MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
May 2, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 9:07 a.m. on Monday, May 2, 2011, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

GUEST LEGISLATORS PRESENT:

Senator Elizabeth Halseth, Clark County Senatorial District No. 9
Assemblyman Scott Hammond, Assembly District No. 13
Assemblyman James Ohrenschall, Assembly District No. 12

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Policy Analyst
Bradley A. Wilkinson, Counsel
Kathleen Swain, Committee Secretary

OTHERS PRESENT:

Kermitt Waters
Leo Dupre, Independence Realty
Juliana Smith

Alex Ortiz, Administrative Services Manager, Department of Family Services, Clark County
Michael G. Chapman, Clark County
Randall H. Walker, Aviation Director, Clark County Department of Aviation, McCarran International Airport
David N. Bowers, P.E., P.T.O.E., City Engineer, Department of Public Works, City of Las Vegas
John Madole, Executive Director, Nevada Chapter, The Associated General Contractors of America, Inc.; Nevada Highway Users Coalition
Lee Thomson, Chief Deputy District Attorney, Clark County Department of Aviation
Fred Ohene, Assistant General Manager, Regional Transportation Commission of Southern Nevada
Dan Musgrove, City of North Las Vegas
Ruth Borrelli, Nevada Department of Transportation
Randy Robison, City of Mesquite
Lisa Foster, Nevada League of Cities and Municipalities
Laura Fitzsimmons
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Rebecca Gasca, Legislative and Policy Director, American Civil Liberties Union of Nevada

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 346.

ASSEMBLY BILL 346 (1st Reprint): Provides a cause of action against public agencies which delay certain actions after adopting a resolution of intent to exercise eminent domain. (BDR 3-531)

ASSEMBLYMAN JAMES OHRENSCHALL (Assembly District No. 12):
Assembly Bill 346 deals with eminent domain. Sometimes, the government needs to use eminent domain for a public purpose. Private landowners should be justly compensated for the value of their property.

A situation came to my attention where a public agency passes a resolution evidencing an intent to take someone's private property in the future. However, the public agency does not begin the eminent domain process right then. This clouds a landowner's property because once an agency announces its intent,

most people are not interested in buying or investing in that property. The value of the property suffers. A public agency may wait 5, 10, 15 or 20 years to actually begin the eminent domain process. By then, the owner has lost a lot of value with that property and been substantially harmed. That is why I introduced A.B. 346.

Assembly Bill 346 is based on a California statute that has been on the books since the 1970s. It is meant to give private property owners more protection. In effect, it tells the public agency that if it plans to take property, go ahead and do it because the agency will not hold landowners in limbo and leave them twisting in the wind.

CHAIR WIENER:
Section 1, subsection 1, paragraph (b) of the bill says, "Recover damages from the public agency for any interference with the possession and use of the property resulting from the adoption of the resolution of necessity." How broadly would the word "any" be applied?

ASSEMBLYMAN OHRENSCHALL:
It would depend on the judge and jury. Most juries would make a reasonable decision. California has case law because its statute has been in effect since the 1970s. As far as I know, there has been no abuse of California's statute.

CHAIR WIENER:
Was the original measure modeled after California? What change was made to your bill?

ASSEMBLYMAN OHRENSCHALL:
The original version of A.B. 346 provided a public agency would have six months to act after it passed a resolution of need and necessity announcing it would take someone's land for public use. That was based on the California statute. I worked with Kermitt Waters and Laura Fitzsimmons on this bill. I proposed changing it to one year in an effort to alleviate concerns that six months might not be enough time. Much time, effort and study go into this process before a public agency arrives at the point of passing a resolution of necessity. Under this version of the bill, the public agency would have one year to begin the process. The landowner would not have a cause of action until the one year expires.

SENATOR ROBERSON:
I am concerned about the change to 12 months. Why does the public agency need 12 months to take that land?

ASSEMBLYMAN OHRENSCHALL:
The public agency would be required to begin the eminent domain process within the 12 months under this bill. Concerns were expressed that six months would not be enough time. This version of the bill was a compromise.

SENATOR ROBERSON:
To clarify, it would be 12 months simply to begin the eminent domain process?

ASSEMBLYMAN OHRENSCHALL:
Under this amended version of A.B. 346, a public agency would have 12 months after it passes the resolution of necessity to begin the process.

SENATOR ROBERSON:
That makes no sense to me. I support your original bill.

CHAIR WIENER:
The art of compromise brings all sides together. This was something you resolved with the parties?

ASSEMBLYMAN OHRENSCHALL:
It was an effort to resolve all concerns. In the end, the parties who were opposed to the bill will not support this bill because they still have concerns. However, this is a reasonable measure. It is only reasonable to allow private property owners some protection and not be put in limbo.

CHAIR WIENER:
Do our more recent eminent domain laws not work regarding this concern? In your research, did you find problems with the law?

ASSEMBLYMAN OHRENSCHALL:
I found examples of public agencies passing resolutions of necessity and leaving private property owners twisting in the wind. An article three or four weeks ago in the *Las Vegas Review-Journal* told of the owner of a print shop in Las Vegas and the planned expansion of Interstate 15. The owner of the print shop in the area of this expansion does not know when her property will be taken.

Consequently, no one is interested in investing in her property for improvements or purchasing her property.

KERMITT WATERS:
I am an attorney practicing in eminent domain. If I have a resolution of need and necessity in my office, I can file an eminent domain complaint in two hours. I do not need six months or a year. Cities do this; the State does not. Once the Nevada Department of Transportation files a resolution of need and necessity, it always files the suit within approximately 30 days.

