MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Seventy-sixth Session
May 10, 2011

The Senate Committee on Judiciary was called to order by Chair Valerie Wiener at 8:19 a.m. on Tuesday, May 10, 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 Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

COMMITTEE MEMBERS ABSENT:

Senator Allison Copening, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Pete Goicoechea, Assembly District No. 35
Assemblyman William C. Horne, Assembly District No. 34
Assemblyman Tick Segerblom, Assembly District No. 9

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Phil Pomeroy
Bill Uffelman, President and CEO, Nevada Bankers Association
Jonathan Friedrich
Brian Padgett
Laura FitzSimmons
Keith Harper, Las Vegas Chapter and Reno-Carson-Tahoe Chapter, Appraisal Institute
Michael Cheshire, President, Commission of Appraisers of Real Estate
Tami Campa
Scott Dibiasio, Appraisal Institute
James J. Leavitt
Chris Lauger, President, Las Vegas Chapter, Appraisal Institute

CHAIR WIENER:
I will open the hearing on Assembly Bill (A.B.) 373.

ASSEMBLY BILL 373 (1st Reprint): Prohibits the destruction of real property that is subject to foreclosure with the intent to defraud. (BDR 15-98)

ASSEMBLYMAN PETE GOICOECHEA (Assembly District No. 35):
Phil and Carla Pomeroy owned property in Fallon. They sold the property and carried the paper for the buyers. The buyers destroyed the property when they were facing foreclosure (Exhibit C).

In many cases, people have vandalized or destroyed their homes before they leave when they are facing foreclosure. They have blown holes in the walls with a shotgun or put kitty litter or cement down the drains. This impacts the mortgage holder or person carrying the paper on a property.

Assembly Bill 373 provides a mechanism where lienholders can go to the sheriff or law enforcement for investigation of those who damaged the property. Criminal charges could be filed. Nevada law does not allow the lienholder or landlord to file a complaint with law enforcement. This bill would allow lienholders to file a criminal complaint. It is a misdemeanor. This would help the lienholders in a civil action. Unfortunately, these buyers cannot pay for the home, so the recovery will not be very good.

CHAIR WIENER:
The bill before us is a first reprint. Please explain what changed from the original bill.

ASSEMBLYMAN GOICOECHEA:
Initially, this behavior was a felony. It went to a gross misdemeanor and ended up as a misdemeanor. The intent is that a criminal complaint could only be filed when the home is foreclosed. That is the time frame. Section 1, subsection 2, paragraph (a) says, "... with the intent to defraud the secured party ... ."

The problem is many people are being foreclosed, especially in southern Nevada. They vacate the property before they get the foreclosure notice. Other vandals, tenants or squatters move into those properties. This bill will help lienholders or mortgage holders. Property owners would not want someone else to damage their property because when it is foreclosed, the lienholder could come in and say the owner damaged the property. Before owners vacate their property, they should notify the lienholder they are leaving, and that the property is in good repair upon vacancy.

SENATOR BREEDEN:
Why is it only a misdemeanor? You indicated there was a compromise when your colleagues saw these pictures, Exhibit C.

ASSEMBLYMAN GOICOECHEA:
Yes. That was the only way we could get the bill out. There is a different mentality in Clark County because squatters do move into these vacated properties. They were concerned the property owner could be charged with a gross misdemeanor or felony when someone else actually caused the damage. The borrowers and property owners have some responsibility. It is not right to damage or destroy a piece of property. The issue is the ability to file a criminal complaint, rather than whether the behavior is a gross misdemeanor or misdemeanor.

SENATOR BREEDEN:
I wonder about the possibility of a tiered penalty.

ASSEMBLYMAN GOICOECHEA:
I agree with you, but we have to live with what we can get passed.

SENATOR GUSTAVSON:
I had the same question as Senator Breeden. I wondered why this is only a misdemeanor. Is there the possibility of a tiered system and going after the person who actually caused the damage?

ASSEMBLYMAN GOICOECHEA:
I agree with you. The first step is the ability to file a criminal complaint. Maybe we can get better in the future.

CHAIR WIENER:
We do not know what happened in the other House. When a sponsor says there was a negotiation and this was the compromise, I honor that, especially when the sponsor knows what he experienced to get it into this House.

ASSEMBLYMAN GOICOECHEA:
We did reach a compromise on the bill.

PHIL POMEROY:
I am from Fallon. You have seen the photographs of the property, Exhibit C, which depicts what happened to a piece of property I owned. I carried the note for the buyer. The penalty should be higher. We watched this property be destroyed. We called the sheriff, who said there was nothing that could be done. It is an eyesore to the community. This is not just personal. Other property is devalued as well. I understand the Las Vegas issue. I have heard stories of people plugging up the drains or walking away with the water running. That is vandalism.

SENATOR GUSTAVSON:
Law enforcement said officers could not do anything. Why is this not destruction of personal property? Are there several crimes the perpetrators could be charged with?

