MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND CONSTITUTIONAL AMENDMENTS

Seventy-Fifth Session
February 26, 2009

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:50 p.m. on Thursday, February 26, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, 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/75th2009/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 Harry Mortenson, Chair
Assemblywoman Ellen Koivisto, Vice Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Bernie Anderson, Washoe County Assembly District No. 31
Assemblyman Joe Hardy, Clark County Assembly District No. 20

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Judie Fisher, Committee Manager
Terry Horgan, Committee Secretary
Cheryl McClellan, Committee Assistant

OTHERS PRESENT:

John Wagner, State Vice Chairman, Independent American Party, Elko, Nevada
David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada
Lynn Chapman, State Vice President, Nevada Eagle Forum, Sparks, Nevada
Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada

Chairman Mortenson:
[Roll called. The Chairman reminded Committee members and the audience about Committee rules and protocol.] Assemblyman Anderson has been a teacher for a long time and has an institutional knowledge of government and this Legislature. Since this Committee is mostly interested in Constitutional Amendments, and most of them come by means of the initiative petition and referendum process, I have asked Mr. Anderson to give a brief to the Committee (Exhibit C).

Assemblyman Bernie Anderson, Washoe County Assembly District No. 31:
I once was part of this Committee and want to thank you for this opportunity to speak to you today and share my thoughts about direct democracy. The initiative and referendum process, or "I and R" as I like to think of it, allow a citizen to bring to the ballot box statutory and constitutional change through the petition process.

I am reminded that one of our Presidents, John Quincy Adams, is the only former President to serve in the House of Representatives after being elected to the Presidency, which is rather a remarkable thing if you think about it.

Congressman Adams was a champion in the House of the right to petition the Body. At the time, through the influence of the southern membership, the House was divided on severely restricting the practice. For instance, the question of slavery would so divide the Body that they chose not to talk about it. Adams presented petitions to abolish the practice of slavery numerous times during his 18 years of service in Congress. Despite the House's consistent denial of his petitions, John Quincy Adams understood that the right to petition the government is the true cornerstone of the American democratic process. I agree with the President, then Congressman Adams, and the many statesmen who followed, that the petition process is an important component of our democratic system.

Let me explain the difference between an initiative and a referendum. The initiative is the process and method whereby citizens, usually through the written petition process, place measures on the ballot proposing changes or additions to laws or to the state *Constitution*. In Nevada, an initiative that is to amend the *Constitution* is considered a direct initiative because the proposal goes directly to the general election if there are enough signatures on the petition. An initiative petition to propose a new statute or amendment to existing state laws is considered an indirect initiative because the Legislature must first consider the proposal before it is placed on the ballot; thus our involvement in one while not in the other.

A referendum typically allows citizens to register, through a vote of the people, their support or disapproval of a current law or statute. In many states, the referendum is advisory in nature and does not create or abolish any law; however, in Nevada, a referendum is binding and serves to either set in stone a particular statute, except by another vote of the people, or render a law or resolution void. My nearly 20 years in the Legislature have taught me a bit about human nature, as have my classroom experiences, and why we, as Legislators, do our jobs, and why, as we will discuss today, our constituents sometimes feel compelled to seek remedies outside the legislative process to get laws passed or overturned.

The initiative and referendum process is an important part of Nevada's political history. As a former history teacher, I am compelled to at least give you a brief history of the initiative and referendum process. The "I and R" process was made popular in the late nineteenth and early twentieth centuries during a wave of populist feeling that swept the country. During the late 1890s, the Populist Party was gaining influence in the American political scene. Their platform included women's suffrage, direct election of United States Senators,

who previously had been chosen by state legislatures, and the use of the initiative and referendum.

