MINUTES OF THE
SENATE COMMITTEE ON TAXATION

Seventy-third Session
April 12, 2005

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 1:39 p.m. on Tuesday, April 12, 2005, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 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 Mike McGinness, Chair
Senator Sandra J. Tiffany, Vice Chair
Senator Randolph J. Townsend
Senator Dean A. Rhoads
Senator Bob Coffin
Senator Terry Care
Senator John Lee

GUEST LEGISLATORS PRESENT:

Senator Mark E. Amodei, Capital Senatorial District
Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

Russell J. Guindon, Deputy Fiscal Analyst
Chris Janzen, Deputy Fiscal Analyst
Ardyss Johns, Committee Secretary
Tanya Morrison, Committee Secretary

OTHERS PRESENT:

Dennis K. Neilander, Chairman, State Gaming Control Board
Charles Chinnock, Executive Director, Department of Taxation
Scott Scherer, Paramount Parks, Incorporated
George A. Ross, Las Vegas Chamber of Commerce

Carole Vilardo, Nevada Taxpayers Association
Carmen Shipman, Tax Administrator, Motor Carrier Division, Department of Motor Vehicles
George W. Treat Flint, Nevada Brothel Owners Association
H. North Swanson, Naturist Action Committee
Taylor Dew, National Hula Girls
Allen Lichtenstein, General Counsel, American Civil Liberties Union of Nevada
Terry Graves, The Beach
Bob Williams
Norman Kaye, Poet Laureate of Nevada
Jim Endres, Independent Gaming Operator Coalition
Richard H. Wells, President, Wells Gaming Research
Chris Barrett, Independent Gaming Operator Coalition
Peter J. Mandas, Owner, Hobey's Restaurant and Casino
Roger Norman, Owner, Crystal Bay Club-Casino
Nancy Newton, Controller, Stockman's Bar, Restaurant and Casino
Jim Marsh, Owner-Operator, Long Street Inn and Casino
Ryan Sheltra, General Manager, Bonanza Casino
Casey Sullivan, General Manager, Tamarack Junction Casino
Hal Holder, Chief Executive Officer, Holder Hospitality Group
Kathy Burke, Recorder, Washoe County
Dennis Freimann, Auditor, Clark County
Madelyn Shipman, Nevada District Attorneys Association; Southern Nevada Home Builders Association
Russell Rowe, Focus Property Group
Buffy J. Dreiling, Nevada Association of Realtors
Joe L. Johnson, Independent Power Corporation
Michael A. T. Pagni, Attorney, Albertson's Incorporated
Mary Lau, Retail Association of Nevada
Samuel P. McMullen, Retail Association of Nevada
Alfredo Alonso, Nevada Beer Wholesalers Association c/o Bonanza Beverage Company
Leif Reid, Attorney
Ron Cuzze, Captain, Government Affairs Officer, Nevada Wing, Civil Air Patrol
Dion E. DeCamp, Colonel, Commander, Nevada Wing, Civil Air Patrol
Gary H. Wolff, Teamsters Union Local 14
Ellen Allman, Caithness Operating Company, Limited Liability Company
Bjorn (BJ) Selinder, Churchill County
Andrew List, Nevada Association of Counties

Robert H. Erickson, City of Fallon
Jeff Payson, Manager of Appraisal, Assessor, Clark County
Mary C. Walker, Carson City; Douglas County; Lyon County

CHAIR MCGINNESS:
We will open the hearing on Senate Bill (S.B.) 392. This is the omnibus taxation, public revenue and tax policy bill that came out of the legislative committee known as the S.B. 8 Committee, created by S.B. No. 8 of the 20th Special Session.

SENATE BILL 392: Makes various changes to state financial administration. (BDR 32-683)

RUSSELL J. GUINDON (Deputy Fiscal Analyst):
You have before you a handout titled "Explanation of Senate Bill 392 in Relation to the Recommendations of the Legislative Committee on Taxation, Public Revenue and Tax Policy" (Exhibit D). This is the Fiscal Analysis Division's attempt to go through the bill section by section and tie it to the recommendations made by the Legislative Committee on Taxation, Public Revenue, and Tax Policy (Exhibit C, original is on file at the Research Library). The S.B. 8 Committee was directed to look into the tax plan passed in the 72nd Session and make any recommendations necessary with regard to technical cleanup and/or if there needed to be any policy considerations. Eighteen recommendations came out of the interim study. Last week, you heard the bill to change how we define financial institutions, from a method based on the North American Industrial Classification System, to one based more on a licensing or registration requirement. Senate Bill 392 is the bill that incorporates the other 17 recommendations made by S.B. 8 Committee.

Section 1 amends chapter 360 of the *Nevada Revised Statutes* (NRS) to include the new sections, 2 through 6, which have to do with making changes to the business-license fee. Section 2 defines the term "exhibition," which will be used to implement the Committee's Recommendation 5. Section 3 defines the term "state business license" used in various sections of the bill. Section 4 implements the Committee's Recommendation 2, which came out of discussions of the Committee with regard to the business license fee. It specifies a natural person is required to obtain only one business-license for any combination of activities conducted by that individual that are reported to the Internal Revenue Service on certain forms. Those forms are the Schedule C,

which is the business-income form, Schedule E, which is the supplemental-income form and Schedule F, which is the agricultural-income form. This recommendation codifies the regulations developed by the Department of Taxation, approved by the Nevada Tax Commission and then ratified by the Legislative Commission. If an individual is not operating separate businesses, but is filing a Schedule C and a Schedule E because those forms are required for certain activities, he or she is only required to get one business license.

Section 5 implements the Committee's Recommendation 1. It authorizes the Department of Taxation to allow an individual with multiple businesses to establish a common anniversary date on which he or she can pay the $100 fee. This also allows for the proration of the $100 when a business comes to the Department to have this common anniversary date established.

Section 6 implements Recommendation 5. This, again, has to do with the business-license fee. Anyone who operates a facility having craft shows, exhibitions, trade shows, et cetera, will be responsible for the payment of the business-license fee for those operators. The business-license fee for these types of activities can be paid in one of two ways. It can be paid as a flat $5,000 on or before July 1 for all the shows held at a facility during the fiscal year (FY), or it can be paid on a per-show or event basis at the rate of $1.25 per exhibitor, per day of the show. This is a provision that was repealed in S.B. No. 8 of the 20th Special Session. Several individuals came before the Committee with regard to attempting to get that provision back because it was a more effective and efficient way to deal with the business-license fee.

MR. GUINDON:
Section 7 is in regard to the Nevada Tax Commission and addresses increasing the salaries of the members of the Nevada Tax Commission. Under current statutes, they are paid $80 per day plus per diem. The workload of the Nevada Tax Commission is becoming increasingly heavier, as well as more involved and difficult. There were no actual numbers recommended, so the Committee decided to base the number on the salaries paid to members of the Nevada Gaming Commission. The Chair would get $55,000 per year, and the other 7 members would be paid $40,000 per year.

Section 8 deals with the Taxpayers' Bill of Rights. The recommendation was based on information brought before the S.B. 8 Committee to include the insurance-premium tax, the short-term car-rental tax and fuel tax.

Section 9 came out of a concern that incorporating the insurance premium tax and the short-term car-rental tax, under the provisions of the Taxpayers' Bill of Rights, would have a potential fiscal impact. The current provision requires each taxpayer to be provided a copy of the Taxpayers' Bill of Rights. Section 9 changes the provisions for the dissemination of the Taxpayers' Bill of Rights and eliminates the provision requiring a pamphlet to be distributed to each taxpayer. Instead, it can be posted on the Internet Web site maintained by the Department, or made available to any person upon request at the offices of the department responsible. It would also be distributed with each notice to a taxpayer when an audit will be conducted.

Section 10 of S.B. 392 again deals with the business-license fee and implements Recommendation 3a, removing the provision requiring the definition of an employee. Section 11 includes the definition of the activities of a natural person deemed to be a business activity in the NRS 360.765. This was just a cleanup done by the Legislative Counsel Bureau (LCB), Legal Division. Section 11 also implements Recommendation 4, which is to have legislation drafted defining the term "earns" as net earnings. This provision addresses the criterion for testing whether a home-based business has a responsibility to pay the business-license fee. Section 11 also implements Recommendation 7, which removes the fee exemption for businesses that create or produce motion pictures as defined in the NRS 231.020. Under current statute, those entities are exempt from the business-license fee. This provision removes that exemption. Those entities are now covered under the modified business tax as well as the business-license fee. Section 11 also implements Recommendation 6 of the Committee, which provides an exemption for a person who derives rental income from four or fewer dwelling units.

MR. GUINDON:
Section 12 implements Recommendation 3b and is just some technical cleanup. It eliminates the requirement of reporting the estimated number of employees to the Department of Taxation when paying the business-license fee. Section 12 also eliminates subsection 5 of the NRS 360.780. Section 6 of the bill implements Recommendation 5, and is the provision having to do with persons who operate a facility that hosts exhibitions, such as craft and trade shows,

conventions, et cetera. Those persons are responsible for payment of the business license. On page 7 of S.B. 392, a new subsection 7 contains additional language needed for the implementation of Recommendation 5.

MR. GUINDON:
Section 13 deals with Recommendation 3 and eliminates the provision requiring the Department of Taxation to report the number of employees to the Department of Business and Industry. Those were just cleanups to remove the employee provisions that were no longer needed, based on the business license fee.

Sections 14, 15 and 16 implement Recommendation 18a (3), which bring the fuel taxes under the Taxpayers' Bill of Rights. Section 17, which I talked about earlier, also brings the fuel taxes under the amended dissemination requirements for the Taxpayers' Bill of Rights.

MR. GUINDON:
Section 18 has to do with the modified business tax on financial institutions. It implements Recommendation 10 of the Committee. It includes the definitions adopted in the regulations by the Department of Taxation, approved by the Tax Commission and ratified by the Legislative Commission. Those definitions are with regard to implementing both the financial and nonfinancial health-care deduction allowed under the modified business tax. It defines the terms: "claims, direct administrative services costs, employees and health benefit plan." These terms were defined in the regulations and were needed by the Department of Taxation for implementing the tax. They were based on testimony provided to the Committee by members of various organizations.

Section 19 also has to do with the modified business tax on financial institutions, and implements Recommendation 8 of the Committee. This language amends the statutes to indicate the tax does not apply to things the State is "prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution." Section 20 adds that language as well. Section 20 also implements Recommendation 9 of the Committee. It eliminates the requirement for taxpayers to submit copies of their quarterly unemployment-insurance tax forms along with the modified business tax forms filed with the Department of Taxation.

Section 21 refers to the modified business tax on general business. It implements Recommendation 10. It defines the terms needed to implement the health-care-deduction part of the modified business tax for general business. These are terms adopted by the Department of Taxation and the Nevada Tax Commission.

The new language in section 22 exempts the wages paid by individuals to employees who provide in-home domestic health-care services to their employer or family members of their employer. This refers to personal-service employees, so this would be you, the individual, hiring someone to come in and provide health-care services to you or someone in your family.

Section 23 implements Recommendation 8 and makes it clear that the statutes for the modified business tax on general business do not apply to things the State is prohibited from taxing under the Constitution. Section 23 also provides for implementing Recommendation 9, eliminating the provision requiring the taxpayer to send a copy of his or her unemployment-insurance tax return.

MR. GUINDON:
Sections 24 through 28 regard the live-entertainment tax, which is in the NRS 368A. These changes implement Recommendation 3. During the interim study, it was brought to the Committee's attention that the statute drafted in S.B. No. 8 of the 20th Special Session gave the State Gaming Control Board the regulatory authority over the gaming portion of the live-entertainment tax. Instead, that authority should have been given to the Nevada Gaming Commission because it has the regulatory authority over all the other gaming taxes and fees in the NRS 463.

Section 29 implements Recommendation 14, and is mostly a technical change. It was an attempt to provide some clarification with regard to whether the tax was based on maximum seating or maximum occupancy. A new paragraph was added on page 21 referring to nonprofits, which are basically exempt from the tax. There was concern there could be an event where a nonprofit could buy tickets from a for-profit entity at a discount, and then resell those tickets and keep the difference. This new language clears up that situation.

Section 29 also implements Recommendation 15 of the S.B. 8 Committee by creating a new paragraph on page 22, starting on line 21. This was a result of testimony brought before the Committee regarding the live-entertainment tax

provisions. There was some concern it could be construed to apply to food and product demonstrations conducted at shopping malls, craft shows or similar facilities. The Committee recommended drafting legislation to make it explicit in the statute that these types of events would not be subject to the live-entertainment tax.

Sections 30 through 32 of S.B. 392 contain technical changes needed with regard to making the Nevada Gaming Commission responsible for the regulatory provisions of the live entertainment tax.

Section 34 refers to the NRS 233B, which is the Nevada Administrative Procedure Act. This is related to the live-entertainment tax and implements Recommendation 13. Similarly, section 35 is in the NRS 463, which contains the licensing and control of gaming provisions. These, again, are just changes necessary to implement Recommendation 3 with regard to the live-entertainment tax.

Section 36 has to do with the business-license fee. It repeals the NRS 360.770 and NRS 360.785. As previously discussed, the provisions in the bill have been directly included in the NRS 360.765 rather than a reference made to the NRS 360.785.

Section 37 refers to the live-entertainment tax. This voids the regulations adopted pursuant to the NRS 368A by the State Gaming Control Board and ratified by the Legislative Commission. This section implements Recommendation 13.

Section 38 makes this act effective on July 1, 2005.

SENATOR CARE:
Are you convinced that by any deletion of definitions, for example, of "business, wages or employer," we are not somehow impacting revenues? Are these more to simply streamline some sort of consistency throughout the bill when read with other statutes? Sometimes, when you change the definition of a word over here, it has a tremendous impact over there. I want to be sure we are not doing that anywhere.

MR. GUINDON:
It is my understanding a lot of those changes are just technical in order to implement the technical recommendations of the Committee from the interim study. A lot of those changes are actually codifying the regulations adopted by the Department of Taxation, approved by the Nevada Tax Commission and ratified by the Legislative Commission. There is a fiscal note for the bill, but the changes to which you are referring are just technical in nature and do not affect other provisions in statute.

DENNIS K. NEILANDER (Chairman, State Gaming Control Board):
As you may recall, I participated to some extent in your interim debates in respect to this matter. There are a couple of provisions within the bill requiring some further technical cleanup. They are really just drafting issues and not substantive. I will walk the Committee through these recommended technical amendments to S.B. 392 (Exhibit E).

The first change we are suggesting is in section 9, on page 5, lines 37 and 38. This section has to do with the Taxpayers' Bill of Rights and the pamphlets. Since the gaming taxpayers are not subject to those provisions, the State Gaming Control Board should not be included in that section at all. Our second suggestion is under the NRS 368A.210. There is currently a provision applying to both the Board and the Department of Taxation, which requires the taxpayer to create a separate account in which to hold the live-entertainment tax proceeds. That is something we have never required under the casino-entertainment tax and, from a gaming perspective, it is not necessary. In my discussions with the Department of Taxation, we have come to the same conclusion. We have had a lot of complaints from the taxpayers who have had to set up these separate accounts. There also tends to be some confusion about whether this account is to be held in trust for the State. Does that mean it needs to be a trust account, which tends to be more expensive?

Our final suggestion is to delete section 37. That section would have the effect of voiding the existing regulations adopted by the Board. The rationale was if this law is to pass, it will now replace the Nevada Gaming Commission as the rule-making authority as opposed to the Board, which is how it is for everything else in respect to gaming. The Board does not have the rule-making authority. It was granted that authority under S.B. No. 8 of the 20th Special Session, but it should be the Commission. However, the Board did go through the entire rule-making process together with the Department of Taxation and with the

Commission. The regulations were adopted under the provisions of the *Nevada Administrative Code* (NAC) and ratified by the Legislative Commission. I would suggest it is not necessary to jettison those regulations already adopted. Those regulations fully conform to S.B. No. 8 of the 20th Special Session.