MR. POMEROY:
The reasoning is that the people who signed the note own the home. In reality, they do not own the home; they own a portion of it. I have heard comments about the big bad banks. If it were not for the banks, how many people would own a piece of property?

CHAIR WIENER:
Maybe this is the first step to provide a tool kit for law enforcement.

BILL UFFELMAN (President and CEO, Nevada Bankers Association):
There is a home in Henderson where the bank and borrower were negotiating over a short sale and other issues. That house was appraised last September at $500,000. It had been in the $1 million range when it was purchased. They were not able to come to a mutual agreement. The house went into foreclosure. By the time the bank got it on February 17, it sold the house as is for $250,000 because the occupants removed the granite countertops and ripped the doors off the cabinets. The front door is there, but they removed the entire backdoor assembly. They took the air conditioners and the spa tub. Anything they could yank, they yanked. Their intent was to destroy the value of the house.

The theory is that borrowers have some interest in the house. They bought the property with no money down. I am not sure how much interest they have in it, but they do have an ownership interest. If squatters or trespassers came into the house, you would have a criminal complaint for trespass and vandalism. Absent this bill, the homeowners could do anything they want to the house, even though they are destroying the security interests the lender kept in the property.

Some people might be deterred with a criminal statute like this. Others might not. The bill would help people understand there are criminal repercussions for destroying something that is theirs but is not theirs. The fact the foreclosure notice has been filed puts them on notice they have a responsibility and should behave accordingly.

SENATOR BREEDEN:
When this bill is passed, how will homeowners know about this law? Will it be included in their paperwork? How can we make sure they know?

MR. UFFELMAN:
We could include notice in the foreclosure paperwork informing homeowners the Legislature recently enacted a law imposing criminal liability if they destroy the property and attempt to diminish its value. The notice of default process advises homeowners they are in foreclosure, that they have a right to mediation and other rights. This could be another piece of that notice.

SENATOR BREEDEN:
Could we require that?

MR. UFFELMAN:
If you have driven past a foreclosed home, you will see several warnings. To the extent this is in the interests of the lenders to notify people of the lenders' rights, most lenders would create a notice of this law. If it does not work and we are still in this mess in 2013, we will be back with ways to improve this bill.

ASSEMBLYMAN GOICOECHEA:
If people are tearing the walls down and the doors off, they need to hear from law enforcement, not the lender.

CHAIR WIENER:
About 1.5 years ago, a young lady told me that she and her husband were in the process of buying their first home. They found one in Summerlin, and it was a difficult process. They saw 30 homes and chose the least damaged home of the 30 they saw.

SENATOR MCGINNESS:
Does this cover renters? Section 1, subsection 1 of the bill says, "a person who occupies real property, including a person with an ownership interest in the real property ... ."

ASSEMBLYMAN GOICOECHEA:
That was not the intent. You do not have an ownership interest in the property if you are renting it. I will leave that up to the Committee.

CHAIR WIENER:
Because of the way this is drafted, it may include renters or those who lease.

BRADLEY A. WILKINSON (Counsel):
The language in this statute seems to apply to renters, although Nevada law covers that situation. The distinction in the bill is that it is not a crime to destroy your own property. It is a crime to destroy personal property that is covered by a security interest, but not real property. That is the hole this bill attempts to address. It could cover renters, but more likely renters would be covered under the law for destroying someone else's property.

ASSEMBLYMAN GOICOECHEA:
If it covers renters, that is fine. We have no problem either way.

SENATOR KIHUEN:
How would you differentiate between occupant and someone who purposely vandalized a house? For example, someone lives in the home, decides to move out and leaves. Someone else breaks the windows, for example.

ASSEMBLYMAN GOICOECHEA:
The testimony on the Assembly side clearly says this action takes place at the point of foreclosure. If you were the person in that property, you should notify your lender that you were moving out and get an inspection. If you are a borrower, you do have some responsibility. To avoid that exposure, the best thing you could do is call your lender and notify it you are under foreclosure and vacating the property.

SENATOR KIHUEN:
I noticed the voting on the bill. There were eight nays on the Assembly Floor. Why did they oppose the bill?

ASSEMBLYMAN GOICOECHEA:
They thought the penalty was too much. They also raised some of the same questions you have. They did not want to see a homeowner arrested for an action someone else did—a squatter or vandal. We have resolved that. You can only be responsible for your own actions. If you are going to be foreclosed, call your lender the day you move out of the property. People are upset; they have lost their home. They walk out and leave the door open. They do have a responsibility.

SENATOR KIHUEN:
That is my concern. I would hate to see an innocent person end up in jail or arrested for something another person did. We want them to call the lender. That does not happen. I am concerned about the innocent person.

ASSEMBLYMAN GOICOECHEA:
That was the argument on the Assembly side. But that is why you would call law enforcement. That is why it is only a misdemeanor. The lender has to be able to prove ownership. That is what the investigation would be about. But at least you can start the clock. If you can see someone is destroying your

property, we would hope this bill would allow law enforcement to look at it. People must understand that if they destroy the property when they walk away from it, they would be subject to criminal action. There must be a mechanism in place to take care of those bad actors who destroy property.

