

**MINUTES OF THE
SENATE COMMITTEE ON TAXATION**

**Seventy-third Session
February 24, 2005**

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 1:33 p.m. on Thursday, February 24, 2005, in Room 2135 of the Legislative Building, Carson City, 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 Mike McGinness, Chair
Senator Sandra Tiffany, Vice Chair
Senator Randolph J. Townsend
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Terry Care
Senator John Lee

GUEST LEGISLATORS PRESENT:

Assemblyman John C. Carpenter, Assembly District No. 33

STAFF MEMBERS PRESENT:

Chris Janzen, Deputy Fiscal Analyst
Ardyss Johns, Committee Secretary
Tanya Morrison, Committee Secretary

OTHERS PRESENT:

Charles Chinnock, Executive Director, Department of Taxation
Barbara Smith Campbell, Chairman, Nevada Tax Commission
Dino DiCianno, Deputy Executive Director, Department of Taxation
Kim Huys, Acting Chief Deputy Controller, Office of the State Controller
Al Kramer, Treasurer, Carson Elko City
Mike Franzoia, Mayor, City of Elko
Charles Myers, Vice Chairman, Board of Commissioners, Elko County
Mary Walker, City of Elko

Senate Committee on Taxation
February 24, 2005
Page 2

Linda Ritter, City Manager, Carson City
Glen Guttry, City Council, City of Elko
Dean E. Alford, Chairman, Elko Area Chamber of Commerce
Linda Bingaman, Mayor, City of Carlin
Andrew List, Executive Director, Nevada Association of Counties
Chris Johnson, City Council, City of Elko
Bjorn (BJ) Selinder, Churchill County
Josephine E. Thaut, Mayor, City of West Wendover
Michael R. Alastuey, Committee on Local Government Finance

CHAIR MCGINNESS:

We have three bills today and we will start with Senate Bill (S.B.) 15.

SENATE BILL 15: Authorizes Nevada Tax Commission to compromise amounts owed taxpayers under certain circumstances. (BDR 32-637)

CHARLES CHINNOCK (Executive Director, Department of Taxation):

We have with us today the chair of the Nevada Tax Commission, and we will begin with her testimony.

BARBARA SMITH CAMPBELL (Chairman, Nevada Tax Commission):

The Nevada Tax Commission is totally in support of S.B. 15. The Commission has several tools available to help with deficiency audits and taxpayers who are delinquent on their payments to the Department of Taxation. To date, we have about 200 payment plans in place which are reviewed on a 6-month or 12-month cycle. These reviews come before the Commission on those anniversary dates. We have adopted a temporary regulation (Exhibit C). This addresses the issue of "offer in compromise." The Legislature, in the past, has given the Commission the authority to write off bad debt under *Nevada Revised Statute* (NRS) 360.265.

The difficulty we are struggling with today is the five-year limitation. The statute states we may write off a bad debt after five years. We are having taxpayers come before us who are in financial difficulty and qualify under the conditions we set forth under the regulations adopted. Our fear is the assets available to us today will not be available in five years. In an effort to collect as many tax dollars as we can from the taxpayer who is deficient, we would like to see the Tax Committee and the Legislature lift the five-year limitation for us.

MR. CHINNOCK:

This is another tool we could use at the Department of Taxation. It would allow us the ability to collect in cases where there is doubt on the part of a particular taxpayer. This would allow us to look at the taxpayer's financial situation and status and make a particular judgment in that situation. When there is doubt as to the liability, we would be able to make a judgment with respect to that particular situation and enter into a compromise. If there is an issue of equity and fairness, we would be able to address that issue as well. This is similar to what the Internal Revenue Service and other states do. This would just be another tool in collecting tax revenue owed to the State of Nevada.

DINO DiCIANNO (Deputy Executive Director, Department of Taxation):

Senate Bill 15 was filed on behalf of the Department of Taxation for the Nevada Tax Commission. On page 1, we ask that the Nevada Tax Commission be allowed to enter into a compromise with the taxpayer on any liability which he or she owes. On page 2 it states the "Department has determined the taxpayer is required to pay to the State if a majority of the members of the Nevada Tax Commission determine upon affirmative vote" The Nevada Tax Commission was very concerned this was going to be taken lightly. They wanted to make sure it was understood, for the Nevada Tax Commission to allow any type of compromise on the liability, it would take a majority vote. There are three sets of criteria stated in the bill.

SENATOR TOWNSEND:

I want to make sure we understand what it says on line 2 and you have your intent clear. It is a majority of the Commission, not a quorum. There are seven people on the Commission, is that correct?

MS. CAMPBELL:

We are a body of eight. In order for us to act on this, we need an affirmative vote from five members.

SENATOR TOWNSEND:

How do we let you have eight members? How do you get anything done? You should have an odd number of members.

MS. CAMPBELL:

We have only had a split vote a few times.