SENATOR TIFFANY:
If we modified the entertainment tax in this Committee, would you like us, then, to have the Commission adopt the regulations?

MR. NEILANDER:
Yes, and if it requires any additions, amendments or anything going forward, we would assist the Commission in carrying out any recommendations.

SENATOR TIFFANY:
Are you like the technical staff to the Commission?

MR. NEILANDER:
That is correct.

CHARLES CHINNOCK (Executive Director, Department of Taxation):
The Department of Taxation also worked closely with the interim S.B. 8 Committee to come up with S.B. 392, which we support. We do have some technical amendments (Exhibit F) we would like to discuss, some to which Mr. Neilander has already spoken.

The first suggestion is to amend section 18, subsection 3, which has to do with the modified business tax with respect to the financial institutions. Starting on line 10 of page 12, remove the part of section 3 that reads, "An employer claiming the deduction allowed pursuant to this section shall submit with the return filed pursuant to subsection 3 of NRS 363A.130 proof of the amount paid in the calendar quarter that qualifies for deduction." We would replace it with, "Upon request, any health care deduction claimed by the employer must be supported by appropriate documentation and explained to the satisfaction of the Department."

The same change would apply to section 21, subsection 2 on page 16, line 18, with respect to the modified business tax for general business. During the interim and in our own regulations, we indicated with respect to filing every

quarter, the employers did not need to supply that information. We would only need to have that information on an audit basis or if there was some concern.

We support what Mr. Neilander said with respect to amending section 9 on page 5. We also concur with his second recommendation with respect to not needing a separate account for the live-entertainment tax.

One final recommendation is with respect to the fiscal note we submitted (Exhibit G). We had shown a loss in revenue as a result of the provision in section 5 on page 2, where several business licenses can be aligned to an anniversary date. There was some concern, when we were working on this fiscal note, credits could involve refunds. After talking to the Legal Division of the LCB, we now understand that section better. On the first line of the fiscal note, it should show no fiscal impact. Where it now shows $1.7 million for 2005-2006, a little over $2 million for 2006-2007 and $4 million for the future biennia, it should show $0 all the way across.

CHAIR MCGINNESS:
Therefore, on the fiscal note, the total would be somewhere around $12 million rather than the $16 million.

MR. CHINNOCK:
That is correct.

SCOTT SCHERER (Paramount Parks, Incorporated):
We are requesting an amendment to clarify the definition of live entertainment. Motion simulator rides, or other digital, electronic mediums, like “Star Trek: The Experience,” would not be considered live entertainment. They do have flight attendants who are in uniform and may utter a few lines to enhance the overall experience of the ride or attraction. The ushers, who are employees of “Star Trek: The Experience,” are there predominately for safety and for operating the ride. There has been concern that because they are in costume and are persons who are physically present, it might be considered live entertainment.

SENATOR CARE:
Are you currently paying a live-entertainment tax, or do you just want to clarify it so you do not have to pay it?

MR. SCHERER:
Historically, it has not been paid. “Star Trek: The Experience” was built in 1996. In 1995, a representative of the Nevada Resort Association requested and got an exemption for interactive entertainment. He specifically noted that “Star Trek: The Experience” was the kind of attraction that would be exempt under the exemption from the casino-entertainment tax. Two years ago, all of those exemptions were eliminated, which has given rise to this ambiguity. There has been some suggestion that “Star Trek: The Experience” will be required to pay the tax, so we are looking for clarification, at least going forward.

SENATOR CARE:
This is from Paramount Parks, Incorporated. I wonder how many others there may be out there.

MR. SCHERER:
I am not aware of how many others there may be. I have shared this amendment with the Department of Taxation and with the Gaming Control Board and they have no objection to clarifying it in this manner.

GEORGE A. ROSS (Las Vegas Chamber of Commerce):
We are very much in support of S.B. 392.

CAROLE VILARDO (Nevada Taxpayers Association):
We are in support of the bill, but I will not speak to the amendments, since I have not seen them.

CARMEN SHIPMAN (Tax Administrator, Motor Carrier Division, Department of Motor Vehicles):
The Department of Motor Vehicles (DMV) has no position on S.B. 392; however, the Department has prepared a fiscal note reflecting the anticipated costs needed to implement the requirement to publish an informational pamphlet as required in section 17.

The total cost is expected to be $5,000 in fiscal 2006, $3,920 in fiscal 2007 and $7,840 in future biennia. These estimates include the cost to develop and print the pamphlet, the associated mailing costs and the expenses involved to enact regulations to clarify the Department’s responsibilities under this bill.

The Motor Carrier Division currently has processes in place that perform the functions specified in S.B. 392. For example, the Division publishes a quarterly newsletter, posted on our Web page. It provides advice and instruction on completing fuel-tax returns; obtaining a fuel license; obtaining a refund of taxes paid for exempt fuel usage; and record-keeping requirements for audit purposes. In addition, after each Legislative Session, the Division notifies our customers of all law changes affecting fuel-tax reporting.

The Division has developed an important partnership with the motor-carrier and fuel industries, and we remain committed to work to continually improve upon that relationship.

The Division would ask the Committee to consider removing the requirement for publishing a pamphlet, and, instead, allow the requirements specified in S.B. 392 to be posted solely on our Web page. We believe it is more cost-effective and efficient to provide this information electronically, allowing the information to be continually updated without incurring additional expense. The Division also requests an alternate effective date of October 1, 2005, to allow sufficient time for implementation.

CHAIR MCGINNESS:
Ms. Vilardo, is this part of the Taxpayers' Bill of Rights information?

MS. VILARDO:
The Nevada Taxpayers Association recommended including this in the bill for a very specific purpose. The Taxpayers' Bill of Rights encompasses more than what Ms. Shipman just identified. I have had members, over the years, wanting it applied to other taxes as well, particularly knowing if there are any changes relative to hearings, everybody will be treated the same because they get the information based on an audit. For agencies that have not been subject to the Taxpayers' Bill of Rights, I do agree it is probably a good idea to give them an extended period of time. I would not mind if it even went to January 1 in order for them to get the necessary regulations to make sure they are in compliance. I would urge this Committee not to strike that provision.

CHAIR MCGINNESS:
We will close the hearing on S.B. 392 and open the hearing on S.B. 127. This is Senator Titus bill.

SENATE BILL 127: Expands exemption for certain small businesses from requirements for state business license. (BDR 32-679)

MR. ROSS:
The Las Vegas Chamber of Commerce supports this bill.

SENATOR DINA TITUS (Clark County Senatorial District No. 7):
I do not have to tell you how much confusion existed in the last Session and two Special Sessions, when it came to doing the tax package. We subsequently found some things that could be corrected and cleaned up. One of those is the exemption for a small business. Under the existing law, which we passed last Session, a business has to obtain a license and pay an annual fee of $100 unless the business is exempt by law. The businesses exempt by law are those operated by a person from home, earning no more than two-thirds of the previous year's average annual wage. During the interim, I heard from a number of people who said even though they operated a business, they were not exempt because the business was not in the home. I am referring primarily to homeowner associations, which are not really businesses. However, under the law, they have to pay the business tax and buy the business license because the law only exempts those businesses operated in the home. This bill simply extends the definition of those exempt businesses to say it does not just have to be operated in the home. It can be operated outside the home as well.

SENATOR RHOADS:
Do you agree with the fiscal note? It shows $8 million the first and second years.

SENATOR TITUS:
No. I am surprised it would be nearly that much. Perhaps, someone from the Department of Taxation can explain how they came up with that figure.

MR. CHINNOCK:
For the fiscal year 2003, we ran all businesses in the State of Nevada who had a net income of less than the $22,000. We came up with about 72,000 businesses. With projected growth of about 6.5 percent per year, we ended up with the future biennia at 76,000 businesses per year, which is where we got the cost.

SENATOR CARE:
Who falls into this category then? The testimony was the homeowner associations and the like, but almost $20 million in a biennium?

MR. CHINNOCK:
We saw this as any business earning less than $22,000 per year. Our interpretation was an expansion from the home-based businesses provided in last Session's legislation.

SENATOR TITUS:
I did not know there were businesses operating outside the home that could exist making less than $22,000 per year, but apparently there are a few out there. If that is too much money, even though we give other benefits to small business, I would at least ask you to look at the homeowner-association aspect of it. Can Mr. Chinnock see how many of those would qualify?

MR. CHINNOCK:
We will see if we can get the filing forms for the homeowner-associations and give it our best. It would be considerably less.

SENATOR COFFIN:
Is your fiscal note based on anticipatory income that might be lost, or is it based on something that has been captured?

MR. CHINNOCK:
Both, it could be some anticipatory too, because as you know, we have been going through the process of gathering upwards of between 300,000 and 400,000 businesses. We have over 200,000 businesses registered now, so it would be a combination of both.

SENATOR COFFIN:
In the current budget revenues projected in the Governor's budget, it is not really $19 million for this biennium, is it?

MR. CHINNOCK:
If it includes over 76,000 businesses, I would say yes.

SENATOR COFFIN:
When I said anticipatory, I meant people you thought might be captured eventually, and you just wanted to make sure you were conservative on the fiscal note.

MR. CHINNOCK:
That is correct.

SENATOR COFFIN:
It includes everyone who is being taxed, and no one else.

MR. CHINNOCK:
It would include anybody who is qualified for the $100 business license under the existing statute.

SENATOR COFFIN:
Some of them are not currently paying.

MR. CHINNOCK:
That is possible.

SENATOR COFFIN:
How much of this money is being indicated as being lost on this fiscal note, but in fact, is not being captured?

MR. CHINNOCK:
I do not know the exact amount, at this time. There are probably around 220,000 businesses registered, and after a process of discovery, it probably should be somewhere between 300,000 and 400,000.

SENATOR COFFIN:
One could say then, it is something less than $19 million, maybe a little more than half of that.

MR. CHINNOCK:
Yes, I could definitely say that.

SENATOR TIFFANY:
When we developed this $100 business tax, if I remember, part of the purpose was to be able to capture the small business people's names, so we could create a database for the future. Is that correct?

MR. CHINNOCK:
Yes, it is.

SENATOR TIFFANY:
Did we create the database just so we could tax them?

MR. CHINNOCK:
Under the statutory provisions passed in 2003, we were required to discover those businesses, which is why we were creating those databases. Those databases also allow us then to identify those who were required to pay use tax and also to discover whether they needed to pay any of the other taxes.

SENATOR TIFFANY:
If I remember right, it was to capture the names so we could go after them for more, which is why I did not like it.

MR. CHINNOCK:
It was so we could make it uniform across-the-board to everyone.

SENATOR TIFFANY:
That is a nice way of putting it. You said 77,000 fall into this category. Were those the numbers we would not have swept up without the new tax law? Would they have gone untaxed or unidentified?

MR. CHINNOCK:
They would not have been taxed, because under the old business-license tax, sole proprietorships were not required to pay the business-license tax.

SENATOR TIFFANY:
Senator Titus, what you might want to do is look at what was not taxed before and offer that as a rebate. We have not yet addressed giving money back to the public. Since this is new money we created, it could be another way to give some money back to the public if we are having a problem with this reduction as a fiscal note.

SENATOR TITUS:
I appreciate your suggestion; however, I would like to go back to those figures Mr. Chinnock gave us in terms of how many businesses are paying now and how many we have not tapped, that could be tapped. Could you repeat those figures, because I think that makes a good point?

MR. CHINNOCK:
The number I stated was 220,000 registered currently, and from a discovery standpoint, there are probably somewhere between 300,000 and 400,000 businesses out there.

SENATOR TITUS:
What you are talking about is not a revenue loss, but a considerable revenue gain if you can capture all of those not currently paying. The difference between 220,000 and 350,000 to 400,000 is not going to be just small businesses. You could be getting more money from big businesses if you ever figure out a way to identify them. Is that accurate?

MR. CHINNOCK:
It is a fair statement.

SENATOR TITUS:
Maybe we need to revise this fiscal note to show the problem would not be in exempting these small businesses. The problem stems from not capturing the businesses that have been identified but are not paying.

SENATOR TIFFANY:
That is a good point. We could shift the staff required to monitor the 77,000 people over to look at the others if you wanted to recapture it that way. If you have to find another 200,000, you would have to have the staff to do it. Is that correct, Mr. Chinnock?

MR. CHINNOCK:
We are in the process of doing that right now.

SENATOR TIFFANY:
Is that in your budget?

MR. CHINNOCK:
Yes.

SENATOR TITUS:
Under the old provisions, the sole proprietors were exempt. This is not just sole proprietors. These would not be somebody who is a sole proprietor making a lot of money. Remember, the qualifying thing is the amount they make, which is less than $22,000 per year, so these are extremely small businesses we want to exempt from this tax.

SENATOR CARE:
Is the $22,000 before or after the owner has been paid? Are we talking about the $22,000 threshold being the revenues of the business or the earnings of the business? What if the income of the business revenues is $200,000 and the owner pays himself $180,000? The net earnings would then be below $22,000.

MR. CHINNOCK:
After much discussion in the interim and by regulation, we established it was the net earnings as reported to the IRS in the prior year.

SENATOR CARE:
It would be the net earnings of the business.

MR. CHINNOCK:
That is correct.

SENATOR CARE:
So, this is after wages have been paid.

MR. CHINNOCK:
It would be after wages had been paid if the business had employees.

SENATOR CARE:
Could it be the owner who pays himself a six-figure salary?

MR. CHINNOCK:
No, it could not.

CHAIR MCGINNESS:
We will close the hearing on S.B. 127 and open the hearing on S.B. 247.

SENATE BILL 247: Revises provisions governing tax on live entertainment. (BDR 32-680)

SENATOR TITUS:
After two Special Sessions, many late nights, a lot of political battles, some Supreme Court decisions and some pretty messy compromises, we came up with a tax package that was quickly found to be full of problems. One of those problems was with the entertainment tax, which turned out to be a bookkeeping nightmare. It also failed to generate the anticipated revenue, and it did not adequately bring in a group some of us intended to be included, namely, the striptease clubs which have proliferated in southern Nevada. For those reasons, I introduce a reform for the entertainment tax, which is what is before you today in S.B. 247. Since I was one of the ones who pushed to include the striptease clubs, I felt some obligation to try to clean up the mess made in that last bill.

I have handed out an amendment, which is, in effect, a rewrite of S.B. 247 (Exhibit H, original is on file at the Research Library). I have also handed out a packet of letters in support of the new entertainment tax (Exhibit I). These letters come from people who produce sporting events, which will be excluded from the entertainment tax under the new bill, as I will explain. There are letters from the Las Vegas 51's baseball team, Las Vegas Motor Speedway, Wranglers hockey team and Feld Entertainment, Incorporated, which sponsors circuses.

Under the new bill, you will virtually take the old entertainment tax and divide it into two parts, or, two taxes. We will call one live entertainment and the other, adult entertainment. We will go over the details of the live-entertainment tax first, which is a continuation of the old tax, but with some revisions. The live-entertainment tax would apply only to nonrestricted gaming facilities, and would be administered by the Gaming Control Board. Sporting events that occur in gaming facilities would be exempt, but the bill would leave in place the 10-percent charge on admissions, drink, food, and souvenirs. This would eliminate the seating requirement and eliminate any facilities other than gaming facilities with nonrestricted licenses.

Senator Titus:
The second part of the bill deals with the adult-entertainment tax, which is defined in section 11. It would charge the same 10 percent on everything; drinks, admissions and souvenirs, in nonrestricted gaming and in non-gaming facilities that provide adult entertainment. It would be administered by the Department of Taxation and would include houses of prostitution.