For example, a person in the military owns a house and has a mortgage. If that person is transferred out of Nevada, he or she would want to sell that house. In preparing to sell, the person may discover the City has a resolution of need and necessity on his or her property. That person would be unable to sell the property because of the resolution of need and necessity. If a person owns commercial property and wants to borrow money for improvements, banks will not loan money because of the resolution of need and necessity.

The public agency has a lowball appraisal in most cases. If you own a home, the public agency wants to offer you half what it is worth. You would not want to accept that offer. You cannot sell it and cannot live in it because you have already moved. You just twist in the wind until you finally accept the public agency's low offer. This applies to commercial and residential property. The agency knows it can intimidate you into taking the low appraisal by hanging the resolution of need and necessity over your head. They do not need six months or a year. The appraisals, planning and studies are done before the public agency needs to do the resolution of need and necessity.

A resolution of need and necessity is similar to a cloud on the title. It is similar to someone filing a lien on your property where you cannot sell your property until the lien is removed. Many times, property owners do not know about the resolution of need and necessity unless they are always acutely aware of what is going on in the local public entities. California passed its statute 30 years ago to stop abuse similar to the abuse in Clark County. California has not had a problem with its statute.

I oppose all the amendments. Some of them sound good but result in unintended consequences. A lobbyist tried to convince me to remove the words "eminent domain." If "eminent domain" is removed and you sell your house,

there are tax consequences. If that involves commercial property, you would have income tax consequences. For example, if you involuntarily sell to the government, you have a certain number of days to reinvest the money. If not, the money is straight income.

I object to any of the amendments offered. The original bill was done correctly. It was patterned after California. One year is too much time.

SENATOR BREEDEN:
Can a homeowner get an appraisal?

MR. WATERS:
Yes.

SENATOR BREEDEN:
You mentioned the entity taking the property has a lowball appraisal.

MR. WATERS:
The homeowner can get an appraisal. Typically, the entity will not pay any attention to it.

SENATOR BREEDEN:
The homeowner or commercial owner is stuck?

MR. WATERS:
The owner is just twisting in the wind. Eminent domain is a different world. It is not like a normal appraisal. You make assumptions. For example, you cannot have a true fair market value of property that is going to be taken. Nobody will buy your property. At trial, the property is hypothetically valued assuming the project is not coming and there is no intention to take the property. The assumptions made for eminent domain appraisals are completely different from a normal appraisal.

SENATOR BREEDEN:
Do I understand correctly that homeowners have no idea their property will be taken until it is already done?

MR. WATERS:
Unless the homeowner sits through all the hearings or daily watches the list of items being addressed, he or she would not know it has happened until he or she is ready to sell. It is not put in your title or recorded in the chain of title.

SENATOR BREEDEN:
There is no notice?

MR. WATERS:
No. It would not even show up on a title report.

SENATOR BREEDEN:
What are your recommendations to fix this?

MR. WATERS:
The original bill would fix it. It would be helpful to reduce the time, but it is a start.

SENATOR GUSTAVSON:
Would you prefer 180 days?

MR. WATERS:
Yes. Once you have the resolution of need and necessity on a title report, all you have to do is file it.

SENATOR GUSTAVSON:
I can see where you are going.

SENATOR ROBERSON:
Once the government is finished testifying, I would like to hear from Mr. Waters again.

CHAIR WIENER:
We will see how it moves forward.

LEO DUPRE (Independence Realty):
I support Mr. Waters. I would like to clarify certain professional responsibilities brokers face in transactions involving property tainted by these resolutions of intent. In response to Senator Breeden's question, a certified letter with notice

of the public hearing goes out. However, unless you follow every public hearing, you have no way of knowing that resolution of intent has been passed, amended or modified. If you are an absentee landowner, for example, you might not get proper notice even though it has been legally posted.

When the property owners, particularly commercial owners, market their property, the real estate broker has a duty to disclose all material facts affecting the property. The broker may or may not know about the resolution of intent, particularly if it was done a year in the past.

This bill brings clarity to an otherwise open-ended event. For commercial property owners, it is a double-edged sword because most commercial financing has a five- to seven-year call. If a property owner is trying to refinance and the property is tainted with a resolution of intent, he or she will not get financing rolled back over on the bank. It is hard enough to get any financing.

The arguments about the good of taking property are fine, but property owners should have some protection so they have clarity and timelines they can live with. The same is true for potential property owners. A business may lose part of its parking because of street widening, which will affect what the owner can and cannot use on the property. If you are homeowner, it is unknown. There are proposed projects in both northern and southern Nevada where we do not know what will happen in the future. When these plans are proposed, we would appreciate clarity and defined timelines on behalf of the property owners and the brokerage.

The argument regarding whether it is six months or a year is the art of compromise.

SENATOR BREEDEN:
You mentioned the property owner will receive a notice. Does that notice specifically indicate which property the hearing is about, or is it broad?

MR. DUPRE:
It is specific and typically identified by parcel number. Most people do not know their parcel numbers.

SENATOR BREEDEN:
It does not list the address?

MR. DUPRE:
Sometimes the address is listed.

JULIANA SMITH:
I own Time Printing in Las Vegas. I support A.B. 346. In December 1982, my husband opened Time Printing. We worked hard to grow Time Printing into a successful company.

My building has been slated for eminent domain for quite some time. A business must be able to expand its services to compete. I cannot do that because of eminent domain. A business must be able to provide services their customers ask for. I cannot. A business must keep up with changing technology to stay competitive with other providers. I cannot. I cannot use the building I own as I see fit. For many years, we have needed a larger facility. We have been stopped by impending eminent domain. I have tried to sell or lease my building so I can move my company into a larger facility. As soon as it is disclosed my building is in eminent domain, people are no longer interested. It is infuriating to own a building I cannot use.

