

**MINUTES OF THE  
SENATE COMMITTEE ON GOVERNMENT AFFAIRS**

**Seventy-third Session  
March 30, 2005**

The Senate Committee on Government Affairs was called to order by Chair Warren B. Hardy II at 2 p.m. on Wednesday, March 30, 2005, in Room 2149 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4406, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

**COMMITTEE MEMBERS PRESENT:**

Senator Warren B. Hardy II, Chair  
Senator Sandra J. Tiffany, Vice Chair  
Senator William J. Raggio  
Senator Randolph J. Townsend  
Senator Dina Titus  
Senator Terry Care  
Senator John Lee

**STAFF MEMBERS PRESENT:**

Kim Guinasso, Committee Counsel  
Olivia Lodato, Committee Secretary  
Michael Stewart, Committee Policy Analyst  
Catherine Barstad, Committee Secretary

**OTHERS PRESENT:**

Scott M. Craigie, American Resort Development Association Resort Owners  
Coalition  
Karen D. Dennison, American Resort Development Association Resort Owners  
Coalition  
Thomas A. Bell, Interval International

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Michael G. Alonso, Reno-Sparks Convention and Visitors Authority; Las Vegas  
Convention and Visitors Authority  
Brett J. Scolari, Reno-Sparks Convention and Visitors Authority; Las Vegas  
Convention and Visitors Authority  
Paul "Luke" Puschnig, Las Vegas Convention and Visitors Authority

CHAIR HARDY:

We have to begin as a subcommittee with Senator Tiffany and me present. We are scheduled to address Senate Bill (S.B.) 407 and S.B. 417.

SENATE BILL 407: Authorizes boards of county commissioners to provide civil penalties in lieu of criminal penalties for violations of ordinances in certain circumstances. (BDR 20-588)

SENATE BILL 417: Authorizes certain counties to regulate use of electric personal assistive mobility devices. (BDR 20-331)

CHAIR HARDY:

We will not have time to address S.B. 407 and S.B. 417 today. Our time is limited due to a taxation meeting scheduled for 3 p.m. We will reschedule these bills for Friday, April 1. We will open the hearing with S.B. 84.

SENATE BILL 84: Revises provisions governing exemption of certain uses of time-share units from taxes on transient lodging. (BDR 20-135)

CHAIR HARDY:

We will begin with those in favor of S.B. 84. Those in favor will testify for 25 minutes, and the remainder of the time will go to the opposition. I would like to avoid appointing this to a subcommittee.

SCOTT M. CRAIGIE (American Resort Development Association Resort Owners Coalition):

This is an extremely important piece of legislation. There is a misunderstanding as to what the impact of this bill would have on room taxes. Please refer to the handout ([Exhibit C](#)) which defines city- and county-room-tax law exactly as it appears in the *Nevada Revised Statutes* (NRS).

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CHAIR HARDY:

The record should reflect we are now in full committee. Please continue, Mr. Craigie. I apologize for the interruption.

MR. CRAIGIE:

Local government is a direct product of this Legislature. Senate Bill 84 deals specifically with room tax. One of the major issues is whether or not certain revenue is to be collected from time-shares. Room tax is collected based on gross receipts. There is a lot of folklore about who should pay and who should not pay, especially in time-shares. There is much flexibility for those who own time-shares; they can trade with someone in other areas. Senate Bill 84 executes only when a person comes in and puts money down on the counter. When people are complimentary guests or time-share owners, they do not pay the room tax. It is simply no cash, no tax.

The lobbyists and the attorneys for the Las Vegas Convention and Visitors Authority (LVCVA) and the Reno-Sparks Convention and Visitors Authority (RSCVA) have been cooperative. We made an attempt to work this out (Exhibit D, original is on file at the Research Library). The LVCVA and the RSCVA do not separate or categorize the revenue on the tax returns. This is important because it addresses one of the main issues in this tax case. There is the allegation that S.B. 84 is going to end a revenue stream paid to the RSCVA and the LVCVA. There is no way to separate the amount of the exchange revenue without conducting an audit. That data is not available. The RSCVA has to assume a property is properly reporting tax returns and accounting for them in the gross and taxable revenues.

CHAIR HARDY:

If you do not pay cash, you do not pay tax.