MR. DiCIANNO:

There are three specific criteria in which the Commission would review a request by a taxpayer. First, the Department would review the claim and then present it to the Commission, in light of three issues. Number 1, is it unlikely the Department would be able to collect the entire amount of liability of the taxpayer? Number 2, is the liability amount of the taxpayer unclear? I want to be very specific about this. The term "unclear" in S.B. 15 means is there doubt as to the existence or correct amount of the liability? If I can draw your attention to the temporary regulation on page 2 of [Exhibit C](#), it discusses the items by which that doubt could arise. And last, is such a compromise appropriately based upon consideration of equity and fairness with respect to the taxpayer?

Again, if I could draw your attention to page 2, paragraph (c), of the regulation, [Exhibit C](#), it outlines the criteria with respect to fairness and equity. Also, the bill contains provisions and regulations which the Commission will adopt. All we are trying to do is show the Commission has taken its initial first step with respect to adopting regulations. These are temporary, as Ms. Campbell has indicated. The regulations were predicated on NRS 360.265. We also have a proposed amendment to the bill ([Exhibit D](#)). This was something which was an oversight on our part when it was originally filed. We are asking to have S.B. 15 amended to read "This act becomes effective upon passage and approval." Thank you for your time, Mr. Chair.

CHAIR MCGINNESS:

Would each case be handled individually? Will you not get a blanket policy to go out and collect taxes?

MR. DiCIANNO:

That is correct. These are on a case-by-case basis. I also need to clarify this is on final debt. This is debt that has been finalized, based upon what the taxpayer claims is owed. In other words, they have exhausted their administrative remedies. This is debt that is actually owed to the State.

SENATOR CARE:

The temporary regulation in [Exhibit C](#), adopted in November, excludes chapter 361 of NRS, which is property tax. Under the statute, you could expand that to include property tax. The reason I raise that question is because property taxes have been a subject of interest for the past few weeks, as has the constitutional mandate of uniformity and equality. It would seem to me, the

criteria for forgiveness or compromise, which is the term used in the draft, could be viewed and applied as subjective and, arguably, unequal factors.

You may have the case where one taxpayer comes in and one member of the Nevada Tax Commission states it is clear to him or her, this is not collectible tax. The same commissioner might say in a different case, the taxes are collectible. You may also have two commissioners with different points of view on the same case. That is discretionary, as opposed to mandated uniform and equal policy. Could you explain to us how you are going to balance between what I think might be subjective on a case-by-case basis as opposed to uniform and constitutionally mandated?

MR. DiCIANNO:

In response to your first question, we wrote this without NRS Chapter 361 because those are taxes collected by the local assessor. The regulation would not apply under that scenario, so we did not include it. The answer to your second question is the issue you brought up which was a debate subject for the Nevada Tax Commission when they initially wrote the regulation. That is why they were concerned it had to be a majority of the members. They wanted to make sure it was not just a see-saw vote that did not apply fairness and equity to those taxpayers before them. I believe that assurance is there.

SENATOR CARE:

That answers my questions. I do not know if others might disagree. To believe the vote would be unanimous in all cases would be unrealistic. I do want you to know, I see the argument arising when someone goes before the Nevada Tax Commission and does not get what he or she wants.

SENATOR COFFIN:

I keep thinking this amendment must be necessary because of S.B. No. 8 of the 20th Special Session. Is this enabling you to solve the problems created by that bill?

MR. CHINNOCK:

No, this did not particularly have to do with taxes in the 2003 Session. This has to do with the issue of tax liability that has been established. For the reasons I have stated, the individuals are either financially unable to pay those taxes or because of a matter of equity and fairness are unable to pay. As a result, by

going through the process of looking at their financial status and varied situations, we are able to get something out of that liability as opposed to nothing.

SENATOR COFFIN:

This is not really for your use in terms of trying to weed out problems that are not clear in the statute. Compromise is sometimes an important thing.

MS. CAMPBELL:

In the last two to three years, we have had several taxpayers come before us who have asked the Nevada Tax Commission to consider an offer in compromise. This was either due to one of the members being deceased, the business is no longer up and running, another family member has cancer or there are other difficulties in the family which cause financial hardship for the taxpayers.

The Nevada Tax Commission has always put those taxpayers into a payment plan. We, as a body without a regulation in place, did not want to move forward in an offer in compromise. We felt we had the statutory authority under NRS 360.265, but the limiting factor in there is the five-year period. We could also see with these taxpayers, if the State did not move on this more quickly, other creditors would have the ability of grabbing those assets, not that our Department wants to be in the position of grabbing anything from the taxpayer who has financial or medical problems. We wanted the ability to move forward and work with that taxpayer for those financial debts due to the State.

The Nevada Tax Commission, also, envisioned this would be a very lengthy financial process of documentation at the Department level. Then, we would move forward with recommendations from the Department to the Nevada Tax Commission after it had reviewed all of the financial records.

CHAIR MCGINNESS:

We will close the hearing on S.B. 15. I will now open the hearing on 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)
I will read from my prepared testimony ([Exhibit E](#)).