In 1897, Nebraska became the first state to allow the initiative and referendum for city elections and city issues. In 1898, South Dakota became the first state to adopt a statewide initiative and referendum process. Utah became the second, followed by Oregon in 1902. Oregon was also the first state to place a statewide initiative measure on the ballot in 1904. In 1905, Nevada adopted its popular referendum; however, it was not until 1912 that Nevada adopted the statewide initiative process. With a few exceptions, this process remains the same today as it was in the early 1900s.

The popularity of the initiative and referendum process was so great during the early part of the twentieth century that by 1918, 19 of the 24 states that currently have the initiative and referendum process had adopted this process; Mississippi being the last to do so in 1992. The handout I provided lists all the states that either do or do not have the initiative or referendum process.

Interestingly enough, most states that have adopted the initiative and referendum are west of the Mississippi. Some people theorize that the expansion of the initiative and referendum in the West fits more with westerners' independence and populist belief systems. For the most part, initiatives and referenda operated quietly in the background of state politics for most of the twentieth century; however, during the last two decades they have come back into vogue. Today, more initiatives are circulated, more qualify for the ballot, and more money is spent on the process than ever before.

Since inception of the process in 1898, there have been over 2,000 initiatives on the ballots in the 24 states that allow it. Roughly half of these initiatives appeared on ballots in the last 30 years. Is this increasing popularity in the use of the initiative and referendum a good thing? I would argue "yes" and "no." In California and in some other states, we have seen some significant abuses of the process. In California, the initiative and referendum process has become a tool used by special interests to force vague and sometimes deceptive proposals into law. In that case, I would argue the process is dangerous and should be carefully watched. On the other hand, if the initiative and referendum process is used to legitimately respond to the reluctance of the Legislature to address important and, often, controversial topics, then I would argue that it is of tremendous value.

Let me give you a couple of good examples. I remember quite well my first election to the Legislature in 1990. Also on the ballot that year was the

referendum on abortion which asked voters if they wanted to permanently support or reject Nevada's existing law on abortion. Abortion is a political hot potato, at the very least. The 1990 referendum served to essentially protect the law from further action by the Legislature and was a positive use of the process. I often wonder if the Legislature would ever have had the political courage to tackle this controversial issue again. For those of us here, we may be happy that it does not come up every session.

Also, no matter how you feel about term limits, they are most likely a permanent fixture due to the initiative process. Again, would the Legislature ever have fully handled this issue on its own? Probably not, so the initiative and referendum process does have value and is, like it or not, here to stay. It is a process which allows citizens to actively influence political matters. We are, after all, truly a citizen Legislature, so why would we expect anything less from our constituents than that they are able to initiate and refer on their own?

However, the process is not without flaws. During the past several legislative sessions, this Committee has improved the process by adding the summary/description at the top of each petition, requiring verification, and requiring contribution and expenditure reports from groups involved in the petitioning efforts. More needs to be done, to be sure, but when considering improving the process, I urge you to view all of the proposals with an open mind. The initiative and referendum process is important and relevant and, if not abused, can be a boon for all of us.

In closing, I would like to share with you one final quote I am particularly fond of from our third President of the United States, Thomas Jefferson. In 1824 he wrote to Henry Lee a letter that speaks to why people's rights to be heard through speech, the written word, or through the petition process, are so instrumental to our American way of life. I constantly keep this in mind:

> "Men, by their constitutions are naturally divided into two parties:
> 1. Those who fear and distrust the people and wish to draw all powers from them into the hands of the higher classes.
> 2. Those who identify themselves with the people, have confidence in them, cherish and consider them as the most honest and safe, although not the most wise, depository of the public interest.
> In every country these two parties exist, and in every one, where they are free to think, speak, and write, they will declare themselves."

Nearly 200 years later, these words still ring true. The people are declaring themselves and the initiative and referendum process helps facilitate that.

Chairman Mortenson:
Thank you very much, Mr. Anderson. That was a very thorough presentation. Are there any questions for Mr. Anderson?

Assemblyman Ohrenschall:
I would like to suggest that this Committee offer its thanks to our colleague from District 31 for the presentation, whenever that would be appropriate. I also have a question. Did the western states adopt the initiative/referendum because of abuses by the railroad barons or the mining barons?

