

AJR 3 - 2007

Introduced on: Feb 21, 2007

By Hardy , Buckley , Ohrenschall , Horne , Gansert , Allen , Anderson , Arberry , Atkinson , Beers , Bobzien , Carpenter , Christensen , Claborn , Cobb , Conklin , Denis , Goedhart , Goicoechea , Grady , Hogan , Kihuen , Kirkpatrick , Koivisto , Mabey , Manendo , Marvel , McClain , Mortenson , Munford , Oceguela , Parks , Parnell , Pierce , Segerblom , Settelmeyer , Smith , Stewart , Weber , Womack , Care , Heck , Cegavske , Hardy , Raggio , Beers , Coffin , Horsford , Lee , Mathews , McGinness , Nolan , Schneider , Townsend , Washington , Wiener , Woodhouse

Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

Fiscal Notes

Effect on Local Government: *No.*

Effect on State: *No.*

Most Recent History Action:
(See full list below)

File No. 101.
Return to 2009 Session.

Past Hearings

Senate Judiciary	Feb-28-2007	Mentioned No Jurisdiction
Assembly Judiciary	Mar-08-2007	No Action
Assembly Judiciary	Mar-14-2007	No Action
Assembly Judiciary	Mar-23-2007	Amend, and do pass as amended
Assembly Elections, Procedures, Ethics, and Constitutional Amendments	Apr-09-2007	Do pass, as amended
Senate Judiciary	Apr-24-2007	Amend, and do pass as amended

Votes

Assembly Final Passage Apr-12 Yea 42, Nay 0, Excused 0, Not Voting 0, Absent 0

Senate Final Passage May-14 Yea 20, Nay 0, Excused 1, Not Voting 0, Absent 0

Bill Text (PDF)	As Introduced	1st Reprint	2nd Reprint	As Enrolled
Statutes of Nevada 2007	File No. 101			
Amendments (PDF)	Amend. No.75	Amend. No.630		

Bill History

Feb 21, 2007 Read first time. Referred to Concurrent Committees on Judiciary and Elections, Procedures, Ethics, and Constitutional Amendments. To printer.

Feb 22, 2007 From printer. To committees.

Apr 05, 2007 From Concurrent Committee on Judiciary: Amend, and do pass as amended.

Apr 09, 2007 Read second time. Amended. (Amend. No. 75.) To printer.
From printer. To engrossment. Engrossed. First reprint.
To Concurrent Committee on Elections, Procedures, Ethics, and Constitutional
Amendments.

Apr 12, 2007 From Concurrent Committee on Elections, Procedures, Ethics, and Constitutional
Amendments:
Do pass, as amended. Placed on General File. Read third time. Passed, as amended.
Title approved.(Yeas: 42, Nays: None.) To Senate.

Apr 13, 2007 In Senate.
Read first time. Referred to Committee on Judiciary. To committee.

May 07, 2007 From committee: Amend, and do pass as amended.

May 08, 2007 Read second time. Amended. (Amend. No. 630.) To printer.

May 09, 2007 From printer. To reengrossment. Reengrossed. Second reprint.
Taken from General File. Placed on General File for next legislative day.

May 10, 2007 Taken from General File. Placed on General File for next legislative day.

May 14, 2007 Read third time. Passed, as amended. Title approved.
(Yeas: 20, Nays: None, Excused: 1.) To Assembly.

May 15, 2007 In Assembly.

May 24, 2007 Senate Amendment No. 630 concurred in. To enrollment.

May 25, 2007 Enrolled and delivered to Secretary of State.

File No. 101.

Return to 2009 Session.



PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

FLOOR STATEMENT
74th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

ASSEMBLY JOINT RESOLUTION NO. 3
(Enrolled)

Topic

Assembly Joint Resolution No. 3 concerns eminent domain proceedings.

Summary

Assembly Joint Resolution No. 3 proposes to amend Section 8, Article 1 of the *Constitution of the State of Nevada* to provide that, except under certain circumstances, private property may not be taken through an eminent domain proceeding if it is to be transferred to a private party.

The amendment proposed by this measure also provides for the manner of computing just compensation to the owner of condemned property, and stipulates that neither party to an eminent domain proceeding is liable for the other party's attorney's fees, except under certain circumstances. It provides that the original property owner must be given the opportunity to reacquire the property if the entity that took it has failed to put it use within 15 years.

Finally, A.J.R. 3 provides that if the People's Initiative to Stop the Taking of Our Land (PISTOL) is approved at the 2008 General Election, its provisions will be repealed upon final approval of A.J.R. 3 by the voters at the 2010 General Election.

Effective Date

If approved in identical form during the 2009 Session of the Legislature, A.J.R. 3 will be submitted to the voters for final approval or disapproval at the 2010 General Election.

Background Information

Testimony indicated that the sponsors of the PISTOL initiative were involved with the drafting of A.J.R. 3 and are in agreement with its provisions. Additionally, Assembly Bill 102 has been drafted as a statutory companion measure to A.J.R. 3, and its provisions have also been agreed to by the sponsors of the PISTOL initiative.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
February 28, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Wednesday, February 28, 2007, 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 Mark E. Amodei, Chair
Senator Maurice E. Washington, Vice Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

GUEST LEGISLATORS PRESENT:

William J. Raggio, Washoe County Senatorial District No. 3

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bryan Fernley-Gonzalez, Committee Counsel
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

Bruce L. Woodbury, Board of Commissioners, Clark County; Chairman, Regional Transportation Commission
Jacob Snow, General Manager, Regional Transportation Commission, Clark County
Kermitt Waters

NICOLAS ANTHONY (City of Reno):

The City of Reno supports the efforts of this body and bills passed in the 2005 Legislative Session. We look forward to working with the Committee to come to an agreement on this issue.

DAVID K. SCHUMANN (Nevada Committee for Full Statehood; Independent American Party):

The Independent American Party supports S.B. 16 and S.B. 85. Justice Clarence Thomas, after the *Kelo* decision, said the Supreme Court amended the Constitution by substituting the word "purpose" for the word "use." It was a simple thing—going from use to purpose, the purpose being to raise income. A goal of the redevelopment people is to increase income to local government. Justice Thomas recognized that the Constitution cannot be amended without a laborious process. The Nevada Supreme Court, as well as other courts, has no business amending the Nevada Constitution.

JOHN L. WAGNER (The Burke Consortium):

Two things I have learned—the first is to listen when Senator Raggio speaks. His testimony on S.B. 85 was excellent and needed. I supported PISTOL and look forward to decisions coming out of committees. The second thing is to count votes. I see more than enough voters present in support of S.B. 85 to pass it out of this Committee. I fully expect the version coming out of the Assembly will go into conference; either way, you are doing the right thing. I favor private property and private property rights.

MS. HANSEN:

The Nevada Eagle Forum supports S.B. 85.

MR. BENDER:

The City of North Las Vegas reiterates our ability to live with the provisions in S.B. 85 and would like to be involved in the process as it moves forward.

SENATOR WASHINGTON:

The hearing is closed on S.B. 85 and opened on S.B. 130.



SENATE BILL 130: Repeals the prospective expiration of the provision relating to the use and sale of certain property acquired by a governmental entity through eminent domain. (BDR S-588)

Senate Committee on Judiciary
February 28, 2007
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SUSAN MARTINOVICH (P.E., Director, Director's Office, Nevada Department of Transportation):

Senate Bill 130 repeals language in legislation that took effect during the 2005 Legislative Session. The NDOT received a letter from the Federal Highway Administration indicating Nevada's federal funding would be in jeopardy without this exception. Subsequently, NDOT received a second letter from the Administration to the contrary and decided to resolve the issue through Assembly Joint Resolution (A.J.R.) 3. Therefore, NDOT respectfully removes the repeal request in S.B. 85 because A.J.R. 3 should address the concerns.

ASSEMBLY JOINT RESOLUTION 3: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

SENATOR CARE:

Regarding Mr. Shumann's testimony, NRS 37.010, which is the scope of power on eminent domain, begins by using the words "public purposes." I would like Committee Counsel to identify those statutes regarding eminent domain where the words "public purpose" are used, as opposed to "public use." The words "public use" are used in the Fifth Amendment.

SENATOR WASHINGTON:

The clarification will be made. The hearing is closed on S.B. 130.

Ms. Eissmann, when the Committee addresses S.B. 85 in work session, please make a note to amend it and add my name to the sponsorship.

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

**Seventy-Fourth Session
March 8, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:06 a.m., on Thursday, March 8, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblywoman Susan Gerhardt (excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joseph P. Hardy, Assembly District No. 20

Minutes ID: 426



STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Kaci Kerfeld, Committee Secretary
Matt Mowbray, Committee Assistant

OTHERS PRESENT:

Bruce Woodbury, Clark County Commissioner, Chairman of the Regional Transportation Commission of Southern Nevada
Janine Hansen, State President, Nevada Eagle Forum, Elko
Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation, Sparks
George Ross, Chamber of Commerce, Las Vegas, Nevada
David Schumann, Vice Chairman, Nevada Committee for Full Statehood, Sparks
Nicholas C. Anthony, Legislative Relations Program Manager, Officer of the City Manager, Reno, Nevada
Derek Morse, Deputy Executive Director, Regional Transportation Commission, Washoe County, Nevada
Paul Lipparelli, District Attorneys Office, Washoe County, Nevada
Rudy Malfabon, Deputy Director, Department of Transportation, Nevada
Dennis Johnson, Private Citizen, Nevada

Chairman Anderson:

I am moving Assembly Joint Resolution 3 to the front of the agenda to accommodate Mr. Woodbury in Clark County. We must clearly recognize that this is a potential constitutional amendment. We have the opportunity to make sure that our statutory language is a reflection of the constitutional questions so that this can get placed.

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

Assemblyman Joseph P. Hardy, Assembly District No. 20:

There is a need to do something with eminent domain. Everyone on this Committee is probably aware of some of those issues. The balance we try to maintain in life and government is to represent the people as well as the process in such a way that we protect rights. In terms of pendulums and balances, you have had a government that has been somewhat egregious in tipping the scale against private property owners. What A.J.R. 3 is trying to do, in the

constitutional sense, is even that scale. Sometimes you end up going too far and then you need to rebalance it. The rebalancing is what we are doing right now with these eminent domain propositions, proposals, and constitutional amendments. When I had the opportunity to talk to people who were involved with the process of eminent domain and its enforcement, I realized that we needed a parallel solution. Anybody who has fixed a plumbing problem realizes that you need two wrenches in order to fix the problem. Eminent domain must be addressed as a parallel track—one being the constitution, the other being the statute. We are seeing several statutes come before us as well as constitutional amendments, but you have to have both in order to successfully repair your pipes. I met with Commissioner Woodbury and realized we need a solution that will work and not overwhelm one party or the other. Commissioner Woodbury took it upon himself to get the parties in the same room and come up with a solution. The proposed amendment mock-up that I have given you (Exhibit C) has everything the bill has introduced plus a small phrase added on page 3, lines 35 and 36, which would allow for friendly condemnations. Referencing the meeting I had with Commissioner Bruce Woodbury, Kermitt Waters, Jim Levette, and various other people in the room, it became apparent that we had to protect people immediately by statute.

The potential problems with the Peoples Initiative to Stop the Taking of Our Land (PISTOL) would create a challenge for us in statute and constitution. The statute needs to take effect as soon as possible while the constitutional amendment that would improve PISTOL marches forth for an ultimate approval by this Body. It will come up again in the 2009 Session so that it could go before the voters in 2010 and take effect in 2011, if approved by the voters.

Bruce Woodbury, Clark County Commissioner, Chairman of the Regional Transportation Commission of Southern Nevada:

[Read from prepared testimony (Exhibit D).]

Chairman Anderson:

I want to thank you for your involvement in this, as well as helping communities understand the need for the State to hold eminent domain issues, and the opportunity for transportation, school, water reclamation, and other good public use. We tried to come up with a partial legislative solution before the Supreme Court decision, and while we continue to work on that, there are many people who have a particular feeling regarding this issue. I hope that statutorily we can move faster than our constitutional amendment. The constitutional amendment is going to drop into a place where, hopefully, it will be clearly understood and defensible in terms of what the public need is—that it is not for private profit, and what type of circumstances might dictate it. Has the added

language on page 3, lines 35 and 36, "The person from whom the property is taken consents to the taking," been agreed to by all of the people involved?

Assemblyman Hardy:

The language in the mock-up is literally hot off the press. This language was requested in the original deal where the original "delicate balance" was inadvertently left out. The principals have both recommended that we make sure we have "friendly condemnation." That is the understanding that I have and I would defer to Mr. Woodbury.

Chairman Anderson:

Mr. Woodbury, I have a copy of your prepared testimony and will have it submitted for the record. In addition, I have a PISTOL settlement scenario (Exhibit E) that was faxed to us. Is it your intent to have that also entered into the record?

Bruce Woodbury:

Yes, Mr. Chairman.

Chairman Anderson:

Subsection 6 says "private property shall not be taken for public use without just compensation having been made, except under certain circumstances." It sets forth those circumstances in subsection 7. It prohibits the transfer of property taken by eminent domain to a private person or entity except in four circumstances. The entity that took the property leases the property to a private person or entity, and will provide the person from whom the property was taken with an opportunity to bid. That is upheld. Then in subsection 8 of the bill, it allows the property owner to have a copy of the appraisal and the right to all appraisals to determine whether the property is specifically listed as being taken for a public use. The entity taking the property has the burden of proving that the taking is for a public use. There will be no liability for attorney fees for either party, except in certain inverse condemnation action. One of the more important parts in subsection 9 is if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use. If property is taken primarily for a profit-making purpose, the property must be valued at the intended use, if such a use results in a higher value for the property owner. Subsection 10 defines "fair market value," and subsection 11 defines "just compensation" to be the sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken and must include interest and reasonable costs and expenses incurred. Subsection 12 says that the property taken must be offered to the person from whom the property was taken if it is not used within 15 years for the public use for which it was taken, or if the entity that took the

property seeks to convey any right, title, or interest in the property to any other person in any other amount than described in subsection 7. The property must be offered to the person from whom the property was taken for the same price as originally purchased. Section 14 applies to an action in eminent domain that is filed on or after January 1, 2011, and this would repeal PISTOL.

It is a complicated bill to understand when you run through it quickly. We have dealt with this issue for many years and many sessions. The public dollar is obviously what we are concerned about. We need roads and water reclamation areas, and we need those things to be purchased at a reasonable price because we are using public dollars and we want the best deal we can get. At the same time, we should not take advantage of the private property owner, who has a right to his property.

Assemblyman Carpenter:

As I understand it, the Legislature would vote on this bill this session and next session, and then it would go to a vote of the people. Before PISTOL would be taken out, what we are considering here today would be put in. Is this going to make any other changes to the statute, specifically in reference to *Nevada Revised Statutes* (NRS) 37.010, where it describes the public purposes allowed for eminent domain? In your bill, it refers back to utility, railroad, and public transportation projects. It seems to me, that if the statute remains the same as it is now, those things are already taken care of.

Assemblyman Hardy:

The play comes back to the two pipe wrenches. We can change the statute from session to session. The people who have voted for PISTOL want the assurance that the government is not going to change its mind and change the statute. There is an inherent difference between a constitutional amendment that is firm and a statute that is flexible. We have to do both. The list that you will have before you later in Committee has appropriate language to have in statute. Constitutionally, we have to make sure there is a mirroring of that language so that the statutes will help define the constitutional amendment in the future. There will be people who say that we could improve the constitutional amendment or the statute, as Commissioner Woodbury addressed. If we can vet those things with the parties involved, we can keep the level of trust. It is the level of trust that we are talking about. That is why we want to be able to do both things at the same time and bring about what I would call PISTOL-plus. Something that is in PISTOL already, but improved, so that it does what the Chair was addressing and helps us with our transportation issues as well as the level of trust in government.

Assemblyman Horne:

Do you have the mirrored statutory language as of yet?

Assemblyman Hardy:

I do not. Those kinds of things will be statute language, and I suspect that this Committee and the Constitutional Committee will probably have input as to how they want that. I personally have a BDR that has not yet been written, and it would not surprise me if it mirrors some of the language that we are already discussing.

Chairman Anderson:

We have two bills on the track, so it may be well to make sure the statutory language is reflected in those. We will not have statutory language competing with constitutional language.

Assemblyman Hardy:

I had a handshake with Mr. Kermitt Waters, and I told him that my goal was to have mirror language in statute and in constitution, and march those forward through the legislature. I do not care who owns the bill as far as the name is concerned, and would be thrilled to continue to work with Mr. Horne as well as the other members who are on board. I appreciate that offer.

Chairman Anderson:

We will consider it an extension of your handshake, and see if we can take care of it in that fashion, depending on the will of the Committee, of course.

Janine Hansen, State President, Nevada Eagle Forum, Elko:

We supported PISTOL in our Nevada Family Voter guide which went throughout the State last election. We are supporting A.J.R. 3 as the compromise measure at this time. An article which concerns us greatly has been handed out to you (Exhibit F). We have been involved in the change of terms by the United States Supreme Court from "public use" to "public purpose", in which "public purpose" has allowed abuses to take place, such as people's homes being taken for economic development to increase the tax base. This is certainly of great concern to us.

Since the *Kelo* decision [*Kelo v. City of New London*, 545 U.S. 469 (2005)], over 5,700 properties have come under threat. During this time, 30 states have responded as you are responding. We supported your legislation last session to help correct the eminent domain issues. Eleven states had ballot measures, including our own. We support this legislation, and because I have to go to another Committee, we also want to go on the record for Assembly Bill 102 and

Assembly Bill 129, particularly A.B. 129, which includes court costs and damages.

Doug Busselman, Executive Vice President, Nevada Farm Bureau Federation:

We are here in support of A.J.R. 3. Our organization was also involved in supporting Ballot Question Two, Nevada Property Owner's Bill of Rights, and we continue to support it. We appreciate the Legislature's attention this session to various components and ideas on protecting private property rights. We believe this is something that needs to be of top priority.

George Ross, Chamber of Commerce, Las Vegas:

We are in favor of A.J.R. 3. We feel this is a good balance between protection of private property and the need for the government public sector to build initiatory facilities to keep up with the growth in southern Nevada.

David Schumann, Vice Chairman, the Nevada Committee for Full Statehood:

Justice Thomas remarked on the *Kelo* case that the Supreme Court had amended the United States Constitution by substituting the word "purpose" for the word "use" in the Fifth Amendment by saying that property should not be taken except for public "use," and they changed that to "purpose". Now we are changing line 32 of page 3 of the bill to "benefit of public service." This is an opening wedge, and skillful lawyers will be able to take this wedge and expand it. Skillful lawyers are experts in the use of language and in different interpretations of phrases and words. I support these two other bills and PISTOL. PISTOL does the job and it does it strongly; this is going to water it down. We are not contemplating what good lawyers can do with this language. By putting these wedge words in here like "service" instead of "purpose", we are going to water PISTOL down and the people who voted for PISTOL are going to feel betrayed.

Assemblyman Conklin:

This is an A.J.R., so when it passes here it must move through Elections, Procedures, Ethics, and Constitutional Amendments, pass the House twice, and then proceed to a vote of the people, correct?

Chairman Anderson:

It would need an affirmative vote in this session of the Legislature from both Houses. It would need to leave this Committee, go to the second Committee on Elections, Procedures, Ethics, and Constitutional Amendments, and then to the other House for its concurrent. It would then need to go through this House again in 2009, and then to the vote of the people in 2010. There will be at least 5 more votes on it.

Nicholas C. Anthony, Legislative Relations Program Manager, Officer of the City Manager, Reno, Nevada:

I would like to echo support for A.J.R. 3 and the work of this Body, both now and in the last session. Before the *Kelo* decision, this Body made great strides in our statewide legislation, in terms of curbing eminent domain abuse. We look forward to working with the sponsors as this measure moves throughout this session, into the future for 2009, and then for the voters.

Derek Morse, Deputy Executive Director, Regional Transportation Commission, Washoe County:

My comments this morning reflect the perspective of senior management of the Regional Transportation Commission of Washoe County (RTCWC). We have not had a specific discussion with our board on this particular piece of legislation, but we will later this month.

From a transportation perspective, A.J.R. 3 offers significant improvement over the language of PISTOL.

[Chairman Anderson left room.]

The resolution addresses a number of very significant issues that we are concerned with regarding PISTOL. The language of PISTOL would have crippled the public's ability to enter into concession agreements for the construction and operation of vital transportation facilities with the private sector—which we call public-private partnerships. Section 8.7 maintains the potential for such arrangements. PISTOL could have arguably required the public to pay attorney fees, thus encouraging increased litigation and the diversion of scarce public dollars away from needed infrastructure. Again, the language of A.J.R. 3 addresses this concern. PISTOL would also impose a five-year deadline for the use of property acquired by eminent domain—a restriction incompatible with the increasingly complex projects needed to keep Nevada mobile. This issue has also been effectively addressed by Section 12(a) of A.J.R. 3. PISTOL also effectively rendered the offer of the judgment mechanism unavailable to the public. Section 8.8 of A.J.R. 3 balances the playing field by denying this offer of judgment mechanism to either the public or the private owner in the future. For all of these reasons, A.J.R. 3 is clearly superior to the alternative. Management of RTCWC will be recommending to our board that they support the resolution and the related legislation enacting this provision into NRS. At the same time, it is incumbent upon the RTCWC, as fiduciaries of the public money that has been entrusted to us, to disclose that the provisions of A.J.R. 3 are projected to result in an increase of \$140 million in costs required over the next approximately 25 years. While this is considerably less than the

projected impacts of PISTOL, it is nonetheless a significant factor and should be acknowledged as part of these deliberations.

Assemblyman Carpenter:

Could you give me an example of the public-private partnerships that you are in now, or would enter into if A.J.R. 3 becomes part of the constitution?

Derek Morse:

Because of the work by the Governor's Blue Ribbon Committee, it is well known throughout Nevada that we are dramatically short on the funds for transportation projects in the State. We face that problem in the north as well as in the south. We have core freeway improvements that need to be made in the I-80 corridor as well as the 395 corridor. We are contemplating the possibility of having new improvements made using concessions to private contractors under toll arrangements, where the tolls would fund the construction of those improvements. That means that you are transferring a property right to a private party in that regard, but it is primarily for public benefit and for transportation purposes. The language of A.J.R. 3 would clearly allow such arrangements should they be approved. We know that we are a long way from that, but the language of PISTOL itself would have denied such arrangements.

Assemblyman Carpenter:

So, it is basically a toll road?

Derek Morse:

That is one aspect, yes. The tolls clearly are a way of accomplishing that.

Assemblyman Mortenson:

Even though the public-private phrase is in the constitution ... would that divestment of public property to a private entity require legislative approval?

Assemblyman Horne:

Are you talking about a divestment after the taking from a public-private partnership, whether they need ... ?

Assemblyman Mortenson:

Can toll roads be put in without legislative approval?

Assemblyman Horne:

I do not think that, under A.J.R. 3, it would be okay to put toll roads in. It only says that if we are to do it, it would be a permissible taking in our constitution. Does that make sense?

Assemblyman Hardy:

Currently in statute, there is a prohibition from using tolls or toll roads in the State of Nevada. To answer your question directly, yes, the Legislature would have to approve tolling in any way in the State of Nevada.

Paul Lipparelli, Washoe County District Attorney's Office:

I would like to address one provision of A.J.R. 3 in subsection 11, which deals with "just compensation." Assemblyman Hardy's description of the necessary balance was very apt, and Mr. Morse's description from the RTCWC perspective of this resolution over PISTOL is something we concur with completely. With regard to "just compensation" and the determination of interest, when a government entity like Washoe County undertakes the solemn act of condemnation, it is really important to our analysis that there is a certain measure of predictability in what we do. We count on being able to have the data available to know approximately how much interest we would have to pay on the judgment.

[Chairman Anderson returned.]

Section 11 would establish not only the determination of the interest rate, but also when the interest begins to run with the district court. We are concerned about how that affects our ability to estimate the total costs that we will incur when we undertake condemnation. We would appreciate the opportunity to study that and work with the sponsors of the legislation to see if we understand entirely what is meant by those provisions.

Chairman Anderson:

Recognizing that the language here has been compromised on and worked out by many, if not every, interested entity, is it Washoe County's contention that they, and they alone, have not been consulted, and therefore, are concerned about this since everyone else has been consulted?

Paul Lipparelli:

I can only speak for the things that I know. There may be officials in Washoe County who have been involved in these discussions. I merely meant to put into the record a concern about the way the language is written, and to make sure that the Committee knows we will work with those who came up with this language to make sure we understand what they mean. When I read subsection 11, I am concerned about the open-endedness of the courts' potential post-trial determinations of interest, which could cost millions of dollars for the condemning authority to come up with after the trial.

Chairman Anderson:

We are hopeful to put this to the next work session, so if you are going to prepare something, I would ask that it be done in a relatively rapid fashion. I presume that you have had an opportunity to read this since it has been out. This section has not been changed in any way by the information that was submitted this morning.

Paul Lipparelli:

We will work diligently to make sure the turn around is short.