MR. CRAIGIE:

Page 4 of Exhibit D is a local government fiscal note from the deputy fiscal analyst. These numbers are very confusing. One of the problems is we see all these numbers and they do not add up. The "2003 Marketing Report" for the RSCVA is on the Web site and page 7 of Exhibit D. It has incredible numbers indicating peak hotel room rates as well as rates for condos and time-shares. This is the information we receive on the gross room tax. The point we are trying to make is that these revenue streams do exist, they just need to be categorized.

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KAREN D. DENNISON (American Resort Development Association Resort Owners Coalition):

I represent the time-share owners who are the members of the American Resort Development Association (ARDA). All ARDA members have been polled. We found one time-share property which has paid room tax on time-share exchanges. That tax is currently being contested in front of the Nevada Tax Commission. There is one new resort in Clark County that pays on time-share exchanges. Only two resorts in the Las Vegas area are paying on time-share exchanges. The law does not require the industry to pay these taxes.

Please refer to page 2, line 8 of Senate Bill 84. Our proposed amendment is identical in every section of the bill. This section of NRS 244 was adopted by this Legislature in 1997. The purpose was to inform counties and cities that they need to define transient lodging. The components are tax on gross receipts from the rental of transient lodging. The definition of transient lodging includes hotels. Time-share projects sometimes operate as hotels, but usually operate just as time-shares. Owners stay there, exchange their week and exchange-owners come in to stay for that week. No rent is paid and there is no tax payable. You cannot increase the power of taxation by omitting the nontaxable category. The letter of the law, the policy of the law and the legislative history is clear as to when a tax is payable. We are not here to change the law, only to clarify existing law. Please refer to page 2, lines 15 through 20 of S.B. 84. This section should include language to indicate when an owner comes in, through a time-share exchange program, that owner should not be taxed.

We have a proposed clarification for S.B. 84 ([Exhibit E](#)). The language clarification recognizes that a time-share owner does not always use the same unit. When S.B. 84 was written, it suggested that the time-share member would occupy the same unit every time, which is incorrect. I urge you to pass S.B. 84 per our amendments. It is consistent with the law, legislative history and policy, as well as current practices of those who collect room tax.

THOMAS A. BELL (Interval International):

Interval International is one of the two largest exchange companies, internationally. Within the State of Nevada last year, 15 percent of the people who exchanged were owners in Nevada. Our rules provide that when these taxes are assessed, they are paid by the people who are exchanging. If S.B. 84

is passed, we will notify each exchanger who contacts us and wants to exchange into Nevada. If they wish to do so, there will be an additional fee required when coming into Nevada. That fee will also apply to the 15 percent of Nevada residents who seek to exchange in Nevada, as they did last year.

You have a statute that imposes a tax on gross receipts. The only money paid when you have a time-share exchange is a \$129 administrative fee paid to the exchange company to handle that transaction. People who come to Nevada do not pay money to exchange into a resort in Nevada. If you pass this tax, you will be the only state in the continental United States that has chosen to tax exchanges. Hawaii imposes a minimal tax on exchange, but it is imposed on every occupant of the unit including the owner. I understand you are waiting to hear from bond counsel, who cannot be here today, on their opinion that this tax is unconstitutional. A tax, obviously, only rises to the level of a constitutional issue based on their argument that it is money they are counting on and will not receive. It cannot be unconstitutional if they had no right to collect it in the first place. Based on the language used in this tax, they have no right to collect it, and have collected very little money in the eight years this tax has been in effect. Most people have figured out they are not supposed to pay it. We agreed to postpone the hearing on this bill once before because the other side could not assemble all its people. I would hope this matter is allowed to come to vote within the time limits imposed by the Legislature.

SENATOR TIFFANY:

This looks like the bill is only for Carson City, Douglas and Washoe Counties. Is that correct?

MS. DENNISON:

No, that is not correct. The first section of NRS 244 deals with all counties. The next section, NRS 268, deals with all cities. Special bills that deal with those jurisdictions you just mentioned would also need the same amendment. If this amendment were to pass, it would be uniform throughout all of the bills that deal with room taxes. It covers everybody.

SENATOR CARE:

I refer to the Reno-Sparks marketing reports going back to 1999, page 33 of [Exhibit D](#). Do you have any literature that has been circulated to time-share holders? I am assuming the issue has come up before. I am concerned about any legislative history prior to today about these online publications.

MR. CRAIGIE:

There was, during the Legislative Session when we did this one section of law. It was made absolutely clear to that Committee before the vote was taken, and the industry has acted accordingly throughout. We will go back and take a look to see if there were communications by those association groups. The regulation, which is reflected in the marketing reports throughout this entire nine-year period, clearly says: "Do not collect it; do not pay it."