Assemblyman Anderson:
In part, it was because of the abuses by some large groups that held political control of legislatures during certain time periods. In each state, not just in the western states, there is often a particular group that holds political power. For us here in the West, as we all know, railroads made significant contributions. Adoption of the initiative and referendum could have been part of the Grange movement or a response to other problems that the farmers in the midwest were beginning to see. Those farmers were feeling that they were being taken advantage of economically, and they wanted a greater role.

Westerners, unlike our eastern colleagues, want to control their own destiny. They do trust us somewhat, at a distance, to legislate for them on a very limited basis. They have limited the length and frequency of our meetings because, historically, they prefer direct involvement. This is a reflection of that viewpoint. The abuse I think you are making reference to was the abuse of the United States Senate, which was once referred to as the "Millionaires Club." It could probably be referred to today in that fashion, too, but in the 1890s, that was a much more significant dollar figure than it is today. Removing that power from the Legislature and placing it into the hands of the people was a dramatic occurrence.

Parenthetically, Mr. Ohrenschall, we often hear criticism directed toward the direct election of the President versus the popular election of the President. When the *Constitution* was put forward, the opportunity of emailing was not available to the Founding Fathers, and thus, they created an institution to elect the President. There has been a suggestion that we could possibly look at the popular election of Presidents versus the Electoral College methodology. We should always view our government as something evolving.

Assemblyman Segerblom:
Do you see any similarities between the 1890s and today, with the handful of corporate and rich people in charge of everything and the rest of us trying to eke out a bare living and being dominated by all these massive forces?

Assemblyman Anderson:
Unfortunately, I do. It is my own personal opinion, but unfortunately, there is a sense in the public's mind that anybody who runs for public office and serves in it somehow is controlled by those who have the economic wherewithal to put forth candidates and support them. The reality is, as we all know, the reporting requirements in place are very, very stringent in terms of who we get money from and how we report it. The requirements allow the public to examine those things more than was possible before. Through the Elections, Procedures, and Ethics part of this Committee you have been able to fix some of those things to ensure public confidence in elections. That is the reason why this particular Committee is of such great importance to us.

It is an honor for me to come before you, knowing your responsibility for the public trust and your attempt to dispel the rumor that it is controlled by the powerful. It is something all of us are fearful of, and rightly so. The short answer is, "Yes," but the long answer is that we are working hard to increase transparency.

Chairman Mortenson:
Are there any further questions for Mr. Anderson? Yes, I will accept a motion.

> ASSEMBLYMAN OHRENSCHALL MOVED THAT THE COMMITTEE ON ELECTIONS, PROCEDURES, ETHICS, AND CONSTITUTIONAL AMENDMENTS EXTEND ITS THANKS TO ITS COLLEAGUE FROM DISTRICT 31 FOR HIS INFORMATIVE PRESENTATION.
>
> ASSEMBLYWOMAN SMITH SECONDED THE MOTION.
>
> THE MOTION PASSED UNANIMOUSLY.

Mr. Anderson, thank you very much for speaking to us. We very much appreciated hearing from you.

Assemblyman Munford:
You did a very good job and it was excellent in terms of accuracy. You were right on target.

Chairman Mortenson:
We will open the hearing on Assembly Joint Resolution 3 of the 74th Session. Assemblyman Joe Hardy has volunteered to give us an introduction to it.

Assembly Joint Resolution 3 of the 74th Session: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

Assemblyman Joe Hardy, Clark County Assembly District No. 20:
With me is Assemblyman Horne. We appreciated the opportunity to work with your Committee during the last session as well as with the Chair of the Judiciary Committee on this issue.