Rudy Malfabon, Deputy Director, Department of Transportation, Nevada:

I want to go on record in support of A.J.R. 3. The acquisition of right-of-ways is a significant element of our project delivery process and it takes a lot of time. We do not start the process to acquire the right-of-way until after we get the environmental documents approved. The significant widening projects on our freeways are typically on federal aid projects. When these projects use federal aid, they have to follow the Uniform Act for Acquisition of Property, which provides protections and assistance for people that are affected by these projects. One significant thing to note is the large freeway projects that are covered by the Blue Ribbon Committee's recommendations. There are seven projects in southern Nevada and three projects in northern Nevada. The total cost of those projects is roughly \$5 billion. You may have heard about the \$3.8 billion shortfall. We do have some money available, but not enough to finish the entire projects. Out of that \$5 billion, about \$1 billion is for right-of-way costs that we anticipate.

There are significant impacts to the Department as a result of the PISTOL initiative. We understand that the compromise reached is not perfect but it addresses some major concerns of Nevada Department of Transportation (NDOT), specifically the five-year reversion clause being revised to 15 years. It takes a long time to deliver some of these projects because they are very complex and have to go through several processes. The attorney fees are another area covered. We would basically just like to go on record in support of A.J.R. 3.

Chairman Anderson:

I am closing the hearing on A.J.R. 3.

Let us turn our attention to Assembly Bill 102.

Assembly Bill 102: Prohibits use of eminent domain to acquire property for economic development. (BDR 3-38)

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MOCK-UP

PROPOSED AMENDMENT 3287 TO
ASSEMBLY JOINT RESOLUTION NO. 3

PREPARED FOR ASSEMBLYMAN HARDY

FEBRUARY 27, 2007

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN
CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE
OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment and (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment.

Legislative Counsel's Digest:

Section 8 of Article 1 of the Nevada Constitution and the Fifth Amendment to the United States Constitution provide that private property cannot be taken for a public use without just compensation. In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that the use of eminent domain to acquire property and transfer it to another private party for the purpose of economic development does not violate the Takings Clause of the Fifth Amendment to the United States Constitution.

This resolution proposes an amendment to the Nevada Constitution to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party.

In addition, the amendment proposed by this resolution requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, in all eminent domain actions, the owner of the property that is being taken is entitled to a determination of whether the taking is for a public use and the entity that is taking the property has the burden of proving that the taking is for a public use.

The amendment proposed by this resolution provides for the manner of computing the just compensation owed to a person whose property is taken by the exercise of eminent domain. Also, the amendment provides that neither a property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney's fees of the other party, except in a certain circumstance. Under the amendment, the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to reacquire the property for the price paid by the entity which took the property under certain circumstances.

Assembly committee: Jud.

*PROPOSED AMENDMENT TO

Exhibit C Bill No. AJR3 P. 1 of 5
Submitted by: Joseph Hardy Date 3/8/07

1 This resolution also proposes to repeal the "People's Initiative to Stop the Taking of
2 Our Land" if that initiative is approved by the voters at the 2008 General Election.

3 RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA,
4 JOINTLY, That Section 8 of Article 1 of the Nevada Constitution be
5 amended to read as follows:

6 Sec. 8. 1. No person shall be tried for a capital or other
7 infamous crime (except in cases of impeachment, and in cases of the
8 militia when in actual service and the land and naval forces in time
9 of war, or which this State may keep, with the consent of Congress,
10 in time of peace, and in cases of petit larceny, under the regulation
11 of the Legislature) except on presentment or indictment of the grand
12 jury, or upon information duly filed by a district attorney, or
13 Attorney General of the State, and in any trial, in any court
14 whatever, the party accused shall be allowed to appear and defend in
15 person, and with counsel, as in civil actions. No person shall be
16 subject to be twice put in jeopardy for the same offense; nor shall he
17 be compelled, in any criminal case, to be a witness against himself.

18 2. The Legislature shall provide by law for the rights of victims
19 of crime, personally or through a representative, to be:

20 (a) Informed, upon written request, of the status or disposition of
21 a criminal proceeding at any stage of the proceeding;

22 (b) Present at all public hearings involving the critical stages of
23 a criminal proceeding; and

24 (c) Heard at all proceedings for the sentencing or release of a
25 convicted person after trial.

26 3. Except as otherwise provided in subsection 4, no person may
27 maintain an action against the State or any public officer or
28 employee for damages or injunctive, declaratory or other legal or
29 equitable relief on behalf of a victim of a crime as a result of a
30 violation of any statute enacted by the Legislature pursuant to
31 subsection 2. No such violation authorizes setting aside a conviction
32 or sentence or continuing or postponing a criminal proceeding.

33 4. A person may maintain an action to compel a public officer
34 or employee to carry out any duty required by the Legislature
35 pursuant to subsection 2.

36 5. No person shall be deprived of life, liberty, or property,
37 without due process of law.

38 6. Private property shall not be taken for public use without just
39 compensation having been first made, or secured, except in cases of
40 war, riot, fire, or great public peril, in which case compensation
41 shall be afterward made.

42 7. *Except as otherwise provided in paragraphs (a) to (d),*
43 *inclusive, the public uses for which private property may be taken*

1 do not include the direct or indirect transfer of any interest in the
2 property to another private person or entity. A transfer of property
3 taken by the exercise of eminent domain to another private person
4 or entity is a public use in the following circumstances:

5 (a) The entity that took the property transfers the property to a
6 private person or entity and the private person or entity uses the
7 property primarily to benefit a public service, including, without
8 limitation, a utility, railroad, public transportation project,
9 pipeline, road, bridge or public facility.

10 (b) The entity that took the property leases the property to a
11 private person or entity that occupies an incidental part of a public
12 facility and, before leasing the property:

13 (1) Uses its best efforts to notify the person from whom the
14 property was taken that the property will be leased to a private
15 person or entity that will occupy an incidental part of a public
16 facility; and

17 (2) Provides the person from whom the property was taken
18 with an opportunity to bid or propose on an equal basis with
19 others.

20 (c) The entity:

21 (1) Took the property in order to acquire property that was
22 abandoned by the owner, abate an immediate threat to the safety
23 of the public or remediate hazardous waste; and

24 (2) Grants a right of first refusal to the person from whom
25 the property was taken that allows that person to reacquire the
26 property on the same terms and conditions that are offered to the
27 other private person or entity.

28 (d) The entity that took the property transfers an interest in the
29 property to a private person or entity in exchange for an interest in
30 the property that was taken, or is being taken, by the exercise of
31 eminent domain or under the threat of the exercise of eminent
32 domain for the purpose of a road or highway, the relocation of
33 public or private structures or to facilitate or avoid payment of
34 excessive compensation or damages.

35 (e) The person from whom the property is taken consents to
36 the taking.

37 8. In all actions in eminent domain:

38 (a) Before the entity that is taking property obtains possession
39 of the property, the entity shall give to the owner of the property a
40 copy of all appraisals of the property obtained by the entity.

41 (b) At the occupancy hearing, the owner of the property that is
42 the subject of the action is entitled, at the property owner's
43 election, to a separate and distinct determination as to whether the
44 property is being taken for a public use.

1 (c) *The entity that is taking property has the burden of proving*
2 *that the taking is for a public use.*

3 (d) *Except as otherwise provided in this paragraph, neither the*
4 *entity that is taking property nor the owner of the property is liable*
5 *for the attorney's fees of the other party. This paragraph does not*
6 *apply in an inverse condemnation action if the owner of the*
7 *property that is the subject of the action makes a request for*
8 *attorney's fees from the other party to the action.*

9 9. *Except as otherwise provided in this subsection, if a court*
10 *determines that a taking of property is for public use, the taken or*
11 *damaged property must be valued at its highest and best use*
12 *without considering any future dedication requirements imposed*
13 *by the entity that is taking the property. If property is taken*
14 *primarily for a profit-making purpose, the property must be valued*
15 *at the use to which the entity that is taking the property intends to*
16 *put the property, if such use results in a higher value for the*
17 *property.*

18 10. *In all actions in eminent domain, fair market value is the*
19 *highest price, on the date of valuation, that would be agreed to by*
20 *a seller, who is willing to sell on the open market and has*
21 *reasonable time to find a purchaser, and a buyer, who is ready,*
22 *willing and able to buy, if both the seller and the buyer had full*
23 *knowledge of all the uses and purposes for which the property is*
24 *reasonably adaptable and available.*

25 11. *In all actions in eminent domain, just compensation is*
26 *that sum of money necessary to place the property owner in the*
27 *same position monetarily as if the property had never been taken,*
28 *excluding any governmental offsets except special benefits. Special*
29 *benefits may only offset severance damages and may not offset the*
30 *value for the property. Just compensation for the property taken by*
31 *the exercise of eminent domain must include, without limitation,*
32 *interest and reasonable costs and expenses incurred by the owner*
33 *of the property that is the subject of the action. The district court*
34 *shall determine, in a posttrial hearing, the award of interest and*
35 *award as interest the amount of money which will put the person*
36 *from whom the property is taken in as good a position monetarily*
37 *as if the property had not been taken. The district court shall enter*
38 *an order concerning:*

39 (a) *The date on which the computation of interest will*
40 *commence;*

41 (b) *The rate of interest to be used to compute the award of*
42 *interest, which must not be less than the prime rate of interest plus*
43 *2 percent; and*

44 (c) *Whether the interest will be compounded annually.*

1 12. *Property taken by the exercise of eminent domain must be*
2 *offered to and reverts to the person from whom the property was*
3 *taken upon repayment of the original purchase price if, within 15*
4 *years after obtaining possession of the property, the entity that*
5 *took the property:*

6 (a) *Fails to use the property for the public use for which the*
7 *property was taken or for any public use reasonably related to the*
8 *public use for which the property was taken; or*

9 (b) *Seeks to convey any right, title or interest in all or part of*
10 *the property to any other person and the conveyance is not*
11 *occurring pursuant to subsection 7.*

12 ↪ *The entity that has taken the property does not fail to use the*
13 *property under paragraph (a) if the entity has begun active*
14 *planning for or design of the public use, the assembling of land in*
15 *furtherance of planning for or design of the public use or*
16 *construction related to the public use.*

17 13. *If any provision of subsections 7 to 12, inclusive, or the*
18 *application thereof to any person or circumstance is held invalid,*
19 *such invalidity shall not affect the provisions or application of*
20 *subsections 7 to 12, inclusive, which can be given effect without*
21 *the invalid provision or application, and to this end the provisions*
22 *of subsections 7 to 12, inclusive, are declared to be severable.*

23 14. *The provisions of subsections 7 to 12, inclusive, apply to*
24 *an action in eminent domain that is filed on or after January 1,*
25 *2011.*

26 And be it further

27 RESOLVED, That Section 22 of Article 1 of the Nevada Constitution,
28 commonly known as the "People's Initiative to Stop the Taking of Our
29 Land," if that section is approved and ratified by the voters at the 2008
30 General Election, is hereby repealed.

H

**Testimony
of
Clark County Commissioner Bruce L. Woodbury
Assembly Judiciary Committee
March 8, 2007
8:00am**

Contact information: (702) 455-3535 or BRUCE@co.clark.nv.us
via Videoconferencing from Grant Sawyer Building, Room 4401

Mr. Chairman, members of the committee, thank you for the opportunity to testify regarding the bills pending before you and the subject of eminent domain in general.

First, let me say that until about a year ago, eminent domain was not a topic which was prominent on my agenda, except that a few years ago, I opposed the creation of Clark County's Redevelopment Agency or any use by such an agency of the power of eminent domain because of my concern about abuses of property rights in the taking of private property by government agencies which then sell the property to other private parties for economic development or redevelopment purposes. My opposition to such uses of eminent domain was, of course, reinforced by the Kelo ruling by the U.S. Supreme Court. However, I have never before involved myself in these legislative issues. Each of you and many of your colleagues in the Senate and Assembly have far greater knowledge, experience, and insight regarding the constitutional, statutory and case-law framework of eminent domain in Nevada than I.

Last year, however, in my role as a county commissioner, as chairman of the Regional Transportation Commission of Southern Nevada, as a member of the Clark County Regional Flood Control District, and as a member of the Governor's Task Force on Transportation Funding, I, along with many others, became deeply concerned about potential adverse impacts of the Initiative Petition known as PISTOL, which became Question 2 on last November's ballot.

Assembly committee: Jud.

Exhibit D Bill No. AB3 P. 1 of 5
Submitted by: Bruce Woodbury Date 3/8/07

While we fully supported the primary focus of the initiative to protect property against Kelo-type takings, legal opinions indicated that PISTOL, as originally proposed, could impose major cost increases and delays on vital state and local public works projects, especially highways and roads, could jeopardize federal funds and could create an entirely new realm of virtually unlimited liability for any act of state or local government which affected anyone's property values.

As a result of a court challenge which we filed, 5 of PISTOL's original sections were stricken by the Nevada Supreme Court, including section 8, which would have created the new form of liability for any acts by government such as land use decisions, which significantly affected property values. However, several remaining provisions still caused us considerable concern.

Instead of launching an all-out media campaign against PISTOL last fall, we decided to propose an alternative constitutional amendment, which would contain many of PISTOL's well-intended provisions but with some modifications to mitigate potential unintended consequences. We did this in close consultation with NDOT, NACO, the RTC's in Clark County and Washoe County, Governor Guinn's Task Force, and of course, with several legislators, including Senator Care, Senator Horsford, Senator Hardy, Senator Beers, Assemblyman Hardy, Assemblyman Horne, and Speaker Buckley. We were also given guidance by BDR's on these subjects from members of the Senate and Assembly, and Governor Gibbons endorsed this alternative amendment process in his State of the State address.

During last fall's campaigns, I had discussions with Don Chairez, one of the authors of PISTOL, and we agreed to seek common ground since we were both property rights advocates and both recognized the urgent need to fast-track transportation improvements in Nevada.

We began our negotiations after the election and were joined by Kermitt Waters, the other principal author of PISTOL, and other legal advisors and transportation specialists. Senator Care actively participated in these negotiations, as did Assemblyman Hardy, and they were joined by Senator Beers, Assemblyman Horne, and Assemblyman Conklin until the legislative session began. Without the involvement of our legislators, the agreement would not have been possible, or even appropriate. Kermitt, Don, and their associates are all fine attorneys and strong advocates for their cause. Through these discussions, we were each able to better understand the other's concerns and intentions.

The result is an agreed-upon proposal for an alternative constitutional amendment, which strikes a proper balance between property rights and necessary public works programs involving the use of eminent domain. Each of our concerns has been addressed in reasonable ways, while each of the basic property-rights protections sought by Don and Kermitt and other associates have been preserved. It should also be mentioned that during the course of our meetings, the FHWA issued an opinion letter requested by Don Chairez which stated that, contrary to prior FHWA opinions, PISTOL did not violate certain federal rules, and therefore our federal highway funds are not jeopardized.

Mr. Chairman, SB 85, AB 129, and SB 16 are good bills designed to prevent the use of eminent domain for redevelopment purposes and to provide that money deposited in court in eminent domain actions must be properly invested for the benefit of the property owner.

As a result of our agreed-upon language, Assembly Joint Resolution 3, which embodies that settlement, and which is co-sponsored by most Assembly members and Senators, is being introduced. It contains provisions, which embody the prohibition of the use of eminent domain for economic development. The suggested settlement

scenario for you to consider is that AJR 3 be passed to initiate the constitutional amendment this year, with a second approval by the Legislature in 2009, and a vote by the people of Nevada in 2010. Identical statutory provisions would also be enacted this year to take effect sometime in 2007. You can decide if SB 85 and AB 129, which provided guiding principles for our agreement, add appropriate reinforcement to the prohibition on the taking of private property and selling it for economic development purposes.

I believe that this proposal has the strong support of NDOT, NACO, the 2 RTC's, all of the cities in Clark County, as well as the private sector coalitions which formed on both sides of the PISTOL debate last year. I know that it is impossible to totally satisfy everyone's concerns, and I am informed that some other cities may ask you to preserve the right to use eminent domain for redevelopment of blighted neighborhoods. While we agree that there can be language which allows a "friendly condemnation" in such cases, where a property owner agrees to have his property taken by eminent domain to gain the tax deferred advantage which that allows, we along with Mr. Waters and Mr. Chairez strongly oppose any attempt to continue to allow the use of eminent domain to cure blight by taking property from one property owner and selling to another. That is essentially what was allowed by the Kelo case, where government uses this absolute power to force people to sell property for redevelopment purposes. AJR 3, which contains our agreement, allows the use of eminent domain to acquire abandoned or contaminated property and to abate threats to health and safety. That is as far as it should go. One man's "blight" is another man's palace, and there are numerous other ways for government to require the abatement of nuisances or code violations without the use of the power of eminent domain, which should be used sparingly, only as a last resort, and only for genuinely public purposes.

Mr. Chairman, we would never presume that our proposal is untouchable. It is the Legislature's exclusive province to act on these matters. However, we would request that any amendments to the language to AJR 3 be discussed in depth with the parties to the settlement, including Mr. Waters and Mr. Chairez, so that the delicate balance which was achieved in this agreement with the crucial assistance of members of this legislature be preserved. Any disruption of the settlement will put these issues back into a posture of an unproductive political conflict with a real potential for very unfavorable consequences for the people of Nevada.

Thank you for your consideration of this matter.

BRUCE L. WOODBURY
Clark County Commissioner
Chairman, RTC of Southern Nevada

PISTOL Settlement Scenario

1. Kermitt Waters and Don Chairez, on behalf of PISTOL proponents, and Bruce Woodbury and others, on behalf of PISTOL opponents, along with legislators who participated, announce agreement on language on alternative constitutional amendment. Through an extensive dialogue over several weeks, each side gained important insights from the other, and common ground was found. We have agreed that this version properly balances the rights of property owners with the need to fast-track vital public works projects in Nevada, as follows:

- (a) Property rights are significantly strengthened by (1) prohibiting the use of eminent domain to transfer property to another private person except for tightly-defined public purposes; (2) prohibiting the government from withholding its appraisals or using the threat of liability for government's attorney fees in eminent domain actions; (3) placing the burden on the government to prove the legitimate public purpose for its taking in a separate judicial hearing, if requested by the property owner; (4) ensuring that the owner whose property is being taken by the government receives the highest price that one selling his property would receive, without offsets, plus a reasonable rate of interest; and (5) enhancing the right of the property owner to obtain his property back from the government if it is not used for the intended purpose over time.
- (b) Public transportation agencies and public works departments gain from this proposal because each of the provisions of PISTOL which were perceived as harmful to their ability to build roads and other vital projects have been clarified or modified in reasonable ways. Other concerns were resolved

Assembly committee: Jud.

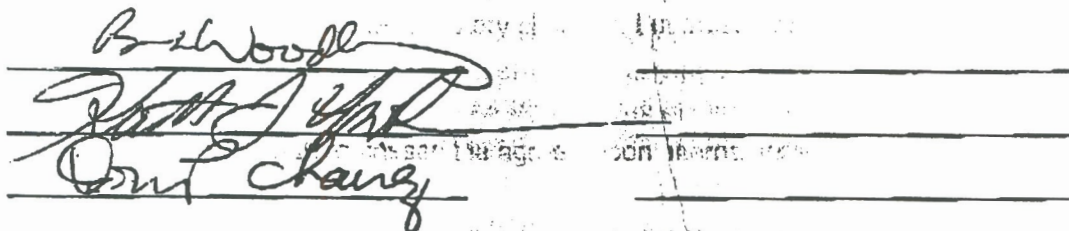
Exhibit E Bill No. ASR 3 P. 1 of 2

30 Submitted by: Bruce Woodbury Date 3/8/07

through the court action last year and the legal opinion recently obtained from the FHWA by Don Chalez.

2. The 2007 Legislature enacts a bill which incorporates these agreed-upon provisions in statutory form and initiates the constitutional amendment with identical content. Kermitt may seek other statutory changes, but those are not part of our agreement.
3. The 2009 Legislature passes the agreed-upon alternative amendment for the second time.
4. We all mount a campaign to gain voter approval of the alternative amendment in 2010.
5. The agreed upon Amendment is attached hereto as Exhibit "A".

AGREED to in principle this 13th day of February, 2007.



Attachment: Agreed-upon version of Alternative Constitutional Amendment, which is also a statutory proposal for the 2007 Legislature.

March for Private Property

by Phyllis Schlafly, October 4, 2006

Grassroots conservatives are again asserting themselves forcefully and effectively against governmental impudence. Having defeated the Harriet Miers Supreme Court nomination and the Dubai Ports sellout, conservatives are now flexing their muscles against supremacist judges and money-grasping public officials.

It is remarkable how the 2005 Supreme Court's 5-4 decision in *Kelo v. City of New London* has riled normally apathetic American people and motivated them into asserting people power over the twin powers of government and money. Thirty state legislatures have passed laws or constitutional amendments to limit the effect of the *Kelo* ruling and provide protection against abusive takings of private property for other private purposes.

In addition, eleven states will have ballot measures this year to protect private property rights. The issue carries double-barrelled clout because the voters are both repudiating government takings of private property AND repudiating the favorite liberal goal of increasing the flow of tax money into government's clutches.

These slaps at local public officials and increased taxes also include a reprimand of the Supreme Court in the *Kelo* case, which has endangered the ownership of every home, business, church and farm. The Supremes thought they could evolve the U.S. Constitution's words "public use" (which would include a highway or a public building) into the words "public purpose" (defined to include transferring private property of lower-income people to higher-income people who will pay higher taxes, and just about anything that comes under a redevelopment plan).

Taking private property in order to get more money into government is not authorized by the U.S. Constitution or any statute. Justice Thomas wrote in dissent in the *Kelo* case: "Something has gone seriously awry with this Court's interpretation of the Constitution."

The justices only get away with this sort of decision because law schools have propagated the myth that whatever the Supreme Court says is the law of the land. The issue for the American people is: are we a nation of self-government, or are we going to submit to rule by black-robed judges?

Since the *Kelo* decision, more than 5,700 private properties have been threatened by or taken over by this power of eminent domain, a tremendous increase over the preceding five years. The *Kelo* decision made local officials and developers bolder and bolder in the taking of private property.

We don't expect the Supreme Court always to defer to the legislative process. We do expect the Court to implement the text of the Constitution as written, and that means defending our constitutional right to private property even when that requires knocking down a legislative action.

Even some judges are getting the message. On July 26, 2006 the Ohio Supreme Court handed down a stunning unanimous decision against a \$125 million development project in a suburb of Cincinnati. This case, *City of Norwood v. Horney*, illustrates how abusive eminent domain takings are motivated by local governments seeking new sources of revenue.

The City of Norwood had hoped to get \$2 million a year in new taxes from the new property owners. The developer had already bulldozed every house on the site except three, including Joy Gamble's home where she had lived in for 35 years, raised her children, and hoped to remain for the rest of her life.

When the mayor of Norwood heard that the homeowners had won in the Ohio Supreme Court, he predicted that the city would run out of money by October, and it might actually have to lay off a government worker.

But the Ohio Supreme Court concluded that "economic benefits alone," such as increased taxes, do not justify a taking of private property. The court stated that "Ohio has always considered the right of property to be a fundamental right," and that property rights are "Believed to be derived fundamentally from a higher authority and natural law . . ."

However, state legislation is needed in most states to prevent government from ruining private property while a

http://www.eagleforum.org/cgi_bin/print/MasterPFP.cgi?doc=1

Assembly committee: Jud.

Exhibit F Bill No. AJR 3 P. 1 of 2

Submitted by: Janine Hanser Date 3/8/07

dispute is going on. By the time Joy Gamble won her appeal, she had been barred from her property for a year and a half during which time the utilities were disconnected and the property vandalized and looted.

State legislatures should be alert to draft their new laws against governmental takings to make clear that condemning authorities may not take possession of property until appeals are exhausted and the property is paid for, and that blight is defined as a danger to public health and safety (not mere underutilization or diversity of ownership).

The Ohio Supreme Court's decision underscores the fact that the U.S. Supreme Court is not infallible and we have every right to criticize and work to overturn wrong decisions made by supremacist judges who think they can rewrite the U.S. Constitution.

Eagle Forum • PO Box 618 • Alton, IL 62002 • phone: 618-462-5415 • fax: 618-462-8909 • eagle@eagleforum.org

Read this article online: <http://www.eagleforum.org/column/2006/oct06/06-10-04.html>

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

**Seventy-Fourth Session
March 14, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:10 a.m., on Wednesday, March 14, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst
Risa Lang, Committee Counsel
Danielle Mayabb, Committee Secretary
Matt Mowbray, Committee Assistant

Minutes ID: 523



Chairman Anderson:

Are there any concerns from anyone on A.B. 90 with the amendment as outlined in the mock-up? Ms. Gerhardt, are there observations you want to make about the bill?

Assemblywoman Gerhardt:

No, I am satisfied.

Chairman Anderson:

Mr. Cobb, did you have a concern?

Assemblyman Cobb:

I noted that you had a concern about it being a gross misdemeanor. I am guessing that was taken care of with the amendment?

Chairman Anderson:

It is going to be taken care of with the amendment.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 90.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN GOEDHART WAS ABSENT
FOR THE VOTE.)

Jennifer Chisel:

Assembly Bill 102 is Mr. Horne's eminent domain bill.