SENATOR KIHUEN:
I agree. Those people should be punished with a fine, jail or something. I am trying to protect the innocent person, not those who vandalize.

CHAIR WIENER:
That might be part of the culture shift to notify the lender if the homeowner is vacating the property. Based on the conversation here, I would encourage you to include that notice.

MR. UFFELMAN:
That is the intent. It is a proof situation. Under this bill, you would have to prove who damaged the property. In this process, we are dealing with a different set of borrowers than we did with the foreclosures in 2007 and 2008. Everyone has learned something, and there is a cultural shift on both sides. People must understand that just because they are upset, they do not have a license to do $100,000 worth of damage to a house that now may only have sold for $120,000 at a foreclosure sale. I urge you to support the bill.

ASSEMBLYMAN GOICOECHEA:
I urge your support of this bill.

JONATHAN FRIEDRICH:
I support this bill in concept. A lot has been said about squatters moving into homes, but in southern Nevada many of the homes are in gated communities, which would prohibit or restrict squatters from moving in. Most foreclosures have taken place in the newer homes predominantly in gated communities.

The bill is good start, but it needs to go further. I was present when the bill was introduced in the Assembly as a gross misdemeanor. Someone who does $20,000 to $100,000 worth of damage should be subject to more punitive measures. Please consider a two-tier punishment, either a misdemeanor or a gross misdemeanor, depending on what it costs to repair the property. I know of one home where the homeowners walked out. Before they left, they turned on all faucets, closed the drains and let the water run until it ran out the front

door and the garage door. There was more than $100,000 in damage to the home. The sheetrock had to be removed. There had to be mold remuneration and new cabinetry installed. All the tile was smashed, and there were holes in the exterior stucco of the home. That is more severe than a misdemeanor.

In the past, there was a program where the lender sent an inspector to take photographs of the interior of the home and offered key money to the owner being foreclosed. After the owners moved, if the home was in the same condition before their departure, they were given a certain amount of money. I do not know if this procedure is still going on, but it is something that might be considered—inspecting the property before the owner leaves.

CHAIR WIENER:
I will close the hearing on A.B. 373 and open the hearing on A.B. 292.

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

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):
Assembly Bill 292 deals with appraisals and eminent domain actions. This bill was amended in the Assembly. That amendment addressed some concerns and was offered by Brian Padgett. Laura FitzSimmons opposed this bill in the Assembly, and this amendment satisfied her concerns. It was a favorable amendment; however, some will oppose it, suggesting the bill should revert to its original version. I said I would accept this amendment.

CHAIR WIENER:
This Committee honors the work done in the first House. From my reading, I understand there was a compromise, and people agreed.

BRIAN PADGETT:
I support A.B. 292, which was a compromise reached between two disparate parties. It is a fair and reasonable compromise to exclude restricted use appraisal reports from use in eminent domain proceedings. A restricted use appraisal report is different from what we use in the practice of eminent domain.

For the last decade, I have represented landowners in eminent domain proceedings. I have recently seen the use of restricted use appraisal reports. In

legal proceedings, litigants go through the discovery process and hire expert witnesses to give opinions for and against your position before the case goes to trial. Once you get those opinions, you exchange them with the other side. Typically as a landowner's attorney, you hire appraisers among others—brokers, planners or land use experts. The appraisers provide a standard appraisal report, which is a self-contained appraisal report or summary appraisal report consisting of approximately 50 to 100 pages. These appraisal reports contain enough data and information for an attorney to determine the opinions of the appraiser; to discern the adjustments to the comparable sales; and to understand their background, scope and neighborhood that encapsulate the dynamics for the comparable sales we are viewing.

Restricted use appraisal reports are different because they are thin and do not contain much discussion about the comparable sales. They consist of approximately ten pages with a valuation at the end that says take it or leave it. Under the Uniform Standards of Professional Appraisal Practice (USPAP), a restricted use appraisal report is usually only prepared for one user, the client who requisitions the report. It has never been meant for use in litigation. I suggested this compromise because I recently dealt with cases where restricted use appraisal reports were brought into litigation. Nothing prevents them from being introduced.

For example, I had a case where I received a ten-page appraisal report from an out-of-town California appraiser who represented a condemning authority. I got 10 or 12 pages with a valuation at the end. In those 10 or 12 pages, nothing much allowed me to determine the opinions of the appraiser. The appraiser's deposition could be taken, and that should tell you a lot about his opinions. The problem with that is when you give such a thin appraisal, it comes with approximately 4,000 pages of documents in a work file including anything the appraiser used or considered relevant in preparing this report. It is like picking a needle out of a haystack. I could depose an appraiser and ask for his opinions. I could go through his restricted use appraisal report and ask him everything that comes to mind. However, with 4,000 pages of documents, he could easily come to trial and pull out a page or two or three and say that is his opinion. I could ask why he did not tell me that at the deposition, and he could respond I did not ask him the question. That is why I am here. I want transparency for landowners and condemning authorities. This is a fair and reasonable compromise between one side that wants restrictions and the other side that

does not. It is fair and reasonable that restricted use appraisal reports be prohibited from use in eminent domain proceedings.