AL KRAMER (Treasurer, Carson City):

We are taking copies of protest letters and forwarding them to two places. Sometimes, we get a check and the individual writes a derogatory statement as a protest. We do not forward copies of the checks since we determined they are not a separate letter in addition to the payment. I do not understand why we are even sending one to the Attorney General's Office. They find out when the State Board of Equalization passes and someone has a protest after that. Nevertheless, this bill is a step in the right direction and I support it.

SENATOR COFFIN:

Bills like this usually arise and then are ancient history. There has probably been an occasion when an individual was aggrieved and could not get relief at the county level. It was felt the next step would be to notify a State official, and I suspect, they may have notified everyone they felt would have an interest. I do not know the history of that bill or how long it has been in the statutes.

Ms. HUYS:

The research we found did not give us any information on where this came from. It may stem from the fact that state property taxes are remitted to the State Controller's Office, and they deemed that a connection. At this point, we could find no other history or any case law related to this issue.

CHAIR MCGINNESS:

Is there anyone else here to testify on Senate Bill 45? We will close the hearing on S.B. 45 and open the hearing on Senate Bill 38.

SENATE BILL 38: Revises formula for distribution of proceeds of certain taxes to local governments. (BDR 32-863)

SENATOR RHOADS:

We have a problem in many of our rural counties, particularly in Elko County, Esmeralda County, Lander County and other rural mining communities regarding a fundamental flaw in the consolidated tax formula.

The consolidated tax is a combination of local government taxes. Primary sales tax is one of the largest sources of local government revenues, so this is an important issue.

When the consolidated tax was put into effect in 1998, it included a very important stabilizing factor called the one-plus formula. The one-plus formula was critical in rural mining communities for stabilizing the consolidated tax. This was to ensure windfalls would not occur in mining communities where wide swings in economies can and have occurred.

In 2001, the consolidated tax formula was changed to eliminate the one-plus formula, due to concerns by larger urban cities. They felt the formula was not responsive to growth.

The elimination of the one-plus factor may have been advantageous to certain larger urban communities, but it has been disastrous to some of the smaller rural mining communities. The smaller entities' economics vary significantly from year to year.

For the past few months, Elko County, the Cities of Elko and West Wendover and other entities have tried to resolve this tax flaw locally. However, negotiations were of no avail.

We are asking for your support of S.B. 38 to eliminate the unstableness of the consolidated-tax formula for our smaller, rural local governments. Legislative leadership provided us with an expedited bill, S.B. 38, due to the seriousness of the problem. We urge your passage of this bill as soon as possible.

With me today are a number of people to speak in favor of the bill, to go through the mechanics of the bill and to talk about how detrimental the currently flawed formula is to our rural communities.

ASSEMBLYMAN JOHN C. CARPENTER (ASSEMBLY DISTRICT No. 33):

I will read from my prepared testimony ([Exhibit F](#)). I ask the members of the Committee to please follow along on the handout given to you. I will be referring to the Department of Taxation State Demographer's Graph, ([Exhibit G](#)), of the distribution of sales tax among the rural entities. I would be happy to answer any questions.

MIKE FRANZOIA (Mayor, City of Elko):

As stated before by both residents of Elko County and other areas, there is a flaw that was not identified until the economy started to turn around. Being a mining community, we have been suffering economically for several years.

With the advent of higher gold prices, we added more stability to the community as well as added the perception mining will be there a bit longer than was thought. With that in mind, people started spending more money. We saw a slight increase in excess sales tax monies generated, but not really enough to throw out red flags.

The State-projected tax revenues this year would be about \$2.4 million in excess revenue. Later, we found out none of that was coming back to the economic generator which was the Elko city area including Spring Creek and Lamoille. It obviously brought us great concerns and we expedited, with Senator Rhoads, to craft a bill and get this on the books as quickly as possible. As responsible elected officials, we felt this was the right thing to do. The City Council agreed it would be productive to at least try to work an agreement with all affected entities to have everyone benefit from something through an interlocal agreement. However, that effort failed, and we kept both options open because of the responsibilities we have to our citizens to make sure they are represented, and we can provide the services.

I am sure the people spending money in Elko County would like to see a return on their investment. Sales tax being the most important revenue generator for all local government within Elko County and pretty much through the rest of the State of Nevada, it was important we follow through with legislation. We did not want to take the risk of a failed negotiation in lieu of lack of legislation and possibly wait two years to come back before this body to have the change. The risk in a mining community such as Elko is the potential swing.

We could sit here now and do nothing with legislation and let the pendulum swing back towards the City of Elko. The City has always grown, and it has subsided so we have those cycles to deal with. That is not very good government. It is irresponsible, as elected officials, to sacrifice others in the county from revenues we could share and hoard all that by waiting for the pendulum to swing two years later. That would benefit Elko because we are seeing new growth and new construction. Those portions of the formula would be beneficial in the five-year average.

