# MINUTES OF THE MEETING
# OF THE
# ASSEMBLY COMMITTEE ON JUDICIARY

## Seventy-Fourth Session
## May 2, 2007

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m., on Wednesday, May 2, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

**COMMITTEE MEMBERS PRESENT**:

Assemblyman Bernie Anderson, Chairman
Assemblyman William Horne, Vice Chairman
Assemblywoman Francis Allen
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Susan Gerhardt
Assemblyman Ed Goedhart
Assemblyman Garn Mabey
Assemblyman Mark Manendo
Assemblyman Harry Mortenson
Assemblyman John Oceguera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

**GUEST LEGISLATORS PRESENT**:

Senator Terry Care, Clark County Senatorial District No. 7

**STAFF MEMBERS PRESENT**:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Darlene Rubin, Committee Secretary
Matt Mowbray, Committee Assistant

**OTHERS PRESENT**:

Kermit Waters, representing People's Initiative to Stop Taking Our Land, Las Vegas
David Schumann, representing Nevada Commission for Full Statehood, Carson City
Janine Hansen, representing Nevada Eagle Forum, Elko
Derek Morse, Deputy Executive Director, Regional Transportation Commission, Reno
Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Reno
Scott Rawlins, Deputy Director, Department of Transportation, Carson City
Seth Floyd, representing the City of Las Vegas
David Laxalt, representing Nevada League of Cities, Reno
Jeff Fontaine, Executive Director, Nevada Association of Counties, Carson City
Paul Lipparelli, Chief Deputy District Attorney, Washoe County
Leslie Neilsen, Deputy District Attorney, Office of the District Attorney, Clark County, Las Vegas
Jacob Snow, Regional Transportation Commission, Reno
Michael Foley, Clark County District Attorney, Las Vegas
David Evans, Regional Underwriting/Claims Manager, Nevada Land Title, Reno
Teresa McKee, General Counsel, Nevada Association of Realtors, Reno
Josh Hicks, General Counsel, Office of the Governor, Carson City
Bill Uffelman, President & CEO, Nevada Bankers Association, Las Vegas

**Chairman Anderson**:
[Meeting called to order. Roll called.]

Let us turn to Senate Bill 16 (1st Reprint).

**Senate Bill 16 (1st Reprint): Revises the provisions pertaining to eminent domain. (BDR 3-121)**

**Senator Terry Care, Clark County Senatorial District No. 7:**
Senate Bill 16 (1st Reprint) stemmed from a newspaper article that I read (Exhibit C). It is about someone I have never met—and I have never practiced in the area of condemnation actions or eminent domain—but when I read the article I was outraged. On the second page of the article, Judge Herndon talks about the current statute being, in his opinion, unconstitutional. What happens in an eminent domain action is, with the court's approval, the plaintiff—the city, county, or state government—may deposit a sum of money with the clerk of the court. The landowner—the defendant in a condemnation action—can take that money. However, in doing so he waives all of his defenses in the condemnation action, except those that might go to the value of the land that is the subject of the condemnation. The newspaper article indicated that the city had deposited a sum of money with the clerk of the court and it sat there for 12 years. After that length of time, the defendant decided he wanted the money that was on deposit. He was told he could have the money, but would not receive any interest accrued because, under state law, the interest goes to the General Fund.

This bill is intended to amend the state law. There was no disagreement about this in the Senate. It is just a matter of fairness; if the defendant-landowner wants to take the money on deposit, he is also entitled to the interest earned. That is covered in Sections 1 and 2 of the bill. It is somewhat complex, however, if there is a judgment and that money is still on deposit. For example, with a deposit of $100, if the interest earned is $10, and the judgment is $120, there can still be interest on the judgment which would be set by the court; that is different than the interest earned on the account. The landowner gets the interest earned on the money on deposit, and would also get whatever else was needed to make him whole as to the judgment. If the judgment was for less than the money on deposit; for example, with a deposit of $100, the interest earned is $10, but the judgment is $80, then the landowner would get the $80 plus 80 percent of the interest that had been earned, because an $80 judgment would be 80 percent of $100 on deposit, and I suppose any additional interest earned on the judgment. This would fundamentally give the landowner what he was entitled to. That was the intent of Sections 1 and 2 of the original bill.

In my discussions with Kermit Waters, one of the proponents of People's Initiative to Stop Taking Our Land (PISTOL), and in subsequent negotiations with Mr. Horne, Dr. Joe Hardy, and Bruce Woodbury, from Clark County, we made an effort to come up with some superseding constitutional amendment in the event that PISTOL was passed the second time, and to tone down some of its more extreme measures. When we had our first eminent domain hearing in the Senate, nearly everyone was there including Mr. Waters and he offered the amendment now contained in Section 1.5. The amendment gives the defendant

three choices on what would be the proper date of valuation. It passed the Senate without objection. I understand there are objections today, which I hope Mr. Waters will explain, and which I do not disagree with. The Committee may also have some questions on how Sections 1 and 2 might work if there was a judgment for more than or less than the money on deposit.

The point I want to make is, if the landowner-defendant is entitled to that money on deposit with the court, he should also get the interest, subject, perhaps, to a set-off if the judgment is less than the deposit.

**Chairman Anderson**
To make sure I understand, who puts the money on deposit?

**Senator Care:**
That would be the government entity—the plaintiff—who initiates the action.

**Chairman Anderson:**
The government deposits the money in good faith; they are serious about taking your property and you are challenging that. If the property owner withdraws that money does that mean the deal has come to an end?

**Senator Care:**
If the defendant wants to take the money, that is fine. If he does that, it is my understanding that he waives all of the defenses in the condemnation action except as to valuation.

**Chairman Anderson:**
Those were public dollars deposited in good faith with the intent to take the property?

**Senator Care**:
I do not know if it would be proper to call it "good faith." It is actually done in lieu of a bond. In other words, if you are going to tie up my land in litigation for six months, one year, or 12 years, I might be harmed by that litigation because I might actually prevail. Therefore, there better be a deposit or something posted because I may be damaged in those proceedings and there needs to be something where I can find redress.

**Chairman Anderson:**
I would have to hire an attorney to fight the government.

**Senator Care:**
The point is, everyone agrees, the government cannot say we are going to initiate this action, but we are not going to put up any money. That cannot be done.

**Assemblyman Horne:**
On the set-off amount, does that revert to the plaintiff or to the General Fund?

**Senator Care:**
It is my understanding that it currently goes to the General Fund.

**Assemblyman Horne:**
If you had a judgment that was less, that tells me that there is more money than what the landowner-defendant is entitled to. Where is that additional money going to go?

**Senator Care:**
It will go back to the plaintiff. I think current law states "political entity," or something to that effect. But we did change that to "plaintiff," because one such entity was the Regional Transportation Commission in Washoe County.

**Chairman Anderson**:
Is there anyone else to speak on behalf of the bill?

**Senator Care:**
Yes, Mr. Waters is in Las Vegas. He has a wealth of experience and can answer any procedural questions the Committee may have in addition to Section1.5 and the rationale behind the three choices given the landowner on valuation.

