

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Seventy-Third Session
April 28, 2005**

The Committee on Growth and Infrastructure was called to order at 1:40 p.m., on Thursday, April 28, 2005. Chairman Richard Perkins presided in Room 4100 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4406 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:

Mr. Richard Perkins, Chairman
Ms. Chris Giunchigliani, Vice Chairwoman
Ms. Francis Allen
Mr. Tom Grady
Mrs. Marilyn Kirkpatrick
Ms. Sheila Leslie
Mr. Harry Mortenson
Mr. David Parks
Ms. Peggy Pierce
Mr. Scott Sibley

COMMITTEE MEMBERS ABSENT:

Mr. Lynn Hettrick (excused)
Mr. Bernie Anderson (excused)
Ms. Valerie Weber (excused)

GUEST LEGISLATORS PRESENT:

Senator Mike McGinness, Central Nevada Senatorial District

STAFF MEMBERS PRESENT:

Susan Scholley, Committee Policy Analyst
Russell Guindon, Deputy Fiscal Analyst

Linda Utt, Committee Manager
James Cassimus, Committee Attaché

OTHERS PRESENT:

Kim Huys, Acting Chief Deputy Controller, Office of the State Controller
Al Kramer, City Treasurer, Carson City, Nevada
Teresa Moiola, Assistant Controller, Office of the State Controller
Bob Milz, Chairman, Board of Commissioners, Lyon County, Nevada
Kelly Kite, Chairman, County Commission, Douglas County, Nevada
Mary Walker, Legislative Advocate, representing Carson City,
Douglas County, and Lyon County, Nevada
Linda Ritter, City Manager, Carson City, Nevada
John Slaughter, Director, Management Services, Washoe County, Nevada
Andrew List, Executive Director, Nevada Association of Counties
Mary-Margaret Madden, Deputy District Attorney, Civil Division,
Carson City District Attorney's Office, Carson City, Nevada

Chairman Perkins:

[Meeting called to order. Roll called.] We have four bills on our agenda today.
The first is Senate Bill 45. Do we have a proponent of S.B. 45?

Senate Bill 45: Eliminates requirement that State Controller receive copy of
written protest filed by property owner concerning property taxes.
(BDR 32-166)

Kim Huys, Acting Chief Deputy Controller, Office of the State Controller:

[Read from prepared statement ([Exhibit B](#)).] I am here to request the removal of
a provision in *Nevada Revised Statutes* (NRS) 361.420, Section 1, that requires
the tax receiver to forward copies of property tax protest letters to the State
Controller. This is cleanup legislation to avoid unnecessary duplication of effort.

In 2003, the State Controller's Office received 3,997 letters. In 2004, we
received 2,273. In 2005, to date, we have received 340 letters. Our office
simply places these letters in storage for the period required by the Retention
Schedule and purges them upon completion of the required time period.

The legislative history is unknown, and we are unaware of any purpose for
receiving these letters. In the event a refund is approved, the State Controller's
Office does not process the refund. It is handled by the local authority. We do
not reference the original protest.

[Kim Huys, continued.] Since existing processes are in places for protesting property tax rates, there is no significant reason for the State Controller's Office to receive a copy of the protest letter. It creates an unnecessary requirement for local governments to support the cost of copying and mailing these letters to the State Controller, in addition to the obligation on our Office to archive the letters for a prescribed period.

Since protest letters are handled through local and state boards of equalization, the State Controller's Office has no role in solving these disputes. It is for these reasons we respectfully ask the Legislature to remove this statutory obligation.

Chairman Perkins:

How many years of archives of these letters do you have?

Kim Huys:

We have them going back to when this law was enacted. Early on, there were many years when we received no copies of protest letters. The numbers are escalating because of different initiatives in different sections of the state, such as Incline Village. That was the preponderance of the letters we received in 2003. For a long time, we were able to keep them in a file in a filing cabinet. Now, we keep them in boxes in the basement.

Al Kramer, City Treasurer, Carson City, Nevada:

As one responsible for filing these with the State Attorney General and the State Controller, it would be welcome to send one less. It is even questionable as to why we send one to the Attorney General, but this is a step in the right direction.

Assemblyman Grady:

What about the Attorney General?

Chairman Perkins:

Should we amend the bill to not send them to the Attorney General?

Al Kramer:

That would be my preference, but that is something you would want to hear from the Attorney General on.

Chairman Perkins:

Does the Controller's Office have an opinion on that? If there is a reason for it, then that is fine. If not, there is no sense in doing this two times if we can do it all at once.