The State of Nevada projects \$2.4 million in excess this year and about \$1.6 million in excess next year for a combined total of approximately \$4 million. The majority of that excess will be split between the City of Elko and Elko County. We need legislation changing the formula back, so we are sharing

with all of the entities. Whether or not there was growth, they would get a share of the money, and now we get none of that funding.

To give you a little bit of an idea of a five-year average, Elko lost 51 people from 2000 to 2005. Those numbers are from the Department of Taxation State Demographer's Graph, [Exhibit G](#). It shows West Wendover grew by 16 people in that same 5-year period. It is an anomaly that over 80 percent of excess-tax revenues go to a city whose population grew by 16 people in 5 years. We all have problems, and the City of Elko has agreed with this legislation to bring back the one-plus formula for taxation. We are victims of unintended consequences of legislation which was passed several years ago.

Finding no blame with anyone, the Elko City Council supported a bill that still allows West Wendover to keep the excess tax generated for the first six months of this fiscal year. This was decided because it was not West Wendover's fault. If you support this bill, it would come back and be correct as of January 1, 2005. I would like to thank Chair McGinness and the rest of the members of the Senate Committee on Taxation for hearing this bill so quickly. We appreciate your effort on expediting this bill to the Senate, as well.

SENATOR LEE:

Is this the first time this has moved in this direction? Is this an opportunity where Wendover could do some redevelopment to help build their infrastructure to attract people to Wendover?

MR. FRANZOIA:

Yes, but we are all in the same boat. We have all experienced this since 1997, when mining decreased substantially in all of these towns. I do not know about Wendover, but Wells, Carlin and Elko County have been flat. Sales tax is 50 percent of our budgets, and when that fails, there is only so much room on the property-tax side of the equation to balance our budgets and maintain the status quo. We could all use something like that, including Wendover, but there is never enough to meet the needs in rural Nevada. We never have enough money, and when we do get a rebound, it takes us longer to recover from the down times. This is due to population size, which does not affect urban areas such as Washoe County and Clark County.

CHARLES MYERS (Vice Chairman, Board of Commissioners, Elko County):

I will read from prepared testimony in support of S.B. 38 ([Exhibit H](#)). I would like to read for the record a letter from the City of Wells ([Exhibit I](#)).

We just received information from the Spring Creek Association, which is the largest homeowners association in the State of Nevada with 13,000 residents. Their association board voted unanimously last night to support legislative change to S.B. 38.

CHAIR MCGINNESS:

Thank you, Mr. Myers, we appreciate the presentation.

MARY WALKER (City of Elko):

With me today is Charles Chinnock, Executive Director, Department of Taxation and Linda Ritter, Carson City Manager, formerly with the County and City of Elko. I have passed out a packet of letters of support, many from within the County of Elko, but several from other counties, as well ([Exhibit J](#)). For example, there are letters from Lander County, Churchill County, Nye County and Esmeralda County, all in support of S.B. 38. There is also a letter from the Nevada Association of Counties. I will read from prepared testimony ([Exhibit K](#)).

CHAIR MCGINNESS:

Ms. Walker, do you have a proposed amendment?

MS. WALKER:

Yes, we have brought the Committee a proposed amendment to S.B. 38 ([Exhibit L](#)).

CHAIR MCGINNESS:

You only addressed one amendment on this sheet, is that correct?

MS. WALKER:

That is correct. In this amendment, I originally put \$70 million as the trigger for the assessed valuation of the mines, so Nye County would not be affected, but, they will be triggered into this anyway. We can go down to \$50 million, not affect any other county and provide a broader safety net and more security to the mining communities.

The date of enactment is January 1, 2005. It is important you recognize the counties and cities that worked on this were very gracious and generous in regard to West Wendover and Jackpot. By going with January 1, we split the year. This means there is still a windfall to West Wendover and Jackpot in the amount of about \$1 million. Elko County and the Cities of Elko, Wells and Carlin are cumulatively giving up \$1 million.

The reason they are willing to do this is not to punish anyone, it was not their fault. These things just happened, and we do not want to go back and take money from them they have already received. The distribution happens two months later, so the distribution for the January collections will happen at the end of March. We did go to Assembly and Senate leadership to request an expedited bill to get this through the Legislature and make the change to correct this as of January 1. We need to get this bill out of the Legislature in the next three weeks. That is why you see the bill before you today.

The elimination of the one-plus-stabilization factor in the consolidated-tax distribution formula has caused catastrophic results in Elko County, Lander and Esmeralda Counties and potentially others in the future. The proposed Legislative changes will stabilize the distribution formula only for those smaller mining communities affected, without detrimentally harming the larger, more stable counties.

MR. CHINNOCK:

I am going to run through the impacts of this legislation. In front of you, there is a graph with a five-year average ([Exhibit M](#)). You can see on the far right-hand side in column G, it was set at that original \$70 million, and now we are proposing an amendment of \$50 million. You will see, if you use that number of \$50 million, those shaded areas, which show eligibility with respect to this statute, do not change. Those same counties still apply.

