

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

**Seventy-Sixth Session
March 16, 2011**

The Committee on Judiciary was called to order by Chairman William C. Horne at 8:10 a.m. on Wednesday, March 16, 2011, 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/76th2011/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 William C. Horne, Chairman
Assemblyman James Ohrenschall, Vice Chairman
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom
Assemblyman Mark Sherwood

COMMITTEE MEMBERS ABSENT:

Assemblyman Steven Brooks (excused)

GUEST LEGISLATORS PRESENT:

Senator Sheila Leslie, Washoe County Senatorial District No. 1
Assemblyman Ed Goedhart, Assembly District No. 36

STAFF MEMBERS PRESENT:

Dave Ziegler, Committee Policy Analyst
Nick Anthony, Committee Counsel
Julie Kellen, Committee Secretary
Michael Smith, Committee Assistant

OTHERS PRESENT:

Guy Rocha, Private Citizen, Carson City
Glen Miller, Private Citizen, Reno
Gayle Sherman, Private Citizen, Silver City
Larry Wahrenbrock, Private Citizen, Silver City
Erich Obermayr, Private Citizen, Silver City
Cashion Callaway, Private Citizen, Silver City
Kyle Davis, Political and Policy Director, Nevada Conservation League and
Education Fund
John Wagner, State Chairman, Independent American Party
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties
Union of Nevada
Susan Fisher, representing Valley Electric Association; Clean Energy
Rail Center
Janine Hansen, representing Nevada Committee for Full Statehood
Betty Hammond, Social Services Program Specialist 2, Aging and
Disability Services Division, Department of Health and Human
Services
Gary W. Olsen, Consultant, Leadership Education Advocacy Designs
Linda Bell, District Judge, Eighth Judicial District Court
Ben Graham, representing Supreme Court of Nevada

Chairman Horne:

[Roll was called.] We have four bills on the agenda today. We will start with Assembly Bill 180. This is my bill, so Assemblyman Ohrenschall will conduct this hearing.

Assembly Bill 180: Makes various changes to provisions governing eminent domain. (BDR 3-115)

Vice Chairman Ohrenschall:

Please go ahead with your presentation of A.B. 180.

Assemblyman William C. Horne, Clark County Assembly District No. 34:

I am here to present A.B. 180 dealing with eminent domain and the prohibition of its use by mining.

To give you a brief history of eminent domain since I have been a member of this body, I brought an eminent domain bill during the 2003 session. It eventually found a slow death in the Senate after two hearings, but I became known as the "eminent domain guy." During the 2005 session, I brought another broader eminent domain bill dealing with redevelopment areas and how to remediate those using eminent domain in those circumstances. During the 2007 session, we had a bill dealing with the People's Initiative to Stop the Taking of our Land (PISTOL), which was a constitutional change of the use of eminent domain in our state. As you know, those measures were adopted in other jurisdictions across the country, and these stem from a case called *Kelo* (*Kelo v. City of New London*, 545 U.S. 469 (2005)). This case was part of my 2003 eminent domain legislation. With the PISTOL initiative, what we had decided to do was put those prohibitions in statute first, so they would take effect immediately before we had the constitutional change. It took time to get the constitutional change done, but we did put the revision in statutes during the interim. That bill was cosponsored by Senator Joe Hardy, and we worked side-by-side on it.

I heard of a dispute in Elko about a mine trying to use eminent domain on someone's private property. I was perplexed after reading *Kelo* and the powers we had in Nevada and PISTOL, and I thought it might be resolved in the courts based on the merits. That did not happen. It became an open question on whether or not mining still had that power of eminent domain on private property, so I introduced a bill. I did not know until after the session had begun that Senator Sheila Leslie had already prefiled a bill on the same subject. The difference between our bills is that she includes sugar beet farmers.

This is where we are today with this bill, and my intention was to entertain ideas about possible amendments dealing with allowing counties to have the power to take property, and then mining could go that route in getting the property the companies need for development, et cetera. They could possibly give ongoing royalties for those persons who have to give up their property to the county through eminent domain. After further thought, I believe that is still in violation of PISTOL, which passed overwhelmingly in our state. I think this is circumvention to that constitutional provision that states one private party cannot take property of another private party. If you allow the county to say, "This mine needs this property, so we are going to take it to allow the mining company to have that property," it is the same thing. You have not abided by the provisions of PISTOL. My proposal to this Committee is to keep the bill as

is. When we hear Senator Leslie's bill, we will amend those persons' names signed onto this bill onto that bill and make it one. There is a procedural reason for that. If we process this bill the same way as the Senate bill, it must go to the Senate and go through all the hearings.

You will have testimony from Guy Rocha and Senator Leslie today. They will testify as they did in the Senate already. Once we amend this bill, we will not have to go through the whole process since we will just have one bill.

Vice Chairman Ohrenschall:

I want to concur with you. I grew up in Las Vegas, and I never knew a private party could take another private party's real property, whether it be for sugar beets or mining.

Are there any questions? [There were none.]

Senator Sheila Leslie, Washoe County Senatorial District No. 1:

I am happy to be here today in support of A.B. 180. This bill is very similar to my bill, Senate Bill 86, which was approved by the Senate last week. The only difference is the sugar beet factories. I will let Mr. Rocha give you the history on that. For any Nevada history buff, it is quite an interesting story how the sugar beet industry was able to get the power of eminent domain in 1907. That law remains on our books today.

What I have learned about this issue as I have been working on it is that there have been many times when mining has used the power of eminent domain, or just as importantly, the threat of eminent domain to acquire private property at the right price. In fact, I think the room is filled today with residents from Silver City, Nevada, who will tell you what is happening right now in realtime with this issue in their community. I will let them speak for themselves, as I believe they can give you some real-time examples.

Since this bill came out, and there has been much press attention, I have received numerous emails from ranchers in rural Nevada and from other people who have experienced this issue firsthand. These are real-time threats and not from 1907.

The key question I would ask you to keep in mind as you hear this bill today is when or if you think a private corporate interest should have the right to acquire your personal property through eminent domain to further their private interests. Is it when the industry is of paramount interest to the state? You will hear from Mr. Rocha about how mining got this power. At the time it received the power of eminent domain, it was determined that mining was the paramount interest in

this state. Is it when it produces a certain number or level of jobs? That argument has been used as a reason to let mining have the power of eminent domain. It is when someone decides the asking price is sufficiently high, or when a county commission decides it is needed to remove that one landowner who is holding out on a piece of property for their right price? Try to decide for yourself what special circumstance would convince you that the basic principle of willing buyer/willing seller should be ignored. Remember this is not about the greater good. This is about the mining and sugar beet industries getting private property for their private, corporate interests. It is not about utility lines or cable.

I believe both of these provisions should be repealed by the Legislature in the interests of our private property rights.

I got this lovely letter from Electra Giannopulos Larsen that I will read to you ([Exhibit C](#)).

That is a letter from a Nevada citizen whose family has been affected by eminent domain taking from a mining company out in an eastern Nevada mining community. I think she says it all. I urge your careful consideration and appreciate the Chairman to be willing to work with me. We will do whatever we need to do to make the process go smoothly.

Vice Chairman Ohrenschall:

Can you spell Riepetown for the Committee in case we do want to look it up?