Teresa Moiola, Assistant Controller, Office of the State Controller:

We did have a conversation with the State Attorney General's Office, and they do want to continue receiving them. One of their deputy attorneys general who represents the State Board of Equalization gets those letters. They use them for a purpose, whereas our Office does not.

Chairman Perkins:

If there are 2,273 in 2004 and almost 4,000 in 2003, how many of those actually end up in the hands of the Board of Equalization?

Teresa Moiola:

I am not sure. Mr. Kramer could tell us if they send them to the Board as well. I know the ones that go to the Attorney General's Office go to the counsel who represents that Board.

Chairman Perkins:

If 20 out of 4,000 go onto the Board of Equalization, maybe we are saving a lot of people a lot of time, postage, and effort just waiting to see which ones go to the Board of Equalization—then get the letters to them.

Al Kramer:

That would be my position also. The Board of Equalization or the Nevada Tax Commission are the ones these papers are formally filed with for the protest to be heard. That is where the Attorney General would get the information from.

Chairman Perkins:

I will have our staff contact the Attorney General's Office and find out if there is a real need for them to have these. If not, then we can do away with all this. Are there any other questions from the Committee? Is there anyone else wishing to testify either for or against S.B. 45? Seeing none, we will close the hearing on Senate Bill 45. We will open the hearing on S.B. 170.

Senate Bill 170 (1st Reprint): Authorizes certain smaller counties to impose additional local sales and use tax under certain circumstances. (BDR 32-853)

Bob Milz, Chairman, Board of County Commissioners, Lyon County, Nevada:

We are here in support of S.B. 170, a one-quarter cent sales tax voter approval for libraries, parks, and senior centers. S.B. 170 authorizes counties whose population is less than 100,000 to enact, with voter approval, an ordinance to impose a local sales tax at the rate of not more than one-quarter of one percent

to operate, maintain, and construct libraries, parks, recreational programs and facilities, and services for senior citizens, in any combination of those purposes.

[Bob Milz, continued.] S.B. 170 would provide rural local governments greater self-sufficiency and less reliance on funding from the more urban communities. S.B. 170 gives rural counties the critical tools they need to help themselves and achieve this greater self-sufficiency. Many rural counties have sales tax rates that are 6.5 percent to 7.0 percent, versus the 7.375 percent to 7.5 percent imposed in Washoe and Clark Counties.

S.B. 170 would be a tool to help close the gap and provide for greater rural self-sufficiency. We request your support of S.B. 170 to allow rural local governments the ability to go to their voters for a one-quarter cent sales tax for libraries, parks, and senior centers, which are so vitally needed in our communities.

One of the problems we have is that state law says any county that has a population of 100,000 or more can tax its citizens for maintenance, but they do not do that for counties under 100,000. We don't have the ability at this time to maintain the structures we have already, let alone build any new ones. This will help us both with the infrastructure and maintenance needs.

Assemblywoman Giunchigliani:

Can you tell me why schools were not in here?

Bob Milz:

Counties don't have anything to say about school districts. They are a separate entity. We don't control the schools.

Assemblywoman Giunchigliani:

I understand that. But years ago, we allowed for impact fee and additional sales tax for the construction of schools. Has that ever been levied, to your knowledge, in your area?

Bob Milz:

No, it has not. That is up to the schools to come forward. I am representing Lyon County only.

Assemblywoman Giunchigliani:

Correct, they can recommend, but the county has to approve of it. Have they ever asked the county?

Bob Milz:

Ask for the sales tax? No.

Assemblywoman Giunchigliani:

Did they ask for the impact fee?

Bob Milz:

They are in the process of doing so.

Assemblywoman Giunchigliani:

On the issue of parks, for clarification, is that the accurate definition for a park? Years ago, we had golf courses defined as parks. I wanted to be sure this didn't open up that door.

Assemblyman Kirkpatrick:

On the recreational programs, who determines what type of programs that this will fall under, and how would the question be written? It seems that, when you talk about different recreational programs, it needs to be determined. Would it be a specific program? Would it be an ongoing basis? How would you define that when it was on the ballot?

Kelly Kite, Chairman, Board of Commissioners, Douglas County, Nevada:

The way this usually happens for parks, recreation, and those types of things, we have a parks and recreation commission. They are brought forward and discussed at the commission level. Then, those are brought forward as an advisory question to the Board of Commissioners. At that point, we follow State law and have a proponent and opponent write the ballot arguments. The County Clerk writes the ballot question. Those are all discussed at public meetings to determine what the ballot questions would be and define what those were going to be used for. It is a very public process on determining where the money would be used. Since it is voter approval, that process would be used.