**Kermit Waters, representing Peoples Initiative to Stop Taking Our Land (PISTOL), Las Vegas:**
We proposed this change in the statute for the current date of value, or the date of trial. All of us are aware of the rapidly ascending prices of land over the last year. When the government files a condemnation complaint, it essentially freezes the date of value. Historically, the case will not get to trial except in rare circumstances until shortly before the two year statute. Under the present law, if it is not brought to trial within two years, the landowner gets the current date of value. The problem is that the government will wait until the last minute to get it set for trial and then affix a value by using comparable sales up to four years prior. That means that the landowner-plaintiff gets a valuation that is up to six years old. That is not fair, and in an ascending market when people are displaced from their homes, they will not receive enough money to

replace those homes. For instance, if the landowner's lawyer asks for a continuance, it could be four years before the case gets to trial. In that case, they use comparable sales prior to the date of filing, which could be six or eight years old. That is outrageous and unfair. Therefore, the landowner should have the option—in case the market starts going south before it gets to trial—to get the valuation as of the date of filing. Or, if it goes to trial within two years, he gets the then-current date of value if the price is going up, because he has to take the money when he gets it and buy something else.

Concerning the other statute, the deposit is made to the court in order for the government to take possession. If you lose the use of the land and you do not have the money, then you have lost both use and money. Thus, any time the government takes possession they have to put up the money. The only thing that puts the landowner back in the position he should have been in is to either get a current date of value, depending upon the market, or the original date of the filing of the complaint if the market is flat.

**Assemblyman Carpenter:**
Can you take the money and then still sue on the valuation of the property, or does it have to go into a trust?

**Kermit Waters:**
Yes, but you cannot contest the take. In other words, if you think the property is being taken to benefit some crony of the government and you want to contest that it is not a public use, you cannot draw the money out under the current law. If you draw the money out, then you cannot contest it, because if you do draw it, you waive your right. If you leave the money there, under the current law, the county gets the interest. If the county is the condemning agency, they earn interest on your property. Once the government deposits the money, they do not have to pay interest on that amount.

Under the current law, if the government files a condemnation suit, they do not have to deposit the money. If they take possession, they have to deposit the money. If you own a home and they want to take the home out from under you, you are out in the street unless you have the money to buy another house. The purpose of the deposit is for them to take possession. However, if you intend to contest whether or not being taken for public use, you cannot draw out the money. When the money is in the court, under the present law, you do not get interest on it. It is not fair; the landowner should get the interest on the deposit if he wants to contest it. It does not happen very often, but it does happen, particularly with the redevelopment in Clark County. If PISTOL passes, it will no longer be a problem. By the same token, the interest should go to the landowner if it is deposited for the landowner.

**Chairman Anderson:**
That would be Section 1 of the bill?

**Kermit Waters:**
Yes. Section 2, as I have explained, allows a landowner, when he gets paid, to be able to go back in the market and replace what he lost. He cannot do it in an ascending market, or even a descending market, if at the time he is paid it is not commensurate with the market.

**Assemblyman Carpenter:**
If they condemn my land, put a value on it, and I take that money, then do I lose all rights to contest either the value or who it is going to?

**Kermit Waters:**
You lose all rights to contest any part of eminent domain except the amount of compensation you get. That means you cannot contest the need and necessity, or whether it is for public use.

**Assemblyman Horne:**
Can you explain in layman's terms Section 1.5? Why would we allow the landowner to pick the date of the valuation? Are they choosing that date of valuation after, or only if, they have withdrawn the deposit money, and two years have passed, and the land could have increased or decreased in value?

**Kermit Waters:**
The deposit has nothing to do with the issue of the current date of value. For example, let us assume the government is going to take your home and they filed a condemnation action in 2000. Just before 2002, it comes to trial. Meanwhile, the value of your house has gone up, but the government values it as of the time they filed the complaint. They get to use comparable sales, and sometimes the judge will allow it up to four years prior. You would be getting 1996-1997 comparable sales brought into evidence by the government in the valuation of your house for a 2000 date of value. If the trial date goes beyond the two years, due to any fault of the landowner, you could be getting your money in 2003 or 2004 based on those same 1996-1997 valuations. If the market decreases between the time the government files the complaint and the time of the judge's verdict, you need to be able to go back and ask for the valuation as of the date they filed the complaint.

**Assemblyman Horne:**
Does this occur whether or not the government has taken possession of the property?

**Kermit Waters:**
Yes. Possession even makes it worse. Whether they take possession or not, the valuation is going to be the same. Under current law, the valuation will be with the service of summons and complaint when they file it. However, they will use comparable sales up to four years prior, and although they tell you they adjust them, they really do not. The deposits are generally very small compared to the real market value. I have never seen a deposit close to what the ultimate judgment was.

**Assemblyman Horne:**
I am trying to understand the differences, particularly with whether the government has taken possession and the landowner has taken the deposit money. If the government takes possession in 2000 and I take the deposit money, I am only arguing about the value of my property. It seems logical that I am arguing about the value as of the date they took possession. If they have not taken possession, and it goes two or more years, then it seems that the proper valuation would be at that time of judgment, because I still have possession of the land.

**Kermit Waters:**
You would not have possession of it if they deposited the money. But the deposit has nothing to do with the current date of value, because the deposit only becomes an off-set against the ultimate judgment. Frankly, the deposits are so ridiculously low that they are almost meaningless. That is why the current date of value allows the landowner, once he gets paid, to go back and replace what he lost. That is the purpose of just compensation. You cannot do that if you are dealing with four- or six-year-old comparable sales and dates of value. You must be able to tailor your eminent domain action to the current value at the time you go to trial in order to make yourself whole. It is a form of cheating a landowner. The government has been getting away with it for years.

**Chairman Anderson:**
If the government comes in and decides to put in a new road, they will do a comparable value for that property based on that moment in time. Everyone who agrees to what the government has offered them will take that compensation for their property. Is that correct?

**Kermit Waters:**
Do you mean if they settle a case?

**Chairman Anderson:**
No. The government comes in and wants to straighten a road. They go to each homeowner, and some settle with them right away, and they are compensated based upon market value and whatever is being offered by the State.

**Kermit Waters:**
They do it all the time.

**Chairman Anderson:**
Now I decide I am not happy with what they are offering me and I commence an action to indicate that I do not want to give up my property. They condemn it and now we go to court. That is the beginning of the process. I put myself at risk and they will have to put up a bond, correct? Either I can take what they give me or I can fight it because I believe it has greater value than they are willing to offer me. Is that not what this fight is all about?

**Kermit Waters:**
That is exactly right.

**Chairman Anderson:**
Now I win. I get what I thought the value was at the time I started the process, not what it is—even though progress has increased the land value since that time. Are you saying that they should go re-figure the compensation they should have offered me, based on what the actual sales are for a piece of property of similar value at the time of judgment? Is that what you think is fair?

**Kermit Waters:**
It is, because, that is when you are actually going to get paid. You have to replace what was taken from you. If you are talking about getting an enhanced value that is a different situation because your comparable sales are going to be tied to a situation that occurred when they filed the suit, but you are going to get updated values.

