

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Third Session
April 8, 2005**

The Committee on Commerce and Labor was called to order at 1:13 p.m., on Friday, April 8, 2005. Chairwoman Barbara Buckley presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Ms. Barbara Buckley, Chairwoman
Mr. John Ocegüera, Vice Chairman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Morse Arberry Jr.
Mr. Marcus Conklin
Mrs. Heidi S. Gansert
Ms. Chris Giunchigliani
Mr. Lynn Hettrick
Ms. Kathy McClain
Mr. David Parks
Mr. Richard Perkins
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

Mr. Bob Seale (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Susan Gerhardt, Assembly District No. 29, Clark County
Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka,
Pershing, White Pine, Humboldt (part), Churchill (part), Lander
(part), Washoe (part)
Assemblyman John Carpenter, Assembly District No. 33, Elko,
Humboldt (part)

STAFF MEMBERS PRESENT:

Brenda J. Erdoes, Legislative Counsel
Diane Thornton, Committee Policy Analyst
Stacy Shaffer, Assistant Committee Manager

OTHERS PRESENT:

Judy Stokey, Legislative Advocate, representing Nevada Power and Sierra Pacific Power
Pete Allen, Chairman, Nevada Board of Registered Environmental Health Specialists
Daniel Maxson, Secretary, Nevada Board of Registered Environmental Health Specialists
Bjorn Selinder, Legislative Advocate, representing Churchill and Eureka Counties
Kenneth Benson, Member, Board of County Commissioners, Eureka County, Nevada
John Milton, Chairman, Humboldt County Commission, Humboldt County, Nevada
Mickey Yarboro, Chairman, Lander County Commission, Lander County, Nevada
Andrew List, Executive Director, Nevada Association of Counties
Ben Zunino, Superintendent, Eureka County, Nevada
Carole Vilardo, President, Nevada Taxpayers Association
Paul McKenzie, Organizer, Operating Engineers, Local No. 3, Reno, Nevada
David Kersh, Government Affairs Director, Carpenters/Contractors Cooperation Committee, Las Vegas, Nevada
Buzz Harris, Legislative Advocate, representing Nevada State Contractors Board
George Lyford, Director of Investigations, Nevada State Contractors Board
Joe Johnson, Private Citizen, Las Vegas, Nevada
Larry Smith, Vice President, Right Now Air, Las Vegas, Nevada
Jim Wadhams, Legislative Advocate, representing Newmont Mining Corporation
Dino DiCianno, Deputy Executive Director, Compliance, Nevada Department of Taxation
Alfredo Alonso, Legislative Advocate, representing Southern Wine and Spirits

Gary Milliken, Legislative Advocate, representing Distilled Spirits Council of the United States
Joseph Brown, Legislative Advocate, representing DeLuca Liquor and Wine
Samuel McMullen, Legislative Advocate, representing Altria Corporate Services, Incorporated
Daryl Capurro, Legislative Advocate, representing Nevada Motor Transport Association
Peter Krueger, Legislative Advocate, Single Stick Inc., and U.S.A. Distributing
Randall Munn, Special Assistant Attorney General, Attorney General's Office, State of Nevada

Chairwoman Buckley:

[Meeting called to order. Roll called.] I think we will try to start with our work session to see how much we can get done there. Let's start with A.B. 120.

Assembly Bill 120: Requires physicians to report to their licensing boards certain information concerning performance of office-based surgery. (BDR 54-888)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 120 requires physicians to report to the licensing board certain information concerning performance of office-based surgery, sponsored by Assemblywoman Gerhardt, and heard on March 23, 2005. The original bill required medical doctors and osteopathic physicians to include in their application for registration or license renewal office-based information concerning surgeries they performed which require sedation or general anesthesia, including information concerning any unexpected occurrence involving death or injury. The bill also requires the Board of Medical Examiners and the State Board of Osteopathic Medicine to include in their biennial reports to the Governor and Legislature information received from licensees regarding office-based surgeries involving sedation or general anesthesia. Behind Tab C (Exhibit B), you'll find the amendments proposed by Assemblywoman Gerhardt.

Chairwoman Buckley:

In case anyone is here for A.B. 114, we're going to hold that until Monday. Renee Diamond wanted an opportunity to speak with the sponsors of the bill a little further, so we'll hold off on that until Monday.

Assemblywoman Susan Gerhardt, Assembly District No. 29, Clark County:

Good afternoon, Madam Chair, you have a mockup ([Exhibit B](#)) of A.B. 120 that I think that will expedite going through the amendments and make this a little clearer.

Starting on page 2, line 3 ([Exhibit B](#)), after consulting with all of the interested parties, one of the things that we came up with is not tying the report to licensure but doing the report annually. Starting on line 4, the underlined texts are the changes we're going to make so the report will be submitted annually. Continuing down, starting on line 9, you'll see a few words that are lined out, because we are, again, not going to tie this to licensure. The phrase "during the most recent period of licensure," obviously, is not needed, so that area will be deleted. On line 13, in conversations with the interested parties, paragraph (b) really is not information that is needed for the bill.

In keeping with my intent, what we're trying to do is get information on how many surgeries are performed, the types of surgeries, and if there are any sentinel events, so getting information on the type and dosage of anesthesia is not really information that's needed. I have therefore agreed to go ahead and delete that section. On page 3, starting on line 9, because we're taking out that licensure information later on in the bill, we had to put in the language some penalties for not reporting the information to the respective boards. We created subsection 3, and it reads, "Failure to submit to the Board or to submit the report required by this section or knowingly filing false information in such a report shall constitute grounds for initiating disciplinary action." This is entirely up to the Board what disciplinary action they're going to take.

Starting at line 13, on page 3, items (a), (b), and (c), these were items that the Board of Medical Examiners wanted placed in the bill. It just gives a little bit of language about how the information is going to be collected, protected. Then, on line 19, as I mentioned in my original testimony, there's some language starting there where we are making further steps to be sure that the information is not discoverable, and that's elaborated on page 3. On page 4, you're going to see a lot of lining out; Section 3 and Section 4 have been completely taken out. If we're not going to tie the reports to licensure, again, that information is not needed. When you get to page 5, starting with Section 5, the text literally repeats itself. At that point, they're talking about the osteopaths, and the first part of the bill they were talking about M.D.s, and the language just duplicates itself.

Chairwoman Buckley:

Could you please tell us who you worked on the amendments with?

Assemblywoman Gerhardt:

Yes, I met with Keith Lee and Scott Craigie and, I believe, his name was Michael Hackett.

Chairwoman Buckley:

I see Keith and Scott here. Anyone want to comment on the amendments? Any problems with the amendments? I don't see any.

Assemblywoman McClain:

Is this going to be the only amendment, because we have another one in the work document?

Assemblywoman Gerhardt:

There were actually two additional things that need to be put in the bill. In the Work Session Document ([Exhibit B](#)), on page 2, in my discussion with the Nevada State Medical Association, they have a couple of language items that they would like put in. What they're trying to get at is, "in a format defined in regulation by the Board." My suggestion would be, under number 4, in the mockup bill on page 2, the language, "in a format defined in regulation adopted by the Board," that could easily be inserted right before "a report" on line 6.

Chairwoman Buckley:

Which one of these is in the mockup and which ones are not?

Assemblywoman Gerhardt:

On the Work Session Document, page 2 ([Exhibit B](#)).

Chairwoman Buckley:

Four and five?

Assemblywoman Gerhardt:

The part in quotations that begins "every licensed physician."

Chairwoman Buckley:

That's under paragraph 4?

Assemblywoman Gerhardt:

Correct. Their language is just a little bit different than mine, and the substance of the change is in a format defined by regulation adopted by the Board.

Chairwoman Buckley:

So that's the only change from the mockup?

Assemblywoman Gerhardt:

Correct. That could be inserted in the bill on page 2, line 6, right before "a report." That should satisfy the concern that the Medical Association had.

Chairwoman Buckley:

Any further questions?

Assemblywoman Gerhardt:

The second item they wanted inserted, Chairwoman Buckley, the paragraph that begins "a board shall require." That could easily replace on page 2, line 16, item (c). You could put that paragraph in place of (c).

Chairwoman Buckley:

It's really the same thing that we had just a little wordsmithing. We're happy to do that.

Assemblywoman Gansert:

We went over a few amendments. I want to clarify you're still requiring they submit records for sedation not just for sentinel events—or is it just for sentinel?

Assemblywoman Gerhardt:

What we're looking for is aggregate information. They do not need to submit reports. We're basically looking for how many procedures they did under those levels of sedation, just numbers. Although, the only report that they would have to include would be if a sentinel event occurred. Then that reporting would only have to take place yearly.

Assemblywoman Gansert:

Thank you.

Chairwoman Buckley:

Further questions? Thank you for your presentation. Does the Committee need more time to digest it, or is the Committee ready to act?

ASSEMBLYMAN PERKINS MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 120 WITH THE MOCKUP.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Seale and Mr. Anderson were not present for the vote.)

Chairwoman Buckley:

Thank you Assemblywoman Gerhardt. We'll go to A.B. 236.