In 2006, I contemplated selling my business. I was unsuccessful because of the necessity to disclose the eminent domain issue. People do not want to invest in a business and building and have to move later, nor do they want to invest in a building with no room for expansion.

In the last few years, I have lost long-time customers to competitors who were free to move and expand to add services my company cannot offer because of the lack of space. If I am ever able to move to a new location, I will have to spend significant time and money to regain the customer base I have lost through no fault of my own.

I did not create this situation; the government did. We have heard discussion about bringing new business into Nevada. Maybe we should pay more attention to the businesses we already have. Other businesses on my street are in the same situation and have been for years.

At some point, it becomes too much to overcome to stay in business. If it were not for my employees, children and grandson, that time would have already come.

SENATOR BREEDEN:
How long has your property been tied up?

MS. SMITH:
Since 1995.

CHAIR WIENER:
You mentioned 1999 in your testimony. What was that reference?

MS. SMITH:
In 1999, we were going to try to move to a larger building.

ALEX ORTIZ (Administrative Services Manager, Department of Family Services, Clark County):
We oppose this bill and the amendments. We proposed amendments in the Assembly Committee on Judiciary, which were not considered. This bill is modeled after the California Code of Civil Procedure that has been in place for approximately 30 years. The California Code of Civil Procedure states that within six months after the date of the adoption of a resolution by a public entity, eminent domain proceedings must proceed. That has been amended to 365 days, which does help Clark County. We would be fine with six months.

In addition, the California Code of Civil Procedure states within one year and six months after the date the public entity has adopted the resolution of necessity. Section 1, subsection 2 of the bill says, "... any such action must be commenced within 15 years after the date on which the public agency adopted the resolution of necessity." If you are trying to mirror the language from the California Code of Civil Procedure, one year and six months is more adequate for our needs.

MICHAEL G. CHAPMAN (Clark County):
I have represented landowners and government agencies in eminent domain cases since 1984. Do landowners get notice before the government agency passes a resolution condemning their property? Yes. The Legislature dealt with that a number of years ago and enacted *Nevada Revised Statute* (NRS) 241.034, which is part of the Nevada Open Meeting Law. Before property is considered for a taking in eminent domain by the State, county, city or any other body, the owner must receive written notice that includes his or her name, the address of the property and the assessor's parcel number. It must

be hand delivered to the person who pays the taxes on the property or mailed by certified mail with a return receipt requested. Any action to condemn someone's property without that notice is void.

Mrs. Smith stated that eminent domain has been hanging over her property since 1995. That might lead us to believe the resolution of necessity was passed in 1995 and that the Attorney General was directed in 1995 to file a condemnation suit against the property and pay the owner just compensation. For whatever reason, the Attorney General has done nothing for 16 years. That is not correct. The Environmental Impact Statement on Project Neon was not approved by the Federal Highway Administration until late last fall. As far as I know, a condemnation resolution as discussed in this bill triggering the 180-day period has not yet occurred.

The main problem with the bill is that it will result in unintended consequences. The bill, as drafted, is taken from one section of a comprehensive scheme of California law. The bill was adopted from California Code of Civil Procedure Section 1245.260 and adds Nevada terminology rather than California terminology. The bill leaves out the definition of resolution of necessity, which is contained in California Code of Civil Procedure Section 1245.230.

Clark County's amendment adds that definition (Exhibit C) and clarifies that the resolution of necessity is the final act in the planning process. It is the action where the governing body sends a written notice per NRS 241.034. There is then a public hearing where the agency decides to condemn the property and directs a lawyer to file the lawsuit. This is important because eminent domain power in Nevada belongs to the Legislature and any body this Legislature delegates that authority to. This Legislature has delegated the authority of eminent domain mainly to state agencies—for example, the Department of Transportation—the counties and the cities. A lawyer cannot condemn property until a governing body, exercising eminent domain, has passed the resolution and directed the filing in court.

Regarding unintended consequences, the resolution of necessity spoken of in the California Code of Civil Procedure is the seventh item in the planning process prior to condemnation (Exhibit D), page 2. Other state and federal law mandates master planning and regional planning—including the National Environmental Policy Act (NEPA) at the federal level and NRS 278 at the state level. Planning is the public policy of the State.

In some lawsuits, landowners argue that the announcement of the intent to condemn is actually the public hearing mandated by law rather than the resolution of necessity. As a practical matter, you cannot do a public project without a public hearing and notice to the public.

When a road project gets going, for example, the environmental impact process requires that several alternatives be discussed and considered by the planners and public at the public hearings. It has been argued that though the official announcement of intent to condemn was the right-of-way setting, the county commission would choose Alternative A over other alternatives for the route of a particular project. It has also been argued that hiring an appraiser to appraise the property for negotiation with the property owner is the actual condemnation resolution because the county commission selects the appraiser. If that was the case—180 days from each one of these actions, you would be forced to go to court before the governing body has enacted a resolution authorizing the lawyer to go to court, which would be illegal.

This is a process because of the national policy under NEPA and the state laws requiring reasonable planning for public projects and public input into those items. It creates a problem to cut short the planning process because you had a public hearing or decided which route amongst various alternative routes you were going to do.

The County's amendment suggests incorporating the definition of resolution of necessity directly from the California law. We propose a new subsection 7, Exhibit C, page 3, which would clarify that the 180 days or 360 days would be the resolution of necessity because a lawyer cannot go to court within 180 days after a public hearing, a right-of-way setting or an appraiser has been hired for negotiation. A period of negotiation is necessary because people do not like it if their property is condemned without a chance to read the appraisal or speak with the government agency and representatives about it and perhaps settle the case. Ninety percent of these cases are settled without going to eminent domain.