Senator Leslie:

R-I-E-P-E-T-O-W-N.

Assemblyman Kite:

I need to disclose that I think eminent domain, even from the federal government, needs to be restricted.

I do not know if this is an instance that comes up in Nevada with mining, but there are many times when mineral or oil rights are sold, but the surface land is not sold. Does that come up, and how does that affect eminent domain?

Assemblyman Horne:

As a disclosure, even though I practice law, I do not practice eminent domain law. Gathering from your question, a person would own the mineral or oil rights and someone else owns the surface rights. To me, that does not seem like taking as opposed to gaining a right of easement to those minerals or oil. You might have the surface rights owner precluding the mineral or oil rights

owner from coming in and taking the minerals or oil from underneath it. Theoretically, you can get a court to enjoin that owner from stopping you from getting to your mineral rights. I can certainly get an answer for you.

Assemblyman Kite:

I would appreciate that. That may not be a common occurrence, but it does happen, and I want to know what the remedy would be for the mineral rights owner.

Senator Leslie:

We have Dr. Glen Miller here who could answer that question for Assemblyman Kite.

Assemblyman Sherwood:

I have two quick questions. You say this is happening in real time. How many cases have happened in the last 12 months? If this were to be repealed, of the cases that come forward, how many would be solved with a free market saying, "Here is what we will pay you. Here is the deal we will do on the back end with royalties, et cetera?" Could many of these issues be solved if it were a market transaction?

Senator Leslie:

I think all of them could be solved through a market transaction. Like the case in Elko, those were investors and not the quintessential Nevada rancher. It was settled for a certain amount of money.

As to your first question, it is difficult to quantify. There is no registry. You hear about these cases, and Silver City is a primary example of something going on in real time. I am not an expert in mining. Dr. Glen Miller is somebody who is a professional in the mining field, and he would be able to give you a better estimate. I do not think there is any way to know for sure how many cases there are. From the people who have contacted me, it is a very real occurrence, in real time. I have had people from the mining industry tell me they do not use eminent domain very often. If they do not use it very often, then they do not need that right. I have heard about the threat being used more often than the actual taking. The threat could be enough to give up property to mining.

Assemblyman Horne:

Talking about the market, one thing that gets missed is that as a private property owner, you should have the right to not wish to sell your property. There are parts of Nevada where the property owners are fourth generation

owners of that property and have no intention of selling it. They have intended for that property to stay in the family. It should be okay to do that.

Assemblyman Sherwood:

As a follow-up, sometimes no deal is a deal, and that is the market as well.

Assemblyman Horne:

Also, I have heard the complaints of a person only purchasing property to speculate. That is not a bad thing. The West was built on speculation, and you can do that if you want to. You can take the risk of thinking the property is worth more. There have been people who have done that and missed the boat. There have been people who have done that and sold at the right time. It is their right to do that. I would like the Committee to remember those things as well.

Vice Chairman Ohrenschall:

I would like to concur with both of your statements. I have a friend I went to law school with, and they have a small alfalfa farm in Armargosa Valley they inherited from their father. It has a lot of sentimental value to them, and I would hate to think a private entity would be able to force them to sell.

Are there any other questions? [There were none.]

Senator Leslie:

I have just been informed that Electra Giannopoulos Larsen is with us today.

Vice Chairman Ohrenschall:

Thank you for traveling all this way to Carson City.

The next witness I have signed in to speak is Guy Rocha.

Guy Rocha, Private Citizen, Carson City:

Thirty years ago, Assemblyman Joe Dini and I testified on a bill in the Assembly Committee on Judiciary to amend the eminent domain law as it related to mining.

[Continued to read from prepared testimony ([Exhibit D](#)).]

Vice Chairman Ohrenschall:

It is good of you to remind us that future legislatures can correct the errors of past legislatures.

Assemblyman Hansen:

That was very interesting testimony. If you go back just 10 years ago or so, when the Pappas garage situation was going on with the redevelopment programs, many of the same people who are beating up mining now were defenders of it then in order to have redevelopment projects in downtown Reno and around Washoe County. I am 100 percent on board with this, and I do not think anyone should have that right. While I do not think mining should have that power, I do not think this is unique to them. Eminent domain has been used by many entities over the years.

Guy Rocha:

As I stated in my concluding remarks, the use of eminent domain, at any level, is a coercive act in a democratic society. Government may abuse that coercive act in conjunction with private interests to give them an edge. Mining, another private interest, has an edge over private citizens. I think all of this raises fundamental issues of what kind of powers we extend to the private sector through government. I can see this as an abuse of power.

Assemblyman Hansen:

The PISTOL initiative took care of that. Those days are gone. People clearly said they were not going to allow any private entity, or the government, to use that eminent domain power to transfer private property to another private party. I think that has been settled in the *Nevada Constitution*.

Vice Chairman Ohrenschall:

When the United States Supreme Court handed down the *Kelo* decision, many of us backers of PISTOL, including the Chairman, went through a lot of effort to try to make sure private property would not be taken for private use.

Assemblyman Sherwood:

Mr. Rocha, the first carveout we have is for the federal government. Mining is not the paramount industry anymore, but it is critical to our state. If the federal government did not play by different rules, and we had access to all the land and let the market work, could mining be the paramount industry again?

Guy Rocha:

That is theoretical. We deal with federal land management. In the latest figures, it is 82.5 percent, down from the usual 87 percent; this is the largest in the United States as far as federal land management. On those lands, how much of that would be good mining properties? I do not know. There must be more precious metals and minerals out there. Would that theoretical situation ever occur, and would it help the mining industry? I suspect it would. Would it make it the paramount industry? The casino industry would have to do much

worse to get mining to exceed that. While mining is prominent in rural Nevada, it does not have much sway in urban Nevada, and the amount of taxes it pays is significantly less. I suspect it would be a spur to the mining industry to have access to public lands. How possible is that? I think it would be remote.

Vice Chairman Ohrenschall:

Are there any other questions? [There were none.]

Glen Miller, Private Citizen, Reno:

I have been involved in mining issues for several decades now. Mostly I have been involved with the environmental issues associated with leaching and tailings facilities. We have done a lot of research on acid mine drainage. I am probably considered somewhat of a critic of the mining industry, although I recognize it is a critically important industry particularly for rural Nevada. It provides some high-paying jobs.

I have been involved in discussions on eminent domain for quite a few years. The first time I heard about it was in Silver City when I first came to Nevada, sometime around 1978-1982. You hear about this every now and then. Riepetown is another example. I was contacted by people living by the Pequop range who were complaining about having their land taken away. Mining has a special ability to take private land, and this needs to be changed and eliminated.

Assemblyman Sherwood's question of whether the market can take care of this is interesting. What this law does is give the mining industry a tremendous ability to negotiate. They do not want to use eminent domain. It is a bad process, but they have it hanging in the background saying, "We are going to give you 20 percent more, or 2 or 3 times as much for your land as you would otherwise. If we have to go through eminent domain, we are going to give you the amount of money that it is valued at." Much of the land is not \$1,000 or \$10,000 an acre, but it is around \$100 or \$200 an acre. Someone is looking at a very small pittance of payment for their land versus something that may be two or three times as large if they negotiated. Land is valued at what it is valued, and my value as a landowner is going to be a certain amount, but if I know someone else is going to make a whole lot of money on it, the value that I perceive is going to go up. That is free market. Sometimes we are lucky, and sometimes we are not. A landowner who has land that can be used for a valuable purpose is going to value that higher. There was an example in the Pequop range. This land that I was contacted about last summer was the claim block which was purchased for \$2 billion. There is some money for that landowner on a free market basis, and that is the argument that is the strongest. In one case, it will allow the landowner to have a much higher return

based on the true value of the land in a free market versus one that would be much lower based on typical value. The issue is how you negotiate.