The *United States Constitution*, in the Fifth Amendment, basically guarantees private property rights that cannot be taken for public use without just compensation. There was a wrench put into those works when the United States Supreme Court ruled that the use of eminent domain to acquire property and transfer it to another private party for the purpose of economic development did not violate the "takings" clause of the Fifth Amendment of the *United States Constitution* in *Kelo v. City of New London* 125 S. Ct. 2655, 2656 (2005). That led to many states being involved with what we are doing today.

I would be remiss if I did not pay tribute to, and express appreciation for, the initiative petition organizers and people involved with the PISTOL initiative, which is the acronym for People's Initiative to Stop the Taking of Our Land. They really did a very effective job of getting the ball rolling and protecting private property from eminent domain takings.

It became apparent, as it occasionally occurs in legislation, that there were a certain number of unintended consequences. That led to me having conversations with other people, as well as with Assemblyman Horne, Clark County Commissioner Bruce Woodbury, and Kermit Waters who has been protecting people's private property rights for decades. Mr. Waters is one of the organizers of the PISTOL initiative. We approached him and said that we had some challenges and misgivings about the PISTOL initiative as it stood. If the electorate is given an option to protect property or not to protect property, they will, as they did, protect property. The electorate, by a 70-plus percent vote in two separate general elections, did vote to protect property; thus it became part of the *Nevada Constitution*. It has been through the court process and is now in effect.

Kermit Waters and his crew, Bruce Woodbury, and I talked about what could be done to improve the application for protecting personal property. It became apparent that it would behoove us to protect private property immediately. That led to a parallel track, so Assemblyman Horne graciously worked with me and this Body to create a parallel track. One track is A.J.R. 3 of the 74th Session, which you have before you today. The other track is Assembly Bill 102 of the 74th Session. Ostensibly, those two measures were to accomplish the same exact things: We would be able to assure that people immediately had protection for their private property with the statute and then go forward with A.J.R. 3 of the 74th Session which would allow us the opportunity to improve PISTOL.

Assembly Joint Resolution 3 of the 74th Session went through several iterations, and everyone who had a say in the process was involved. Any concerns about how it was written were addressed as much as possible, making it a better product in our view than the original PISTOL initiative. Both the statute and the resolution passed out of the 2007 Legislature.

We, as a legislative Body, can allow the voters to vote directly. We do that in a constitutional way with the Assembly joint resolution process. We passed the resolution in 2007, and here in 2009, if we can pass it with the exact same language as in A.J.R. 3 of the 74th Session, it can go before the voters in the 2010 November Election. As this is written, it would replace PISTOL, thus still protecting people's property rights.

Assemblyman Segerblom:
It is my understanding that Clark County is coming back this session with some type of eminent domain legislation. I do not know if it was your understanding that there would not be any further changes to eminent domain law, or does this not affect future proposals?

Assemblyman Hardy:
I would suggest, if you have an opportunity to look at eminent domain, you do it very carefully and make sure that it does not preclude the concepts we are talking about that would be in violation of PISTOL. Any statute we pass would have to be in line with PISTOL as it stands now, but it should not affect what the people choose in November of 2010.

Assemblyman Segerblom:
Is there some kind of understanding that there would not be any future eminent domain legislation if this thing were agreed to?

Assemblyman Hardy:
There was a handshake deal that we would not propose a competing eminent domain constitutional amendment, and that we did not require anyone, including Kermit Waters, to do anything else. We have made the decision to go through the A.J.R. 3 of the 74th Session process and the A.B. 102 of the 74th Session process on parallel tracks, which does not preclude anyone, including Kermit Waters, from presenting whatever other eminent domain issue there may be.

Assemblyman Munford:
What if private property has been designated or determined to be blighted? Does eminent domain allow the right to take blighted property?

Assemblyman Hardy:
There is a provision in A.J.R. 3 of the 74th Session that looks at an emergency taking, as well as one in PISTOL. We do not have the same concept as redevelopment agencies, so you do not see the term "blight," or that concept, in the eminent domain statutes or the proposed statute.

