MINUTES OF THE
JOINT MEETING OF THE ASSEMBLY COMMITTEE ON GROWTH AND INFRASTRUCTURE
AND THE
SENATE COMMITTEE ON TAXATION

Seventy-Second Session
March 17, 2005

The Joint Assembly Committee on Growth and Infrastructure and the Senate Committee on Taxation was called to order at 1:47 p.m., on Thursday, March 17, 2005. Chairman Richard Perkins 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.

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Mr. Richard Perkins, Chairman
Ms. Chris Giunchigliani, Vice Chairwoman
Ms. Francis Allen
Mr. Bernie Anderson
Mr. Tom Grady
Mr. Lynn Hettrick
Mrs. Marilyn Kirkpatrick
Ms. Sheila Leslie
Mr. Harry Mortenson
Mr. David Parks
Mr. Scott Sibley
Ms. Valerie Weber

SENATE COMMITTEE MEMBERS PRESENT:

Senator Mike McGinness, Chairman
Senator Sandra Tiffany, Vice Chairwoman
Senator Terry Care
Senator Bob Coffin
Senator John Lee
Senator Dean A. Rhoads
Senator Randolph J. Townsend

COMMITTEE MEMBERS ABSENT:

Ms. Peggy Pierce (excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County
Assemblywoman Kathy McClain, Assembly District No. 15, Clark County

STAFF MEMBERS PRESENT:

Brenda Erdoes, Legislative Counsel
Susan Scholley, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst
Keith Norberg, Deputy Fiscal Analyst
Gregory Sharry, Committee Secretary

OTHERS PRESENT:

Lorraine Hunt, Lieutenant Governor, State of Nevada
Steve Johnson, E.L. Wiegand Professor of Law, William S. Boyd School of Law, University Nevada, Las Vegas
Anne Loring, Legislative Advocate, representing Washoe County School District
Michael Alastuey, Legislative Advocate, representing Clark County, Nevada
Marvin Leavitt, Legislative Advocate, representing Urban Consortium
Carole Vilardo, President, Nevada Taxpayers Association
William Freed, Private Citizen, Nevada

Chairman Perkins:
[Meeting called to order. Roll called.] Today's agenda addresses a continuation of presentations from BDRs we heard on Tuesday and then presentation and discussion of various proposals for property tax relief.

Lorraine Hunt, Lieutenant Governor, State of Nevada:
The issue that I was concerned with was the issue of economic hardship. It is my understanding that you have invited Professor Steve Johnson from UNLV, who will be handling and addressing my concerns about property tax.

Chairman Perkins:
Your concern is that we involve the "severe economic hardship" provision of the *Constitution* in the solution we find.

Lieutenant Governor Hunt:
We felt it was a good vehicle and wanted to have it addressed with a little more consideration.

Chairman Perkins:
Thank you for joining us today.

Steve Johnson, E.L. Wiegand Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas (UNLV):
I have spent my entire professional life in the area of taxation. For 5 years I did tax work in private practice, 9 years in government practice and tax, and for the last 12 years I have been teaching tax law. I am currently a professor of law at the William S. Boyd School of Law, UNLV. My remarks today are expressions of my personal views and are not the expressions of the law school or of the University (Exhibit B and Exhibit C).

I am here to discuss the hardship exception in the *Nevada Constitution*. Specifically, I urge you to consider using the hardship exception as a vehicle, or the vehicle, to achieve property tax relief. For purposes of illustration, I will be talking about a 6 percent cap done through the vehicle of the hardship exception. A cap is not the only way in which the hardship exception could be structured, and 6 percent is not the only number, but it is useful by way of illustration.

I would like to address two topics with you. First, I would like to explain my conclusion that the hardship approach would satisfy the constitutional requirements of the *Nevada Constitution*. Second, I would like to talk about how relief legislation that satisfies the hardship exception could be crafted.

Legislative relief tailored to fit within the hardship exception is likely to be held constitutional. A significant part of the discussion in this very complex question of property tax relief involves the *Nevada Constitution*. Specifically, the uniformity clause, Article 10, Section 1(1) of the *Constitution*, which provides that the Legislature should "provide by law for a uniform and equal rate of assessment and taxation." That has been in the *Nevada Constitution* from the early days of Nevada statehood. More recently, though, The *Constitution* has been amended to modify the uniformity clause in a number of respects. The amendment of greatest interest, for this purpose, is the hardship exception; this

is found in Article 10, Section 1(10), of the *Constitution*. It provides, in relevant part, that the Legislature may provide for the abatement of tax upon or exemption of part of the assessed value of owner occupied single-family residences in order to avoid severe economic hardship for the owner of the property. This provision is best understood as an exception to the general uniformity requirement. In other words, relief legislation that fits within the severe economic hardship exception would satisfy the uniformity clause or would be free from limitation by the uniformity clause.

[Steve Johnson, continued.] In contrast, relief legislation that is outside the substantial economic hardship provision would have to be justified under the uniformity clause. The hardship exception is the more specific and more recent of the enactments. As such, it would have control over the uniformity clause that is more general and older of an enactment.

Under these principles, if a measure that you pass satisfies the hardship exception, it will be out from under the uniformity limitations. Additionally, it strikes me that use of the hardship exception is the natural way to achieve property tax relief. The hardship exception was created by legislation passed in 1999 and 2001, and ratified by the voters in the general election of 2002. The current situation is precisely what the hardship exception should encompass. When there are market changes that produce hardship through the tax system, the hardship exception is the already available and properly adapted remedy.

Let me offer an analogy. Your car is running very low on gasoline. You have a can containing more gasoline. The natural thing would be to pour the contents into your tank and continue your motoring. On the other hand, there are other things you could do. For example, you could abandon your car and buy a new car that happens to have more gas in the tank. Or, if you are mechanically competent, you could reengineer your vehicle to run on some fuel other than gasoline. You could do those alternatives, but what sensible person would do that? My suggestion is, to the extent that we have our current situation that involves hardship through the tax system, the already existing hardship exception is the natural way to respond to that in preference to more exotic alternatives. If the exception was not passed for a situation like we have today, why was it passed? If it isn't going to be used now, when will it be used? Relief legislation tailored to fit within the hardship exception would meet the constitutional demands.

That presents the second question: How does one craft legislation that would fit within the hardship exception? Whatever legislation this Body chooses to pass must be carefully constructed to produce the best chance to survive

challenge through litigation. We may hope that no one challenges the legislation, but in our highly litigious society, that is somewhat short of guaranteed. The old saying, "Hope for the best, but prepare for the worst," is a good slogan for legislation as well as life.

[Steve Johnson, continued.] In this context, "preparing for the worst" means crafting relief legislation that is as bulletproof as possible in advance. When the litigation comes, the burden of proof will be on those who challenge whatever this Body passes. The courts will operate deferentially, but they will not be a rubber stamp. Specifically, legislation based on the hardship exception would likely be upheld if it represents a reasonable interpretation of what "hardship" is. It would likely be overturned if the legislation merely appropriates the label of hardship as a pretext for passing more extensive relief. In other words, to be upheld, the relief legislation must be a reasonable attempt to measure and alleviate hardship. In that light, I suggest that relief legislation designed to fit within the hardship exception have five characteristics.

First, the hardship legislation must be limited to the owner-occupied, single-family residences. That, after all, is precisely in the language of Section 1(10). Legislation that goes beyond that cannot satisfy that provision. If this Body concludes that it is appropriate to extend relief to others other than owner-occupied, single-family residences, hardship exception could be part of the package to cover owner-occupied, single-family residences. The other parts of the package could not be justified under the hardship exception, because it goes beyond owner-occupied, single-family residences. It would therefore have to have an independent constitutional justification under some other theory of the uniformity clause.

Second, hardship legislation should contain a definition of hardship. The courts would be greatly aided by knowing what the Legislature believes hardship to be. In my view, hardship includes not just absolute inability to pay the tax, but also includes a lack of liquidity. If families could pay the tax by selling their homes or other important assets, by exhausting their savings, or paying interest by borrowing from a bank; that would constitute severe economic hardship in my estimation. Of course, it is your estimation that counts and not mine. The Legislature, and any legislation designed to come within the severe economic hardship exception, should define what it understands hardship to be. The courts would likely uphold a reasonable legislative definition of the hardship context.