CHAIR WIENER:
In your letter dated May 9 (Exhibit D), you mentioned the self-contained appraisal report and the summary appraisal report. In the amended version of A.B. 292, both of those reports would be appropriate. Please explain the distinctions and why they would be more appropriate.

MR. PADGETT:
A summary appraisal report gives more discussion on the neighborhood area, the comparable sales, and the adjustments and valuation used in arriving at an opinion of value. It also comes with a work file, but by reviewing the report, you should be able to exactly discern the opinions and hold the appraiser to those opinions during the deposition and at trial.

A self-contained appraisal report has everything the appraiser considered, more or less, in that report, and it is thicker. I have no problem with either of those two reports. The only one that concerns me is the restricted use appraisal report. The economy has changed in the last four years, and eminent domain practice has changed to a certain degree as well.

We represent landowners far and wide in southern Nevada, from one side of Las Vegas to the other. Because things are changing and evolving, a restricted use report removes transparency and a level playing field. Condemning authorities would not like it if I gave them a restricted use appraisal report. The restricted use appraisal report does not give support for opinions, and it promulgates surprise.

LAURA FITZSIMMONS:
I support this bill. It is a compromise. I agree with the statements made by Assemblyman Horne and Mr. Padgett.

SENATOR ROBERSON:
I have no problem with this bill. I read the original bill. What were the objections to the original bill?

MS. FITZSIMMONS:
This original bill was suggested by a group of appraisers in eminent domain who are members of a local chapter of the Appraisal Institute. Approximately 20 appraisers in Nevada do a lot of eminent domain appraisal work. It is a small competitive group.

I also have represented landowners for a long time. I saw the abuse of this system undertaken by the Nevada Department of Transportation (NDOT) against a landowner's appraiser. I previously spoke of Eva Lompa and the Lompa Ranch. The NDOT tried to discipline Mrs. Lompa's appraiser so he could not testify for her in an effort to get just compensation for her land. The Department of Transportation first tried to hire this appraiser because he was so good, but when he said he was working for Mrs. Lompa, the NDOT filed a complaint. This appraiser knew he would be punished by the same State that was taking Mrs. Lompa's land. That enraged me. It enraged then-Senator Mark Amodei, who testified in 2005 on a bill the original draft of A.B. 292 would undo. Senator David Parks, who was then in the Assembly, brought A.B. No. 341 of the 73rd Session. The same people who are seeking the amendment today, we met in that context in 2005. This Legislature unanimously passed A.B. No. 341 of the 73rd Session. It was heard twice in the Assembly. It passed unanimously in the Senate Committee on Commerce and Labor, except for then-Senator Bob Coffin. He immediately sent me an e-mail saying he had hit the wrong voting button.

Every member of this body who was here in 2005 understood and voted to protect appraisers from the retribution of the government because it is so important. They also considered that we do not want surprise in eminent domain. We want transparency. The first reprint of the bill speaks to that.

Judges decide what testimony is allowed and what is not allowed. Juries decide which witnesses they want to believe and are credible. Ex-Senator Amodei said it is dangerous when a State licensing body is in the position of a court of appeals so it can hammer people who speak up for landowners. This is included in the material I submitted (Exhibit E), which also includes the background. A lot of work was done, and there was a good feeling in the 2005 Session. We have not had any problems because appraisers and experts are protected from retribution. This is a professional issue with a small group of people. The overriding issue is to ensure landowners and government agencies have full

ability to present testimony subject to the guidance and approval of a judge and subject to juries.

SENATOR ROBERSON:
The original bill appears to have the effect of making licensed appraisers who hold a certificate of license issued by another jurisdiction subject to the provisions governing real estate appraisal in Nevada. I am getting a disconnect between what I am reading and what I am hearing from you. I am trying to understand how the original bill creates the harm you are saying it does. I have no doubt you are correct. I am trying to connect the dots.

MS. FITZSIMMONS:
The copy of the original A.B. 292 I have says in section 1, subsection 6, "... other than a licensed appraiser, certified appraiser or person ... ." That means all appraisers. If we are looking at the same language, the original bill draft took all appraisers, whether they are licensed here or from out of state working under a permit, and put them back under the control of the State in terms of what they say.

If there is a disagreement between what the State believes and what an appraiser believes, the appraiser against the State or the State tribunal could lose his or her license. In the instance of the appraiser I represented in the Lompa matter, it cost me $100,000 to defend him. It was a ten-day hearing. At the end of that hearing, the appraisal board said this is a dangerous thing. My clients were devastated because they could lose their appraiser. We worked that out. It includes all appraisers, not just out-of-state appraisers. The judge is the gatekeeper. If someone is not reasonable and does not make sense, the jury will not listen to it. That is the system.