I noticed Senator Leslie left saying I am an expert on this, but I am not a lawyer either. I will defer on that. I do have oil rights because when my grandfather homesteaded land in 1903, there was no concern about oil rights at that point. There are oil rights there now, and while we own all of the oil rights on our land, there is a split estate. If I understand correctly, there is a right of ingress and egress on that property if someone owns the mineral rights. I am not sure how that affects Nevada. With an oil well, it will come and go, and the land is returned. If you put an open pit on the land, that is something else, and that question should be answered by somebody who is an expert on eminent domain.

I strongly support this legislation. It was once suggested that there could be a way of doing this with a county commission. I think, as Assemblyman Horne mentioned, it is probably not consistent with PISTOL at this point, and I defer to his judgment on that.

Eminent domain is very rarely used except as a negotiating tool, and that is what makes it so very difficult. There is an uneven platform that exists for one private interest taking the land of another private interest but not paying for the true value of the land.

Vice Chairman Ohrenschall:

I am not sure whether you are the right person to ask this question, but in jurisdictions where mining companies do not have this power of eminent domain over a mining claim, are you aware of any examples of someone who has held out and been unreasonable and never negotiated and let the free market forces bring about a deal that allowed the ore to be extracted?

Glen Miller:

I am not aware of specific examples. There have been occasions like that in Wyoming where they were looking at coal bed methane. There was a rancher that said he was not going to do that. It was not a huge impact with jobs or anything like that. I do not know that area very well.

Vice Chairman Ohrenschall:

Are there any questions? [There were none.]

Gayle Sherman, Private Citizen, Silver City:

I am a property owner in Silver City and a member of the Comstock Residents Association. I am here in support of A.B. 180.

The Comstock Residents Association is a group of concerned citizens who have a common interest in preserving the quality of life in the Comstock communities of Virginia City, Gold Hill, Silver City, and Dayton.

[Continued to read from prepared testimony ([Exhibit E](#)).]

Vice Chairman Ohrenschall:

Are there any questions? [There were none.]

Larry Wahrenbrock, Private Citizen, Silver City:

I have been a resident of Silver City since 1973. I used to work for the Comstock Historic District Commission and became intimately aware of eminent domain with the Houston Oil and Minerals project in Gold Hill. I would like to characterize the issue facing you in this piece of legislation. It is a balancing of rights and privileges.

[Continued to read from prepared testimony ([Exhibit F](#)).]

Vice Chairman Ohrenschall:

I have three more witness signed in to speak. Could you all come up please together?

Erich Obermayr, Private Citizen, Silver City:

I am a resident of Silver City and Chair of the Silver City Town Advisory Council. Silver City is a small, unincorporated community in the Comstock a few miles down the hill from Virginia City.

I am here to offer my support of A.B. 180. This bill would end the use of eminent domain for mining and mining-related activities. At our March 1, 2011, town meeting, Silver City approved a motion of support for S.B. 86 by a vote of 16-1. We are a small town, so those are big numbers for a town meeting. Because A.B. 180 makes almost identical changes to the statutes as S.B. 86, I can tell you the vast majority of Silver City residents also support the bill.

Mining is an important land use issue facing Silver City. The fact that under current law mining companies have the power of eminent domain is particularly unsettling. The rise of gold prices to \$1,400 an ounce, and more, has changed everything. It has changed the Comstock and life in Silver City. Previously unprofitable mining claims and properties can now be worked at a profit, and at dazzling profits. We are feeling the effects in Silver City. There is, in fact, an exploratory drilling project now under way within the southwestern portion of the town and just south of the town limits. An open-pit mine is the ultimate objective of this drilling.

Our situation is an example which will become more common up and down the Comstock, and perhaps across the state. The situation is that mining projects are proposed in areas close to or adjacent to private property, homes, and businesses. The idea that if a mining company so desired it could use the power of eminent domain to expand their operations in these circumstances at the expense of nearby property owners is troubling to say the least. In addition, there is a history on the Comstock with respect to mining and eminent domain. The Houston Oil and Minerals pit on Greiner's Bend that was dug in 1979 alongside the highway to Virginia City is the poster child for worst mining practices. Eminent domain was used to acquire property for this project.

More recently, the company currently drilling in Silver City commissioned a consultant's report that mentioned, with respect to a proposed mine approximately half a mile northwest of Silver City, that the project could involve "the relocation of certain landowners." When a phrase like that is used by a consultant speaking for a company with the power of eminent domain, it becomes truly ominous.

When we think of mining in Nevada, we often think of large open-pit mines located far from any population centers. The current gold prices mean mining companies are literally leaving no stone unturned, even in places like Silver City. Our situation shows that, even in a context of local, state, and federal land use regulations, there is still a need for limits for what mining companies can do. Assembly Bill 180 is a good step toward establishing these limits, and we urge you to approve it.

Cashion Callaway, Private Citizen, Silver City:

I am going to be very brief. Mr. Obermayr told you we are a small community. I am telling you we are a very vibrant, small community. Our investment in our property can number in the hundreds of thousands of dollars. More importantly, our investment in our families and our community, including volunteer time, talent, et cetera, is incalculable. We are a tight-knit community. For a mining company, through the invocation of eminent domain, to rend the fabric of our families and our community is unthinkable, and not just for our community, but for any community in the state. In sum, I and my neighbors are not here to ask you to support A.B. 180 but, with the greatest respect, we insist on it.

Kyle Davis, Political and Policy Director, Nevada Conservation League and Education Fund:

I will be very brief as many of the arguments have been laid out for you. We are in support of this bill. We do not think mining companies having this ability is in the public interest or environmental interest and urge your support.

Vice Chairman Ohrenschall:

Are there any questions? [There were none.]

John Wagner, State Chairman, Independent American Party:

I will be brief. We support this legislation. I am sure when the Senate bill gets here, Assemblyman Horne and Senator Leslie will come out with a very good bill.

I am going to be a little nitpicky. On page 3, line 22, for some reason you have cemeteries and public parks listed twice in the same sentence.

As far as the bill itself, I think it is excellent. My daughter got married at the Gold Hill Hotel, so it has sentimental value as well.

Vice Chairman Ohrenschall:

Are there any questions? [There were none.]

As to your nitpickiness, we appreciate that. We will look at it, and I am sure we will have an answer shortly.

Our legal counsel wants to address Mr. Wagner's point on the bill.

Nick Anthony, Committee Counsel:

That is in existing law, and we can certainly fix that in the bill.

Vice Chairman Ohrenschall:

We appreciate your attention to that, Mr. Wagner.