This new approach is better than the old live-entertainment tax for several reasons. It eliminates the seating requirements which were problematic in the old bill. It also eliminates sporting events, which are family-oriented and have a lot of local attendance. Having this exemption will help us get a second National Association for Stock Car Auto Racing, Incorporated, (NASCAR) race, which everybody seems to love, as well as a professional baseball team in Las Vegas. It also eliminates taverns and restaurants, which often have weekend entertainment. It will provide a better way of capturing adult live entertainment, which is an industry that puts additional burdens on our society, and therefore, is justified in being taxed. One of those burdens is more need for law enforcement because of the activities often surrounding the neighborhoods in these areas. Also, these facilities do not provide any kind of workmens' compensation or benefits, so the people who work in them often become a burden on the State. Any loss in revenue that might occur from eliminating sporting events, which were only charged 5 percent on admission anyway, will be more than made up for in an increase in revenue from adult entertainment.

GEORGE W. TREAT FLINT (Nevada Brothel Owners Association):
Before the 2003 Session, I was approached with the question of whether the brothels would be willing to be included in the live-entertainment tax. We have always been willing to participate, and through the last Session, and right up to the end, in S.B. No. 8 of the 20th Special Session, we felt we were included in the bill. There was a concern, at that time, about what would happen with the small venues that only had live entertainment on Friday and Saturday nights consisting of, maybe, an accordion or guitar player. The result was to create a 300-seat threshold, which effectively not only exempted my client, but probably about 90 percent of those other venues Senator Titus has addressed here today.

We had made plans all through last Session to institute an admissions fee into the brothel live-entertainment area. It was not our intention to be exempted. As a matter of fact, we were surprised by it. During the interim, a couple of

Legislators asked if we would fulfill the agreement we had made before, and we said we would. We are the only sex-related business in the State that has been up front and forward and asked to be included in the tax. As we were willing before, we are willing again.

The section in which the proposed amendment includes us is at the top of page 31 of Exhibit H. There will be an admission fee created, not for those persons coming in to have a drink or buy a souvenir, but for those who come into the bedroom area. Additionally, we will start charging a 10-percent excise fee on our bars, souvenirs and restaurants. Restaurants are becoming fairly common in some of the brothels. I sat down a couple days ago and tried to figure what fiscal advantage this would have for the State, and I came up with a figure of $1,640,000. It turned out to be close to the figure estimated by the Department of Taxation, which was $1,600,000. Much of that, of course, depends on how good business is. Business continues to be better in southern Nevada than it is in the northern part of the State.

We are anxious to participate for several reasons. One of those is ultimately, possibly next Session, we may come back and ask you to give us some benefits we do not have now, such as limited advertising. I hope this will send a message to those other sexually oriented businesses, particularly in southern Nevada, it is time to come on board and pay their fair share.

Additionally, we are appearing tomorrow before the Assembly with a similar bill, which only includes us and does not expand, as this bill does, into other areas. It is Assembly Bill (A.B.) 317 and is completely contained within the lines to which I alluded on page 31 of the amendment proposed by Senator Titus.

ASSEMBLY BILL 317: Provides for imposition of tax on live entertainment provided by all houses of prostitution. (BDR 32-926)

SENATOR CARE:
What are your motives for wanting to be included in this tax?

MR. FLINT:
I would be less than honest if I did not say we feel the State will become used to our contribution and, maybe, even look forward to it. Then, when someone comes along and says it is time to take a look at continuing to keep us legal,

you may be the first to point out that we are not creating any problems for the State and are contributing quite a bit.

SENATOR TITUS:
In the past, there has been some discussion whether limiting adult entertainment would be contrary to the First Amendment of the U.S. Constitution. The First Amendment is not an absolute freedom. It has been interpreted to exclude certain things, and I believe you could make a good argument that adult entertainment puts a special kind of burden on the State, which justifies its being taxed in this way. Also, there is a severability clause in the bill that says if the American Civil Liberties Union (ACLU), or somebody decides to challenge this tax on adult entertainment, and it is found to be unconstitutional, we would just go back to the old tax.

H. NORTH SWANSON, (Naturist Action Committee):
The language in S.B. 247 is disturbing to the Naturist Action Committee, particularly section 10. Live adult entertainment means "any activity provided for pleasure, enjoyment, recreation, relaxation, diversion," et cetera. That language would adversely affect a legitimate business like a naturist resort, which is a family-oriented resort and in no way resembles adult entertainment. Body parts do show in these places, but every effort is made to make it nonsexual. That language needs to be changed.

SENATOR TITUS:
The bill was not intended to get at family nudist colonies.

SENATOR LEE:
If this were my bill, I would probably outlaw brothels, but I understand you are leaving them in to make money off of them. How much revenue do you think this is going to generate?

SENATOR TITUS:
The calculations made last Session were tremendous. It was $75.4 million in fiscal year 2005. This is a huge business in southern Nevada, and they make a lot of money, mostly from tourists. This tax would be paid mostly by tourists, and not so much by local people. Because they are enjoying the climate of our State, it just seems appropriate for them to be paying their share. The new theme for Las Vegas of "What happens in Las Vegas, stays in Las Vegas," promotes even more of this kind of activity.

SENATOR LEE:
This money would go into the State General Fund. Is that correct?

SENATOR TITUS:
Yes.

SENATOR LEE:
We mentioned the responsibility lies at the local level to maintain and correct the problems and challenges this industry creates. Would it not be best for the money to stay at the local level, where these activities are managed rather than the State benefiting?

SENATOR TITUS:
At the local level, they do have specialized licenses. We do not have specialized licenses at the State level for these facilities. I would point out to you, while the local law enforcement would be involved, it is a burden on State services when it comes to lack of unemployment benefits and lack of health care. All of those are provided for by State social services, not local.

SENATOR LEE:
I know this bill is very important, but it seems like we are selectively going after a group or a business. No matter what business it is, I have a challenge with understanding that type of activity.

TAYLOR DEW: (National Hula Girls)
As you recall, the live-entertainment tax last Session was meant only to tax adult entertainment, but unintentionally affected us Hula Girls, Elvis impersonators, jugglers, singers, bands and virtually every type of entertainer. Obviously, the wording will need to be changed. There have been some compromises proposed by the Nevada Gaming Control Board, the State Gaming Commission and the Department of Taxation, but those were shot down.

If both of these bills are passed, S.B. 247 and A.B. 317, they would be very contradictory, which also worries me. Senate Bill 247 would be far superior because it defines adult entertainment as A.B. 317 does not. Senate Bill 247 taxes only a facility where live adult entertainment is provided and removes the tax on all other forms of live entertainment. This bill cleans up the language and, legislatively, makes a clear distinction between entertainment and adult

entertainment. This is absolutely vital to solving this serious and seemingly endless problem.

On page 1 of S.B. 247, lines 9 through 12 clearly state that if this were to go to judiciary, it is not clear whether the courts would require uniformity on appealing the tax. Also, it is difficult to tell if it goes to the courts, if live entertainers would even have a means to fight the expensive court battles. Entertainers would really like “adult entertainers” and “entertainers” to be defined. The State has an ample surplus of money, and I am not looking forward to any more taxes, but if a bill does pass, I would be in favor of S.B. 247.

ALLEN LICHTENSTEIN (General Counsel, American Civil Liberties Union of Nevada):
I am here to speak against S.B. 247. We at the ACLU have a great deal of respect for the hard work and the contributions of Senator Titus. However, in this particular case, this bill is way off base from a constitutional standpoint. She mentioned if it is challenged and if it is declared unconstitutional, it would revert back to the existing situation. Clearly, it will be challenged, and it will be declared unconstitutional. The courts, including the U.S. Supreme Court, have made it very clear we are dealing with First Amendment-protected activities. These adult businesses, such as strip clubs and the like, are clearly involved in First Amendment-protected activity. You cannot single them out, based on content, for special treatment in terms of taxes. One of the Committee members asked how much revenue this would generate, and the figure was $75.4 million. This is not revenue neutral. Its purpose, as testimony suggests, is to generate revenue for the State. You justify it by saying dancers do not have workmens' compensation or health care. You cannot justify it on that basis unless you treat all businesses not providing workers' compensation or health care in the same way. You cannot single out a business to generate revenue because you do not like it. This is not a new issue. It may be new in this State, but there is considerable case law when it comes to First Amendment issues.

Section 29 of S.B. 247 says this cannot be challenged in court. Again, there is case law that says you have laws that burden First Amendment rights. Federal courts have jurisdiction to look at the constitutionality of those particular laws and enjoin, temporarily and permanently, provisions that do violate the U.S. Constitution. Certainly, businesses involved in adult entertainment can be part of the general tax. However, that is not what we have here. This specifies these businesses on the basis of content and, frankly, that just will not fly.

SENATOR COFFIN:
You may be right in your assertion there will be some challenge. If we were to designate these businesses as a privileged business like we do with the gaming business, would your same constitutional protest apply?

MR. LICHTENSTEIN:
There are two points to make. One is unless there is some privileged activity, such as gaming or the sale of alcohol, these cannot be privileged businesses because you have a right to First Amendment activity. The court cases are quite clear. Gaming is an activity the State could choose to ban completely. Gaming is not a right. Alcohol sales and prostitution could also be banned by the State under Amendment XXI of the U.S. Constitution. On the other hand, erotic dance cannot be banned completely. If the Legislature were to say we do not want erotic dance any more, or we do not like it, so we are going to ban it, it would be unconstitutional because erotic dance is a right and not a privilege. There can be regulation of those businesses, but they cannot be banned and, therefore, cannot be considered privileged.

SENATOR TITUS:
I see this as a regulation and not a ban, so I think what you are saying is rather contradictory. I know local governments have special-privilege licenses or special-privilege charges and those seem to have stood. I am a strong supporter of the First Amendment, but there are exceptions to the First Amendment. Obscenity is not protected by the First Amendment, nor is sedition, subversion or fighting words. It is not an absolute right. It is subject to interpretation and, I think, in a case like this, we can interpret it in such a way to be able to deal with certain burdens these types of businesses put on the State. If this Committee is worried about constitutionality, I hope you would at least use this bill to clean up some of the problems with regard to entertainers like the Hula Girls, the sporting activities and those types of things.

MR. LICHTENSTEIN:
On the local level, there are business-license fees, as there are for all businesses. They have to be revenue neutral in the sense they cannot unduly burden any particular types of businesses. There may be a yearly fee of a few hundred dollars, but it is not the $75.4-million kind of cash cow being suggested here as a way of gaining revenue from particular businesses.

Your second point, regarding the First Amendment not being absolute, is true, but we are not talking about activities or businesses or expressions that are obscene, or fighting words or something else illegal. We are talking about licensed, legal businesses offering constitutionally protected expression. The U.S. Supreme Court has said we are dealing with the First Amendment, and you cannot unduly tax expression based on the content. That is exactly what is being offered here.

SENATOR TITUS:
I will just remind this Committee, this is not an undue tax or a different tax. This will be applied the exact same way as the live-entertainment tax in the nonrestricted-gaming areas. It is the same 10-percent tax and not some special higher tax that is an extra burden. It is the same one being applied to other businesses.

SENATOR LEE:
Would it be possible, if the State did not want proliferation of this type of business but also realizes it is here, for the State to then charge a fee? In other words, could the State say, "If you are going to be in this type of business, there will be a $250,000 fee for you to be in business in the State of Nevada?"

MR. LICHTENSTEIN:
No. Legal businesses can be regulated in terms of separation requirements, or in terms of not having density, but you cannot tax them or put extra fees on businesses because you do not like the content. That is the U.S. Constitution, and it is the same Constitution that protects your, my and everyone's right to speak.

SENATOR CARE:
Two years ago, we levied a tax on banks. Banks were distinguished in two ways. There is an additional payroll tax as well as a branch tax. Those do not apply to any other industry in the State. Yet, there is no First Amendment implication. It only applies to the banks. Is it your position what we did with banks is okay because it does not involve the First Amendment expression, but we may not do it with the establishments set forth in part of this bill?

MR. LICHTENSTEIN:
It is not my position. As a lawyer yourself, you know we follow case law, and the case law is pretty clear on this. For example, say the State Legislature

decides it wants to go after the newspapers, for whatever reason, and levy an extra tax on newsprint, which was an actual case in Minnesota. The court said it could not be done because of the First Amendment. So, yes, it is different when you have constitutionally protected expression as opposed to other types of businesses. I am not going to suggest whether what you do with banking is right or wrong. I have not looked at that, but again, I do know, very clearly, in the First Amendment area, that cannot be done.

SENATOR TITUS:
I appreciate the argument for newsprint. I think there is a difference between newsprint and striptease clubs, and the court has made that kind of distinction in some of its rulings over the years. This is worth doing, and it is worth taking a chance in court. It would probably go to federal court, but maybe also to the State Supreme Court. I cannot see the Nevada Supreme Court turning over this kind of tax.

TERRY GRAVES (The Beach):
As Senator Townsend can attest, we spent a lot of time during the interim working on the regulatory process with both the tax and gaming commissions. We applied what Senator Titus is trying to do here, though I have not seen the proposed amendment. I would like to ask the maker of the bill if issues like disc jockeys, celebrity disc jockeys, singing song-leader waiters and waitresses have been addressed in the bill.

SENATOR TITUS:
Yes, that would be my intent.

MR. GRAVES:
In that case, we would support S.B. 247.

BOB WILLIAMS:
I am a local entertainer who plays the piano and sings. However, since this original tax was passed in 2003, I have been prohibited from singing because singing is classified as entertainment. Entertainers in a regular casino, such as the place I work, are considered taxable. Is that correct?

SENATOR TITUS:
Yes, entertainment in casinos would still be covered by the entertainment tax.

MR. WILLIAMS:
Am I correct in saying the entertainment tax is not affected by this amendment?

SENATOR TITUS:
It depends on where you sing. If you are singing in the showroom of a casino, you would still be covered by this tax. If you are singing in a restaurant or a lounge, you would not be covered.

MR. WILLIAMS:
What about an entertainer in a lounge, or in an area adjacent to, or heard by people playing slot machines? There is a lot of gray area here.

SENATOR TITUS:
Yes, I know. This is a very difficult bill to work out.

MR. NEILANDER:
The existing law was patterned, somewhat, after the old casino-entertainment tax. Conceptually, under the old tax there was no distinction made between areas where there is an admission charge and those where there is not. In Mr. Williams' example, if it was a free area, it did not matter under the old law. The tax was applicable whether there was an admission fee or not. If I understand what Senator Titus is suggesting, she is proposing to amend it so the tax would only be applicable in a nonrestricted casino environment if there was an admission fee to get into that particular venue. What you are talking about are principally showrooms and ticketed events, but not necessarily lounges, where people can come for free. If that is what her intention was, it would address that situation.

MR. WILLIAMS:
This I can understand. The differentiation between a ticketed event and a non-ticketed event is clear for most of the casinos to understand. Entertainment is the lifeblood of Las Vegas, not gambling. People can gamble in their living rooms on the Internet. They come to Las Vegas to get good entertainment. Entertainment in open, non-ticketed lounges and entertainment in dining rooms is what vintage Las Vegas was all about.

NORMAN KAYE (Poet Laureate of Nevada):
I serve Nevada as its poet laureate. I was with the Mary Kaye Trio since we came here in 1947. We were the first entertainers in the lounge at the Frontier

Hotel. The tax on entertainers in the lounges is not correct. There is a different variation of talent within every person who works in the lounge. A 10-percent tax on entertainment, which in a sense is passive, is wrong.

SENATOR TITUS:
I love live music, too. As a matter of fact, I am a member of the Jazz Society. I want to be sure we understand what is happening here. There has been an entertainment tax for many years on all entertainment in casinos, including the lounges. It was originally a federal tax called the rooftop-cabaret tax. Congress repealed it, and the State picked it up in 1961. Then, last Session, there was some tinkering done to it. What I am trying to do now is not to impose a new tax, but clean up an old tax and take it away from some of the places where it used to apply. I want to be sure everyone understands this is not a new 10-percent tax on entertainment that would bring in the non-showroom aspects of entertainment. It is just the opposite.