MR. BELL:

You are correct. This is not the first time this issue has been before this body. In 2001, there was a bill that proposed to add specific language to allow the taxing of exchanges. This body deleted that language from the bill before it was sent back to the Assembly. It was S.B. No. 122 of the 71st Session. This Committee has spoken on this issue before and has refused to approve language that would have allowed these associations to do exactly what they are now trying to do.

SENATOR CARE:

Please refer to page 2 of [Exhibit D](#). In the letter dated March 16, the language in your third paragraph, "Therefore, we believe the collection history on these revenues is irrelevant," leads me to believe there came a time when the RSCVA decided they needed the money. That is what it indicates to me, with these publications online and a letter as recent as March of this year. In the interim, something happened that brought this to a head.

MR. CRAIGIE:

They did not make that constitutionality decision based on a firm knowledge that revenues were lost. If the agency had done audits over the last eight years, the information would be available.

CHAIR HARDY:

Do we have anyone in southern Nevada wishing to speak in favor of or opposition to S.B. 84? There is one person in opposition, and the remainder of the people are in favor. Is there anybody who could not join us at a future date

for a continuation of this discussion? We will do our best to get some testimony on the record from southern Nevada today.

MICHAEL G. ALONSO (Reno-Sparks Convention and Visitors Authority; Las Vegas Convention and Visitors Authority):

At my left is Brett Scolari, and on my right is Luke Puschnig. Also with me today is Tim Smith, Chief Financial Officer for the RSCVA. We are diametrically opposed to the position taken by the proponents of S.B. 84. This is not a new tax. The law is clear that time-shares have been taxable for some time, with the exception of owners staying in their own units. The Swendseid & Stern letter ([Exhibit F](#)) is a significant issue for us and the proponents. They take the position that S.B. 84 is unconstitutional. It violates the contracts clause because bonds have been issued. What we are talking about is an exemption. Owners do not pay the tax. People who exchange are not owners; they are no different than someone coming in to rent a room. There is not a gross-receipts definition in the room-tax statute, but there is one in the sales-tax statute. This defines gross receipts as the total amount of the sale or lease, or the rental price, whether received in money or otherwise. Somebody is getting paid. The exchange company is getting paid. They may not be paying when they get to the room because they have this exchange.

Refer to page 12 of the online article from ARDA ([Exhibit G](#)). This defines exchange as the system that allows time-share owners to trade the accommodations they own for comparable accommodations or travel-related services. Why would you need a definition for home resort if we are all owners? Home resort is where a new owner has purchased his or her week or joined a club or point-based program. What they are asking for is an exemption, not a new tax. We are opposed to S.B. 84 because an exemption is not appropriate.

BRETT J. SCOLARI (Reno-Sparks Convention and Visitors Authority; Las Vegas Convention and Visitors Authority):

The Legislature made a conscious decision in the original statutes to tax certain transient uses as hotels, motels and time-shares, unless that time-share is occupied by the owner of that particular unit. The language in S.B. 84 is asking

for an additional exemption on time-share exchanges. If this bill is passed, you are not taxing owner-occupied or time-share exchanges, and the intent is lost. There are no more time-share-type uses to tax. We need to return to the original intent of the statute. Many different jurisdictions are counting on this revenue. There is an appeal before the Nevada Tax Commission on Monday, April 4. That appeal should decide the issue on time-share exchanges.

PAUL "LUKE" PUSCHNIG (Las Vegas Convention and Visitors Authority):  
I am in opposition to S.B. 84. You have two letters from Jacqueline Holloway, Director, Department of Business License, Clark County ([Exhibit H](#)). These letters indicate that exchange users, as well as other time-share participants, have always been subject to transient lodging tax. The current test as to whether the transient lodging tax should or should not be imposed is logical, if you read it within the circumstance. The transient lodging tax does not apply to the owner of the unit. If a third party is allowed to occupy the unit for consideration, then the transient lodging tax applies. There is no difference between a person who pays consideration for possession of a hotel room and a person who pays consideration to obtain possession of a time-share unit. In both cases, the person pays consideration for short-term use of the property that he or she does not own. That is the definition of transient lodging.

SENATOR TIFFANY:  
What does the LVCVA collect per year in room tax?

MR. PUSCHNIG:  
The LVCVA usually does not collect the room tax. We rely upon the counties and the cities. They collect approximately \$180 million.