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

We do wholeheartedly support this bill. I want to note for the record that our position is the same on Senator Leslie's bill. From our perspective, there are many private industries that currently have eminent domain rights, and we would like to see those eliminated. No nongovernmental organization should have the right of eminent domain. We see it as a liberty interest, and we hope the Committee does as well.

Assemblyman Sherwood:

What about government entities? How does the American Civil Liberties Union (ACLU) feel about that?

Rebecca Gasca:

This bill does not address governmental entities. Certainly, courts have validated governmental interests in the ability to exercise the right of eminent domain. It is a fairly complex legal history.

Assemblyman Hansen:

Did you say there are other statutes that give private entities power to use eminent domain in Nevada?

Rebecca Gasca:

The same section of law allows private entities to exercise rights of eminent domain for issues relating to smelting, toll roads, et cetera. There are multiple entities and nongovernmental organizations that would have the right to exercise eminent domain.

Assemblyman Hansen:

I would like to address that later with you.

Vice Chairman Ohrenschall:

Are there any more questions? [There were none.] Is there anyone wishing to speak in opposition to the bill? [There were none.] Is there anyone wishing to speak in neutral to the bill? [There were none.]

I will close the hearing on A.B. 180. I will hand the gavel back over to our Chairman.

Chairman Horne:

I will open the bill on Assembly Bill 186.

Assembly Bill 186: Allows certain real property managed or controlled by the Federal Government to be taken by eminent domain for certain purposes. (BDR 3-373)

Assemblyman Ed Goedhart, Assembly District No. 36:

I am here to present A.B. 186. Let me go through the genesis of this bill. I live in rural Nevada, and currently in Nye County, 98.1 percent of the land is controlled by the federal government. Being a business person within those borders, I have found it is very difficult to obtain land from the federal government. In fact, I embarked on a seven-year process to be able to buy some land in the middle of our ranch to be able to have a continuous piece of property. This process took time and hundreds of thousands of dollars to have the right to petition the federal government to be able to buy this piece of property. My brother asked what the big deal was because you are going to

buy the property at fair market value as determined by an independent third-party arbiter. What can be so difficult about that? After we had embarked on that process that was successful, I said to my brother that this was the first piece of public property that was allowed to be sold to a private individual in Amargosa Valley in one-third of a century, even though Clark County, Nye County, and the Las Vegas Regional Master Plan, underneath the Bureau of Land Management (BLM), had slated 22,000 acres for disposal. I was also helping out renewable energy projects. One of the hardest deals out there for them is to come to the realization that Nevada has a lot of land, but it is not open for business. We have millions of acres of land controlled by the federal government. The process is so onerous, lengthy, and unpredictable that people who have ideas, passions, and dreams, and have money in their pockets, see a sign in Nevada that says, "Closed for business. We are not open for business." One thing we realized coming out of this recession is that we need to diversify our economy and expand our opportunities. We need to show that we are open for business.

When Nevada came into statehood, to this day, we still have 87 percent of our land controlled by the federal government, which is the highest percentage of any state, with the exception of possibly Alaska. This bill follows on the heels of Assembly Joint Resolution No. 10 of the 75th Session, and it urged Congress to enact legislation requiring the Secretary of Interior to convey ownership of certain land in the State of Nevada for the development of projects for renewable energy. Former Speaker Barbara Buckley realized that unless we have that land available to sell and dispose of for these renewable energy projects, we will not realize the dream of being open for business.

Chairman Horne:

The first thing that jumps out at me about your bill is the constitutionality. I searched and turned it around, and I do not see where Nevada has the power to do a taking against the federal government.

Assemblyman Goedhart:

I say the goal is to force the question. Who is the sovereign power, the state or the federal government? Sovereignty actually rests with the people. The question becomes to whom the citizens of Nevada give their sovereignty. I believe when we entered into statehood, that sovereignty still rested with the people. Here today, the Legislature has the opportunity to right a wrong that has been perpetuated upon the people for far too long.

Chairman Horne:

I do not want to put words in your mouth, but it sounds to me you would like us to ignore the constitutional provisions to send a message that we disagree with it as Nevadans.

Assemblyman Goedhart:

I do not disagree with the way you paraphrased my words. I get passionate about this. Utah had just passed such a provision ([Exhibit G](#)), but it has not been tested in the United States (U.S.) Supreme Court. This is not the first state to pass such a law.

Assemblyman Hammond:

I have looked at this issue before, but I cannot recall the cases that came up. It kind of harkens back to the time when we had the Sagebrush Rebellion. I am not sure about the constitutional revisions, but I know there have been federal court cases that have talked about the ability of the federal government to keep the land that was given to them upon the creation of the State of Nevada. In a sense, what you are saying is that you are challenging the decisions of these court cases, or are you challenging the *U.S. Constitution* itself?

Assemblyman Goedhart:

I am not challenging the *U.S. Constitution*. I realize everything is open to interpretation. I was part of a lawsuit that took California to the U.S. Supreme Court. All along the way they said they were wrong until we had the supermajority decision of the U.S. Supreme Court. I had the last laugh. I realize people have different interpretations of what is constitutional and what is not, but I believe we, as citizens of the State of Nevada, have the responsibility to say this is our land and our state, and we are not going to go "willy-nilly" and annex all of the federal property within the state boundaries. We will do it for a very narrowly-defined purpose and scope for the greater public good, if you will. It is for renewable energy projects. This follows up on Speaker Buckley's A.J.R. No. 10 of the 75th Session urging the federal government to allow access to certain pieces of property for the greater public good and expanding our economy. Since the bill was passed last session, I have not seen much progress on the side of the federal government to open up these lands for economic development. I believe this will send a message saying we are serious about diversifying our economic opportunities for those who would like to come here and create jobs, invest money, and pay taxes.

Assemblyman Hansen:

I think you just nailed it. We are talking on a fairly limited scope. You are talking about the Equal Footing Doctrine, which was the basis for the Sagebrush Rebellion. At this point, all we are doing with this law is trying to

speed up the process of allowing renewable energy projects to go forward in the state. Everybody who has studied this knows the process they must go through retards the time frame and delays the creation of renewable energy projects. Everyone talks about renewable energy and creating green jobs, yet it is the federal government that is the huge roadblock for allowing this to happen in Nevada. We have 200,000 people who are unemployed. This bill is not so much opening the Sagebrush Rebellion but simply allowing the state to gain access to these lands and speed up the process to create the green energy jobs. Is that what we are looking at?

Assemblyman Goedhart:

You are absolutely right. Coming from Amargosa Valley in Nye County, we have seen firsthand how lengthy the process can be. We want to go ahead and put a loop-line in for Valley Electric. About 11 1/2 years ago, we started the process as a member-owned co-op called the Valley Electric Association. We wanted to get enough right-of-way to be able to put a power pole in up State Route 160 down to U.S. Highway 95, around Indian Springs. That process took over 11 1/2 years. It does not matter how good our tax incentives are. If a developer wants to develop a green energy project on a particular tract of land and sees that it may take 10-13 years to get a right-of-way access to transmit his power out of that area, all of the bills we have in this body will not bring that realization of economic opportunity and jobs.

Assemblyman Hansen:

When most of us were running for office, we talked about creating green energy jobs. In this case, I would think those who are more left on the environmental wing and those of us on the right who are about state's rights should come together on this issue to try to form a consensus to expand and promote green energy in the state.