Assemblyman Munford:
So, you are saying if a development company wanted to acquire some property, it would get approval to take the property if that property was for development purposes. It would be okay to take the property, of course with just compensation, but the developer would get permission from the local government or entity to take it. Is that correct?

Assemblyman Hardy:
That is exactly what we are trying to protect people from.

Assemblyman Munford:
In my district that has been attempted, to some degree. I think Assemblyman Horne spoke about this, too.

Assemblyman William C. Horne, Clark County Assembly District No. 34:
That is correct, Mr. Munford. In 2005, I brought legislation to address blighted properties and the procedures that governments had to go through in order to do a "taking." Prior to that legislation, I believe only three or five indicia needed to be shown for blighted property. We increased the number of indicia that had to be present in order for property to be determined to be blighted and for a taking to be done for redevelopment.

For clarification, the local government would only have had to prove that one of those three or five indicia were present. Now, I believe they have to show five of seven; they cannot just find one indicia and determine that a property is blighted. That is the standard we increased in order to protect those areas and give property owners time to repair the blight.

Chairman Mortenson:
Are there any questions for either Assemblyman? I see none; thank you very much for your presentation.

Correct me if I am wrong, but PISTOL has passed and become constitutional so your bill right now is moot. It does not apply unless it contains provisions other than those in PISTOL, is that correct?

Assemblyman Horne:
This is correct. PISTOL had not yet been passed when A.B. 102 of the 74th Session was crafted and passed to provide some immediate protections that property owners were seeking. People said they wanted it, and PISTOL passed and became constitutional. However, some counties and city governments have found that some of the provisions in PISTOL are difficult to comply with and possibly onerous. Assembly Joint Resolution 3 of the 74th Session is designed to correct those provisions.

For example, in PISTOL, if a property that had been taken was not developed within five years, the property owner had the right to purchase that property back at the value at which it had been taken. Five years is a very, very short window of time in which to turn some properties around for redevelopment. In A.B. 102 of the 74th Session and in A.J.R. 3 of the 74th Session, the time allowed is 15 years. That is just one example of the changes that were made. As Dr. Hardy stated, everyone was in the room and agreed to these types of modifications. We agreed to go forward with A.B. 102 of the 74th Session to get something in statute right away. This is not an attempt to defeat PISTOL, but to allow A.J.R. 3 of the 74th Session to pass and to make those changes later. It has to pass exactly the way it did last session.

Chairman Mortenson:
I did have a conversation with Mr. Waters a few days ago. I asked if he would send someone up here to talk about this. He said, "No. I made a gentleman's agreement that I would not in any way interfere or protest." He will honor that agreement so he did not send anyone up here. He did send us a document (Exhibit D) outlining the differences should the people reject A.J.R. 3 of the 74th Session and PISTOL remain as the constitutional law. You can look at this

piece of paper and see essentially what the differences would be. It is very informative. Our Legislative Counsel Bureau (LCB) researcher has done the same thing (Exhibit E), so we have two different comparisons. These are informative and explain how eminent domain will change if the voters accept this resolution or how it will stay the same if they reject it.

Assemblyman Horne:
To address Mr. Segerblom's question pertaining to possible legislation, language has emerged about determining valuation on inverse takings. Whether or not that language would alter this is something that needs to be looked into, but I doubt it very seriously. As you said, we all know a constitutional provision overrides a statutory one, but they are looking at reformulating when to evaluate property.

Chairman Mortenson:
That is a bill rather than a resolution, correct?

Assemblyman Horne:
Correct. From what I understand, it would be a bill. I have not seen it officially, but I have spoken with the County. They said when they get something more concrete they will share it with me.

Chairman Mortenson:
Of course, if there is a conflict between what they are proposing and what exists in the *Constitution*, the *Constitution* will prevail.

Assemblyman Horne:
That is correct.

Chairman Mortenson:
Are there any further questions for these gentlemen? If not, I thank you very much for your information.