**Chairman Anderson:**
If the value goes the other way, then I get to go back to where I was because it would have been higher, so I will always come up with the highest value, regardless of market conditions? In one place I get to play with market conditions and one place I do not.

**Kermit Waters**:
You are not trying to play with it, you are trying to be made whole. You are not trying to get a windfall. If you think these landowners get a windfall, that is

just not true. By the time they are through with everything, they are never made whole.

**Chairman Anderson:**
I think I understand.

**David Schumann, representing Nevada Committee for Full Statehood, Carson City:**
I am in support of this bill, particularly Section 1.5. The process of condemning someone's property should not be an easy one for the government. By being able to receive the maximum amount, the person who is victimized by eminent domain is made whole. If this becomes an expensive process, it will be a deterrent. Entire cities on the east coast were built under the Takings Clause of the Fifth Amendment to the *United States Constitution*, as it was without the *Kelo* [545 U.S. 469 (2005)*]* benefits. It is too bad that *Kelo* stood. Taking property should be a difficult process for the government. By allowing the victim to set the date and to receive full interest on the money, he comes out whole.

**Janine Hansen, representing Nevada Eagle Forum, Elko:**
We support the fairness of this bill.

**Chairman Anderson:**
Is there anyone else in support? [There was no one.] What about those in opposition? Is someone presenting an amendment?

**Derek Morse, Deputy Executive Director, Regional Transportation Commission, Washoe County:**
The Regional Transportation Commission (RTC) does oppose S.B. 16 (R1), Amendment 36, which is language currently before you. We do support the original intent of Senator Care to deal with the interest issue on the money deposited with the court, but we think that amendment 36 moves well away from that. We are proposing an amendment on behalf of the RTC of Washoe County and of southern Nevada that would strike Section 1.5 from the bill, which is the section that deals with the option of the property owner to elect the date of valuation, which we think is inimical to the public interest.

**Stan Peck, Chief Legal Counsel, Regional Transportation Commission, Washoe County:**
I have been doing condemnation work for at least 25 years and feel qualified to speak on the process and perhaps clear up some misconceptions or representations that have been made to this Committee. The statute relating to the date of valuation has worked very well from my perspective, and I have

represented both landowners and the government. Mr. Waters had indicated that this was problematic because of the deposit that takes place with an immediate occupancy and the use of outdated sales to value the property. That has not been my experience at all. More often than not, certainly in northern Nevada and Washoe County, the appraisers who testify as to value use sales that are anywhere from six months before the date of value to six months after the date of value. If the sales are substantially dated, that is certainly grounds for an objection and the ability of the court to determine whether or not the appraisal is valid and can be testified to. There have also been discussions about the waiver of defenses. Mr. Waters indicated that if the deposit money is taken out, a landowner waives all defenses, and that is true, in that limited representation. Customarily, in any governmental acquisition, the government moves for an immediate occupancy of the property or within a short period after the action is initiated. Obviously, that is for the purpose of constructing a road or public building, or the like. If we move for immediate occupancy and the landowner's attorney does not agree, we have to have a hearing before the judge. As part of that hearing, the landowner's attorney can contest whether or not it is for a public purpose and whether it is for the greater good with the least amount of private harm. The judge will make a decision on those issues at the time and before the government takes immediate occupancy. Based on the testimony of an appraiser, that money is deposited with the clerk of the court and can be invested for the benefit of the landowner. Having represented both landowners and the government, this process under the existing law has worked very well. In my experience, there have been no circumstances when I have had an issue dealing with the proper valuation or the date of value.

Once a landowner goes through that immediate occupancy hearing and the money is deposited, the landowner can take that money out. He is then in a position to invest the money to generate interest, or to use it to buy a new property. Doing so does not impact his ability to challenge the amount of money ultimately awarded, and to get interest at some determined rate on the money that exceeds the amount of the government's deposit. I believe the system is fair. The *Nevada State Constitution* as well as the *United States Constitution* address the payment of just compensation at the time of the taking. Therefore, if I file a condemnation case in 2007, the value that should be paid to the landowner is based on comparable sales from 2007. It should not be some arbitrary market value that is two years later, or some other date that the landowner chooses, particularly when he is able to withdraw the money, generate interest, and entitled to recover at the conclusion of the case any difference in the valuation plus interest on that money as well.

**Assemblyman Mortenson:**
That explains one of the two situations. What if the landowner chooses not to withdraw the money? He does not have the land, he does not have the money, and in that case it seems logical that he should get the interest, such as the example offered by Mr. Waters of the case that went on for 12 years.

**Stan Peck:**
My experience is that the landowner always withdraws the money. If he does not, the money can be invested. I recently concluded a case in which an owner and a tenant both had an interest in the money on deposit, and they agreed that the money would be deposited in a bank account and the interest generated would be divided at a subsequent time. Logically, I do not see why a landowner would not withdraw the money. I have never heard of a situation where 12 years had elapsed. My experience reveals that condemnation cases are generally advanced on the calendar and tried within one year to 18 months. If the landowner chose for whatever reason to leave the money in the court, the money could still be deposited with a court order and he could receive the benefit

**Derek Morse:**
The amendment we proposed does leave language intact from Senator Care that would allow the interest to be paid to the landowner on the money deposited with the court. We support that part of the bill. Our objection is to Section 1.5 which allows the landowner to select the date of valuation.

**Stan Peck:**
We would like to be sure that the interest generated is credited against the ultimate interest to be paid after the judgment is entered.

**Assemblyman Mortenson:**
You stated that you did not know why a person would not withdraw the money. The answer is that if the landowner did not want his property taken, and he felt it was being taken for improper use—for private use not public use—then he would want to fight it, and he could not withdraw the money if he wanted to fight it.

**Stan Peck:**
Normally, the government, within a short time after it files a lawsuit, files a motion for immediate occupancy in order to build its public improvement. At that point, there is a hearing before the court if the landowner has a problem with its intended use, or whether the property is located in a manner consistent with the greatest public good and least amount of private harm. That would be the time for the landowner to contest that issue. If the judge rules in our favor,

he would enter an order; we would then be able to use the property on the condition that we deposit with the court the amount of money determined by our appraiser to be the just compensation.

**Assemblyman Mortenson:**
Still, you cannot take the money out at the time the process starts because then the judge will not make those decisions.

**Stan Peck:**
The money will not be deposited with the court until the government wants to take possession of the property. At that time, we would ask the court to give us an order that would allow us to take possession, but in consideration for that order we would have to deposit the appraised value. The landowner would have an opportunity to contest the issues as part of that court hearing.

**Assemblyman Mortenson:**
That is the way I understand it also.

**Assemblywoman Allen:**
Throughout this time frame, from when an initial complaint is filed through when a trial is set, what is the longest time span you have seen?

**Stan Peck:**
Are you are asking me from the time the case is initially filed to the time of the trial date for that acquisition?