Assembly Bill 102: Prohibits use of eminent domain to acquire property for economic development. (BDR 3-38)

It prohibits the use of eminent domain to transfer property to a private entity for the purpose of economic development. In the hearing, Assemblyman Hardy presented Assembly Joint Resolution 3 to amend the *Nevada Constitution* to prohibit the use of eminent domain for the purpose of economic development.

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

These measures are in response to the *Kelo* case [*Kelo v. City of New London*, 545 U.S. 469 (2005)] and the People's Initiative to Stop the Taking of our Land

(PISTOL) which was approved by the voters for the first time in the 2006 election. Discussion in the hearing proposed to amend A.B. 102 to include statutory language that was parallel to the constitutional amendment language in A.J.R. 3. The attached mock-up prepared by Committee counsel amends A.B. 102 accordingly (Exhibit D). Assembly Joint Resolution 3 is also included in this work session document and there is an attached mock-up with a slight change from that which was presented at the hearing by Assemblyman Hardy.

Chairman Anderson:

There were some concerns raised at the initial hearing that not everyone had been part of the initial discussions on A.J.R. 3. Assembly Bill 102 is going to solve part of the issues on eminent domain and those that the U.S. Supreme Court had because of the *Kelo* decision. We have already been on track the last several sessions to enact bills that limit eminent domain. We are in pretty good shape compared to many other states that are similarly upset about what eminent domain is needed for. The taking of private property for the public good is a reality as our society changes. This amendment would go a long way to try to do that, so I would suggest that we amend A.B. 102 and then do A.J.R. 3 because it needs to go to Elections, Procedures, Ethics and Constitutional Amendments for another hearing. Not wanting to take their jurisdiction, we want to make sure they get this in a timely fashion so they also can deal with it. Mr. Horne, do you have questions relative to A.B. 102?

Assemblyman Horne:

I have none.

Assemblyman Carpenter:

On page 5 of A.B. 102 where we are putting A.J.R. 3, it mentions public facilities. I have a memorandum from Legal that says public facility is not actually defined and wherever it is used, it is being used in the context of a Wal-Mart or J.C. Penney or something. This morning I received a memorandum from Assemblyman Hardy that public facility here should be defined as a public facility like an airport terminal building or convention center.

Chairman Anderson:

And this is in Section 5 of the mock-up?

Assemblyman Carpenter:

It is on page 5. It is on both of them.

Assemblyman Horne:

We are talking about the definition of a public building, as I understand it. I have always understood a public building as one which is owned by a

government entity or a private party where it is used primarily for a governmental purpose. Even though the public frequents it, Wal-Mart is owned by a private entity. The public could be excluded if Wal-Mart chose to do that.

Chairman Anderson:

How would this affect something like Greyhound Bus Lines?

Risa Lang, Committee Counsel:

I would have to look at this if you wanted to define "public facility" to clarify what it applies to. We can certainly try to do that on both bills. The way you are talking about it, I am not sure it would mean that it is always owned by a public entity. Right now the way it is written, I would presume that is what was intended.

Chairman Anderson:

Mr. Carpenter, I do not recall the primary sponsor of A.J.R. 3 bringing forth that concern.

Assemblyman Carpenter:

It seemed to me that "public facility" was not defined. We should have it defined in the eminent domain bill. The documentation I got said wherever a public facility was mentioned in the statutes it referred to something that is open to the public. I do not think this is what we are looking for here. We want it to be a real public facility like an airport or convention center. It is important not to have anything that people can question on this, especially when it is going to the people.

Chairman Anderson:

Assembly Bill 102 is not going to the vote of the people. Dr. Hardy, you are on the hot seat. Mr. Carpenter indicated that you had raised some concerns relative to the definition of what might be considered to be a public facility.

Assemblyman Joseph P. Hardy, Assembly District No. 20:

The conversation I had with Assemblyman Carpenter raised a good point. In Transportation, we use the term "transportation facility" to mean a road. "Public facility," likewise, can be further defined. Words are being looked at that will be able to allay that concern. Those would be to the effect of "public facility, as in those things that the public uses, such as a road, railway, or airport." If you look at the bill that Assemblyman Horne has, that is where the mirroring of the statute and the constitutional amendment needs to be. I do not have that verbiage at this point.

Chairman Anderson:

So, you do not want us to move with A.J.R. 3?

Assemblyman Hardy:

It would behoove us to make sure that it is done right and everyone's concerns are addressed. So, to answer that, it would be good to put that off.

Chairman Anderson:

Let me try to facilitate the passage of A.J.R. 3, which I consider to be important. I will ask Ms. Chisel to work with Ms. Lang to see if they can reach an understanding about "public facility." It sounds to me that you can argue that a bill like this—a constitutional amendment—is purposely vague so that, as society changes, it does not have to go back to the stone document.

I agree that we need to make sure that our constitutional language is perfect. At the same time, I want to make sure that the second committee has an adequate amount of time to post it.

Can we move with A.B. 102 without that clarification? That is the question. Ms. Lang, do you understand the concern?

Risa Lang:

I understand the concern and we can certainly clarify that.

Chairman Anderson:

I am going to suggest to the Committee that we Amend and Do Pass A.B. 102, take it to the Floor, and we will put it on the Chief Clerk's desk following amendment to make sure that it conforms. We will take up A.J.R. 3 at another work session and try to get it amended on the Floor. We will see what happens with the bill in the jurisdiction of the other committee. Is that acceptable?

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 102.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN GOEDHART
AND OCEGUERA WERE ABSENT FOR THE VOTE.)

We do not need to take up A.J.R. 3 at this time. Any other issues to come in front of us? We are adjourned [at 9:58 a.m.].

RESPECTFULLY SUBMITTED:

Danielle Mayabb
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chair

DATE: _____

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WORK SESSION

Assembly Committee on Judiciary

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

March 14, 2007

Bills Under Consideration

The following measures may be considered for action during today's work session. In some cases, possible amendments are noted. These amendments were either suggested during testimony or submitted after the hearing and do not necessarily have the approval of the Committee.

- ☐ Assembly Bill 17 p. 2
Floor Assignment _____
- ☐ Assembly Bill 52 p. 5
Floor Assignment _____
- ☐ Assembly Bill 55 p. 9
Floor Assignment _____
- ☐ Assembly Bill 72 p. 15
Floor Assignment _____
- ☐ Assembly Bill 77 p. 18
Floor Assignment _____
- ☐ Assembly Bill 90 p. 21
Floor Assignment _____
- ☐ Assembly Bill 102 p. 23
Floor Assignment _____
- ☐ Assembly Joint Resolution No. 3 p. 35
Floor Assignment _____

Committee Action:

Do Pass _____
Amend & Do Pass _____
Other _____

This measure may be considered for action during today's work session.
(March 14, 2007)

ASSEMBLY JOINT RESOLUTION NO. 3

Proposes to amend the *Nevada Constitution* to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

Sponsored by: Assembly Members Hardy, Buckley, Ohrenschall, Horne, Gansert, and Senators Care, Heck, Cegavske, Hardy, et al.

Date Heard: March 8, 2007

Fiscal Impact: Effect on Local Government: No
Effect on the State: No

Assembly Joint Resolution No. 3 proposes to amend the *Nevada Constitution* to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party. In addition, the amendment requires an entity which is taking property by eminent domain to provide the owner of the property with all appraisals of the property before the entity is allowed to occupy the property. Further, the owner of the property is entitled to a determination of whether the taking is for a public use. The amendment provides the manner for computing just compensation, attorney's fees may be awarded only in certain circumstances, and the property owner has the right to reacquire the property under certain circumstances. Finally, the resolution proposes to repeal the "People's Initiative to Stop the Taking of Our Land" if that initiative is approved by the voters at the 2008 General Election.

Amendments: The attached mock-up, prepared by the Legal Division, is essentially the same as the one presented by Assemblyman Hardy during the hearing on March 8, 2007, with the exception of an internal reference change in **Section 8**, subsection 7.

MOCK-UP

PROPOSED AMENDMENT 3290 TO ASSEMBLY JOINT RESOLUTION NO. 3

PREPARED FOR ASSEMBLYMAN HARDY
FEBRUARY 27, 2007

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN
CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE
OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment and (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment.

Legislative Counsel's Digest:

Section 8 of Article 1 of the Nevada Constitution and the Fifth Amendment to the United States Constitution provide that private property cannot be taken for a public use without just compensation. In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that the use of eminent domain to acquire property and transfer it to another private party for the purpose of economic development does not violate the Takings Clause of the Fifth Amendment to the United States Constitution.

This resolution proposes an amendment to the Nevada Constitution to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party.

In addition, the amendment proposed by this resolution requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, in all eminent domain actions, the owner of the property that is being taken is entitled to a determination of whether the taking is for a public use and the entity that is taking the property has the burden of proving that the taking is for a public use.

The amendment proposed by this resolution provides for the manner of computing the just compensation owed to a person whose property is taken by the exercise of eminent domain. Also, the amendment provides that neither a property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney's fees of the other party, except in a certain circumstance. Under the amendment, the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to reacquire the property for the price paid by the entity which took the property under certain circumstances.

1 This resolution also proposes to repeal the "People's Initiative to Stop the
2 Taking of Our Land" if that initiative is approved by the voters at the 2008
3 General Election.

4 RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA,
5 JOINTLY, That Section 8 of Article 1 of the Nevada Constitution be
6 amended to read as follows:

7 Sec. 8. 1. No person shall be tried for a capital or other
8 infamous crime (except in cases of impeachment, and in cases of the
9 militia when in actual service and the land and naval forces in time
10 of war, or which this State may keep, with the consent of Congress,
11 in time of peace, and in cases of petit larceny, under the regulation
12 of the Legislature) except on presentment or indictment of the grand
13 jury, or upon information duly filed by a district attorney, or
14 Attorney General of the State, and in any trial, in any court
15 whatever, the party accused shall be allowed to appear and defend in
16 person, and with counsel, as in civil actions. No person shall be
17 subject to be twice put in jeopardy for the same offense; nor shall he
18 be compelled, in any criminal case, to be a witness against himself.

19 2. The Legislature shall provide by law for the rights of victims
20 of crime, personally or through a representative, to be:

21 (a) Informed, upon written request, of the status or disposition of
22 a criminal proceeding at any stage of the proceeding;

23 (b) Present at all public hearings involving the critical stages of
24 a criminal proceeding; and

25 (c) Heard at all proceedings for the sentencing or release of a
26 convicted person after trial.

27 3. Except as otherwise provided in subsection 4, no person may
28 maintain an action against the State or any public officer or
29 employee for damages or injunctive, declaratory or other legal or
30 equitable relief on behalf of a victim of a crime as a result of a
31 violation of any statute enacted by the Legislature pursuant to
32 subsection 2. No such violation authorizes setting aside a conviction
33 or sentence or continuing or postponing a criminal proceeding.

34 4. A person may maintain an action to compel a public officer
35 or employee to carry out any duty required by the Legislature
36 pursuant to subsection 2.

37 5. No person shall be deprived of life, liberty, or property,
38 without due process of law.

39 6. Private property shall not be taken for public use without just
40 compensation having been first made, or secured, except in cases of
41 war, riot, fire, or great public peril, in which case compensation
42 shall be afterward made.

1 7. Except as otherwise provided in paragraphs (a) to ~~((d))~~ (e),
2 inclusive, the public uses for which private property may be taken
3 do not include the direct or indirect transfer of any interest in the
4 property to another private person or entity. A transfer of property
5 taken by the exercise of eminent domain to another private person
6 or entity is a public use in the following circumstances:

7 (a) The entity that took the property transfers the property to a
8 private person or entity and the private person or entity uses the
9 property primarily to benefit a public service, including, without
10 limitation, a utility, railroad, public transportation project,
11 pipeline, road, bridge or public facility.

12 (b) The entity that took the property leases the property to a
13 private person or entity that occupies an incidental part of a public
14 facility and, before leasing the property:

15 (1) Uses its best efforts to notify the person from whom the
16 property was taken that the property will be leased to a private
17 person or entity that will occupy an incidental part of a public
18 facility; and

19 (2) Provides the person from whom the property was taken
20 with an opportunity to bid or propose on an equal basis with
21 others.

22 (c) The entity:

23 (1) Took the property in order to acquire property that was
24 abandoned by the owner, abate an immediate threat to the safety
25 of the public or remediate hazardous waste; and

26 (2) Grants a right of first refusal to the person from whom
27 the property was taken that allows that person to reacquire the
28 property on the same terms and conditions that are offered to the
29 other private person or entity.

30 (d) The entity that took the property transfers an interest in the
31 property to a private person or entity in exchange for an interest in
32 the property that was taken, or is being taken, by the exercise of
33 eminent domain or under the threat of the exercise of eminent
34 domain for the purpose of a road or highway, the relocation of
35 public or private structures or to facilitate or avoid payment of
36 excessive compensation or damages.

37 (e) The person from whom the property is taken consents to
38 the taking.

39 8. In all actions in eminent domain:

40 (a) Before the entity that is taking property obtains possession
41 of the property, the entity shall give to the owner of the property a
42 copy of all appraisals of the property obtained by the entity.

43 (b) At the occupancy hearing, the owner of the property that is
44 the subject of the action is entitled, at the property owner's

1 election, to a separate and distinct determination as to whether the
2 property is being taken for a public use.

3 (c) The entity that is taking property has the burden of proving
4 that the taking is for a public use.

5 (d) Except as otherwise provided in this paragraph, neither the
6 entity that is taking property nor the owner of the property is liable
7 for the attorney's fees of the other party. This paragraph does not
8 apply in an inverse condemnation action if the owner of the
9 property that is the subject of the action makes a request for
10 attorney's fees from the other party to the action.

11 9. Except as otherwise provided in this subsection, if a court
12 determines that a taking of property is for public use, the taken or
13 damaged property must be valued at its highest and best use
14 without considering any future dedication requirements imposed
15 by the entity that is taking the property. If property is taken
16 primarily for a profit-making purpose, the property must be valued
17 at the use to which the entity that is taking the property intends to
18 put the property, if such use results in a higher value for the
19 property.

20 10. In all actions in eminent domain, fair market value is the
21 highest price, on the date of valuation, that would be agreed to by
22 a seller, who is willing to sell on the open market and has
23 reasonable time to find a purchaser, and a buyer, who is ready,
24 willing and able to buy, if both the seller and the buyer had full
25 knowledge of all the uses and purposes for which the property is
26 reasonably adaptable and available.

27 11. In all actions in eminent domain, just compensation is
28 that sum of money necessary to place the property owner in the
29 same position monetarily as if the property had never been taken,
30 excluding any governmental offsets except special benefits. Special
31 benefits may only offset severance damages and may not offset the
32 value for the property. Just compensation for the property taken by
33 the exercise of eminent domain must include, without limitation,
34 interest and reasonable costs and expenses incurred by the owner
35 of the property that is the subject of the action. The district court
36 shall determine, in a posttrial hearing, the award of interest and
37 award as interest the amount of money which will put the person
38 from whom the property is taken in as good a position monetarily
39 as if the property had not been taken. The district court shall enter
40 an order concerning:

41 (a) The date on which the computation of interest will
42 commence;

43 (b) The rate of interest to be used to compute the award of
44 interest, which must not be less than the prime rate of interest plus
45 2 percent; and

1 (c) *Whether the interest will be compounded annually.*

2 12. *Property taken by the exercise of eminent domain must be*
3 *offered to and reverts to the person from whom the property was*
4 *taken upon repayment of the original purchase price if, within 15*
5 *years after obtaining possession of the property, the entity that*
6 *took the property:*

7 (a) *Fails to use the property for the public use for which the*
8 *property was taken or for any public use reasonably related to the*
9 *public use for which the property was taken; or*

10 (b) *Seeks to convey any right, title or interest in all or part of*
11 *the property to any other person and the conveyance is not*
12 *occurring pursuant to subsection 7.*

13 *↪ The entity that has taken the property does not fail to use the*
14 *property under paragraph (a) if the entity has begun active*
15 *planning for or design of the public use, the assembling of land in*
16 *furtherance of planning for or design of the public use or*
17 *construction related to the public use.*

18 13. *If any provision of subsections 7 to 12, inclusive, or the*
19 *application thereof to any person or circumstance is held invalid,*
20 *such invalidity shall not affect the provisions or application of*
21 *subsections 7 to 12, inclusive, which can be given effect without*
22 *the invalid provision or application, and to this end the provisions*
23 *of subsections 7 to 12, inclusive, are declared to be severable.*

24 14. *The provisions of subsections 7 to 12, inclusive, apply to*
25 *an action in eminent domain that is filed on or after January 1,*
26 *2011.*

27 And be it further

28 RESOLVED, That Section 22 of Article 1 of the Nevada Constitution,
29 commonly known as the "People's Initiative to Stop the Taking of Our
30 Land," if that section is approved and ratified by the voters at the 2008
31 General Election, is hereby repealed.

H

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

**Seventy-Fourth Session
March 23, 2007**

The Committee on Judiciary was called to order by Chairman Bernie Anderson at 8:11 a.m., on Friday, March 23, 2007, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

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

COMMITTEE MEMBERS ABSENT:

Assemblywoman Susan Gerhardt (Excused)

STAFF MEMBERS PRESENT:

Jennifer M. Chisel, Committee Policy Analyst

Minutes ID: 580



Are there any other questions or concerns? [There were none]

ASSEMBLYMAN HORNE MOVED TO AMEND AND DO PASS ASSEMBLY BILL 83.

ASSEMBLYMAN OHRENSCHALL SECONDED THE MOTION.

THE MOTION FAILED. (ASSEMBLYMEN ALLEN, COBB, GOEDHART, MABEY, AND SEGERBLOM VOTED NO. ASSEMBLYMEN CARPENTER AND GERHARDT WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

The bill has failed having received seven affirmative votes and five in the negative. Eight were needed to pass the committee. It does not mean that it is dead, but it has not passed.

Jennifer Chisel:

We have two left. Should we try Assembly Joint Resolution 3?

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

Assembly Joint Resolution 3 (Exhibit I) was presented by Assemblyman Hardy to amend the Nevada Constitution to prohibit the use of eminent domain for the purpose of economic development. This measure is in response to the *Kelo v. City of New London* case [545 U.S. 469 (2005)] and the People's Initiative to Stop the Taking of Our Land (PISTOL) which was approved by the voters for the first time in the 2006 election. During the last work session the Committee voted to amend and do pass Assembly Bill 102, which was Assemblyman Horne's eminent domain bill. The amendments to A.B. 102 would mirror the language in A.J.R. 3. Additional amendments were discussed for A.J.R. 3, including the addition of a definition of "public facility." You can see from the attached conceptual amendment, it proposes three things. The first is to further clarify the term "public facility" to ensure that it serves a governmental or quasi-governmental purpose. Skipping to the third, it also specifies that if the property taken by eminent domain is transferred to another private party, then that taking is deemed to be for a public use. That provision was actually in the mockup presented during the hearing by Assemblyman Hardy. The third amendment has not yet been discussed. That amendment is to ensure that, when private property is taken to gain a right-of-way for the purpose of building

a highway, the property is not subsequently exchanged to another private person if the highway or road is not eventually built on or near that location.

Chairman Anderson:

I would like to point out to the Committee that if we were to proceed with accepting all three amendments, we would have to move to reconsider A.B. 102. We could adopt amendments one and three clarifying the term "public facility" so that it mirrored the language that we have suggested for A.B. 102. The bill drafters are currently dealing with that amendment. When it finally comes forward, we will make sure that they mirror each other. We will then specify the actions to be taken if property taken by eminent domain is transferred to another private party and is deemed for public use, which is also in A.B. 102. Regarding amendment number two, we would need to amend the bill and bring it back to Committee, yet again, for a full hearing on that question. We would have to move to reconsider A.B. 102 to open discussion on A.J.R. 3. What is the pleasure of the Committee? Do you want to delay A.J.R. 3 and then bring back A.B. 102? We are dealing with the first definition of "public facility."

ASSEMBLYMAN GOEDHART MOVED TO AMEND AND DO PASS
ASSEMBLY JOINT RESOLUTION 3 TO REFLECT ITEMS ONE AND
THREE.

ASSEMBLYMAN COBB SECONDED THE MOTION.

Assemblyman Mortenson:

I am a little puzzled by the third amendment. If you take the property for a public use, then transfer it to a private party, what is the property then used for? If a transfer of property to a private party takes place long after the initial eminent domain process, does the original owner have a right to say no? For example, what if the owner of the property decides that a public school is a good use of the land and the property is transferred to a private party down the line. The original owner no longer has a voice in the matter. He can not say that he would not have transferred the property if he had known it was going to private property. This bothers me.

Chairman Anderson:

As I understand it, we have the individual who agrees to the eminent domain transfer. There is the possibility of gaining a tax advantage for the exchange. He wants it to be taken by a public entity. The fact that it may be used later by a private party is not his concern. His advantage gained is the tax write-off and, therefore, he is a disclaimer to the property. He does not want the property to come back to him because then he loses his tax incentive, and it

may divide his property in a way that it no longer has its economic advantage. Does that help?

Assemblyman Mortenson:

I understand that situation, but I also see a case where a person gives up his property for the public good. He believes we need public schools, and they want his land for a public school. He will give it up for a public school. Down the line, the public school never gets built and the property is transferred to a builder of condominiums. The person then says that if he knew condominiums were going up, he never would have agreed to this.

Chairman Anderson:

In that case, the owner would not consent to that. This bill is referring to situations where the owner has consented. This mirrors the language that we already put in A.B. 102.

Assemblyman Mortenson:

I am talking about a situation in which the eminent domain process has already taken place, and the original owner consented because he thought it a good cause. Four years later, after everything is said and done, there is a decision that the land will go to condominiums rather than a public school. Does he have a right, after four years, to go back and object?

Chairman Anderson:

I am under the impression that he would. This specifically says, "With the owner's consent to the taking and the transfer." Ms. Lang, could you help me out with these questions?

Risa Lang:

I think that what Assemblyman Mortenson is talking about is a situation that would happen after the fact. I believe this bill is addressing the original taking, and what is considered a public use for that taking.

Chairman Anderson:

The question that you are suggesting is related to the overall question of eminent domain rather than amendment number three.

Assemblyman Mortenson:

I guess I did not understand Ms. Lang's response.

Risa Lang:

I think that there are other procedures that come into play if the property is not used for the purpose that it was taken for. That issue would come up at a different time. This is for the original taking of the property.

Assemblyman Mortenson:

If the property is not used for public use, it can be returned to the original owner. He can purchase it back for the same amount. Is that still in the bill?

Chairman Anderson:

Yes, that is still part of the bill. We are in no way endangering that. We are trying to bring A.J.R. 3 in line with A.B. 102, and to further clarify the term "public facility". By following the motion of amend and do pass, we would be clarifying the term and specifying property taken by eminent domain.

Assemblyman Mortenson:

I am happy, Mr. Chairman.

THE MOTION PASSED.(ASSEMBLYMEN CARPENTER AND GERHARDT
WERE ABSENT FOR THE VOTE.)

Chairman Anderson:

This bill will be amended on the Floor, than it will be referred to another committee. We will not have the ultimate control of it when it comes to the Floor. It will go to Elections, Procedures, Ethics and Constitutional Amendments. This is amend and do pass and rerefer.

Jennifer Chisel:

We only have one bill left, and that is Assembly Bill 8.

Assembly Bill 8: Prohibits a person from being admitted to bail for at least 12 hours after his arrest for driving a vehicle or operating a vessel under the influence of intoxicating liquor or a controlled substance. (BDR 14-704)

Assembly Bill 8 (Exhibit J) was presented by Assemblyman Manendo on February 16, 2007. This bill provides a mandatory 12-hour hold before a person arrested for driving under the influence (DUI) may be released on bail. In response to concerns raised in the hearing, an amendment was submitted by Frank Adams on behalf of the Sheriffs' and Chiefs' Association. The amended language is found on page 2 of the work session document. If the person arrested is under the influence of alcohol, he may not be released until his breath test is .04 or below. Further, the amendment provides that if the person

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Committee Action:

Do Pass _____

Amend & Do Pass _____

Other _____

This measure may be considered for action during today's work session.
(March 23, 2007)

ASSEMBLY JOINT RESOLUTION NO. 3

Proposes to amend the *Nevada Constitution* to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

Sponsored by: Assembly Members Hardy, Buckley, Ohrenschall, Horne, Gansert, and Senators Care, Heck, Cegavske, Hardy, et al.

Date Heard: March 8, 2007

Fiscal Impact: Effect on Local Government: No
Effect on the State: No

Assembly Joint Resolution No. 3 proposes to amend the *Nevada Constitution* to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party. In addition, the amendment requires an entity which is taking property by eminent domain to provide the owner of the property with all appraisals of the property before the entity is allowed to occupy the property. Further, the owner of the property is entitled to a determination of whether the taking is for a public use. The amendment provides the manner for computing just compensation, attorney's fees may be awarded only in certain circumstances, and the property owner has the right to reacquire the property under certain circumstances. Finally, the resolution proposes to repeal the "People's Initiative to Stop the Taking of Our Land" if that initiative is approved by the voters at the 2008 General Election.