The first thing I would like to do with the fiscal note that was passed out ([Exhibit N](#)) is to make a couple of corrections. In the first sentence, it states "Attached is information which shows the effect of revising the distribution of 2nd tier sales tax revenue," and it is actually for the consolidated tax distribution. In the next sentence, it states "this bill provides for use of a one-plus formula in any county with a five-year average of net proceeds of minerals" and that should now be changed to \$50 million or more. Instead of "and," it should read "or the average population of the last five years is declining," and you could add one thing there or both of those.

Let me run through and explain how this works. First of all, what this distribution formula change has to do with is excess distribution of tax revenue. Consolidated tax revenue is made up of six components. Those components are the basic city/county relief tax, the supplemental city/county relief tax, cigarette money, liquor tax money, real property transfer tax and motor vehicle privilege tax. There are various distribution requirements for each of those. They are

distributed out to the various counties. The amount distributed to the counties has an offset based upon a base year. The base year established is the prior base year adjusted by the consumer price index (CPI), or the actual collections from the prior year adjusted by CPI, whichever of the two is lower. Now, you collect revenue in the existing year and compare that each month to 8.33 percent of that base formula. If you look at pages 5 and 6 of [Exhibit N](#), you will see the computation for the change in population. What you end up seeing are those counties with negative population in the shaded areas. That is one of the eligibility requirements provided by S.B. 38.

If you look at the page on net proceeds and minerals tax, you see those counties which have the other eligibility requirement. It was originally greater than \$70 million and now is going to be greater than \$50 million. Those same shaded counties apply.

On page 3, in column B, you see the counties that are eligible. In column D, the counties eligible or not eligible are shaded. They just need to be eligible in either column B or D in order to be eligible for the alternative calculation that is in the third column from the right. You will see all the yes answers in that column. The second to the right column shows counties already in a one-plus category: Esmeralda, Eureka, Humboldt, Mineral and Pershing Counties and, of course, White Pine, which has its own interlocal agreement. This then makes eligible the four remaining counties, Elko, Lander, Lincoln and Nye.

Next we go to the first two pages which show the estimated impact of second-tier entities if one-plus is implemented. Where it shows the amount of current excess distribution, that is the formula under no one-plus, and you can see this is Elko County for fiscal year 2005-2006. This is the amount we believe they will collect in the shaded area under the one-plus formula, and it shows what the distribution would be. Note, with respect to the overall county, the excess distribution does not change. It is still the same \$1.5 million. It is the individual taxing entities, the districts, where the change occurs. Also shown are Lander, Lincoln and Nye Counties going from a no one-plus to a one-plus.

I will explain the title of a no one-plus to the Committee. Prior to 2001, if you were to have a 5-percent decrease, you added 1.0 to that, so you were presented as at 0.95 or 95 percent of your base. If you had a 5-percent increase, you were represented as 105 percent. After 2001, if you had a negative increase, which would have been 0.95 under one-plus, that was no longer considered part of the formula. Anytime you got a negative

category, there was no distribution. That is the relationship between no one-plus and one-plus.

SENATOR CARE:

I have two concerns. The first I will direct to staff, and the second to Mr. Chinnock. The effective date of this bill is January 1, 2005. As I understand, the money has been collected, but not yet distributed and will not be until the end of March. It seems to me there is a vesting argument with this situation. My question is whether we are empowered to craft legislation that would have an effective date to redirect funds already collected. At the time they were collected, the funds were then, by State law, directed to go elsewhere. Maybe someone can look into this or already has the answer to this question.

CHRIS JANZEN (Deputy Fiscal Analyst):

I will validate with the Legal Division whether that would violate any statutes or create other problems and get back to the Committee.

SENATOR CARE:

Secondly, Mr. Chinnock, there was a subcommittee this past interim that studied the possibility of altering the borders between Utah and Nevada. This would make Wendover become part of West Wendover in Nevada. Based on the data available, what would happen in the future if we were to enact this legislation? What would that do to this formula if you had a much larger Wendover in population? I do not expect you to have those figures right offhand, but I would like you to look into that issue. I do not expect the Wendover consolidation to happen, but just in case, we should know the consequences.

MS. WALKER:

Senator Care, on January 1, 2005, the Legislative Counsel Bureau did take a look at the statute. Senator Raggio wanted to take this date back to July 1, 2004. The agreement we had with the cities and counties was we would go with January 1, 2005, to be fair. I do know Principal Deputy Legislative Counsel Kim Guinasso and Legislative Counsel Brenda Erodes both took a look at this specifically, and I believe they felt January 1, 2005, would be fine. We never heard anything else about this issue. I do know Senator Raggio was interested in going back even further. I think what you will find is the Legal Division has taken a look at those concerns.