We should be careful about what definition of the resolution of necessity we enact. The definition in the first bill submitted by Assemblyman Ohrenschall is loose. It would arguably create the argument that you would be short-circuiting the planning process. Our State's policy is to have planning and then condemnation.

Once planning is finished and the governing body enacts a resolution of necessity, the attorney is authorized to go to court and file the case. It takes more than two hours, but not six months or a year. It involves paperwork required by NRS 37, which governs eminent domain, and includes a complaint, map, legal description of the property, notice of pendency of action and other items. This can be done within a reasonable period of time. The complaints we hear are not about the length of time after the resolution of necessity. That does not take 180 days as a practical matter in this State. We hear a desire for a shorter planning process and liability to be attached to the taxpayers with respect to the planning activity governing agencies are required by law to go through. The Nevada Supreme Court, the California Supreme Court and others have struggled with the definition of planning versus taking. It would be more clear to say the 180 days came from the resolution of necessity after the planning process is done. That is why the County's amendment suggests the language it does.

A Committee member asked how broadly damages would be defined. I agree with Assemblyman Ohrenschall's answer that it depends. The request is generally in the millions of dollars. Many times, juries will not award that. The claim facing the taxpayers in most of these cases is that you hired an appraiser and had a public hearing; therefore, that was the date of taking. It morphs itself from a precondemnation-damages analysis to a taking analysis by saying your property was actually condemned and taken three years ago even though a condemnation resolution was not passed. Additionally, the remedy sought is to have a 2006 or 2007 date of value with interest to run over that three-year period when the condemning agency has not occupied the property, condemned the property by resolution, filed a condemnation complaint or asked the owner to leave. The owner has remained in full use and possession of the property. In certain cases, we are handling for the County where this has come up. The damages can be high to the taxpayers, depending upon the situation.

If, by an unintended consequence, the actual date of the taking is pushed back farther into the process and the government is required to file a condemnation case earlier in the planning, we have the amendment known as the People's Initiative to Stop the Taking of Our Land (PISTOL), which was passed by the vote of the people and became effective in 2008. The PISTOL provides that the owner has the right to buy back the property if it is not put to its public use within five years of the recording of the final order of condemnation. If we advance the eminent domain process back into the planning process before the

government is ready to condemn it, the five years runs before it can finish the planning process with respect to the rest of the route of the road. Now, the owner is in a position to demand his property back if he wants to repay the price. We must watch that situation.

Sometimes, the County or another government will buy property it does not intend to condemn. For example, the County bought the Phoenix Building in Las Vegas, but it would not have condemned it. Under a possible reading of this bill, the applicant may come to the reality that the County does not like the way the negotiations are going. You may want the property condemned within 180 days when the intent was not to condemn it at all. This can force the County's hand.

The Southern Nevada Public Land Management Act (SNPLMA) is a similar thing. That is money available for local entities to do a variety of things. However, pursuant to that Act, you cannot use federal funds if you are going to use eminent domain. Under this bill, if someone was able to force an eminent domain action, you may lose the SNPLMA funding and the ability to do that project.

The County has suggested an amendment to subsection 2 of the bill which called for a 15-year statute of limitations. We have changed that to 1.5 years to mirror the California statute. That will get rid of another unintended consequence. If someone's property was subject to a planning process ten years ago and the project never happened, with a 15-year statute of limitations a person could conceivably bring a claim against the government under this bill to seek compensation for something that never occurred many years in the past—damage from the planning process.

SENATOR BREEDEN:
You mentioned that after this five-year period, the property owner can buy back his or her property. Could that person buy it back at the price the county gave them, or would it be a higher price?

MR. CHAPMAN:
No. Under PISTOL, it would have to be from an eminent domain case. The final piece of paper in an eminent domain case is the final order of condemnation. Five years after the entry of that document, if the property has not been put to

the use for which it was condemned, the former owner can buy it back at the condemnation price.

SENATOR MCGINNESS:
On your chart, Exhibit D, where is the notification to the property owner?

MR. CHAPMAN:
The NRS 241 notice is right before the resolution of necessity.

SENATOR MCGINNESS:
The landowner is pretty far down in the process.

MR. CHAPMAN:
The acquisition of the property by eminent domain is toward the end of the planning process because until that time, the government is planning on the project and deciding what property to take. When the government has the right-of-way set, has hired an appraiser, negotiated with the owner and had a rejection of the government's offer, the NRS 241 notice goes out according to statute. The landowner is entitled to address the city council, county commission or State agency that is condemning the property.

SENATOR MCGINNESS:
When the plan is developed and the government has the idea on the property, the owner is not notified until three or four more steps?

MR. CHAPMAN:
Not necessarily. Under NEPA, for example, landowners close to the project or likely to be impacted by the project are sent written notice to attend the public hearings. The public hearings are usually held at a convenient location where the public can come in the evening and review the maps of the possible routes and this kind of thing. In addition, the notices of public meetings are noticed according to the standards established by this Legislature or Congress, as the case may be. People are noticed the planning process. Specific hand-delivered notice is required under NRS 241 to people before a resolution of necessity is approved.

SENATOR MCGINNESS:
You said there is a notification of public hearing, but is the landowner given notification that his or her property may be in jeopardy of eminent domain?

MR. CHAPMAN:
Not at that early stage.

SENATOR MCGINNESS:
Was Mrs. Smith's property in jeopardy since 1995 or not?