CHAIR MCGINNESS:
We will close the hearing on S.B. 247 and open the hearing on S.B. 388.

SENATE BILL 388: Revises provisions governing applicability of requirements for state business license and certain taxes on businesses. (BDR 32-821)

MS. VILARDO:
By nature of whom we represent and the issues with which we are involved, we followed S.B. No. 8 of the 20th Special Session through the process and through all of the hearings as was indicated on the earlier bill. Our members kept calling about different issues. One of the most interesting issues was the fact everybody realized it was to be a tax on business. However, there was never a definition of a business in the bill. In S.B. 392, heard earlier today, you accommodated one of the issues that arose, which was a health-care provider. Two different cases were specified. In one case was an invalid, and the other case was a woman who had full-time medical care for her mother. These were people who hired and paid employment security on the wages they paid because they were full-time employees of the person. Both of them had to pay over $700 in payroll tax. They were not providing a service, but were consuming a service.

We found the same issue where a couple both worked and they had children. Because the children were young, the couple employed a sitter for enough hours

that they felt they had to report that person's wages to the Employment Security Division. If you paid a contribution to Employment Security, you were considered an employer, but in all these cases, these were not people who had businesses. In most cases, they worked for other people; so, one of the major things became providing a definition of a business, in statute, so you would not be capturing people who were consumers, instead of providers. You will find that on the first page in section 1 of the bill.

Page 5 is just a cleanup to provide conformance with the provisions of an employee of a business activity. The Legal Division of the LCB has just restructured language between lines 37 and 39, so that it conforms. That is, very simply, what this bill does, and I hope you will process it.

JIM ENDRES (Independent Gaming Operator Coalition):
The Independent Gaming Operator Coalition is a new organization that has come together for purposes of seeking an amendment to S.B. 388. Before you is the proposed amendment (Exhibit J), which seeks to create an update to the nonrestricted-gaming operator's tax bracket. Clearly, there is a fiscal impact to this proposal. Our proposal suggests, should the amendment be adopted and implemented as of January 6 of the first fiscal year of the biennium, the impact would be $13 million the first year of the biennium, and $26 million the second year.

The Coalition recognizes this Legislature will be considering many other proposals this Session with respect to how to treat the revenue stream of the State. The Coalition requests you consider this request among the body of all other requests having a fiscal impact. Should it be determined that the fiscal impact of $13 million in the first fiscal year of the biennium is too much to bear at this juncture, then the coalition also would like to consider phasing in the bracket change itself. On page 2 of the proposed amendment, you will see what is identified as Scenario III. By amending the brackets and phasing it in over 2 years, there would only be a $6-million fiscal impact in the first year of the biennium and a $20-million fiscal impact in the second year.

I have shared with you the request of the Coalition, which is changing the tax brackets to which the nonrestricted gaming licensees, particularly in rural Nevada, are subject, along with all other gamers. We request the first bracket be reset from $0 to $50,000 to $0 to $250,000 and the second tier be reset from $50,000 to $134,000 to $250,000 to $650,000.

RICHARD H. WELLS (President, Wells Gaming Research):
My task was to analyze the numbers and the economics and to review the fiscal and the economic impacts of this change in the bill. You should have a copy of the PowerPoint presentation I will be presenting (Exhibit K, original is on file at the Research Library).

Page 2 of Exhibit K shows the current brackets. The first $50,000 per month is now taxed at 3.5 percent. The next $84,000 is now taxed at 4.5 percent, and everything over the sum of those two, or $134,000 per month, is taxed at 6.75 percent. Those brackets were established in 1963.

Pages 3 through 7 of the exhibit give a sampling of some of the major events happening in the world during 1963. Just to name a few, the Cold War was in full bloom; nuclear testing was going on; Alcatraz was closed; and President Kennedy was assassinated. In gaming in 1963, there were no state lotteries, no tribal casinos, no riverboat casinos and no land-based commercial casinos except in Nevada. The 1963 fiscal year revenues for the State were $248 million. Page 9 of Exhibit K shows some of the key casinos in operation in Las Vegas in 1963, and the next page shows those in Reno. Of all those in Reno, only two are still in operation. Moving fast-forward to today, the United States now has 788 casinos with commercial casinos in 11 states, racetrack casinos in 8 states and tribal casinos in 28. Those casinos generate almost $46 billion per year in revenue.

If you look at page 12, you will see Nevada is surrounded by tribal casinos in all but one direction, which is Utah. The chart on page 13 plots total gaming revenues for Washoe County and Reno since 1980. We had continual growth, for the most part, until 2000. Since 2000, we have had three years of decline and an apparent leveling out in the most recent year. The next page shows a little closer zoom-in. The first bold vertical bar shows approval of tribal, or a full Nevada-style gaming in California. You can see it precipitated the declines. The second vertical bar is the opening of the Thunder Valley Casino, which competes heavily with northern Nevada.

Looking at those same revenues in a different way on the next page, the first heavy horizontal bar represents tribal gamings' development in the major feeder markets for northern Nevada over quite a long time period. The effect of that was to cut the gaming growth rate in half. Prior to tribal gaming, the revenues

were growing at about 6 percent per year. During this first wave of tribal gaming, the revenue growth rate declined to 3 percent per year. With the second wave of full Nevada-style gaming in California, the rate for Washoe County has gone negative.

MR. WELLS:
Comparing the gaming revenues with retail sales on page 16 of Exhibit K for Washoe County, you can see a very significant difference in the patterns. Retail sales flattened out a little during the economic downturn in 2001, but continued to grow, where gaming revenues declined. The next page shows what prices were like in 1963. The average home in the United States cost $19,300, which has now escalated 14 times on a national-average basis. Fuel prices were 29 cents for regular gas and the list shows several others.

As you can see on the next page, the consumer price index (CPI) in 1963 was 30.6 and for the full year of 2004, it was 188.9, increasing over 6 times. Some components have increased more than that. Next, if you were to adjust the brackets just for CPI six times, you would move the lowest bracket from $50,000 to $300,000 and the next bracket to $504,000 and $804,000.

The proposal brought before you by the Independent Gaming Operator Coalition is less than that. It is an adjustment of only 4.85 times the $250,000, the $400,000 and the $650,000. Your LCB, using data provided by the Gaming Control Board, estimated the annual fiscal-year impacts. If this had been in effect in 2004, the impact would have been $26.4 million. The LCB estimated $26.6 million in the coming fiscal year and $27.9 million in the 2007 fiscal year. Page 22 shows where the $26 million would go, or which casinos would receive it. Over half of the benefit would go to the small casinos. There are 347 licensees in the small category from $0 to $36 million. They would get $13.7 million, or 52 percent. Medium casinos would get about 23 percent and large casinos, 25 percent of these reduced taxes.

MR. WELLS:
What would casinos do with this money? They would spend it on facilities and equipment, in particular, keeping up to date on slot products, which is an ever-moving target. They would also spend it on marketing and promotion programs. Sometimes, small casinos have difficulty affording the staff they need, so they might hire that one additional person in marketing they do not have now. You will see the estimated economic impact of this kind of reduction

and the categories of spending on pages 24 and 25 of Exhibit K. These numbers were run by the University of Nevada, Reno (UNR), Bureau of Business and Economic Research. The total impact on a full, fiscal-year basis is $40,000. There is a significant impact from the portion that would go to capital improvements. These are the flow-through effects for the two fiscal years. It would also have an impact on creating additional jobs. This would indicate only 41 new jobs in casinos, but the services purchased by the casinos, the capital improvements, et cetera, would generate over 400 additional jobs Statewide, for a full fiscal year.

We believe if you consider this data, it is time to make an adjustment based upon the CPI.

CHRIS BARRETT (Independent Gaming Operator Coalition):
At this time, it might be appropriate to give some background of our members. We have over 60 properties and are still growing. These properties are all across the State, not only in rural Nevada, but Las Vegas, Henderson, Mesquite, Hawthorne and others. Some of these casinos provide the lifeblood of the community, not only for the gaming attraction and entertainment, but also as a major business and major employer. They are looked upon as leaders in their communities, helping out in all kinds of nonprofit organizations and are very active in those communities. Should this move forward, 77 percent of the nonrestricted gaming licensees would receive the majority of the benefit of this adjustment. What that means is anywhere from $10,000 to $13,000 per month per property. Though that is not big to a lot of people, it does help crack that nut when you are making the payroll. I will remind the Committee when the gross gaming tax is calculated, it is the first tax paid. That is not including expenses, but comes off every dollar that comes in.

SENATOR CARE:
What is the Legislature's obligation to adjust tax brackets to lend aid to an industry that has suffered, in part, because of the vagaries of the free-market forces? Keep in mind, some of those free-market forces are from other states, generated in part, by Nevada licensees. At what point does the Legislature say, that is business, as opposed to, we need to step in and help for the reasons Mr. Barrett just gave and, I am sure, other reasons as well?

MR. WELLS:
I cannot speak to the Legislature's obligations in regard to making those adjustments, but I would point out the graduated scale was put in place 42 years ago, and operating costs, had there been no competition developed, would have increased significantly over that time period and would affect the small operators significantly. The developments of gaming occurring in other states would have occurred whether any Nevada operators participated or not. Many operators did participate, and many did not. Many small operators, who are affected by these brackets, are not participating in gaming in other states, but they are very much affected by the competition.

SENATOR TOWNSEND:
As vague as my memory may be today, I think we had a substantial debate two years ago on gaming issues. Why was this not discussed then? The whole tax basis for our tax system, including 1979 and 1981, was laid open in front of this body for 6 very tough months.

MR. ENDRES:
This group of gamers of the market segment from Nevada's nonrestricted gaming businesses only came about in the last two or three months. They have been in the State for a long time, but as a coalesced interest, they have never come before the Legislature expressing any legislative interest, that I know of, to create or advocate a change. That is largely the reason. Now, the rural casinos and northern Nevada casinos have come together and see there is a need for their place in the public-policy debate.

PETER J. MANDAS (Owner, Hobey's Restaurant and Casino):
This legislation would assist Hobey's in further expansion, and adding employees for marketing, which we do not currently have. It would help the employees because it would contribute to health insurance. There are a lot of employees who do not participate in the health-insurance program because they are not willing to give up the $25 they would have to pay.

ROGER NORMAN (Owner, Crystal Bay Club-Casino):
I own the Crystal Bay Casino on the North Shore of Lake Tahoe, as well as Double Diamond Gaming in Reno. Two years ago, I did not own a casino, which is the reason this matter was not in front of this Committee. I spent eight days with William Eadington, an economist from UNR with whom I had many discussions about the inequities of the small casinos and what we are up

against. Being faced with increased competition from the larger casinos in Reno and Lake Tahoe, and being hit so hard by the tribal casinos, we have gone after the local market. This is happening in many areas of northern Nevada. After many discussions with Mr. Eadington, I got together with Mr. Endres and my gaming attorney and we decided to start this Coalition. The economies of small casinos are much different than the larger casinos against whom we have to compete. We have many of the same regulations and requirements, and in many cases, much higher overheads. If you look at a cross-section of the smaller casinos, our overheads are much higher than those of the larger casinos.

This is a way that benefits and is fair to the entire casino industry because they would be sharing in this same reduction of taxes although it will be of the most benefit to smaller casinos, which are the ones who need the help the most, right now, due to all of this added competition.

NANCY NEWTON: (Controller, Stockman's Bar, Restaurant and Casino):
I would like to address Senator Townsend's remark about why we may not have been here two years ago. You were all very busy two years ago, and there were many complications, such as the modified business tax passed at the last minute. You really did not know the impact it would have. I personally sent you all a letter after I calculated our first modified business tax in January of that year. This would have been way too much on your plate two years ago.

I am the controller at Stockman's Casino in Fallon. Stockman's Casino donates a lot to our community. We donate tens of thousands of dollars per year, whether it is to the Boys and Girls Club, the leukemia problem we have had or one of many other nonprofit organizations in Fallon. For many years now, we have had plans to add a six- or eight-plex theater so our citizens can enjoy theater in Fallon instead of having to go to Reno.

Our labor pool is very small in Fallon. If we had the additional money we could save by passage of this amendment to S.B. 388, we would use it to pay higher wages and draw more people. Last week, we scheduled interviews for five people for one job, and not one of those people showed up. We have a terrible labor-pool market in Fallon, and we need to pay higher wages. When I came to Stockman's six and a half years ago, I was paying nothing for my health insurance. Since then, our deductible has gone from $500 to $2,500 per year, and I now pay, as a manager, 25 percent of my premium to help with the cost paid by my employer. He still pays well over $100,000 per year for the

150 employees of Stockman's. Excluding the military base, we are the second largest private employer in the city of Fallon.

JIM MARSH: (Owner-Operator, Longstreet Inn and Casino):
I have three rural casinos, all located in Nye County. I would like to reiterate the impact the tribal casinos have made on the casinos, particularly in the western part of the State. We have been significantly impacted in Tonopah by the addition of the tribal casinos in Bishop, California. Probably most significant, is my Amargosa property, which has been losing money for the last three years, not particularly because of the gaming tax, but I had a disastrous fire two years ago and we were shut down for the better part of a year. We reopened the rooms last July, and then in August, a flash flood hit Death Valley and Highway 190 has been closed ever since. It has made a major impact, and I have had to pay out of pocket every month to keep the place open. Would this gaming tax help? Absolutely. This is important to the smaller casinos and would certainly be beneficial.

RYAN SHELTRA (General Manager, Bonanza Casino):
We are a small, family-run operation founded by my father 32 years ago in 1973. Today we have 250 employees, 425 slots, a small table-games department and several restaurants. We are very active in our community, the most notable being "Partners in Education" with North Valleys High School.

I would like to speak to you regarding the financial state of our gaming segment. This segment I define as casinos with gaming revenues of $1 million to $12 million, annually. I e-mailed each of you excerpts from the Nevada Gaming Abstract (Exhibit L), which is produced by the State Gaming Control Board. These are your numbers, produced by the State. What I shared with you was a combined net-income/loss before federal income taxes and extraordinary items for the following categories: $1 million to $12 million gaming revenue; $12 million to $36 million gaming revenue; and $36 million to $72 million gaming revenue. The average total net income/loss of Washoe County in Reno/Sparks for all casinos in the $1 million to $12 million bracket for the last 5 years is a yearly combined loss of $14,415,804. The average total net income/loss in Nevada for all casinos in the 5 years is a yearly combined loss of $19,460,658.

During this time, 14 businesses holding unlimited licenses have closed in Washoe County. At least 30 have closed Statewide. While this by no means

tells the whole story, it does clearly show a pattern. Small casinos are in need of tax relief. To stay competitive, it is imperative we have the funds to reinvest into our properties. The $1 million to $12 million gaming bracket represents nearly 26,000 Nevada employees. We cannot be left behind.

Senator Care, you asked a few moments ago what obligation the Legislature has to small gaming. Certainly, you are not obligated. You represent us. There were a lot of external factors you mentioned that are not necessarily the fault of the State or small gaming. However, in the last Legislative Session there were a whole slew of new taxes passed to help our State face a budget shortfall, which in the end we did not need, and these things hit us. We are paying the increased gaming tax, payroll tax, entertainment tax, liquor tax and tobacco tax. The tax relief we are asking for today barely even brings us up to where we were two years ago before we were paying all of these.

SENATOR CARE:
I think my question was fair in the sense in the final analysis, it is part of our examination. We all recognize some operations are run more efficiently than others. There may be problems other than external forces. Having said that, I know studies exist like this in Clark County, but I wonder if there has ever been a study done showing the number of insular jobs generated by independent operators or the rural operations. You see, for example, the vendors, linen supply and that sort of thing in Clark County, but I do not know if anyone has attempted to put something together like that for your organization. I do not know if there is such a study, but I would like to see one.

SENATOR TIFFANY:
Is it fair to say we are talking about economic hardship?