Amendments: The attached amendment, submitted by Assemblyman Hardy, proposes the following conceptual changes:

1. Clarify the term "public facility" to ensure that it serves a governmental or quasi-governmental purpose.
2. Ensure that when private property is taken to build a highway or road the property is not subsequently given to another private party if the highway or road is not actually built.
3. Specify that if property taken by eminent domain is transferred to another private party, it is deemed to be a public use if the original owner consents to the initial taking.

Assembly committee: Judiciary

Exhibit I P. 1 of 2 Date 3/23/07

Submitted by: Griffiths Chisel

Proposed Conceptual Amendment to AJR 3
Prepared for Assemblyman Hardy

Amend subsection 7, paragraph (a), page 3, to clarify what constitutes a public facility and to ensure that the public facility serves only a governmental or quasi-governmental purpose such as utilities or transportation infrastructure.

Amend subsection 7, paragraph (d), page 4, to ensure that when private property is taken to gain a right-of-way for the purpose of building a highway or road the property is not subsequently exchanged to another private person if the highway or road is not eventually built on or near the location of the private property initially taken.

Amend subsection 7, page 4, to add a new paragraph (e) to specify that a transfer of property taken by the exercise of eminent domain to another private person or entity is a public use when the owner consents to the taking.

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

**Seventy-Fourth Session
April 9, 2007**

The Assembly Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 12:01 p.m., on Monday, April 9, 2007, behind the Bar of the Assembly.

COMMITTEE MEMBERS PRESENT:

Assemblyman Harry Mortenson, Chair
Assemblywoman Ellen Koivisto, Vice Chair
Assemblyman Chad Christensen
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman Ed Goedhart
Assemblyman Ruben Kihuen
Assemblywoman Marilyn Kirkpatrick
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James Settelmeyer

STAFF MEMBERS PRESENT:

Patrick Guinan, Committee Policy Analyst
Sheila Sease, Committee Manager
Terry Horgan, Committee Secretary

Chair Mortenson:

[Roll was taken and a copy of the bill was distributed to Committee Members. Chair Mortenson gave a detailed description of the bill.] We are here to vote on Assembly Joint Resolution 3 (1st Reprint).

Minutes ID: 939



Assembly Joint Resolution 3 (1st Reprint): Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

This bill had an extensive hearing this session by the Assembly Judiciary Committee, which includes six members of this Committee. This is a measure that has unanimous agreement among the stakeholders, and I would welcome a motion.

ASSEMBLYWOMAN GANSERT MOVED TO DO PASS ASSEMBLY JOINT RESOLUTION 3 (1st REPRINT).

ASSEMBLYMAN MUNFORD SECONDED THE MOTION.

Is there any discussion on the motion? [No response] All right, I will call for a vote.

THE MOTION PASSED UNANIMOUSLY.

Thank you, Committee. We are adjourned [at 12:06 p.m.].

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Harry Mortenson, Chair

DATE: _____

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fourth Session
April 24, 2007**

The Senate Committee on Judiciary was called to order by Chair Mark E. Amodei at 9 a.m. on Tuesday, April 24, 2007, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Mark E. Amodei, Chair
Senator Mike McGinness
Senator Dennis Nolan
Senator Valerie Wiener
Senator Terry Care
Senator Steven A. Horsford

COMMITTEE MEMBERS ABSENT:

Senator Maurice E. Washington, Vice Chair (Excused)

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20
Assemblyman William Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Brad Wilkinson, Chief Deputy Legislative Counsel
Barbara Moss, Committee Secretary

OTHERS PRESENT:

James J. Leavitt
Leslie A. Nielsen, District Attorney's Office, Clark County

Senate Committee on Judiciary
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SENATOR WIENER MOVED TO ADOPT AMENDMENT 612 TO S.B. 299.

SENATOR HORSFORD SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:

Mr. Wilkinson, while the amendment says it was prepared for me, it was to have been prepared for Senators Dina Titus, Warren B. Hardy II and members of the Senate Committee on Judiciary. Will it say that in final form?

BRAD WILKINSON (Chief Deputy Legislative Counsel):

It is supposed to have those names; however, as a technical matter, I am unsure how many names can fit on the form. I will check into the matter.

CHAIR AMODEI:

The hearing is opened on Assembly Bill (A.B.) 102 and Assembly Joint Resolution (A.J.R.) 3.

ASSEMBLY BILL 102 (1st Reprint): Makes various changes to provisions relating to eminent domain. (BDR 3-38)

ASSEMBLY JOINT RESOLUTION 3 (1st Reprint): Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):

Senator Terry Care, Assemblyman Joe Hardy, Clark County Commissioner Bruce L. Woodbury, Kermitt Waters, Jim Leavitt and others crafted the language in A.B. 102 to address eminent domain and the protection of property owners in Nevada. I have dealt with this issue since my freshman session in 2003 and have the pleasure of continuing the fight.

In the *Kelo v. City of New London*, 545 U.S. 469 (2005) case, the U.S. Supreme Court found a government entity can take private property and give it to another private person. In that decision, the U.S. Supreme Court left

the door open for states to craft their own eminent domain legislation, laws and how they will deal with the takings power of the state. Subsequent to the *Kelo* decision, a People's Initiative to Stop the Taking of Our Land (PISTOL) initiative circulated around the state and passed the first round of elections. There are concerns with provisions in the initiative which hamstringing some essential operations the state will need to do in the future. Nevada has enormous growth and the problems that come with it, particularly transportation.

Assembly Bill 102 and A.J.R. 3 are an attempt to craft legislation and a Nevada constitutional amendment to provide protection for property owners and allow government to work as needed. Assembly Bill 102 has been amended in the Assembly and other amendments will be proposed today. Assembly Bill 102 and A.J.R. 3 are identical proposals. Assembly Bill 102, if passed, will go into effect upon being signed by the Governor; A.J.R. 3 will take effect once it has gone through its course and becomes part of the *Constitution of the State of Nevada*; A.B. 102 is the provision that takes effect until the Nevada constitutional amendment has been completed.

Senate Bill 85 has already been heard and has the same provisions as A.B. 102 and A.J.R. 3. The proposed friendly amendments mirror the negotiations between the parties in crafting the legislation.

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

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

This is a triple image bill, of which A.J.R. 3 is the Nevada constitutional amendment that addresses eminent domain in the fix. I would not presume to keep everybody happy with this particular improvement on the *Kelo* decision or PISTOL. The reality is that some people will be more affected than others. The goal is to have the agreement made between Commissioner Woodbury, Kermitt Waters, Don Chairez and many other players and partners. Senator Horsford was also involved in the discussions.

We want to march forward together with a statute that would take effect upon passage; a constitutional amendment that would take another Legislative Session to be approved by this body; then the Governor followed by the voters in 2010, after which the Nevada Constitution would be amended in 2011 by that vote. That amendment to the Nevada Constitution would bring about what

I call PISTOL-plus, which would take the good things in PISTOL and put them into the Nevada Constitution in a way that will protect property rights of the people and allow the state to move forward in the appropriate eminent domain field.

JAMES J. LEAVITT:

We reviewed the proposed legislative language and spoke with Commissioner Woodbury's office and Leslie Nielsen. We agree with the comments by the Clark County District Attorney's Office. A couple of provisions that were stricken are proposed to be repealed which were previously in A.B. 102 as the project influence rule. We strongly agree with the District Attorney's Office that the rule should remain in the statutory provisions.

I would like to address two other issues. Language was stricken from NRS 37.175, which addressed interest. We agree with the District Attorney's Office that the language should remain in the statutory provisions. Of concern were the comments sent up with A.B. 102 by the District Attorney's Office which state the government should not have to pay interest on money deposited with the court. We want it made clear that one of the provisions in NRS 37.175 provides that the district court judge shall enter an order to determine the date of the commencement of interest. The District Attorney's Office agreed.

The landowner may argue it may be an earlier date. When that argument is presented to the judge, the judge may order interest prior to the commencement of the cause of action. For example, if a complaint is filed in January 2006, a judge may order interest to commence on January 2005, which would also be one year or some time prior to the government making a deposit. If that occurs, the government would be required to pay interest on the entire award, including the money which has not yet been deposited. Once a deposit is made, interest would stop running on the amount paid. We wanted that section clarified.

We also want to clarify NRS 37.010, which refers to redevelopment. We all agree that A.B. 102 narrowly limits redevelopment or taking of property for redevelopment. We agreed that when property is taken for redevelopment purposes, the redevelopment must comply with the public use requirements listed in NRS 37.010 and is subject to those specific public use limitations set forth in the new proposed language.

Even though property may be taken for redevelopment, it is still subject to the public use requirements in NRS 37.010. Both parties further agree that the only time redevelopment may be used under A.B. 102 is where the government itself engages in a public redevelopment project and does not transfer the property to a private entity, and both parties agree that the determination of whether the property has, indeed, been taken for public use is subject to judicial review under the new proposed language in NRS 37.100.

LESLIE A. NIELSEN (District Attorney's Office, Clark County):

Commissioner Woodbury was unable to attend the hearing and asked me to convey his request that we consider A.J.R. 3 and A.B. 102 in light of the agreed alternative language. He previously testified in legislative hearings and would like to have his prior comments incorporated into the minutes of this meeting (Exhibit D).

We mostly agree with the representations made by Mr. Leavitt. With respect to the interest provision and the requirement that the government might pay interest between some prior date of taking and the filing of the complaint, we may still argue that interest would commence on a later date, such as the filing of the complaint or the service of summons. Mr. Leavitt understands the government may argue, but A.J.R. 3 and A.B. 102 are very clear that the district court is given the power to order the date on which interest shall commence because it is stated a couple of times throughout the bills.

With respect to the redevelopment provision, we agree the word redevelopment should stay in A.B. 102 in the listing of public uses allowable. We understand the taking would be for a public redevelopment project, and we would not be able to transfer it to a private party, except as provided in the exceptions listed in A.B. 102 and A.J.R. 3. For the most part, we agree on the interest and redevelopment provisions.

I will address the points raised in my memorandum to Sabra Smith-Newby, Director, Intergovernmental Relations, Clark County, dated April 24, 2007 (Exhibit E).

KERRITT WATERS:

Ms. Nielsen summed up our agreement.

SENATOR CARE:

What does PISTOL or A.J.R. 3 do to a redevelopment agency taking blighted property and conveying that property to another private entity? I am not referring to noneconomic blight, which we got rid of last Legislative Session. I am talking about blight where 4 of the now-existing 11 factors must be demonstrated to exist. Do either of these proposed constitutional amendments take that power away from the redevelopment agency?

MR. WATERS:

The redevelopment agency can take the property under eminent domain but cannot transfer it to somebody else. They can always deal with this in regard to nuisance. For example, the City of Las Vegas has Chapter 9.04 of the *Las Vegas Municipal Code* which allows them to fine a homeowner \$500 a day for nuisance, or \$1,000 a day for commercial, for every day that nuisance is maintained. They can then lien and sell the property for the fine. They have remedies other than eminent domain.

SENATOR CARE:

I read it as it could not be conveyed to a third party.

MR. WATERS:

That is the intent.

MS. NIELSEN:

That is our understanding as well.

SENATOR CARE:

In the mock-up Proposed Amendment 3812 to Assembly Joint Resolution No. 3_R1 First Reprint (Exhibit F), section 8, subsection 7, paragraph (b) says:

The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property.

I believe "airport" is in there because somebody was thinking of the case of the concession at the airport. Is that your understanding?

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MR. WATERS:
Airport is in there.

MR. LEAVITT:
Those discussions came up during negotiation regarding the government wanting the right to lease property to concessionaires at the airport.

SENATOR CARE:
The language also says "or a facility that is owned by a governmental entity." The question is whether it would include the ability for, let us say, the university system that takes property by eminent domain to also lease some of that property to a private party in the form of a concession.

MR. WATERS:
I see no problem with it.

MS. NIELSEN:
Absolutely.

SENATOR CARE:
Assuming we process this bill out with these amendments, what we have now is S.B. 85 which mirrors A.B. 102 word-for-word. I assume the Assembly would make the same changes to S.B. 85.

ASSEMBLYMAN HORNE:
Yes, the same changes would be made in the Assembly. The danger would be if the Senate Committee on Judiciary chose to adopt some, all or none of the amendments that did not match ours, it would then end up in a conference committee.

JACOB SNOW (General Manager, Regional Transportation Commission of Southern Nevada, Clark County):

Transportation infrastructure may not be at the top of everybody's mind, but traffic is a top concern. We have done a good job working with the Bureau of Land Management, other governmental agencies, the public and private owners to preserve the right-of-way for transportation projects. There are occasions when eminent domain is necessary for transportation improvements. As my boss, Commissioner Bruce Woodbury, testified in your Committee several

weeks ago, the PISTOL initiative on the ballot last November had the potential to cripple those transportation projects.

The intent of the initiative to protect personal property rights is important. We recognize the intent and appreciate the things learned from Kermitt Waters, Jim Leavitt and others in this regard; however, PISTOL on its own, would have made it almost impossible for us to have used eminent domain as we have used it in the past for necessary projects.

I thank Assemblymen Hardy and Horne and recognize Senator Care in their efforts to bring everybody together and create the compromise before you today. It will provide us needed flexibility to use eminent domain when necessary for transportation projects while protecting the rights of property owners to fair compensation for that property.

More importantly, it allows us the time necessary to complete transportation projects; the original language in PISTOL limited us to only five years from the time the property would be acquired to complete the transportation project. For regionally significant projects, such as the 215 Beltway, five years was not enough time to complete the project. We now have a 15-year window offered in A.J.R. 3 and A.B. 102 to allow us to plan ahead, preserve the right-of-way and have enough time to complete the project.

As southern Nevada grows, transportation infrastructure becomes more critical. A recent study found the average rush hour trip in southern Nevada takes 39 percent longer than the same time during non-rush hour times of the day. Another similar study found those trips will take longer in the future if we do not continue our commitment to building transportation infrastructure. That study projects that by 2030, rush hour trips would take almost 80 percent longer than the same trip in non-rush hour traffic. In Nevada, gridlock is not caused by a failure to plan; it is caused by a failure to implement those plans.

Transportation funding and the ability to acquire the right-of-way for transportation infrastructure are critical to our ability to plan and implement projects. Assembly Joint Resolution 3 and A.B. 102 give us the ability to use eminent domain in those rare cases when it is needed. It is not our first choice, but it is necessary to have the ability to use it in instances when it is in the public's best interest. We agree with the statements made by Mr. Waters, Mr. Leavitt and Ms. Nielsen and support the amendments.

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DAVID K. SCHUMANN (Nevada Committee for Full Statehood):

I oppose A.J.R. 3 and A.B. 102. The original PISTOL was far better language. I grew up in Philadelphia, which has an extensive elevated railway line that dwarfs anything they have, or plan to have, in Las Vegas. It was built under the existing prohibitions of the Fifth Amendment, which defined public use. As Justice Clarence Thomas said, the *Kelo* decision amended the U. S. Constitution by replacing the words "public use" with the words "public purpose."

Page 5, section 8, subsection 12 of A.J.R. 3 says 15 years, which is an outrageous amount of time. They should plan the project before seizing the property and have it all done in five years. After 15 years, the person who owned the property would probably be dead. Page 5, section 8, subsection 10 of A.J.R. 3 says "In all actions in eminent domain, fair market value is the highest price, on the date of valuation," without tying that date to the date they took the property. They can value it five or ten years before they take the property and then the value is much less. There should be language that ties the date of valuation to some short period before they actually seize the property; otherwise, the compensation is not the highest and just compensation that people deserve.

Testimony at this hearing, as well as the previous hearing, has not provided a good explanation why PISTOL is deficient and why we need to expand the powers of government to take property.

STEVEN POLIKALAS (Steven T. Polikalas, Limited):

We have been watching the various initiatives throughout the Legislative Session. I would like to have the opportunity to work with Assemblyman Hardy and proponents of the resolution to use the language existing before and integrate what is now proposed.

JOSEPH A. TURCO (American Civil Liberties Union of Nevada):

We support both A.B. 102 and A.J.R. 3. Everybody knows about due process. When a fundamental right is at stake, government must afford meaningful safeguards, particularly in a case where the taking involves taking from one private property owner for another private entity, that maximum due process is accorded. We are satisfied both bills are on the right track.

Assembly Bill 102 places the burden of proof that the public use is legitimate on the taker. It is unclear whether that burden applies to government or the private

entity to which they are giving the property. I do not know how important it is, but in practice, it would have an effect. Exactly whose burden is it?

I work with some of the brightest lawyers and questioned Lee Rowland and Alan Lichtenstein on A.J.R. 3, page 4, section 8, subsection 7, paragraph (d), lines 18 to 20 that say "or to facilitate or avoid payment of excessive compensation or damages." I do not know what that means, neither does Mr. Lichtenstein or any of the lawyers at the ACLU. Is it a potential loophole? I do not know who wrote the language or its intent. We caution you to look carefully at it and know what it means before you vote on it.

CHAIR AMODEI:

The hearing is closed on A.B. 102 and A.J.R. 3. What is the pleasure of the Committee on A.B. 102?

SENATOR CARE:

I would move to amend and do pass as amended A.B. 102, the amendments being the agreed-to testimony between Ms. Nielsen, Mr. Waters and Mr. Leavitt.

SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
A.B. 102.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE
ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:

What is the pleasure of the Committee on A.J.R. 3?

SENATOR CARE:

I would move to amend and do pass as amended A.J.R. 3 adopting the amendments testified on by Ms. Nielsen, Mr. Waters and Mr. Leavitt and agreed to by Assemblymen Hardy and Horne.

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SENATOR CARE MOVED TO AMEND AND DO PASS AS AMENDED
A.J.R. 3.

SENATOR MCGINNESS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS NOLAN AND WASHINGTON WERE
ABSENT FOR THE VOTE.)

* * * * *

CHAIR AMODEI:
The hearing is opened on A.J.R. 5.

ASSEMBLY JOINT RESOLUTION 5: Proposes to amend the Nevada Constitution
to authorize the Legislature to provide for a statewide lottery for
textbooks, computers and other educational media for classrooms.
(BDR C-921)

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

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Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

**Testimony
Of
Clark County Commissioner Bruce L. Woodbury
Senate Judiciary Committee
February 28, 2007
9:00 a.m.**

Contact information: (702) 455-3535 or BRUCE@co.clark.nv.us

Mr. Chairman, members of the committee, thank you for the opportunity to testify regarding the bills pending before you and the subject of eminent domain in general.

First, let me say that until about a year ago, eminent domain was not a topic which was prominent on my agenda, except that a few years ago, I opposed the creation of Clark County's Redevelopment Agency or any use by such an agency of the power eminent domain because of my concern about abuses of property rights in the taking of private property by government agencies which then sell the property to other private parties for economic development or redevelopment purposes. My opposition to such uses of eminent domain was, of course, reinforced by the Kelo ruling by the U.S. Supreme Court. However, I have never before involved myself in these legislative issues. Each of you and many of your colleagues in the Senate and Assembly have far greater knowledge, experience, and insight regarding the constitutional, statutory and case-law framework of eminent domain in Nevada than I.

Last year, however, in my role as a county commissioner, as chairman of the Regional Transportation Commission of Southern Nevada, as a member of the Clark County Regional Flood Control District, and as a member of the Governor's Task Force on Transportation Funding, I, along with many others, became deeply concerned about potential adverse impacts

of the Initiative Petition known as PISTOL, which became Question 2 on last November's ballot.

While we fully supported the primary focus of the initiative to protect property against Kelo-type takings, legal opinions indicated that PISTOL, as originally proposed, could impose major cost increases and delays on vital state and local public works projects, especially highways and roads, could jeopardize federal funds and could create an entirely new realm of virtually unlimited liability for any act of state or local government which affected anyone's property values.

As a result of a court challenge which we filed, 5 of PISTOL's original sections were stricken by the Nevada Supreme Court, including section 8, which would have created the new form of liability for any acts by government such as land use decisions, which significantly affected property values. However, several remaining provisions still caused us considerable concern.

Instead of launching an all-out media campaign against PISTOL last fall, we decided to propose an alternative constitutional amendment, which would contain many of PISTOL's well-intended provisions but with some modifications to mitigate potential unintended consequences. We did this in close consultation with NDOT, NACO, the RTC's in Clark County and Washoe County, Governor Guinn's Task Force, and of course, with several legislators, including Senator Care, Senator Horsford, Senator Hardy, Senator Beers, Assemblyman Hardy, Assemblyman Horne, and Speaker Buckley. We were also given guidance by BDRs on these subjects from members of the Senate and Assembly, and Governor Gibbons endorsed this alternative amendment process in his State of the State address.

During last fall's campaigns, I had discussions with Don Chairez, one of the authors of PISTOL, and we agreed to seek common ground since we were both property rights advocates and both recognized the urgent need to fast-track transportation improvements in Nevada.

We began our negotiations after the election and were joined by Kermitt Waters, the other principal author of PISTOL, and other legal advisors and transportation specialists. We consulted closely with NDOT, local agencies and the governor. Senator Care actively participated in these negotiations, as did Assemblyman Hardy, and they were joined by Senator Beers, Assemblyman Horne, and Assemblyman Conklin until the legislative session began. Without the involvement of our legislators, the agreement would not have been possible, or even appropriate. Kermitt, Don, and their associates are all fine attorneys and strong advocates for their cause. Though these discussions, we were each able to better understand the other's concerns and intentions.

The result is an agreed-upon proposal for an alternative constitutional amendment, which strikes a proper balance between property rights and necessary public works programs involving the use of eminent domain. Each of our concerns has been addressed in reasonable ways, while each of the basic property-rights protections sought by Don and Kermitt and other associates have been preserved. It should also be mentioned that during the course of our meetings, the FHWA issued an opinion letter requested by Don Chairez which stated that, contrary to prior FHWA opinions, PISTOL did not violate certain federal rules, and therefore our federal highway funds are not jeopardized.

Mr. Chairman, SB 85, AB 129, and SB 16 are good bills designed to prevent the use of eminent domain for redevelopment purposes and to provide that money deposited in court in eminent domain actions must be properly invested for the benefit of the property owner.

As a result of our agreed-upon language, Assembly Joint Resolution 3, which embodies that settlement, and which is co-sponsored by most Assembly members and Senators, is being introduced. It contains provisions which embody the prohibition of the use of eminent domain for economic development. The suggested settlement scenario for you to consider is that AJR 3 be passed to initiate the constitutional amendment this year, with a second approval by the Legislature in 2009, and a vote by the people of Nevada in 2010. Identical statutory provisions would also be enacted this year to take effect sometime in 2007. You can decide if SB 85 and AB 129, which provided guiding principles for our agreement, add appropriate reinforcement to the prohibition on the taking of private property and selling it for economic development purposes.

I believe that this proposal has the strong support of NDOT, NACO, the 2 RTC's, all of the cities in Clark County, as well as the private sector coalitions which formed on both sides of the PISTOL debate last year. I know that is impossible to totally satisfy everyone's concerns.

Mr. Chairman, we would never presume that our proposal is untouchable. It is the Legislature's exclusive province to act on these matters. However, we would request that any amendments to the language to AJR 3 be discussed in depth with the parties to the settlement, including Mr. Waters and Mr. Chairez, so that the delicate balance which was achieved in this agreement with the crucial assistance of members of this legislature be preserved. Any disruption of the settlement will put these issues back into a posture of an unproductive

political conflict with a real potential for very unfavorable consequences for the people of Nevada.

Thank you for your consideration of this matter.

BRUCE L. WOODBURY
Clark County Commissioner
Chairman, RTC of Southern Nevada



DAVID ROGER
District Attorney

**OFFICE OF THE DISTRICT ATTORNEY
CLARK COUNTY, NEVADA
CIVIL DIVISION**

CHRISTOPHER J. LALLI
Assistant District Attorney

ROBERT W. TEUTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

MEMORANDUM

TO: Sabra Smith-Newby, Director of Intergovernmental Relations
FROM: Leslie A. Nielsen, Deputy District Attorney, Civil Division
DATE: April 24, 2007
SUBJECT: Requested Amendments to AJR3 and AB102

I have reviewed AJR3 and AB102 and noted several discrepancies between them and the alternative proposed constitutional amendment negotiated by Commissioner Woodbury and the PISTOL proponents. I have discussed the discrepancies with Kermitt Waters and Jim Leavitt over the last several days, and they agreed that all the amendments outlined below should be incorporated into AJR3 and AB102 to accurately reflect the parties' agreement.

AJR3 (Amend. No. 75)

There are two amendments requested to this bill. First, on page 4 at line 17, the phrase "on any such lease" should be substituted in place of the phrase "on an equal basis with others." This amendment accurately reflects the agreed language and avoids any ambiguities regarding existing preferences for leasing of public facilities.

The second amendment requires the deletion of paragraph (d) on page 4 at lines 26-32, and substitution of the following paragraph:

"(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under threat of eminent domain for roadway or highway purposes, to relocate public or private structures, or to avoid payment of excessive compensation or damages."

This amendment is requested because the drafters apparently misunderstood what was intended in the alternative constitutional amendment, and the language as drafted by the LCB did not allow for such an exchange to settle a condemnation case.