Assemblywoman Kirkpatrick:

In Section 4, it says "park"; in Section 5, it says "recreation facility"; then, in Section 6, it says "recreation program." When you have a park, you have the facility that comes with it. The programs are the reasons you need the facility and the park. Would you tie this all into one question? Why are we segregating it? I wouldn't want you to go three different times with three different ballot questions to the general public, when you need all three. They should go together.

Kelly Kite:

We are trying to get away from the "one size fits all."

[Kelly Kite, continued.] We had a voter initiative in Douglas County called PALS [parks, airport, libraries, and senior center]. It passed for a quarter-cent raise. We can build, but we can't operate. It was very closely defined.

Building is the cheapest part. Operating and maintaining it for the next 30 years is the big expense. When they are narrowly defined, you can build one but you can't operate because you don't have the funds. That is why we are asking for the ability to raise it one-quarter cent. If we don't need the one-quarter, we can go one-eighth. It gives us more opportunity to operate what we have, more so than building something else.

Assemblywoman Kirkpatrick:

Section 10 does say "maintain." I am trying to understand why we need to do that.

Mary Walker, Legislative Advocate, representing Carson City, Douglas County, and Lyon County, Nevada:

We crafted this to be for 15 counties. Some counties will need it more for programs than they are for construction. Other counties may need it more for construction. This is to provide flexibility for the elected officials to work with their local constituents to design what they need, whether it's for programs or constructions. It is up to those counties to make that decision.

Many times when these voter approvals come forward for things like parks and recreation programs, you use the park and recreation commission. Those are typically citizens and not elected officials. They are the users of the parks and recreational facilities. It is a grassroots effort.

It is the same thing with senior centers. These are the citizens coming forward saying they want it. That is what you need in order to have a successful passage. That is what we looked at here, because you can have some true grassroot effort in marketing this.

Chairman Perkins:

Thank you for that clarification.

Linda Ritter, City Manager, Carson City, Nevada:

I am here representing Mayor Marv Teixeira and Commissioner Pete Livermore of the Parks and Recreation Commission. They voted unanimously in support of this bill. It gives us another financing tool, should members of the public come to us and request that we expand our parks, recreation, and senior programs. It does give us a great tool for the future to address the needs of our citizens.

Chairman Perkins:

This still requires you to go to the voters for their approval for the additional funding?

Linda Ritter:

Yes, absolutely.

Assemblywoman Giunchigliani:

The tax would be levied not to exceed 30 years; is that correct? You said this would apply to 15 counties. Have they taken positions that they would utilize this?

Mary Walker:

We have several counties in the Nevada Association of Counties (NACO) who will be speaking in support or have given us letters of support: Elko County, the City of Elko, and some of the smaller jurisdictions, such as Churchill County and Nye County. There are several of them that are very interested in this, as well as NACO.

Assemblywoman Giunchigliani:

I don't see when the ballot question would actually go. What would be the intent? Is it mandatory or advisory?

Mary Walker:

This is enabling only. If a county decided that they did want to go, then they have this tool to go to their voters. Currently, to enact any kind of sales tax, we would need permission, not only from the Legislature, but also from the public. S.B. 170 gives us the authority to go to our citizens to ask them. Some counties may want it at this point; some may want it a few years from now. It is up to them. It does give them a road map if they are strapped for financing and need more financing. This is a way for them to gather that financing locally, rather than look at statewide efforts.

Assemblywoman Giunchigliani:

We need to look at the definition of the term "services for senior citizens." It is pretty broad. I understand you want some maintenance money. We usually don't do it this way.

I am looking at Section 10. It says you may issue bonds and securities after enactment of an ordinance. What would the ordinance say?

Mary Walker:

There is a standard ordinance from the Department of Taxation that local governments utilize to enact it. That ordinance would basically allow the Department of Taxation to go to the businesses and say that an increase in the sales tax has been approved and they have to put it. It also would be for stating what the use would be.

We would be very happy to work with you, Ms. Giunchigliani, on some of this language changes in here, if you feel that some of them are too broad. We tried to do that so the local communities could make that decision on their own.

Assemblywoman Giunchigliani:

I understand that, but people are already paying property taxes for certain programs and certain ongoing operations. If we were to do this, it would be a revenue bond and you would build your buildings, et cetera. The collection of your property tax would pay for your ongoing.

It is unusual to do it in this manner. I am trying to understand the flow of this. It would be a mandatory vote of the public to enact it. The vote of the people would be at the general election. Then, you do the ordinance to collect.

Assemblyman Grady:

Following Ms. Giunchigliani's comments, if we put in "senior citizen centers," then it doesn't look like it's ongoing for "senior services." It is meant to help and maintain the senior citizen centers that are in most of the rural counties.