MR. CHAPMAN:
No. She said she was under the cloud of eminent domain since 1995. Project Neon may have been planned for a long time. It is a fairly big project. To my knowledge, the resolution of necessity, which A.B. 346 is talking about, has not been passed with respect to her property. Listening to the testimony, the owners could have understood it to mean a resolution of necessity had been passed. The Attorney General's Office has had the authority to go to court since 1995, and it has not done that.

SENATOR MCGINNESS:
If someone was interested in purchasing Mrs. Smith's property, would a good real estate agent know eminent domain could occur on that property?

MR. CHAPMAN:
Possibly, because there are public notices of the planning process. The remedy is not to stop planning or to increase the taxpayers' liability and have a public hearing before the routes are selected. It is not criminalizing the planning process, but it is subjecting the planning process to civil liability, which has never been the intent of this Legislature. Property is also sold during eminent domain cases. There are a number of Nevada cases where that has occurred. The rule of law in our State is that the eminent domain award would belong to the owner at the time the action was filed in court. This happens regularly.

Bank loans are interesting. I have seen many bank loan documents, and all of them include condemnation clauses. This is not unusual to bankers. They spell out specifically in the loan documents what would happen if your property were to be condemned. If you went to a banker and said your property is going to be condemned by the county next month, the bank would not want to loan money on your property. As a general rule, the prospect of public planning for projects does not stop people from buying, selling or hypothecating property.

SENATOR ROBERSON:
I am looking at your chart, Exhibit D, page 2. You are arguing that if we enact this bill, the government would be forced to speed up the process between the idea stage to the resolution of necessity stage?

MR. CHAPMAN:
Yes, that is one of the possible unintended consequences to this bill. You must adequately define the resolution of necessity. Is it the public hearing or the event of setting the right-of-way by resolution at the county level? Is it the act of hiring an appraiser by agenda item at the county commission meeting? Which is it? Once you start the liability process running, you are either telling the government it must shorten the planning process, or you are telling it not to make so many announcements and make it public knowledge—but, it is required by law to do that. You may be saying as soon as it starts planning a project and paying people money, which is not the law in the State, who is paid and how much; it is hard to know how much of a tax increase that would be on taxpayers.

SENATOR ROBERSON:
Section 1, subsection 6, paragraph (b), subparagraphs (1) and (2) define resolution of necessity as, "... adopted by a public agency authorized by NRS 37.0095 to exercise the power of eminent domain; and (2) Announces the intent of the public agency to acquire property." That is different than the idea stage, developing-plan stage, public-hearing stage, right-of-way setting stage or hiring-appraiser stage. Why do you not see clarity in this definition? What would you suggest to make this definition more clear?

MR. CHAPMAN:
Our problem with that language is that it is not exact to California statute. The California statute references back to a specific definition of resolution of necessity.

SENATOR ROBERSON:
That is California. This is Nevada. What is wrong with this definition in Nevada?

RANDALL H. WALKER (Aviation Director, Clark County Department of Aviation, McCarran International Airport):
If you read the definition of resolution of necessity carefully, two things must be done in order for resolution of necessity to be in effect. First, a resolution of

necessity is adopted by a public agency authorized to exercise the power of eminent domain. It does not say it is going to exercise the power, it is authorized. By statute, Clark County is authorized to exercise eminent domain. Second, section 1, subsection 6, paragraph (b), subparagraph (2) says, "Announces the intent of the public agency to acquire property."

I will give you an example of what concerns me. Over the years, we have had programs to acquire property from people living under the flight paths in noisy areas as defined by federal regulation. We go through a Federal Aviation Regulation Part 150 Study. Based on that study, if property is eligible under the federal government for noise compatibility programs, we prefer to buy the homes and take out the use. We are eligible to receive grants up to 75 percent, and then we start a process. We are starting that process now. We have approximately 1,000 homes to the southwest of the airport off the southern runway.

I can ask the board to authorize the acquisition of that property over a phased basis, based on when we can get funding from the federal government. If we go to the board and ask for a direction authorizing us to buy that property, do we need subparagraph (1); is the County authorized to exercise the power of eminent domain? The answer is yes. Does the county announce the intent to acquire property? The answer is yes. Albeit by willing buyer, willing seller, we do not intend to use eminent domain to buy one of those properties.

By this definition, that would be a resolution of necessity. Section 1, subsection 1 of the bill says, "If a public agency has adopted a resolution of necessity but has not commenced an eminent domain proceeding ... ," then, you are forced into an eminent domain action. Most of the property we have purchased at the airport is by willing buyer, willing seller. My concern is that the way resolution of necessity is written, every action by the board, which is authorized to exercise eminent domain but does not always use that authority, complied with subparagraph (1). As soon as it announces the intent to acquire property, that is a resolution of necessity. If we could redefine that to clarify that a resolution of necessity is only when the board announces its intent to use eminent domain to acquire that property, then my concern would be resolved.

The other issue we have is whether you have the authority to exercise eminent domain before you have finalized any impact study process. For example, Terminal 3 is under construction. It has been on a master plan for more than

20 years, albeit not exactly the way it is being built today. When we intended to build Terminal 3, we were going to build it before we built the fourth leg of the D Gates. We went forward to try to do that. We started the environmental process, had a change of leadership in the Federal Aviation Administration in the regional area of San Francisco, and it wanted to start the impact study process all over again. We did not have time because we were in high growth mode in the community.

We needed the gate, so we switched and built the fourth leg of the D Gates first. We needed to acquire some property for Terminal 3 in the event we built it. However, we would not have had a public necessity to condemn that property if we needed to until the environmental impact study was completed and we got permission from the federal government to actually build Terminal 3. Without permission from the federal government to build Terminal 3, there is no public necessity to acquire property for Terminal 3. We could buy it on a willing buyer, willing seller basis, but we could not actually ask the board to initiate an action of eminent domain until we got permission from the federal government to actually build the project we needed to build.