Assembly Bill 236: Makes various changes relating to energy systems that use certain types of renewable energy. (BDR 58-248)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 236 was sponsored by Assemblyman Hardy and first heard on March 30. This bill authorizes a customer to use a net metering system that has a generating capacity of not more than 150 kilowatts. The bill also creates an exemption from the PUCN [Public Utilities Commission of Nevada] permitting requirements for electrical generating plants and associated facilities if they use certain types of renewable energy or energy from a qualified energy recovery process as their primary source of energy to generate electricity and have a generating capacity of not more than 150 kilowatts. This bill provides that an owner may not be prohibited or unreasonably restricted from using a wind energy system on his property. In addition, the bill extends protections for homeowners' associations to an owner who wants to improve his unit by adding a wind energy system. The bill also requires local government to amend building codes to permit a person to use solar energy and wind energy systems to reduce the energy costs per structure to the extent that the local climate allows. Assemblyman Hardy proposed the amendments behind Tab D ([Exhibit B](#)). There was a fiscal note filed by the PUCN, but it was determined that they could carry out with their existing staff and funding levels.

Chairwoman Buckley:

I missed the testimony, as I was testifying in another committee. My only concern was that because wind energy is different in terms of just having the solar panel, it could be a turbine that's a little bit more unsightly. Could that cause a problem in neighborhoods? But I think with the amendment that says if the boundaries encompass two acres or more that probably meets my concerns. I was just afraid of getting complaints from constituents, such as "how did you let that be built in my neighborhood?" but I think with this much distance, it wouldn't be a problem.

Assemblyman Hettrick:

I was under the impression that the 150 kilowatt limit was okay, but above 30 kilowatts, there was to be some participation by the business or whoever wanted to install net metering equipment for cost. Otherwise, you're going to subsidize all this equipment off of everybody else.

Chairwoman Buckley:

Which section are you referring to, Mr. Hettrick?

Assemblyman Hettrick:

It was in a discussion where they were talking about having to provide all of the equipment necessary to do the hookups on facilities up to 150 kilowatts.

Judy Stokey, Legislative Advocate, representing Nevada Power and Sierra Pacific Power Companies:

Mr. Hettrick, that is our understanding too. We worked with the sponsor on the original bill, and there were three specific areas we were concerned about and were able to negotiate. The one is addressed in the bill as printed, but the two others did not get in the amendments and that was a concern, one being the net metering at 150 kilowatts will actually supply a small commercial or medium commercial building. Right now, the way net-metered customers work, the other customers actually pay for some of those costs associated with the transmission distribution and some other related charges. That's actually incentive for these people to do net-metered systems, which is a good idea. The larger systems are more expensive, and we just didn't think that the residential customers should subsidize the costs of the T and D [transmission and distribution] equipment and the metering costs for a larger system for a commercial system. So that was one of the issues. The other one was a billing issue. Right now, at the end of the year, we reconcile how much they owe us and we owe them. We would rather do that monthly so that the customer actually sees their benefit, what they actually are benefiting from month-to-month on their system.

Chairwoman Buckley:

I'll pull this from the agenda. If you want to work with Assemblyman Hardy and present his position on these issues, we'll look at it at our next work session.

Judy Stokey:

Thank you.

Chairwoman Buckley:

You're welcome. A.B. 260.

Assembly Bill 260: Revises provisions relating to environmental health specialists. (BDR 54-855)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 260 revises provisions relating to environmental health specialists sponsored by Assemblywoman Allen, heard on April 4, 2005. The bill defines "environmental health specialist" as a person who is qualified to advocate or recommend sanitary measures for the promotion and protection of public health and the environment. A person engaging in the practice of environmental health is required to register with the Board of Registered Environmental Health Specialists. This bill authorizes the Board to employ certain persons to accomplish its duties. The bill also revises the eligibility for certificate of registration specifying the type of education training required. Daniel Maxson, working with Assemblywoman Allen, proposed the amendments behind Tab E in your Work Session Document ([Exhibit B](#)).

Chairwoman Buckley:

Assemblywoman Allen, do you have anything to add or want to comment on the amendments?

Assemblywoman Francis Allen, Assembly District No. 4, Clark County:

There was an amendment proposed by the SEIU [Service Employees International Union] that they should probably focus on and clarify.

Daniel Maxson, Secretary, Nevada Board of Registered Environmental Specialists Board Secretary:

I'm with Pete Allen, the Chairman of the Board, and he will speak.

Pete Allen, Chairman, Nevada Board of Registered Environmental Specialists Board:

I talked to the union representatives this morning, and they are comfortable with the amendment to the bill. They have told me that they will not oppose the bill, nor, however will they endorse it.

Chairwoman Buckley:

I have one question, and it could be for either one of you or it could be for Brenda, our legal counsel. Going to just the first paragraph, when I originally read this bill, I was a little concerned about the description of the promotion and protection of the public health and environment in the following areas and then the laundry list. There are a lot of people involved in the promotion and protection of the public health and environment who don't practice in environmental health arenas; for example, someone who works in a county housing division who is concerned about the protection and promotion of affordable housing. I'm not sure if in a board you define the practice by one of the goals of the Board, which is the promotion and protection of public health and environment, or whether that's consistent with our other regulatory

sections. I think it's probably okay because the first section says enforcement consultation and emergency response. But that second clause about the promotion just seemed a little awkward to me. Brenda, do you have any thoughts?

Brenda Erdoes, Legislative Counsel:

I would point out you have other practices that protect the public health, such as the whole medical profession, and we don't have that in there; perhaps that's what's sticking out to you. I can't tell you this is going to cause a particular legal problem, but it isn't parallel to the other professions, if that matters.

Chairwoman Buckley:

Yes.

Daniel Maxson:

I think we would have to defer to the Board. We followed the national model, with the exception of minor amendments, and it's consistent with that. If you look in all those different areas listed, and I realize that's quite a list, there are things like housing that you think, what does the health department do with that? It runs the gamut, from the backyard swimming pool that has mosquitoes to lead abatement in homes.

Chairwoman Buckley:

I don't think that's the concern. I think it's more the phrase in the first paragraph, and the promotion and protection of the public health and environment. That might be one of your goals, but does that decide the scope of the occupation? Maybe what we can do is an amend and do pass with all of the amendments, ask our legal counsel to make that consistent with our other statutes, and consult you in the final amendment, just to make sure that works.

Daniel Maxson:

That sounds fine.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 260.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Seale was not present for the vote.)

Assemblyman Anderson:

Madam Chair, if I could request, before this amendment goes forward, that I have an opportunity to speak to the people from SEIU about their concerns if I'm going to support this piece. I want to make sure it doesn't conflict with some of the other kinds of legislation that we've dealt with, construction defect, quality issues in Judiciary, and I want to see how this fits next to that kind of question. For my comfort level, while I'll be supporting the amended version, I want to in part reserve my full-fledged support.

Chairwoman Buckley:

That's fine. I'd be happy to have Diane Thornton touch base with the sponsor of the bill and let the Committee know exactly who from SEIU worked on the amendments before it's brought to the Floor.

Assemblyman Parks:

I share the same concerns that Mr. Anderson has.

Chairwoman Buckley:

The next one is A.B. 249.

Assembly Bill 249: Makes various changes relating to vehicles. (BDR 43-136)

Diane Thornton, Committee Policy Analyst:

Assembly Bill 249 was sponsored by Assemblywoman Buckley and heard on April 6, 2005. This bill revises provisions governing the sales of vehicles, authorizes the Department of Motor Vehicles to investigate, and imposes fines against a person who engages in deceptive trade practices that involve the purchase and sale of a motor vehicle. For customers injured by deceptive trade practice of a dealer, distributor, rebuilder, manufacturer, representative or salesman, the injured party is authorized to bring an action or apply to the DMV for compensation from the bond. In addition, this measure clarifies the definition of a rebuilt vehicle and requires that titles of vehicles that have been reacquired due to nonconformity to expressed warranties must be inscribed with a notation lemon law buyback. Assemblywoman Buckley proposed the amendment behind Tab F in your Work Session Document ([Exhibit B](#)).

Chairwoman Buckley:

This amendment is substantially similar to the one I presented at the time of the hearing. I had a couple of refinements that I worked on with Troy Dillard with DMV and John Sande representing the Nevada Franchise Auto Dealers. Is there anyone here who would like to comment on the amendments, other than me?

These amendments were discussed at the hearing. We had already pretty much agreed to them. I think the only thing that's different from the hearing is page 2, the first line. The Franchise Auto Dealers were concerned about being associated with coercion, duress, and intimidation, and so we changed it to mimic some language that already exists in NRS Chapter 598.

Assemblywoman Gansert:

I hadn't seen this the first time, but in Section 1, the amendment talks about the director keeping money in a variety of places or in cash. I wasn't sure why cash.

Chairwoman Buckley:

As I recall from the testimony, this section of the bill was added to my bill because, when the DMV was separated from the Department of Public Safety, this language was accidentally dropped, and this is the same language that is already in existing law with regard to Public Safety and was replicated in their chapter. It may be that if they're assisting law enforcement officials with a sting or something, they may need cash.

Assemblywoman Gansert:

Thank you.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 249 WITH THE AMENDMENTS OUTLINED IN THE
WORK SESSION DOCUMENT ([EXHIBIT B](#)).