SENATOR TIFFANY:  
In the letter from the Department of Business License for Clark County, [Exhibit H](#), Ms. Dennison said there were one or two examples in Clark County where the room tax is collected. Is that correct?

MR. PUSCHNIG:  
Yes, that is her testimony.



SENATOR TIFFANY:

Can you explain what kind of examples these are?

MR. PUSCHNIG:

According to the Clark County Department of Business License, which actually collects the room tax for the LVCVA and the various entities, there are many of those types of transient lodging taxes collected. They have indicated to me that they do collect taxes from the exchange users.

SENATOR TIFFANY:

That would be difficult to verify. This is 1 percent of the money collected. It might be a small enough amount that it could be the transient users.

MR. PUSCHNIG:

The amount of this tax being paid by exchange users is anywhere between \$1.2 million and \$1.7 million, according to the Clark County Department of Business License as a result of their audits.

SENATOR TIFFANY:

Organizations receiving the room taxes do not categorize. It would be surprising if Clark County kept categories on room tax collections. One percent is quite small. If we decide to go into subcommittee, that is something we will investigate.

MR. PUSCHNIG:

The LVCVA tracks a number of these trends within the business. Clark County is going to have a boom in these types of exchanges. This is one of the reasons they are fighting so hard. We estimate that time-shares will increase by 2,000 to 3,000 units by 2009. That is a significant amount of increase in the tourist-related traffic.

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SENATOR TIFFANY:

That is understood. You are fighting over the future.

MR. PUSCHNIG:

Senate Bill 84 is unconstitutional and will blur the test as to when the transient lodging tax is going to apply. You have all these different models of room taxes in which to apply this bill.

SENATOR TIFFANY:

It could go either way, which is what we will decide.

SENATOR TITUS:

If there is cash exchanged, do you pay the tax? Is there a room tax collected on time-share exchanges in other states?

MR. ALONSO:

Yes, there is a tax on cash exchanges. I know that the tax is paid in Hawaii. Our present tax position in Nevada exempts only the owner of the unit from paying taxes. There is an old ordinance in Clark County for time-shares. A rate was set for walk-ins at approximately \$25 many years ago. This provided a taxable number for when the nonowner came in to occupy that unit.

SENATOR TITUS:

Would there be a tax on \$25?

MR. ALONSO:

It is higher due to inflation.

MR. PUSCHNIG:

In 1980, the Clark County code was to tax \$25, but the amount has since increased to \$54.17.

SENATOR TITUS:

Are you arguing that they should pay the tax on \$54.17 every time they do an exchange? Is that the tax you said they are collecting now?

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MR. PUSCHNIG:  
Yes.

SENATOR TITUS:  
Who is paying that tax? Which one of the time-shares is paying that tax? Are all the time-shares paying tax on \$54.17 every time there is an exchange?

MR. PUSCHNIG:  
Yes. The ordinance to collect this tax has been in effect since 1980.

SENATOR TITUS:  
Can we get some more information on that? Could we ask staff to check into other states to see if they pay taxes on exchanges?

CHAIR HARDY:  
It is my intent to send this to subcommittee; there is enough factual information in dispute. I will allow a subcommittee to do additional work on this. It is my intent to appoint Senator Tiffany as chair, with Senator Care and Senator Lee in the subcommittee.

SENATOR RAGGIO:  
I will recuse myself, as a shareholder in the firm of Jones Vargas, and will not participate in any vote on this measure.

SENATOR CARE:  
Mr. Puschnig mentioned there was some consideration, and I am not sure that is consistent with what Mr. Alonso said. What is the policy on room comps by resorts? How are hotels allowed to provide complimentary rooms?

MR. ALONSO:  
This goes back a long time. As the Legislature delegated some of this authority to local government, they have handled these situations by policy or by regulation. Complimentary rooms for a resort have been allowed to be deducted from gross revenues.

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MR. SCOLARI:

When time-share users decide to opt into an exchange program, they forfeit those rights of the vacation ownership.

CHAIR HARDY:

I have assigned a subcommittee. We will schedule a hearing so that you may have legal counsel and bond counsel present. Committee, if there is nothing further to come before us, we are adjourned at 3:07 p.m.

RESPECTFULLY SUBMITTED:

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Catherine T. Barstad,  
Committee Secretary

APPROVED BY:

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Senator Warren B. Hardy II, Chair

DATE: \_\_\_\_\_