Third, hardship legislation may use general, objective benchmarks as a way of measuring hardship. Conceptually, there are two ways that eligibility for relief

could be framed. One way would be completely individualized. It would look at each taxpayer and determine his or her income, assets, debts, et cetera, and decide on a person-by-person basis whether hardship exists. The other approach would be to set up general criteria that substitutes for individualized person by person analysis. In my view, the Nevada courts will not require individualized fact finding. Instead, they would likely accept the use of general, objective criteria or benchmarks. As early as the 1860s, the Nevada Supreme Court recognized the common-sense truth, "Absolute equality in assessments is known to be impossible."

[Steve Johnson, continued.] Similarly, subsequent Nevada cases have upheld against uniformity clause challenges arrangements that entailed reasonable approximations and some degree of deviation from theoretical perfection. Plainly, the first approach, individualized in every case determination, would be administratively infeasible. We are not set up to do that kind of thing. Courts are not blind to realities or feasibilities. Thus, they would likely uphold, as consistent with the hardship exception, legislation that uses some generalized measure for hardship. For example, in a cap approach, the approximation would be the percentage at which it kicks in.

Fourth, hardship legislation should be buttressed by a plausible base of factual support. If a cap approach is used, at what level should the cap be set? That is a critical question. There is a trade-off. The higher the number of the cap, the more likely it would be upheld by the courts as validly measuring severe economic hardship. By the way, the higher the cap, the more revenue it would preserve for governmental units. On the other side, the higher the cap, the less the relief. For example, a cap at a 20 percent level would almost certainly be upheld by the courts as being constitutional within the hardship exception and would surely protect a lot of revenue, but it would not do the relief job. A cap at such a level would be a nonstarter.

On the other hand, a cap set at 1 percent would provide a great deal of relief, but it would be unlikely to be upheld. It would stretch credulity to say that if the property value and the tax go up by 2 percent that would constitute severe hardship. Fixing the number is a critical fact. Where then is the point of balance? The number that gives the best mix or balance of constitutionality, relief, and revenue goals. It is essential that this number not be plucked out of the air. It is an empirical question. There must be a factual basis to support the number that is selected as the reasonable measurement of hardship. The courts will certainly allow leeway, they will allow latitude, but the hardship concept is not infinitely elastic.

Information that I have seen suggests that 6 percent might be defensible based upon historical averages, but the data would need to be developed. I would strongly urge you to have the data developed before the legislation passes. Passing particular legislation and trying to justify it later would seem too much to the courts like rationalization. It would likely command little weight or respect from the courts. A factual basis for the benchmark selected should be in place when the legislation is enacted.

[Steve Johnson, continued.] Fifth, hardship relief legislation should include legislative findings as part of the statute itself. These findings would include the definition of hardship that the Legislature selects. It would include the objective benchmarks that the Legislature believes reasonably measure hardship. If a cap were used, it would include a general statement of why the Legislature believes that the number selected represents or reasonably estimates hardship. These findings would be impressive to the courts. The courts in cases like this have repeatedly adverted to legislative findings and emphasized their significance. The presence of such findings would considerably enhance the likelihood that the Legislature would survive constitutional scrutiny.

In summary, I think that first, the hardship exception is the natural constitutional approach to deal with the current property tax problem. Second, I feel that a cap approach would be a reasonable way to implement relief via the hardship exception. Third, whatever form the hardship exception takes, there are ways to craft the legislation to maximize the chance that it will be upheld by the courts.

Chairman Perkins:
Finding the balance is the key to using the economic hardship approach. Even if we were to find that balance—and empirical evidence says that 6 percent is a severe economic hardship—do we not put ourselves in a challengeable situation if we kept an owner-occupied residence at 6 percent, even if the person happened to be wealthy?

Steve Johnson:
Undoubtedly, any generalized measurement will result in some people getting relief who are not in a hardship circumstance: Warren Buffett, Bill Gates. They do not need relief that will be provided by any legislation that the Body passes. There will be some imprecision. The critical question is, how much imprecision will the courts allow? I am confident, based on my review of the case law, that the court would not demand a 100 percent correlation. It would not say that the relief is constitutional only if it gets only needy people and no one else. Some degree of spillage is inevitable when you have a generalized approach. I

think there is support in the case law that the courts would accord latitude or leeway. The important question would be how much spillage or imprecision would exist? That is why the empirical support is so essential. In short, the mere existence of some instances like this should not doom the legislation.

Chairman Perkins:
If it is this Legislature's desire to provide property tax relief for those other than owner-occupied residences, how does the severe economic hardship clause come into play?

Steve Johnson:
It would not be available for those. If you wish to give relief to folks other than owner-occupied single-family residences, that could not be under the "severe economic hardship" test, because that is the precise language of Section 1(10). That does not mean that you could not give relief to other people. One of the virtues of the hardship exception is that it does not have to be the sole mechanism; it can be part of a package. You can choose to give relief to owner-occupied, single-family residences through this mechanism and relief to other kinds of property through some other mechanism. But the relief to the other kinds of mechanism would have to have an independent constitutional justification. It could not rely on the hardship exception. Along those lines, one thing that the Legislature might consider is a severability provision. If you do an act, you might want to provide an instruction to the courts. If they find one part of the package constitutionally defective, they should uphold the parts that are constitutionally satisfactory.

Chairman Perkins:
Using the percentage cap theory, if we were to enact a 6 percent cap across the board for owner-occupied residences and everybody else in the world, why would we need to use a severe economic hardship clause?

Steve Johnson:
If you did not use the severe economic hardship test, if it were across the board—not justified at all by the severe economic hardship test—then, if the courts concluded that the legislation did not pass constitutional muster, the whole thing would be struck down. Something that is within the "severe economic hardship" test stands even if it is not uniform. Something that is outside the economic hardship test has to be uniform. This is a tricky thing to achieve. All of the major proposals that have been described thus far have arguments that can make them constitutional. In the legal circumstance, we are dealing less with absolute black and white and more with shades of grey. There are arguments that can be made in favor of other approaches, including a

blanket approach. Whether those arguments would suffice is the big question. My own belief is that something based on severe economic hardship is much more likely to constitutionally work than something that is not based on severe economic hardship. If you leave severe economic hardship out entirely, you will risk invalidation of the entire legislation.

Chairman Perkins:
What, in your experience and expertise, could you tell us about the vulnerabilities of an across-the-board cap? This is without using severe economic hardship.

Steve Johnson:
Let me first give you the argument in favor of it and then I will give you the argument against it. Ultimately, the question depends on what approach the courts would use. The argument in favor of an across-the-board approach as being constitutional under the uniformity clause is the idea that it is one rule applied to everybody. As a formal proposition, facially, one rule applied to everybody is uniform. The problem is that one facial approach has disparate impact. That one approach will benefit some properties much more than it will benefit other properties; facially neutral but disparate impacts. The courts are called upon to confront the question of substance versus form in many contexts. Certainly it is a recurring theme in taxation. There are some courts that have gone with the facial approach, and if the Nevada Supreme Court were inclined to say, we are just looking at the face of the legislation and not the effect of the legislation, then an across-the-board approach might be upheld. But the general approach of the law is to look beyond form to the substance; to look at the actual economic impact. If the Nevada Supreme Court conformed to the general approach of the courts and the law of looking at substance, then the disparate impact would mean that the legislation is not constitutional under the uniformity clause.

Senator Tiffany:
Do you consider this as the long-term fix? We were looking at the cap or the freeze as the short-term solution, then an interim study, and then a constitutional change.

Steve Johnson:
I think this could be a long-term solution. If you do not use this as a long-term solution, one could do something temporarily and then go for the larger fix. The critical case in this regard is the Nevada Supreme Court's decision in *List v. Whisler*, [99 Nev.133, 660 P.2d 104 (1983)], in which the Court upheld against a uniformity clause challenge. There was a cyclical reappraisal scheme

that resulted in some disparity in the short term but ultimately led to uniformity. If the court could be convinced that a short-term fix is purely short term, and that there is a good long-term fix that is being proposed, I am not sure it would guarantee its being upheld, but it would help. My concern in that regard is that the court would be less inclined to buy long-term relief in the sky—if this were enacted in short term, the court would want to see what the long term is.

If you simultaneously enacted something in the short term and in the same legislation, you proposed a constitutional amendment to make the larger fix, that would be much more likely to survive constitutional scrutiny than a short-term fix with an "and we will get around to a long-term fix" of some undefined character. The problem is that many people can say we need to do something to the uniformity clause, but there are very sharp disagreements as to the specifics. The "devil is in the details." I am sure there would be considerable disagreement as to exactly how the *Constitution* should be changed. In short, a long-term fix that is defined in the legislation will have a much better chance than a long-term fix that says, "We will deal with it later."