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Seale was not present for the vote.)

Chairwoman Buckley:

I think that exhausts our work session. We do have a few other bills that are ready, but we were trying to space them out a little bit. We'll open the hearing on A.B. 244.

Assembly Bill 244: Revises provisions governing distribution of proceeds of tax on net proceeds of minerals. (BDR 32-793)

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, White Pine, Humboldt (part), Churchill (part), Lander (part), Washoe (part):

Assembly Bill 244 proposes a change in the distribution of net proceeds on the tax on minerals. The constitutional cap on any tax, of course, is \$5.00 per 100. Under the Net Proceeds of Minerals Tax, local government can take up to the statutory cap which is \$3.64. Many of the conservative counties, especially the mining counties, have been penalized for their low tax rate. They had the ability to raise their tax rate and capture more of the net proceeds as gold prices dropped off and mining was being curtailed, but that would have only further impacted the mining industry, as well as other small businesses in their community and their constituents.

As we worked on the A.B. 489 tax plan, many of the members of this Body came to realize that in rural Nevada we have many local governments, counties that are functioning at a negative with a declining tax base. The change in the distribution of A.B. 244 will allow the local jurisdiction to meet the infrastructure needs that have been placed on hold as the mining industry has suffered and struggled with the \$200 or \$250 price of gold. As mining rebounds, the local governments will rebound. Local governments have learned that the Net Proceeds of Minerals Tax needs to be spent, placed in capital outlay or one-shot funded projects, street repairs, new paving, water improvements, building construction, or retrofit.

Under A.B. 244, the local governments would be allowed to take the statutory \$3.64 out of the \$5.00 tax imposed on the net proceeds. That won't impact the industry. They're presently paying the \$5.00. The balance of the \$3.64, the \$1.36, would go to the State. As I said in my packet ([Exhibit C](#)), it helps 16 of 17. The only county that wouldn't benefit from this change would be Carson City; they don't generate any net proceeds or royalty payments. There are two pages in your packet ([Exhibit C](#)) that show a breakdown by county, as well as the ten-year average net proceeds of mining. There are a number of counties represented and some school districts. I think they will testify to the need for this change. Local governments are only asking your help and support in giving them the ability to pay their own way as we work our way through this slump in the mining industry.

Assemblyman John C. Carpenter, Assembly District No. 33, Elko, Humboldt (part):

I'm here in support of A.B. 244. This change would go a long way toward mitigating any fallout that we've had and that we might have from the recently passed A.B. 489. As gold rebounds and we're going to hopefully have more citizens move into our counties, this would indeed help the counties to provide

for the services that are going to be necessary when we do have an increase in our population. I would encourage the Committee to support A.B. 244.

Chairwoman Buckley:

Thank you for your support.

Bjorn Selinder, Legislative Advocate, representing Churchill and Eureka Counties:

The Board of Churchill County Commissioners is in support of A.B. 244. Although we're not a major recipient in Churchill County of net proceeds, we nevertheless support A.B. 244. We recognize that it's a big help especially to our mining neighbors, and, as you've heard from Assemblyman Goicoechea, it will help possibly offset some of the reductions in revenues that have resulted from other items and issues that the Legislature has had to contend with.

Kenneth Benson, Member, Eureka County Board of Commissioners:

Eureka County is perhaps the most unique amongst rural Nevada counties in asserting itself as a poster child testimonial to the boom-and-bust cyclical nature of the precious metal extraction industry in the state of Nevada. We do not however, lay claim to any right or title to bolster the parameters of this designation, whether it's to bask in the sunlight of periods of relative economic prosperity or to bemoan our condition during the inevitable periods of reduced tax revenues flowing into the county government. The swing from the high side of the boom cycle as to the profitability and investment expectations of the various individual gold mining companies, resulting in positive tax revenues flowing to local government, to the low end of the cycle can be vividly harsh and cruel. The boom side of the cycle usually announces itself by gradual progression of the general level of prosperity generated with the gold mining industry over a period of successive physical quarterly reporting periods. The bust is usually heralded by a precipitous crash in the price of gold, which evidences itself within a relatively short period of time as negative earnings reports hit the boardrooms of the big multi-national corporations. Strategic business plans collapse, layoffs are instituted, new investment falters, displaced employees flee the community, school classrooms empty, and local businesses suffer. Shortfalls in county tax revenues soon follow, and local government is disadvantaged while the social fabric and business structure of our local communities are deteriorating. It's not a pretty picture.

Fortunately, such is not the case as I appear before you today. Eureka County stands to declare its full support and concurrence with the text and intent of A.B. 244. Today we enjoy the privilege of debating the revenue distribution addressed in the bill in an environment of relative prosperity. The Committee may inquire how dependent is Eureka County on the gold mining industry. As of

April 6, 2005, over 92 percent of the county's assessed valuation is tied to two mining companies. The portion of the county's total assessed evaluation attributed to net proceeds of minerals valuation as of this date is 20 percent. Both figures are highly volatile, totally beyond the extent of Eureka County's control, and challengingly unpredictable.

[Ken Benson, continued.] In fiscal year 2002, the net proceeds of minerals assessed evaluation was \$90 million; in fiscal year 2003 it was \$70 million. It is projected at \$70 million again for fiscal 2004 and at \$150 million for 2005. Eureka County's fiscal policy is to budget net proceeds revenues towards capital purchases and infrastructure only. This policy allows the county to maintain basic levels of service and maintenance when fluctuating revenues prohibit new fixed investment.

With respect to the ad valorem tax portion of the total assessed valuation, recently, Eureka County has been negatively impacted by the Nevada Department of Taxation's shift to an alternative methodology of appraisal and determining the ad valorem assessed valuation of mining properties. Both of the two mining companies comprising 92 percent of Eureka County's tax base were reappraised by the Department of Taxation in calendar year 2004. The previously employed methodology of evaluating the asset base of the two mines was the basis of full cash replacement cost, less accumulated depreciation.

In the 2004 reappraisal of the two mines, the Department of Taxation implemented a discounted cash flow model in deriving asset package valuation. This methodology resulted in a substantial reduction in the Department's appraisal of the two properties. On December 3, 2004, the Eureka County Assessor's Office was instructed by official transmittal from the Department of Taxation to adjust the secured tax rolls, reducing the new appraised value of these properties by \$69,512,000. Through a micro-second of digital data transmission, Eureka County was dispossessed of 26 percent of the entirety of its ad valorem tax base. Eureka County had no input into the decision by the Nevada Department of Taxation to change the appraisal methodology, nor was it extended the courtesy that such a change was contemplated; they just did it and handed us the results. It surpasses credibility that any rational thought process would validate the Department of Taxation's determination that the two largest gold mines in the state of Nevada are worth 26 percent less today than they were four months ago.

Eureka County advances its support for A.B. 244 for the following reasons. Number one, the distribution language of the bill will allow for additional funding for capital outlays and infrastructure at the local government level. Number two, the undisturbed portion of the text, Section 2, which codifies NRS 362.171, will

continue to allow Eureka County's local government to fund reserve account balances to mitigate adverse effects resulting from the volatility of mining revenues. Number three, local-county-of-origin governing bodies will enjoy some measure of stability and retain some small measure of monetary wealth from the extraction of a nonrenewable resource when the gold is removed from the ground and introduced into international commerce. Once the gold is gone, it's gone forever, and the potential for the county of origin to materially generate future prosperity is gone with it. No local entity will receive a less proportional share of future net proceeds revenues than they're currently receiving. Mining companies paying the net proceeds of the tax will be unaffected. The legislation only addresses the distribution of the revenues collected.

[Ken Benson, continued.] Number four, the financial impact of the treasury of the State of Nevada, with respect to the proposed revision, is not excessive and presents minimal challenge to balancing the state's budget. I am joined today by Mr. Jim Ithurralde of Eureka County who has served as the Eureka County Assessor since 1979 and Mr. Mike Revaledi as well who has served as the Eureka County Recorder-Auditor since 1983. In this capacity, Mike is also Eureka County's Chief Financial Officer. Both of these gentlemen are available to contribute additional information into the record or answer questions from Committee members. Eureka County is also represented here today by fellow Eureka County Commissioner, Dave Pastorino. Thank you for your time and thank you for your consideration of this bill. [Submitted [Exhibit D](#)]

Chairwoman Buckley:

Are there any questions of the Committee for either the witness or any member of the delegation? It's a pretty simple bill to understand. We appreciate your testimony and appreciate you traveling here today.

Kenneth Benson:

Thank you.

John Milton, Chairman, Humboldt County Commission, Humboldt County, Nevada:

I came here to lend my support to A.B. 244 and just make a brief statement. In the last five years Humboldt County has suffered approximately 28 percent loss in assessed valuation. This bill will help greatly to restore some of the funds to our county so we can provide for infrastructure, and we definitely support passage of this bill. Thank you very much.

Chairwoman Buckley:

Thank you. I certainly came to a much greater understanding of the challenges of the rural communities and Humboldt County when I participated in the

property tax discussions. All the numbers seemed very clear as we were trying to devise the same system for Clark County as Humboldt County. It was quite challenging, so I appreciate the issues that you're dealing with there.