MR. SHELTRA:
Yes.

SENATOR TIFFANY:
Do you know how many of the properties you mentioned have applied for property-tax relief?

MR. SHELTRA:
I can get back to you with the answer. My property has never applied for property tax relief. We also have never laid off an employee.

SENATOR TIFFANY:
Do you believe property-tax relief would help?

MR. SHELTRA:
Yes.

SENATOR TIFFANY:
We just passed a bill providing a streamlined process for a business needing some relief, and what you are asking for is an economic-hardship relief from the gaming tax.

MR. SHELTRA:
We are asking for an adjustment to the CPI going back to 1963. We feel there is an inequality, being 40 years has passed, and we are still using the old brackets.

SENATOR TIFFANY:
So, it is an inequality more than it is economic hardship?

MR. SHELTRA:
I believe it is both.

SENATOR TIFFANY:
If you have an economic hardship in a casino, and you have the unlimited license, you could reduce your number of slots or reduce your number of games. That helps, does it not?

MR. SHELTRA:
Yes, we could. One of the things really affecting the small operators is the cost of the slot machines. They are $13,000 apiece now. I bought one new bank of slot machines for $120,000. The general rule of thumb in casinos is you need to turn over at least 20 percent of your product per year. With 400 machines, think how much money the Bonanza Casino needs to reinvest on a yearly basis to stay competitive with the other casinos in our segment. Certainly, we are not the only ones. Every casino in our coalition is facing the same thing.

SENATOR TIFFANY:
I understand now a little more that it is not just economic hardship. It is the way you are being taxed that makes it very hard to keep up with the Joneses in order to remain in business. Mr. Marsh, you are the only one of the three of you who has a casino in Henderson. Remember when the big guys consolidated and got bigger and everybody was worried whether the little guys would be able to stay alive? How many of the little guys do you know who have been impacted just by the bigger casinos forcing them out of the market?

MR. MARSH:
That would be 400 slot machines times $13,000 is big bucks, but the smaller casinos have a high labor force relative to our machine plight. The bigger casinos have gone to all computerized Ticket-in/Ticket-out machines. They can run a casino much more efficiently than the small operators can. I probably have 32 full-time people in my gaming area. A big casino, for that same area, would probably have two people. The bigger you get, the more efficient you can be. It costs us more to run a casino than it does a major corporation because they have the wherewithal to invest hundreds of millions of dollars in equipment and computerized technology allowing them to operate with many fewer employees.

When you walk into some of these casinos today, you see practically no floor people at all. It is all Ticket-in/Ticket-out. You get your ticket, you put in your $20 and then whatever you win, you collect at the cashier's cage. It is an envious position to be in because it certainly cuts your overhead. I am not in a position to compete with that, and I think most of the other small operators share my concern.

SENATOR TIFFANY:
The big guys are the only ones who can stay in the game then, because the cost to modernize is so outrageous, the little guys are being forced out.

CASEY SULLIVAN (General Manager, Tamarack Junction Casino):
Mr. Marsh already said most of what I was going to say. The new technology is out there. The computer age has really changed gaming. Up until about four years ago, you had a hopper and a machine. Then, tickets were introduced and suddenly every single slot machine on your floor had to be upgraded to handle tickets. The next thing coming out is electronic-funds transfer. The small operators cannot afford to continually upgrade, so the large casinos are forcing out the smaller casinos.

I happen to be fortunate because the Tamarack Junction Casino has 100-percent Ticket-in/Ticket-out machines, but we still might have to upgrade our slot system. It would cost somewhere above $700,000 or $800,000, just to get us up to speed to be able to handle what the competition is bringing in. A lot of the other casinos cannot even upgrade their machines to a point where they are able to compete. Tax relief would help everyone. We could buy 14 machines with the total savings we would get with the tax relief.

HAL HOLDER (Chief Executive Officer, Holder Hospitality Group):
My company owns 11 casinos, and most of them are in smaller communities, with the exception of the casino in Henderson. We have about 3,200 gaming positions in the State. Our payroll this year will be a little less than $40 million. We own the El Capitan Resort Casino in Hawthorne, and we are an important part of the community. When I started buying casinos, I had to live in the State for five and a half years. I closed my first transaction in October 1999, which was the Sundance Casino in Winnemucca. I like to tell my staff that for the people who visit the Sundance Casino in Winnemucca, the entertainment experience is just as important to them as it is to those people visiting a large megaresorts on the Las Vegas Strip.

When we buy a casino, we usually go into the market, improve the facility inside and out and update the machines. As a result, after a few months the tax base in the community is improved. In every casino we own, we have improved the tax revenues. We do attempt to become a very important part of the community through providing employment, and through the services and products we buy in the community. We enjoy being a good citizen, doing what we need to do.

I think it is important to recognize we have a responsibility in the small markets to make it attractive for people to visit these casinos. When I worked at Sears, we determined that any new dollar invested in a community returns seven times. You may disagree with that figure, but in every casino we have purchased, we have invested in the community more than just accepting the property as it was.

Senator Townsend asked why we were not here last Session. We are a small organization, not part of the 79 percent of the big megaresorts in this State. We have not had a voice until now. We are not here with our hat in our hands. We are here asking you to correct a mistake. If you want to encourage people to

invest in these smaller communities, you have to make it attractive for them, not penalize them. As Mr. Marsh said, when you have 50 slot machines in a casino and then go to 100, the economies begin to kick in.

CHAIR MCGINNESS:
We will close the hearing on S.B. 388 and open the hearing on S.B. 390.

SENATE BILL 390: Makes various changes regarding applicability and administration of certain taxes on transfers of real property. (BDR 32-760)

KATHY BURKE (Recorder, Washoe County):
I am representing the recorder's association. We presented S.B. 390 because recorders are always looking for a way to administer the real-property transfer tax in an easier fashion. We already have proposed amendments to the bill. The first one was prepared by the Nevada District Attorney's Association (Exhibit M), and the other was offered on behalf of Focus Property Group (Exhibit N). The change requested by the Focus Property Group refers to the exemptions in section 6, subsections 1 and 8. Instead of eliminating those exemptions, their proposed amendment would retain those exemptions. In order for this bill to go forward, we decided to support both of the proposed amendments.

The new language shown for section 6, subsection 4, combines the language eliminated in subsection 9. We have added, "the first degree of lineal consanguinity or affinity." This would allow you to deed your property to your son and daughter-in-law. Currently, if you deed it to your son, it would be exempt, but if you deed it to your son and daughter-in-law, it would be fully taxable. What happens is double deeding. You would deed to your son and, in turn, a second deed would be prepared for your son to deed from himself to himself and his wife. This exemption will include deeding to your spouse only.

We would like this act to become effective October 1, in order for us to be able to implement that change within our current systems in our offices.

SENATOR TIFFANY:
When we passed the real-estate transfer-tax fees, I am sure you saw a lot of questions come through your office. What would you say were the top five questions?

MS. BURKE:
I think the most asked question had to do with the huge tax increase, which would probably be No. 1 on any taxpayer's mind. The most difficult questions in our offices are on those exemptions referred to in section 6, subsections 1 and 8, because they are so difficult to apply fairly. We see a lot of people taking shortcuts. The only good exemption in section 6 was the one regarding moving property to or from a trust without consideration. The taxpayers still like that. The one thing they did not like was having to present a certificate of trust at the time of transfer. The difficulty for us was the fact the taxpayer is deeding to what would be called a trust, but there is no way we can determine it is a trust. Asking for the trust certificate makes it a lot easier.

DENNIS FREIMANN: (Auditor, Clark County):
There are situations in which a spouse is adding a spouse, and they question why they have to provide documentation of a trust when they do not have to provide documentation proving there is a spouse. We have no verification it is actually going to a spouse. I have questions myself as to verifying they are a spouse.

SENATOR TIFFANY:
When the large casinos merged, there was real estate transfer between them and the Howard Hughes Corporation. When they sold a mall and the Hughes Center, there was no real estate transfer tax to pay. Yet, when Barrick Mines bought four casinos downtown, they paid the real estate transfer tax. Are you ever asked questions about that? How do you discern which one does and which one does not pay the real estate transfer tax? There seems to be a disparity.

MR. FREIMANN:
The reason they did not pay a transfer tax is because real property was not transferred. It was a stock sale versus real property. The transfer of property versus the transfer of stock is a major issue. Tomorrow afternoon, we will be testifying on A.B. 245, which covers that issue.

ASSEMBLY BILL 245: Makes various changes to provisions governing taxes on transfer of real property. (BDR 32-163)

MR. FREIMANN:
They are trying to address controlling interests through taxation saying if the controlling interest is sold, there should be a transfer tax. I have a problem with that. How do we control the individual company from not dispersing its stock so major holders have less than a controlling interest, thereby avoiding the transfer tax? It is a dilemma the recorders fight every day. The problems are akin to those exemptions referred to in section 6, subsections 1 and 8, where the individual companies do some very serious and long-term planning before they conduct their sales, making sure they qualify through the steps established in those exemptions.

SENATOR CARE:
Those two exemptions are deleted in the bill, but under a proposed amendment, they would not be deleted. Did I understand the testimony to be that those exemptions are just too complex to administer? Maybe we need to work on the language to make them clearer.

MR. FREIMANN:
It is a tool we have, but we need to modify it in order to make it more effective. The question is how to correct it. At this moment, we do not have an answer other than using the guidelines we have and making sure the transactions comply with those guidelines.

SENATOR CARE:
You requested, in S.B. 390, to delete those two exemptions and the Focus Property Group wants them put back in. Do you have any objection to putting them back in?

MR. FREIMANN:
No, we do not.

MADELYN SHIPMAN (Nevada District Attorney's Association; Southern Nevada Home Builders Association):
I represent the Nevada District Attorney's Association on this particular amendment (Exhibit M)). We stand in support of S.B. 390 as well as the amendment proposed by the Focus Property Group. I understand one of the concerns in regard to the district-attorney portion of this bill was in getting a legal opinion. Sometimes, it was either difficult or not forthcoming from some of the single-entity district attorneys or district attorneys who had other priorities.

I have also had conversations with Realtors who indicated there are sometimes conflicting opinions from the district-attorney offices, and therefore, assumed the language in this bill was intended to try to eliminate those kinds of conflicts.

Essentially, the amendment will have the county recorder start with his or her own district attorney. There is already a process in statute in which a district attorney, for no fee, can request an opinion from the Attorney General's Office if there is an issue on something they wish to do. The county recorders start with the district attorney. If the district attorney cannot provide a timely response, or if there is a conflict between the district attorneys' opinions, then the district attorneys will submit the question to the Attorney General under the existing authority of the NRS 228.150.

Section 1 amendments provide that language in the NRS 375. It also makes it clear how documents will be handled pending an opinion being rendered. Section 3 eliminates the prohibition regarding the Department of Taxation. The reason for this was that I did not hear from anybody saying there was any real problem with overlapping or conflicting opinions being given by the Department of Taxation, the district attorney and/or the Attorney General.

Finally, section 9 amends the district-attorney statute to direct how all of this is supposed to occur within the district-attorney statute. I can assure you, if this amendment is accepted, it will be followed up by training with the district attorneys, so they will know what their obligations are under this statute.

Also, the Southern Nevada Home Builders Association agrees with both of the amendments, Exhibit M and Exhibit N.

RUSSELL ROWE (Focus Property Group):
We submitted the amendment with respect to section 6, subsections 1 and 8.

CHAIR MCGINNESS:
What concerns prompted you to ask to retain those two exemptions?

MR. ROWE:
There were two concerns. One, we would be creating a new taxable event. This exemption is currently in statute; deleting it would create a new taxable event for these types of transactions. The second concern goes to the intent of the transfer tax. The idea is, you tax a sale of property after you have held it, and it

has appreciated, and you sell it. Therefore, you have the money to pay additional taxes on the transfer, as opposed to transfers between parents and subsidiaries or corporations owned completely by another company. It is essentially a transfer of the property within the corporation, as opposed to a sale between two parties at fair market value.

Specifically, Focus Property Group, which is a master developer, buys large amounts of properties, assembles them and brings home builders in on these master-planned communities. The properties are often transferred many times with Focus Property Group and the entities created within the parent company itself. They are transferred to the home builders after the property has been assembled into one large piece and then subdivided again and sold to the home builders or other commercial developers. If it is eventually built as a home, it would be sold to a home buyer. These transactions are currently exempt. Focus Group, for example, buys property from the Bureau of Land Management, which used to not be a taxable event but became a taxable event after the 2001 Session. The Henderson piece was a $250-million transaction with the federal government. It was a taxable event, so the tax is paid at that time. Then, the property is transferred to the home builder, which is also a taxable event, so a second transfer tax is paid. It is taxed a third time when it is transferred to the home buyer. All of those transfer taxes are included in the cost of the home.

BUFFY J. DREILING (Nevada Association of Realtors):
We appreciate the additional language in section 6, subsection 4 of S.B. 390. Adding "affinity" addresses a real concern shared by many of our members' clients. We also support the amendments proposed by the Nevada District Attorneys Association.

CHAIR MCGINNESS:
We will close the hearing on S.B. 390 and open the hearing on S.B. 398.

SENATE BILL 398: Delays prospective expiration of exemption from certain sales taxes for certain products and systems that use renewable energy. (BDR S-1299)

JOE L. JOHNSON (Independent Power Corporation):
I am representing Independent Power Corporation, a small solar- and renewable-energy installer in Nevada. I have presented you with a letter from

Grace Caldwell, President of Independent Power Corporation (Exhibit O). It lists the justifications for the request of an extension of the partial sales tax, which you have had before you in two prior Sessions. Last Session, you allowed the partial sales tax to be extended to June 30, 2005. We are asking to extend it further, to December 31, 2005.

CHAIR MCGINNESS:
Does this apply just to this company, or can other companies take advantage of this as well?

MR. JOHNSON:
There are numerous other installers besides Independent Power Corporation, and the exemption would apply to any renewable-energy equipment.

CHAIR MCGINNESS:
We will close the hearing on S.B. 398 and open the hearing on S.B. 457.

SENATE BILL 457: Revises provisions governing storage and transfer of liquor between retail liquor stores. (BDR 32-1408)

SENATOR MARK E. AMODEI (Capital Senatorial District):
Senate Bill 457 is a result of a fairly rare occurrence. You have before you a situation where an Executive Branch board deferred on an action pending input from the Legislature on the meaning of the statute. In my experience, we have a hard time getting the folks in that full-time Branch to defer to the explicit meaning of measures passed by the Legislature, even when we do not think it is vague. This bill deals with liquor transportation and storage, collection of taxes and franchise lines for liquor distributors.

A bill was passed last Session which indicated warehousing would be allowed of retailers if they had an unrestricted-gaming license, it did not break franchise lines and they were controlled so the excise tax on liquor could be collected without problem. The passage of that bill caused a request to go forward from the Nevada Tax Commission to the Attorney General asking if it would be possible for retail grocery-store chains to engage in this type of conduct. The Attorney General's Office, in its opinion said, "Because the statute now says specifically, 'unrestricted gaming licensees, distilled spirits,' that is what they meant. They did not say anything else." That has caused an issue in southern Nevada where several grocery-store chains warehouse distilled spirits products.

Before I go any further, nothing I say today should be interpreted as a request to do anything regarding warehousing of beer, which the legislative history on the measure passed last time specifically excluded. Senators Rawson and Townsend testified on the floor of the Senate, the measure was not meant to apply to warehousing of beer products. Also, nothing I say today should be interpreted to mean any provision that would weaken our ability to collect excise tax on liquor should be considered by this Committee. Franchise lines should stay inviolate, and the Taxation Department's and the Tax Commission's ability to make sure excise tax is collected on liquor should remain a priority. Allowing unrestricted-gaming licensees to warehouse distilled spirits, so long as they made sure the taxes were paid and franchised lines were not crossed, has been a success. There have been no problems I am aware of regarding that practice.