CHAIR WIENER:
Regarding A.B. No. 341 of the 73rd Session, will the amended version before us be consistent with the law or will it complement the law?

MS. FITZSIMMONS:
It will complement the law. It does no violence to the law or our efforts in the 2005 Session.

KEITH HARPER (Las Vegas Chapter and Reno-Carson-Tahoe Chapter, Appraisal Institute):
I originally brought A.B. 292. The Appraisal Institute is a national organization of appraisers. Our concern and the purpose of this is to hold appraisers to a standard. I understand what happened in 2005, and I understand Ms. FitzSimmons' position. I was asked as the Government Relations Chair of the local chapter to meet with Assemblyman Horne and present the language. That is what I have done. As it moved through the process, this compromise came along. I have been asked on behalf of the respective boards to try to have the original bill, the changes to NRS 645C, put back into the bill (Exhibit F).

CHAIR WIENER:
Were you at the table during the discussions of the compromised measure that came from the Assembly?

MR. HARPER:
I was in Las Vegas. I have not been part of that compromise. Based on what I witnessed, Assemblyman Horne, Ms. FitzSimmons and Mr. Padgett came to this compromise. The local board in Las Vegas has not voted on that compromise. We have not had a meeting to bring it to the board. I have been asked to try to bring back the original language we submitted in December and revive that language.

CHAIR WIENER:
You mentioned you were aware of the measure Senator Parks had introduced in 2005, which received unanimous support. Did you participate in that process in 2005?

MR. HARPER:
No.

CHAIR WIENER:
Are there members of your organization who did?

MR. HARPER:
Yes. I did not serve on the board at that time, and I was aware of it as a practicing appraiser. I was keeping up with what was going on with the Commission of Appraisers of Real Estate and the actions taking place. I was an outsider looking in.

CHAIR WIENER:
Have you found any harm to you or others from the law enacted under A.B. No. 341 of the 73rd Session?

MR. HARPER:
I personally have not. I do eminent domain appraisals and am active in that field. I understand the purpose, and I know there are some issues with the State holding appraisers to a certain standard, which is USPAP. The local board and the board of the Reno-Carson-Tahoe Chapter want to bring all appraisers under the same guidelines, rules and regulations for any appraisals, be it eminent domain or lending purposes.

MICHAEL CHESHIRE (President, Commission of Appraisers of Real Estate):
I sit on the board that governs appraisers. When this bill was presented on March 28, I could not testify because we had a Commission of Appraisers of Real Estate hearing to discuss this bill among others. The Commission voted unanimously to support the bill as originally sponsored by the Appraisal Institute. That was not the bill that came out of the Legislative Counsel Bureau. That was the amendment from Mr. Harper. It was to govern appraisers.

When the amendment was made, Mr. Harper was not involved in the discussion even though he was supposedly the sponsor of the bill. The bill was amended, and we held another Commission meeting on April 20. We voted to oppose the first reprint of A.B. 292 because USPAP, which we do not make up, is given to us by the federal government. We are licensed by the State but controlled by federal regulation. The Commission felt it was not right to keep one section of USPAP and not other sections that would keep appraisers out. That is my testimony on behalf of the State.

As an individual, I work in the eminent domain practice. I have worked for the last several years only for landowners. Government agencies do not hire me any more. I agree with Mr. Padgett that it is improper to use a restricted use report in an eminent domain proceeding. Under USPAP, that would not be allowed. I see outside attorneys for condemning authorities use out-of-state appraisers who lack geographical competency. They know nothing about the market. They come in, prepare appraisal reports and deliver them to the property owner's appraiser. I review those reports, and they do not make sense because these people do not know the market. I agree with Ms. FitzSimmons that the judge should be the gatekeeper, but over 90 percent of the eminent domain cases

never make it to trial. They are settled before trial. Many property owners are intimidated by the condemning authorities, and they settle for a lower amount than they should get for their land.

If everyone functioned under the USPAP, there would be transparency in all appraisal work, not just eminent domain. I understand Ms. FitzSimmons' concern in 2005, and I testified against Ms. FitzSimmons' bill. I was concerned at that time it had potential for abuse from the property owners' attorneys. I was wrong. I have not seen any property owners' attorneys abuse that bill.

I see condemning authority attorneys abuse that bill. Brenda Kindred-Kipling testified in the Assembly that checks and balances are in place to ensure malicious complaints cannot be filed against appraisers. The Commission does not see 75 percent of the complaints filed because they are screened before they get to the Commission. They are dismissed as having no basis, or they are heard by an advisory review committee that dispenses education to appraisers who commit minor violations of USPAP.

Under USPAP, restricted use reports would not be allowed. I would like to see the original language Mr. Harper submitted, Exhibit F, not what came out of the Legislative Counsel Bureau and certainly not this amended version of the bill.