Mickey Yarbrow, Chairman, Lander County Commission, Lander County, Nevada: Lander County supports A.B. 244 as a means to provide much-needed fiscal stability. The economy of Lander County remains heavily dependent upon mining. Argenta Mine and Mill Barite have 18 employees; Greystone Barite Mine, 63 employees; Cortez Gold, 402 employees. Of those 402 employees, 300 of them live in other counties. McCoy Cove Mine, down to 26 employees. Mule Canyon Mine, no employees. Phoenix Project, hopefully whenever it goes online, will have 450 estimated employees. Direct and indirect mining related employment represents approximately 50 percent of the total employment in Lander County.

Mining is Nevada's second largest industry, and Lander County is host to some of Nevada's largest gold mines, yet Lander County remains economically and fiscally unstable. Lander County and its school district must develop and maintain infrastructure and public services to provide for population influx and yet afford this same basic infrastructure during population decline. During the last 20 years, Lander County's population has varied from an estimated 4,500 residents in 1986 to nearly 7,000 residents in 1997. Most recently, the Nevada State Demographer has estimated the population to be 5,357 persons in 2004. A significant component of Lander County's assessed valuation is mining related, yet the county has been unable to incur revenues commensurate with the growth in mine-related evaluations. In 1999 and 2000, mining accounted for \$160 million of Lander County's total assessed valuation of \$353,017,284, or approximately 45 percent. Mining has typically accounted for 35 percent to 50 percent of Lander County's assessed valuation. Between 1998 and 1999, and between 2002 and 2003, total taxable sales in Lander County have steadily declined from \$97,931,000 to \$22,026,000, largely reflective of variation in mine-related purchases. Assembly Bill 244 will help ensure Lander County is able to derive revenues commensurate with the need to provide and maintain basic infrastructure. [Submitted [Exhibit E](#)]

Assemblywoman Giunchigliani:

Do you know what the fiscal impact of this would be to the State?

Chairwoman Buckley:

We have Russ [Guindon] from the Fiscal Division, so I'll get that information to you.

Andrew List, Executive Director, Nevada Association of Counties:

I've spoken with the Nevada League of Cities. We both lend our support to this bill. The bill is very important especially for our rural counties, whose economies are dependent on mining. We have rather fragile economies during the boom and bust economies. We think that this bill will help mitigate the boom and bust periods that those rural economies have had. We think when the mining period slows down, they'll have a little bit extra money hopefully to deal with some infrastructure needs that those counties might have and be unable to pay for otherwise. During the boom periods, those counties will be able to provide for their citizens, a lot of whom would not be there but for the mining boom itself. We think that this bill will also help mitigate some of the impacts of the methodology changes that the Department of Taxation now uses. That was the methodology spoken of by Mr. Benson and will also help mitigate some of the minor impacts you might have associated with A.B. 489.

Chairwoman Buckley, we thank you for your work on that particular bill and the work that you and this Body did to mitigate the impacts that bill had on the rural counties. We know you went through quite a number of iterations to reduce those impacts, and we appreciate it. There are going to be some minor impacts nonetheless, and we think this bill might help.

I provided to you a few different handouts ([Exhibit F](#)). These illustrate in some of the rural counties what the assessed valuation does with the boom and bust, especially in Eureka County. You can see their assessed value is now below where it was in 1991, which has a lot to do with the mining. When they drop off so precipitously, it's hard to provide for the citizens who remain after the boom period.

Chairwoman Buckley:

For anyone here on A.B. 264 and A.B. 284, we were just advised by the sponsors of those bills that they intend to withdraw them. A.B. 264 was Assemblywoman Angle's bill and A.B. 284 was Assemblyman Sherer's bill.

The fiscal impact is diagrammed on this long sheet and the fiscal note, both from Department of Taxation ([Exhibit C](#)). Over the biennium, the fiscal impact is \$14.6 million, \$7 million the first year and \$7.3 the second year. It doesn't add up to \$14.6; it adds up to \$14.3. Yes, \$7 million a year. The Department of Taxation lost another \$300,000 there. But I guess for tax that's pretty good.

Ben Zunino, Superintendent, Eureka County, Nevada:

We're in favor of A.B. 244. Eureka County has worked very hard to keep its tax rate as low as possible for its citizens. In keeping the tax rate low, the county has given up a lot of revenue over time.

[Ben Zunino, continued.] This year, with the change in the depreciation for two of the mines; they went down \$70 million. That cost the school district \$525,000. The net proceeds are going to be down \$42 million, that's another \$315,000, to a total of \$940,000 that the school district will not get as a result of net proceeds. This would definitely help make that up. Eureka County, as the others have said, has gone through a very volatile period. Our school buses have over a million miles on them and we can't afford to replace them because of the cost. The facilities are in need of repair. Other rural school districts are in the same condition. I was talking with a superintendent yesterday, and there's a \$600,000 shortage.

One of the things that we're also short of in rural America is radio stations. I was traveling out to some property the other day and I was listening to Assemblywoman Giunchigliani on the radio. It's delayed getting out there. I really appreciated what she was saying, because he was asking her what she was going to do personally with the \$380 million overage. One of the things she said was we have to be very careful not to put that in our General Fund and count that as revenue from year to year. I really appreciate that. That's exactly what we have to do in the rurals for our budgets, and our general fund is comprised a great amount with net proceeds funding, which is very volatile. So in the boom times, we can add teachers, we can add textbooks, we can do those kinds of things. When it's down, then we have to subtract all of that. I would really appreciate your consideration of this bill for the rural counties. It will definitely benefit Eureka County as well as the others. It's something that they could actually raise their taxes and get anyway, but that's something they've chosen not to do.

Carole Vilardo, President, Nevada Taxpayers Association:

Speaking in support of the bill, we think it's very important. We would have liked to have seen it a number of years ago. Assemblywoman Giunchigliani can appreciate when we try and help schools with infrastructure and building in rural communities with a \$0.08 sales tax, but that doesn't go anywhere because they don't have the retail base. It's particularly important to note that at least over the last couple of years, when this issue has been discussed, you're at your lowest point of the State receiving this level of money. It makes sense, when the State is not getting as much as they had originally anticipated, to start moving that over into the rural communities, and you still will have money left for the State. We think it's an important bill and hope that you'll process it.

Paul McKenzie, Organizer, Operating Engineers, Local No. 3, Reno, Nevada:

We represent public employees in White Pine County, Elko County, Lander County, and Humboldt County. We deal on a day-to-day basis with those

employees and the effect that funding in those communities has on the infrastructure and on their livelihood. We're very much in support of this bill. We hope that it will help those rural communities with some revenue that helps them stay on top.

Chairwoman Buckley:

We thank you all for being with us and traveling so far. With that, I'll close the public hearing on A.B. 244. We'll switch back to work session and consider two bills, A.B. 44 and A.B. 83. We'll start first with A.B. 44.

Assembly Bill 44: Revises provisions governing payment of overtime to certain employees. (BDR 53-761)

Chairwoman Buckley:

Assembly Bill 44 is presented in mock format ([Exhibit B](#)) with two amendments; they both have the number of the bill on top. If you'll recall, A.B. 44 was trying to get the jurisdiction of the Labor Commissioner to settle disputes over pay and the parties worked very hard to come up with this compromise. It's a little confusing. We have Legal standing by to explain it. Do you want to start by giving us a short overview of what the amendments do?

David Kersh, Government Affairs Director, Carpenters/Contractors Cooperation Committee, Las Vegas, Nevada:

We've worked very hard with the Labor Commissioner's Office, chambers of commerce north and south, with the Retail Association, Building Trades, and a host of other groups, given the popularity of this bill. After the last hearing, we went back and tried to work out a good way of moving forward with the overtime issue. What we have done is make sure workers who make between \$7.73 and prevailing wage, who are not covered under Nevada State labor laws or not enforced by the Labor Commissioner, will now be able to have their overtime enforced after 40 hours in a way that is consistent with federal law. We are not adding any new requirements. All we're adding is the ability to go to the Labor Commissioner's Office as opposed to the U.S. Department of Labor. This is an important step because a lot of workers will have their claims processed quicker, and this will go a long way to help workers who have issues.

The proposed amendment keeps in place the people who already have the overtime after 8 hours, which is people who are making up to \$7.72, as well as the prevailing wage workers, and just that middle section now will be covered for 40 hours, the same as the federal government.

Chairwoman Buckley:

Anything to add, Assemblyman Conklin? I asked you to look over the amendments to be sure they reflected what we talked about at the hearing. Any comments?

Assemblyman Conklin:

In looking over the amendment, I think his assessment is correct. It does not change anything in statute as to who gets overtime. It brings all of Nevada workers under the jurisdiction of the Labor Commissioner. I think that's critical because there are some cases where people are working two jobs with the same employer and they're being denied overtime when the law is very clear that they should be. They're not big enough to get the attention of federal courts and the federal Department of Labor, so employers are getting away with it. I have a lot of faith in Nevada's Labor Commissioner to address some of those issues.

Chairwoman Buckley:

I think it's a good compromise that accomplishes good goals for both employers and employees. For employers, it's easier to deal with a Nevada agency than it is dealing with a federal one. I think it helps everybody.