SENATOR AMODEI:
The Attorney General's opinion said because it has been specified for unrestricted-gaming licensees, you do not have the authority, as a retail grocer, to engage in this activity. The Tax Commission did, however, defer action on the particular enforcement actions at play right now, until June 6 at midnight. I am not suggesting you should do anything that affects the lawsuit, but I am suggesting, while we are in Session, if we are asked to provide input on an issue that is clearly within the jurisdiction of this Committee, we ought to provide that input. If there are four votes on this Committee to provide no input, then so be it. However, I hope you will decide to provide some input. The unrestricted-gaming licensee warehousing of distilled spirits is provided for in statute.

SENATOR AMODEI:
Nothing I say today should be interpreted as advocating the three-tier system be, in any way, shape or form, weakened. If a retail grocer can duplicate the experience of what unrestricted gaming licensees have experienced, then they ought to be given the same opportunity, with respect to distilled spirits.

I fully appreciate and support the importance of franchise agreements and the boundaries they establish. The ability to warehouse distilled spirits should be extended to retail grocers as long as they comply with the same sorts of safeguards presently in statute regarding unrestricted-gaming licensees.

This bill was pretty much a starting point. The parties have been negotiating. Obviously, there is litigation going on regarding what the Tax Department has done. You are going to hear requests for some amendments. What I am here to advocate is first taking action to provide what our intent was to the folks on the Tax Commission. Second, that action should take the same form as what is in statute already for nonrestricted-gaming licensees. If the Committee wants to amend the bill, based on the testimony on one side or the other, it is certainly within your discretion. I would hope the Committee would not decide to do nothing. That would mean, by virtue of the passage of midnight on April 15, we in the Senate have elected not to provide input regarding this issue to the Executive Branch agency involved.

MICHAEL A. T. PAGNI (Attorney, Albertson's Incorporated):
We have been working closely with the retailers, the Department of Taxation, the distributors and affected parties to come up with a solution to this problem. Senate Bill 457 is the product of a decision last month in which the Tax Commission concluded that the current law is ambiguous as to the rights of retailers, other than casinos, to store and transfer liquor. The Commission decided to stay any action on this issue, so the parties could come before this body and try to find a legislative solution.

I have provided you with a packet containing an amendment, which amends the bill in its entirety (Exhibit P). Also in the packet are two letters from the Department of Taxation. The bill, as introduced, had some drafting errors. After we had the opportunity to meet with the Department and the affected parties, we were able to craft some language addressing those drafting errors, which is what this amendment does.

Allow me to make it clear at the outset what the bill does and does not do. What it does is clarify current ambiguities recognized by the Tax Commission by recognizing the historic business practices of both distributors and retailers. Distributors can deliver wine and spirits to a retailer at a central, interim facility, from which point the retailers can then transfer the products to their individual stores.

The bill does not impact the three-tier system. Retailers must still purchase all liquor from duly licensed wholesalers. It does not apply to beer, which section 1 makes clear. It does not, in any way, affect the collection or enforcement of excise taxes in this State. Taxes, of course, are collected at the

distributor level and are paid well before the liquor even reaches a retailer's hands. This bill does not impose any new or additional obligation on the Department. It can be implemented under existing law, and it has absolutely no effect on a distributor's control over its franchise areas.

This is a historic practice and has gone on for 10- or 15-plus years in this State between retailers and distributors. This practice allowed distributors to save on substantial costs by reducing the number of drivers, the number of trucks and the locations to which they had to distribute the liquor. It enabled retailers to more effectively manage inventory and to buy a product in a greater quantity. In turn, it allowed them to enjoy savings which were passed on to consumers. It was a win, win, win because it benefited retailers, distributors and the public in general, and it had gone on for years.

MR. PAGNI:
The Department, in 1999, issued a written opinion to Safeway, Incorporated, in which the Department opined that this practice complied with the provisions of the NRS 369 and in no way violated the three-tier system. A copy of the opinion is in your packet, Exhibit P. Then, in 2001, the NRS 369.4865 was added to the statutes to create a clarification that casinos could also do this. The law was redundant, given the Department's prior opinion that this was a permitted practice. Somehow, with the passage of time, it has morphed into an edict on the existing practice of retailers that are not casinos.

The issue came to a head in February, which is why we appeared before the Tax Commission. The Department had relied on two statutes, the NRS 369.490 and NRS 369.4865, in questioning whether somehow, now, a retailer was not allowed to engage in this historic practice. *Nevada Revised Statute* 369.490 provides that it is unlawful for any person to sell or transport liquor unless he holds a license issued by the Department. The Department only issues two kinds of licenses, importer's licenses and wholesaler's licenses. People who are in opposition to the practice took the position that the statute must be read literally, and under their construction, it meant only a wholesaler can store and sell liquor. It quickly became apparent; however, if you were to adopt that interpretation, it would have some ridiculous results and would create significant inconsistencies in the statutes. For example, if only a wholesaler could sell liquor, then every casino and retailer in the State would be required to have a wholesaler's license. It would contradict the NRS 369.485 and the NRS 597.220, which prohibit retailers from engaging in the wholesale practice.

The problem with that interpretation was further exacerbated by other provisions in the law where there is nothing in the NRS 369 prohibiting a retailer from storing liquor, or from transporting liquor. There is nothing in the NRS 369 specifically identifying any type of license required to transport liquor.

The reliance on the NRS 369.4865, which is the casino statute, was equally problematic because the only way it could be applied to the historic business practice of retailers and distributors was to extend it negatively, by implication. The Nevada Supreme Court is adamant that tax statutes cannot be extended by implication. The Tax Commission recognized the current status of the law creates ambiguities and some enforcement problems. What we are asking you to do is recognize a historic business practice between distributors and retailers that has benefits for all parties in the State.

MR. PAGNI:
This proposed amendment, Exhibit P, creates a new section to the NRS 369. It is based upon the existing statute allowing this type of practice for casinos. It has all of the safeguards currently in place for the casino legislation, and some new ones, which we have added with the help and input from the Department of Taxation. Subsection 1 provides that retail stores may store liquor at interim facilities and may transfer it between stores if they satisfy certain conditions, which are laid out in paragraphs (a) through (d). Some of these conditions are taken from current language applying to casinos. Others are a result of input from the Department of Taxation, specifically, some new provisions that would apply to retail liquor stores. The retail liquor store would be required to obtain a special permit under the NRS 369.450. This is an existing statute allowing the Department to issue a permit for an entity to transport liquor within the state lines.

Section 1, subsection 5, paragraph (b) of Exhibit P specifically carves out beer. It was never our intention to apply this to beer, and the language is absolutely clear from the very first words. Subsection 2 allows distributors and retailers to move products across franchised territories in limited circumstances where both the distributors in each area consent and where both distributors are affiliated entities. This recognizes good business practice where you have common ownership of two distributors who have the rights to distribute a brand in both areas. For that one distributor who happens to own both entities, it may be good business practice for him to allow products to move across his own

franchise territory. It is a limited carve-out, but it leaves all power in the hands of the distributors.

CHAIR MCGINNESS:
Is this new language or is it taken out of the language for unrestricted-gaming operators?

MR. PAGNI:
This is new language. The gaming operators actually have a provision in subsection 2 of NRS 369.4865, relating to beer. The beer language allows a casino to move a product with the consent of a beer wholesaler. It does not speak specifically to franchise territories, but it does not prohibit it, either. We did not want to touch beer. This is new language, and it recognizes the historic practice and good business practice for those very limited circumstances where you have a distributor who has common ownership. Basically, you are talking about the same guy who has two different companies in different franchise territories trying to move his product in his best interest.

CHAIR MCGINNESS:
If the wholesale dealers consent in writing, because it was more convenient for one to deliver to a certain area, could they make a deal with the guy across the boundary?

MR. PAGNI:
In subsection 2, paragraphs (a), (b) and (c) of Exhibit P are cumulative, so you have to have all three in order for this to be allowed. The first one is they have to be affiliates, so the two wholesalers in the two different locations have to be affiliated companies. If both of those companies have a common ownership and consent to moving a product across the line, then it can happen. This could happen where you have a store in Tonopah and it does not make sense for somebody in Las Vegas to truck up a small crate of beer. He may have some location closer to Tonopah where it is easier for him to transport the liquor to the Tonopah store less expensively, even though it is technically not his territory. It allows distributors, who have ownership of both entities, to engage in that practice.

Subsections 3 and 4 of Exhibit P are simply reiterations of the safeguards already in place in NRS 369.4865. Subsection 5 provides some clarifying definitions which apply only to this bill. Again, note that “liquor” excludes beer.

It includes the definition of "affiliate." Section 2 of S.B. 457 was added in response to comments from some distributors about franchise issues. This is an amendment to the NRS 597, which are the statutory section addressing franchise rights between wholesalers and suppliers. It is set forth in that chapter rather than the NRS 369 because the Department really has no involvement in these types of private-contract issues.

I know there was some concern about imposing new obligations on the Department of Taxation to police franchise issues. I want to make it absolutely clear to this Committee for the record, the Department of Taxation has no obligation under current law to regulate these franchise issues, and nothing in this bill alters that fact. This is a private-contract issue, but in recognition of some of the input we received from distributors, we were happy to provide a remedy. This remedy in the NRS 597 is essentially identical to that already existing in the law for wholesalers, where a supplier violates a franchise agreement. It provides that if a retailer knowingly violates a franchise area in the transport of liquor, it gives a remedy to the wholesaler. The element of knowing is important, because, again, these are private contracts. There is no book to which a retailer can go to figure out where these distribution lines start and stop. The only way it can really be enforceable is if we actually have knowledge of where the franchise area stops. That is why there is also a provision in subsection 2, of Exhibit P requiring a wholesaler to take the steps reasonably necessary to inform retailers of its franchise boundaries. That way, we have the information, and we know which distributor we should be talking to when we go to purchase liquor. Under the current law, our only obligation is to buy from a licensed distributor. There is really no way for us to know, without information from the distributors, whether we are buying from the right one or not.

In summary, the purpose of this legislation is to eliminate existing ambiguity and recognize a historic business practice of both distributors and retailers. It allows a successful commercial relationship which has had significant benefits for distributors, retailers and the general public and has gone on for years without incident or problems. It does not affect the three-tier system. It does not affect beer, and it does not affect the integrity of the tax system. It can be implemented by the Department under existing law, and it is responsive to the Tax Commission's request.

SENATOR LEE:
I have a problem with crossing franchise lines. I believe in the franchisee, the work they put in and the infrastructure that goes into making it successful. Could they carve out an area where they could say, "You know, that is so far out, we really do not want to even deal with it" and sell that portion or something, so we did not have this consent letter and things like that?

MR. PAGNI:
Let me first respond by saying Albertson's is also an ardent supporter of the three-tier system and these franchise territories. These are private contracts between a supplier and a wholesaler, so it is a matter of the private contract. It depends on the nature of each contract what they could or could not negotiate. It is just like any other business relationship. I am sure they could approach that and try to do what you suggested. They probably have that ability now, but because the question has been raised, and because it has been raised to the Tax Commission, we thought we would just include it in the statute. This would recognize that distributors and wholesalers can engage in a commercial practice through their private contracts to negotiate with whomever is the holder of that contract. It just recognizes a commercial relationship.

SENATOR LEE:
If there were a bunch of casinos down south that had casinos up north, they, basically by this legislation, could say to a wholesaler in the north, "We want our southern wholesaler to do this. Sign a letter. If you do not sign a letter, it is going to affect you in other ways." This is a pressure point they would put on these franchisees. There is no doubt about it. There is an implied threat here.

MR. PAGNI:
I would disagree, and I will explain why. Under the current statute, retailers can only buy from duly licensed wholesalers in their area. There is really, for lack of a better phrase, a state-created monopoly. We have one person to look to if we want to buy a certain product. We have demand from customers who want to buy this product, and we have one person to whom we have to go. We have the ability now to say, "I am going to buy the product," or "I am not going to buy the product." That is the free-market system. That reality exists whether this bill is there or not. We have the ability to say, "Yes, we are going to buy your product," or "No, we are not going to buy your product." I have heard it suggested that maybe this creates some kind of pressure. There is no difference in the pressure that exists just as a matter of having a willing buyer and a

willing seller. It does not create anything new because the reality is, at the end of the day, if the distributor in the north, from your example, says, “No, I am not going to consent to this,” we have two options. We either have to buy from the guy in the north, or we cannot sell that product to our customer. That is the same option we have today.

SENATOR LEE:
No, there is a third option. Now you would have another tool allowing you to circumvent him.

MR. PAGNI:
No, we would not, under this bill, be able to circumvent him without his consent. He must consent.

SENATOR LEE:
He will consent if the pressure is enough. Let me work this through, but I am seeing pressure here on a franchisee in an area that does not have enough clout to fight back.

MR. PAGNI:
I appreciate your comments, which, in part, is why we have limited this to affiliated distributors. These distributors are going to have common ownership. It is the same guy who owns both, so it is not like you are robbing Peter to pay Paul. It is the same guy. Maybe he has bought a distributor located in the north. Maybe he bought the company out, and now he happens to own a corporate entity in the north and a corporate entity in the down south.

SENATOR LEE:
He controls both of these franchises?

MR. PAGNI:
Yes, they have to have common ownership.

SENATOR LEE:
I heard you say that, but I figured it was a slip.

MR. PAGNI:
No, and it was directly in response to that comment that we added that language.

MARY LAU (Retail Association of Nevada):
What is being handed out now is just a chronology (Exhibit Q).It is information that goes back from the beginning of this thing. For the long-term Legislators here, I should begin my testimony by apologizing. During the 2001 Session, when we were in negotiations on this bill to allow gaming to transfer amongst their affiliated properties, not crossing franchise territories, the Retail Association of Nevada was very heavily involved in that process because we were concerned that we may have been impacted. We were negotiating, at that time, with two different entities and lobbying firms, and also the Department of Taxation. We were given assurances it would not affect us as we stood, that this was a new area that was going to be carved out because prior to this, gaming had never been allowed to do it. We considered it fair. The bill was sitting in the Assembly Committee on Ways and Means and, at the risk of sounding somewhat arrogant, it was blocked and would not have passed. With assurances of all parties involved, we felt we should step aside, stay out of the argument, and we would continue doing business as is, and it was only fair that the gaming industries be allowed to do what they needed to do in order to accommodate their courtesy to their guests. One of the arguments was that you could be at the MGM and you had high stock, VSOP or any other brand, a player at Bellagio would like to have that, but they did not have it so they could run it across the street. We backed away from it, and in our testimony said we understand that our members cannot cross franchise territories. I did not understand, before this testimony today, that it has to be owned by someone else. We previously have not taken a position on that. Our position has stayed within a franchise territory only, perhaps, had I been more vigilant at that time. The bill did pass in the regular Session, but it was after midnight. It came back into the next Special Session. At that time, we were not in the building. There was a statement made in the Senate Chamber that the Department of Taxation was concerned about retail transfers. Unfortunately at the time the floor statement was made, nobody had conferred with the Department or us so we did create some ambiguity. What we are asking for is to go back to the second paragraph of page 1, so that it would not be a violation of the three-tier system and they would be allowed to ship from their warehouses to their stores.

SENATOR CARE:
I recall the bill four years ago, but I do not recall the Senate floor statement. I guess it was included in those passed after midnight. Did the floor statement just say, “nonrestricted licensees need to do this for their guests?” Did it go

beyond that and say nobody else can do it? What was the thrust of the floor statement?

SAMUEL P. MCMULLEN (Retail Association of Nevada):
The specific reference on the floor was by Senator Rawson. There was some question about the Department of Taxation being able to enforce, if it involved all of the retail stores in the State. The Attorney General's Office crafted an opinion that the legislative intent of the bill was contrary to what we understood when it was passed. It is hard now to argue about it, but basically, it was not consistent with what we had heard or understood to be the comments. However, it was clearly made on the floor, and floor statements govern legislative intent, or legislative history.