We will open the public hearing. Is there anyone who wishes to testify for A.J.R. 3 of the 74th Session? [No response.] I see there is no one in support of the resolution but there are a number signed in against it.

John Wagner, State Vice Chairman, Independent American Party, Elko, Nevada:
We are against this. I also received a copy of the memorandum sent to you, Mr. Mortenson, from Kermit Waters. Looking it over, we do not see that it makes any difference whether this resolution goes forward or not. We do not see that there are any real changes made to PISTOL. From that standpoint we

oppose this legislation. Why put it on the ballot if it really does not do anything?

Chairman Mortenson:
I disagree with you. There are some differences. For example, at the present time, as Mr. Waters says in his memorandum, if a person wants to protect his property from being taken, he can go to court. Under A.J.R. 3 of the 74th Session, he must pay his own court costs. Under PISTOL, he has a chance to argue for the court to order that his fees for protecting his property be paid. That is one difference and there are a few other, subtle differences.

John Wagner:
I believe if you go to court, and you win, you should not have to pay your own court costs.

Chairman Mortenson:
That is what Mr. Waters says. Are there any questions for Mr. Wagner? [No response.]

David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada:
I oppose this. I have read the document, and it seems to me that it makes it less onerous for governments to acquire land by this, and I do not think that is a good idea. I think it should be as onerous as possible when the force of a government is coming down to take property. I really think we should leave it the way it is. PISTOL does a good job, and we do not need to make it less onerous for government to seize land. The people would agree if you explained this in depth; however, I do not think the media would provide a thorough explanation of this so that people would see there are differences between these two. I would hope that you just drop this.

Chairman Mortenson:
I think we will get some good information on the ballot. Mr. Waters has said that he would like to participate in the "For" and "Against" arguments, and I think he will do a good job of explaining the difference between PISTOL and A.J.R. 3 of the 74th Session when it is being voted on. Are there any questions for Mr. Schumann? I do not see any.

Lynn Chapman, State Vice President, Nevada Eagle Forum, Sparks, Nevada:
We are opposed to this bill. We figure that 70 percent of the people, not once but twice, voted this in place, so we should probably leave it as the people wanted it. We are asking you to leave it as it is. We have a little bit more

punch for the people in what PISTOL has, and I think we should just leave it as it is.

Chairman Mortenson:
Are there any questions for Ms. Chapman? [No response.] If the people made a good decision on PISTOL, we will let them look at the differences between the two and let the people make another good decision one way or the other.

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:
I am not here to defend PISTOL. When constitutional rights are affected, we are concerned that there is full due process, and a key element for us is that language not be vague when it affects people's fundamental rights. We have concerns about two sentences in this bill. I have spoken with Assemblyman Hardy, the lead sponsor of this bill, and I know he is really not amenable to amendments at this point, because of the delicate balance that was crafted; I think in part with all the sponsors. So, I did sign in against the bill instead of neutral with proposed amendments, which is how I prefer to do it.

I know members are concerned about specific issues that might require the transfer of property from one private entity to another private entity; for instance, Assemblyman Munford mentioned blight earlier. I do not believe that the American Civil Liberties Union (ACLU) has an official position specifically on blight, with respect to that. Again, it is not so much about the substance of the public use; it is about strictly defining it so people understand when their property might be taken. Juries and judges, when they make the determination of whether or not the use is a public use, must have clear guidelines to follow. We do not think this language meets that standard and I will be specific.

Language on page 3 of the bill, at lines 27 through 31, defines several of the situations where a transfer of property may be made from a private entity to another private entity. The language states that such a transfer can be made whenever that entity "uses the property primarily to benefit a public service." We think that language is very over-broad. The word "primarily" allows the possibility that you could make such a transfer for a profit-making enterprise or to raise the tax base. Those are exactly the kinds of problems we think led to a public fury in the wake of the *Kelo* decision. This language still allows for that, so we are concerned. Again, it is not so much the substance; it is the fact that, looking at this, I do not think I can determine whether my house is going to be taken to build a coffee shop across the street from the Legislature, or whether it is going to be taken to create a critical railroad that would connect two transportation hubs. This language is extraordinarily broad. What we would

like to see is the delineation of specific types of public use, for instance, blight, if that would be the pleasure of the Legislature, but again, defined more carefully.