TAMI CAMPA:
I am a licensed appraiser in Nevada. I am a member of the local and national chapters of the Appraisal Institute. I am also a licensed real estate broker and a member of the Clark County Board of Equalization. I testified in support of the original bill, A.B. No. 341 of the 73rd Session. I was opposed to the original language Mr. Harper proposed in A.B. 292 because it guts the heart of A.B. No. 341 of the 73rd Session. I was part of the compromise language proposed by Assemblyman Horne, Mr. Padgett and Ms. FitzSimmons, and I support A.B. 292 before you today. I oppose going back to the language Mr. Harper and Mr. Cheshire would like in A.B. 292.

I also work in the eminent domain area. I work for landowners and government agencies. It is a small arena, and in most of the local cases in Las Vegas, I will be one side or the other—the landowners or the government agencies. Assembly Bill No. 341 of the 73rd Session worked. It has been helpful. It is an adversarial process, and people from other states or from within the State oppose us and attorneys fight it out. If this new language is not used, we will

be subject to sore loser complaints. There are safeguards in place. All appraisers I know of comply with USPAP, which is a subjective document. We all attempt to comply with USPAP. Whether the bill was in place or whether licensing existed at all, we are always subject to disciplinary action by the appraisal organizations we belong to, all of which have adopted USPAP.

I do not think A.B. 292, the amendment or the original language, is necessary because A.B. No. 341 of the 73rd Session takes care of it, but I am not opposed to the compromised language. That came about in good faith, and I support that.

SCOTT DIBIASIO (Appraisal Institute):
The Appraisal Institute is the largest global membership association of professional real estate appraisers. I support A.B. 292 with the amendment proposed by Mr. Harper. I reiterate Mr. Cheshire's comments that the language passed out of the Assembly is in no way compromised language. It involves two entirely different issues. The original language of the bill would have required licensing and certification for all appraisers in eminent domain proceedings. The prohibition on the use of restricted use appraisal reports is an entirely different animal. In fact, the leaders of both the Reno-Carson-Tahoe Chapter of the Appraisal Institute as well as the Las Vegas Chapter were not involved in those discussions, even though they were the proponents of the original language.

The Appraisal Institute believes licensing and/or certification, including a temporary practice permit or a reciprocal license, is the minimum qualification an appraiser should be required to obtain to provide any opinion of value and appraisal review or appraisal consulting services in any type of transaction, including eminent domain cases. A law allows appraisers in eminent domain cases to be exempt from the requirements of NRS 645C. The problem with that is if an appraiser prepares an appraisal in an eminent domain case and he or she violates USPAP, the Commission cannot do anything to take action against that appraiser. We have heard of many instances, in Nevada and other states, where appraisers testifying in eminent domain cases have performed shoddy work in violation of USPAP. With the exemption in Nevada, they can walk away free. In those cases, a judge and/or jury would discredit the value of their work and not accept their opinion of value. However, in some cases, landowners have been denied just compensation for their property based upon shoddy non-USPAP

compliant work. The appraiser who caused that denial of just compensation has walked away free.

It is also important to point out that an appraiser who provides an opinion of value of real estate in any other type of judicial proceeding, such as a divorce, tax appeal or probate of an estate, is required to be credentialed and is subject to oversight by the Commission of Appraisers of Real Estate.

I am not sure why eminent domain cases should be any different than any other type of judicial proceeding. You have heard testimony that requiring the licensing of appraisers in eminent domain cases could result in recriminatory complaints being filed against the appraiser by the losing party. There are enough gatekeepers in place, including the Commission's legal staff and federal oversight officers, to ensure no frivolous complaints against an appraiser would ever make it to the level of an investigation, hearing or adjudication by the Commission. If an appraiser feels he has been unjustly prosecuted by the Commission, appeal methods to the courts are available to ask for reconsideration of any action by the Commission. The likelihood there would be retribution taken against appraisers for their work is slim to none.

Even if appraisers are required to be licensed, attorneys will still be able to challenge their credentials or challenge their work before a judge or jury. Attorneys must follow court rules regarding the credentialing of expert witnesses. Requiring that appraisers in eminent domain cases be licensed is simply to ensure they follow USPAP, which in other mortgage lending transactions is federal law. If the appraisers do not follow USPAP, it is appropriate the Commission be able to take appropriate action against them just as it would against an appraiser in any other type of transaction.

The amendment added by the Assembly guts the original intent of the bill and prohibits the use of one kind of appraisal report that contains a limited amount of information about how the opinion of value was developed. Attorneys do not like that kind of report because it gives them a limited amount of information on which to challenge the appraiser's opinion of value. It is obvious why attorneys want to prohibit the use of restricted appraisal reports because it gives them less to delve into.

Prohibiting the use of restrictive use appraisal reports is an entirely different matter than what was originally proposed in A.B. 292. It is my understanding

the amendment added in the Assembly was not fully vetted through any of the original proponents of the bill. Therefore, we support the amendment proposed by Mr. Harper removing the language added in the Assembly and restoring the language that would require an appraiser in a judicial proceeding for eminent domain who calls himself or herself an appraiser or refers to his or her work as an appraisal be credentialed by the Commission.