ASSEMBLYMAN HETTRICK MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 44.

ASSEMBLYWOMAN GIUNCHIGLIANI SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Seale and Mr. Perkins were not present for the vote.)

Chairwoman Buckley:

Assembly Bill 83 was a companion bill to A.B. 44, so we kept them together. David, did you want to walk the Committee through this once more to refresh everyone's recollection?

Assembly Bill 83: Revises provisions governing compensation of workmen on public works. (BDR 28-759)

David Kersh, Government Affairs Director, Carpenters/Contractors Cooperation Committee, Las Vegas, Nevada:

Assembly Bill 83 is broken up into two parts. The first part is to create some uniformity in terms of workers who are working overtime, private and public, to make sure that when they're working on a public works project, the private hours are taken into consideration. It's basically to codify into law what is existing practice in the Labor Commissioner's Office and to make sure that the workers, contractor, and the Labor Commissioner are all on the same page. The second part has to do with removing the word "cash pay," in terms of the obligations of a contractor, who can make contributions to a third party. We had problems with the word "cash" because it's really not defined anywhere and the workers would just be getting cold cash. We stated that a contractor can make contributions in part, so we removed the word "cash," and we found the easiest way of saying that. That's what the second part of the amendment is ([Exhibit B](#)).

ASSEMBLYWOMAN MCCLAIN MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 83.

ASSEMBLYMAN ARBERRY SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins and Mr. Seale were not present for the vote.)

Chairwoman Buckley:

Thank you very much. We will open the hearing on A.B. 501.

Assembly Bill 501: Revises certain provisions governing contractors. (BDR 54-636)

Buzz Harris, Legislative Advocate, representing Nevada State Contractors Board:
We'd like to walk you through a packet ([Exhibit H](#)). We have revised the bill as a whole, due to some challenges when the bill first came out, to make quite a few clarifications. Sections 2 and 3 refer to the advertising that has taken place on a variety of levels with people trying to sell warranties or rebates to make some clarifications; that has been inserted into NRS Chapter 624 to protect the consumers so we can deal with the deceptive trade practices. Sections 4, 5, 7, and 8 clarify what has been referred to as the financial statement for those who are either new contractors or contractors revising their license so that they do not have to have a certified copy of that financial statement. If you're a smaller company and you need to make a fairly simple statement as to your financial

records or your financial balance, that can be done by hand. It does not necessarily need to be prepared by a CPA. Going on to Section 12, there's a significant increase in the fine that can be levied on those that have had fairly large infractions as an unlicensed contractor from \$10,000 up to \$50,000. Section 13 is essentially a duplication of what was in Sections 2 and 3 dealing with deceptive trade practices. Those are the changes that we have. We have worked with the Southern Nevada Home Builders Association and the AGC [Association of General Contractors] to clear up the complications that came out on the original bill. [Submitted [Exhibit G](#), [Exhibit H](#), [Exhibit I](#), and [Exhibit J](#) on behalf of Margi Grein, Nevada State Contractors Board.]

Chairwoman Buckley:

We appreciate the mockup, which makes it easier with amendments this late.

Assemblyman Anderson:

I noticed the offending "and" statement behind Tab 5 ([Exhibit G](#), page 49). The "and/or" controversy is still here, and, of course, I hesitate to bring up the question, but clearly it's one of those issues that we're always concerned about. We have a piece of legislation in another committee that has dealt with that this week.

George Lyford, Director of Investigations, Nevada State Contractors Board:

The Board is meeting at this point in time, specifically to address that particular issue. They should be resolving those issues by way of teleconference today.

Chairwoman Buckley:

To be clear, that NRS section in Chapter 40 with regard to the "and/or" is not in the proposed mockup at all. It's in the jurisdiction of the Judiciary Committee; is that correct?

Buzz Harris:

That is correct.

Chairwoman Buckley:

I did see that tab in there. That's the first thing I did too, Mr. Anderson, predicting you would come to that next.

George Lyford:

We're addressing that issue separately. The packet that was given to you is an informational package ([Exhibit G](#)). Assembly Bill 501 is basically a housecleaning bill. We've seen this advertising come up every year. Some contractors are using deceptive advertising to get business from other contractors. We could refer it over to the Attorney General's Office, which we

have done several times. That criminal process and the intent that's needed to prove things along those lines is a lot more than we need to take administrative action, and that's why we're trying to move this part in here. We have corrected, and are continually working on correcting, some of these advertising problems by calling in the offending persons and asking them politely to change their advertising and giving them only a couple options.

Assemblywoman McClain:

The bill in the bill book is replaced by the mockup?

Chairwoman Buckley:

Correct. In its entirety.

Assemblywoman McClain:

These are amendments ([Exhibit H](#)) to the mockup?

George Lyford:

The page you have there we initially did in the normal format of "here are the changes." Then, when we looked at that, it was confusing even for us. The one in the packet is the explanation of what we changed in the mockup; they are technically the same.

Chairwoman Buckley:

The two handouts ([Exhibit H](#), [Exhibit I](#)) should be the same. This ([Exhibit H](#)) is amending the original bill, and this ([Exhibit I](#)) is what it would look like so we don't have to look at both. If you just want to see the substantive changes you could just rely on the mockup. Thank you. We appreciate your testimony. Is there anyone else that would like to testify in support of A.B. 501?

Joe Johnson, Private Citizen, Las Vegas, Nevada:

I am here to speak today in favor of A.B. 501, because there are always new and innovative methods of advertising and marketing coming about, which is great. However, the problem arises when those methods of doing business become deceitful, untruthful, or deceptive. This bill is so important because it allows the State Contractors Board concrete and measurable actions that can be taken to correct this or prevent this from happening. In addition, it creates a level playing field for those of us contractors who do business in a moral and ethical manner. I think the party that gets most affected is the consumer. No consumer should ever have to be influenced into doing business through methods and manners that are deceitful or untruthful. So, again, I support A.B. 501 with the effort to safeguard my company and the local contractors here in southern Nevada from earning the reputation of a used car salesman.

Larry Smith, Vice President, Right Now Air, Las Vegas, Nevada:

I'm a licensed contractor in the state of Nevada and have operated a heating and air conditioning business in southern Nevada for 25 years. Recently, postcards ([Exhibit K](#)) have been sent out giving you the impression that they're from Clark County, or an equipment manufacturer, stating that it's necessary, and required, that you have certain services provided to your heating and air conditioning system. It's nearly impossible to find out where these things actually came from. Generally, you respond to a telephone number or something like that. You don't even know who you're actually calling.

There's been a company that's done some telemarketing along the same lines. Ironically, they happened to call my mother. When they did, she explained to them that her son owns an air conditioning company and he takes care of her heating and air conditioning. They led her to believe that it was somebody from my office, while they did not actually say they were me, so she went ahead and allowed them to come out. When they got to the door, she realized it wasn't my company. She told them to go away and they said she owed them \$80 because she scheduled a service call and they needed to be paid. So she called me. I invited them to leave, gave them my name and phone number, and told them to tell the owner of the company if he has a problem with the \$80 to call me. Of course, I never heard from him.

But this is what is going on down here. It's very misleading, very deceitful, and I've had several of my client's call, especially senior citizens, being very confused about what's going on. The State Contractors Board is funded by us to police our industry. They have everything necessary with the investigative and everything in place to handle it, and I think it should be allowed.

Jim Wadhams, Legislative Advocate, representing Newmont Mining Corporation:

I have a very small point, but it could be potentially important and it has to do with the amendments dealing with the request for financial statements. I believe the first place it appears is in the mockup ([Exhibit H](#)) in Section 7, subsection 4. Many contractors, particularly the larger ones that are publicly traded, have audited financial statements. We'd like to make sure that the language will reflect that audited financial statement and will always satisfy the way the language is written. It could be interpreted, and unfortunately we've had to engage in these interpretation issues, that even an audited financial statement would not be enough. We'd have to transpose that to a form and then, additionally, verify the accuracy; that's just housekeeping. It appears about 6 or 7 times through the bill. If that adjustment could be made, we'd be perfectly satisfied. The Board has taken the time to address concerns that were raised by

a variety of people in the industry, and I think, with this one exception, it has done a good job of doing that.

Chairwoman Buckley:

Thank you very much. Mr. Lyford, any problem with that clarification?

George Lyford:

No, Madam Chair, we believe an audited financial statement is the ultimate. That's the best we would expect from anybody.

Assemblyman Anderson:

On page 6, Section 9, subsection 3 ([Exhibit H](#)), is there a justification for the dollar increase?

George Lyford:

The justification primarily is because we have seen many large contractors from out of state come in to do multi-million-dollar jobs. A fine of \$10,000 is absolutely nothing to them at that point in time. That's why we asked for the increase to go up to that. But you will see a developer or an owner of a franchise chain from out of state that uses a particular contractor. That contractor comes in, they know you're building a \$34 million project and they're unlicensed. This is something we have run across several times, so we're upping the ante on that a little bit.

Assemblyman Anderson:

On that same page, subsection 10, where it talks about a 10 percent per annum paid to the Board prior to issuance of renewal of license to engage in the Contractors Board. What is the justification for that dollar increase?