Senator Tiffany:
In regard to a long-term fix that would be a constitutional change, let us say to the court that we would like to be able to apply the property tax laws by county. Do you think that would hold up as a long-term solution of a constitutional change?

Steve Johnson:
If you amend the *Constitution*, yes. The problem is the uniform clause in the *Constitution*.

Assemblyman Hettrick:
I would like you to confirm what I heard. Severe economic hardship is no less disparate in terms of the effect; the only difference is that because it is in the *Constitution*, it stands a better chance of surviving.

Steve Johnson:
Yes, sir.

Assemblyman Hettrick:
I would like to go back to the comment made about a constitutional amendment. We have proposed, because of the time frames that we are working under, to allow county governments to have some certainty in preparing county budgets that we would try to pass through a cap. Then we would like to allow ourselves some time within this session to do the

constitutional amendments that would follow that in order to address the balance of the issues. Do you think that those two things have to be tied together in the same bill, or would the court recognize that there was a reason to pass this so counties could move on if we addressed it in the same legislative session?

Steve Johnson:
I certainly think that something within the same session would work. The shorter the time period and the closer the two are tied the better. Again, we are dealing with shades of grey here and every complex court case—*List v. Whisler*—are amenable to different readings. One could not guarantee that this kind of approach would work constitutionally, but it would be much better than something that just held out the long-term possibility of some kind of constitutional relief to be effected by some future Legislature.

Assemblyman Hettrick:
Given the "uniform and equal" clause in the *Constitution* and a clause that allows us to apply severe economic hardship, if we apply "severe economic hardship" why wouldn't the "uniform and equal" clause apply to all the rest of the entities under the severe economic hardship provision?

Steve Johnson:
If I understand the question correctly, if you apply severe economic hardship, and the measure that is passed accords with what the court believes the parameters are, then you are okay as to the owner-occupied, single-family residences. This would not apply to other kinds of property that would need relief. To be okay for that, you would have to satisfy the uniformity clause; this may present some difficulties. Again, the question is about whether it is facial versus substantive impact that the court adverts to in deciding uniformity.

Senator Care:
If we wanted to, we could say that the following situation constitutes an economic hardship; while that may raise an eyebrow, I suppose we could do that. In any examination of legislative intent, wouldn't we have to go beyond that? Don't we have to make some demonstration that, by and large, people who fall into a certain category face economic hardship? There has to be some center of reality to the term "economic hardship."

Steve Johnson:
I agree completely. You remember the old Abraham Lincoln line: "Calling something a dog doesn't mean that it is a dog." One can attach a label and the courts will be deferential on how they would view the determination of the

Legislature, but they will not be a rubber stamp. If the label departs from any plausible notion of reality, it will be struck down as not being within the "severe economic hardship" clause. Thus, the finding starts the process, but the factual base is critical. There will be leeway and latitude given by the courts, but there needs to be some reasonable factual basis of support that whatever number, level, or approach is used corresponds to economic hardship in reality.

Senator Care:
I would be interested in this. I do not know if your research would give you any guide to this, but let us suppose the Legislature petitions for extraordinary writ with the Supreme Court. Then, the Supreme Court comes back and says they will strike this down as a violation with the state *Constitution*. What would the consequences be? If we have already enacted some cap or freeze and the counties did not collect as much revenue as they normally do, is there a threat that the court will order the counties to assess everybody for the difference of what they would have paid had the Legislature not acted?

Steve Johnson:
I have enormous respect for the courts. The judges are much smarter people than I am, and they often come up with ideas that never occurred to me. They will find things that are legal, which in my limited brain do not appear to be legal. One can offer probabilities as to what courts will do but certainly no guarantees. We have had an abundance of that in not too far distant history. My own suspicion would be that it would be unlikely for that to happen, but your guess is undoubtedly better than mine.

Senator Coffin:
I think what Senator Care raised on the last point was possibly that the municipalities, especially the counties, have responsibilities for the welfare of the people. This is in the *Constitution*. I suppose the "general welfare" means that the other things they have to provide would override a sense of constitutionality. Does that seem correct?

Steve Johnson:
Do you remember the *Guinn v. Legislature*, [119 Nev. 277, 71 P.3d 1269 (2003)] decision? One aspect of the conclusion was that a substantive requirement outranks a procedural requirement. The courts could say that the uniformity clause and its various modifications are procedural in contrast to substantive obligations imposed upon the localities; therefore, the substantive obligation would claim priority in the analysis. I would be surprised if the courts did that, but it is not inconceivable. I suspect that if the enacted legislation that provided so much relief seriously constrained revenue, there would be strong

appeals to this Body to provide State revenue to make up for the shortfall in revenue from the property tax. If there were adequate state revenues, then the substantive requirements and obligations would be initially satisfied. The concern is the property tax being available to the locals. They set it in some kind of fashion. In contrast, a state subvention may be here today and gone tomorrow and will not provide the same kind of relief.

In the scenario you presented, I think the first thing that would happen would be considerable appeal to this Body to pass a spending or subsidy measure in addition to the property relief measure. If that did happen, I think it would be unlikely that a judicial challenge would succeed.

Senator Coffin:
As we are required to make up the balance of the education fund if local taxes and fees fall short, we would have to pass some sort of emergency taxation measure for the state to be able to afford necessary services. Secondly, on the hardship issue raised by Senator Care, it seems like you would have to have a conclusive definition of what it means in the sense that you might even have to have means testing. We would have to determine an income or an asset test for a person applying for hardship.

Steve Johnson:
That would be one way to go, but I would certainly not recommend it. I do not think it would be desirable, and I also do not think it would be constitutionally necessary. Again, the stricter the correlation between relief and the concept of hardship, the more likely it is to be upheld, but I do think there is some leeway there. I do not think means testing is required. We do not have the sources to do that, the infrastructure to do that, and I think the courts acknowledge that kind of reality. The means test goes to one definition of hardship, and that is absolute inability to pay. It is also possible to define hardship in a more liberal but reasonable manner in terms of liquidity. If you were to take measures of average household savings and compare that to the tax increases, you can say that people could pay the increase in tax if they sold either their home or other assets. It would strike me as draconian to require them to do that; therefore, it would be reasonable under a severe economic hardship approach to look at liquidity as well. The liquidity measurement could be used with general benchmarks and objective indicators as opposed to a person-by-person, household-by-household individualized approach. There is reasonable support within case law for that.

Senator Coffin:
Under those standards, wouldn't you have to grant it to anyone who asked?

Steve Johnson:
No, the Legislature would define, with reference to some reasonable measure of absolute ability or liquidity, a level at which we could cut in. In my estimation, there would be no necessity for accepting anyone's protestation. You can create reasonable criteria. If the criteria that you create are reasonable, it will be upheld. If someone does not meet those criteria, he does not get relief.

Senator Coffin:
I understand that these are a lot of hypotheticals, but they do become realities. What if a person feels the greed? He and his neighbor have similar housing, but one is considerably more well off. One would be able to qualify for some hardship, whereas the other would not.

Steve Johnson
That is a genuine consideration because I always think that my neighbor is richer or poorer than I am or than he or she actually is. Perceptions are often as or more significant than reality. When one is dealing with something as complex as taxation, lines have to be drawn. It is impossible to escape line drawing. The Nevada courts, and other courts, have repeatedly said that legislative classifications will be upheld as long as they are reasonable. It comes down to the legal test of whether the classification is reasonable, where I feel there is significant leeway. Then there is the political question of whether it would be perceived to be adequate relief on the part of the citizens. I possess no particular expertise in terms of the level of political fallout that it might result.

Assemblywoman Giunchigliani:
We currently have an allowance for commercial property, businesses, to appeal, which is very similar to an economic hardship. Is that correct, in your mind?

Steve Johnson:
Yes. Businesses have often been successful with that. They can often muster the statistical support necessary to show that the assessment would be too high to them. They can do that by referencing the income of the business, which is not an option that is available to individuals.

Assemblywoman Giunchigliani:
Correct, but we could model something along those lines?

Steve Johnson:
Yes. If you chose, you could create some kind of appeal mechanism. Too liberal of an appeal mechanism would result in a big administrative burden. A lot of people might be making these appeals, and would the administrative structure be in place to handle it? Too liberal an approach could be administratively difficult, but it certainly would add a useful safety valve for political purposes. It would also be an additional indicator of the fairness of the approach, which would only help in subsequent litigation.