There are some unintended consequences. We do not have an issue with the intent of this bill if we change the resolution of necessity to specifically indicate that this action is only when the board intends to use the power of eminent domain—not willing buyer, willing seller issues. In talking to our attorneys and the experience we have at the airport with the very few times we have used eminent domain, 180 days is not an issue once we have that resolution of necessity.

I hope that clarifies our concern because the way this is written, willing buyer, willing seller property by this definition is a resolution of necessity once announced by the board.

SENATOR ROBERSON:
What you say makes sense and maybe we can look at this definition and carve out the willing buyer, willing seller situation. I would like to hear the proponents of the bill respond to your concern.

My other question is the process leading up to the resolution of necessity. I would like to get a better sense of how long this process is in many instances. Even though there has not been a resolution of necessity, I get the impression it

is a long process. In reality, someone's property is under a cloud because a real estate agent representing someone who may be interested in purchasing that property from the landowner will know pretty quickly this process is ongoing. That person is stuck. I understand the need for the government to develop, but what can we do to streamline this process so these landowners are not twisting in the wind?

MR. CHAPMAN:
It depends on how long the project takes. For example, the widening of Moana Lane in Reno has been a fast project. From the acquisition to the time people knew their property might be acquired until now has been approximately one year. Other projects take longer because they are bigger, harder to plan, perhaps more expensive to acquire the property and construct. This situation has existed since the beginning of the United States. It has become more prevalent as people have moved into cities. The response by the courts has been that these are incidents of ownership that the public has the right and majority rule kind of argument to sustain. Landowners in the planning area need to deal with it. If it gets too egregious, our State has adopted a remedy by case law called precondemnation damages. This relates to the time of the condemnation resolution forward; there is a possibility of getting some relief. Landowners are not completely without a remedy under the case law.

The problem with the bill is the unintended consequences. It actually sanctifies in every case that liability will begin during the planning process and increase the costs of these public jobs and public acquisitions. The reality of the situation is that landowners may be occupying their property, using the property as they have before. When the planning process runs, they will be paid and provided relocation benefits to assist with their moving and other things. Is there a way to completely indemnify everyone in society from the planning process? No. Is it a bad idea to turn the planning process into a source of civil liability for the government? Yes. That is why we oppose this bill.

SENATOR ROBERSON:
Regarding the concern with the willing buyer, willing seller situation, if we carve that out in this definition of resolution of necessity, does that satisfy your concern?

MR. CHAPMAN:
What would satisfy our concern, and perhaps the other concerns, is this. I am reading from the suggested amendment from Clark County, Exhibit C. We are suggesting an amendment to subsection 6 of the bill. We renumbered it as subsection 7, Exhibit C, page 3 beginning on line 18. We would define resolution of necessity by saying:

> (b) Resolution of necessity means a resolution which:
> (1) Is adopted by a public agency authorized by NRS 37.0095 to exercise the power of eminent domain; and
> (2) Authorizes the commencement of a court of action to acquire property by eminent domain.

We have followed that up with a verbatim statement from California law of what the resolution of necessity should require, Exhibit C, page 4. If we make it clear the resolution of necessity we are talking about is the one that actually authorizes the court action, then we do not have to worry about willing buyers and willing sellers getting caught up in the process.

MR. WALKER:
For our concerns at the Department of Aviation, if you defined that second sentence in the definition, that would take care of our concerns. Without that, if this were passed as is, we would not go forward with the acquisition of any of that property on a willing buyer, willing seller basis.

SENATOR ROBERSON:
It would be helpful to hear the proponents' response to Mr. Walker and Mr. Chapman.

CHAIR WIENER:
If we have time, we will bring them back, but we have others who want to go on the record.

DAVID N. BOWERS, P.E., P.T.O.E. (City Engineer, Department of Public Works, City of Las Vegas):
I oppose the bill as written. I support the proposed amendments. Mr. Chapman and Mr. Walker have done a good job presenting this bill. Regarding when the clock starts as far as section 1, subsection 7, Exhibit C, page 3, line 18—the definition of resolution of necessity—the Legislative Counsel Bureau clarified the clock started with the process of public notification an eminent domain

proceeding was starting. We would like to have that language clarified to ensure that is the case and is understood by the public.

Another issue we are concerned about is if an eminent domain process has begun, we want the ability to rescind that. It does not mention in the bill that the public or the entity has the ability to rescind that eminent domain once it has begun.

JOHN MADOLE (Executive Director, Nevada Chapter, The Associated General Contractors of America, Inc.; Nevada Highway Users Coalition):
We are opposed to the bill, but we would probably support the amendments proposed by Mr. Chapman, Exhibit D. Our concern would be that there are enough dollars to build the roads now, and this is undoubtedly going to increase the costs. Therefore, we would be opposed to anything that increases the cost of building roads.

LEE THOMSON (Chief Deputy District Attorney, Clark County Department of Aviation):
In clarification of Mr. Bowers' concern, the current subsection 4 and what is in subsection 5 of Clark County's amendment, Exhibit C, includes the ability to abandon an eminent domain proceeding. Related to that in the California statute, we propose adding in our amendment the ability of the entity to rescind its resolution of necessity at any time before an action is brought by a landowner, Exhibit C, pages 2 and 3.

Clark County does not oppose a bill which more closely follows California law as long as there is this clarification allowing us not to get caught up in problems with our willing buyer, willing seller situation, or with our statutorily mandated planning obligations such as those in NRS 278.160.