JAMES J. LEAVITT:
I am an attorney with the Law Offices of Kermitt L. Waters. The Law Offices of Kermitt L. Waters has represented landowners in eminent domain actions for approximately 40 years. We were not part of the compromised language presented regarding restricted appraisal reports. We oppose all forms of A.B. 292 because they attempt to regulate the type of evidence that would be admitted in an eminent domain proceeding. It interferes with a process that has worked for approximately 100 years—the judicial process.

I will explain how eminent domain proceedings work from the time the client comes into our office until the case is ultimately decided. The appraisers produce their expert report. With that expert report, they produce a work file. Within that report and work file, whether it is a restricted appraisal report, a summary appraisal report or whatever type of appraisal report, all things they may be able to testify to must be included in the expert report and the work file produced. As an attorney, I have an obligation to read that testimony, work file and expert report, and depose that witness.

If I do not agree with that witness's testimony because it is unreliable or irrelevant, I have the opportunity to file a motion in limine with the district court judge early in the case. The district court judge can exclude that testimony. In a federal case, the federal claims court stated very succinctly that the district court judge acts as a gatekeeper to fetter out unreliable and irrelevant testimony. That process should be followed to exclude this testimony. Stepping into that providence and determining what appraisal testimony may or may not be admitted in eminent domain proceedings is contrary to Nevada law. Our Nevada Supreme Court has stated in *City of Sparks v. Armstrong*, 103 Nev. 619, 748 P.2d 7 (1987) that it is often appropriate to determine the fair market value of property which has no relevant market by any method of valuation that is just and equitable.

I have given seminars in eminent domain to attorneys across the Country, explaining that certain property may not have a market. For example, a property with an unrestricted gaming license in a neighborhood, a landfill, a church or a park may not have a market. We may need to resort to evidence not typically admitted under the USPAP standard or which may require us to step outside those standards to arrive at just compensation. The courts have unanimously held in the past that as long as that method arrives at just compensation and is reliable and relevant, the court should admit that testimony and allow the jury to hear it.

Our Nevada Supreme Court stated that all elements that might affect the fair market value of property, including such elements that might influence a reasonably prudent person interested in purchasing it, are held properly considered. The Nevada Supreme Court has stated it will leave it up to the judge to determine what type of evidence should be admitted. That judge acts as a gatekeeper to determine whether that evidence is reliable and relevant.

Let us suppose a judge allows evidence you believe is unreliable and irrelevant; then you have an opportunity to cross examine that appraiser in front of the jury. This works effectively. The jury hears the evidence and makes a determination on whether that appraiser has provided reliable and relevant testimony.

Additionally, if a report is produced to you and you cannot determine the basis of that report, you can have it excluded for lack of foundation. Every person who gets on the stand in front of a jury has to lay a foundation for his or her testimony. If he or she has provided a report that is not transparent and does not include a foundation for the testimony, any competent judge and attorney will keep that evidence out. It will not be admitted.

MR. LEAVITT:
What you are doing by stating certain evidence is excluded from all eminent domain proceedings invades this province the judges have. It has an unintended consequence. For example, we had a case against Clark County. In that case, the most reliable expert was not an appraiser but a broker. That broker knew the real estate market in that area, knew commercial property values and the impact the taking would have on the landowner's property. Our property was on a corner, and the government was taking that corner influence away. That individual had relevant and reliable testimony. We knew the government was

going to try to exclude that testimony, so we filed a brief and District Judge Mark Gibbons, who is now a Supreme Court Justice, allowed that testimony. If he had this law excluding restricted appraisal reports, he could have said the witness's testimony, which is the most reliable in this case, does not rise to the level of a restricted appraisal report. Even though the evidence was reliable, the judge could not have admitted it.

Assembly Bill 292 is an unnecessary law because judges make these determinations of what evidence should be admitted. Our process works well. It has worked well for 100 years, and there is no reason to now step on the judges' toes and handcuff them regarding what type of evidence can and cannot be admitted in eminent domain proceedings. We oppose this bill.

Regarding the amendment proposed today by the appraisers, we oppose that more than we oppose the restricted appraisal language because it subjects our appraisers to sore loser complaints. Ms. FitzSimmons has explained this well.

That process is unfair and should not be used. It was disturbing to see a landowner's appraiser testify against the State and then the State, unsatisfied with that testimony, sought to discipline that appraiser. That was a sore loser case. The Office of the Attorney General that represents the NDOT in eminent domain cases is the same office to discipline the appraisers who testify in eminent domain proceedings under the bill proposed by the appraisers today. The amendment Ms. FitzSimmons proposed in 2005 and which passed unanimously was good law. It has worked for the last six years, and appraisers have not been targeted by the government. When that appraiser was disciplined, we tried to hire several appraisers to testify against the NDOT in eminent domain proceedings. They would not do it because they would be subject to discipline by the entity they were testifying against. It has a chilling effect on a landowner's right to hire an appraiser and fairly present a case to a jury.