Assemblyman Mortenson:
You have been telling us that we are going to craft a bill that will be either rejected or not rejected by the Supreme Court depending on how the criterion is set. Is someone really suffering or not? It seems to me that with all of the criteria out there, the most obvious would be cost of living. So many people live on Social Security and their increases are in proportion to cost of living. It would seem that one logical place to start would be to set it at the cost of living or slightly higher; this is a demarcation line. If one little old lady gets a 30 percent increase in her taxes and her Social Security only goes up by 3 percent, there is an obvious hardship. It seems to me that if you set the cap at 3 percent, or somewhat higher, that would be a good spot for the Supreme Court to decide whether or not that is significant hardship.

Steve Johnson:
My response, in the context of legality, is you would also face the additional policy considerations of whether 3 percent would provide enough growth to protect necessary governmental services. Simply in terms of the legality of the question, CPI should certainly be part of the factual demonstration. I doubt that it should be the totality of the determination, though. Generally speaking, the housing prices have appreciated faster than the cost of living in recent decades. Despite that fact, there does not seem to be a remarkable increase in the foreclosure rate. I think the explanation for that is that folks are drawing out their savings. They now have lower savings than ever before, but the savings component should probably be part of it also. It might be wise to have multiple factors as part of the substantiation.

Assemblyman Mortenson:
This should be one?

Steve Johnson:
I would be surprised if it wouldn't be.

Assemblyman Hettrick:
Are you suggesting that to use severe economic hardship, people would have to go in and apply for this? We couldn't just do this across the board?

Steve Johnson:
No, I am not saying that. I suggested that there were two ways that one could try to determine who qualifies for relief. One way is the individualized approach, in which everyone goes in and determines the circumstances. I do not see that as being feasible, nor do I see it as being constitutionally necessary. Based on the cases I have read, I do not believe the courts will require the impossible. The Supreme Court has said as much in several instances. That is why I say that objective general benchmarks, designed as proxies or substitutes for individualized determination, should be upheld as long as they plausibly measure hardship.

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County:
I now know more about property taxes than I ever wanted to know. I think all of us share a desire to pass a bill this month that will provide permanent relief to our constituents who are suffering from potentially outrageous spikes in their tax bills. Over the last couple of months, we have heard of various plans, benefits of plans, downsides to plans, constitutional issues, and we have seen a number of proposals, all of which have downsides and benefits. Today, what I would like to propose is taking a little piece of each of them to see if it can be combined and passed out next week.

It is a three-step proposal. The first step is to take all owner-occupied homes that are valued at $500,000 or less and abate the tax liability for these homes. Basically, their tax bill increase could be no more than 4 percent per year. This is a permanent plan on the future. That is owner-occupied homes at $500,000 or less with an absolute abatement of any taxes over 4 percent. Nothing gets carried forward, like the assessed valuation plans. There is no permanent millstone around somebody's neck that can become payable as there are with some of the taxation approaches; it is an abatement for owner-occupied homes.

For everybody else who does not fit under the owner-occupied component or has a house of more than $500,000, there would be a simulated tax-rate reduction that would be based to the average growth of assessed valuation over a five- to ten-year period by county. Basically, you would look at the average rate of growth, take out any spikes, and average it. For any rural counties that have negative growth, you would have an additional provision that they would be held harmless so they could not go down; for example, you wouldn't factor

in a negative 26 as we have with one of our rural counties. That would be done by county and would be a simulated reduction in the tax rate for everyone else.

[Barbara Buckley, continued.] The third part of it would be a proposed constitutional amendment to allow the Legislature, in future sessions, to be able to make additional adjustments for "unique county characteristics" or "unique residential characteristics." The advantages to doing an approach like this is that it would be a long-term solution; no interim study or two-year plan is required. This would guarantee taxpayer relief. Property would continue to be assessed and valued in the same manner it is today; we do not change assessed valuation. New property is added to the roll at its full value. There would be no cap or other reduction. No recapture is needed. It is constitutional. We worked with Brenda [Erdoes, Legislative Counsel,] over the evening and early morning hours. Everyone gets some relief, but we target the most relief to those owner-occupied residences who have an averagely valued home. It was deemed to be one of the most defensibly constitutional propositions, and it balances the needs of taxpayers with the needs of schools and other important services.

The $500,000 amount for a house would be indexed in the future so that number stays real. For example, the average cost of a house that is now valued at $500,000 is $600,000 next year; that would be indexed. You would have to do this with the growth in Nevada. That is the proposal in a nutshell.

I did a little bit of research into the median home sales information for Clark County. In Clark County, the median price for new homes is $290,000; Summerlin is $424,000; Anthem is $366,000; Southern Highlands is $375,000. Keep in mind this is the median price; $500,000 seemed to capture the average cost of a house where most of our constituents live. It is not my proposal. It is a combination of taking a little piece of every proposal from all of you and others discussing it in the hallways.

Chairman Perkins:
For those residences and other properties above $500,000, how is the averaging done? By what district is the averaging done?

Assemblywoman Buckley:
The averaging would be done by county. For example, you have different residences in the county with different pockets of high growth. It would be averaged through the county so that everyone would receive the same average.

Assemblywoman Giunchigliani:
That would be somewhat like a proportional rate so that there would be some savings, but we wouldn't have to worry about some of the recapturing that got out there. It will eliminate that craziness. The "owner-occupied" is really the hardship discussion we just heard and is already allowed under the *Constitution*, but we have not utilized it to this point?

Assemblywoman Buckley:
That is correct. In my consultation with Ms. Erdoes, she believed that the reason why homes could be treated in this manner was because of the constitutional changes allowing for owner-occupied homes to be treated differently in the context of severe economic hardship. That is how it can be done. If you ask from this overall plan, which I think this Committee has done, who benefits the most, the answer is clear that the folks who benefit the most are those middle-class and lower-income constituents who own or live in their own homes and see huge spikes. That is who benefits from this plan.

Assemblywoman Giunchigliani:
Even though this is a long-term plan, we would still not dismiss the discussion the Committee has had on a constitutional amendment to make sure that we allow for some subclass situations to occur, pending voter approval; that is still part of the third prong of this approach?

Assemblywoman Buckley:
Yes. It is a permanent plan, but the reason to couple it with a request for a constitutional amendment is to give future legislators more flexibility to consider future changes. One of the things that has been so amazing is that every time you have a good idea, and you run it through every county in Nevada, it is no longer a good idea. There may be certain rural counties where you say that it shouldn't be homes under $500,000; that would not make sense for a certain county. It should be $300,000 to be more fair and equitable. Our hands would be tied, and this would allow us and future legislative sessions to consider the needs of every county in a more sensitive manner.

Assemblywoman Giunchigliani:
The professor mentioned that we need to have a severability clause. That would be only in the constitutional amendment. We would not need that in the property tax relief legislation?

Assemblywoman Buckley:
Yes. Severability clauses are sometimes advisable. Sometimes you might say you would like the entire thing tied together so that the court would be

apprehensive to take any of it down. Usually though, severability clauses are more advisable from a legal point of view.

Assemblywoman Giunchigliani:
I think you took the better parts of what we have been listening to: from the freeze, from the 6 percent, from the mixed version from last week. To me, this is simpler and still gets to the individuals who are suffering far more than anybody else, the middle class. I had been hoping we would come up with something for discussion purposes so we would be able to get past all of the complications. I would want to see any plan that we run through and make sure the hit on schools is not detrimental. That is still unknown, but I think conceptually, I would rather have staff working on some numbers this way than having 25 different plans that may be unconstitutional or do not work.

Chairman Perkins:
Can you explain to the Committee the difference between abatement and a cap?

Assemblywoman Buckley:
An abatement, which is allowed under the severe economic hardship constitutional amendment, basically means you make it go away. A 4 percent abatement in the long run is probably worth more than a 6 percent cap because the cap carries over. Whatever the amount is over the assessed valuation will go to the next year. If you have a home that has doubled, they have a guaranteed rate increase for the next 20 years in order to even it out. Under the severe economic hardship clause, we can abate. For the folks who are truly trying to help, there is nothing weighing them down. We are just forgiving that amount over the limit.