In regard to the West Wendover increase as a practical matter, if Wendover did consolidate into Nevada, the assessed valuation would go way up. The population would increase a great deal. Now, there are only about 4,600 people and an increase in just 100 new residents would impact this small area and their percentages would go way up. It would be the same if only one casino were built in Jackpot or one house in Kingston, which would impact these small areas and affect the percentages with just these slight growth increases. That would be the problem if Wendover were to expand. They would probably receive a lot of money generated in Elko, Carlin and Wells because their percentages would go way up even though they may not be generating the money in that area. Whether or not it is a big or small thing, these small communities see a significant shift in their percentages.

CHAIR MCGINNESS:

Senator Care, I think you bring up a good point about the legality of a bill which would be retroactive to January 1, 2005. Mr. Janzen, please pursue this with the Legal Division and make sure we receive all the information with regard to the legal issues.

LINDA RITTER (City Manager, Carson City):

I am formerly the city manager of Elko and also formerly on the technical advisory committee for S.B. No. 557 of the 71st Session, which studied the distribution of revenue among local governments. I served on that committee when the changes were implemented. I would like to make you aware, as we looked at the change, the elimination of the one-plus theory of giving the money to the counties with growth made a lot of sense.

The flaw in this plan was what would happen if a county had a negative population growth at the same time the rest of the State was having a growing population with a strengthening economy. We had not anticipated that scenario. What we are seeing now is an unintentional consequence of the statewide formula change. It does not work for a rural community and, especially, a county with very diverse economies. In most of these small counties, mining or gaming is their prevalent source of income. As far as the technical advisory committee, this was not something we identified at the time as something that was possible, but now we are experiencing those consequences. From my standpoint, these corrections in this bill make a lot of sense.

CHAIR MCGINNESS:

Are there other scenarios out there we have not anticipated? I know Assemblyman Carpenter and Senator Rhoads do not like to come forward with problems for the people in their districts suffering these consequences. If anybody else has any ideas or probable future problems with this change, I would like them to come forward now, so we do not have to correct this in the next Session. Thank you for coming forward with this issue.

GLEN GUTTRY (City Council, City of Elko):

I would like to thank Senator Rhoads for introducing S.B. 38 and expediting it through the Committee. I am an independent business owner in Elko and have been for 21 years. I am also a city councilman and have held that seat for about ten years. Last year, I saw about an 11-percent increase in business, which is what the other businesses in Elko showed. That equates to approximately \$13,000 in additional sales tax revenue over the previous year. That is just one business. Elko taxpayers paid that tax money and my business and employees collected that money. In rough numbers, that meant approximately \$4,800 to the City of Elko and about \$5,300 to the county. I prefer to have that money go for street improvements and other much-needed projects in my community. I do not want to see that money going to other communities which did not collect this tax. I know some counties subsidize others, but not with 100 percent of their increases.

This type of tax distribution could be devastating to rural economic development. When businesses commit to a rural community, they want to know the tax revenue they generate will be used for improvements in that community. In turn, they expect any increase in value of their investments would go to improve the quality of life for their employees and their businesses. This was bad legislation, and I feel it needs to be fixed.

I agree with Senator Raggio to date this back to July 1, 2004. As a city councilman, it is difficult for me to tell my constituents a portion of their money went to Wendover by mistake. Then, we explain, we let them keep \$600,000 because it was not Wendover's fault. If the Internal Revenue Service or any other taxing agency gives you a double refund or sends you a check that does not belong to you, eventually they will get their money back.

The City of Elko has lost 26 employees since 2001. That is a 15-percent decrease. I had to vote 2 times for a 19-percent increase in property taxes in the last 2 years, just to keep the doors open in Elko. Now our economy is

rebounding, the businesses are doing well and tax revenue is up. We should be looking forward right now to restoring the level of service this community deserves. Instead, I am telling the city taxpayers the money their retailers are generating in Elko in sales tax increases is going to other communities and not theirs. With the opening soon of a Super Wal-Mart and a Home Depot in Elko, the potential loss of revenue in sales taxes will be devastating to my community. It is not logical, fair, reasonable or justified in any way.

Let me put this in perspective for just a moment. Imagine four years ago in the waning hours of the Session, Congress passed some obscure legislation. They did not tell you anything about it and today a couple of triggers fire, all the stars line up like they are supposed to and John P. Comeaux, Director, Department of Administration, has to sit you down and explain a story. He starts out by telling you the \$300 million in excess tax revenue you have is going to go to the governor of California to balance his budget. You were going to use that money to save the Millennium Scholarship and do other improvements within the State of Nevada. You would be waking up in the middle of the night, like I do, wondering how this could be happening. Thank you for your time and consideration of S.B. 38.

DEAN E. ALFORD (Chairman, Elko Area Chamber of Commerce):

I live in Elko, Nevada, and I am here to speak on behalf of the 640 members of the Elko Area Chamber of Commerce. Our members range from Elko, Spring Creek, Lamoille, Carlin and the surrounding area. I am here today to ask your Committee to support S.B. 38 as it is written and as it is amended. As a chairman of the board of directors of the Elko Chamber of Commerce during 2004, I witnessed a transition in our local economy. Businesses struggling in January of last year finished out the year recognizing it as one of the best in nearly a decade. Our chamber members reported exceeding their revenue goals last year.