CHAIR WIENER:
As the amendment has been provided to us, you would agree with the resolution of necessity, the expansion through the amendment provided by Clark County, Exhibit C, addressing all the concerns including willing buyer, willing seller?

MR. THOMSON:
Yes.

FRED OHENE (Assistant General Manager, Regional Transportation Commission of Southern Nevada):
I oppose the bill as written. I support the amendments proposed by Clark County.

DAN MUSGROVE (City of North Las Vegas):
I ask my amendment (Exhibit E) be withdrawn. I should have signed in as opposed to this bill. In other committees when you have an amendment, they ask you sign in as neutral. We were opposed to this bill on the Assembly side. I testified. A layman and I tried to work out some issues dealing with notification and the ability to rescind. Clark County's amendment captures everything we were trying to accomplish. We support Clark County's amendment.

RUTH BORRELLI (Nevada Department of Transportation):
We support the proposed amendments to A.B. 346.

CHAIR WIENER:
Which amendments?

MS. BORRELLI:
The Clark County amendments. We were specifically concerned with the definition of resolution of necessity to include the specific language "by eminent domain." The amended language tightens the definition to create a clear distinction as to when the 180 days or 365 days would commence for a public agency to acquire affected property.

CHAIR WIENER:
Do you have a position on whether it be 180 days or 365 days?

MS. BORRELLI:
We do not.

RANDY ROBISON (City of Mesquite):
Our concern is not with the intent of this bill but with the resolution of necessity and a definition, particularly with section 1, subsection 6, paragraph (b), subparagraph (2). We are in a unique position where we own a lot of our own property. We acquire property or exchange property through a variety of ways

that may be variations on the willing buyer, willing seller method. If it is tightened up as has been described, that addresses our concern.

LISA FOSTER (Nevada League of Cities and Municipalities):
We were opposed to the bill and neutral with the Clark County amendment.

CHAIR WIENER:
You are opposed to the bill?

MS. FOSTER:
We are opposed to the amended version of the bill, but neutral with Clark County's amendment today.

MR. ORTIZ:
Before the hearing, I spoke with Jeffrey Fontaine with the Nevada Association of Counties. He cannot be here today. He wanted me to state his support for Clark County's amendment, and he opposed the bill.

CHAIR WIENER:
He opposes the measure, but supports your amendment?

MR. ORTIZ:
Yes.

LAURA FITZSIMMONS:
I support the bill. I will address Senator Roberson's question about how long projects normally take. Mr. Chapman answered with the example of Moana Lane. I am sure that project took a year. I have represented landowners, for example Eva Lompa in Carson City, regarding the freeway. She lived on a ranch in the center of Carson City for 60 years. For 20 years she knew with certainty that the alignment cutting her ranch in half had been adopted and approved by the Nevada Department of Transportation. She passed away during the condemnation case. Nothing was done.

I receive telephone calls from homeowners impacted by Project Neon. They have not received the formal end-game resolution of intent yet. They have been dealing with right-of-way agents hired by the Nevada Department of Transportation, whom Mr. Chapman may not have indicated he is in employ on

Project Neon. They have been told not to fix their roofs, five years ago or seven years ago. It freezes the use of property.

Think about what property means emotionally and financially for most people. These large projects do take planning, but there is a huge gap many times because there is no economic incentive under the law for agencies from the time right-of-way is set or they know they are going through a certain neighborhood or piece of land. People just hang.

I represent a church pro bono that is being impacted by Project Neon. It has substantial decisions about meeting the needs of its parishioners. It has not been able to do anything. The church first came to me nine years ago. There is still not that end-game resolution of necessity. Landowners are taxpayers too. Looking for the balance is what you are seeking.

SENATOR ROBERSON:
If this bill in the original form would not really mitigate that problem, what can we do?

MS. FITZSIMMONS:
I am not sure this bill as written would alleviate what Mrs. Smith has been going through, certainly the others impacted by Project Neon. If we are focusing on section 1, subsection 6 of the bill and the amendment turning that into subsection 7, there is a middle ground that could happen using Mr. Chapman's chart, Exhibit D. It is clear to the real estate market, lenders, homeowners and business owners that their land will be taken. It is just a matter of when. If that was the trigger point, that would alleviate these concerns. In many instances, it would help the taxpayers. Ultimately, they would pay when the market was rising. In Eva Lompa's case, although it impacted the quality of her life, if the Department of Transportation had been able to pay her 15 or 5 years earlier, it would have paid less. We need to understand everyone has to come together, but there is no accountability with these large delays.

MR. WATERS:
I remember what PISTOL said when I wrote it. I remember the County expressed many ideas that it would cost $3 billion if it passed. None of that turned out to be true. From a practical point of view, you do receive notice they want to buy your property. You do get notice the appraiser is going to talk to you and then you get a low offer. Then, you do not hear from them again. It

may be months and months or you may never know until you get ready to sell your property that you got notice the resolution of need and necessity had been filed. That is the real world. Whether you are required to or not, I disagree because you do not get it in the real world. The 15-year statute of limitations is the law for eminent domain for inverse condemnation. I did not want to change that because that is the rule, and I do not want that slippery slope.