Assemblyman Hettrick:
I do not understand how we can take the severe economic hardship clause for single-family owner-occupied dwellings and divide the relief between the two. We are arbitrarily saying that someone with a home valued over $500,000 is economically more able to pay his/her taxes. What we have done here is struck an arbitrary figure at $500,000 and said anybody above that must sell their home—as Professor Johnson said—to pay the tax, but anybody under that does not. I do not see how that can possibly fall into being defensible under the *Constitution* under the "uniform and equal clause" that still exists, and a higher valuation of a home does not mean that the person has any greater ability to pay the taxes.

Assemblywoman Buckley:
I think I am going to defer to Brenda. I will take a stab at summarizing what she said to me after I asked that same question. With the severe economic hardship, you are more likely to assume that there is a severe economic hardship when someone owns a home under this amount and is suffering from a spike. Someone buys a house that they can afford at $180,000, and the next thing you know it is $350,000. You are more likely to assume a severe economic hardship when everybody gets some relief, and you are targeting owner-occupied household with the change in the *Constitution* allowing us to do so without violating "uniform and equal." I would like Brenda to weigh in, because I went to her and told her this needs to be solved by next week. I asked her what ideas we could use to help the most people. This is the advice I was given.

I would add one other thing: nothing precludes us from passing some plan, whether this or variations of this, and still continue to look at additional ways to expand "severe economic hardship." We may find that there is a pocket in this state, whose homes have gone up over $500,000, who still need some definition of economic hardship. We could still write such legislation, but for purposes of getting a package out that will arrive in time for this year's tax bill, for the overwhelming number of people in the state, we need to get something now.

Brenda Erdoes, Legislative Counsel:
As Professor Johnson has indicated, none of us are going to be able to tell you what will fly with the court in terms of severe economic hardship. This constitutional revision has never been construed. We are using our best judgment, and I would counsel you, as a Legislature, to make good, fact-finding decisions. If this is something you choose to do, you need to be able to defend it. We need to find out where severe economic hardship is, but I will tell you that the Legislature enjoys a very nice presumption that you are going to carefully consider the matter. Your decision as to what a severe economic hardship is will only be overturned if the court finds you have radically strayed from the constitutional provision. You do have that in your favor. The other question I would like to answer is that it is my opinion that "uniform and equal" does not apply to what you do with the severe economic hardship provision. In other words, whatever you decide severe economic hardship to be, you will be under federal due process requirements to treat people equally, but other than that, in the true sense of the *Nevada Constitution*, I believe it is an exception to "uniform and equal."

Assemblyman Hettrick:
I still have a concern in how we can pick a value that says below said number is an economic hardship where you get a certain amount of abatement. Above that number, you get less of an abatement with less justification as to why you are getting less when you could be impacted more than the person below the number. I do not see how that works, whether we are applying "uniform and equal" or not. It seems to me that we are citing an arbitrary number where anybody below that is entitled to more relief. I wonder how this works for renters. If we are going to go to a county average increase to anything beyond an owner-occupied home below $500,000, apartments and the like will be hit with a different tax structure. We are moving opposite of who needs the relief the most.

Assemblywoman Buckley:
Because of "uniform and equal," every approach we take has a downside. One of the things about having a twofold approach is that everybody gets some relief. If you go down to a simulated reduction in the tax rate, everybody will get the spikes taken out. This way, everybody's tax relief, including those who live in apartments, get a tax break. Everybody who owns a single-family home gets an additional break, because they can under severe economic hardship. That is why I feel it is also important to couple it with a constitutional amendment that will allow us to do more for apartments. We will have the ability to give the voters a bigger break should they choose to change "uniform and equal." I have a lot of apartments in my district and they are facing a detrimental situation. Apartment rents are going up and people are getting kicked out of apartments in my district, because the apartments are being converted to condominiums. They are being forced form their homes and forced to find new places. If the market is going to move to conversion, there is going to be a scarcity of rental housing, which will cause the rates to go up. I feel it is imperative that we pass a constitutional amendment to allow these folks to have some more relief. If we tried to pass a bill now that says people in apartments could get more relief, there would be a violation of "uniform and equal." I think we are fortunate that this severe economic hardship was passed, because it, at least, gives us the flexibility to help those who own homes in our districts. When the constitutional amendment passes, we can pass on more savings to people.

Assemblyman Hettrick:
I believe a 6 percent, across-the-board cap will accomplish the exact same thing. We offer relief to all people; we offer relief to renters immediately. We offer relief to everyone across the board for an uncontrollable rise in prices. We would also impact the fact that Marshall and Swift is going to come out with a

13 percent increase and immediately raise the value of improvements on all structures. We will see this bite go through the commercial community as well as it is going through the homeowners community. We are going to be dealing with this again. We are talking about doing it in two different ways.

I think we are setting ourselves up for a fall on the commercial side. I have problems with the constitutionality. I appreciate the idea and the attempt to get to something that could be done, but I must tell you I have problems with the constitutionality of this. I think an across-the-board cap is as equally defensible. Professor Johnson's comments about doing the findings strike me that this can be done either way. I do not care if you do severe economic hardship for a single-family, owner-occupied residence, but I think you have to do the rest of the community as well. You need to cover the renters and others equally. I feel we are assured all kinds of challenges with this proposition.

Assemblywoman Buckley:
I have not dug in one way or another. I just want to pass a bill by the end of this month. If we have however many people we need in each of the Houses, I will probably vote for anything that will give relief for my constituents. They are tired of us not doing anything. Having said that, it is constitutional and Legal has cleared it. In terms of straight across the board, it does have some appeal, but it does have some downside. The downside is that it will be carried on to the next year's tax bill. The constituent that lives around the corner from me and is retired will get more of a guaranteed increase with a 6 percent cap than they do with an abatement. This would be much better for that family on Social Security around the corner from me. We are also coupling it with a constitutional amendment to give everybody in the state more relief. You are balancing a plan that lowers single-family residences more, with a constitutional amendment to do more in two years. Coupling the growth every year will create a guaranteed tax increase. You will also be lowering it. It is 4 versus 6 percent, and you are making up the difference so that you do not harm schools. This is giving the single-family homeowner a bigger break. On the business side of it, there is the relief that if someone owns a business that is not profitable enough, they can go in for relief, whereas that single-family homeowner that lives around the corner from me cannot go in and ask for relief in the same way a business can. They are stuck. I agree that there are more favorable things in every plan, but overall, this addresses the people that need the help the most: single-family homeowners.

Senator Lee:
I understand exactly where you are coming from and where the Minority Leader of the Assembly is coming from. We all have children and we want our children

to move out, and if they move out, we want them to be able to afford to stay out. I understand a $500,000 house is going to incrementally move up in this plan. It is the "owner-occupied" thing that is getting to me a little bit; what if we just went across the board and said houses that do not value to $500,000. The person who rents a home and is living next door to someone who has the money and qualifications to buy a home would have the same lifestyle as the other without actually owning a home. The affordable component is what I am asking about.

Assemblywoman Buckley:
I agree with you and I support that, but according to our Legal Division, that cannot be done without the constitutional amendment. The severe economic hardship amendment only applied to owner-occupied residences. I would love to say "all residential," but we cannot unless the voters approve a change to "uniform and equal." I think when we go to them and make that case to them, they will vote for it.

Senator Care:
My question is for Ms. Erdoes. I am wondering if the professor and Ms. Erdoes are correct in assuming Section 1(10) takes you outside of the "uniform and equal" provision. Can the Legislature determine, as a matter of fact, the following circumstances constitute severe economic hardship, and then go on to say that other circumstances constitute a lesser degree of economic hardship, thus allowing the application of the idea here? You could have different degrees of abatement or assessment based on county population or whatever. We would not just say "severe economic hardship," but say we recognize various degrees of "severe economic hardship."

Brenda Erdoes:
I believe that the answer to your question is yes. I believe that there are no limitations to the manner in which the "severe economic hardship" clause is granted. The relief of abatement or exemption is not required to be granted the same way in all different situations. I believe the only thing that you would be under is the federal equal protection clause, which will make sure you treat people in the like situation the same. Other than that, I think you can make differentiations based on the facts.

Senator Coffin:
I am worried about the constitutionality of the proposal at $500,000, albeit supported by our legal counsel. The political side of this is that it could set rich against poor: those above $500,000 versus those below. It could create a real political dilemma for us. I realize that my district is theoretically not a high

income district. Perhaps median housing is considered way lower than west and southwest of our town. That brings to mind the litigious nature of our population. Those who would not fall into the hardship definition also have the ability to litigate considerably more than those who are under the bar. Wouldn't you be asking for a legal problem coming out of the political problem if it is divided in such a way? If the *Constitution* were on our side at this point, I feel that you could do that after the vote of the people. That may be one of those society-splitting elections, and it probably would be in three years or four years. Why not just abate for everybody to some degree, regardless of the value of their home? Then we could put the constitutional amendment to the people. Do it the other way.