[Sabra Smith-Newby]
April 24, 2007
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Re: Requested Amendments to AJR3 and AB102

AB102 (Amend. No. 47)

The requested amendments to AJR3 should also be applied to AB102. The same amendments are to be made in Section 4, on page 6 at lines 18, and 26-31.

Additionally, in Section 7 there are deletions proposed for NRS 37.175 which should be retained. On page 8 at lines 18-20, the following deleted text in NRS 37.175(1) should be retained,

“on the difference between the amount deposited pursuant to NRS 37.100 or 37.170 and the sum of the amount awarded for the taking.”

On page 8 at lines 25-26, the following deleted text in NRS 37.175(2) should be retained,

“plaintiff is not required to pay interest on any amount deposited pursuant to the provisions of NRS 37.100 or 37.170.”

These two deletions would have required the government to pay prejudgment interest on its estimate of just compensation deposited early in the case when it occupies the property. Because this money is available for withdrawal and investment by the landowner, it is unfair to require the government to pay any interest on it. This is a clear windfall to the landowner at the taxpayers' expense. With my recommended amendment, the government will still pay prejudgment interest on the difference, if any, between the amount deposited and the amount ultimately awarded as just compensation for the property taken.

On page 8 at lines 27-34, the following deleted text in NRS 37.175(3) should be retained,

“No interest is required to be paid for the period from the date of a trial which is continued past 2 years after the date of the first service of the summons, until the date of entry of judgment, if the continuance was caused primarily by the defendant or, if there is more than one defendant, the total delay caused by all the defendants. As used in this subsection, “primarily” means the greater amount, quantity or quality of acts of the plaintiff or the defendant or, if there is more than one defendant, the total delay caused by all defendants, that would cause the trial to be continued past 2 years after the date of the first service of the summons.”

The deleted provision relieves the government from paying interest for any period of delay in the commencement of trial beyond two years from the filing of the complaint if the delay is caused primarily by the landowner. This provision, if retained, discourages landowners from unfairly delaying trial. A separate provision exists to discourage the government from delaying trial.

In Section 11, NRS 37.112 should not be repealed. The repealed text is known as the “project influence rule” which provides that any increase or decrease in the landowner's property value due to the public project is disregarded in determining the amount of just compensation for

[Sabra Smith-Newby]
April 24, 2007
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Re: Requested Amendments to AJR3 and AB102

the property taken. This is a well established valuation rule followed in most all states. The argument supporting the rule is that while the government should not be charged with increases in value of the condemned property due to its project, such as construction of a new freeway interchange, landowners also benefit from the rule in the event that project announcements cause blight in the area and a resulting decrease in the value of the condemned property.

I hope this memorandum is helpful in explaining and resolving the discrepancies between the agreed text and the bills as drafted. Please feel free to encourage anyone to call me at (702) 455-4120 if there are questions about these requested amendments.

/LAN

cc: Commissioner Bruce L. Woodbury
Jacob L. Snow, General Manager
Regional Transportation Commission
of Southern Nevada
Kermitt L. Waters, Esq.
James Jack Leavitt, Esq.

MOCK-UP

PROPOSED AMENDMENT 3812 TO ASSEMBLY JOINT RESOLUTION NO. 3_R1 FIRST REPRINT

PREPARED FOR ASSEMBLYMAN HARDY
APRIL 24, 2007

PREPARED BY THE LEGAL DIVISION

**NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN
CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE
OFFICIAL AMENDMENT MAY DIFFER.**

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red-strikethrough~~ is deleted language in the original bill; (4) ~~purple double-strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) **green bold** is newly added transitory language.

Legislative Counsel's Digest:

Section 8 of Article 1 of the Nevada Constitution and the Fifth Amendment to the United States Constitution provide that private property cannot be taken for a public use without just compensation. In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that the use of eminent domain to acquire property and transfer it to another private party for the purpose of economic development does not violate the Takings Clause of the Fifth Amendment to the United States Constitution.

This resolution proposes an amendment to the Nevada Constitution to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party.

In addition, the amendment proposed by this resolution requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, in all eminent domain actions, the owner of the property that is being taken is entitled to a determination of whether the taking is for a public use and the entity that is taking the property has the burden of proving that the taking is for a public use.

The amendment proposed by this resolution provides for the manner of computing the just compensation owed to a person whose property is taken by the exercise of eminent domain. Also, the amendment provides that neither a property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney's fees of the other party, except in a certain circumstance. Under the amendment, the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to

EXHIBIT F Senate Committee on Judiciary

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PROPOSED AMENDMENT TO⁷⁸AJR3_R1

1 reacquire the property for the price paid by the entity which took the property under certain
2 circumstances.

3 This resolution also proposes to repeal the "People's Initiative to Stop the Taking of
4 Our Land" if that initiative is approved by the voters at the 2008 General Election.

5 RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA,
6 JOINTLY, That Section 8 of Article 1 of the Nevada Constitution be
7 amended to read as follows:

8 Sec. 8. 1. No person shall be tried for a capital or other infamous
9 crime (except in cases of impeachment, and in cases of the militia when in
10 actual service and the land and naval forces in time of war, or which this
11 State may keep, with the consent of Congress, in time of peace, and in
12 cases of petit larceny, under the regulation of the Legislature) except on
13 presentment or indictment of the grand jury, or upon information duly filed
14 by a district attorney, or Attorney General of the State, and in any trial, in
15 any court whatever, the party accused shall be allowed to appear and
16 defend in person, and with counsel, as in civil actions. No person shall be
17 subject to be twice put in jeopardy for the same offense; nor shall he be
18 compelled, in any criminal case, to be a witness against himself.

19 2. The Legislature shall provide by law for the rights of victims of
20 crime, personally or through a representative, to be:

21 (a) Informed, upon written request, of the status or disposition of a
22 criminal proceeding at any stage of the proceeding;

23 (b) Present at all public hearings involving the critical stages of a
24 criminal proceeding; and

25 (c) Heard at all proceedings for the sentencing or release of a convicted
26 person after trial.

27 3. Except as otherwise provided in subsection 4, no person may
28 maintain an action against the State or any public officer or employee for
29 damages or injunctive, declaratory or other legal or equitable relief on
30 behalf of a victim of a crime as a result of a violation of any statute enacted
31 by the Legislature pursuant to subsection 2. No such violation authorizes
32 setting aside a conviction or sentence or continuing or postponing a
33 criminal proceeding.

34 4. A person may maintain an action to compel a public officer or
35 employee to carry out any duty required by the Legislature pursuant to
36 subsection 2.

37 5. No person shall be deprived of life, liberty, or property, without
38 due process of law.

39 6. Private property shall not be taken for public use without just
40 compensation having been first made, or secured, except in cases of war,
41 riot, fire, or great public peril, in which case compensation shall be
42 afterward made.

1 7. Except as otherwise provided in paragraphs (a) to (e), inclusive,
2 the public uses for which private property may be taken do not include
3 the direct or indirect transfer of any interest in the property to another
4 private person or entity. A transfer of property taken by the exercise of
5 eminent domain to another private person or entity is a public use in the
6 following circumstances:

7 (a) The entity that took the property transfers the property to a
8 private person or entity and the private person or entity uses the property
9 primarily to benefit a public service, including, without limitation, a
10 utility, railroad, public transportation project, pipeline, road, bridge,
11 airport or facility that is owned by a governmental entity.

12 (b) The entity that took the property leases the property to a private
13 person or entity that occupies an incidental part of an airport or a facility
14 that is owned by a governmental entity and, before leasing the property:

15 (1) Uses its best efforts to notify the person from whom the
16 property was taken that the property will be leased to a private person or
17 entity that will occupy an incidental part of an airport or a facility that is
18 owned by a governmental entity; and

19 (2) Provides the person from whom the property was taken with
20 an opportunity to bid or propose on ~~an equal basis with others.~~ any
21 such lease.

22 (c) The entity:

23 (1) Took the property in order to acquire property that was
24 abandoned by the owner, abate an immediate threat to the safety of the
25 public or remediate hazardous waste; and

26 (2) Grants a right of first refusal to the person from whom the
27 property was taken that allows that person to reacquire the property on
28 the same terms and conditions that are offered to the other private
29 person or entity.

30 (d) The entity that took the property ~~transfers an interest in the~~
31 ~~property to a private person or entity in exchange for an interest in the~~
32 ~~property that was taken, or is being taken,~~ exchanges it for other
33 property acquired or being acquired by [the exercise of] eminent domain
34 or under the threat of [the exercise of] eminent domain for [the purpose
35 of a road] roadway or highway [the relocation of] purposes, to relocate
36 public or private structures or to [facilitate or] avoid payment of
37 excessive compensation or damages.

38 (e) The person from whom the property is taken consents to the
39 taking.

40 8. In all actions in eminent domain:

41 (a) Before the entity that is taking property obtains possession of the
42 property, the entity shall give to the owner of the property a copy of all
43 appraisals of the property obtained by the entity.

44 (b) At the occupancy hearing, the owner of the property that is the
45 subject of the action is entitled, at the property owner's election, to a

1 separate and distinct determination as to whether the property is being
2 taken for a public use.

3 (c) The entity that is taking property has the burden of proving that
4 the taking is for a public use.

5 (d) Except as otherwise provided in this paragraph, neither the entity
6 that is taking property nor the owner of the property is liable for the
7 attorney's fees of the other party. This paragraph does not apply in an
8 inverse condemnation action if the owner of the property that is the
9 subject of the action makes a request for attorney's fees from the other
10 party to the action.

11 9. Except as otherwise provided in this subsection, if a court
12 determines that a taking of property is for public use, the taken or
13 damaged property must be valued at its highest and best use without
14 considering any future dedication requirements imposed by the entity
15 that is taking the property. If property is taken primarily for a profit-
16 making purpose, the property must be valued at the use to which the
17 entity that is taking the property intends to put the property, if such use
18 results in a higher value for the property.

19 10. In all actions in eminent domain, fair market value is the
20 highest price, on the date of valuation, that would be agreed to by a
21 seller, who is willing to sell on the open market and has reasonable time
22 to find a purchaser, and a buyer, who is ready, willing and able to buy, if
23 both the seller and the buyer had full knowledge of all the uses and
24 purposes for which the property is reasonably adaptable and available.

25 11. In all actions in eminent domain, just compensation is that sum
26 of money necessary to place the property owner in the same position
27 monetarily as if the property had never been taken, excluding any
28 governmental offsets except special benefits. Special benefits may only
29 offset severance damages and may not offset the value for the property.
30 Just compensation for the property taken by the exercise of eminent
31 domain must include, without limitation, interest and reasonable costs
32 and expenses, except attorney's fees, incurred by the owner of the
33 property that is the subject of the action. The district court shall
34 determine, in a posttrial hearing, the award of interest and award as
35 interest the amount of money which will put the person from whom the
36 property is taken in as good a position monetarily as if the property had
37 not been taken. The district court shall enter an order concerning:

38 (a) The date on which the computation of interest will commence;

39 (b) The rate of interest to be used to compute the award of interest,
40 which must not be less than the prime rate of interest plus 2 percent; and

41 (c) Whether the interest will be compounded annually.

42 12. Property taken by the exercise of eminent domain must be
43 offered to and reverts to the person from whom the property was taken
44 upon repayment of the original purchase price if, within 15 years after
45 obtaining possession of the property, the entity that took the property:

1 (a) Fails to use the property for the public use for which the property
2 was taken or for any public use reasonably related to the public use for
3 which the property was taken; or

4 (b) Seeks to convey any right, title or interest in all or part of the
5 property to any other person and the conveyance is not occurring
6 pursuant to subsection 7.

7 ➡ The entity that has taken the property does not fail to use the property
8 under paragraph (a) if the entity has begun active planning for or design
9 of the public use, the assembling of land in furtherance of planning for
10 or design of the public use or construction related to the public use.

11 13. If any provision of subsections 7 to 12, inclusive, or the
12 application thereof to any person or circumstance is held invalid, such
13 invalidity shall not affect the provisions or application of subsections 7 to
14 12, inclusive, which can be given effect without the invalid provision or
15 application, and to this end the provisions of subsections 7 to 12,
16 inclusive, are declared to be severable.

17 14. The provisions of subsections 7 to 12, inclusive, apply to an
18 action in eminent domain that is filed on or after January 1, 2011.

19 And be it further

20 RESOLVED, That Section 22 of Article 1 of the Nevada Constitution,
21 commonly known as the "People's Initiative to Stop the Taking of Our
22 Land," if that section is approved and ratified by the voters at the 2008
23 General Election, is hereby repealed.

H

24

FLOOR ACTIONS

AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

NOTE: THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS*
([HTTP://WWW.LEG.STATE.NV.US/SESSION/74TH2007/JOURNAL/](http://www.leg.state.nv.us/session/74th2007/journal/)), WHICH ARE NOT THE OFFICIAL
FINALIZED VERSIONS OF THE *JOURNALS*. CONSULT THE PRINT VERSION FOR THE OFFICIAL
RECORD.

NEVADA LEGISLATURE

Seventy-Fourth Session, 2007

ASSEMBLY DAILY JOURNAL

THE SIXTY-FOURTH DAY

CARSON CITY (Monday), April 9, 2007

Assembly called to order at 11:10 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Marie Hanson.

Please join with me now, taking a moment to go within, connecting with your breath and the Universal Power and Presence that permeates each of us. May we now let go of all that it took to be here today. Distractions, projects, phone calls, meetings—all dissolve in this moment as we accept and know each and every need is met, easily and effortlessly. Let us join our hearts and minds as One. All things are enveloped in Your Love, Father/Mother/Sister/Brother. Our Essential Nature is Love. Being One with It, we lovingly express our thoughts, activities, and words today. We let Joy guide us and inspire us to do that which You would have us accomplish, Great Spirit. There is nothing, no thing, that we cannot do without You. We invite You into our minds, now. Your Peace radiates out into this room, this building, this city, this state, this country, this planet, and beyond. Your wisdom allows us to be that which You are: Peace, Love, and Joy. It is with this intention we move into all our moments today, letting go and letting God, for He exceeds what we can do alone. And so it is.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Ocegüera moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Commerce and Labor, to which was referred Assembly Bill No. 404, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

SECOND READING AND AMENDMENT

Assembly Joint Resolution No. 3.

The following amendment was proposed by the Committee on Judiciary:
Amendment No. 75.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:

(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;

(b) Present at all public hearings involving the critical stages of a criminal proceeding; and

(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.

3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.

5. No person shall be deprived of life, liberty, or property, without due process of law.

6. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

7. *Except as otherwise provided in paragraphs (a) to ~~[(d)]~~ (e), inclusive, the public uses for which private property may be taken do not include the*

direct or indirect transfer of any interest in the property to another private person or entity. A transfer of property taken by the exercise of eminent domain to another private person or entity is a public use in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge ~~for public~~, airport or facility ~~for~~ that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of ~~for public~~ an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of ~~for public~~ an airport or a facility ~~for~~ that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on an equal basis with others.

(c) The entity:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property transfers an interest in the property to a private person or entity in exchange for an interest in the property that was taken, or is being taken, by the exercise of eminent domain or under the threat of the exercise of eminent domain for the purpose of a road or highway, the relocation of public or private structures or to facilitate or avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

8. *In all actions in eminent domain:*

(a) Before the entity that is taking property obtains possession of the property, the entity shall give to the owner of the property a copy of all appraisals of the property obtained by the entity.

(b) At the occupancy hearing, the owner of the property that is the subject of the action is entitled, at the property owner's election, to a separate and distinct determination as to whether the property is being taken for a public use.

(c) *The entity that is taking property has the burden of proving that the taking is for a public use.*

(d) *Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.*

9. *Except as otherwise provided in this subsection, if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If property is taken primarily for a profit-making purpose, the property must be valued at the use to which the entity that is taking the property intends to put the property, if such use results in a higher value for the property.*

10. *In all actions in eminent domain, fair market value is the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*

11. *In all actions in eminent domain, just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest and reasonable costs and expenses , except attorney's fees, incurred by the owner of the property that is the subject of the action. The district court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:*

- (a) *The date on which the computation of interest will commence;*
- (b) *The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and*
- (c) *Whether the interest will be compounded annually.*

12. *Property taken by the exercise of eminent domain must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:*

(a) Fails to use the property for the public use for which the property was taken or for any public use reasonably related to the public use for which the property was taken; or

(b) Seeks to convey any right, title or interest in all or part of the property to any other person and the conveyance is not occurring pursuant to subsection 7.

The entity that has taken the property does not fail to use the property under paragraph (a) if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

13. If any provision of subsections 7 to 12, inclusive, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or application of subsections 7 to 12, inclusive, which can be given effect without the invalid provision or application, and to this end the provisions of subsections 7 to 12, inclusive, are declared to be severable.

14. The provisions of subsections 7 to 12, inclusive, apply to an action in eminent domain that is filed on or after January 1, 2011.

And be it further

RESOLVED, That Section 22 of Article 1 of the Nevada Constitution, commonly known as the “People’s Initiative to Stop the Taking of Our Land,” if that section is approved and ratified by the voters at the 2008 General Election, is hereby repealed.

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Resolution ordered reprinted, engrossed and to the Concurrent Committee on Elections, Procedures, Ethics, and Constitutional Amendments.

Assembly Bill No. 13.

Bill read second time.

The following amendment was proposed by the Committee on Natural Resources, Agriculture, and Mining:

Amendment No. 87.

Section 1. Chapter 488 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The owner of a boat livery or his agent or employee shall not rent an aquatic device to any person unless the owner or his agent or employee:

(a) Provides to each person to whom the aquatic device is rented and to each person who will use the aquatic device:

(1) A personal flotation device of a type approved by the United States Coast Guard and prescribed by regulations adopted by the Commission;

NEVADA LEGISLATURE

Seventy-Fourth Session, 2007

ASSEMBLY DAILY JOURNAL

THE SIXTY-SEVENTH DAY

CARSON CITY (Thursday), April 12, 2007

Assembly called to order at 11:05 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Marie Hanson.

I invite you to give this moment this morning, give it to one another—joining together our hearts and minds, recognizing the Oneness of all that is, all that is present in each of us, all that is good is God. Being one with spirit and with each other we relax, we let go, we let God. For it is in this acknowledgment we attract exactly what is needed for us and for our sisters and brothers. For this we give great thanks. And so it is.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Ocegüera moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Madam Speaker:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 329, 366, 468, 560, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Commerce and Labor, to which was referred Assembly Bills Nos. 2, 7, 24, 41, 56, 89, 114, 128, 178, 215, 224, 294, 303, 531, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

Also, your Committee on Commerce and Labor, to which was referred Assembly Bill No. 277, has had the same under consideration, and begs leave to report the same back with the recommendation: Rerefer to the Committee on Ways and Means.

JOHN OCEGUERA, *Chair*

Committee if money is needed to pay attorney's fees or the costs of an investigation, or both.

~~[Sec. 3.]~~ *Sec. 4.* On July 1, 2007:

1. The State Controller shall transfer all money received pursuant to the provisions of chapter 648 of NRS and remaining in the Attorney General's Special Fund to the Fund for the Private Investigator's Licensing Board created pursuant to NRS 648.040, as amended by this act.

2. All assets and liabilities of the Attorney General's Special Fund which concern the activities of the Private Investigator's Licensing Board become the assets and liabilities of the Fund for the Private Investigator's Licensing Board.

~~[Sec. 4.]~~ *Sec. 5.* This act becomes effective on July 1, 2007.

Assemblyman Conklin moved the adoption of the amendment.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 552.

Bill read second time and ordered to third reading.

Assembly Bill No. 554.

Bill read second time and ordered to third reading.

Assembly Bill No. 560.

Bill read second time and ordered to third reading.

Assembly Joint Resolution No. 9.

Bill read second time and ordered to third reading.

Assembly Joint Resolution No. 1 of the 22nd Special Session.

Bill read second time and ordered to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 102.

Bill read third time.

Remarks by Assemblyman Horne.

Roll call on Assembly Bill No. 102:

YEAS—42.

NAYS—None.

Assembly Bill No. 102 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Joint Resolution No. 3.

Resolution read third time.

Remarks by Assemblyman Hardy.

Roll call on Assembly Joint Resolution No. 3:

YEAS—42.

NAYS—None.

Assembly Joint Resolution No. 3 having received a constitutional majority, Madam Speaker declared it passed, as amended.

Resolution ordered transmitted to the Senate.

UNFINISHED BUSINESS

There being no objections, the Speaker and Chief Clerk signed Senate Joint Resolution No. 1; Senate Concurrent Resolution No. 21.

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Anderson, the privilege of the floor of the Assembly Chamber for this day was extended to Amanda van Fosson and Christina van Fosson.

On request of Assemblyman Conklin, the privilege of the floor of the Assembly Chamber for this day was extended to the following students from Liberty Baptist Academy: Sarah Kercher, William Barragan, Alizabeth Bigger, Nicolette McGrath, Kevin Parades, Stephanie Rhodes, James Webb, Crystal Webb, Chrissy Webb, Thomas Webb, Tierra Webb, Berlyn Webb, Brenden Webb, John Berg, Debbie Berg, Steven Berg, Rebecca Berg, David Berg, Michael Berg, Jennifer Berg, Jesse Machuca, Trish Machuca, Faith Machuca, Tonya Piazza, Jessica Piazza, April Glass, Jessica Glass, Robert Horton and William Horton.

On request of Assemblyman Goicoechea, the privilege of the floor of the Assembly Chamber for this day was extended to Megan Damele and Melissa Damele.

On request of Assemblyman Grady, the privilege of the floor of the Assembly Chamber for this day was extended to Laurie Thom, Dorsey Thom, Jr., and Trinity Thom.

On request of Assemblywoman Parnell, the privilege of the floor of the Assembly Chamber for this day was extended to the following members of Carson City Leadership 2007: Neila Abbott, Jane Auerswald, Bonnie Betts, Bruce Bullock, Paul Carignan, Jenny Casselman, Donna Curtis, Carol English, Rick Frewert, Dianne Hilliard, Alana Ladd-Ross, Bob Morin, Le Ann Morris, Brian Olson, Buck Potts, John Procaccini, Lisa Stirgus, Ralph Swagler, Carol Swanson, and Mikel Trejo.

On request of Assemblywoman Smith, the privilege of the floor of the Assembly Chamber for this day was extended to the following members of Reno/Sparks Leadership 2007: Freeman Holbrook, Annemarie Huisman,

THE NINETY-THIRD DAY

CARSON CITY (Tuesday), May 8, 2007

Senate called to order at 11:21 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Reverend Jeffrey Paul.

In loving memory of JohnD Winter,

O Lord, our Governor, bless the leaders of our land and those we love but see no longer, that we may be a people at peace among ourselves and a blessing to other nations of the earth.

To our Senators and those who make our laws in this State, give courage, wisdom, clarity and foresight to provide for the needs of all our people and to fulfill our obligations in all the communities of Nevada; in Your Name, we pray.

AMEN.

Pledge of Allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce and Labor, to which were referred Assembly Bills Nos. 2, 303, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

RANDOLPH J. TOWNSEND, *Chair*

Mr. President:

Your Committee on Finance, to which were rereferred Senate Bills Nos. 400, 404, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass as amended.

Also, your Committee on Finance, to which was referred Assembly Bill No. 543, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WILLIAM J. RAGGIO, *Chair*

Mr. President:

Your Committee on Government Affairs, to which were referred Assembly Bills Nos. 16, 22, 28, 135, 220, 348, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

WARREN B. HARDY II, *Chair*

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, May 7, 2007

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day passed Senate Bills Nos. 121, 122, 150, 177, 208, 220, 294, 473; Senate Joint Resolution No. 9.

Also, I have the honor to inform your honorable body that the Assembly on this day passed, as amended, Assembly Bill No. 540.

(5) A teacher; or

(6) Any other class of persons who are identified in an ordinance adopted by a county who hold a professional license in this State and who are trained to recognize indications of abuse or neglect.

Sec. 3. This act becomes effective on July 1, 2007.

Senator Amodei moved the adoption of the amendment.

Remarks by Senator Amodei.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 329.

Bill read second time and ordered to third reading.

Assembly Bill No. 504.

Bill read second time and ordered to third reading.

Assembly Bill No. 520.

Bill read second time and ordered to third reading.

Assembly Bill No. 536.

Bill read second time and ordered to third reading.

Assembly Bill No. 548.

Bill read second time and ordered to third reading.

Assembly Bill No. 556.

Bill read second time and ordered to third reading.

Assembly Bill No. 577.

Bill read second time and ordered to third reading.

Assembly Joint Resolution No. 3.

Resolution read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 630.

"SUMMARY—Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)"

"ASSEMBLY JOINT RESOLUTION—Proposing to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain."

Legislative Counsel's Digest:

Section 8 of Article 1 of the Nevada Constitution and the Fifth Amendment to the United States Constitution provide that private property cannot be taken for a public use without just compensation. In *Kelo v. City of New London*, 125 S.Ct. 2655 (2005), the United States Supreme Court ruled that the use of eminent domain to acquire property and transfer it to another private party for the purpose of economic development

does not violate the Takings Clause of the Fifth Amendment to the United States Constitution.

This resolution proposes an amendment to the Nevada Constitution to prohibit, except in certain circumstances, the taking of private property if the purpose of the taking is to transfer an interest in that property to another private party.