Assemblywoman Giunchigliani:

That would be helpful. Section 2 says "facility," then, in Section 8, it talks about "services," which is extremely broad. We need to tighten up some of that language.

Chairman Perkins:

In some of these rural counties, there is no property tax base. Their operation money is limited. This becomes another tool of operations for them.

Mary Walker:

That is correct, Mr. Chairman.

Senator Mike McGinness, Central Nevada Senatorial District:

I facilitated this bill draft mainly because of what you just said, Mr. Speaker. Many times, rural counties are at the cap and have no way to go to support a park or senior center. Ultimately, what sold me on the draft was that there is a vote of the people. That is the ultimate authority. I urge your consideration.

Chairman Perkins:

Anyone wishing to testify against S.B. 170? Seeing none, we will close the hearing on Senate Bill 170 (1st Reprint) and open the hearing on Senate Bill 180.

Senate Bill 180: Increases maximum amount of compensation board of county commissioners is authorized to provide for certain members of county board of equalization. (BDR 32-453)

John Slaughter, Director, Management Services, Washoe County, Nevada:

I have with me Bob McGowan, Washoe County Assessor, who can answer any questions. S.B. 180 would allow the county commissioners to establish the compensation for the county board of equalization at a rate not to exceed \$125.00 per day. The current rate is \$40.00 per day, which was set in 1981.

The current interest in property tax has translated into a larger workload for our board of equalization. They have gone from meeting 8 days a month several years ago to 20 days just in the month of February 2005. This bill would allow, as an enabling measure, the county commissioners to set that rate not to exceed \$125.00 per day.

Chairman Perkins:

How many members are on the county board of equalization?

John Slaughter:

There are five members currently.

Chairman Perkins:

How did you arrive at the \$125.00 per day?

Assemblywoman Giunchigliani:

We looked at what the State Board of Equalization paid their members. That is \$80.00 per day, set in 1989. We looked at inflation factors, which, applied to the \$80.00, brings us to \$125.00.

Assemblyman Grady:

The small counties under 15,000 still have three members, do they not? [Mr. Slaughter answered in the affirmative.]

Chairman Perkins:

Are there any further comments or observations from the Committee? Is there anyone else wishing to testify in favor of S.B. 180? Is there anyone wishing to testify in opposition to S.B. 180? Seeing none, we will close the hearing on Senate Bill 180 and open the public hearing on Senate Bill 186 (1st Reprint).

Senate Bill 186 (1st Reprint): Makes various changes concerning appeals to State Board of Equalization. (BDR 32-585)

Andrew List, Executive Director, Nevada Association of Counties (NACO):

I am here urging your support for S.B. 186. This bill has its genesis in a legal case that came out of Mineral County. The question is whether the State Board of Equalization is the one that, indeed, makes the final determination as to what a tax law says, does, and what the intent is of that particular law.

The State Board of Equalization made a determination in Mineral County. The counsel for Mineral County believed there was a legal error in their reasoning, an issue of law that needed to be determined. The case was appealed to district court in Carson City about two-and-a-half years ago. The First Judicial District Court, in a short decision, said that the counties are creatures of state government and have only those powers that are specifically delegated to them, no more and no less. *Nevada Revised Statutes* (NRS) 361 gives the taxpayer the right to appeal. That right to appeal was given to the State Board of Equalization, not to the county.

The county had appealed under the Administrative Procedures Act, believing that they have the power under that Act to appeal that decision. It is currently the topic of a Nevada State Supreme Court decision, the outcome of which has not yet been determined.

This bill gives the county assessor the right to appeal a State Board of Equalization decision on legal issues only. That is a very important distinction. County assessors do not want the right to appeal State Board of Equalization decisions on valuation issues. Simply, it would give them a third bite at the apple. The assessor makes the first decision regarding valuation. The taxpayer can appeal that to the county board of equalization. That, in turn, can be appealed to the State Board of Equalization. There are three determinations of valuation, and the county assessor should not have the right to unlimited appeals to district court, causing the taxpayer more angst and anguish over valuation of the property.

[Andrew List, continued.] When legal issues arise, we do not believe the State Board of Equalization should be the final decision-maker. The proper place to decide legal issues is with a judge and attorneys in a court of law. This bill gives the assessor the right, on legal issues, to appeal to district court.

On my left is Mary-Margaret Madden. She is the District Attorney in the Civil Division in Carson City. She will discuss the same issue in regard to Carson City.

Chairman Perkins:

Is there any anticipation as to when the Supreme Court might take up the issue? If it happens before the end of session, do we even need the bill?