The reason we would be opposed to this, relative to PISTOL, is that PISTOL, in prohibiting all private-to-private transfers, obviously eliminates a huge area where there is a lot of potential for abuse. When you are transferring from one private person to another private person, obviously, the profit potential can sneak in. That, I think, has been the concern, particularly in Las Vegas where there have been specific examples of folks' homes being taken and the area being turned into a Petco. You are probably familiar with those anecdotes; I know they are in Mr. Waters' testimony. So, we oppose this part because of the vagueness.

Very similarly, language on page 5 of the bill would change PISTOL's current requirement that property revert to the original owner in 5 years to a 15-year period. We have no position on 5 years versus 15 years; however, what it does state on lines 33 through 36 is that the property only reverts if the government or the private entity "fails to use the property for the public use for which it was taken or for any public use reasonably related to the public use for which the property was taken." That is a loophole through which you could drive a tractor-trailer rig. It means after your home is taken, the government could, *post facto*, come up with another reason for the taking that is reasonably related to the original reason they took your home and go with that one. We do not think that language is appropriate.

As the earlier testifiers stated, we also have an issue with the lack of attorney's fees or the possibility that a landowner would bear the burden for his own attorney's fees. We do think that is a very real bar to accessing the legal system. I know, from my own office, that it is a reality. When we are talking about a very fundamental right—the right to own your home—we do not believe such a disincentive to access the system should exist. We believe people should be able to recoup those fees.

In the grand scheme of the bill, those are fairly minor concerns, but I know the possibility for amendment is not here, so I feel compelled to oppose this bill. I do want to assure the Chair and Committee Members that we understand the motivation behind this bill and do not oppose it. The problems we have are with the specific language in the bill that we just think is too vague and opens up room for exactly the kind of abuses that people were upset about when they enacted PISTOL.

Assemblyman Horne:
Which provision was vague?

Lee Rowland:
Page 3, lines 27 through 30, refer to transfers of property to a private person or entity. The language states that the private person or entity can use the property primarily to benefit a public service, and the next three words are "including, without limitation" so I did not read the rest.

Assemblyman Horne:
For the Committee's edification, the reason for the wording "primarily benefits a public service" was that more and more government projects are erecting mixed-use facilities. Mixed-use buildings could house government offices, but also lease space to private persons to operate private industries as well. That language allows for that possibility. When it says "primarily public," it means government did not want to be precluded from doing something like that and wanted to use a property to its fullest potential.

On changing 5 years to 15, if you will remember, eminent domain taking had been deemed appropriate and constitutional when it was for a public purpose. The discussions I have had indicate that sometimes on these takings, a project's design has to be altered or changed and they want flexibility. A private party does not want the government to say it is taking a property for a public purpose and then later say the project will not work and transfer it to another private party. Government still has the opportunity to use that land for a public purpose, so the public is still getting use from the land. It may not have been the project that was initially envisioned, but the property is still being used for the public, so the taking still falls within that constitutional framework. And the property owner still retains their just compensation for that property.

As for the attorney's fees, a number of people who were challenging the taking of their properties were losing. Government was demanding costs and fees, and in some instances, people were paying the government for taking their properties. I had a bill to try to eliminate offers of judgment but it died in the Senate. This was one of the problems, so this is a compromise to try to get away from that. I understand what you are saying. Not everyone can afford counsel. Attorney's costs on the government's side are very high as opposed to a landowner hiring one attorney. That is what that change is designed to do. I appreciate the ACLU's concerns, but these are not concerns we did not envision as we worked on this.