Regarding willing buyer, willing seller, be careful with this. The entities say they will buy your house if you are willing to sell. If you are not willing to sell, we could use eminent domain, but we are not going to do that now, maybe later, but not now. If you are willing to sell your house at their price and you sell it, the next thing they do is rent your house. Many times the properties become crack houses or low income messes. Suddenly, your neighbor has people in the neighborhood they do not want to have. It is now a little dangerous for your children to be out in the street. Now, you are willing to settle for the offer the entity made you. That is the kind of willing buyer, willing seller situation you get into. Be careful if you are thinking about changing that. I do not have a quarrel with entities making honest offers to sell on a willing basis, but whether the threat is there is a different matter. They may turn the neighborhood into a slum area by selectively taking the houses and renting them out. They should not be able to rent them out once they take them. If you start doing that, you force other people to sell at the low price. Why do they do this? Why do they pass these resolutions? They do it because they can finance them on the backs of landowners. When this bill was offered, the cities wrote back to Assemblyman Ohrenschall saying there was an economic effect. There will not be if the entity files a suit. All the city has to do is file timely. If people know what the cities are taking, they make the deposits, they can pay off their notes and go on with their lives.

SENATOR ROBERSON:
I understand the willing buyer, willing seller exception. I am looking at the Clark County amendment, and it goes a lot further than that. That is a concern.

I am concerned about even if we pass the bill as originally drafted and move it down to my preference of 30 days, not six months. How does that solve the problem that entities can take years and years before they actually send out the resolution of necessity?

MR. WATERS:
It does not. It helps part of the problem. It is almost impossible to cure all these problems with the federal funding that comes into these projects, the federal requirements and the time it takes to do these. If the entities would get on with it once they target a property and know which property they are going to take, they would stop this problem. But they use it for delay to get it cheaper. I know they have rules and regulations that give them excuses, but those rules and regulations are being dragged out in many cases.

SENATOR ROBERSON:
I am looking at the definition of resolution of necessity. Section 1, subsection 6, paragraph (b), subparagraph (2) says, "Announces the intent of the public agency to acquire property." I assume that means to acquire that specific property?

MR. WATERS:
Yes.

SENATOR ROBERSON:
At that point, the title is clouded. You are impairing that landowner.

MR. WATERS:
Yes. If you try to borrow money on that property, the bank will not lend.

ASSEMBLYMAN OHRENSCHALL:
This is a complicated issue. Eminent domain is a need for governmental agencies, but we have to protect private landowners. That is what this bill intends to do. I am suspicious of amendments that do not go in the direction of providing more protections for private landowners. If we do not provide more protections for private landowners, we are not performing a service to our constituents. I hope the Committee will consider this legislation.

CHAIR WIENER:
I will close the hearing on A.B. 346. Because we do not have time remaining today to give due diligence, I will reschedule the hearing on A.B. 292. I will open the hearing on A.B. 379.

ASSEMBLY BILL 292 (1st Reprint): Revises provisions governing judicial proceedings for eminent domain. (BDR 3-803)

ASSEMBLY BILL 379 (1st Reprint): Establishes the crime of stolen valor. (BDR 15-1005)

ASSEMBLYMAN SCOTT HAMMOND (Assembly District No. 13):
Assembly Bill 379 is essentially the same as you heard in Senate Bill 356. When this bill passed out of the Assembly, there were some amendments placed on it. I did not get to hear all the amendments. I was aware of one of the amendments, which directly talked about the amounts of money before it was a Category E felony and a gross misdemeanor. I understood the concerns of those who opposed the bill. However, after seeing what happened to the bill here, I agree with the amendment offered April 15, when this Committee attached the word "monetary" to the bill. The amendments to the bill remove section 1 and add the $2,500 threshhold. Anything above $2,500 was a Category E felony, and anything below was considered a gross misdemeanor.

SENATE BILL 356 (1st Reprint): Establishes the crime of stolen valor. (BDR 15-999)

CHAIR WIENER:
Did the original measure mirror Senator Elizabeth Halseth's bill?

ASSEMBLYMAN HAMMOND:
Yes.

SENATOR GUSTAVSON:
Is it your intent to mirror Senator Halseth's bill?

ASSEMBLYMAN HAMMOND:
Yes.

SENATOR ELIZABETH HALSETH (Clark County Senatorial District No. 9):
I want A.B. 379 to mirror S.B. 356 the Senate Committee on Judiciary unanimously passed.

CHUCK CALLAWAY (Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department):
We support this bill.

CHAIR WIENER:
Which version?

MR. CALLAWAY:
We supported both versions.

REBECCA GASCA (Legislative and Policy Director, American Civil Liberties Union of Nevada):
I was not present at the Assembly work session when they considered this bill. Several members of the Assembly Committee on Judiciary felt strongly about the bill. Most of them supported the intent of the bill, and their discussion was robust in wanting to take care of what they viewed as First Amendment problems with the bill as originally proposed. Regarding this version of the bill, I have signed in neutral because it does take care of the problems we brought up in the Assembly and Senate. We appreciate the sponsor's willingness to have the word "monetary" be amended into this version of the bill. While that is implicit in the way the bill was amended, it is best to move forward in a more clear way and make it explicit that it does have a monetary value.

CHAIR WIENER:
For clarity, with the changes in both measures, you are still neutral, but the clarity gives you a higher level of comfort?

MS. GASCA:
Yes. When bills no longer represent a threat to civil liberties, we change our position to neutral.

CHAIR WIENER:
I will close the hearing on A.B. 379. The hearing is open for public comment. There being nothing further to come before the Committee, we are adjourned at 10:47 a.m.

RESPECTFULLY SUBMITTED:

Kathleen Swain,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE:

EXHIBITS			
Bill	**Exhibit**	**Witness / Agency**	**Description**
	A		Agenda
	B		Attendance Roster
A.B. 346	C	Michael G. Chapman	Proposed Amendment
A.B. 346	D	Michael G. Chapman	Chart, Planning Process Prior to Condemnation
A.B. 346	E	Dan Musgrove	Suggested Amendment