Assemblywoman Buckley:
I believe there is a reason for setting some threshold like $500,000 for when a home would be eligible for the "severe economic hardship" clause. If someone owns a $2,000,000 home, it is more likely if their tax bill is still capped—because you would go under the second category where everybody gets a simulated tax-rate relief. If they are only paying the average amount of growth on their assessed valuation, they are still getting some relief. One would assume that someone with a $2,000,000 house is more able to pay the average rate of growth for assessed valuation times the rate than someone who is in a house under $500,000. The way it was described to me was that it is more likely someone has a "severe economic hardship." What we are doing is not making everybody apply because it would cause an administrative nightmare. You have to make some assumptions. The more you assume that a millionaire cannot pay his tax bill, the more constitutional problems you may potentially run into. Similarly, if we are still concerned as a Body that there may be a circumstance where somebody buys in an area where they cannot build anymore, such as Lake Tahoe, we could still craft a separate statute whereby anybody who lives in a house that is worth more than $500,000, who cannot afford the increase in his tax bill even despite the simulated tax cap, could still apply for a "severe economic hardship" abatement. We could do that, too; we are not limited. I think that we are out of time and need to pass something for most people in the district. Then, we still have a couple months to draft a procedure for the next tax year for anybody not caught in this net.

Senator McGinness:
You mentioned a couple of things on the spikes. Is there a definition of a "spike" as something out of the average? How far back would we go?

Assemblywoman Buckley:
This Committee could pick whatever it wanted to. You could pick the last five years. The average would take care of spikes. You could pick any years that you want. It was the concept that I was proposing and it could be defined in any way that you thought it made sense for the counties.

Senator McGinness:
I am just wondering if there is some way we can address some of the rural communities Senator Rhoads and I represent that haven't had any growth for the last five years. Would we be dooming them to no growth for a certain period of time?

Assemblywoman Buckley:
I think we could build in one of the things Legal suggested, because reviewing the charts of rural communities under these various plans has been quite eye-opening for me. I think we could build in a "hold harmless" on the averaging; any average in the negative direction could be built in a mechanism that ensures we are not hurting the rural communities.

Senator McGinness:
We need to make sure the hold harmless will not keep them at that average in perpetuity. Can you also go over the constitutional amendment for me?

Assemblywoman Buckley:
I envisioned it to be upon passage and approval of a constitutional amendment, the Legislature would be allowed to make differences in changing the tax rates and/or methods to allow for differences between counties and differences between classification. Doing so would allow us help all residential property regardless of whether it is owner-occupied. County and residential differences would be the key areas.

Senator McGinness
If you are giving the Legislature a blank check on property taxes each year, it would scare the people to death.

Assemblywoman Buckley:
It can and should be worded so that it gives the Legislature the opportunity to give further tax relief based on the county and residential nature of the property, not to increase but to give further relief.

Chairman Perkins:
You mentioned in your testimony about doing this by county. This Committee has discussed the opportunity to do it by various types of taxing districts, whether it be individual district, county, or other things. How does the averaging by county tend to work better than moving it down to the individual tax district?

Assemblywoman Buckley:
If you have any anomalies by county where the spike in assessed valuation in one part of the county is 30 percent, but the overall assessed valuation spike is 8 percent, there will be an automatic leveling on the areas with the high spikes to the lower common denominator. It provides more tax relief if you do it by county as opposed to taxing district.

Chairman Perkins:
If you have a pocket in a particular county, and let us use Washoe and Incline Village as an example, I doubt it would average out to 4 percent—which is what you suggested—for $500,000 and below. The pocket would probably be increasing at around 30, 40, or 50 percent. Averaging around the county would be around 7 percent instead. Is that what you envision?

Assemblywoman Buckley:
Yes. One last comment on the 4 percent. One of the reasons why we could choose 4 percent, as opposed to 6 percent across the board, is that we have had a lot of numbers thrown out and this seemed like a good compromise in terms of getting us closer to having a bill. If this Committee wants to pick a different number, that is fine with me. I am just trying to suggest things after my discussions with all of you and my examination of some of the ideas that have already been thrown out.

Chairman Perkins:
I think this Committee does see a significant urgency of getting something done quickly for our constituents, and this adds another tool for us to work with.

Those are the only proposals in terms of potential plans that were forwarded to my office. We do have some other folks who want to speak. Anne Loring is going to speak about the various impacts of the recent proposals. There may be others that come up and would like to share their interests with the Committee as well, but I would like to point out that we do not want this to be a "woe is me" approach. There will be tax relief soon, but I think we need to do it in the larger context of what those impacts are going to be on schools and other public services.

Anne Loring, Legislative Advocate, representing Washoe County School District: I do not have a proposal for you today. I do not actually have the evaluation of the various proposals that you saw on Tuesday, but I want to assure you that we are working on that. It is of as much interest to us as it is to you. I am here today to follow up on a brief discussion you had on Tuesday regarding rollover bonds.

Property tax affects capital budgets of the school districts. You are all aware of the fact that school districts, by a vote of the people, can issue bonds. That is what many of us use to finance school construction and renovation. We go out for a ballot question that asks whether the voters of Washoe County will authorize the school district to issue $178 million worth of bonds. We then have a tax rate that generates that revenue, and we sell the bonds to build schools or renovate schools. In 1997, you offered school districts a new approach, which to date three districts have done. That is what we call the rollover bond. Clark County School District did a ballot question for a rollover bond in 1998. Washoe County School District did one in 2002. The ballot question, in those cases, asks the voters of Washoe County if they will authorize the Washoe County School District to hold constant for 10 years the tax rate that we have been levying for debt service and sell bonds against that for a 10-year interval. If the voters approve it as they did in 2002, that will allow us to issue bonds without having to go out individually to the voters for each bond issuance. But we have to keep the tax rate constant, which is a little over $0.38 for Washoe County.

The only way a rollover bond works is if there is new revenue to bond against with the tax rate. That comes in either or both of two ways. Either a school district is retiring debt, which will hold the rate constant and issue new bonds against that rate, or a growth in assessed valuation. It could also be some of each. Washoe County, for instance, will not see a reduction in debt service because of a retiring of our bonds until 2009 at the earliest. We are relying, until 2009, entirely on growth and assessed valuation in Washoe County. The growth in assessed valuation is how we are able to sell bonds between now and 2009. That is why this issue is of such concern to us.

We are working hard with your staff and you to try and get the numbers to you so that all of us have some sense of what the effect will be. I just wanted to bring that to your attention because the rollover bonds are new and not being widely used. In Washoe County's case now, we are entirely dependent on rollover bonds for building or renovating the schools. We will be in touch with you next week with the numbers from our staff.

Michael Alastuey, Legislative Advocate, representing Clark County:
As evidenced by the presentation this afternoon by Majority Leader Buckley, it sometimes takes a blend and another way of looking at things to find a solution. Today, we were not sure what the demands would be. Certainly, Mr. Leavitt and I were prepared to testify in considerable detail on some of the issues and misgivings we had with the three BDRs that were most recently discussed in your last meeting. We are still prepared to do that; however, I would like to take a different path and address the option, or what we understand the option to be this afternoon.

First, the misgivings that we had, and I am sure Mr. Leavitt will embellish in far greater detail than I, had a great deal to do with treatment of new property coming on the roll. Until some legal advice had circulated from Legislative Counsel in the last few weeks, it was always presupposed that new property could find a way to come on the roll with something resembling full market value. That advice, within the context of the three previous BDRs and other proposals, appears to place a chill on that. That said, the numbers that had come from your staff and consultants are of considerable concern to us, not only from the standpoint of those entities we are associated with now, but from my own standpoint as a former budget person for the state and for schools. I saw some deep financial issues in terms of budget policy concerns at both the state and local level, particularly in the school system.

We are not entirely sure that this afternoon's proposal answers all of the concerns. My understanding is that the tiering effect is intended under the economic hardship approach. If that is applied, it will allow one of the tiers to come on the rolls at an unrestricted value. Secondly, it will provide for growth at the high end on a rolling average basis. We have not seen projections on this, but that might mitigate some of the concerns that we have as far as the financial policy of the state and local governments, and balancing the reliability of tax revenues. We are anxious to see the reprojections of those impacts.