**Assemblywoman Allen**:
Correct. Or in the case, as it states in Section 1.5, if a new trial were ordered.

**Stan Peck:**
I think you are thinking about something different. Ordinarily, when we file the case, we set the case for trial within a short period of time. That would be a trial to determine the just compensation and the right of the government to take the property. I think what is proposed in Section 1.5 is an opportunity for the landowner to pick that trial date, which in my experience has rarely been more than 14 or 15 months in Washoe County. Most of my practice is in Washoe County. I do not know what the situation is in Clark County. That is only part of that amendment. The present law clearly states what happens if the case is continued as a result of the clogging of the court calendar, or as a result of a request made on behalf of the public entity. The date of value would go to the date of trial, as opposed to the date of service of the summons and complaint, as in the current law. If the landowner requested a continuance, the date of value would stay the same as the date of the service of the summons and

complaint, because that was when the property was taken. That has been stated in both the *Nevada State Constitution* and the *United States Constitution*. The amendment also proposes that if it is appealed, and the decision is reversed by the Nevada Supreme Court, then the date of value would go to whatever the new trial date would be. That could be as long as five years after the public entity took the property and deposited the money that the landowner has subsequently withdrawn and used.

**Assemblywoman Allen:**
I understand your concern with the "cherry picking" process to pick the date, however, if this is normally a 14-month or longer process, without the litigation the landowner would be able to sell the property at any point. They would be able to "cherry pick" if the litigation was not there.

**Stan Peck:**
That is true, but I think we look back at what the *United States Constitution* provides—that is, our forefathers recognized that, in a society, sometimes someone's land is taken against their wishes. They recognized the need for that in order to develop roads or do things for the betterment of the whole. The idea is to pay for the property when it is acquired because, as public entities we want to use the property within a very short period of time after we file suit, in order to expedite our project, to save escalating costs for steel, concrete, and so on. We deposit what licensed appraisers determine to be the fair market value of the property. Contrary to what Mr. Waters says, my experience in 30 years has never been appraisal numbers that are four or five years old, but current—six months before or six months after.

You are right, if the lawsuit never existed, the landowner could sell the property for whatever he may be able to get on the open market. In a society in which we are able to file a condemnation case, the *United States Constitution* says we pay whatever the market value of the property is as of the taking, which is consistent with the service of the summons and complaint. The landowner gets that money, they get interest on it, and the concept has worked for a long time.

**Chairman Anderson:**
If we accept the amendment, we are removing Section1.5. That is what you are asking us to do, and we would retain the original language in that statute.

**Stan Peck:**
That is correct.

**Assemblyman Segerblom:**
Did you indicate that currently if the government requests a continuance then the date of valuation is the trial date?

**Stan Peck:**
Under the current law, if the trial date is continued more than two years due to the clogging of the court calendar or at the request of the government, that is correct.

**Assemblyman Segerblom:**
Have you ever actually had a trial where that has occurred?

**Stan Peck:**
I have never had a trial where I asked to have the trial date moved, nor have I ever had my condemnation case postponed.

**Assemblyman Segerblom:**
So you are not aware of any problems that have arisen because of this?

**Stan Peck:**
I am not personally aware of a case where the landowner has been delayed for an inordinate period of time because of any delay on the part of the government. I have seen a request by the landowner for a delay.

**Scott Rawlins, Deputy Director, Department of Transportation, Carson City:**
We are here to oppose S.B. 16 (R1) as written, but we do support the amendment that Mr. Peck and Mr. Morse submitted to you. We hope that you will allow that to go forward.

**Seth Floyd, representing the City of Las Vegas:**
We also oppose the bill as written, but support the amendment proposed by the RTC, Washoe County.

**David Laxalt, representing Nevada League of Cities, Carson City:**
We oppose the bill as written, but support the amendment from the RTC.

**Jeff Fontaine, Executive Director, Nevada Association of Counties. Carson City:**
We oppose the bill as written, but would support the amendment offered by the RTC.

**Paul A. Lipparelli, Chief Deputy District Attorney, Washoe County:**
I echo the comments of my colleagues in the county and city organizations. Washoe County opposes Section 1.5 of the bill and supports the amendments offered by the RTC. My research revealed that there is not a state in the western United States that has a statute that would permit the plaintiff to choose the date of value. They are either all tied to the issuance of the summons, the service of the summons, or in some instances the trial date, but none gives that right to the plaintiff. The problem with permitting the plaintiff to choose is the unpredictability that it creates for the whole process.

**Chairman Anderson:**
Mr. Lipparelli, did you indicate opposition to any part of the bill when it was heard on the Senate side?

**Paul A. Lipparelli:**
We were in the room when the bill was heard in the Senate and we did not oppose it, but that was before the amendment that added the language in Section 1.5 was put in so there was not an opportunity to oppose that language.

**Chairman Anderson:**
You were not there when the amendment was presented?

**Paul A. Lipparelli:**
We were not. May I leave the one-page survey (Exhibit D) that I prepared with the Committee?

**Chairman Anderson:**
Yes, fine. Mr. Morse and Mr. Peck, did you have the opportunity to make a presentation on the bill initially on the Senate side?

**Derek Morse:**
We were there at the initial hearing and we did offer an amendment to Senator Care which was largely incorporated in this as it developed. We were not present when amendment 36 was made. That came as a surprise to us and the reason for us being here today.

**Kermit Waters:**
The deposits are so low in most cases that they do not come close to restoring the landowner to where he was before the process began. It is true that just compensation is paid, but it is not paid at the time of the taking. Just compensation is not paid until the time of the trial. That is sometimes two years later and sometimes much more than that. We have a case in Las Vegas

now where they have had possession for years and have not deposited the money. These things happen much more frequently than Stan Peck would have you believe. The appraisals are outrageous, and if the landowner cannot get a trial date—which is when the just compensation is determined—the only way to get that on a fair basis is to have a date of valuation commensurate with the market. If the market is up, you want a date of trial; if the market is down, you want the day of service of summons. It is highly abused, and Mr. Peck is not correct about those comparable sales. I have seen them as many as five years before the date of valuation. At the occupancy hearing, you cannot contest the amount. Only the government's appraisal is permitted, so Mr. Peck is not right about that.

**Chairman Anderson:**
Anyone else who wishes to be heard on S.B. 16 (R1)?

**Leslie Nielsen, Deputy District Attorney, Clark County:**
I speak on behalf of Michael Foley, who also works for the Clark County District Attorney's Office. I concur with statements made by Mr. Morse and Mr. Peck. The situation in Clark County District Court is somewhat different than it is in the northern part of the State. We do have congestion in our courts and it is fairly difficult to get to trial quickly. However, we do usually make it within the two year period of time. Under the existing law, we believe it is fair that the date of value be tied to the first service of summons and complaint. What has not been emphasized so far is that in the event there is a jury verdict in excess of the government's initial deposit, interest at the current rate of prime plus two percent is awarded to the landowner, and we believe that is full and fair compensation for the landowner in every case. The real risk here is that if we allow the landowner to choose the date of value, any new trial after appeal and remand would be very difficult for us to plan and to know what the value of the property is going to be. Typically, it takes about five years from the date of filing a case until any new trial after remand. A lot of effort has gone into the eminent domain legislation this session between Clark County Commissioner Bruce Woodbury and Mr. Waters, and we ask in the spirit of compromise that we consider passing S.B. 85 (R1), which I understand will be heard next. We support the amendment by the RTC.