In addition, the amendment proposed by this resolution requires an entity which is taking property by the exercise of eminent domain to provide the owner of the property with all appraisals of the property obtained by the entity before the entity is allowed to occupy the property. Furthermore, in all eminent domain actions, the owner of the property that is being taken is entitled to a determination of whether the taking is for a public use and the entity that is taking the property has the burden of proving that the taking is for a public use.

The amendment proposed by this resolution provides for the manner of computing the just compensation owed to a person whose property is taken by the exercise of eminent domain. Also, the amendment provides that neither a property owner nor an entity which is taking property by the exercise of eminent domain is liable for the attorney's fees of the other party, except in a certain circumstance. Under the amendment, the owner of property taken by the exercise of eminent domain, or his successor in interest, has the right to reacquire the property for the price paid by the entity which took the property under certain circumstances.

This resolution also proposes to repeal the "People's Initiative to Stop the Taking of Our Land" if that initiative is approved by the voters at the 2008 General Election.

RESOLVED BY THE ASSEMBLY AND SENATE OF THE STATE OF NEVADA, JOINTLY, That Section 8 of Article 1 of the Nevada Constitution be amended to read as follows:

Sec. 8. 1. No person shall be tried for a capital or other infamous crime (except in cases of impeachment, and in cases of the militia when in actual service and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) except on presentment or indictment of the grand jury, or upon information duly filed by a district attorney, or Attorney General of the State, and in any trial, in any court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself.

2. The Legislature shall provide by law for the rights of victims of crime, personally or through a representative, to be:

(a) Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;

(b) Present at all public hearings involving the critical stages of a criminal proceeding; and

(c) Heard at all proceedings for the sentencing or release of a convicted person after trial.

3. Except as otherwise provided in subsection 4, no person may maintain an action against the State or any public officer or employee for damages or injunctive, declaratory or other legal or equitable relief on behalf of a victim of a crime as a result of a violation of any statute enacted by the Legislature pursuant to subsection 2. No such violation authorizes setting aside a conviction or sentence or continuing or postponing a criminal proceeding.

4. A person may maintain an action to compel a public officer or employee to carry out any duty required by the Legislature pursuant to subsection 2.

5. No person shall be deprived of life, liberty, or property, without due process of law.

6. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

7. *Except as otherwise provided in paragraphs (a) to (e), inclusive, the public uses for which private property may be taken do not include the direct or indirect transfer of any interest in the property to another private person or entity. A transfer of property taken by the exercise of eminent domain to another private person or entity is a public use in the following circumstances:*

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or a facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on ~~[an equal basis with others.]~~ any such lease.

(c) The entity:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property ~~[transfers an interest in the property to a private person or entity in exchange for an interest in the property that was taken, or is being taken,]~~ exchanges it for other property acquired or being acquired by [the exercise of] eminent domain or under the threat of [the exercise of] eminent domain for [the purpose of a road] roadway or highway [the relocation of] purposes, to relocate public or private structures or to [facilitate or] avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

8. In all actions in eminent domain:

(a) Before the entity that is taking property obtains possession of the property, the entity shall give to the owner of the property a copy of all appraisals of the property obtained by the entity.

(b) At the occupancy hearing, the owner of the property that is the subject of the action is entitled, at the property owner's election, to a separate and distinct determination as to whether the property is being taken for a public use.

(c) The entity that is taking property has the burden of proving that the taking is for a public use.

(d) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.

9. Except as otherwise provided in this subsection, if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If property is taken primarily for a profit-making purpose, the property must be valued at the use to which the entity that is taking the property intends to put the property, if such use results in a higher value for the property.

10. In all actions in eminent domain, fair market value is the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

11. In all actions in eminent domain, just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the

property taken by the exercise of eminent domain must include, without limitation, interest and reasonable costs and expenses, except attorney's fees, incurred by the owner of the property that is the subject of the action. The district court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

- (a) The date on which the computation of interest will commence;*
- (b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and*
- (c) Whether the interest will be compounded annually.*

12. Property taken by the exercise of eminent domain must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:

(a) Fails to use the property for the public use for which the property was taken or for any public use reasonably related to the public use for which the property was taken; or

(b) Seeks to convey any right, title or interest in all or part of the property to any other person and the conveyance is not occurring pursuant to subsection 7.

↪ The entity that has taken the property does not fail to use the property under paragraph (a) if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

13. If any provision of subsections 7 to 12, inclusive, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or application of subsections 7 to 12, inclusive, which can be given effect without the invalid provision or application, and to this end the provisions of subsections 7 to 12, inclusive, are declared to be severable.

14. The provisions of subsections 7 to 12, inclusive, apply to an action in eminent domain that is filed on or after January 1, 2011.

And be it further

RESOLVED, That Section 22 of Article 1 of the Nevada Constitution, commonly known as the "People's Initiative to Stop the Taking of Our Land," if that section is approved and ratified by the voters at the 2008 General Election, is hereby repealed.

Senator Care moved the adoption of the amendment.

Remarks by Senator Care.

Amendment adopted.

Resolution ordered reprinted, reengrossed and to third reading.

THE NINETY-NINTH DAY

CARSON CITY (Monday), May 14, 2007

Senate called to order at 11:35 a.m.

President Krolicki presiding.

Roll called.

All present except Senator Horsford, who was excused.

Prayer by the Chaplain, Pastor Albert Tilstra.

Today, grant to the members and the officers of this body a sacred moment of quiet as they continue the duties of the day. Turn their thoughts to You and open their hearts to Your Spirit that they may have wisdom in their decisions, understanding in their thinking, love in their attitudes and mercy in their judgments.

Let them not think, when this prayer is said, that their dependence upon You is over and forget Your counsels for the rest of the day. Rather from these moments of heart-searching may there come such a sweetness of disposition that all may know that You are in this place. From this holy interlude may there flow light and joy and power that will remain with them until night shall bring Your whispered benediction, "Well done, good and faithful servant."

We ask these things in humbleness of heart.

AMEN.

Pledge of Allegiance to the Flag.

Senator Raggio moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Finance, to which were referred Assembly Bills Nos. 540, 549, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Finance, to which were referred Senate Bills Nos. 346, 455, 458, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

WILLIAM J. RAGGIO, *Chair*

Mr. President:

Your Committee on Human Resources and Education, to which were referred Assembly Bills Nos. 6, 70, 131, 233, 313, 446, 507, 576, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Human Resources and Education, to which was referred Assembly Concurrent Resolution No. 6, has had the same under consideration, and begs leave to report the same back with the recommendation: Be adopted.

MAURICE E. WASHINGTON, *Chair*

Mr. President:

Your Committee on Judiciary, to which were referred Assembly Bills Nos. 95, 323, 344, 352, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Assembly Joint Resolution No. 3.

Resolution read third time.

Roll call on Assembly Joint Resolution No. 3:

YEAS—20.

NAYS—None.

EXCUSED—Horsford.

Assembly Joint Resolution No. 3 having received a constitutional majority, Mr. President declared it passed, as amended.

Resolution ordered transmitted to the Assembly.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Resolution No. 8; Assembly Bills Nos. 20, 72, 77, 117, 250, 261, 306, 307, 505; Assembly Joint Resolution No. 6.

GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Carlton, the privilege of the floor of the Senate Chamber for this day was extended to Lyla Bleu Brooks, Misty Levis and Aaron Brooks.

On request of Senator Lee, the privilege of the floor of the Senate Chamber for this day was extended to Travis Lee.

On request of Senator Nolan, the privilege of the floor of the Senate Chamber for this day was extended to Nicholas D. Marquart.

On request of Senator Mathews, the privilege of the floor of the Senate Chamber for this day was extended to the following students and teacher from the Bernice Mathews Elementary School: Essence Belmont, Olson Beltran, Jackie Izquierdo, Cecilia Barajas, Britney Espinoza, Nancy Garcia, Cody Johnston, Shalyce Latvaho, Austin Lavatai, Ulysses Martin Fajardo, Ahsan Masud, Marisa Medina, Maria Patricia Penalber, Hector Ramirez, Destiney Joseph, Justin Reedy, Sir Frederick Tatum, Ashley Trammel, Kelsey Usher, Kenneth Viers, Shanquila White, Gerardo Anaya, Victoria De Avila, Karen Gomez, Edgardo Gomez, Edgar Gonzalez, Lesley Guerrero, Brian Guevara, Michael Haro, Jose Hernandez, Edgar Hernandez, Liliam Hernandez, Cody Holland, Ian Knox, Jasmine Lara, Edwin Medina, Jose Montelongo, Jonathan Murillo, Danny Najera, Bianca Palomino, Cliff Porter, Leandra Riggs, Hoover Roscom, Alex Santana, Osiris Vazquez, Jose Velazquez, Maria Moreno and teacher: Alan Holmes.

On request of Senator Raggio, the privilege of the floor of the Senate Chamber for this day was extended to the following students and teachers from the Roy Gomm Elementary School: Christina Baldazo, Joseph Bath, Hannah Beesley, Austin Berry, Emilee Brockovich, Reilly Busch, Nicola Dipaolo, Benjamin Fuller, Kira Fuqua, Jeffery Jordan, Clark Knobel, Jacob Kostiuk, Milia Lockwood, Marina Lowe, Samantah Miguel, Melanie

BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE
FOR COMPLETE TEXT

SUPPLEMENTAL MATERIALS

ASSEMBLY JOINT RESOLUTION 3 (2007)
TO BE RETURNED TO THE 2009 SESSION.

AJR 3 of the 74th Session - 2009

Introduced in the Assembly on Feb 02, 2009.

By: (**Bolded** name indicates primary sponsorship)

Hardy , Buckley , Ohrenschall , Horne , Gansert , Allen , Anderson , Arberry , Atkinson , Beers , Bobzien , Carpenter , Christensen , Claborn , Cobb , Conklin , Denis , Goedhart , Goicoechea , Grady , Hogan , Kihuen , Kirkpatrick , Koivisto , Mabey , Manendo , Marvel , McClain , Mortenson , Munford , Ocegura , Parks , Parnell , Pierce , Segerblom , Settelmeyer , Smith , Stewart , Weber , Womack , **Care , Heck , Cegavske , Hardy , Raggio** , Beers , Coffin , Horsford , Lee , Mathews , McGinness , Nolan , Schneider , Townsend , Washington , Wiener , Woodhouse

Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

Fiscal Notes

Effect on Local Government: No.

Effect on State: No.

Most Recent History Action: File No. 51
(See full list below) **On 2010 Ballot**

Past Hearings

Assembly Elections, Procedures, Ethics, and Constitutional Amendments	Feb. 26, 2009	03:45 PM	Minutes	Do pass
Senate Judiciary	Mar. 20, 2009	08:30 AM	Minutes	No Action
Senate Judiciary	Mar. 26, 2009	08:30 AM	Minutes	Do pass

Votes

Assembly Final Passage	Mar. 11	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
Senate Final Passage	Apr. 13	Yea 20,	Nay 1,	Excused 0,	Not Voting 0,	Absent 0

Bill Text [As Introduced](#) [As Enrolled](#)

Statutes of Nevada 2009 [File No. 51](#)

Bill History

Feb 02, 2009	Returned from Secretary of State. Read first time. Referred to Committee on Elections, Procedures, Ethics, and Constitutional Amendments. To printer. From printer. To committee.
Feb 27, 2009	From committee: Do pass.
Mar 02, 2009	Taken from Second Reading File. Placed on Chief Clerk's desk.
Mar 10, 2009	Taken from Chief Clerk's desk. Placed on Second Reading File. Read second time.
Mar 11, 2009	Read third time. Passed. Title approved. (Yeas: 42, Nays: None.) To Senate.
Mar 13, 2009	In Senate. Read first time. Referred to Committee on Judiciary. To committee.
Mar 26, 2009	From committee: Do pass.
Mar 30, 2009	Read second time.
Apr 01, 2009	Taken from General File. Placed on General File for next legislative day.
Apr 02, 2009	Taken from General File. Placed on General File for next legislative day.
Apr 06, 2009	Taken from General File. Placed on General File for next legislative day.
Apr 08, 2009	Taken from General File. Placed on General File for next legislative day.
Apr 13, 2009	Read third time. Passed. Title approved. (Yeas: 20, Nays: 1.) To Assembly.
Apr 14, 2009	In Assembly. To enrollment.
Apr 16, 2009	Enrolled and delivered to Secretary of State. File No. 51. On 2010 Ballot.



PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

FLOOR STATEMENT
75th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

ASSEMBLY JOINT RESOLUTION NO. 3 (Enrolled)
OF THE 74TH SESSION
Concerning Eminent Domain

Summary

Assembly Joint Resolution No. 3 of the 74th Session of the Nevada Legislature proposes to amend Section 8, Article 1 of the *Constitution of the State of Nevada* to provide that, except under certain circumstances, private property may not be taken through an eminent domain proceeding if it is to be transferred to a private party.

The measure also provides for the manner of computing just compensation to the owner of condemned property, and stipulates that neither party to an eminent domain proceeding is liable for the other party's attorney's fees, except under certain circumstances. It provides that the original property owner must be given the opportunity to reacquire the property if the entity that took it has failed to put it to use within 15 years.

Finally, A.J.R. 3 provides that the provision of the People's Initiative to Stop the Taking of Our Land (PISTOL), which was approved at the 2008 General Election, will be repealed upon final approval of A.J.R. 3 by the voters at the 2010 General Election.

Effective Date

This measure was approved in identical form during the 2007 and 2009 Sessions of the Legislature. The proposal will be submitted to the voters for final approval or disapproval at the 2010 General Election.

Background Information

The initiative that qualified for the 2008 ballot is commonly referred to as PISTOL but is also known as the Nevada Property Owner's Bill of Rights.

LEGISLATIVE HEARINGS

MINUTES AND EXHIBITS

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

**Seventy-Fifth Session
February 26, 2009**

The Committee on Elections, Procedures, Ethics, and Constitutional Amendments was called to order by Chair Harry Mortenson at 3:50 p.m. on Thursday, February 26, 2009, in Room 3142 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Harry Mortenson, Chair
Assemblywoman Ellen Koivisto, Vice Chair
Assemblyman Ty Cobb
Assemblyman Marcus Conklin
Assemblywoman Heidi S. Gansert
Assemblyman John Hambrick
Assemblyman William C. Horne
Assemblyman Ruben J. Kihuen
Assemblyman Harvey J. Munford
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom
Assemblyman James A. Settelmeyer
Assemblywoman Debbie Smith

COMMITTEE MEMBERS ABSENT:

None

Minutes ID: 263



Chairman Mortenson:

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

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

Assemblyman Joe Hardy, Clark County Assembly District No. 20:

With me is Assemblyman Horne. We appreciated the opportunity to work with your Committee during the last session as well as with the Chair of the Judiciary Committee on this issue.

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

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

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

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

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

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

Assemblyman Segerblom:

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

Assemblyman Hardy:

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

Assemblyman Segerblom:

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

Assemblyman Hardy:

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

Assemblyman Munford:

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

Assemblyman Hardy:

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

Assemblyman Munford:

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

Assemblyman Hardy:

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

Assemblyman Munford:

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

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

That is correct, Mr. Munford. In 2005, I brought legislation to address blighted properties and the procedures that governments had to go through in order to do a "taking." Prior to that legislation, I believe only three or five indicia needed to be shown for blighted property. We increased the number of indicia that had to be present in order for property to be determined to be blighted and for a taking to be done for redevelopment.

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

Chairman Mortenson:

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

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

Assemblyman Horne:

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

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

Chairman Mortenson:

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

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

Assemblyman Horne:

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

Chairman Mortenson:

That is a bill rather than a resolution, correct?

Assemblyman Horne:

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

Chairman Mortenson:

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

Assemblyman Horne:

That is correct.

Chairman Mortenson:

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

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

John Wagner, State Vice Chairman, Independent American Party, Elko, Nevada:

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

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

Chairman Mortenson:

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

John Wagner:

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

Chairman Mortenson:

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

David Schumann, Chairman, Nevada Committee for Full Statehood, Minden, Nevada:

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

Chairman Mortenson:

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

Lynn Chapman, State Vice President, Nevada Eagle Forum, Sparks, Nevada:

We are opposed to this bill. We figure that 70 percent of the people, not once but twice, voted this in place, so we should probably leave it as the people wanted it. We are asking you to leave it as it is. We have a little bit more

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

Chairman Mortenson:

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

Lee Rowland, Northern Coordinator, American Civil Liberties Union of Nevada, Reno, Nevada:

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

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

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

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

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

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

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

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

Assemblyman Horne:

Which provision was vague?

Lee Rowland:

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

Assemblyman Horne:

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

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

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

Lee Rowland:

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

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

Assemblyman Munford:

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

Lee Rowland:

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

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

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

Chairman Mortenson:

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

ASSEMBLYMAN HORNE MOVED TO DO PASS ASSEMBLY JOINT RESOLUTION 3 OF THE 74TH SESSION.

ASSEMBLYMAN KIHUEN SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN SEGERBLOM WAS ABSENT FOR THE VOTE.)

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

RESPECTFULLY SUBMITTED:

Terry Horgan
Committee Secretary

APPROVED BY:

Assemblyman Harry Mortenson, Chair

DATE: _____

TO: Assemblyman Harry Mortenson

Pursuant to your request, please see the following Memorandum:

**Comparative Memorandum For
Article 1, Section 22 Property Owners' Bill of Rights (PISTOL)
and
AJR 3**

I. Introduction

In response to the United States Supreme Court decision in *Kelo v. City of New London, Connecticut*, and the Nevada Supreme Court decision in *City of Las Vegas Downtown Redevelopment Agency v. Pappas*, which allowed the government to use its power of eminent domain to take private property from one person and give it to another, along with numerous other abuses witnessed by Kermitt L. Waters, Esq. in over 40 years of legal practice focusing on landowners' rights in eminent domain actions, the Property Owner's Bill of Rights ("PISTOL") initiative was placed on the ballot in the 2006 and 2008 general elections. Because PISTOL was an amendment to the Nevada Constitution, Nevada law required it to be passed in two separate general elections. Despite continued legal challenges and modification by the Nevada Supreme Court, the majority of landowner protections survived and Nevada's voters overwhelmingly (nearly 70% statewide in both elections) approved the PISTOL initiative. PISTOL is now part of the Nevada Constitution and governs all forthcoming eminent domain actions in Nevada.

Upon the Supreme Court's decision to allow PISTOL to proceed to the 2006 Ballot, the Regional Transportation Commission of Southern Nevada ("RTC"), the Clark County District Attorney's Office, and Clark County Commissioner Bruce Woodbury contacted Mr. Waters and other sponsors of PISTOL to address their concerns with two particular provisions in PISTOL prior to the 2006 election. The provisions of PISTOL which allegedly caused concern were the definition of "direct or indirect transfers"¹ and the definition of "used within 5 years."² Allegedly, these public agencies and officials wanted to more specifically define the type of private to private 'transfers' which would pass a public use challenge under PISTOL. And, they requested that the term 'use' and the time period for such 'use' under PISTOL be specifically defined. These public agencies and officials did not raise any other concerns regarding other specific provisions of PISTOL at that time.

The provisions in AJR 3 vary from those in PISTOL and do not afford the same level of protections for landowners facing eminent domain. Below, the provisions of both PISTOL and AJR 3 are set out and the individual provisions are compared. It must be remembered that the power of eminent domain is one of the most intrusive powers of the government. In an eminent domain action, a private landowner has not invited the intrusion and sacrifices his private property for public

¹ Article 1, Section 22 (1).

² Article 1, Section 22 (6).

use. To receive constitutionally guaranteed just compensation the landowner is forced to 'fight city hall' and its nearly unlimited resources. In this fight, a landowner needs as much protection as the law can afford.

II. Provision Comparison

PISTOL: Sec. 22(1):

Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.

AJR 3: Sec. 8(7):

Except as otherwise provided in paragraphs (a) to (e), inclusive, the public uses for which private property may be taken do not include the direct or indirect transfer of any interest in the property to another private person or entity. A transfer of property taken by the exercise of eminent domain to another private person or entity is a public use in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or a facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

Commentary:

In a concise way, this PISTOL provision directly addresses the United States Supreme Court

ruling in *Kelo* and the Nevada Supreme Court ruling in *Pappas* to prevent condemnors in Nevada from using the power of eminent domain to take private property from one person and giving it to another person. The PISTOL provision provides an outright ban on using eminent domain for any private to private transfer to prevent this recognized abuse of eminent domain.

AJR 3 provides exceptions/circumstances where private property acquired by the government through the use of eminent domain may be transferred from the government to another separate private entity presumably to a private entity for the benefit of a public service. Further, AJR 3 provides an exception to the ban on private to private transfers in PISTOL where the government desires to lease property acquired through eminent domain as an incidental part of the government facility's operation. The specific issue as to railroad companies, public utilities and other quasi governmental entities, they have their own eminent domain power and are not prohibited by PISTOL. PISTOL provides an outright ban on private to private transfers preventing the government from taking private property with eminent domain and giving that property to other private entities. AJR 3, although limiting this practice somewhat, still provides mechanisms for private to private transfers to occur.

AJR 3: Sec. 8(8)(c):

In all actions in eminent domain:

(c) *The entity that is taking property has the burden of proving that the taking is for a public use.*

Commentary:

This provision is similar in effect to the second sentence of PISTOL Sec. 22(1).

PISTOL: Sec. 22(2):

In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.

AJR 3: Sec. 8(8)(a) and (8)(b):

In all actions in eminent domain:

(a) *Before the entity that is taking property obtains possession of the property, the entity shall give to the owner of the property a copy of all appraisals of the property obtained by the entity.*

(b) *At the occupancy hearing, the owner of the property that is the subject of the action is entitled, at the property owner's election, to a separate and distinct determination as to whether the property is being taken for a public use.*

Commentary:

This PISTOL provision provides that a landowner may request a jury to determine if a government project for which eminent domain is being used is truly a public use. This is an important difference between the corresponding AJR 3 provision as it adds another important protection to prevent the government from taking private property from one individual and giving it to another.

PISTOL: Sec. 22(3):

If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

AJR 3: Sec. 8(9):

Except as otherwise provided in this subsection, if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If property is taken primarily for a profit-making purpose, the property must be valued at the use to which the entity that is taking the property intends to put the property, if such use results in a higher value for the property.

Commentary:

The AJR 3 provision is similar in effect to the PISTOL provision in sec. 22(3), except that the PISTOL provision is more concise and upholds the right to a jury to determine if a public use exists when private property is taken by eminent domain.

PISTOL: Sec. 22(4):

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

AJR 3: Sec. 8(11):

In all actions in eminent domain, just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset

severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest and reasonable costs and expenses, except attorney's fees, incurred by the owner of the property that is the subject of the action. The district court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning.

- (a) The date on which the computation of interest will commence;*
- (b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and*
- (c) Whether the interest will be compounded annually.*

AJR 3: Sec. 8(8)(d):

In all actions in eminent domain:

- (d) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of action makes a request for attorney's fees from the other party to the action.*

Commentary:

In any eminent domain action, the Fifth Amendment of the United States Constitution and Article 1, Section 8 of the Nevada Constitution require the government to pay the landowner just compensation for the property which has been taken. Just compensation is to serve as the replacement for the property the landowner lost to the government. This is so that a landowner whose property is taken by eminent domain can replace himself in the market and purchase a similar property to what was taken. This PISTOL provision seeks to guarantee that a landowner who loses property through the government's use of eminent domain truly receives just compensation as guaranteed by the Constitution. PISTOL prevents the government from using any offset to reduce just compensation and concocting ways to lessen what landowners receive for their property. The list of ways the government has tried to offset a landowners' just compensation is too numerous to detail. PISTOL puts an outright stop to this practice and prevents the government from using any offsets to reduce constitutionally guaranteed just compensation. This provision of PISTOL also guarantees that a landowner will receive compound interest on an award of just compensation just as would be done in the market. Further, costs and expenses incurred by a landowner seeking just compensation effectively force the landowner's just compensation award to be reduced by the amount of such costs and expenses. For example, if a landowner's just compensation was \$100,000 and it took \$50,000 in costs and expenses to recover it, then true just compensation was not received. The costs and expenses provided under PISTOL may also allow for a landowner to recover any attorney's fees incurred to recover just compensation. Accordingly, this PISTOL provision allows a landowner to truly receive just compensation as mandated under the United States and Nevada Constitutions.

In comparison, the AJR 3 provision regarding governmental offsets is similar in effect to the PISTOL provision. However, it does provide an offset for special benefits where a remainder parcel receives unique enhancement from a government project. Under this AJR 3 provision, the condemnor can only invoke a special benefits offset if it is determined that any of the landowner's remaining property, not taken by eminent domain, suffers severance damages. This portion of this AJR 3 provision is in accordance with current eminent domain law. As to costs and expenses incurred by a landowner in an eminent domain proceeding, AJR 3, similar to the corresponding PISTOL provision, allows recovery for these costs and expenses. The main difference here is that AJR 3 Sec.8(8)(d) precludes a landowner from recovering any attorney's fees in a direct eminent domain proceeding initiated by the government thereby effectively reducing any just compensation award as this is one expense that could not be reimbursed by the court. Lastly, instead of automatically providing compound interest on an award of just compensation, AJR 3 8(11) leaves it to the discretion of the court in a post trial hearing whether such interest should be compounded or not.