George Lyford:

The justification is as a penalty if we assess a fine on a contractor who leaves Nevada and goes to Arizona, but three or four years later decides to get licensed. I have a specific example of that where the contractor didn't want to come back to Nevada but he wanted to be licensed in Arizona. Arizona has a reciprocal agreement with us, and they said settle up with Nevada before we'll license you here. If he has a \$20,000 fine that we assessed, three or four years later he can settle up with us for \$20,000 plus interest. He's not getting the \$20,000 free and clear for three or four years before he decides to pay us back.

Assemblyman Anderson:

What is the anticipated additional revenue estimated to be?

George Lyford:

That depends entirely on which ones decide to come and get licensed here with the states we have relationships with.

Chairwoman Buckley:

Thank you very much, Mr. Lyford. Anyone else who would like to present testimony on A.B. 501? Seeing none, I'll close the public hearing on A.B. 501. We'll thank the people that came forward to testify. Does the Committee want more time? Assemblyman Anderson, how does it fit with any Judiciary issues?

Assemblyman Anderson:

I haven't had an opportunity to peruse the entire amendment to see its application. I don't see any real problem with it, but I want to make sure that we're not doing something that's going to be harmful to the industry as a whole. If it means the Contractors Board will start doing something about construction defect, I want to give them the tools to do so. I'm a little disappointed, of course, that they chose to do their hearing when we were right in the middle of the busiest time of the legislative session when we couldn't possibly be monitoring both events, and I think it's a little strange.

Chairwoman Buckley:

Right. I'll accept a motion to amend and do pass with the amendment to clarify that audited financial statements are sufficient for purposes of the financial statements as requested throughout the amendment.

ASSEMBLYMAN ANDERSON MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 501.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins, Mr. Seale, and Mr. Oceguela were not present for the vote.)

Chairwoman Buckley:

We'll open the hearing on A.B. 292.

Assembly Bill 292: Requires earlier filing of statements of estimated gross yield, net proceeds and royalties by persons extracting minerals. (BDR 32-1278)

Assemblyman Pete Goicoechea, Assembly District No. 35, Eureka, Pershing, White Pine, Humboldt (part), Churchill (part), Lander (part), Washoe (part):

Assembly Bill 292 was brought forward at the request of local government. I know mining did support the bill, as did the Nevada Taxpayers Association. The only change is for those mining companies in the industry. They shall file their statement March 1, rather than April, to the Department of Taxation and when they submit their estimate to local government, it will be March 15 rather than April 25. That date was actually after the time frame when local governments had to file their tentative budget. I don't think there's any opposition to the bill.

Chairwoman Buckley:

Thank you very much. Anyone care to provide testimony on A.B. 292?

Carole Vilardo, President, Nevada Taxpayers Association:

We've been concerned about the issue of dates on this. We work a lot with county assessors in various counties. One of the concerns was the way the numbers were being given. It was coming after they had done work on the budgets. If you wanted to have a discussion about the reason for this change in your net proceeds or anything, there was no time to do it. We hope that this will provide a better budget process and allow better communication between the mining companies and the various local governments.

Jim Wadhams, Legislative Advocate, representing Newmont Mining Corporation:

Modern accounting has allowed these companies to prepare these statements earlier than in past years. This was a cooperative effort designed to facilitate county budget planning; the Nevada Mining Association would support this bill.

Chairwoman Buckley:

We appreciate your testimony.

Andrew List, Executive Director, Nevada Association of Counties:

For the reasons previously stated, it simplifies the budget process and allows for better budgeting. We support the bill. Thank you.

Chairwoman Buckley:

You're welcome. Anyone else want to testify on this bill? Seeing none, I'll close the public hearing on A.B. 292.

ASSEMBLYWOMAN MCCLAIN MOVED TO DO PASS
ASSEMBLY BILL 292.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins, Mr. Seale, and Mr. Oceguela
were not present for the vote.)

Chairwoman Buckley:

Open the hearing on A.B. 163.

Assembly Bill 163: Revises provisions governing reporting and certification of gross yield and claimed net proceeds of minerals extracted for purposes of taxing such proceeds. (BDR 32-640)

Dino DiCianno, Deputy Director, Compliance Division, Nevada Department of Taxation:

Drawing your attention to page 2, the bill attempts to remove an administrative hurdle. In other words, we no longer would request that an operator or a royalty recipient request an okay from the Department in filing an amended return. Also, by allowing them to go ahead and have up to 30 days after the original filing date, which is February 16, we will send them a certificate of assessment on April 30.

Chairwoman Buckley:

For the record, Ms. Vilardo, of the Nevada Taxpayers Association is in support; the same with Mr. Wadhams, Nevada Mining Association. I'll close the public hearing on A.B. 163.

ASSEMBLYMAN HETTRICK MOVED TO DO PASS
ASSEMBLY BILL 163.

ASSEMBLYWOMAN MCCLAIN SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins, Mr. Seale, and Mr. Oceguela
were not present for the vote.)

Chairwoman Buckley:

I'll open the hearing on A.B. 553.

Assembly Bill 553: Requires licensing of suppliers and rectifiers of intoxicating liquor and wine. (BDR 32-1314)

Alfredo Alonso, Legislative Advocate, representing Southern Wine and Spirits:

Essentially what we have before us is a situation where the three-tier system controls how alcohol enters the state, is distributed, and sold. Unfortunately, a licensing issue came up. Although we believe that existing law already covers this, there is no specific licensing for this type of individual or this type of company. Assembly Bill 553 clarifies and defines it so it can be licensed properly. There were a couple of drafting errors and a couple of things that we thought might be a little clearer in the amendment ([Exhibit L](#)). What's most important, obviously, is the definition of a rectifier in existing statute under NRS 597.210. It is defined as anybody who is in the business of manufacturing, blending, and/or bottling alcoholic beverages, shall not engage in the business of importing, wholesaling, or retailing alcoholic beverages. So what's happening now is you have individuals that bring in ingredients, mix them, and bottle them, and because there's no rectifiers licensed at this moment, they're also wholesaling them. So they're doing essentially two of the three tiers of the system.

Assembly Bill 553 tries to define the rectifier in Section 3. The bill also creates a supplier's and rectifier's license to make sure that everything is cohesive within the statute. Then we make certain that these individuals can choose one or the other. They're either going to be a supplier or they're going to be a wholesaler, but they can't be both. That ensures the three-tier system stays strong and that individuals coming into this area are doing exactly what they're supposed to be doing and not delving into the other areas of the three-tier system.

Assemblywoman Giunchigliani:

We never defined supplier before?

Alfredo Alonso:

It's already been defined in the statute.

Assemblywoman Giunchigliani:

In this amendment, it looks like you're changing the terminology in it?

Alfredo Alonso:

It means an establishment other than a rectifier and winery to distinguish the two because, again, suppliers are normally out-of-state companies sending in their wares and they're sold to a wholesaler or importer. An importer can import or act as a wholesaler as well. That's okay within the law. What we have here is someone who is bringing in the ingredients, the materials, mixing them, acting as a supplier, and then selling them as a wholesaler.

Assemblywoman Giunchigliani:

If supplier is already in statute, why are we now creating a license?

Alfredo Alonso:

The only reason there's a supplier's license in the statute is because we're trying to meld that with the remaining statute. They have a certificate currently.

Assemblywoman Giunchigliani:

Is that \$750 currently, or is that an increase?

Alfredo Alonso:

That would be an increase. Again, we have no problem with that.

Assemblywoman Giunchigliani:

What was it before?

Alfredo Alonso:

Nothing.

Assemblywoman Giunchigliani:

You just got issued a certificate as a supplier but didn't pay anything?

Alfredo Alonso:

Exactly.

Assemblywoman Giunchigliani:

A rectifier, that's an interesting term. Is that like what used to be a distiller, or is that a whole different term?

Alfredo Alonso:

The rectifier is essentially no different than today's soda pop bottler. They get the ingredients, put them together in a vat or blend it with other ingredients or color it, bottle it, and then sell it.

Assemblywoman Giunchigliani:

So if I look on page 2, Section 4, subsection 4, do most of the businesses that are doing it in the state currently have a supplier's license?

Alfredo Alonso:

Those would be retailers; they have retailer's licenses. That's the third tier of the three tiers.

Assemblywoman Giunchigliani:

In the "privilege to engage in business," does that mean they'll have to have a privileged license?

Alfredo Alonso:

It's no different than anyone else operating within those tiers. They would simply receive a license and then they'd be able to act as a rectifier within the state.

Assemblyman Anderson:

Then one of the purposes is to make sure a wholesaler cannot simultaneously be a rectifier, and that's one of the things that you're concerned about here?

Alfredo Alonso:

It would be no different than Old Crow essentially designating themselves as a wholesaler and making the product and selling the product to a retailer directly, which is again a violation of the three-tier system. The only difference here is that these individuals are importing the ingredients, and in many cases they come in vats. There are many different ways to do it. But they will then put the ingredients together, bottle, and sell as a wholesaler. We're not saying they can't do that. They simply need to get a wholesaler to sell their wares then. When they manufacture and rectify, they would get a wholesaler, who would sell to the retailer. Again, because the wholesaler is the individual who collects the tax, the wholesaler pays the excise tax to the State and, that is why it's checks and balances of the three-tier system.