Chairman Horne:

Are there any other questions? [There were none.]

I would like to remind the Committee that once you have won your seat, you also took an oath to defend and uphold the *U.S. Constitution*. While the procedures in place to obtain federal land may be onerous, we do not breach the *U.S. Constitution*. The ends do not justify the means. That is my opinion.

Do you have other witnesses in support of your bill?

Assemblyman Goedhart:

I might have one or two other brave individuals.

I would also like to say that I have seen eminent domain exercised against the property of private individuals, and I believe what is good for the goose is good for the gander. We the people should have the right to exercise eminent domain against the federal government.

Susan Fisher, representing Valley Electric Association; Clean Energy Rail Center: Valley Electric Association is a rural cooperative based in Amargosa Valley, Nye County. We encompass about 6,500 square miles of service territory.

The Clean Energy Rail Center (CERC) is being built in Lyon County and Churchill County.

We support the spirit of this legislation but not addressing the constitutionality of it. The permitting time is ridiculous, and we would much rather deal with the state rather than the federal government when it comes to permitting many of these projects.

Chairman Horne:

Are there any questions? [There were none.]

Janine Hansen, representing Nevada Committee for Full Statehood:

Nevada is not a full state. Most of our land is controlled by the federal government. We are far above Alaska, where the federal government owns about 64 percent of the land. I think this is some of the most creative and innovative legislation I have seen in a very long time. We heard a wonderful discussion this morning on the issue of eminent domain, and how this legislative body has the power to right a wrong and change the law so it can come to where we are currently in our thinking. This is the same thing that happens with constitutionality. We know the U.S. Supreme Court said in the Dred Scott decision that slavery was legal, and we know those wrongs have been righted. We support those changes. There are many things that have been judged as constitutional or unconstitutional in the past, which over time, experience has shown us need to change. Many people differ on what exactly is constitutional. The U.S. Supreme Court is often split on constitutionality.

What happens when those controversial questions come before the courts is that there is a public discussion, nationally and locally, that opens up a whole generation of new information, new ideas, and new examinations of what the possibilities are. We also know that when our nation was formed, the 13 Colonies gave power to the federal government. Included in the *United States Constitution* was the Tenth Amendment, which reserved to the states, and the people respectively, the ultimate power, which was not specifically delegated in the *Constitution*. We know that control of Nevada's

land was not delegated in the original *Constitution* by the fact that A.B. 186 quotes Article 1, section 8, clause 17 of the *Constitution*, which limits the control of the federal government to..."Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings." In the original *Constitution*, the authority of the federal government is over the land of the original states. The states that came into the Union east of the Mississippi River do not have federal governmental control of their lands because they came in under the equal footing.

There is a constitutional question as to whether the federal government should control Nevada's land. Who better to challenge that for the good of Nevada than the people of Nevada and the Legislature, which represents the people of Nevada? This is a wonderful and creative opportunity for you to right a wrong. We know in counties such as Nye and Lincoln Counties, there is a very small tax base. This is a way for the state to have new revenue. If we have renewable, green energy, they will be paying property taxes and other things to the state, which will not be a new tax but will provide greatly needed revenue, especially in the rural counties.

This legislation could right that wrong and could go back to the original *Constitution* in which states came into the Union on equal footing. This is also a great idea in order to speed up the process of green energy, which would help economically in Nevada. I encourage you to realize the power you have as state legislators and to make a statement and make a stand and go back to the original intent of the *Constitution*, which would be to give you the power to control the property of the State of Nevada. In 2009, when former Speaker Buckley brought forth her A.J.R. No. 10 of the 75th Session, I was very much in favor of that particular legislation and testified in favor of it because we need to assert and reassert our constitutional authority in this area by the State of Nevada. I enthusiastically support this creative and innovative legislation, which would put the Nevada Legislature in the driver's seat with authority over this particular limited green energy to help the people and the government here in Nevada.

Assemblyman Sherwood:

I get exactly what you are saying. Why stop at renewable energy? The land should be the state's, and we did not get the same deal as Alaska. We would have a great tax base. Why not open it up so we do not have to pay more for our property in Clark County when we buy houses, et cetera?

Janine Hansen:

This is the beginning, in my mind, and a very important one. Nothing happens all at once. We have seen that through conceal and carry (CCW) legislation. I first testified back in the 1990s, and it has progressed so much that we are now achieving a point where we have reasserted our right to keep and bear arms. This is similar to that. You must have a starting place where people can come together in agreement from all sides of the table. I would say we need to go further than that, but right now that is not reasonable and not necessarily possible. I agree with you philosophically that Nevada should control the land in Nevada, like all the states east of the Mississippi River do. Many states west of the Mississippi control far more than Nevada. Nevada is the worst state in this matter. California has about 50 percent controlled by the feds. Green energy is a popular idea, and it can bring to focus the devastation that the federally controlled land has brought to our economy and our people. I think it is a very good beginning. We need to start in small steps in order to right the wrong that has been discussed. You do not want to take too big of a step or you will fail. We can begin to reestablish these correct constitutional principles that have been abandoned in the courts and Congress for many years. The battle for liberty, the right for property, and state sovereignty is never over unless we give up.

Assemblywoman Diaz:

I have a concern with Nevada trying to trump the federal government. I do understand that the BLM has much of Nevada's land. In times where money is tight in this state, and we are looking to cut budgets in education and health and human services, if we pass this law, who is going to pick up the bill when we are trying to contest this? I am sure the federal government is not going to stand up and say Nevada can have this land. I am sure they will go to the courts, and we will be tied up in litigation. Who is going to pick up the bill, and how much can this potentially cost us as a state in trying to defend this new law?

Janine Hansen:

First of all, if it is the State of Nevada that takes the land, it goes directly to the U.S. Supreme Court, and that is in the *U.S. Constitution*. There are not many intermediary courts where it goes. Secondly, states like Utah, who are also burdened by this federal stranglehold that is on our land, would be interested in joining the State of Nevada in this. Ultimately, it will be a great opportunity for Nevada to raise additional revenue by private enterprise going into operation, which will more than pay the fees. I do not know how much it will cost, but additional revenue will come to the state and counties through this private enterprise. In the long run, it will be a great boon to our state. I think for us to sit back while this injustice is holding our state is a mistake. We need to go

forward so in the future we will have more revenue for our state and local governments. There will be more opportunity for business and jobs in our local communities.

Assemblywoman Diaz:

I do understand that more land means more opportunity for a state. However, I have also been reading about what Utah has been doing, and they have set aside \$3 million to try to defend this law in court. If they have set up a defense fund for this legislation, we will probably have to do the same. I am sure no transactions would be able to happen on land until it is settled in court. We will have to put up money before we get some land, and I am concerned about that.

Chairman Horne:

It seems to me that if Utah has a defense fund and is already gearing up for battle at the U.S. Supreme Court, we would not have to do anything. Once the Supreme Court made a ruling on it, and let us say they ruled that Utah was right, that ruling would apply to the entire country. We would not have to go to court or pass a bill, which I believe is unconstitutional.