PISTOL: Sec. 22(5):

In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

AJR 3: Sec. 8(10):

In all actions in eminent domain, fair market value is the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

Commentary:

This PISTOL provision is clear and concise and serves to value property in an eminent domain action the same way property is valued in the open market. As sellers on the open market typically accept the highest offer made. Further, this highest price definition of value restores how property was valued in eminent domain actions in Nevada from 1900 to 1993. And, is the 'value' definition used in several other states including California and Arizona.

The AJR 3 highest price definition includes several contingencies which serve to water down the unequivocal meaning of 'highest' price. In so doing, it allows condemnors to present evidence which does not truly meet the highest price standard in a effort to reduce the just compensation paid to a landowner.

PISTOL: Sec 22(6):

Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.

AJR 3: Sec. 8(12):

Property taken by the exercise of eminent domain must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:

(a) Fails to use the property for the public use for which the property was taken or for any public use reasonably related to the public use for which the property was taken;
or

(b) Seeks to convey any right, title or interest in all or part of the property to any other person and the conveyance is not occurring pursuant to subsection 7.

—> The entity that has taken the property does not fail to use the property under paragraph (a) if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

Commentary:

This provision of PISTOL prevents the government from abusing its eminent domain power by taking private property under a specific public use and then after it has acquired the property changing the use or transferring the property to a private entity which does not use the property for a public use. As an example, hundreds of homes were taken through eminent domain for a public airport use in Las Vegas at the corner of Eastern and Russell. The taken homes were not used for airport purposes and a private developer constructed a commercial center on the site which now includes a Walmart, Petsmart, and Lowes. So in actuality these homes were taken so a Walmart could be built even though the original justification was for airport use. Under PISTOL, the government has to use property it acquires through eminent domain for the original purpose for which it was condemned. And, if it does not use the property for the originally stated purpose or the property is not used within five years from the final order of condemnation (which is usually 3-5 years after the government has physically occupied the property), the property automatically reverts back to the original property owner upon repayment of the original purchase price.

The corresponding provision in AJR 3 extends the time for the reversion back to the landowner to 15 years and seeks to define the term ‘use’ broadly. Which may limit some of the protections provided by PISTOL.

PISTOL: Sec. 22(7):

A property owner shall not be liable to the government for attorney’s fees or costs in any eminent domain action.

AJR 3: Sec. 8(8)(d):

In all actions in eminent domain:

(D) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.

Commentary:

This PISTOL provision prevents the government from taxing a landowner in an eminent domain proceeding with its attorney's fees. Given the nearly unlimited resources of the government to retain any counsel of its choosing and the tactic often used by condemnors to force a landowner to take less than just compensation under the threat of forcing the landowner to pay its attorney's fees this provision is only fair. This allows a landowner to pursue the constitutional right to receive just compensation without the fear of being liable for the government's attorneys fees.

AJR 3 has similar protections, however, it prevents the landowner from recovering his own attorney's fees which, as discussed above, reduces his just compensation.

PISTOL sections 22(8) and (9) and AJR 3 sections 8(13) and 8(14) are largely technical. Specifically, AJR 3 section 8(14) provides that the provisions of AJR 3 do not apply until January 1, 2011 assuming that it passes the 2009 legislature and receives a majority of votes in the 2010 general election.

**Side-by-Side Comparison of Provisions in
Assembly Joint Resolution 3 of 2007 and the PISTOL Initiative**

Section	A.J.R. 3	Section	PISTOL
7	<p>Provides clearly defined instances wherein private property can be transferred directly or indirectly from one private entity to another under via an eminent domain proceeding under the definition of "public use." The instances are as follows:</p> <p>A) When the property is used primarily to benefit a public service.</p> <p>B) When the entity that took the property leases it to a private entity that occupies an incidental portion of an airport or other facility that is owned by a government and notifies the previous owner of its intentions and allows the previous owner to bid on said lease or purpose.</p> <p>C) The entity took the property because it was abandoned in order to abate or remediate a dangerous or hazardous situation, and the entity grants the previous owner right of first refusal to reacquire the property.</p> <p>D) The entity that took the property exchanges it with other property acquired under eminent domain for roadway purposes or to relocate private or public structures.</p> <p>E) The person from whom the property is taken consents to the taking.</p>	2	<p>Provides that "public use" shall not include the direct or indirect transfer of land taken in an eminent domain proceeding from one private party to another. Places burden of proving public use on government.</p>
8	<p>Provides that neither party in such a hearing is liable for the other party's attorney's fees, except in the case of an inverse condemnation action.</p>	4	<p>In all eminent domain actions, prior to occupancy, a government must provide the owner copies of all appraisals and the owner can elect to have a court decide if the taking is actually for a public use.</p>

Section	A.J.R. 3	Section	PISTOL
9	Changes "any proprietary governmental purpose" to "primarily for a profit-making purpose."	5	If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If a property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.
11	Excludes government offsets except <i>special benefits</i> . Special benefits may only offset severance damages and may not offset value of property. Excludes attorney's fees from costs and expenses. Provides that a court will determine start date for interest, the rate to be used, and whether interest will be compounded.	6	In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, with any governmental offsets, as if the property had never been taken. Just compensation shall include, but not be limited to, compounded interest and all reasonable costs and expenses actually incurred.
10	Defines fair market value as the highest price a seller would be willing to sell for on the date of valuation if he had reasonable time to find a buyer on the open market who was ready, willing and able to buy if both parties have full knowledge of all the uses and purposes to which the property could reasonably be put.	7	In all eminent domain proceedings where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.
12	Reversion takes place after 15 years upon original purchase price if: Government fails to use property for stated purpose or any reasonably related purpose; or seeks to convey the property to any other person not pursuant to the rules expressed in Section 7.	11	Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.

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Section	A.J.R. 3	Section	PISTOL
8 & 11	See provisions concerning attorney's fees and costs in sections 8 and 11.	12	A property owner shall not be liable to the government for attorney's fees or costs in any eminent domain action.
NA		13	Defines "government."
13	Provides for severability of provisions.	14	Provides for the severability of each provision of the section (22) should any other provision be stricken.
14	Provides that effective date of amendment is January 1, 2011.		

W90711-1

E-3

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
March 20, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:40 a.m. on Friday, March 20, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

GUEST LEGISLATORS PRESENT:

Assemblyman Joe Hardy, Assembly District No. 20
Assemblyman William Horne, Assembly District No. 34

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Judith Anker-Nissen, Committee Secretary

OTHERS PRESENT:

David A. Huff, District Judge, Department 1, Third Judicial District
Victor Trujillo, Senior Judge, Child Protective Service Master, Fifth Judicial District
John R. McCormick, Rural Courts Coordinator, Administrative Office of the Courts

CHAIR CARE:

I will open the hearing on Assembly Joint Resolution (A.J.R.) 3 of the 74th Session. In 2003, Assemblyman William Horne had a bill to rein in the abuses of eminent domain. In 2005, he and I had bills introduced prior to the *Kelo v. City of New London*, 125 S.Ct. 2655 (2005) decision. What former Supreme Court Justice Sandra Day O'Connor said would happen did happen. Legislatures all over the country engaged in a similar exercise.

Assemblyman Joe Hardy's name, Mr. Horne's name and my name are on A.J.R. 3 of the 74th Session. The Property Owners' Bill of Rights is now the law of the land in the Nevada Constitution. But there were discussions between Kermitt Waters and those who wanted A.J.R. 3 of the 74th Session as a way of modifying what was contained in the People's Initiative to Stop the Taking of Our Land (PISTOL).

ASSEMBLY JOINT RESOLUTION 3 OF THE 74TH SESSION: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

ASSEMBLYMAN JOE HARDY (Assembly District No. 20):

We have a working relationship with all of the parties involved in eminent domain. I appreciate the proponents of PISTOL bringing that forward. It allowed us protection when we looked at A.J.R. 3 of the 74th Session, recognizing that PISTOL could be refined for a more practical PISTOL.

We recognized we needed to put it into statute before PISTOL came into effect, so we had A.B. No. 102 of the 74th Session that Assemblyman Horne shepherded. That protected private property owners more immediately than PISTOL. Then PISTOL superseded in a constitutional way.

When we looked at the language for PISTOL, we recognized challenges with that particular implementation. A meeting occurred where I had a handshake with Kermitt Waters to work together on a dual track that included a statute and constitutional improvement of PISTOL.

Assembly Joint Resolution 3 of the 74th Session is what resulted in trying to get the components and people in the process to a consensus. Because A.J.R. 3 of the 74th Session came through a refining process, it is imperative to

pass A.J.R. 3 of the 74th Session unamended if we choose to pass it. Otherwise, it goes back to PISTOL which has problems for local governments.

ASSEMBLYMAN WILLIAM HORNE (Assembly District No. 34):

Mr. Hardy explained the process well. To clarify, it is imperative that A.J.R. 3 of the 74th Session pass unamended; it has to in order for it to be effective. If it does not pass, PISTOL will remain in effect. As Mr. Hardy stated, the reason for the compromise and dual tracks is we wanted a more workable PISTOL. Provisions in the original bill make some government functions much more difficult, and that was not my intention. In fact, other jurisdictions—one that comes to mind is Colorado—with PISTOL in place have moved to repeal it because of onerous provisions that hamstring local government.

All parties came up with A.J.R. 3 of the 74th Session and A.B. No. 102 of the 74th Session in order to make PISTOL a more workable framework for eminent domain.

CHAIR CARE:

If this is going to happen, it has to be passed word for word as in the 2007 Session. Then it would go on the ballot in 2010. There were 12 statewide ballot questions in 2008, and the eminent domain one passed by a two-thirds vote. The only ballot question that received a greater margin for or against was the measure wherein Legislators should not be paid for every day they work. Approximately 70 percent of the voters voted no on that. That also means if A.J.R. 3 of the 74th Session goes on the ballot, it will only take a majority, but it would supersede PISTOL. It has nothing to do with the percentage of the votes acquired.

There are some differences between PISTOL and A.J.R. 3 of the 74th Session. A handout was prepared for Assemblyman Harry Mortenson, Assembly District No. 42, approximately two years ago.

Everybody understands it has to be one way or the other, we cannot change any words. Does anyone want to get into the distinctions between the two measures?

DAVID SCHUMANN (Chair, Nevada Committee for Full Statehood):

I handed out the comparative memorandum from Kermitt Waters (Exhibit G). Assembly Joint Resolution 3 of the 74th Session is deficient; it does not afford the same level of protection as PISTOL.

The PISTOL creates an onerous condition when the government takes property from private citizens. That is right, it is supposed to. Taking property from private individuals by the government should be onerous, not easy and simple.

In the original *Kelo* decision, the City of New London, Connecticut, took land from Susette Kelo and gave it to somebody who was building an apartment house or housing development, something that would pay higher taxes. They defined paying higher taxes as a public use; A.J.R 3 of the 74th Session does exactly the same thing, it redefines certain uses as public uses. They are trying to get around PISTOL and they failed.

The PISTOL provision prevents the government from taxing a landowner—when you are in a lawsuit that is involved, the landowner has to pay not only his lawyer but the government’s lawyer. The PISTOL provision prevents the government from “taxing” a landowner in an eminent domain proceeding with government attorney fees. Given the unlimited resources of the government to retain any counsel of its choosing, and the tactic often used by condemners to force a landowner to take less than just compensation under the threat of forcing the landowner to pay its attorney fees, this provision is only fair. The PISTOL provisions say, no, you pay your own taxes. You will have to read this because it is full of instances where the government is redefining what is clearly a private entity and the fact they leased property to a private entity. They are defining that as a public use.

That is what City of New London did, and the U.S. Supreme Court caught them. When you bring this up and tell people, few people know this goes on. The reaction is how we can stop them from doing that. The obvious response is whether we need a new constitutional proposition to stop the Legislature from watering down enacted constitutional propositions.

This does not afford the same level of protection, according to Kermitt Waters. Mr. Waters has explained this better than I can because I am not an attorney. The PISTOL provides an absolute ban on private-to-private transfers. That is the point. When you take the land for a police station, school or something of that

nature, nobody is going to fight. That is in the Constitution. The government has an absolute right to do that as long as they pay just compensation. But say you take it from me and give it to you to use for something they have defined is public use as a railroad. No, I am sorry it is not, that is the railroad. This is an attempt to get around the *Kelo* decision, and it is a failure. If you do this, I guarantee you somebody will have another PISTOL proposition the Legislature is forbidden to mess with.

CHAIR CARE:

Somewhere along the way the Constitution says public use, and then you started seeing the phrase public purpose, which was not quite the same thing, in case law.

MR. SCHUMANN:

You are absolutely right. They use the term public purpose the same as public use.

CHAIR CARE:

I remember the debate quite well. Mr. Schumann, you testified on the measure Mr. Horne and I had. It was quite a discussion.

On the issue of taking from a private party and conveying to another private party, some provisions in A.J.R. 3 of the 74th Session discuss that. Do you want to talk about that Mr. Wilkinson?

BRADLEY A. WILKINSON (Chief Deputy Legislative Counsel):

One thing to make clear: It is referred to as the People's Initiative to Stop the Taking of Our Land in the last resolve clause in A.J.R. 3 of the 74th Session. However, the actual question that was placed on the ballot referred to Property Owners' Bill Of Rights, but we are talking about the same thing.

With respect to the issue of public use, subsection 7 of A.J.R. 3 of the 74th Session sets forth five specific circumstances in which a transfer of property to another private person or entity would be allowed.

As Mr. Schumann stated, and as indicated in the materials from Mr. Waters, PISTOL prohibits that type of direct or indirect transfer to another private person or entity, where as A.J.R. 3 of the 74th Session sets out those specific circumstances under which such a transfer would be allowed. That is a half

page long, so I will not read those to you. The circumstances are set forth there.

SENATOR WASHINGTON:

Mr. Wilkinson, does subsection 7 address a situation where you may have a property owned by a private individual who is removed from the property because of geographical distance? The local government cannot get into contact with them or refuses to contact them. The property either needs to be deemed blighted or sold to another private entity for development. Then they can claim eminent domain?

MR. WILKINSON:

Subsection 7 defines the circumstances considered a public use. It does not get into any situation you are describing. It would have to be under the circumstances you were describing. One of the purposes is set forth in paragraph (a), (b), (c), (d) or (e). I am not clear how that would apply to your question.

LEE ROWLAND (American Civil Liberties Union of Nevada):

I am well aware that amendments are not possible on A.J.R. 3 of the 74th Session, which is why I have not provided any. We are in an awkward position of having to choose between an existing regime and comment on A.J.R. 3 of the 74th Session.

The American Civil Liberties Union (ACLU) is not traditionally a property rights organization. Our concerns stem from the constitutional protection of due process when that property is taken. We are concerned about making sure the rules are clear, and when somebody goes through the system, they know what to expect and how to get recompensed if their property is taken.

Our concern in A.J.R. 3 of the 74th Session stems from two areas, the one mentioned by the last testifier and the second you were just discussing—the ability to transfer to a private entity.

The ACLU does not oppose the ability of the government to transfer to a private entity. In light of the history and *Kelo*, this critical area needs tight language, so you do not end up in another two years with lawsuits of people trying to determine what constitutes public service.

Our concern is with the ability to transfer to a private person or entity in subsection 7, paragraph (a) of A.J.R. 3 of the 74th Session on page 3, lines 27 to 32. The only requirement is the private person or entity uses the property primarily to benefit a public service.

That is a loophole. Public service is not defined. There is a list, but it says without limitation. This is likely to put people back in the position of not knowing precisely when their property might be taken. That started the unrest that led to PISTOL. This might be putting us back in the position we were.

This is just a due process issue. When you do something as invasive as take someone's property, everybody has the right to know the rules of the game. As an attorney, I could not tell you what that rule meant. You could go to court and argue about it, and that is hopefully what we are all trying to avoid.

Our second concern is the lack of ability to get attorney fees in these actions. That is a due process concern, the ability to be made whole by your government. Page 5, subsection 11 of A.J.R. 3 of the 74th Session specifically exempts attorney fees for anyone who is entitled to receive full compensation for their property. Attorney fees can be substantial, especially if you are in a long battle with the government about your property.

This is only talking about someone who has won their eminent domain action against the government and is supposed to be made whole. They cannot truly be made whole because they are out the attorney fees paid to fight with the government to get compensation.

From those two points of view, unfortunately, we are in the position of opposing A.J.R. 3 of the 74th Session. The existing law, while not something necessary to the ACLU, is more restrictive. It does not present those due process issues because it is more a black-and-white process, which is no transfer to private property. Though that position is not required by any ACLU policy, it gets rid of vagueness in due process problems of A.J.R. 3 of the 74th Session with respect to the transfer of private property.

SENATOR PARKS:

Ms. Rowland, could these due process issues be addressed by a bill and placed in statute?

MS. ROWLAND:

That is a tricky question. We are talking about setting a constitutional rule of the game and then trying to amend it statutorily. Frankly, I am not an expert in statutory interpretation. It might be a better question for the Legislative Counsel Bureau. Someone could easily litigate against those statutory rules, get them knocked out or lose the deference if they were seen to conflict.

The Legislature could further define public service. If there is an appetite for that, we are certainly willing to look at the language and assist to the degree we can. This is not directly an ACLU priority. The priority is it be clearly stated. An effort could be made, and it would help with legislative intent. The problem is you are putting the rules of the game in the Constitution. You open the possibility for courts to say, we can knock these statutory rules out and go back to the broad definition. It would still have concerns, but it would be helpful.

ASSEMBLYMAN HORNE:

For clarification and on the record,

I have been involved with the eminent domain legislation since becoming a member of this legislative body. So I think it would be a stretch to think, to characterize me as trying to weaken eminent domain laws in our State.

I'll remind the Committee that what you have before you is as been agreed upon by Mr. Kermitt Waters. And there have been many discussions between him, and then [former Clark] County Commissioner Bruce Woodbury, ... Assemblyman Hardy and others.

But to answer some questions on particularly in [sub]section 7, [paragraph] (a). When you talk about private-to-private transfer, many Committee members will remember that ... part of the discussion ... there are many ... government properties, facilities such as city halls and et cetera, are becoming mixed use as well as private.

And they can ... for instance, there has been this discussion about redoing City Hall in Las Vegas. Part of that property can be used by private individuals who lease various shops or whatever. But in a taking, if you made it so strict where you couldn't transfer part of

that property to use for that, it would be a violation as in that the old definition is when we used to use public use as opposed to public purpose, would be violated. But, you know, the debate was, but is this still a government property entity is being used for the benefit of the people as a mixed use. And so this allows that type of project to go forward.

As for the attorneys' fees, that was my first bill in 2003. It was offered as a judgment dealing with attorneys' fees. And we went around and around about that even in '05 when Senator Amodei was the Chair. And part of this was—there was ... even discussion about ... you know, ... these offers of judgment going both ways and both sides depending on ... And it came down to, let the parties pay for their own attorneys. That's how we got there. But there were instances where these private individuals ... were paying for the privilege of having their property taken from them after, you know, losing ... and having to pay the government's, you know, attorneys' costs and fees. So that was a compromise there, doing that, trying to get some reasonableness in this area of eminent domain, which you will never get out ... get out of the courts. You will always have litigation of some sort when it comes to the government taking property, regardless on its use.

CHAIR CARE:

I was leaning toward moving this bill today, but we will put this on the work session for Thursday. It is going to be all or nothing.

SENATOR WASHINGTON:

Is it possible that Staff could give us a copy of Mr. Water's testimony?

LINDA J. EISSMANN (Committee Policy Analyst):

Mr. Chair, you will recall that A.J.R. 3 of the 74th Session was amended in the Assembly and in the Senate last Session. Perhaps that could have been written before the amendments?

CHAIR CARE:

I do not know, but legislative history will bear that out.

Senate Committee on Judiciary
March 20, 2009
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We will close the hearing on A.J.R. 3 of the 74th Session. The Committee is adjourned at 9:32 a.m.

RESPECTFULLY SUBMITTED:

Judith Anker-Nissen,
Committee Secretary

APPROVED BY:

Senator Terry Care, Chair

DATE: _____

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Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

TO: Assemblyman Harry Mortenson

Pursuant to your request, please see the following Memorandum:

**Comparative Memorandum For
Article 1, Section 22 Property Owners' Bill of Rights (PISTOL)
and
AJR 3***

I. Introduction

In response to the United States Supreme Court decision in *Kelo v. City of New London, Connecticut*, and the Nevada Supreme Court decision in *City of Las Vegas Downtown Redevelopment Agency v. Pappas*, which allowed the government to use its power of eminent domain to take private property from one person and give it to another, along with numerous other abuses witnessed by Kermit L. Waters, Esq. in over 40 years of legal practice focusing on landowners' rights in eminent domain actions, the Property Owner's Bill of Rights ("PISTOL") initiative was placed on the ballot in the 2006 and 2008 general elections. Because PISTOL was an amendment to the Nevada Constitution, Nevada law required it to be passed in two separate general elections. Despite continued legal challenges and modification by the Nevada Supreme Court, the majority of landowner protections survived and Nevada's voters overwhelmingly (nearly 70% statewide in both elections) approved the PISTOL initiative. PISTOL is now part of the Nevada Constitution and governs all forthcoming eminent domain actions in Nevada.

Upon the Supreme Court's decision to allow PISTOL to proceed to the 2006 Ballot, the Regional Transportation Commission of Southern Nevada ("RTC"), the Clark County District Attorney's Office, and Clark County Commissioner Bruce Woodbury contacted Mr. Waters and other sponsors of PISTOL to address their concerns with two particular provisions in PISTOL prior to the 2006 election. The provisions of PISTOL which allegedly caused concern were the definition of "direct or indirect transfers"¹ and the definition of "used within 5 years."² Allegedly, these public agencies and officials wanted to more specifically define the type of private to private 'transfers' which would pass a public use challenge under PISTOL. And, they requested that the term 'use' and the time period for such 'use' under PISTOL be specifically defined. These public agencies and officials did not raise any other concerns regarding other specific provisions of PISTOL at that time.

The provisions in AJR 3 vary from those in PISTOL and do not afford the same level of protections for landowners facing eminent domain. Below, the provisions of both PISTOL and AJR 3 are set out and the individual provisions are compared. It must be remembered that the power of eminent domain is one of the most intrusive powers of the government. In an eminent domain action, a private landowner has not invited the intrusion and sacrifices his private property for public

¹ Article 1, Section 22 (1).

² Article 1, Section 22 (6).

use. To receive constitutionally guaranteed just compensation the landowner is forced to 'fight city hall' and its nearly unlimited resources. In this fight, a landowner needs as much protection as the law can afford.

II. Provision Comparison

PISTOL: Sec. 22(1):

Public use shall not include the direct or indirect transfer of any interest in property taken in an eminent domain proceeding from one private party to another private party. In all eminent domain actions, the government shall have the burden to prove public use.

AJR 3: Sec. 8(7):

Except as otherwise provided in paragraphs (a) to (e), inclusive, the public uses for which private property may be taken do not include the direct or indirect transfer of any interest in the property to another private person or entity. A transfer of property taken by the exercise of eminent domain to another private person or entity is a public use in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or a facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

Commentary:

In a concise way, this PISTOL provision directly addresses the United States Supreme Court

ruling in *Kelo* and the Nevada Supreme Court ruling in *Pappas* to prevent condemnors in Nevada from using the power of eminent domain to take private property from one person and giving it to another person. The PISTOL provision provides an outright ban on using eminent domain for any private to private transfer to prevent this recognized abuse of eminent domain.

AJR 3 provides exceptions/circumstances where private property acquired by the government through the use of eminent domain may be transferred from the government to another separate private entity presumably to a private entity for the benefit of a public service. Further, AJR 3 provides an exception to the ban on private to private transfers in PISTOL where the government desires to lease property acquired through eminent domain as an incidental part of the government facility's operation. The specific issue as to railroad companies, public utilities and other quasi governmental entities, they have their own eminent domain power and are not prohibited by PISTOL. PISTOL provides an outright ban on private to private transfers preventing the government from taking private property with eminent domain and giving that property to other private entities. AJR 3, although limiting this practice somewhat, still provides mechanisms for private to private transfers to occur.

AJR 3: Sec. 8(8)(c):

In all actions in eminent domain:

(c) *The entity that is taking property has the burden of proving that the taking is for a public use.*

Commentary:

This provision is similar in effect to the second sentence of PISTOL Sec. 22(1).

PISTOL: Sec. 22(2):

In all eminent domain actions, prior to the government's occupancy, a property owner shall be given copies of all appraisals by the government and shall be entitled, at the property owner's election, to a separate and distinct determination by a district court jury, as to whether the taking is actually for a public use.

AJR 3: Sec. 8(8)(a) and (8)(b):

In all actions in eminent domain:

(a) *Before the entity that is taking property obtains possession of the property, the entity shall give to the owner of the property a copy of all appraisals of the property obtained by the entity.*

(b) *At the occupancy hearing, the owner of the property that is the subject of the action is entitled, at the property owner's election, to a separate and distinct determination as to whether the property is being taken for a public use.*

Commentary:

This PISTOL provision provides that a landowner may request a jury to determine if a government project for which eminent domain is being used is truly a public use. This is an important difference between the corresponding AJR 3 provision as it adds another important protection to prevent the government from taking private property from one individual and giving it to another.