Assemblyman Anderson:

Do you suggest that we come up with a definition of rectifier in addition, although I don't see it here in this particular amendment?

Alfredo Alonso:

It is in Section 3, and in this chapter it means a rectifier is an establishment that bottles, packages, colors, flavors.

Assemblywoman Gansert:

Looking at the lineout on page 3, lines 4, 5, and 6, it looks like a rectifier, somebody who used to rectify, used to be an importer, defined as importer, and you had on page 2, licenses for the importers of wine, beer, and liquor, and then just beer, lines 34 and 35 on page 2. The amounts are different; now it's \$75, and if I looked at it correctly, it used to be \$150 or \$500. If you were a rectifier, you were an importer?

Alfredo Alonso:

I think you'd be referring to the existing language in NRS 369.415, which allows someone to import the materials to be a rectifier. The problem is that it is between the importing piece and the actual manufacturing piece where the law is silent. We're trying to simply say if you're going to import it and then wholesale it, that's a different story. You can do that currently under law. It's never been a rectifier, solely a rectifier. So this individual or this company can then mix the materials just imported and sell them as a wholesaler, and that's what we're trying to stop.

Chairwoman Buckley:

Who does this affect? Why is this needed?

Alfredo Alonso:

It's my understanding there have been applications for this sort of thing. I believe there's only one individual in the state that's done so. It's also my understanding they have spoken to wholesalers but have not done anything further than that. We understand that no one else is affected at this time, although, fairly recently, we received word that there were several individuals that were looking at doing so. I'm sure the Tax Department can speak further to it. But I understand they've had many inquiries, thus our worry.

Assemblyman Hettrick:

Do you have any idea of the quantity that this individual has imported and rectified? No?

Alfredo Alonso:

Again, it's not our attempt to stop them from doing what they're doing with respect to the rectifying process. They can do that and still work under the existing law. The problem is when they then become a wholesaler and do both. Again, they're acting as a supplier, that is, as a rectifier and wholesaler, which is a problem. It essentially violates the three-tier system.

Assemblyman Hettrick:

If I may, when this individual has been selling the materials, has he had the appropriate tax stamps or whatever is required to sell the wholesale or the liquor that he's created?

Alfredo Alonso:

I don't know. It's my understanding that they were licensed as an importer, and then choose to also be the wholesaler; you could in fact do that. We don't have a problem with that portion of it. The problem is when they are actually importing the materials, then making it and selling it as a wholesaler as well.

Gary Milliken, Legislative Advocate, representing Distilled Spirits Council of the United States:

We are in favor of the legislation that has been discussed. I also have an amendment ([Exhibit M](#)) with Mr. Alonso's permission that I have offered. If you will look at the second and third pages ([Exhibit M](#)), this is the device called AWOL, alcohol without liquid. It is a mixture of gas and liquor, like an inhaler, and you simply inhale it. The second page shows a picture of what it's like in a bar area. The third page shows a picture of an individual portable unit. The Distilled Spirits Council does not think this is responsible drinking. There is a similar amendment in 16 states, and they are considering this law. It passed the California Assembly and will be considered by their Senate.

This came over from Europe within the last year, and it goes directly into the lungs. They advertise it will not create hangovers. Distilled Spirits simply does not want this type of product and doesn't want our products being used in this type of equipment. The amendment simply says, "Sale, purchase, or use of alcohol vaporizing device is prohibited." For this section, "vaporizing devices" means any device, machine, or process that mixes spirits, liquor, or other alcoholic products with pure oxygen or other gas to produce a vaporized product. "No person shall purchase, offer for sale, or use an alcohol vaporizing device." We don't want our products' names used for these devices. I'll be willing to answer any questions.

Assemblywoman McClain:

When they do this thing, can you get as drunk as you would drinking? There's no way they can detect it?

Gary Milliken:

I've never tried one. I don't think you'll have the smell that you would if you're drinking out of the glass or out of the bottle.

Assemblywoman McClain:

That's a scary thought.

Gary Milliken:

That's why Distilled Spirits Council is offering this type of amendment in as many states as we can.

Alfredo Alonso:

Southern Wine and Spirits strongly support this amendment ([Exhibit M](#)). If you have kids, this is a scary item.

Joseph Brown, Legislative Advocate, representing DeLuca Liquor and Wine:

I want to be on the record supporting fully Mr. Alonzo's testimony and the amendment offered by Mr. Milliken. We feel the three-tier system is very important for the state of Nevada for state and local enforcement. We have had a number of problems recently. I supplied a copy of a letter written by Mr. Keith Trader from DeLuca ([Exhibit N](#)) to the Compliance Director at the Tax Commission concerning a problem we just came across of a company in Pahrump, which is operating both as a rectifier and purportedly as a wholesaler. I think the Tax Commission at the present time is a bit up in the air because the present statute does need clarification; therefore, we support wholeheartedly this bill.

Dino DiCianno, Deputy Director, Compliance Division, Nevada Department of Taxation:

The Department's concern with respect to the AWOL has to do with administration and enforcement. We have asked that those provisions be put in NRS Chapter 597 under the purview of the Attorney General instead of the Department of Taxation.

Gary Milliken:

Madam Chair, that's fine. I just mention on my amendment NRS Chapter 369, but if it's easier with NRS Chapter 597, that's fine with us.

Chairwoman Buckley:

We appreciate that. Dino, did you have any comments on the rest of the bill and the issue with regard to the tiered system and the issuance of the license? Any concerns from your point of view?

Dino DiCianno:

The Department is neutral on the bill. It clears up some issues that Mr. Alonzo mentioned. I would like to mention that we are in the process of working on an

advisory piece from the request of someone who is going to be a rectifier in the state.

Chairwoman Buckley:

So you think this would help make it clear with respect to the public policy one way or another?

Dino DiCianno:

Yes.

Chairwoman Buckley:

We appreciate that. I'll close the public hearing on A.B. 553. Does the Committee want to move with the bill, or do you want to put it over to work session?

Assemblyman Anderson:

I'm not unhappy with the bill. I have one question maybe Mr. Milliken can clarify for me relative to the amendment that he had suggested to this new non-liquid alcohol thing. I'm curious about "no person shall purchase or offer for sale." We are going to preclude that from taking place here in Nevada?

Gary Milliken:

Yes, that's our intent.

Chairwoman Buckley:

How many other states have done it that way?

Gary Milliken:

Sixteen states are now considering it. It has passed in New York, Alabama, and Colorado. I think Arizona is going for the final vote there, and it passed the Assembly in California earlier this week and it's going to their Senate.

Assemblyman Anderson:

I guess we would be concerned in part because we would have a more difficult time addressing the driving under the influence questions and other questions relative to operation of watercraft and automobiles.

Gary Milliken:

I don't have an answer to that. I don't know.

Chairwoman Buckley:

Does it really eliminate hangovers? That's what the advertising material suggests. I was just wondering if that was false advertising, or whether in fact it does do that.

ASSEMBLYWOMAN GIUNCHIGLIANI MOVED TO AMEND AND DO PASS ASSEMBLY BILL 553 WITH AMENDMENTS SUGGESTED BY DINO DICIANNO, CHANGING THE CHAPTER FOR THE ALCOHOL VAPORIZER TO 597, AND THE LANGUAGE FROM THE MOCKUP.

ASSEMBLYMAN HETTRICK SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Perkins, Mr. Seale, and Mr. Oceguela were not present for the vote.)

Chairwoman Buckley:

Would you send Diane Thornton of our staff any more information you have about these machines and, also, any information on other states? Just a little bit more so the Committee could get educated on the topic. Thank you very much. We will open the hearing on A.B. 464.

Assembly Bill 464: Makes various changes regarding manufacture, sale and use of tobacco products. (BDR 32-1028)

Samuel McMullen, Legislative Advocate, representing Altria Corporate Services Incorporated:

I represent the company that owns Phillip Morris U.S.A. Assembly Bill 464 is similar to A.B. 436, which you heard on Monday. It is the second part of a bill (A.B. 460) passed last year. This is a bill focused on contraband cigarettes, counterfeit cigarettes, smuggling, Internet sales, or delivery sales, as they're called here in this bill. First and foremost, this is the product of an effort undertaken about three years ago when cigarette taxes started rising on the East Coast; they started seeing some creative new enterprises to take advantage of the higher tax rates in certain states. They were even buying cigarettes legally, living across the border, and selling them to get the benefit of the tax rate in that state as profit.

A number of people got together from all law enforcement and commercial sides and tried to figure out some things that needed to be added to the laws of

various states to create more tools to stop those activities, which of course take away from the state's revenues, unfairly compete with retailers and others who follow the rules. They also developed enforcement, compliance, and prosecuting tools for not only our law enforcement people but the Tax Department of our state, to make sure that they have the ability to prove cases and audit revenue, and do that in a way that is defensible.

[Sam McMullen, continued.] I just wanted to take you through some of the main components of the bill. Most of this is to plug some of the holes in the current statute or make it much more comprehensive. Sections 2 through 14 are basically definitions. They define a delivery sale in Section 5. They clarify terms that would be utilized later, like counterfeit cigarettes, which is a term that we didn't have in the law.