Janine Hansen:

Anytime an individual state is trying to challenge the federal government, it is helpful in that contest if there are other states involved. The more states involved, the more likely it is to succeed. If we believe in this, we ought to be willing to participate with Utah. Also, I think there are a lot of private enterprises, individuals, foundations, and grants that would be willing to help fund some kind of challenge. They will see this would benefit business as well as the people in the communities. I think there is more than one way to fund a challenge to the federal government. I think it would be beneficial to join the challenge that Utah has begun. I recommend we do that because it would make it far more likely to succeed.

Assemblyman Daly:

It seems to me that when we became a state, allowing some of our land to be owned by the federal government was part of the deal we made with them. There were very few people living in the state, and we were under 50,000 people for a large part of the last century.

If you are on the other side of the process, as the Chairman pointed out, we have a process to petition the government in order to get the land, and it may be onerous. I believe all of those safeguards were put in to protect the public and for conservation, among other reasons.

I do not believe you will get a better deal from the state. Working with the BLM is usually easier than some of the other processes.

Janine Hansen:

It is always better if you do it within the state because the federal government is very inaccessible. In addition, it was an unfair deal that Nevada had to accept in order to come into the Union. It does not mean it is not right or time to correct that unfair and unjust deal, which has placed Nevada in a tenuous situation in terms of our finances, and that should be changed.

John Wagner, State Chairman, Independent American Party:

We favor this legislation. We believe in Nevada for the Nevadans. I do not see a problem until such time that we actually try to take from the federal government with eminent domain. Passing this bill may not make any difference until that time.

Chairman Horne:

Is there anyone else wishing to testify in favor? [There were none.]

Is there anyone in opposition to A.B. 186?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

We are not in opposition to the spirit of the supporter of this piece of legislation. We certainly understand the frustration in dealing with the federal government and the bureaucratic nature of things. As a government watchdog, we deal with that all the time. We do, however, want to note A.B. 186, in seeking to exercise the right of eminent domain under Chapter 37 of the *Nevada Revised Statutes* (NRS), would likely be found unconstitutional. To that, I reference the 1917 Supreme Court case of *Utah Power and Light Co. v. United States*, 243 U.S. 389 (1917).

[Read from the case ([Exhibit H](#)).]

In plain English, what that means is the court rejected the idea that land residing within the borders of one state should be subject to the laws of that state when the federal government has not already exercised its power to do something with that land. The court referred to a section of the *U.S. Constitution* in saying that it is up to Congress to make the argument or rules relating to the use of that land. They rejected the idea that Utah had the ability to say otherwise.

I did not know about the current piece of legislation that is going to be defended by the State of Utah in the future. I certainly think it will be worth watching as this 1917 U.S. Supreme Court case did originate in Utah. We have certainly seen the U.S. Supreme Court reserve the right to reverse its own decisions, but that would be purely speculation.

I would also note arguments like these are very difficult for Nevada to make. When you reference or review the *Nevada Constitution* you can see why. I stated similar remarks on the record regarding Senate Joint Resolution 6, which dealt with the Tenth Amendment in our interpretation of how it reflects improperly on the *U.S. Constitution* with regards to the supremacy clause. The main thrust of the impropriety of S.J.R. 6 comes from the *Nevada Constitution* itself. Section 2 makes it clear the constitutionality of any federal statute is to be determined not by the Nevada State Legislature but by the U.S. Supreme Court. The important clause in that section states, "But the Paramount Allegiance of every citizen is due to the Federal Government in the exercise of its Constitutional powers as the same have been or may be defined by the Supreme Court of the United States." That section goes on to state no power exists in this state, with regard to responding to federal laws, other than that which is decided by the U.S. Supreme Court. Unfortunately, Nevada is not the best state to make these types of constitutional arguments. That does not mean the Supreme Court will not reverse its decision due to any future challenge, but we do not believe Nevada would be a good participant in that challenge.

Given this kind of situation, it may be prudent for the state and Legislature, if they feel it is deemed worthy in regards to this permitting process, to pass some sort of resolution directly related to the permitting process itself that has been set up by the federal government. You can urge Congress to relook at that, and it is under the purview of your powers and would not likely bring up any constitutional challenge.

Chairman Horne:

Are there any questions? [There were none.]

Kyle Davis, Political and Policy Director, Nevada Conservation League and Education Fund:

We are opposed to the bill. I certainly understand the goal and have talked with the bill sponsor about this piece of legislation. We share the goals of wanting to see more renewable energy projects developed in our state, and that is why the environmental community has taken the proactive step of working with developers and agencies to try and speed along this process and get things resolved from the beginning rather than unnecessarily clogging things up with

court actions. We are trying to work within the current system to speed these projects along in order to deal with issues on the front end rather than the back end. I think we are making significant progress there and have a couple success stories we can point to.

Looking at this bill specifically, if it were to be processed and made law and land were to be taken under this through eminent domain, it would basically be taking the land from the federal government. That land would not go through normal federal and environmental reviews under the National Environmental Policy Act. It would not go through an environmental impact statement or environmental assessment. As many of you are aware, we are facing some significant issues in this state when it comes to endangered or threatened species and issues dealing with species such as the sage grouse or desert tortoise. Many of the times, going through an environmental impact statement or environmental assessment will provide avenues to where we can try to address issues of habitat for these species so we do not see them being listed. If we see species being listed under the Endangered Species Act, that is a significant development, and it has a real impact on the development of the use of our public lands, especially when it comes to renewable energy development. That is why we are working hard right now to make sure we are conserving habitat and trying to work on keeping the sage grouse from being listed. There would be an impact to where it would slow down renewable energy development.

If this land is taken under the provisions of this bill, it does not go through these environmental review processes, and we cannot be sure we are adequately protecting habitat or putting these transmission projects in the right areas that will have the least environmental impact. It goes against what we are trying to do, which is work at things from the front end rather than the back end.

In addition, there is a cost issue. Management of federal lands does cost money. Right now, that cost is primarily borne by the federal government. If we take these and manage them as state lands, there is a cost that comes along with that in terms of managing those lands. There are also problems that come along with checkerboard land between federal and state lands and areas, and it does happen and causes some problems. It seems easier to work through the process that already exists and to work to improve that process rather than to create these new problems. I think Assemblywoman Diaz brought up some very significant points when it comes to the cost, especially when it comes to litigation. We have seen that in our state in the past. In these budget times, we would not want to visit those issues.

For all of those reasons, we are opposed to the bill. We understand the goal, but I do not think this is the way to get at the solution.

Chairman Horne:

Are there any questions? [There were none.]

Is there anyone neutral on A.B. 186? [There were none.] I will close the hearing on A.B. 186.

We will open the hearing on Assembly Bill 194.

One moment, we will close the hearing on A.B. 194 and reopen the hearing on A.B. 186.

If I could get an opinion from our Legal counsel outlining the constitutionality of A.B. 186 for the Committee.

We will close the hearing on A.B. 186 and reopen A.B. 194.

Assembly Bill 194: Revises provisions relating to court interpreters for persons with a communications disability. (BDR 4-85)

Assemblyman James Ohrenschall, Clark County Assembly District No. 12:

I would like to thank our sign language interpreter, Katherine Edwards, who has been here all morning. We appreciate her help.