PISTOL: Sec. 22(3):

If a public use is determined, the taken or damaged property shall be valued at its highest and best use without considering any future dedication requirements imposed by the government. If private property is taken for any proprietary governmental purpose, then the property shall be valued at the use to which the government intends to put the property, if such use results in a higher value for the land taken.

AJR 3: Sec. 8(9):

Except as otherwise provided in this subsection, if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If property is taken primarily for a profit-making purpose, the property must be valued at the use to which the entity that is taking the property intends to put the property, if such use results in a higher value for the property.

Commentary:

The AJR 3 provision is similar in effect to the PISTOL provision in sec. 22(3), except that the PISTOL provision is more concise and upholds the right to a jury to determine if a public use exists when private property is taken by eminent domain.

PISTOL: Sec. 22(4):

In all eminent domain actions, just compensation shall be defined as that sum of money, necessary to place the property owner back in the same position, monetarily, without any governmental offsets, as if the property had never been taken. Just compensation shall include but is not limited to, compounded interest and all reasonable costs and expenses actually incurred.

AJR 3: Sec. 8(11):

In all actions in eminent domain, just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset

severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest and reasonable costs and expenses, except attorney's fees, incurred by the owner of the property that is the subject of the action. The district court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning.

- (a) The date on which the computation of interest will commence;
- (b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and
- (c) Whether the interest will be compounded annually.

AJR 3: Sec. 8(8)(d):

In all actions in eminent domain:

- (d) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of action makes a request for attorney's fees from the other party to the action.

Commentary:

In any eminent domain action, the Fifth Amendment of the United States Constitution and Article 1, Section 8 of the Nevada Constitution require the government to pay the landowner just compensation for the property which has been taken. Just compensation is to serve as the replacement for the property the landowner lost to the government. This is so that a landowner whose property is taken by eminent domain can replace himself in the market and purchase a similar property to what was taken. This PISTOL provision seeks to guarantee that a landowner who loses property through the government's use of eminent domain truly receives just compensation as guaranteed by the Constitution. PISTOL prevents the government from using any offset to reduce just compensation and concocting ways to lessen what landowners receive for their property. The list of ways the government has tried to offset a landowners' just compensation is too numerous to detail. PISTOL puts an outright stop to this practice and prevents the government from using any offsets to reduce constitutionally guaranteed just compensation. This provision of PISTOL also guarantees that a landowner will receive compound interest on an award of just compensation just as would be done in the market. Further, costs and expenses incurred by a landowner seeking just compensation effectively force the landowner's just compensation award to be reduced by the amount of such costs and expenses. For example, if a landowner's just compensation was \$100,000 and it took \$50,000 in costs and expenses to recover it, then true just compensation was not received. The costs and expenses provided under PISTOL may also allow for a landowner to recover any attorney's fees incurred to recover just compensation. Accordingly, this PISTOL provision allows a landowner to truly receive just compensation as mandated under the United States and Nevada Constitutions.

In comparison, the AJR 3 provision regarding governmental offsets is similar in effect to the PISTOL provision. However, it does provide an offset for special benefits where a remainder parcel receives unique enhancement from a government project. Under this AJR 3 provision, the condemnor can only invoke a special benefits offset if it is determined that any of the landowner's remaining property, not taken by eminent domain, suffers severance damages. This portion of this AJR 3 provision is in accordance with current eminent domain law. As to costs and expenses incurred by a landowner in an eminent domain proceeding, AJR 3, similar to the corresponding PISTOL provision, allows recovery for these costs and expenses. The main difference here is that AJR 3 Sec.8(8)(d) precludes a landowner from recovering any attorney's fees in a direct eminent domain proceeding initiated by the government thereby effectively reducing any just compensation award as this is one expense that could not be reimbursed by the court. Lastly, instead of automatically providing compound interest on an award of just compensation, AJR 3 8(11) leaves it to the discretion of the court in a post trial hearing whether such interest should be compounded or not.

PISTOL: Sec. 22(5):

In all eminent domain actions where fair market value is applied, it shall be defined as the highest price the property would bring on the open market.

AJR 3: Sec. 8(10):

In all actions in eminent domain, fair market value is the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

Commentary:

This PISTOL provision is clear and concise and serves to value property in an eminent domain action the same way property is valued in the open market. As sellers on the open market typically accept the highest offer made. Further, this highest price definition of value restores how property was valued in eminent domain actions in Nevada from 1900 to 1993. And, is the 'value' definition used in several other states including California and Arizona.

The AJR 3 highest price definition includes several contingencies which serve to water down the unequivocal meaning of 'highest' price. In so doing, it allows condemnors to present evidence which does not truly meet the highest price standard in a effort to reduce the just compensation paid to a landowner.

PISTOL: Sec 22(6):

Property taken in eminent domain shall automatically revert back to the original property owner upon repayment of the original purchase price, if the property is not used within five years for the original purpose stated by the government. The five years shall begin running from the date of the entry of the final order of condemnation.

AJR 3: Sec. 8(12):

Property taken by the exercise of eminent domain must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:

(a) Fails to use the property for the public use for which the property was taken or for any public use reasonably related to the public use for which the property was taken;

or

(b) Seeks to convey any right, title or interest in all or part of the property to any other person and the conveyance is not occurring pursuant to subsection 7.

—>The entity that has taken the property does not fail to use the property under paragraph (a) if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

Commentary:

This provision of PISTOL prevents the government from abusing its eminent domain power by taking private property under a specific public use and then after it has acquired the property changing the use or transferring the property to a private entity which does not use the property for a public use. As an example, hundreds of homes were taken through eminent domain for a public airport use in Las Vegas at the corner of Eastern and Russell. The taken homes were not used for airport purposes and a private developer constructed a commercial center on the site which now includes a Walmart, Petsmart, and Lowes. So in actuality these homes were taken so a Walmart could be built even though the original justification was for airport use. Under PISTOL, the government has to use property it acquires through eminent domain for the original purpose for which it was condemned. And, if it does not use the property for the originally stated purpose or the property is not used within five years from the final order of condemnation (which is usually 3-5 years after the government has physically occupied the property), the property automatically reverts back to the original property owner upon repayment of the original purchase price.

The corresponding provision in AJR 3 extends the time for the reversion back to the landowner to 15 years and seeks to define the term 'use' broadly. Which may limit some of the protections provided by PISTOL.

PISTOL: Sec. 22(7):

A property owner shall not be liable to the government for attorney's fees or costs in any eminent domain action.

AJR 3: Sec. 8(8)(d):

In all actions in eminent domain:

(D) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.

Commentary:

This PISTOL provision prevents the government from taxing a landowner in an eminent domain proceeding with its attorney's fees. Given the nearly unlimited resources of the government to retain any counsel of its choosing and the tactic often used by condemnors to force a landowner to take less than just compensation under the threat of forcing the landowner to pay its attorney's fees this provision is only fair. This allows a landowner to pursue the constitutional right to receive just compensation without the fear of being liable for the government's attorneys fees.

AJR 3 has similar protections, however, it prevents the landowner from recovering his own attorney's fees which, as discussed above, reduces his just compensation.

PISTOL sections 22(8) and (9) and AJR 3 sections 8(13) and 8(14) are largely technical. Specifically, AJR 3 section 8(14) provides that the provisions of AJR 3 do not apply until January 1, 2011 assuming that it passes the 2009 legislature and receives a majority of votes in the 2010 general election.

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-fifth Session
March 26, 2009**

The Senate Committee on Judiciary was called to order by Chair Terry Care at 8:43 a.m. on Thursday, March 26, 2009, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412E, 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 Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington
Senator Mark E. Amodei

STAFF MEMBERS PRESENT:

Linda J. Eissmann, Committee Policy Analyst
Bradley A. Wilkinson, Chief Deputy Legislative Counsel
Janet Sherwood, Committee Secretary

OTHERS PRESENT:

John P. Rutledge, Real Property Section, State Bar of Nevada
Bill Uffelman, President, Nevada Bankers Association
Scott Scherer, Nevada Registered Agent Association
Derek Rowley, President, Nevada Registered Agent Association
Scott W. Anderson, Deputy for Commercial Recordings, Office of the Secretary of State
Keith G. Munro, Assistant Attorney General, Office of the Attorney General
Allen Lichtenstein, American Civil Liberties Union of Nevada
Cecilia G. Colling, Chief of Staff, Office of the State Treasurer

Senate Committee on Judiciary
March 26, 2009
Page 23

CHAIR CARE:

Assembly Joint Resolution 3 of the 74th Session is all or nothing.

ASSEMBLY JOINT RESOLUTION 3 OF THE 74TH SESSION: Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain. (BDR C-529)

I am unaware of any bills out there now that address eminent domain. Senate Bill 245, introduced by Senator John J. Lee, has been assigned to the Senate Committee on Government Affairs.

SENATE BILL 245: Makes various changes relating to regional transportation commissions. (BDR 22-585)

The power of eminent domain is discussed in that bill. That would be subject to the provisions of the existing law which is the People's Initiative to Stop the Taking of Our Land (PISTOL) and then A.J.R. 3 of the 74th Session, were this to become law. Are there any comments from the Committee?

SENATOR WIENER MOVED TO DO PASS A.J.R. 3 OF THE 74TH SESSION.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR CARE:

I do want to say that we reviewed a legislative history of two years ago when Kermitt Waters explained there had been the deal described earlier by Senator Warren B. Hardy II and Assemblyman William Horne.

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.



PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

WORK SESSION

Senate Committee on Judiciary

March 26, 2009

Bills Under Consideration

The following measures may be considered for action during today's work session. In some cases, possible amendments are noted. These amendments were either suggested during testimony or submitted after the hearing and do not necessarily have the approval of the Committee.

- ☐ Senate Bill 82 _____
Floor Assignment _____
- ☐ Senate Bill 121 _____
Floor Assignment _____
- ☐ Senate Bill 130 _____
Floor Assignment _____
- ☐ Senate Bill 167 _____
Floor Assignment _____
- ☐ Senate Bill 169 _____
Floor Assignment _____
- ☐ Senate Bill 176 _____
Floor Assignment _____
- ☐ Assembly Joint Resolution 3* _____
Floor Assignment _____

Do Pass _____

Amend & Do Pass _____

Other _____

Senate Committee on Judiciary

This measure may be considered for action during today's work session.

March 26, 2009**ASSEMBLY JOINT RESOLUTION 3* — *Proposes to amend the Nevada Constitution to revise provisions relating to the taking of private property by eminent domain.* (BDR C-529)****Sponsored by:** Assembly Members Hardy, Buckley, Ohrenschall, Horne, Gansert, and Senators Care, Heck, Cegavske, Hardy, Raggio, et al.**Date Heard:** March 20, 2009**Fiscal Impact:** Effect on Local Government: No.
Effect on the State: No.** This measure is AJR 3 of the 2007 Legislative Session.*

Assembly Joint Resolution No. 3* proposes to amend Section 8, Article 1 of the *Constitution of the State of Nevada* to provide that, except under certain circumstances, private property may not be taken through an eminent domain proceeding if it is to be transferred to a private party.

The constitutional amendment proposed by this measure also provides for the manner of computing just compensation to the owner of condemned property, and stipulates that neither party to an eminent domain proceeding is liable for the other party's attorney's fees, except under certain circumstances. It provides that the original property owner must be given the opportunity to reacquire the property if the entity that took it has failed to put it to use within 15 years.

Finally, A.J.R. 3 provides that if the People's Initiative to Stop the Taking of Our Land (PISTOL) is approved at the 2008 General Election, its provisions will be repealed upon final approval of A.J.R. 3 by the voters at the 2010 General Election.

Summary of Testimony:

Proponents explained that A.J.R. 3* will amend the *Constitution of the State of Nevada* to provide protection for property owners while allowing government to work as needed.

Opponents argued that the PISTOL provisions are more restrictive and should be sustained.

Amendments: No.

FLOOR ACTIONS

AMENDMENTS ON SECOND READING FLOOR VOTES AND STATEMENTS OTHER ACTIONS

NOTE: THESE FLOOR ACTIONS ARE TAKEN FROM THE *DAILY JOURNALS*
([HTTP://WWW.LEG.STATE.NV.US/SESSION/75TH2009/JOURNAL/](http://www.leg.state.nv.us/Session/75th2009/JOURNAL/)),
WHICH ARE NOT THE OFFICIAL FINALIZED VERSIONS OF THE *JOURNALS*.
CONSULT THE PRINT VERSION FOR THE OFFICIAL RECORD.

THE THIRTY-EIGHTH DAY

CARSON CITY (Wednesday), March 11, 2009

Assembly called to order at 11:12 a.m.

Madam Speaker presiding.

Roll called.

All present.

Prayer by the Chaplain, Brother Christian Funk.

Our Father in Heaven, we come before You this day to thank Thee for the opportunity we have to live in this beautiful land. We thank Thee for these men and women who work to help ensure the blessings of liberty to all. We are thankful for the moisture that we have recently received. We are grateful for Thy guidance. We ask Thee to bless all of us that we may live worthy to receive the blessing of liberty. Bless these men and women that they will be inspired to do those things that will best help our community. Bless all the leaders of our nation and state with health and wisdom to perform their duties in a manner which is pleasing to Thee. Please continue to bless our area with the moisture that we need. We give thanks for all that we have. In the name of Jesus Christ.

AMEN.

Pledge of allegiance to the Flag.

Assemblyman Conklin moved that further reading of the Journal be dispensed with, and the Speaker and Chief Clerk be authorized to make the necessary corrections and additions.

Motion carried.

COMMUNICATIONS

CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-2802

February 24, 2009

ASSEMBLYWOMAN BARBARA BUCKLEY, Nevada State Assembly, Legislative Building, 401 S. Carson Street, Carson City, NV 89701-4747

DEAR ASSEMBLYWOMAN BUCKLEY:

This letter serves as a formal request to address the joint session of the Nevada Legislature on Tuesday, April 14, 2009, at 1 p.m. It is my understanding that this date and time are available.

Should you have any questions or comments, please contact my district director, Verita Black Prothro at 775-686-5760.

I thank you in advance for this august opportunity.

Sincerely,
DEAN HELLER
Member of Congress

MESSAGES FROM THE SENATE

SENATE CHAMBER, Carson City, March 10, 2009

To the Honorable the Assembly:

I have the honor to inform your honorable body that the Senate on this day passed Initiative Petition No. 1.

Assembly Bill No. 173 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed.

Bill ordered transmitted to the Senate.

Assembly Bill No. 174.

Bill read third time.

Remarks by Assemblyman Claborn.

Roll call on Assembly Bill No. 174:

YEAS—42.

NAYS—None.

Assembly Bill No. 174 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed.

Bill ordered transmitted to the Senate.

Assembly Joint Resolution No. 3 of the 74th Session.

Resolution read third time.

Remarks by Assemblymen Mortenson and Hardy.

Roll call on Assembly Joint Resolution No. 3 of the 74th Session:

YEAS—42.

NAYS—None.

Assembly Joint Resolution No. 3 of the 74th Session having received a constitutional majority, Mr. Speaker pro Tempore declared it passed.

Resolution ordered transmitted to the Senate.

UNFINISHED BUSINESS

SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the Speaker and Chief Clerk signed Initiative Petition No. 1; Assembly Bill No. 78; Senate Concurrent Resolution No. 14.

GUESTS EXTENDED PRIVILEGE OF ASSEMBLY FLOOR

On request of Assemblyman Anderson, the privilege of the floor of the Assembly Chamber for this day was extended to Justin Anderson.

On request of Assemblyman Arberry, the privilege of the floor of the Assembly Chamber for this day was extended to John Edmund .

On request of Assemblyman Cobb, the privilege of the floor of the Assembly Chamber for this day was extended to Joey Gilbert.

On request of Assemblyman Denis, the privilege of the floor of the Assembly Chamber for this day was extended to Maritza Denis and Jeanie Leete.

On request of Assemblywoman Dondero Loop, the privilege of the floor of the Assembly Chamber for this day was extended to Michael Ashe and Sam Genzone.

NEVADA LEGISLATURE

Seventy-fifth Session, 2009

SENATE DAILY JOURNAL

THE SEVENTY-FIRST DAY

CARSON CITY (Monday), April 13, 2009

Senate called to order at 11:42 a.m.

President Krolicki presiding.

Roll called.

All present.

Prayer by the Chaplain, Monte Fast.

Let us never forget that this fragile gift of life which we enjoy on a minute to minute basis comes as a gift from our Creator. This gift of life carries with it obligations to fulfill the opportunities and responsibilities that come to us at the same time.

Let us so dedicate ourselves this day.

AMEN.

Pledge of Allegiance to the Flag.

Senator Horsford moved that further reading of the Journal be dispensed with, and the President and Secretary be authorized to make the necessary corrections and additions.

Motion carried.

REPORTS OF COMMITTEES

Mr. President:

Your Committee on Commerce and Labor, to which were referred Senate Bills Nos. 193, 228, 254, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

MAGGIE CARLTON, *Chair*

Mr. President:

Your Committee on Energy, Infrastructure and Transportation, to which was referred Senate Bill No. 312, has had the same under consideration, and begs leave to report the same back with the recommendation: Do pass.

Also, your Committee on Energy, Infrastructure and Transportation, to which were referred Senate Bills Nos. 188, 327, 339, 360, 394, has had the same under consideration, and begs leave to report the same back with the recommendation: Amend, and do pass as amended.

MICHAEL A. SCHNEIDER, *Chair*

Roll call on Senate Joint Resolution No. 3 of the 74th Session:

YEAS—20.

NAYS—Care.

Senate Joint Resolution No. 3 of the 74th Session having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

Assembly Bill No. 39.

Bill read third time.

Roll call on Assembly Bill No. 39:

YEAS—19.

NAYS—Raggio, Townsend—2.

Assembly Bill No. 39 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 216.

Bill read third time.

Roll call on Assembly Bill No. 216:

YEAS—21.

NAYS—None.

Assembly Bill No. 216 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Joint Resolution No. 3 of the 74th Session.

Resolution read third time.

Roll call on Assembly Joint Resolution No. 3 of the 74th Session:

YEAS—20.

NAYS—Cegavske.

Assembly Joint Resolution No. 3 of the 74th Session having received a constitutional majority, Mr. President declared it passed.

Resolution ordered transmitted to the Assembly.

Senator Raggio moved that the Senate recess subject to the call of the Chair.

Motion carried.

Senate in recess at 1:33 p.m.

BILLS AND AMENDMENTS

SEE LINKS ON BILL HISTORY PAGE
FOR COMPLETE TEXT

SUPPLEMENTAL MATERIALS

BALLOT QUESTION TEXT AND VOTES FROM THE 2010 GENERAL ELECTION

State of Nevada

Statewide

Ballot Questions

2010

To Appear on the November 2, 2010
General Election Ballot

QUESTION NO. 4

Amendment to the Nevada Constitution

Assembly Joint Resolution No. 3 of the 74th Session

CONDENSATION (Ballot Question)

Shall Article 1, Section 22 of the *Nevada Constitution* be repealed and shall Article 1, Section 8 of the *Nevada Constitution* be amended to revise provisions relating to eminent domain proceedings?

214,086 Votes (32.72%) Yes ☐ No ☒ 440,245 Votes (67.28%)

EXPLANATION

Approval of this question would repeal Article 1, Section 22 of the *Nevada Constitution*, known as the People's Initiative to Stop the Taking of Our Land (PISTOL), and amend Article 1, Section 8 of the *Nevada Constitution* in order to: (1) provide that the transfer of private property from one private party to another is not considered a public use except under certain circumstances; (2) require an entity that takes private property to provide the property owner with all appraisals it has obtained; (3) grant a property owner the right to a separate determination of whether a taking constitutes a public use and place the burden of proof on the entity taking the property; (4) define "fair market value" and "just compensation"; (5) provide that neither party to an eminent domain action is liable for the other party's attorney's fees except under certain circumstances; and (6) make certain other changes related to eminent domain proceedings.

The proposed amendment provides five exceptions to the prohibition against exercising eminent domain in order to transfer property from one private party to another. Under the following conditions, such a transfer would be considered a "public use" if: (1) the private party obtaining the property uses the property primarily to benefit a public service such as a utility, railroad, public transportation project, pipeline, road, bridge, airport, or facility that is owned by a public entity; (2) the property is leased to a private party that takes up a portion of an airport or facility that is owned by a public entity so long as the public entity notifies the original owner of its intention and allows the owner the opportunity to bid or propose on such a lease; (3) the property taken has been abandoned by the owner, is a threat to public safety, or contains hazardous waste that must be remediated, and the original owner is granted first right of refusal to reacquire the property on the same terms and conditions as anyone else; (4) the entity that obtains the property exchanges it for other property in order to relocate public or private structures or avoid excessive compensation or damages; or (5) the person from whom the property is taken consents to the taking.

Additionally, the proposed amendment defines the terms "fair market value" and "just compensation" and provides for the manner of computing these amounts. It also stipulates that

neither party may be held liable for the other party's attorney's fees in eminent domain proceedings except in the circumstance of an inverse condemnation, wherein a property owner makes a request for attorney's fees in a legal action. The proposed amendment revises from 5 years to 15 years the amount of time within which the entity that took the property must put it to use before the property must be offered to, and will revert to, the original owner upon payment of the original purchase price.

Finally, the repeal of Article 1, Section 22 of the *Nevada Constitution* would rescind a property owner's right to disqualify one judge at the district court level and one judge at each appellate level in any eminent domain action.

A "Yes" vote would repeal Article 1, Section 22 of the *Nevada Constitution* and amend Article 1, Section 8 of the *Nevada Constitution* relating to eminent domain proceedings.

A "No" vote would retain Article 1, Section 22 of the *Nevada Constitution* and keep intact the current provisions of Article 1, Section 8 of the *Nevada Constitution* relating to eminent domain proceedings.

ARGUMENTS FOR PASSAGE

Although the People's Initiative to Stop the Taking of Our Land (PISTOL) remains a well-intentioned, popular initiative that provided much needed protection for Nevada's private property owners, it also contains several flaws that have the potential to cost taxpayers money and hamper efforts to maintain and upgrade infrastructure, including schools, roads, water supply and sewage systems, and public transportation.

Recognizing these problems, representatives of local governments, state agencies, private businesses, the public, and even the original sponsors of PISTOL worked together over the course of two legislative sessions to craft a workable constitutional amendment relating to eminent domain that allows Nevada to move forward with public projects while protecting private property rights, saving taxpayers money, and avoiding unnecessary lawsuits. The provisions of this question clearly define the limited instances in which private property can be transferred or leased to a private party through eminent domain, which do not include increasing tax revenue or generating profit for private businesses. This question builds on the successes of PISTOL while correcting its deficiencies.

ARGUMENTS AGAINST PASSAGE

The People's Initiative to Stop the Taking of Our Land (PISTOL) was a response to eminent domain practices upheld by the United States Supreme Court in *Kelo v. the City of New London* and by the Nevada Supreme Court in *Pappas v. the City of Las Vegas*. In those cases, the courts expanded the definition of "public use" to allow local governments to increase their tax bases by turning over private property to private persons in order to support private business interests. This question seeks to weaken the protections contained in PISTOL by expanding the circumstances under which a government can use eminent domain to transfer property from one private party to another.

The PISTOL initiative sought, in clear and concise language, to put a stop to these transfers once and for all, and to give property owners legal tools to use in the event that their property was targeted for taking by the government. The initiative passed with over 60 percent of the vote in both 2006 and 2008. Voters understood the issues at hand and chose to pass the initiative in two successive elections. There is no reason to change the provisions of PISTOL.

FISCAL NOTE

Financial Impact – Cannot be Determined

This question would amend the *Nevada Constitution* to include new provisions relating to eminent domain proceedings within the State of Nevada, including:

- Allowing the direct or indirect transfer of any interest in private property to another private person or entity as a public use in certain circumstances, as specified in the proposed constitutional amendment;
- Removing the right for property owners to preempt one judge at the district court level and one judge at each appellate level in any eminent domain action; and
- Requiring that property taken by eminent domain must be offered to, and reverts to, the person from whom the property was taken, upon repayment of the purchase price, if the entity who took the property fails to use the property within 15 years after obtaining possession of the property.

These proposed changes relating to eminent domain proceedings may affect the number of eminent domain proceedings that are undertaken by the State and local governments. However, because the number of eminent domain actions that may be undertaken cannot be estimated, the financial effect upon the State and local governments cannot be determined with any reasonable degree of certainty.

Subsections 4 through 8, inclusive, and subsection 12 of Article 1, Section 22 of the *Nevada Constitution* contain various provisions relating to the rights of property owners in eminent domain proceedings, the calculation of fair market value for the property, and the determination of just compensation to the property owner. If this question is approved by the voters, these provisions of the *Nevada Constitution* would be repealed and replaced with similar language contained in this proposed constitutional amendment. These provisions of this question are not anticipated to have a financial effect upon the State or local governments, if approved by the voters.