The regional economy weathered very slow years between 1999 and 2003. Last year, 2004, started out slow but finished at a near-record pace for us. The constant for members of the Elko Area Chamber of Commerce during these years has been to stay in Elko and work to diversify the economy. Our ad valorem taxes, as Mr. Guttry has told you, have been raised to meet the shortfalls that occurred as sales tax receipts lagged. Our area businesses have grudgingly paid that higher tax in the hope, if business improved and the economy rebounded, they would see the benefit in government services.

Earlier discussions here have explained how and why these same businesses will not see any of the excess sales tax revenue they helped generate. It is our contention, with the Chamber of Commerce, the bulk of these revenues are generated in the Elko area and therefore should stay in the Elko area. Our streets and infrastructure are in desperate need of attention. It is difficult to attract new industry and encourage economic development and diversification with crumbling infrastructure.

Excess sales tax would assist our part of Elko County with our diversification and development goals, with rewards to our steadfast business community rather than penalizing them for staying the course and being successful in the past year. This issue has been considered by the Elko Area Chamber's board of directors and by our government affairs committee. I believe you have letters from both of those groups ([Exhibit O](#)). Both groups have unanimously supported the intent of S.B. 38. Returning excess sales tax revenues to the area which generates the money in the first place is a reasonable expectation for business.

I ask you on behalf of Elko area businesses to act positively on S.B. 38. Thank you, for your time.

LINDA BINGAMAN (Mayor, City of Carlin):

The City of Carlin has had an economic downturn, losing \$122,000-plus in the past year. We have a current budget of \$1.2 million, so \$122,000 is a significant amount of money against that type of budget. We have been faced with cutbacks until we are only able to meet basic needs. We are currently projected to lose another \$81,000 in the next fiscal year, which will leave us no choice but to decrease personnel or something else to survive. Any dollar loss is detrimental when you have a tight budget. We are currently capped out on our tax and have nowhere to go and no way to recoup those dollars.

With the current system, we are growing a bit and may be one of the few who would be faced with having the windfall in the future. I realize that would be wrong because all of the small communities need these funds and they need to be distributed fairly and equally to all of them. We all count on that money. I urge your support of S.B. 38 because all of our small communities need every dollar we can get.

ANDREW LIST (Executive Director, Nevada Association of Counties):

We are in favor of S.B. 38. We voted unanimously to support this bill at our meeting on February 4. I want to add a few figures to what you have already heard in some of the other testimony. I spoke to Mickey Yarbrow, Vice Chairman, Lander County Board of Commissioners, and he told me the area of Kingston grew 0.0006 percent which gives them the windfall in that particular county. That windfall would amount to approximately \$65,000. Last year, Lander County paid for a \$32,000 extension to their fire department and has invested \$40,000 a year in Kingston for road projects. The county is currently backing Lander County on a water project as well. We think if Lander County had known about this particular windfall, they may not have invested in those projects. Lander County obviously supports this bill to correct that problem, as does the Nevada Association of Counties.

CHRIS JOHNSON (City Council, City of Elko):

I am going to read from my prepared testimony ([Exhibit P](#)) in favor of S.B. 38.

CHAIR MCGINNESS:

Thank you for your testimony, Mr. Johnson.

BJORN (BJ) SELINDER (Churchill County):

You have, in your packet, a letter from Churchill County ([Exhibit Q](#)) in support of S.B. 38. In the interest of time, I will not read it. It is quite simple, but I would like to note in the last sentence, we view this measure as a technical correction that would benefit those rural counties with unique economies.

JOSEPHINE E. THAUT (Mayor, City of West Wendover):

I am the mayor of the City of West Wendover. Before I begin reading from my prepared testimony I would like to thank you for the opportunity to be able to testify before you on S.B. 38. I will be addressing four points for your consideration. Please see ([Exhibit R](#)) which is my prepared testimony.

MICHAEL R. ALASTUEY (Committee on Local Government Finance):

I do not represent any organization that opposes this bill or urges its passage. I am privileged to be a current member of the Advisory Committee to the Legislative Committee on Local Government Taxes and Finance.

It appears there are three separate policy decisions implicit in the bill. First is the effect of small numbers in scarcely populated areas. These can yield significant percentages which could potentially swing funds in the wrong direction. Those

would be some of the consequences not attended to in the examination of the alternatives in the prior legislation. This deserves your attention and some type of positive action.