Andrew List:

I received notice last week that oral arguments in this Supreme Court case, regarding Mineral County, in which Carson City has filed an amicus brief on the issue, will be at the end of June. A couple months after that, we will get the decision.

I will discuss with the counselor on the Mineral County case whether or not they want to proceed with this bill. I discussed with Susan Scholley [Committee Policy Analyst] yesterday whether or not to continue with this hearing. We decided to go ahead with the hearing. This way, we won't have to schedule it later on in the session. We will let you know how we want to proceed.

Chairman Perkins:

Can you describe what legal issues would be instead of valuation issues that might be place before a body of appeals?

Andrew List:

I would be happy to discuss legal issues in the Mineral County case and leave Ms. Madden to discuss legal issues in the Carson City case. In the Mineral County case, it had to do with possessor use tax and whether or not the full cash value cap applies. Your taxable value cannot exceed the full cash value that is in NRS 361. It was a legal issue. The statutes seemed, on their face, to be unrelated, not connected. A thin legal argument could be made that they are. That was the legal issue. We wanted a court of law to determine whether or not that is indeed applicable.

Mary-Margaret Madden, Deputy District Attorney, Civil Division, Carson City District Attorney's Office, Carson City, Nevada:

I represent the Carson City Assessor. Our issue arose a couple years ago with the Carson-Tahoe Hospital, which is being built north of town. The Carson City Assessor believed that it should be taxed while it is being built, pursuant to the plain language of the statutes, specifically NRS 361.083 and 361.140, which say that the hospital must be occupied, accepting patients, and treating them [to be tax-exempt]. The hospital argued that they should not be taxed.

It went to the State Board of Equalization, which found for the hospital. Before I pursued an appeal, the Mineral County case came to my attention. We put everything on hold to see what the outcome would be, to determine if we even had appellate rights. With due respect to the State Board of Equalization, they are making legal precedent in regard to tax law under NRS 361. That should be left to the courts.

Mr. List stated it well. For valuation issues, there needs to be an end. For issues of law, it needs to go to a court and the assessor should be given that right to appeal. We did an amicus brief and we, too, are anxiously waiting resolution of this so we can get our taxes.

Andrew List:

If we do decide not to proceed with this bill, take our chance in court, and lose, we would bring this bill back next session. We do not think the State Board of Equalization has that right. They are not judges or attorneys; it is not a legal proceeding, and they should not have the ultimate say on what tax law is. That is up to this Body and the courts to interpret.

On the other hand, if we pass this bill, we would look at the case again and decide whether or not the case becomes moot or drop it completely. We would withdraw the appeal and go to district court with the right to appeal.

Chairman Perkins:

In general, I am not terribly fond of trying to do away with litigation by passing a law. There have been a number of bills that have come before this Legislature where people have tried to get out of their litigation by changing the policy of the State. If the policy is what it is, and it has been a longstanding policy, then perhaps the Supreme Court's decision will clear it up.

Unless someone can convince me as to a reason why the policy should change in the State, I have confidence in the Supreme Court that they will reaffirm what the longstanding policy is.

Andrew List:

The decision of the First Judicial District Court, saying we didn't have the right to appeal it, came as a surprise to us. Many of the assessors statewide said that they had been appealing these legal issues for years under the Administrative Procedures Act. It was this one decision that put a hitch into the whole thing. We think it is a standing practice, it's legal and valid, and the Supreme Court does do the right thing.

We wanted to have the hearing today. We will weigh our options now that we know when oral arguments are scheduled.

Chairman Perkins:

In what forum was your adverse decision made?

Andrew List:

It was in the State Board of Equalization. That is the decision we are appealing. The decision that kept us out of court was in the First Judicial District Court in Carson City.

Chairman Perkins:

The First Judicial District Court in Carson City affirmed the Board of Equalization or just rejected your appeal of the Board of Equalization?

Andrew List:

They rejected the appeal, saying that we did not have appeal rights.

Chairman Perkins:

Are there further questions from the Committee? Thank you for your testimony. Is there anyone else wishing to testify in favor of S.B. 186? Is there anyone wishing to testify against S.B. 186? We will close the hearing on S.B. 186.

Is there anything else to come before the Committee? Seeing none, we are adjourned [at 2:18 p.m.].

RESPECTFULLY SUBMITTED:

James S. Cassimus
Committee Attaché

APPROVED BY:

Assemblyman Richard Perkins, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Growth and Infrastructure

Date: April 28, 2005

Time of Meeting: 1:40 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		AGENDA
	B	Kim Huys / State Controllers Office	Prepared statement.