**Assemblyman Carpenter:**
I thought I heard you say that if you lost in court or the value was higher than what you deposited, you would pay interest on that money. Do you have an ordinance that provides for that, because the legislation states that it is supposed to go to the general fund unless there is an ordinance that modifies it?

**Leslie Nielsen:**
Under S.B. 16 (R1), the interest on the deposit would go to the landowner. We agree with that and ask that there be a credit for the government. The government has to pay interest at prime plus two percent, pursuant to NRS 37.175, on the difference between the amount of deposit and the jury verdict. It is not a local ordinance, it is the existing law.

**Assemblyman Carpenter:**
Is that only on the amount over and above the money that was deposited?

**Leslie Nielsen:**
Yes.

**Assemblyman Horne:**
How do you make a determination on the amount deposited? Mr. Waters made a statement that the amount deposited is small in comparison to the value of the property taken, but I believe Mr. Peck stated the value of the property is actually deposited.

**Leslie Nielsen:**
The initial deposit is based on an appraisal performed by a qualified, licensed appraiser. I respectfully disagree with Mr. Waters' statement that there are many deposits made that are close to the ultimate jury verdicts.

**Assemblyman Horne:**
Is that the government's appraisal that you use? Is there an opportunity to contest that deposit?

**Leslie Nielsen:**
Under NRS 37.100, there is no opportunity to contest the amount of the deposit at the occupancy hearing, so the landowner is able to withdraw the money deposited upon occupancy by the government and reinvest it as the landowner sees fit.

**Jacob Snow, Executive Director, Regional Transportation Commission, Reno:**
I want to go on record that the RTC of southern Nevada is in support of the bill as originally drafted, however, we do have a significant problem with Section1.5. It would potentially put us in double jeopardy in certain situations. Whenever we award a contract, State law requires us to have the full amount of that contract in the bank. If Section 1.5 were implemented we could see a large judgment against us years later that could prevent us from paying the contractor the full amount expected. Section 1.5, if passed into law, would create chaos in our roadway and transit development program. Accordingly, we

are in support of the amendment (Exhibit E) offered today by the Washoe County RTC.

**Chairman Anderson:**
Is there anyone else who wishes to be heard? [There was no one.] We close the hearing on S.B. 16 (R1). We will put this bill in the work session document.

We will open the hearing on Senate Bill 85 (1st Reprint), Senator Raggio's bill.

**Senate Bill 85 (1st Reprint): Makes various changes to provisions relating to eminent domain. (BDR 3-9)**

**Michael Foley, Deputy District Attorney, Clark County:**
One of my colleagues, Leslie Nielsen, sent up seven requested amendments that she, Mr. Waters, and others put together (Exhibit F). This bill is the Senate version of Assembly Bill 102 and Assembly Joint Resolution 3, dealing with the proposed legislative response to the PISTOL amendments, the compromise that you discussed earlier and worked out between several entities. I believe this bill is going to be in a joint committee, and that is the reason Senator Raggio is not here.

**Chairman Anderson:**
The problem is making sure that competing bills are as identical as we can make them. Since the primary sponsor of A.B. 102, Mr. Horne, is here we want to make sure that he has had an opportunity to review your amendments.

**Michael Foley:**
There was a memo (Exhibit G) sent yesterday through our lobbyist to your Committee. The seven proposed amendments in Exhibit F would make it mesh with A.B. 102. I do not know if Mr. Horne has addressed those yet.

**Chairman Anderson:**
Mr. Horne, have you had an opportunity to review the amendments?

**Assemblyman Horne:**
In reviewing what was forwarded, they appear to be the same amendments that were proposed for A.B. 102 on the Senate side.

**Chairman Anderson:**
The amendments were dropped by my office yesterday by Ms. Smith-Newby and she indicated that they were being presented in hopes of finding some level of agreement.

**Michael Foley:**
The first amendment discussed, Exhibit F, is in Section 4, page 6, line 14. It is a small change dealing with government entities that lease out a portion of the property to other private entities. For example, a courthouse or airport facility might lease out a portion of its property for a coffee shop, gift shop, and so on. Amendment 1 to S.B. 85 (R1) changes the phrase "any such lease" to read "on equal basis with others." That was meant for such situations as when an airport puts out a Request for Proposal (RFP), the previous owner of the land would be able to submit his own RFPs. It does not give him the right of first refusal, the government can still look at what is the best situation for the population as a whole. All the amendments were agreed to by the proponents of PISTOL.

**Chairman Anderson:**
When we looked at A.B. 102 we were under the impression that we had agreement on the amendments at that time. Is this another supplemental agreement?

**Michael Foley:**
Yes, it is.

**Chairman Anderson:**
It takes us back to where we were in the original bill?

**Michael Foley:**
Not the original version of S.B. 85, but it is meant to bring us in line with A.B.102; so that it has the same revisions in it as A.B. 102.

On Amendment 2, they are asking for the deletion of subparagraph (d) of Section 4, on page 6, lines 22-27. We currently have in statutes some exceptions—when a road alignment is being done, whenever there is a property exchange—it is important to retain the right to swap a small remnant for another piece you may want for a right-of-way. Sometimes it keeps everyone out of court, and the landowner you are taking land from can actually have a win-win situation, especially in road realignment or road widening. This amendment would ban that practice, and it is something that is bad for the public and for the individual landowners in a lot of cases. It was seen by all as a good thing to delete from S.B. 85 (R1). It has already been deleted from A.B.102 and A.J.R. 3.

Amendment 3 deals with NRS 37.175, which is interest to be paid in eminent domain cases. There were deletions in this bill that we felt should not be made. Under the interest statute, when the government deposits money in the court

and takes occupancy, the interest does apply to that amount because the landowner can draw it out, or under the new bill just discussed, S.B. 16 (R1), there will be interest accruing on that money for the landowner's benefit. What they had done in this bill was delete the provision of the statute that gives the government credit for the money they deposited. In other words, if you deposit $100,000 at the beginning of the case in 2005, in 2007 there is another $50,000 awarded for a total of $150,000. Under the current statute, since the landowner already got the $100,000 back in 2005, you do not pay interest on that part, only on the $50,000 awarded on 2007. If this deletion remains, the government would be paying in $100,000 at the beginning of the case, but still pay interest on the $100,000 as if they had never paid it in. Both sides agreed that was overreaching and therefore suggested deleting Section 7 in our amendment. Basically, it would leave the law the same as it is now.

**Assemblyman Mortenson:**
Are you saying that you do not want to pay interest on the money if the defendant-landowner has withdrawn it, or are you saying you do not want to pay it because it is in the trust and waiting to be taken by the landowner?

**Michael Foley:**
The current law is if they allow the money to sit in the court, they do not earn interest. There are two kinds of interest: the interest earned on the deposit put in the court bank account, and where the court requires the condemning agency to pay interest under the *Nevada State Constitution* for the judgment they got. If you pay the money up front and give the landowner the opportunity to withdraw it, both under the *Nevada State Constitution* and our statutes, you do not pay interest on what the State actually paid in earlier.