The abatement issue and a number of the technical issues that will come to light after we see a draft of this will be of concern for everybody wanting something that works. For example, if an abatement is employed as part of the solution, we would look for language that says the abatement is an abatement of the bill, not an abatement on the assessed value. For reasons that Mr. Leavitt testified on before, the bond capacity, capital construction capacity, and the hundreds of references throughout the statutes to assess valuation would have to be tended to very carefully. The actual application of the rate simulation model had yet to be fleshed out in the previous BDRs, and certainly under the second tier in any BDR that comes out from this particular proposal.

Finally, we want to make sure that definitions are reconciled between market value, taxable value, and assessed value.

With that, I would conclude my remarks, but we are prepared to go in depth through the previous day's BDRs, but if that is not appropriate today, just please accept our offer that we are in the building all the time and are anxious to work on all of these proposals with you.

Chairman Perkins:
Mr. Alastuey, when you talk about going through the previous BDRs in depth, what does that mean?

Michael Alastuey:
The level of depth would be as prescribed by the Chairman. Hopefully, you would find our level of preparation satisfactory to any level of questioning you might want. I would say, without getting too much in depth, that the numbers that had circulated as far as the impact—for example, a zero comprehensive cap, 3 percent comprehensive cap, 6 percent comprehensive cap—all represented subnormal levels of growth in ad valorem revenue. Applying any of those subnormal levels of growth, particularly the 0 percent freeze, to the Distributive School Account makes it very easy to back into a $30 million hole in the school fund and a $150 million hole in the state General Fund and budget. The question is what sort of budget policy decisions you would be faced with if you were to accept, at the state level only, a 0 percent cap. You would be faced with the decision of how to fund the school fund. Where would that come from? Frankly, the only place it would come from would be from nonrecurring balances that are largely the result of windfall sales taxes, or optimistically forecast sales taxes over the next two years. Those views served last session and even in the early 1990s.

Whenever the state and its budget practice substitutes a less reliable revenue for a more reliable revenue, there is a fairly dire set of consequences in the subsequent session. I think enough of you were around in the early 1990s when that took place. There was a considerable budgetary whiplash to suffer. There were a number of other issues in there as well. Also, if, under any of those measures, tax rates were substituted for normal tax growth, that could place almost all of Nevada over the tax cap. For example, under a 0 percent growth scenario, you would be foregoing over 18 percent revenue growth over the two years in ad valorem revenue. If that were to be replaced at the state, school, and local levels, you would basically take a rate that averages on a weighted average of 310 statewide and bust the cap. Rate remedies to value suppression issues are really no remedy at all. There are many other features in

the BDRs that warranted comment if those were the only proposals on the table.

Chairman Perkins:
Would you be able to work with our staff? I think it will be important for the Committee to have a side-by-side comparison of what the impacts are. Not just in the terms of the dollars, and without creating some sort of a scare tactic, what are the realistic consequences of not having the normal growth curve that the local government has been budgeting on? What would be the impact on service delivery? Would you be prepared to address that on Tuesday?

Michael Alastuey:
Absolutely. We would be prepared to discuss that from the state standpoint, the school standpoint, and the standpoint of other local governments.

Marvin Leavitt, Legislative Advocate, representing Urban Consortium:
Like Mr. Alastuey had mentioned, I am going to make some comments on the plans and their technical aspects that may have some value. I think it might be of some value if I could make some comments regarding our feelings as to what we thought would be appropriate and important for you to do through this process. Like all of you, we have been concerned that this spike in property tax has put unreasonable burden on the taxpayers of the state. We have also been concerned that the reflection of those burdens, and their unhappiness with the system, could lead to a Question-13-type initiative coming over the next several years. Our fears with that give us concern over a redo of the property tax system, which could be a redo of the entire revenue system for both the state and local governments. We were concerned that whatever you did would be done to avoid the consequences that would eventually come upon us because of Question 13.

In looking at the various proposals over time, we saw proposals that dealt with total revenue of a government and taxes at the parcel level. Our feelings were that if you do not deal with taxes at the parcel level, which provides some guarantee to individual property and homeowners, we will be encouraging a [California] Proposition 13. I think if you dealt with total revenue, which essentially deals with rates, we could go away with exactly the same revenue for local governments. We could go by a parcel method. We would still leave a fairly substantial portion of the taxpayers unhappy because their individual taxes went up by more than what the percentage was that you decided to accept. Of the proposals you have recently discussed, we were most concerned with the freeze, which provides no additional revenue in property taxes. If you look at those numbers, many of them factor negative numbers

relating to revenue changes in property taxes between this and the next year. We feel that is detrimental.

[Marvin Leavitt, continued.] I would like to indicate that for almost all local governments, property tax is not our major revenue source. If you ask me if we are going to survive whatever you do with property taxes, my answer is, "of course we are." Are we going to go bankrupt? Of course we are not. Are we going to announce some severe service curtailment? We are not. At the same time, while our property tax is not a major source, it provides the foundation for all the other revenues we will see. It is the most stable and guaranteed of any of our sources. We look at sales tax, and even understanding how well it is doing right now, we know that it is cyclical. We go through periods where sales tax can actually reduce from what it was in the prior year, and I can remember many of these things happening throughout my career. Property tax is very important to us in its ability to respond to growth over time. Our feeling has been that we are not looking for a windfall of what has happened recently, but at the same time, we do not want to see our revenue growth diminish over what it would have been had none of this occurred. Obviously, neither you nor us nor anyone is responsible for what has occurred, but we recognize that you have to deal with it.

If I could, I would like to make a couple of comments about some of the things you talked about today. It is my feeling that "severe economic hardship" provisions of the *Constitution* provide you an excellent means and method by which you can go about doing something with this problem. I think you would provide additional constitutional basis, and we would heartily recommend that you take that approach. In regard to the proposal put forth by the Majority Leader of the Assembly, I can see that the 4 percent is less than we'd like, but at the same time, it is combined with other things. As we have talked about before, whatever percent goes into a bill, if it is 6 percent we will know our revenue will actually go up on existing property in the neighborhood of 4.8 percent in the most populous counties. Our revenues are somewhat less than whatever percentage you use for the bill. Say, for instance, we have a portion of the residences who would be at 4 percent, average another group who are at the average rate of growth, and business property continues according to the current method of billing. Overall, that would translate at close to 6 percent, which would include all kinds of property. We have not seen numbers, but we will see them over time, which will allow us to answer that question directly. This, while I am definitely not endorsing it, does seem like one of several reasonable alternatives you could develop to solve the problem we have.

As Mike has indicated, we will be happy to work with you in any way that we can. I think we can provide some technical assistance to be certain that the bills you eventually come up with will work from a technical basis. We have identified what we feel are technical problems with the ones you presented on Tuesday. If you want to proceed with those, we would be very happy to make our comments at a later date, but I do not see much purpose at this time.

Senator Lee:
Speaking to the bill today, Mr. Alastuey, I have two questions. First, you mentioned the new housing units, and you had some particular angst. Did I notice that in your opening statement?

Michael Alastuey:
The treatment of due property under the overarching discussing under which the three BDRs were circulating was of concern. Prior to taking the legal approach that new property could not be brought on roll at full value, but had to be brought on at some simulated value as if it had existed in its improved state the prior year, the effects of a 4 or 6 percent cap did not have the stringent effects that they did under the projections that were passed out a couple of days ago. For example, a 6 percent cap on existing property could actually produce a relatively high growth, something in the high single or low double digits, which is basically recent history for Clark County; however, imposing the comprehensive cap or the artificial cap on newly improved property brought that growth in ad valorem revenue way down. For example, a 0 percent cap was a true freeze. That is why I drew attention to the Distributive School Account. The Distributive School Account relies on something between $130 million, and $150 million in growth over the next few years to help you balance your state budget. That money will all have vanished and will cause a budgetary issue. You would have to make a policy decision on that. Yes, treatment of new property is much of concern. The option today, as we understand it, has some opportunity to address that problem without the draconian financial effects.

Senator Lee:
It was left up to the Committee, and maybe the Committee is reaching out to you now, but they were talking about the rolling average, the spikes, and the peaks and valleys—there is seven years of feast, seven years of famine—I was wondering what would happen if we moved on something where we did have an average that actually encompassed what could happen over a certain period of time. Do you have any thoughts on that or should we be looking at it?

