privy and an expert in law of NRS 649 or the Fair Debt Collection Practices Act. As a collection agency, licensed by the Financial Institutions Division, the agency is subject to annual reports filed with the Commissioner. Annual compliance audits making sure that their collection practices, bookkeeping, reconciliation, and their forms are all approved before using. Management companies do not have those requirements at this time.

[Michael Randolph, continued.] The reason that collection agencies are required to have all their forms approved by Financial Institutions is to make sure that they comply with NRS 649 and the Fair Debt Collection Practices Act. These are all safeguards that have been in practice for many years here in Nevada. Nevada also requires that every licensed collection agency has a licensed manager who has been tested to make sure they know the current knowledge on the present Nevada law, and also federal law. There is also a compliance department for homeowners who feel violated and they can file a verified complaint. The Financial Division sends that complaint to the collection agency and they have ten days to file an answer.

By requiring management companies who want to become collection agencies, it saves the Ombudsman's Office time, and money, because the Financial Institutions Division already does the compliance, audits, and the verifications. It saves the state money, they don't have to retrain the Ombudsman's Office or set up new panels for collection problems. It protects the consumers, because everybody doing the job is licensed by the same entity. We have to be very careful, we are doing the most serious collection of all. We are taking somebody's home away from them. For that serious of a collection you should be a licensed collection agency. NRS 649 has required it for years until AGO 99-38 [Attorney General Opinion No. 99-38], which I disagreed with, where the Attorney General's Office said "in the normal course of duties for management companies, they could act like a collection agency." Unfortunately, the biggest abuses, and costs being associated to the homeowner for these services are being done by the non-regulated, non-licensed management companies who wants to act like a collection agency.

Chairman Anderson:
Have you had an opportunity to review the amendment that has been proposed relative to the removal of the additional language for assisting another person in performance?

Michael Randolph:
I agreed with the amendment. Assisting another in the performance would keep a management company from assisting the board president, who can do the foreclosure, and the sale. This would keep the management company from "assisting him," to skirt the law to stay away from being licensed as a collection agency.

David Stone, President and Manager, Nevada Association Services, Las Vegas, Nevada:
I specialize as a Collection Agency and I am in favor the bill.

Chairman Anderson:
Has your position been presented fairly?

David Stone:
Yes.

Kathryn Pauley, Legislative Advocate, representing Silver State Trustee Services, and CAI [Community Assn. Institute], Las Vegas, Nevada:
We support this bill but we also support it with the amendment of removing the word "assists," out of Section 3. This support is coming from the attorney's that Pam Scott had mentioned but also from the managers.

Chairman Anderson:
I will close the hearing on S.B. 153. There being no further business, the meeting is adjourned [at 10:48 a.m.].

RESPECTFULLY SUBMITTED:

Judy Maddock
Committee Attaché

RESPECTFULLY SUBMITTED:

Linda Ronnow
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: May 10, 2005 **Time of Meeting: 8:11 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda (1 page)
S.B. 326	B	Senator Care	Proposed Amendment (6 pages)
S.B. 326	C	Entered by Chairman Anderson	Emails from Toni Harsh, Bill Fine, Bill von Phul, Shannon Nicley, Mitch Brown, and Ted Short (7 pages)
S.B. 326	D	Nicole Lamboley / City of Reno	Proposed Amendment (1 page)
S.B. 326	E	Elisa Maser / Residential and Environmental Partnership	Truckee River Community Coalition "Living River" Concept for Flood Management (1 page)
S.B. 326	F	Elisa Maser / Residential and Environmental Partnership	Truckee River Community Coalition Concept Plan (11 pages)
S.B. 153	G	Pamela Scott / The Howard Hughes Corporation	Proposed amendment Section 3, subsection 3 (1 page)