**Assemblyman Mortenson:**
If the defendant-landowner has not taken it out, he should get the interest not just because you make it available. He has not taken it out because he wants to dispute something.

**Michael Foley:**
We discussed that in the last hearing, but there are other things they can do. In the case Senator Care cited in the newspaper article, there was something the newspaper did not report. The standard practice is that if you are going to leave an amount of money sitting in a court for years while you contest a case, you go to the court and get an order to withdraw that money and put it in a certificate of deposit (CD) pending the outcome of the case. The judge then later awards the accrued interest to whoever wins that case. In the case in the newspaper, I defended the County Clerk so I am familiar with it. The lawyers dropped the ball on that; they just let the money sit in a no interest checking

account for ten years. The United States Supreme Court had a similar case and they stated, instead of going back against the government, the claim should be against the lawyers who did not withdraw the money. We are fine with the amendment in S.B.16 (R1) if you want to take that money away from the courts and give it to the landowners. In the situation where the government is paying the value of the property according to its appraisal, why should the government keep paying interest on money it has parted with?

**Assemblyman Horne:**
I am looking at my file on A.B. 102, and these amendments match the proposed amendments presented when the bill was heard in the Senate with the exception of amendment 7, asking that Section 12 should state that the amendatory provision apply to the action filed on or after passage and approval. Although it is not in the amendment document in my file, and the amendment has not yet been posted online, I believe that was also adopted by the Senate.

**Chairman Anderson:**
Amendments 4 and 5 both seem to deal with the issues raised in S.B. 16 (R1). Mr. Horne, were there any amendments that we rejected on our side?

**Assemblyman Horne:**
I do not recall exactly what was rejected. These proposed amendments and concerns were brought late in the process, in particular the portion dealing with the repeal section on the valuation computation. That was repealed initially in A.B. 102 and that is different than what we heard in S.B.16 (R1) at Section 1.5; which deals with the date the valuation would be computed. Assembly Bill.102 deals only with the computation—NRS 37.112—that is different and was added on. In the Senate hearing, I did not have a problem with the proposed amendments. When I discussed it with all the parties it appeared to be a compromise and these were the amendments that were added.

**Jacob Snow, Regional Transportation Commission, Reno:**
We do not always agree with Kermit Waters; however, this bill and the bill put forward by Assemblyman Horne are reflective of a meeting of the minds on this issue of eminent domain and we are in support of S.B. 85 (R1) with the amendments Mr. Foley discussed with the Committee.

**Assemblyman Carpenter:**
If we passed the interest provisions on S.B.16 (R1), then they will become part of the bill we just talked about?

**Chairman Anderson:**
Ms. Lang, if in a work session we were to pass S.B.16 (R1), how would it impact A.B. 102 or S.B. 85 (R1)?

**Risa Lang, Committee Counsel:**
These two bills are independent, but I will make sure there are no conflicts between them before any work session.

**Chairman Anderson:**
Mr. Carpenter, one of the issues we are dealing with is A.J.R. 3 which is the constitutional amendment and is in the Senate. The language of S.B. 16 (R1) is not inherently part of that constitutional amendment. Whereas, S.B. 85 and A.B. 102 will be mirrors of each other, they are not affected by S.B.16 (R1) and therefore S.B.16 (R1) will become law immediately, as will either A.B. 102 or S.B. 85. In the event A.J.R. 3 does pass in the 2007 Legislative Session and in the 2009 Legislative Session and is approved by a vote of the people, the *Nevada State Constitution* would be amended. The formulation of those laws would come back in the 2011 Legislative Session for any additional implementation that might be necessary.

**Assemblyman Carpenter:**
Before A.J.R 3 goes to a vote of the people, S.B. 16 (R1) would be law?

**Chairman Anderson:**
Yes. By having S.B.16 (R1) ride by itself it becomes the law, if we pass it, regardless of the progress of either A.B. 102 or S.B. 85. I believe that is the reason S.B. 16 (R1) was put forward in a separate standing amendment so that it would become the question to be addressed.

**Janine Hansen, representing Nevada Eagle Forum, Elko:**
We are very pleased to be able to support this bill and the agreed upon amendments. We are appreciative of the hard work on these eminent domain issues. Some 30 state legislatures have been dealing with this issue and 11 state ballot questions since the *Kelo* decision. The Supreme Court created this problem by changing the words "public use" to "public purpose." Since that change, some 5,700 individual property owners have been threatened or have actually had their property taken by eminent domain. We appreciate your interest in preserving and protecting our rights. We commend you and thank you for supporting these bills and the great work you have done. [Submitted Exhibit H]

**Chairman Anderson:**
Is anyone else in support or opposition of S.B. 85 (R1) and/or the proposed amendments? [There was no one.] We will close the hearing on S.B. 85 (R1). We will try to deal with this issue in work session.

We will turn our attention to Senate Bill 217 (1st Reprint).

**Senate Bill 217 (1st Reprint): Revises the provisions governing deeds of trust and the sale of real property after default. (BDR 9-742)**

**David Evans, Regional Underwriting/Claims Manager, Western Title Company, Reno:**
I am here in support of S.B. 217 (R1). This bill has been brought forward by Senator Rhoades on behalf of the Nevada Land Title Association. Senate Bill 217 (R1) addresses the requirements regarding deeds of trust in the sale of real property after default. The statute discusses how a sale may be declared void if the trustee or other person authorized to make the sale does not substantially comply with the requirements. Two years ago the law was changed and allowed the trustee and any other person who was conducting a foreclosure sale to declare the sale void, at no force or effect, for an indefinite period of time. That made it very difficult for the title insurance industry to insure those foreclosed properties. If the sale is hindered because the person bidding cannot get the property insured to either refinance or sell it—because the trustee or other person can turn the sale around indefinitely—it damages the purchaser and the lender. Moreover, the person losing their property may not get fair market value due to purchaser's inability to negotiate the property and could be sued for deficiency judgment. Essentially, this is a housekeeping measure to put a time period and some requirements on when and how those sales can be declared void. We required that, within a certain time period, there be an action started and a notice of *lis pendens* filed. We have given people up to 120 days in one case, and in another case 30 days past, to initiate the sale and make it public record so that we know there is an action pending for irregularity in the sales process. After a given period of time, the title insurance industry could feel somewhat secure that we can then insure those foreclosure sales and allow the people to move forward to sell or refinance the property.

**Chairman Anderson:**
To clarify, there is a foreclosure sale and the person whose property it is maintains that he was not properly noticed. He has 90 days to bring an action to demonstrate his concerns. If he does not do so in that time, then he has another 30 days, and assuming he gets into court as soon as he files notice, you do not give clear title until that is decided?

**David Evans:**
That is correct. He has 90 days after the sale to initiate a lawsuit, then another 30 days to file a notice of *lis pendens* in public record so that the industry becomes aware that there is a pending lawsuit; therefore, we know that however long it takes, we are not about to insure that property. After 120 days, we would feel more secure that the due process time had expired and that we could insure that property.