About a year ago, I was contacted by former Speaker Barbara Buckley about the issue of the hearing impaired in our courts and their ability to have interpreters. Speaker Buckley put me in touch with some people in Washington, D.C., at the Civil Rights Division of the U.S. Department of Justice. That is where the origin of this bill comes from. Assembly Bill 194 is about justice, equal access to the courts, and fundamental fairness. The Americans with Disabilities Act was passed by Congress and signed by the President into law in 1990. Since then, we, as Americans, have made great strides towards assuring all citizens have fair and equal opportunities to live their lives and pursue the opportunities available to all American citizens. This bill brings the *Nevada Revised Statutes* (NRS) into conformity with the Americans with Disabilities Act.

I have some witnesses here who have been very patient, and I think they would like to come forward and testify.

Assemblywoman Diaz:

Were these people with hearing disabilities being charged with fees or were they not adequately being serviced? Is this why we are pushing forward with this legislation? I just want a little more background.

Assemblyman Ohrenschall:

It varied by the courts here in Nevada. Once the Americans with Disabilities Act passed in 1990 and federal regulations were promulgated, NRS 50.050 was in conflict with the regulations promulgated pursuant to the Americans with Disabilities Act. Most of the courts in the state did not charge a hearing-impaired litigant; however, a few did. I believe there was one in Yerington that came to the attention of the Department of Justice. We just wanted to clarify the law to make sure no court in the state would incorrectly interpret the law and attempt to charge someone for the services of a sign language interpreter.

Betty Hammond, Social Services Program Specialist 2, Aging and Disability Services Division, Department of Health and Human Services:

In addition to being a certified American Sign Language interpreter, I am responsible for managing the state's web-based interpreter registry and the regulations which govern the practice of interpreting in the state.

[Continued to read from prepared testimony ([Exhibit I](#)).]

Gary W. Olsen, Consultant, Leadership Education Advocacy Designs:

I am a deaf Nevadan engaged in advocacy efforts for the citizens of all ages who are deaf and hard of hearing in all walks of life. I have been involved with the Legislature in different areas.

[Continued to read from prepared testimony ([Exhibit J](#)).]

I noticed in A.B. 194 there is still a lot of ambiguity left in the bill. I do applaud your efforts and the steps you have made for advancement.

[Continued to read from prepared testimony.]

Speaking of the use of certified interpreters, we should have qualified interpreters for a variety of settings, but it is very difficult for us to retain them in this state; for example, the interpreters needed for courts and the specific skills required. There are interpreters for other state entities such as the Department of Health and Human Services (DHHS). The fund of money is very limited to provide interpreters with a decent pay, as well as for them to be able to work for other agencies. We believe this will help change the situation.

[Continued to read from prepared testimony.]

Assemblywoman Diaz:

I appreciate Mr. Olsen coming today and having a role in the legislative process representing those who are hearing-impaired. I think that is very important. He did state he thought there was still ambiguity in this bill. I wanted to know if he had any recommendations to further clarify any language of this bill.

Gary Olsen:

I do have some, and I am willing to put them in writing. It says "registered legal interpreters" and "person who is deaf and hard of hearing." Those things need to be clarified according to what we already have on record. Oftentimes, the courts here have the authority to make decisions regardless of what exists in the state statutes. Under Ms. Hammond's department, we have regulations. Why do they not follow them to the letter? They do not. Each jurisdiction seems to have their prerogative of making decisions, and we need to be consistent throughout. We cannot help, especially because we are an agricultural state and have rural areas. For example, in Battle Mountain, it might be hard to get an interpreter. What the judge or magistrate might do is bring in someone who can sign a little and use them in the process. To us, that is a big no-no. You really have to understand the deaf person's background and educational level to be able to communicate. There is a failure of the state to provide quality education so the children who do not finish school here in Nevada need to have decent employment rather than being on welfare. The kind of attitude of bringing in anyone who can sign instead of an interpreter has an impact on the person. It keeps them down and oppressed. It keeps them out of the regular stream of life. There are other things, but I can write them up and send them to you.

Assemblywoman Diaz:

And to my colleague Assemblyman Ohrenschall.

Gary Olsen:

Yes, of course. I can send it to all of you. I do applaud you for making this step as a government entity. Others have not done that, but something does need to be done, especially in health and human services and in education for the deaf.

Assemblyman Hansen:

Assemblyman Ohrenschall, all I see is a \$11,000 fiscal note on this, which is pretty minimal. Is that accurate?

Assemblyman Ohrenschall:

As I was going over the fiscal notes, it seemed most of the courts that put them on are already providing the service to the hearing impaired. I do not have those figures in front of me, but I believe you are right about the \$11,000.

Assemblyman Hansen:

That is the only one I saw in the bill, so I assume it is accurate.

Assemblyman Ohrenschall:

Up till now, this was a very narrowly-focused bill that came from my conversations with the people at the Civil Rights Division. I was not aware there were any other problems in statute affecting the hearing-impaired. I am happy to work with Mr. Olsen and any other parties.

Chairman Horne:

Does anyone else wish to testify in favor of A.B. 194?

Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada:

We wholeheartedly support this bill and see it as a necessary first step to ensure equal protection. I do note this particular bill does refer directly to the Civil Division of the courts, but we think full and equal access to the courts is an important component, and one particular group in this state should not be continually left behind.

Chairman Horne:

Are there any questions? [There were none.]

Is there anyone in opposition to A.B. 194? [There were none.] Is there anyone in the neutral position?

Linda Bell, District Judge, Eighth Judicial District Court:

We are neutral on the bill; however, we do want to note the fiscal impact. We already comply with what is being suggested. We ensure anyone who comes to our court who is hearing-impaired has access to participate in court proceedings. In the last two years, we have spent approximately \$50,000 a year to ensure that access. We anticipate that would be the continued cost. However, we could never anticipate, say, if we had an extremely lengthy case. There could certainly be a more significant expense to the court.

Assemblywoman Diaz:

Mr. Olsen made a terrific point about the quality of the interpreters. Are we providing just someone who can sign, or are we making sure these are highly qualified interpreters?

Linda Bell:

Since we live in a large urban area, we are very fortunate in Clark County to have access to very good interpreters. My experience with them is that they are all very qualified and do a great job. I think his point is well taken that in some of the rural areas it is difficult to even get a Spanish language interpreter, let alone a sign language interpreter.

Chairman Horne:

Are there any other questions?

Gary Olsen:

I have a neutral comment if I may. There is another issue for the courts to take into consideration; for example, if a judge makes a decision on a drug abuser who has to go through drug court or some sort of treatment. Who is going to foot the bill for the interpreter at the treatment center and places like that? Here we know for a fact that many of the agencies will not provide interpreters for treatment facilities. How can I get treatment as a deaf person if I cannot communicate? Maybe I am from the streets and cannot afford it. Many of the deaf people have substandard living situations. How would that be covered? That is a question for you to think about.

Chairman Horne:

Is there anyone else in the neutral position? [There were none.] We will close the hearing on A.B. 194.

We will open the hearing on Senate Bill 5.

Senate Bill 5: Revises provisions governing the selection and summoning of grand jurors in certain counties. (BDR 1-319)

Ben Graham, representing Supreme Court of Nevada:

This is a piece of legislation that was sponsored through the court with this Committee's assistance as well. This is about a procedure that is kind of interesting. A day or two ago, we heard about a provision where the Carson City Sheriff was to provide security for the Supreme Court for \$50 a month. Obviously, that has not been done for many years. If you take a look at the procedure here, there were some methods in which the sheriff was to

assist in the grand jury process, and I hesitate to say that has not been done for a long time as well.