What we understood at the time was that the time-honored process of transfers to retail distribution facilities and then out to retail stores by nonrestricted licensees of the state gaming properties was allowed. The Department of Taxation actually opined that in a letter in 1999. We do not understand the problem, but if you want the same allowance retail has, we will not stand in your way. We got a commitment from the head of the Department of Taxation that it would not change the status quo. Those who are receiving product at their warehouses would be able to use their own trucks and deliver it to stores. There can always be questions of economic power, but one thing we want to make clear is those transfers, years in the making, where the practice was just to get the product to a warehouse, and the whole work of deciding which would go where, to what store, putting it on the truck, making sure it is transferred out within the territory, was a practice that evolved both with the retailers and the wholesalers.

There is no way the product was making it to warehouses inside the territory, without the wholesalers delivering it there and, by implication over the years, making it a process that worked for everybody. In effect, what we are trying to do is get back to that same point of commercial reasonableness we had before. We do not want to have to do anything that is inefficient or not cost-effective. We clearly do not have an intention of adjusting the three-tier system. In effect, this was a practice in place for decades without anybody ever complaining that the three-tier system was being violated by those transfers. We want to make it clear we are not trying to adjust the three-tier system. There is a commercial rule of reason, and if the wholesaler decides he is going to deliver a product to the warehouse, if it makes sense for that business from then on out, it is in the

hands of the retailer and it is in the third tier. It can then be processed by the retailer's process to get the product out to the stores. The option is for the distribution to be made by the distributor to all those stores, individually. That is something they can decide, and we can get back to the way it was done before.

Unfortunately, this has become a much more inflamed battle because of circumstances and issues that are outside territory as they alleged. We are on board for all of the retailers who utilize this. We want to get back to the state of commercial reasonableness we thought existed before 2001. What you do for one retail liquor store, you should allow for everyone. Gaming, right now, as nonrestricted licensees, have the ability to transfer product from their warehouses out to their retail liquor stores. We ought to make sure the rules are specified for everyone.

ALFREDO ALONSO (Nevada Beer Wholesalers Association c/o Bonanza Beverage Company):
With respect to the three-tier system, in 1933, the Amendment XXI of the U.S. constitution was ratified, and repealed the failed experiment of prohibition. It also dramatically changed the conditions under which licensed beverages are sold and consumed. Lawmakers developed a three-tier system that uses wholesalers as the insulator between liquor suppliers and retailers. Acting as a safety net, the three-tier system provides for checks and balances in the way alcohol is distributed and sold to retailers and consumers. The purpose of this was to protect the consumer at the lowest level, but was also to protect the retailers from larger retailers, and the consumer and the retailer from large suppliers, thus, the checks and balances. In compliance with the three-tier system, brewers and other producers sell to licensed beverage distributors, who then sell to properly licensed retailers. Retailers then sell the licensed beverages to the public. It is important to note the taxes are paid at the distribution level, so the wholesalers are the ones who purchase the product from the supplier, and then sell after they have paid the tax. That is important here. After they pay the tax, they sell to the retailer.

On average, your Nevada beer wholesaler employs as few as ten workers and as many as several hundred. Nevada's wholesaler distributorships are family-owned and operated by Nevadans, oftentimes two and three generations down. A typical wholesaler maintains at least one temperature-controlled warehouse and operates a fleet of delivery trucks commensurate with the size

of the wholesaler. It is a significant investment these individuals place in their wholesaler businesses, so it is not an issue of someone simply coming into the market. They spend an immense amount of money to create this distributorship. This is trucking, warehousing and everything that goes with it. Once they are there, to simply take that away, which is what this bill does, is not just unfair, it is a crime.

Allow me to give you a little history of the conflict. I heard earlier that this was a historical practice. If by historical you mean late 1990s, then I guess it is. However, it is my understanding, in 1999 the warehouse was initially built. This body passed A.B. No. 12 of the 17th Special Session. I am not going to dispute what happened inside and outside of those committees because, obviously, it is in question, but the important thing is the goal of that bill was to protect gaming licensees with respect to their customers. This was a customer-service type of bill. It was to allow a casino to bring in expensive champagne, from another property, to one of their high rollers, if in fact they ran out. We are talking apples and oranges if you are hearing today that this is a similar practice. Gaming individuals are not shipping liquor throughout the State, which is what is happening here.

MR. ALONSO:
On August 14, 2001, the Department sent a letter to all the retailers which clearly stated the practice of shipping from a warehouse was unlawful. That is in Exhibit G of the packet I passed out to you (Exhibit R, original is on file at the Research Library). That is similar to what was sent to every retailer, so, ambiguous or not, they are being told it is illegal. On August 21, 2001, the Beer Wholesalers Association asked for an advisory opinion to clarify what exactly the law states and what it does. The letter from the Department of Taxation, shown in exhibit "I" of the packet, is the response to that question. On December 13, 2001, the Department opined that, in fact, they could not transfer, so once again, they are told they cannot transfer this liquor. However, the practice did not cease. In fact, we went before the Tax Commission where a discussion ensued as to whether this law should be discussed further with respect to regulations. The Tax Commission decided to wait and deal with it during the 2003 Session and allow us to fix this if it is, in fact, a mistake. That did not happen.

Once again, the Department finally had to take a hand in this, mainly because we had several instances where liquor was coming into the State untaxed. One

such instance was a relatively new retailer had a brand of beer sitting on the floor in Las Vegas. That beer came in from a subsidiary of the retailer, untaxed, and without a wholesaler, so the State had absolutely no benefit from that revenue. Again, this is not without its abuses. I am not here to tell you that Albertson's is doing anything illegal with respect to who they are purchasing from, but the practice itself is clearly illegal. They knew it as far back as 2001, and continued the practice. What S.B. 457 does, in essence, is "we have done something wrong, we have been caught, and now we want you to make it right." That is what they are asking of this body.

What you have before you is a bold assault on the three-tier system and the businesses and working families existing within its structure. If this bill is processed, large, out-of-state companies and their immense market power will control Nevada's liquor industry. It is not an accident that none of my members are here today. We ask you to not process this bill. We believe it will cause irreparable damage to the system and to our members. It is unfair, and if you want to keep track of our taxes, make certain the right people pay them, and protect our business people here in Nevada.

LEIF REID (ATTORNEY):
I am an attorney with Lionel, Sawyer and Collins. I also represent the Beer Wholesalers and I would like to add a few points, specifically focused on the question posed by Senator Lee regarding market power. The statutes in the NRS 369 do not just focus on taxation. There are elements of the statutes in the NRS 369, specifically, subsection 180 and elsewhere, protecting against the intermingling of activities that bear on the three-tier system. Retailers cannot engage in the business of wholesaling. Also, retailers cannot engage in any action that directly or indirectly involves the business of wholesaling.

Nevada Revised Statute 597 says enforcement is not within the jurisdiction of the Tax Commission. I want to remind you of another statute in the NRS chapter 597.190 and it is a statement of legislative policy. It states, "It is the policy of the Legislature to ensure the orderly distribution and marketing of alcoholic beverages in this state .... " It then goes on to state the purpose, "... in order to protect locally owned and operated business enterprises and those residents whose livelihoods and investments are dependent on their freedom to manage their business without economic and coercive control by nonresident suppliers of alcoholic beverages."

When Senator Lee asked about this issue of pressure, it was discussed in terms of it being an implied threat. I am here to tell you today, pressure is being exerted, and it is not being exerted in an implied way with respect to this bill. Wholesalers throughout this State, especially those in the rural areas, are receiving threats from national suppliers to not oppose this legislation because if they do otherwise, it will impact on their non-wine and non-liquor products.

There is power companies like Albertson's, Wal-Mart and other large retailers can exercise over small businesses. That is why the three-tier system was enacted. When we say these transfers would only be between affiliated wholesalers, what that neglects is the fact an affiliated wholesaler does not necessarily have commonality of products. They are affiliated wholesalers, but they do not have the franchise rights to sell the same products in the south as they can sell in the north. This bill ignores that fact. It circumvents it, which it is purposely written to do.

MR. REID:
Also, looking at these amendments, the one stated as being technical and just having to do with defining liquor to exclude beer, also says private-label beer would be exempted. Private-label beer is any product that has been bottled or labeled exclusively for sale to a licensed retail liquor store. If a Wal-Mart or an Albertson's has a beer provided by a national supplier, exclusively for them, the local and rural wholesalers will be completely written out of that transaction. That flies in the face of what the Legislature intended, because the intent of the law and the intent of the three-tier system is not just for collection of taxes. It is also to protect those Nevada businesses that will be impacted in the harshest way by this legislation.

MR. PAGNI:
As to the question of market power, I would point out to this Committee, it is the reason for the provisions already in place in the NRS 597. It is to protect wholesalers from those types of actions by suppliers. I am referring to NRS 597.180, which prohibits suppliers from asserting that type of market power. Also, it is a deceptive argument. We have limited the bill to affiliates. We are talking about the same guy on the other side of the table. He owns both distributors. If he does not have the right to sell a particular brand in the territory, then he cannot do it. He can only buy from the wholesaler with the right to sell the product in that area.

CHAIR MCGINNESS:
If a wholesaler has the right to sell, say, Coors, in Las Vegas and he has a similar distributorship in Reno, but does not have the Coors distributorship, then he cannot ship Coors from Las Vegas and sell it out of his Reno operation. Is that correct?

MR. PAGNI:
First, beer is excluded. If it were Jack Daniel's or another label, no, he could not. He has to have commonality of product and a common ownership of both distributorships. We are just trying to recognize a good, sound business practice for that one guy who owns both businesses and the rights to sell the product. I am perplexed by the comment about it being an assault on the three-tier system. That is why we specifically added language saying all purchases must be in full compliance with the NRS 369, including, specifically, the requirement to purchase from licensed wholesalers. That is what the three-tier system requires, and it is what this bill perpetuates.

SENATOR LEE:
When you say "consent in writing," what does that mean to you?

MR. PAGNI:
What it means to me is a letter from the two distributors by a common guy to the retailer saying, "I consent to this practice." The reason we put it in writing is just to avoid the "he said-he said" issue.

SENATOR LEE:
But, if it is the same company, you are writing a letter to yourself.

MR. PAGNI:
It may be two different companies, but subsidiaries of a common owner. They have to be affiliated in ownership. You might have a situation where a long-established distributor in Las Vegas bought out an existing franchise in Reno. He basically bought a new company, and now he owns both. They have to be affiliated, which is why we added the definition in subsection 5 of the proposed amendment to S.B. 457.

SENATOR LEE:
He has to write himself a letter.

MR. PAGNI:
The letter would be to the retailer, signed by both distributors and saying both distributors consent to this practice. I would imagine it would be provided to the Department, along with the application by the retailer for the certificate under the NRS 369.450. It would show the Department that consent was provided by the distributors, as required by law, to apply for this permit to transport the liquor.

MR. ALONSO:
In order for consent to exist, one wholesaler would have to simply say, "Go ahead and purchase your product elsewhere," in violation of his franchise agreement. This is an incredibly bold attempt to circumvent the current system. I understand what Mr. Pagni is trying to do. It is just simply wrong.

MR. PAGNI:
If it is going to violate a wholesaler's franchise agreement, why would he ever consent?

CHAIR MCGINNESS:
We will close the hearing on S.B. 457 and open the hearing on S.B. 481.

SENATE BILL 481: Makes various changes relating to Civil Air Patrol. (BDR 32-1348)

RON CUZZE (Captain, Government Affairs Officer, Nevada Wing, Civil Air Patrol):
I am the government affairs officer. After September 11, 2001, the Civil Air Patrol's mission somewhat changed, as did a lot of things in our nation. We started taking on additional missions in the area of homeland defense and homeland security, as well as narco-terrorism and narcotics interdiction. A lot of people do not understand narco-terrorism or narcotics interdiction. The Secretary of Homeland Defense and the Secretary of the Air Force have come to realize a lot of the funding for terrorism, worldwide, comes from the sale, manufacturing and distribution of narcotics and illegal drugs. To help prevent that, the Civil Air Patrol is taking active missions in several areas already throughout the United States. We are currently doing so in Winnemucca for the local sheriff there, and we plan to expand those missions.

In the homeland-defense area, we are becoming more and more active. We are currently working on airborne radiological testing with the Las Vegas

Metropolitan Police Department. Basically, it is nothing more than a fine Geiger counter. For a reasonable amount, we can put an aircraft in the air for big events such as New Year's Eve or the National Finals Rodeo. As time goes on, we will go to the Reno area for things like Hot August Nights to check for any dirty bombs in the air. We are going to be flying missions for state game wardens in the future and hope to have a memorandum of understanding with them sometime in the next week or so. In order to facilitate this, we need a couple of changes to the *Nevada Revised Statutes*.

Section 1, subsection 5, paragraph (a) of S.B. 481 simply allows us to operate in the State of Nevada doing homeland-defense and narcotics-interdiction missions. Section 2, subsection 1 will help us facilitate flying all these additional missions for both the State of Nevada and the local law-enforcement agencies. We are asking for a simple change of how money is received by the Civil Air Patrol and a change in the distribution and the way money is collected for aviation fuel. It does not include jet fuel. Aviation fuel is for the small planes and some of the helicopters. Currently, the law says we can receive up to "$130,000 or the total amount remaining in the Account for Taxes on Aviation Fuel, whichever is less." We would like it to read "whichever is higher," to help facilitate our operations throughout the State.

SENATOR CARE:
My understanding is the Civil Air Patrol is largely volunteers. When you are flying on one of your missions, are you covered by any federal Department of Defense laws? If we pass this and you find yourself engaged in missions related to homeland defense and narcotics interdiction, and something goes awry, are you covered? Where does the Department of Defense law kick in, if at all? Are you exclusively civilians, or when you are in the air, are you actually auspices of the military?

CAPTAIN CUZZE:
Under federal law, we can already do the things we are asking Nevada to change its law to allow us to do for your State and local law-enforcement agencies. A local entity can call upon us to do something for homeland security. We would simply go to the U.S. Air Force, who would probably give us a mission number. The Air Force may then bill the Department of Homeland Security. If there was a natural disaster here in Nevada, we would be flying missions under the federal auspices of the United States Air Force, but the money may come from the Federal Emergency Management Agency. We are

asking to have Nevada's laws changed to fit what we are doing under federal statutes, so we can operate within the State. The Civil Air Patrol is very similar to the Nevada National Guard. We are the Nevada Wing, so we have to make sure Air Force regulations, federal laws and state laws all match.

SENATOR CARE:
I understand from your testimony you are already doing this under federal law and you need state law to conform. When you are given a mission number and you are engaged in that mission, are you required to stay in the borders of Nevada, or is there something in place allowing you to slip over into California or Arizona?

DION E. DECAMP (Colonel, Commander, Nevada Wing, Civil Air Patrol):
When we fly under an Air Force-assigned mission number, the Air Force covers us. That includes insurance, fuel and some of our maintenance. We can, on occasion, go into the next state if we are directed to do so by the Air Force Rescue Coordination Center as part of a rescue mission. That coordination is done between the wing commanders.

Our state grant cannot conflict with an Air Force-assigned mission. In other words, we cannot get remuneration from two different areas. It simply does not happen. The problem is our State of Nevada grant does not come up to the amount authorized. Therefore, it affects our other programs. We have to use our general account instead of using the state grant. The general account comes from remuneration from members' dues, contributions and things like that. When we have to use that money to make up for the lack of the full state grant, it affects our cadet programs, our air-crew training and everything else. It simply takes money out of a different area, one we cannot replenish. This is the reason we are trying to get up to the $130,000 authorized. With the price of fuel increasing and the administrative costs to maintain this account, we are not even close now. This year, we will probably get $40,000 to $45,000 instead of $130,000.