**Chairman Anderson:**
I file my lawsuit, then I have 30 days to notify you that I have filed my lawsuit?

**David Evans:**
You have 90 days to file your lawsuit. After that you have another 30 days to file a notice of *lis pendens*.

**Chairman Anderson:**
I have the 30-day notice and you are not going to give clear title that is finished.

**David Evans:**
Correct. After 120 days, if there is no lawsuit, no notice of *lis pendens* filed, we would feel secure that we could give clear title. As it now stands, it is open ended with no limitation.

**Teresa McKee, General Counsel, Nevada Association of Realtors, Reno:**
We are in support of S.B. 217 (R1). Our concern was covered by the inclusion of subparagraph 6 of Section 1. This stems from the fact that if an interest holder in the property does not receive the notice, they have no way to know the foreclosure is even happening, and therefore should not be held to those 90 days plus 30 days. That is a rare occurrence, although as a former bankruptcy attorney, I have seen where there has been a number of interest holders and one was simply not included in the noticing. That particular interest holder would have had the ability to cure the default. To correct that situation, we added subparagraph 6 which states that in the event that proper notice was not given to one of the parties, that party, once they receive actual notice—which could be from standing on the courthouse steps and seeing the foreclosure, or getting an actual notice once the title company learns the person did not receive notice—they have 120 days from that notice to file an action. The addition of subparagraph 6 closes the loophole for that party. There are a number of requirements for the default and foreclosure process. The noticing, although simple and necessary, may in some cases have been missed.

**Assemblyman Carpenter:**
On page 3, lines 33-36, it says, "the person who did not receive such proper notice may commence an action pursuant to subsection 5 within 120 days after the date on which the person received actual notice of the sale."

**Teresa McKee:**
If a party did not get the initial notice as set forth in the first part of subsection 1, but became aware later on—either through the title company or by one of the other owners—that the property was foreclosed, that belated knowledge would be considered as their receiving notice. If they found out and showed up at the foreclosure sale and said they did not get notice, at that point they know there is a foreclosure. From the point that they receive actual notice, then they have 120 days to file an action. They would not have received the proper notice set forth in page 2, subparagraphs 3 and 4(a); therefore, when they did receive actual notice, they would have 120 days. Whether or not an interest holder received notice as required in subparagraph 3 and 4(a) is easy to check: for example, there are five interest holders; did each of those five people get notice as prescribed in subparagraph 3 and 4(a)?

**Assemblyman Carpenter:**
It could go on a long time, though, so where does that put the title company when they are trying to insure all the parties received proper notification?

**David Evans:**
I agree with you completely. We are trying to compromise as best we can. We are trying to take the public's well being into consideration. Generally, foreclosure processes are properly done 95 percent of the time. We are in somewhat of a risk business. In the five percent that are not properly done, or that we cannot verify, we are taking a risk. However, S.B. 217 (R1) gives us more comfort than previously, while trying to keep due process in line.

**Teresa McKee:**
The noticing provisions in subparagraph 3 are very specific about where notice has to be given. Just because you move and do not give notice of your new address, they are allowed to notice you at the last known address and that constitutes proper notice. If they left you off the noticing list completely, that is not proper notice. If they follow subparagraph 3 and 4(a), even if you did not get the notice because you were not at the address you last gave, that still is proper notice; they have followed the rules and attempted to give you proper notice.

**Assemblyman Carpenter:**
I think this might have happened at a ranch in Elko and the guy was actually in jail.

**Chairman Anderson:**
Are there any additional questions? [There were none.] Is there any opposition? [There was none.]

ASSEMBLYMAN CARPENTER MOVED TO DO PASS SENATE BILL 217 (R1).

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN HORNE AND MANENDO WERE ABSENT FOR THE VOTE.)

**Chairman Anderson:**
Mr. Goedhart, will you consider taking this very difficult bill to the Floor for us?

**Assemblyman Goedhart:**
Yes.

**Chairman Anderson:**
Let us take a look at Senate Bill 542.

**Senate Bill 542: Revises provisions governing the homestead exemption. (BDR 2-1364)**

**Josh Hicks, General Counsel, Office of the Governor:**
I am here to support Senate Bill 542. Two handouts are being provided: a set on Clark County (Exhibit I) and a set on Washoe County (Exhibit J), which I will be going through. To give some background, S.B. 542 is, in concept, very simple. It would increase the homestead exemption from $350,000 to $550,000. Each section changes the various aspects of Nevada law where that homestead amount is referenced.

On the Clark County handout, there is a box across the top entitled "Homestead Trends" which we included to show how the homestead exemption has changed over the last few sessions. It was increased by 60 percent in 2003, from $125,000 to $200,000 and increased by 75 percent in 2005 to $350,000. Now we are asking for a 57 percent increase to $550,000. We are looking forward with a proactive approach to the future. Next, I have indicated

the median and average sales prices of newer single family homes so the committee would know what is being referenced. The median is $340,000 and the average $430,955. It is also important to note that these numbers are from the Multiple Listing Service (MLS), so they do not include new home or private home sales. The number of single family homes in Las Vegas is 442,265; approximately 75,185 are valued between $350,000 and $550,000. There are also approximately 26,535 valued at over $550,000. Also covered in this exhibit are the 2003 through 2006 average single family home resale prices, with supporting documentation included. What is shown is that there is a trend of increased prices, although it has slowed down somewhat. In Clark County, 53 percent of homes are homesteaded. There are many people who still have not taken advantage of this free way to protect one of their most valuable assets.

Regarding the Washoe County sheet, the median and mean/averages are broken down by area. Note, however, those numbers do not include Incline Village because, clearly, home prices are so inflated it would have skewed the accuracy of the numbers. The next section is broken down since 1999, and, similar to Clark County, the trend of increase had slowed somewhat. In Washoe County only 32 percent of homes are homesteaded.

The reason we brought this bill forward is because we feel we are right at the cusp of where the average home is protected currently. It will be another two years before there is another opportunity to look at the homestead exemption. Therefore, we urge the Legislature to take a proactive approach on this to get ahead of the increase to make sure that as home prices rise the average homeowner, as well as a significant number who are just above that, have some protection through the homestead exemption. I urge the Committee to pass S.B.542.

**Chairman Anderson:**
Mr. Hicks, you said 56 percent of the homeowners in Clark County take advantage of the homestead exemption?

**Josh Hicks:**
It is 53 percent.

**Chairman Anderson:**
Is there a similar figure for Washoe County?

**Josh Hicks:**
It is 32 percent in Washoe County.

**Chairman Anderson:**
What do you think is the reason for the dramatic difference between the two counties? We have taken up this issue at least six times over the years I have been here and we continually move it forward, yet, while housing stock has increased both in the north and the south, people are not utilizing the homestead exemption. Do you have any theories?

**Josh Hicks:**
I do not know the reason. We certainly would like to see them higher, and we are hoping that maybe the passage of this bill will encourage more homeowners to take advantage of the opportunity.

**Chairman Anderson:**
It has not in the past—at least not in the north.

**Assemblyman Segerblom:**
I recall in the State of the State address that there was a reference to second homes in Lake Tahoe. Does the exemption cover that?