There are two additional tiers of decision-making beyond treating the instant cases of population swings. One is, in addition to treating the population swing, should you then intentionally expand the predisposition of the one-plus language into other communities that may not be experiencing population declines or differential levels of decline and increase? There is the expansion question. Finally, do you, as a matter of policy, wish to distinguish counties or describe them by their principal industries? Every county has a principal industry, but this descriptor is a bit unique. We are used to working with population thresholds and other kinds of criteria, but not much with descriptions of counties by virtue of net proceeds of mines or taxes received from one source or another. With all that said, the fact this bill is brought to you is absolutely understandable. I am speaking as only one member of the Committee on Local Government Finance, but certainly, this represents circumstances not part of the financial modeling. This, by all reasonable logic, would be an unintended consequence of an action that was taken earlier. I do recall, as many of you do, the painful circumstances under which the one-plus language was rescinded a couple of sessions ago. This is, indeed, an unintended consequence. As you deliberate on S.B 38, of course, you have to look into the specific policy questions and ask yourselves whether there are yet undiscovered, unintended consequences down the road. I ask you to do your best in making this decision. Thank you.

SENATOR LEE:

I have been contemplating this bill, and I am not sure of the State demographer's numbers. Did Elko County lose 55 people or did they gain 55 people? In the smaller communities you can probably go around the schools and count the kids quickly, but how do they really come up with a loss of 55 people? I would like to know that is an accurate number. Is there someone here who can answer that for me?

MAYOR FRANZOIA:

The City of Elko lost 51 people. We got a sheet from the demographer's office. In 2005, the City of Elko had approximately 17,191 people and they are projecting July 1, 2004, it will have 17,140. Elko County, as a whole, went from 45,633 people July 1, 2000, to 46,499. The County itself grew overall a slight amount, but I was referring in my comments to cities with reductions in population.

SENATOR CARE:

My question is how do you really know? Is that mailboxes? Who do you really trust? I just want to know if we could ask someone; we would really like a recount.

MAYOR FRANZOIA:

That is a great question. We have fought with the numbers. One way to calculate it is going through the power company's customer billing. We look at our water billing. It is hard to utilize school enrollment, since some families have more kids than others and it is very difficult. Unfortunately, there is nothing in the State that has a good balance of information that we could extrapolate from as a good source. The city water system is another source to get better numbers that fall more closely to the middle instead of having one-sided independent sources. A lot of it is a little bit of guess, and hopefully, the records picked from the utilities are accurate.

SENATOR LEE:

I understand there are a lot of people in Wells. Ms. Walker, do you have a better answer for me?

MS. WALKER:

This is a long, drawn out process. Basically, the State demographer comes out with his estimates. It does go to the local governments, and the local governments have the ability to protest those numbers and bring their data forward. They do have building permits and utilities. They have all kinds of factual data they can use with the State demographer to come up with final estimates.

The original consolidated tax formula, as I stated before, has two basically assessed values as well as population. The reason the committee decided on those two is it is readily available information. It does go through a process of protests. We do use five-year averages in regard to population. If we do have anomalies due to disagreements or whatever, you have the ability to protest, but it is a five-year average which tends to smooth out certain anomalies.

CHAIR MCGINNESS:

Did the city protest?

MR. CHINNOCK:

There is a budgetary appropriation through the Department of Taxation for the State demographer. We do have a contract with the Nevada Small Business Development Center in Reno. State Demographer Jeff Hardcastle does have computer modeling. He also has a geographic information system where they gather data. It is primarily based upon many things already mentioned, but also on housing and employment. So those, plus various other factors go in a computer model and he brings those forward to the county and city officials. They then have the ability to go back and explain why they think it is correct or incorrect and then negotiate. If they are not able to negotiate, the Department of Taxation enters and we negotiate and work with the various entities and State demographer to work the numbers. Finally, if all else fails, we end up taking the issue to the Nevada Tax Commission for a final decision. So far, we have been able to work all those issues out without taking these drastic measures.

SENATOR RHOADS:

I do not have a question. I just want to thank everyone who participated in this from Elko and Wendover. I know a lot of you have been working on this for a long time. I also thank Assemblyman Carpenter who has been working on it even before the Session began. Chair McGinness has assured me we will take some action on this bill next week. We need to get that amendment and find out about any potential legal problems. I think we will vote up and down on this issue next week. Is that correct, Mr. Chair?

CHAIR MCGINNESS:

Yes, we are going to get an answer to Senator Care's legal question. We asked for fiscal notes from the counties, and they have a deadline of today. We want to make sure if anybody has any further comments they come forward today.

We have a bill draft request (BDR) that came from the Department of Taxation, BDR 32-408.

BILL DRAFT REQUEST 32-408: Limits circumstances in which overpayments of taxes may be applied to underpayments in another reporting period to reduce penalties. (Later introduced as [Senate Bill 138](#).)

Senate Committee on Taxation
February 24, 2005
Page 23

SENATOR TOWNSEND MOVED TO INTRODUCE BDR 32-408.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

* * * * *

CHAIR MCGINNESS:

There being no further business, the meeting is adjourned at 3:11 p.m.

RESPECTFULLY SUBMITTED:

Tanya Morrison,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: _____