Section 15 talks about the issuance of license renewals and adds some of the problems that we've seen, like importing or counterfeiting cigarettes as grounds for not renewal or not granting a license. Section 16 is a very important part, which would be the creation of a website that would have the list of the various categories. This industry works with manufacturers; importers are not talked about in this bill because they're covered under the manufacturers' license, but those are people, under our definition, who transfer out of, or into, the United States. Then there are wholesale dealers who, of course, sell to retail dealers.

Section 16 is about putting the list together of the licensed people and the brands of cigarettes that they sell, so that we can have information. Section 17 says people can only receive cigarettes from a manufacturer if they are a wholesale dealer. Section 18 talks about the reports of manufacturers and wholesalers. It's important; when you look at the level of detail, this bill has been looked at over many months and now, two years later, by all of the groups or businesses that are confronted with these challenges, and there's general agreement, I think you'll hear that today, we've got a couple of indications of some problems, but we've been able to keep it where everybody agrees with it.

Chairwoman Buckley:

Sam, since most of us have heard this already, I think I'm going to stop you there and then see what specific questions we have, unless you'd like to talk about this amendment first.

Sam McMullen:

I'd be happy to. We submitted a proposed amendment ([Exhibit O](#)) to A.B. 464. It makes four very quick changes. Number one, we had inartfully put under the definition of counterfeit cigarettes, page 1, Section 3, the phrase "bearing no stamps." There are multiple provisions in the existing law that cover unstamped

cigarettes, so that was unnecessary. Number two, the amendment would clarify that the importer is in fact someone who imports into the United States so that all wholesale dealers that deal inside the States wouldn't have to get a manufacturer's license. In Section 39, we thought that the stamping requirement of 10 days is a little too tight; 20 days is better and is acceptable to the Tax Department, I understand. And then the fourth one was to make sure that tribal law enforcement authorities were added to those who could obtain information about stings, scams, and criminal activity.

Chairwoman Buckley:

Okay. And this bill is going to Ways and Means, too, correct?

Sam McMullen:

Yes, correct.

Chairwoman Buckley:

This is the one with the large fiscal note.

Sam McMullen:

We've had good discussions, which leads us to believe we should be able to resolve that and we're in the process of doing that.

Chairwoman Buckley:

It's already referred concurrently, so it will be traveling there after it leaves us for yet another examination by committee.

Assemblywoman McClain:

What happens to a person, when this is enacted, who buys cigarettes over the Internet and they're delivered to their home?

Sam McMullen:

First of all, this bill tries to control shipments into the state by saying that an individual who actually sells these in the state has to be licensed. Then, it regulates those individuals out of state who sell, puts the requirements on them, and outlaws that. I'm trying to think of where the exact provision is that deals with this.

Chairwoman Buckley:

I think the answer probably is nothing.

Assemblywoman McClain:

It is in Sections 19 and 20.

Sam McMullen:

Section 19 basically relates to the retail dealer who would be licensed under Section 1. That is not the individual who buys the cigarettes. Section 2 is again the seller, the person who accepts the order. If you go to Section 20, that talks about a person shall not cause the mailing or shipment, and that, I think, relates to the supplier, what we would call the retail dealer under this. And I do not believe there's any penalty for the individual.

Assemblywoman McClain:

How are you going to keep track of that? Who is going to keep track of that? How are you going to enforce this? Take, for example, the out-of-state Indian tribes that people buy cigarettes over the Internet from.

Sam McMullen:

Section 19 would be saying that, they shouldn't be doing that unless they are licensed as a retail dealer inside the state of Nevada. A lot of sales will go unenforced because that's just the way the world works. We were hoping to give people the tools to say that, if in fact they find that happening, that they say you are now unlicensed. You now have a requirement under law to be a retail dealer, and if you are not licensed as such, that is now illegal behavior, which gives the Tax Department the ability to do something when they're shipped in here. I'm not saying it's easy, but that was the theory of it.

Daryl Capurro, Legislative Advocate, representing Nevada Motor Transport Association:

My concern is only with Sections 21, 22, 23, and parts of 24. I was advised of this by UPS [United Parcel Service], followed very quickly by FedEx ([Exhibit P](#), [Exhibit Q](#)), this turns them into cops, basically, having to confirm information that's already available. I will give you an example of this. Using Section 21, if the method of service of delivery is chosen by the person receiving the order, and they select UPS, they would have to receive the evidence that all taxes have been levied by this State with respect to the delivery sale that they are going to deliver, and they must include proof as a part of the shipping documents. We're not concerned about that. As long as we have everything on the shipping documents, that's fine.

But when you go to Section 23, it says, "except as otherwise provided in subsection 2, a delivery service shall"—this is UPS—"Before delivering the container, ensure that the shipping documents include the documents required by paragraph (c)." Two, "Obtain evidence required by paragraph (b), regarding the cigarettes in the shipping container;" three, "Ensure that each package bears a valid stamp. Delivery service shall return to the shipper any cigarette

packages that do not bear a valid stamp." It's a contention of our people that this is a little over the wall, as far as our responsibility.

[Daryl Capurro, continued.] We are not changing our method of operation. We are simply delivering cigarettes. Now, to become responsible for checking that every package of cigarettes has a stamp on it, especially when if you go to Section 24, there is a \$1,000 civil penalty involved; I'm sure a violation of this chapter carries probably a criminal penalty, too.

I would just say to you that for us to have to check if someone is under 27 years of age, or at least 18 years of age, as contained on line 31 of page 8, and some of these other requirements, are going over the wall a little bit. I would ask you to take a strong note of that and perhaps clean this part up so that we are not obligated to basically enforce the provisions of the law when we're simply hired as a conduit to ship cigarettes as we have before.

Chairwoman Buckley:

Thank you for your testimony. Was that in last year's bill?

Sam McMullen:

Yes. Section 23 was Section 32 of A.B. 460.

Chairwoman Buckley:

What I might ask you to do is to work with the delivery services to see if there's some way to accommodate that. Obviously, we don't want the contraband in our state, but we also don't want to unduly burden these businesses to become inspectors.

Sam McMullen:

I'd be happy to but I think if I explain a little further, you might find that there's been some consideration of that already.

Chairwoman Buckley:

I'd like Mr. Capurro to be able to get back to his clients and see how this would all work, and then we can have both of you come back in a work session, and discuss it with us next week. Thanks.

Peter Krueger, Legislative Advocate, representing Single Stick, Incorporated; and U.S.A. Distributing:

We were not involved in last session's bill. I just want to ascertain if Section 33 of the new bill continues to allow both licensed wholesalers-distributors to ship unstamped product among themselves. There's been some question on my client's part that Section 33 does do that, but I need to be sure. I've talked to

Mr. McMullen and Mr. DiCianno. I want to get on the record that Section 33 of this bill will continue to allow licensed wholesaler-distributors to ship unstamped product among wholesale distributors. That's crucial to my client's business model.

Chairwoman Buckley:

We'll ask that be put in the Floor statement for the bill so we can add to the official legislative record on that issue. Thank you very much. Anyone else on this bill?

**Randall Munn, Special Assistant Attorney General, Attorney General's Office,
State of Nevada:**

I just would like to go on record to say that obviously this is part of our bill from last session, and we completely support it.

Chairwoman Buckley:

Thank you for your testimony. We'll close the public hearing on A.B. 464, allow that issue to be worked out, and bring it back next week. Any other business to come before the Committee? Seeing none, we're adjourned [at 3:30 p.m.].

RESPECTFULLY SUBMITTED:

James S. Cassimus
Transcribing Attaché

APPROVED BY:

Assemblywoman Barbara Buckley, Chairwoman

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: April 8, 2005

Time of Meeting: 1:13 p.m.

Bill	Exhibit	Witness / Agency	Description
	A	Legislative Counsel Bureau	Agenda
	B	Diane Thornton, Committee Policy Analyst	Work Session Document
244	C	Assemblyman Pete Goicoechea, Assembly District No. 35	Testimony and chart
244	D	Kenneth Benson, Eureka County Board of County Commissioners	Testimony
244	E	Mickey Yarboro, Chairman, Lander County Commission, Nevada	Summary of testimony
244	F	Andrew List, Nevada Association of Counties	Graphs showing assessed value
501	G	Margi Grein, Executive Director, NV State Contractors Board	Presentation
501	H	Margi Grein, Executive Director, NV State Contractors Board	Amendment
501	I	Margi Grein, Executive Director, NV State Contractors Board	Amendment
501	J	Margi Grein, Executive Director, NV State Contractors Board	NV Contractors Billboard
501	K	Larry Smith, Contractor	Examples of fliers
553	L	Alfredo Alonso, representing Southern Wine and Spirits	Mockup
553	M	Gary Milliken, representing Distilled Spirits Council of the US	Amendment
553	N	Joseph Brown, DeLuca Liquor and Wine	Statement
464	O	Sam McMullen, representing Altria Corporate Services	Amendment
464	P	Daryl Capurro, Nevada Motor Transport Association	Terms and Conditions FedEx
464	Q	Daryl Capurro, Nevada Motor Transport Association	Terms and Conditions UPS