Michael Alastuey:
That is something we would look at with you, and the Majority Leader had contemplated a multiyear rolling average for five or ten years. An alternative may exist; although I would not pretend to speak for the options that she would have you consider, but we could look at how volatile that would be in the long term. Not that there is an endorsement coming from us or the people we represent, but we would look at that to see what an appropriate level of stabilization is. I would say that it has generally been the case, looking at the way you balanced your budget over the past few years, that anywhere from the 7 to 10 percent state assessed valuation growth rate has been the norm. In Clark County, it has been on the high end of that. These last land sales and other real estate market factors are extraordinary, but other than that, it has only fluctuated between a couple of percentage points.

Senator Lee:
I was just looking for a period of time. I guess that will come back to us.

Assemblyman Hettrick:
You offered to do a side-by-side comparison for us, and I think that would be very helpful. I would like to make a couple comments and suggestions on that comparison. I do not think we need to go through the technical at this moment, but I think it would be helpful to have the technical in the side-by-side. This way we would be able to see what you thought needed to be fixed if we were to pick any of the four options that are currently on the table. Also, if it is possible to bring property at value in the plan proposed today, I do not see why it is not possible to bring property at value in the other plans. I hear from your discussion that would be the major concern for Clark County and the Clark County municipalities or taxing entities in regards to the other plans. The lack of being able to bring things on at value had a major impact in the growth. I do not have a problem with that. I suggested, in my one conversation during this meeting, that it should be one of the constitutional amendments. We would be able to bring property on at value. It strikes me that we should be able to do that for another plan if we can do it for some other plan.

You then discussed the impacts and you were concerned with the various impacts of the plans. For us to fairly judge what the impacts are, we do need to see, in the context of the current projections, what the revenues are from the other sources. To tell us that one plan has a $130 million impact and another has a $40 million impact, the reality is that the other sources may have enough revenue to make up one of those impacts. Those would be my three requests if that is possible and they are willing to do it: include the technical, give us an indication of the other revenue so we can see if we can cover the hole created

by the cap, and if we can do full value for one, we should be able to do it for all.

Michael Alastuey:
Having only briefly heard the conversation this afternoon, I would not pretend to make representations as to the ability of this most recent proposal to bring property on at value. I did not hear the same description of treatment of that property in the same context. If I misheard, I will certainly make a public record of that. I do not pretend to make representations for the Majority Leader, anybody who might support the plan, or any legal counsel you may refer, including your excellent in-house counsel.

Chairman Perkins:
Brenda, can you explain to us why the most recent plan was able to bring property on it at that level and why the others did not?

Brenda Erdoes, Legislative Counsel:
Like the BDR from the Senate Taxation that was put forward on Tuesday, this plan works on a reduction of the rates and not the assessed value. That is the difference that we have made the distinction upon. In other words, this plan proposes to proportionally reduce the rates applied to the assessed valuation. There are obviously two parts to getting your tax bill: it is the tax rate times your assessed valuation. In the bills that conform to the "uniform and equal" clause, we believe you have to bring new property on at the capped or frozen amount, and all of them are based on assessed valuation. This plan, as I understand it, is based on a proportional reduction of tax rates. The second part is the "severe economic hardship," and the "severe economic hardship" was not subject to "uniform and equal." That is why it doesn't have to be applied to new property as it is applied to existing property.

Senator Coffin:
I do not have a question, I have more of a procedural issue. I have a bill draft that was requested about five weeks ago and is on the verge of being completed. It does not affect any one of these bill drafts, but it would simply allow a tax deferral that I think could fit with any of these bill drafts. I hope, when it is done, the people doing the evaluating can look at that at the same time.

Carole Vilardo, President, Nevada Taxpayers Association:
I have not looked at the proposals relative to numbers. I have looked at them in more of a taxpayer perspective. I would just like to point out a couple of things that I saw. One of the things that became obvious in looking at the proposals

was that there was some discussion of setting aside money from the surplus to hold harmless counties that might otherwise have had a problem. In lieu of that, what happened in the bills that were presented on Tuesday was that the local elected officials were given the right to increase the tax rate. This could work if they all had room to reduce the tax rate, but they do not. You have between 15 and 20 entities from towns, to cities, to entire counties that are sitting at either $3.62, $3.63, $3.64, or $3.66. Without you raising those rates and that cap more than even the $0.15 that was discussed, there is no ability to cover any reduction. You would have a real economic hardship in some of these entities. The other problem that I see, and it is a minor procedural one, is that there would be a provision if you were to zero out, or see a CPI increase given as low as it is, you will conceivably have properties that have absolutely no value. Even freezing last year at zero is going to be an increase for them. The statutory provision says you can appeal this, but I think you, depending on what you are ultimately considering, could create a rebuttable presumption that would allow the assessor, under the circumstances, to reduce that value without having the taxpayer go through the process of an equalization hearing in front of the county boards. I think you can put the safeguards in so that they cannot arbitrarily do it, but you have a number of technical items like this that need to be considered on the three bills from Tuesday.

If you did not have to capture the new values in the other three properties, life would be more simple for the government and definitely the taxpayer. You would have more flexibility. Because of this, whatever you do is going to move you in a direction for a loss of revenue issue of going to the "severe economic hardship." I think it is doing that again because you do not have the flexibility to move new property coming on the rolls outside of anything you would do for existing properties.

Chairman Perkins:
If Russ, or Brenda, or a combination thereof have anything to say about the proposal laid out for us today, please feel free. Do you recall if the abatement was on taxable value?

Brenda Erdoes:
You are talking about the abatement regarding the "severe economic hardship."

Chairman Perkins:
Correct.

Brenda Erdoes:
I believe it is on tax liability, if your tax liability is more than 4 percent of your tax liability for the past year of the same property.

William Freed, Private Citizen:
I am a little bit in awe that I am reading this, because I had not heard the word "deferred" until Senator Coffin mentioned it. I have seen nothing in the press about deferred taxes, so I am going to read an email (Exhibit D) that I sent to Senator Beers this morning. I briefly reviewed this with Senator Titus just before this meeting. I will just read this to make sure I do not miss anything [Read from Exhibit D]:

> I have not given much thought to the property tax issue, as I was certain this had been considered and rejected.
>
> Could we create an account called "due on sale/deferred property tax" which attaches to any parcel suffering an extreme run-up of value?
>
> Any tax due that is in excess of a percentage gain set by the Legislature, be it 1 percent, 10 percent or whatever, is held as a lien until sale. The increase in property value supports the eventual payment of tax in a less painful manner. This does not seem to violate the equal protection/treatment aspect of the law.
>
> If, as we know is possible, value declines, the due-on-sale account is reduced to reflect the reduced market value at time of sale.
>
> If this limit would produce a revenue hardship on counties and schools, bonds backed by the aggregate due-on-sale accounts could provide interim funding.
>
> I am meeting with Senator Titus at 1:00 pm today regarding the "Master Tax Plan" interim study. I will ask this question of her. I hope no one laughs because this has been considered and rejected for some obvious reason that does not occur to me.

In all of the press and write-ups, no one has mentioned a deferred tax account until I heard Senator Coffin a few moments ago. I offer this for your consideration.

Senator Coffin:
That is exactly what I requested on February 11, 2005, but in addition to that, we are a little hung up on the language. We have to find out what bond counsel think about the prospect of local government using the asset, which is the accrued liability of taxes due that have been deferred until sale, and whether or not they may be used for operating expense and/or they can use them as an asset for bonding so the local government does not lose the potential use of the funds that are there. This is still being decided, and that is why the bill isn't in front of us today.

William Freed:
Obviously, we need more publicity because I have searched the popular press and have yet to see this. Perhaps I missed it or have not been diligent enough. I do not think this particular idea has seen a great deal of play, and I am suggesting that it should.

Chairman Perkins:
Is there anyone in Las Vegas who would like to come forward and address the Committee? [Meeting adjourned at 3:56 p.m.].

RESPECTFULLY SUBMITTED:

_____
Gregory Sharry
Committee Attaché

APPROVED BY:

_____
Assemblyman Richard Perkins, Chairman

DATE: _____

_____
Senator Mike McGinness, Chairman

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Growth and Infrastructure/Senate Committee on Taxation

Date: March 17, 2005 **Time of Meeting: 1:30 p.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B	Steve Johnson	Personal Overview
	C	Steve Johnson	Constitutionality of Property Tax relief
	D	William Freed	Email with Senator Beers