We oppose all these amendments because they enter into the province where the judges can make the determination. Regarding the amendment proposed by the appraisers today, they say they have safeguards to protect appraisers through this disciplinary process. That is not what I saw in the past. Those safeguards were not in place. Judges are safeguards who hear the evidence and determine whether it is relevant and reliable. That process should be adhered to, and the Legislature should not interfere with that process.

SENATOR ROBERSON:
I want to disclose that Mr. Leavitt and my wife are cousins.

CHRIS LAUGER (President, Las Vegas Chapter, Appraisal Institute):
I support Mr. Harper's amendment to A.B. 292, putting in the language we originally supported. While I agree with Ms. FitzSimmons that portions of this would gut what was passed in 2005, that statute is the only one among other states. It allows appraisers to come in and appraise in an eminent domain hearing and not be held to the same standard as other appraisal work. We oppose that. That is why I support the amendment.

MS. FITZSIMMONS:
There was no negotiation on the compromise. I did not sit down with Assemblyman Horne and negotiate a compromise and exclude the appraisers. At the hearing in front of the Assembly Committee on Judiciary, it was clear the original bill was not going to go through. At that time, Assemblyman Horne read the proposed compromise by Mr. Padgett. Ms. Campa and I said that was fine. Mr. Harper was in Las Vegas and did not object. There has been no objection since then. A week ago Friday was the first time I heard there was a problem with this compromise.

Eminent domain cases are different than any other judicial proceeding because the government is involved. In all other cases where appraisers can be subject to discipline, there is not the inherent conflict that Mr. Leavitt and Ms. Campa articulated. When you have opponents in one of these cases and they have your professional life in their hands, there is a chilling effect not present in probate or other cases.

Regarding the checks and balances in this disciplinary process, appraisers employed full time by the NDOT are part of these screening committees. It is a process that can be misused. In the past, it has been comprised of people who have worked primarily for the government. It should not have a bent either way. It should be in the courts of law as Mr. Leavitt said.

ASSEMBLYMAN HORNE:
In the hearing in the Assembly, no appraisers opposed the amendment. We heard a week ago they were not amenable to the compromise in this bill. I will take responsibility for not remembering the 2005 legislation. This compromise is good and appropriate. I ask for your consideration.

CHAIR WIENER:
I will close the hearing on A.B. 292 and open the hearing on A.B. 317.

ASSEMBLY BILL 317 (1st Reprint): Revises provisions governing arbitration of certain claims relating to residential property. (BDR 3-540)

ASSEMBLYMAN TICK SEGERBLOM (Assembly District No. 9):
Assembly Bill 317 started out as a great idea to change the way the Real Estate Division works regarding arbitration and how it selects arbitrators. It became clear that it was more complicated than I was prepared for. The issue is when you file an appeal from the Real Estate Division to the district court. It is not clear. When you get a judgment from the arbitrator and then ask for attorney's fees, there is an attorney's fees award. The question is whether the appeal is filed. If the attorney's fees award is still being considered, is the appeal filed 30 days after that award? This bill says the appeal is filed 30 days after all those things are resolved rather than trying to file the appeal after one award or the other. This would clarify the issue of when to file the notice of appeal.

CHAIR WIENER:
That is what the words "final decision" mean?

ASSEMBLYMAN SEGERBLOM:
That is what we think.

CHAIR WIENER:
That is the intent?

ASSEMBLYMAN SEGERBLOM:
Yes.

CHAIR WIENER:
In section 4, subsection 5 of the bill, you will see the language that morphed from the original bill.

ASSEMBLYMAN SEGERBLOM:
The words "which are dispositive of any and all issues of the claim which were submitted to nonbinding arbitration" were added to one sentence in section 4, subsection 5 of the bill. Jonathan Friedrich proposed an amendment to A.B. 317 (Exhibit G). I do not have a position on his amendment.

CHAIR WIENER:
Mr. Friedrich's amendment, Exhibit G, would add a new section?

ASSEMBLYMAN SEGERBLOM:
Supposedly, it is part of an Assembly bill in the Senate Committee on Finance.

CHAIR WIENER:
It is a fee for mediators or arbitrators selected or appointed pursuant to this section.

ASSEMBLYMAN SEGERBLOM:
It caps the fee at $1,000, and you cannot award either party.

CHAIR WIENER:
I will close the hearing on A.B. 317. The hearing is open for public comment. There being nothing further to come before the Committee, we are adjourned at 10:05 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. 373	C	Assemblyman Pete Goicoechea	Photographs of damaged property
A.B. 292	D	Brian Padgett	Letter dated May 9
A.B. 292	E	Laura FitzSimmons	Statement in Opposition to A.B. 292
A.B. 292	F	Keith Harper	Proposed revisions to NRS 645C.150
A.B. 317	G	Jonathan Friedrich	Proposed Amendment to A.B. 317