**Josh Hicks:**
That is not part of this bill. This bill deals only with the increase from $350,000 to $550,000.

**Assemblyman Mortenson:**
If I homesteaded my house many years ago, does the value of my homestead increase with the escalations that have taken place over the years, or am I stuck at the value originally used?

**Josh Hicks:**
There is language in the bill that has been in there in prior sessions that automatically kicks the value up to the new amount.

**Assemblyman Mortenson:**
Then I do not have to re-homestead every time there is an increase?

**Josh Hicks:**
No, you do not.

**Assemblyman Horne:**
We went from $250,000 to $350,000 last session, and now two years later we are asking for another $200,000 jump. What is the rationale for such a

large increase? Next session, will another increase come before the Committee? Did we make a mistake last session in not increasing to $550,000?

**Josh Hicks:**
I certainly do not think the Legislature made a mistake last session. Historically, the Legislature has changed the homestead values to react to increased home prices. What we are asking is a bit of a shift to be proactive rather than reactive. That is why we are stretching it out a little higher by $200,000 in order to stay ahead of the increasing market. As people keep moving here, the market may slow down, but we do not think it will regress, and we feel it will continue to go up.

**Assemblyman Horne:**
Are you saying that two years from now, if we have a boom again, the Governor's Office is going to say there is no need for homestead exemption increase because we already did it previously?

**Josh Hicks:**
I think that would obviously depend upon what kind of increase there was; if there was a huge boom, someone else might be here asking for an increase in the homestead exemption. We are simply trying to look at the future and keep the average home protected as well as a significant number of homes above that average amount.

**Chairman Anderson:**
I have not seen this particular approach in explaining the process, nor do I understand the dramatic difference in marketing or why the explanation to the public is so low. Are the 53 percent in Clark County eligible because they are owner-occupied homes—not rentals or time-shared condominiums? Fifty-three percent is a high level of expectation if that is the case.

**Josh Hicks:**
According to the Clark County Assessor, that is the number of homestead eligible homes. That would not include rentals or other non-eligible residences. I am not sure why it is at 53 percent, but we would like to see it higher.

**Chairman Anderson:**
I would like to see it higher, too. Do we have any information as to how this compares to other states? One of our concerns in prior sessions was how we fit into the trend nationally, and specifically, in relation to Arizona, California, Florida, and other high volume housing markets.

**Josh Hicks:**

I do not have any information on that. From what I have seen in other states, some are very low, some are unlimited.

**Janine Hansen, representing Nevada Eagle Forum, Elko:**
We are here to support this legislation. With the 30 percent decrease in the value of the dollar in just the last few years, we need to recognize the fact that although we may be in the same home, the value has greatly increased. We recently homesteaded my mother's home when we moved to Elko. We appreciate the forward looking view of the Governor's Office on this issue.

**Chairman Anderson:**
Are there any further questions or opposition on S.B. 542?

**Bill Uffelman, President and CEO, Nevada Bankers Association, Las Vegas:**
I had indicated support based on the economic factors that were previously discussed.

**Assemblyman Mabey:**
If the exemption is raised to $550,000, and a person comes in to get a bank loan saying their house is worth $1 million or $500,000, and you know that this would be homesteaded, how can that person use the collateral in their home to secure the loan?

**Bill Uffelman:**
If the person is going to use the home as collateral and I give you a second mortgage, or if it is paid off, a first mortgage, then I have a lien that survives this homestead exemption. However, if you come in and say you are worth $560,000, you have a house worth $550,000 and you have $10,000 in the bank, the first thing I look at is if you have filed a homestead exemption. If so, the reality is that all you are worth to me is $10,000. So if I am going to make you a loan of $100,000 with no security, you are going to pay for it accordingly because you are a risk. There is no off-setting asset I could use if you defaulted on that unsecured loan.

**Chairman Anderson:**
The house that I grew up in, for which my father paid $3,000, is now worth $300,000. If I homesteaded it now, for mortgage purposes, what would happen?

**Bill Uffelman:**
Everybody looks at their home as their most valuable asset. When I seek a loan unrelated to my property, I tell my bank I want an unsecured line of credit of $20,000. I do not want a lien against the property. If I have filed a homestead exemption, the bank ignores the value of the home up to the homestead

exemption in determining my net worth. If I own the house free and clear, homesteaded it, and it was worth $550,000, in the eyes of the person who would loan me unsecured money, it is worth zero. My asset is decreased by the amount of the homestead exemption. In your case, if it was a $300,000 home and you filed a homestead exemption, your net worth is decreased by the amount of the homestead exemption.

If I am taking a lien against the home, you are going to sign mortgage documents related to the value of the home, which is a separate issue unaffected by the homestead exemption. When you file the homestead exemption, your creditors look at you as being worth less than you thought you were.

**Assemblywoman Allen:**
Do you ever have the scenario where someone wants to borrow against equity in their home, but it is homesteaded and they want to remove the homestead?

**Bill Uffelman:**
Borrowing against the equity in the home—or taking a line of credit—subtracts from the equity. It is a homestead exemption minus liens. Keep in mind, for all who fail to file a free homestead exemption, the homestead exemption is available to you up to the second that someone nails that notice of foreclosure on your door or a judgment lien is filed. If things are looking bad when you are in court, you may want to go down to the clerk's office and file the homestead exemption, so that when they get the judgment the home is protected.

**Assemblyman Segerblom:**
I am curious to see if we could just pass a blanket law that granted the homestead exemption unless someone waived it?

**Bill Uffelman:**
I cannot comment on the "everybody gets a homestead" idea, but in Florida the homestead exemption is unlimited on your primary residence and it is protected up to its value. That probably overrides or is a more explicit way of putting the numbers in, but I do not necessarily know how you would word it.

**Chairman Anderson:**
Is there anyone else who wishes to testify on S.B 542? [There was no one.] We will close the hearing on S.B. 542.

We are adjourned [at 10:50 A.M.].

RESPECTFULLY SUBMITTED:

Darlene Rubin
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE:

## EXHIBITS

**Committee Name: Committee on Judiciary**

**Date: May 2, 2007** **Time of Meeting: 8:10 a.m.**

| Bill | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Sign In Sheets |
| SB 16 | C | Senator Terry Care, Senate District 7 | Review-Journal reprint re eminent domain 4/26/07 |
| SB 16 | D | Paul Lipparelli, Chief Deputy, Washoe County District Attorney | Western States Date of Value Statutes |
| SB 16 | E | Jacob Snow, Regional Transportation Commission | Proposed Amendment SB 16 |
| SB 85 | F | Leslie Neilsen, Clark County District Attorney's Office | Memorandum dated May 1, 2007 |
| SB 85 | G | Leslie Neilsen, Clark County District Attorney's Office | Memorandum dated May 1, 2007 |
| SB 85 | H | Janine Hansen, Eagle Forum | Reprint of Phyllis Schlafly article (Oct 4, 2006) |
| SB 542 | I | Josh Hicks, General Counsel, Governor's Office | Homestead Trends – Clark County |
| SB 542 | J | Josh Hicks, General Counsel, Governor's Office | Homestead Trends – Washoe County |