From time to time, you will see legislation coming in to do something additional but also correct some archaic provisions that have not been followed for a while. We talked about a grand jury a month ago or so in regard to that process. It is currently being utilized in Washoe and Clark Counties. The provision Judge Linda Bell is going to ask you about today is strictly a procedural situation, and whether there are issues with a grand jury that may come up at a later time.

We certainly appreciate the Chairman scheduling this a little bit ahead of schedule. If this can proceed, it can be utilized in the near future and save time and money for the courts and the State of Nevada as well. Judge Bell is an elected official from the Eighth Judicial District. She has a very wide background in criminal justice.

Linda Bell, District Judge, Eighth Judicial District Court:

I am a district court judge with the Civil Criminal Division. I am also the judge tasked with the responsibility of overseeing the grand jury in Clark County. We have two grand juries at any given time, and we pick a new grand jury every six months. This bill is really important to me because we have had tremendous difficulty going through the process of picking a grand jury. We start out picking a grand jury by sending out 6,000 letters. It is just like we would for people we ask to serve on a regular trial jury. The only difference is the letter they receive tells them it is voluntary and they need not send a response back unless they are able to devote one day a year to serve on the grand jury. It takes us 6,000 to get 100 people who are willing and able to serve on the grand jury. The judges then select 50 of those people, and we send summons to those people. The way the statute is currently worded, we need 48 people to show up before we can go forward with the selection. If we do not have enough people show up, we cannot go forward.

Because our community is pretty transient, by the time we get through that whole process and on those people, it is fairly frequent that we have a number of people who cannot appear on the day we are picking the grand jury. There are people we can no longer find and people who just do not show up. The last time we picked a grand jury, it took three tries to actually get the grand jury selected. I estimate it costs us roughly \$2,000 for every try we must go through if you figure out staff time and parking for those who come down. It is a tremendous inconvenience to the citizens who are volunteering to be on the grand jury to keep coming back until we get enough people to pick from. What this bill intends to do is do away with the quorum requirement and allow

us to go forward with the grand jury selection as long as we have enough people show up to select the grand jurors. It also gives us a little more flexibility for the judges to pick more than 50 people so we have a little more cushion as well to avoid the time and expense of having to do the selection process more than once.

We also have had a situation where we have run out of alternates over the course of a year. Twelve sounds like an awful lot, but with our current economic situation, people get jobs or life events happen where they are unable to serve. When we go back to our list to find alternates, we have found they have obtained employment, we are no longer able to locate them, or they have had some sort of life circumstance that does not allow them to serve at that point. We want to add a couple of alternates so we do not run into the situation where we run out of alternates and have to reconvene an entirely new grand jury because we do not have enough people to serve.

Chairman Horne:

Are there any questions?

Assemblyman Hammond:

Judge Bell, you mentioned there was an aspect regarding quorum.

Linda Bell:

I do not have that language right in front of me. If you look at page 2, line 26, "If for any reason 8 or more proposed grand jurors fail to appear." That is the way it is worded right now. What that means is we must have 43 people show up on the day we are picking the grand jury to go forward with the selection process.

Assemblyman Hammond:

You are proposing to change it to what?

Linda Bell:

An insufficient number. We must be able to pick 17 grand jurors, and either 12 or 14 alternates. With 14 alternates, we would have to have 31 people show up who are willing to serve. The number is a little tricky because we could have 31 people show up, but some of those people may not be able to serve at that point. We have people come in and say they just received a job or are ill. We have those problems as well. At the end of the day, we need to have 31 people in the court who are able to serve. We just want to eliminate that if we have a sufficient number of people to go forward with the process and pick the grand jury, then we would be able to do that. It would avoid the consistent problems we have had. This last time was the worst, but we have

had other times when we have had difficulties. Most of the time we have exactly 43 people show up.

Assemblyman Hammond:

Thank you for the clarification. That might be the only one I may have a problem with. I always like a number, but I understand the rest of the components of the bill.

Assemblywoman Diaz:

What is stated in this bill is current practice in the courts when selecting a grand jury? I see a lot of language referring to the sheriff and whatnot. Are all counties selecting grand juries in this way?

Linda Bell:

This only impacts Clark and Washoe Counties. Washoe County has no opposition to any of the changes I have proposed. I do not think they have the same problems, but it would not impact them in any significant way.

As far back as I can tell, we have not had the sheriff serve the summons. It would be impractical because of the timelines we are under. As soon as we pick a grand jury, we start working towards picking the next one because of the timelines of sending things out. I do not know when the sheriff stopped doing it. I did a little research, and I could not find anybody who could say they remembered the sheriff had done it. The court has taken care of that responsibility for quite a while, so we wanted to amend the statute with respect to that. I do not think that impacts anything with respect to the process or the grand jury function itself.

Assemblywoman Diaz:

The courts have been summoning the grand juries in this manner, but you are just bringing the statute up to date with what you are doing.

Linda Bell:

Correct.

Chairman Horne:

Are there any other questions? [There were none.]

Is there anyone else here wanting to testify in favor of this bill? [There were none.] Is there anyone in opposition of S.B. 5? [There were none.] Is there anyone in the neutral position? [There were none.]

[All exhibits on NELIS are entered into the record ([Exhibit K](#)).]

We will close the hearing on S.B. 5. I will entertain a motion.

ASSEMBLYMAN OHRENSCHALL MOVED TO DO PASS
SENATE BILL 5.

ASSEMBLYMAN SEGERBLOM SECONDED THE MOTION.

Assemblyman Frierson:

I think this grand jury legislation was drafted originally to be broad, and I think when this started, this was an extremely broad method that was more than sufficient. Because of Nevada's growth, this will provide some flexibility to accommodate that. This is in the spirit of the original broad language to be consistent with modern time.

Assemblyman Hammond:

I asked earlier about the number of people, and she used the word "quorum." I was a little thrown off. I hesitate a little bit, but I understand the intent of it is to make the process streamlined. I wanted to make sure I put down on the record that I was hesitant about total support right now.

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Chairman Horne:

Is there any more discussion? [There was none.]

THE MOTION PASSED. (ASSEMBLYMEN BROOKS AND
SHERWOOD WERE ABSENT FOR THE VOTE.)

The meeting is adjourned [at 10:29 a.m.].

RESPECTFULLY SUBMITTED:

Julie Kellen
Committee Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 16, 2011

Time of Meeting: 8:10 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance roster
A.B. 180	C	Senator Sheila Leslie	Letter in Support of A.B. 180
A.B. 180	D	Guy Rocha	Written Testimony
A.B. 180	E	Gayle Sherman	Written Testimony
A.B. 180	F	Larry Wahrenbrock	Written Testimony
A.B. 186	G	Assemblyman Ed Goedhart	Reasserting State Sovereignty in Public Lands Management
A.B. 186	H	Allen Lichtenstein	Letter in Opposition to A.B. 186
A.B. 194	I	Betty Hammond	Written Testimony
A.B. 194	J	Gary W. Olsen	Written Testimony
S.B. 5	K	Linda Bell	S.B. 5: Grand Jury Empanelment