Lee Rowland:
I do not disagree with anything you said, Assemblyman Horne, in terms of the motivation. That is not the issue. I am in a somewhat awkward position, because I think I could propose language that would meet our concerns and would meet all the needs you just listed, but I do not have the opportunity here. On the first language issue, you would simply delineate what those uses are and then say that something incidental to the section does not violate it because there are incidental leases for profit-making in a mixed-use property, as opposed to having the initial broad language that covers everything. I would say the same thing for the "reasonably related to the public use" language, because you could reasonably relate it to the original project. There is language that could tighten that. Our concerns are really with the enacting language and not with the intent behind it. With respect to the attorney's fees, we would say that there should simply be a provision permitting landowners, if they prevailed and it was not a public use, to recoup those fees. That is the particular situation we are most concerned about. I understand the abuse issues you are talking about; landowners can abuse the system, too, not just the government.

If it is the Committee's pleasure, or if there is any appetite to work on language in this bill, I am certainly happy to do so. It is my understanding that maybe that is not a possibility here.

Assemblyman Munford:
When land is taken, are the landowners ever concerned about just compensation and that they are getting the value from their property? What options and alternatives do they have? There was an incident in Las Vegas concerning downtown—*Las Vegas Downtown Redev. Agency v. Pappas*, 76 P.3d 1 (2003)—and Pappas felt he was not getting just compensation. In the case of something like that, do they have alternatives? Do they have some defense, some protection?

Lee Rowland:
I believe A.J.R. 3 of the 74th Session and PISTOL both provide that defense. I am not an expert in land use or property rights, and neither of those are hot-button, ACLU issues. Our concern stemmed more from the attorney's fees being a disincentive for folks who may have a good claim not to go to court and fight their land being taken. With respect to the *Pappas* case and the cases you are talking about, I think those were the concerns that led to language in PISTOL that required that value be based on the highest use of the property. That same language is here, with the exception that you have to pay for your own attorney's fees, and there is one other minor issue which is that it would be offset by government offsets that are not special benefits. You might be

entitled to slightly less under A.J.R. 3 of the 74th Session than you would be under PISTOL. That is not, however, our primary concern. Our primary concern is making sure that the full due process rights are there.

The one thing that PISTOL does offer over A.J.R. 3 of the 74th Session is the ability to have a jury of your peers hear the question of whether or not you have been adequately compensated and whether or not something is a public use. Being a constitutional rights group, we do favor the full extension of the jury right when someone is taking your property. In that regard, I would say that the existing constitutional amendment probably accomplishes that slightly better, but there is much in this bill that does so, as well.

Chairman Mortenson:
Are there any further questions? [No response.] Thank you very much for your participation. There are people who signed in against but did not indicate they wanted to speak. Is there anyone else here who would like to speak on this bill, either for or against? [No response.] I will close the hearing and bring the resolution back to the Committee. I will entertain a motion.

> ASSEMBLYMAN HORNE MOVED TO DO PASS ASSEMBLY JOINT RESOLUTION 3 OF THE 74TH SESSION.
>
> ASSEMBLYMAN KIHUEN SECONDED THE MOTION.
>
> THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

If there is no further business, we are adjourned [at 4:58 p.m.].

RESPECTFULLY SUBMITTED:

_____
Terry Horgan
Committee Secretary

APPROVED BY:

_____
Assemblyman Harry Mortenson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Elections, Procedures, Ethics, and Constitutional Amendments

Date: February 26, 2009 Time of Meeting: 3:50 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Assemblyman Bernie Anderson	Handout entitled "Initiative and Referendum in Nevada—What is it?"
AJR 3	D	Assemblyman Harry Mortenson	Copy of "Comparative Memorandum for Article 1, Section 22 Property Owners' Bill of Rights (PISTOL) and AJR 3" prepared by Kermit Waters
AJR 3	E	Patrick Guinan	"Side-by-Side Comparison of Provisions in AJR 3 of 2007 and the PISTOL Initiative"