GARY H. WOLFF (Teamsters Union Local 14):
I did not know a great deal about the Civil Air Patrol until about a year ago. It is probably one of the greatest organizations I have ever seen. They do so much good for this State, especially in youth programs and they are having to use private funds to augment what the State should be paying. Had you been at a

dinner I attended in Las Vegas, you would have been impressed how outstanding the youth of Nevada performed. I urge you to process this bill.

SENATOR CARE:
I do not know the circumstances in which the Civil Air Patrol would get involved in narcotics interdiction, but there is danger there. Maybe I have the wrong impression, but that is what struck me when I read the bill.

MR. WOLFF:
When I was at the Nevada Sheriffs' and Chiefs Association meeting, one of the sheriffs said if it were not for these guys, he could not scout out his county in rural Nevada. That is how important they are to rural Nevada. I am sure there are dangers associated in a lot of things.

CAPTAIN CUZZE:
When we speak of narcotics interdiction, the Civil Air Patrol is simply a reconnaissance platform for a local law-enforcement agency. Normally, a deputy or perhaps someone from the Nevada Investigation Division or customs would be in the aircraft. Under posse comitatus laws, we would not be allowed to take any law-enforcement action. We are simply providing some type of reconnaissance. For example, law enforcement might ask us to go 100 miles northeast of Winnemucca and see if we see any smoke coming from an area where a drug laboratory is suspected. We would report back to them and the state or local law-enforcement entities would take any action needed, such as arrest and prosecution.

CHAIR MCGINNESS:
We will close the hearing on S.B. 481 and open the hearing on S.B. 487.

SENATE BILL 487: Revises method of calculation of gross yield of geothermal operation for purposes of tax on net proceeds of minerals extracted. (BDR 32-1324)

ELLEN ALLMAN (Caithness Operating Company, Limited Liability Company):
We have 75 megawatts of geothermal production in the State of Nevada and probably a leasehold position for at least 75 more. I thank you for bringing forth an opportunity to maintain the tax liability on geothermal production in this State. Geothermal is taxed similar to a mine under the net-proceeds tax, and has been for the last 15 to 20 years. Today, we seek to preserve that precedent

and limit the definition of “gross proceeds” to revenue from energy only, and exclude the capacity component and other revenue a plant may receive by virtue of its being a renewable-energy system. Geothermal energy is the only renewable energy exposed to this tax. We have also been singularly excluded from the current national production tax credit. We seek to limit the differential liability existing for geothermal production, and as developers would prefer, build and expand it at a competitive price and add value through property tax and wages.

CHAIR MCGINNESS:
For Senator Rhoads and I, who represent probably most of the geothermal in the State, have you seen the fiscal note (Exhibit S)? It shows the State would lose $675,000 per year. Do you agree with that?

MS. ALLMAN:
That is high. In 2003, geothermal paid $200,000 out of $33 million in net proceeds, so it was approximately 0.6 percent. There is a significant increase because it is like an income tax. You are adding new revenue without any matching deductions, so it goes right to the bottom line. Therefore, it is increasing our tax by a significant amount. We paid 75 percent of the amount in 2003, and the additional liability cannot be $675,000. Therefore, my answer is no, I do not agree with the footnote. Our exposure is on the order of about $350,000. At the moment, it is revenue neutral. It is money they will get because of a new change to the instructions on the tax form.

CHAIR MCGINNESS:
Is this bill a result of a change in the way you are being taxed?

MS. ALLMAN:
That is correct. They have changed the instructions on the tax form to include capacity payments in addition to energy. That change is what increased our liability. Instead of having hearings to try to interpret what the Legislature intended, I am trying today to get you to intend it is energy-only in order to stay revenue neutral. That is the way it has been for the last 15 to 20 years. There is no wind or solar energy being taxed in this manner.

CHAIR MCGINNESS:
When you talk about taxing your capacity, is “capacity” what is available? You said you had 75 megawatts and another 75 available. They want to tax you on both of those?

MS. ALLMAN:
The additional 75 megawatts is capable for future production, so I was just trying to state Caithness’ position in the State with regard to geothermal production. On our contracts from utilities, we get paid an energy component and a capacity component. The energy is related to the direct production, and capacity is a fixed amount. Normally, that is essentially a payment for being there for the utilities, but not necessarily having to produce. It is our capability of production, not the actual production itself. To use an analogy, it could be like the mines getting taxed on what is in the ground, what they are capable of producing, but have not yet produced. It is a differential component and is there for the right of producing for the utilities, but we could produce zero at their request and still get these capacity payments.

I also want to exclude, in the future, plants that may get revenue by selling renewable-energy credits to the utilities by virtue of being renewable. We also do not want that to come under the purview of the gross-proceeds part of the net-proceeds tax. I would just like to maintain it as it was intended. It is a mining tax that would come under the purview of the mines. We asked for that back in the early 1980s. We did not want to be considered regulated by the water folks, so we asked that it come under the mines. We do not really extract anything from the ground. We borrow the water, take the heat out and put the water back in the ground. Instead of taking money away that has been in the counties for this long, we want to make it neutral and not add any tax to it by averting this change proposed by the Department of Taxation.

BJORN (BJ) SELINDER (Churchill County):
I am here today to speak in opposition to S.B. 487. It significantly reduces, or perhaps, even outright eliminates the levying of net proceeds on the extraction of geothermal energy. Part of this relates to section 1, subsection 3, paragraph (b) and further notes any operation that constitutes a renewable-energy system is also exempt from the payments made to the operation. I am a little concerned this is only half the equation. Currently, Churchill County is probably the largest recipient of geothermal proceeds,

receiving almost $300,000 per year, which is probably the bulk of the geothermal net proceeds.

I will not go through the entire testimony and exhibits I prepared (Exhibit T) because it is too long. However, one of the more interesting things I have come across is the federal government, in its royalty payments, requires the geothermal producer to utilize capacity as part of its revenue stream. Why are we deviating from the federal manner in calculating revenues? In any case, there is no problem with regard to affecting the future health and well-being of geothermal production in the State of Nevada. An item included in the exhibit is a newspaper article from the April 8, 2005, edition of the *Lahonton Valley News*, which indicates there is going to be three new geothermal plants installed in Churchill County. They are currently doing some test drilling to see exactly what that resource is going to produce.

Another attachment shows a substantial list of plants and products throughout the State of Nevada indicating how potentially profitable and productive this particular alternative-energy program can be. As far as local governments are concerned, especially rural counties where net proceeds of mines is a factor, this Legislature is dealing with a significant number of revenue-reducing issues that will significantly affect local governments. It includes everything from the recently revised tax caps on property as well as some reduction in franchise fees, if not an outright elimination. We are looking at fees being increased from the Department of Motor Vehicles, for instance, that would reduce the amount of revenues received by local government. All of these things are what I am beginning to think of as the “unfunding” of mandates for local government.

SENATOR LEE:
I would like to understand capacity. Based upon what Ms. Allman said, if I were to go to a casino everyday and play the Megabucks machine, and win $100 per day, the Tax Commission would think I was a pretty good gambler. The way Ms. Allman is stating it, if you have the capacity to win megabucks, you will be taxed on a megabucks win. That is basically how I am looking at this. I have not won Megabucks, but I do have the capacity. I do not want to pay tax on a Megabucks jackpot. Can you explain to me where I have misinterpreted?

MR. SELINDER:
Frankly, I am not sure I can answer that. I think geothermal production is limited by the number of wells you put in, the temperatures you find and so on. I would

have to say there is probably a physical limit as to what can be produced from any particular well field or well. I am not sure that fits into your analogy with regard to the possibility of being taxed or pretaxed for Megabucks.

SENATOR LEE:
Ms. Allman, could you explain capacity to me?

MS. ALLMAN:
When we sign a contract with a utility, it is for a certain capacity amount. Say, we commit to 15 megawatts and, over time, we can produce between 13 and 17. So long as we prove we can make 15 megawatts, we get a capacity payment. Even though the utility might only require 10 or 13 from us, we still get the same capacity payment because we are able to produce the amount to which we committed. The utility knows it can count on 15 when and if it chooses to take it from us.

Mr. Selinder referred to section 1, subsection 2, paragraph (b). He was concerned we would be excluded from paying any net proceeds. That is not the intention of paragraph (b). Right now, and starting in 2004, we can sell parasitic or auxiliary load to the utilities to help them meet their portfolio standard. It is above and beyond anything we get from our contracts from the utilities. That is what paragraph (b) intended. It did not mean to exclude us completely. As far as the question regarding royalties is concerned, we are just looking to be taxed in the same way we have been taxed for the last 20 years. We are looking to keep it the same, not to make a change.

CHAIR MCGINNESS:
You are saying if you prove you have the capacity to produce 15 megawatts, and you sell that capacity, but ABC Company only needs 10 megawatts, you still get paid for 15. You do not want to be taxed on the 5 megawatt difference. Is that correct?

MS. ALLMAN:
We do not want to be taxed on the payment we receive for being able to produce that capacity, consistent with the way we have been taxed from the very beginning.

ANDREW LIST (Nevada Association of Counties):
I want to discuss some of the issues of S.B. 487 that might have an impact on the State as a whole. I have handed out a colored map (Exhibit U) showing some of the geothermal potential throughout the West. As you can see, most of the geothermal potential throughout the western United States is west of the Rocky Mountains. As Senator McGinness stated, he and Senator Rhoads do have a large part of Nevada where most of the geothermal energy is located.

Large industry developments on federal land such as mining and geothermal, give some sort of royalty back to the county of origin. The policy behind this is if a large industry, such as mining, comes into a county and brings in hundreds of workers, the county is stuck with the price tag of paying for the services enjoyed by those workers. It might be the school districts, new roads, additional police officers or sheriff's deputies, or it might be a new park. That is the policy behind this, and we would like to see the policy stay true. The reason it is calculated in Nevada using the difference you are talking about between the 5 and the 15 megawatts, is based on federal law. As Mr. Selinder said, we can certainly look into it and see what is the policy reason.

We see geothermal as the wave of the future as a renewable-energy source. As we go into the future, we fear if the counties receive less money from the geothermal industry to go back into the community, they will be less able to provide for those people who move into the community when the geothermal plant locates there. Assembly Bill 489, which deals with the property-tax cap, will limit some of these communities and their ability to provide for those citizens should these large scale industrial developments occur. The geothermal industry ought to pay its fair share, especially in light of what has happened with the property-tax caps.

ASSEMBLY BILL 489 (4TH Reprint): Provides for partial abatement of ad valorem taxes imposed on property. (BDR 32-1383)

MR. CHINNOCK:
We are neutral on S.B. 487, but I need to set the record straight about some of the comments made about what we do or do not do on the valuation of net proceeds. First, it is important to understand this is a valuation under net proceeds, so it is a property tax. It is a tax on a valuable resource owned by Nevada. It is not an income tax. With respect to the fiscal note, it is based on an absolute worst-case scenario. There are 15 geothermal producers in the

State of Nevada, and incidentally, they are bringing in about $200,000 per year in tax. We have proposed tax forms in a forum with the Nevada Mining Association and several other producers. We want to enhance and provide better forms.

On some of these forms, especially for the geothermal producers, we have added capacity payments. We determine the net proceeds of mines by determining their gross proceeds, and then we go ahead and make certain deductions. In the case of the geothermal companies, as an example, one of the deductions they get is for the return on investment. No other mining producer, of any sort, gets that deduction. Many companies cannot break out what their capacity payments are, so the concern I have is if you will not allow capacity payments, you may reduce the income stream currently going on. In the case of some producers, they are not splitting out their capacity payments based upon income against which they take those deductions. It is a policy decision as far as we are concerned, of how they want to handle it.

As always, when we do a valuation on a company, it is open for discussion. We can adopt and pass regulations to further define how we are going to come up with a property tax.

MR. JOHNSON:
Renewable-energy credits are a creation of the Legislature and should not be attributed as a mineral resource. Therefore, I would suggest the exemption on renewable-energy credit should be considered.

ROBERT H. ERICKSON (City of Fallon):
The City of Fallon is opposed to S.B. 487 for the same reasons given by Mr. List and Mr. Selinder.

CHAIR MCGINNESS:
We will close the hearing on S.B. 487 and begin our work session. We will start with S.B. 233. Senator Schneider agreed with the amendment proposed by Mr. Alonso.

SENATE BILL 233: Makes various changes relating to alcoholic beverages. (BDR 52-154)

SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 233.

SENATOR COFFIN SECONDED THE MOTION.

SENATOR TIFFANY:
I have a question regarding creating the operation of instructional wine-making facilities. It bothered me that just anyone could open up an instructional school. There is nothing in the bill saying they had to have any background in making wine. Was that addressed with the individuals interested in doing this? I am a little uncomfortable about not having to have any credentials or requirements for someone who would start this instructional school.

MR. ALONSO:
That was not discussed, but we would not have a problem designating someone recognized nationally or at least within the State.

SENATOR TIFFANY:
It would probably postpone us voting on it today if we looked at what a credential was, because I do not know, myself. I do not think it is appropriate for someone to start a wine school who just thinks this is a good business idea and now has the statute to allow it and the money to start a business.

MR. ALONSO:
If that is an issue, we have no problem also working on this in the other House.

SENATOR TIFFANY:
I would appreciate your bringing that up when it does reach the Assembly.

SENATOR LEE:
Does anyone remember the discussion in another hearing regarding whole foods? You could not have a wine-tasting event more than every 30 days. Did this amendment work with that? Could you have these wine tastings every single weekend? Was that what the annual permit was supposed to do for us?

CHAIR MCGINNESS:
Trader Joe's was the retail outlet he was referencing.

MR. ALONSO:
It is my understanding they are periodic. It is not done all of the time because of the liability issues involved. Not everyone is going to want to do this, anyway, only a select few, and this simply allows them to do so. I cannot speak for Trader Joe's so I am not sure how often they would have wine tastings, but it seems to me, it is something they want to continue doing.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR MCGINNESS:
Our next bill is S.B. 352. This is the bill changing the bank payroll tax back to 0.65 percent. It also eliminates the per-branch fee.

SENATE BILL 352: Revises provisions governing taxes imposed on financial institutions. (BDR 32-25)

SENATOR RHOADS:
This shows the fiscal impact is $22 million the first year and $25 million the second. Is this correct?

CHAIR MCGINNESS:
Yes, so if there is an appetite to pass the bill, we would do pass and rerefer to the Senate Committee on Finance, or, we could just rerefer.

SENATOR RHOADS MOVED TO REREFER S.B. 352 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR LEE:
I know this is just rerefer, but for the record, I want to disclose I am involved with a bank.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR MCGINNESS:
Senate Bill 356 is the bill brought forward by Senator Townsend. This would put the discount or the exemption for sales tax on auto trade-ins on the ballot. There were only a couple of changes. Dino DiCianno, Deputy Executive Director, Department of Taxation, made a note on page 8 changing "intangible" on lines 7 and 20 to "tangible."

SENATE BILL 356: Revises provisions governing amount of sales and use taxes due on retail sales of vehicles for which used vehicles are taken in trade. (BDR 32-1106)

SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 356.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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We will now go to S.B. 394. You should have a mock-up to the bill (Exhibit V, original is on file at the Research Library). If you recall, there were some questions from Mr. Wadhams. He and Mr. Nadeau had the same concerns.

SENATE BILL 394: Makes various changes to provisions governing conveyance, subdivision and taxation of property. (BDR 32-258)

JEFF PAYSON (Manager of Appraisal, Assessor, Clark County):
We have met with all the people who had issues with our bill, and most of the proposed amendments have been agreed upon. The first amendment is shown on page 15 of the mock-up, Exhibit V. Section 8, subsection 5, has to do with the intangible personal property, which caused a lot of raised eyebrows, so we have deleted it. We have also deleted the top line on page 17, which also relates to the intangible issue. The amendment shown on page 19 was actually verbalized at the initial hearing. It has also been deleted as has the first line in section 14 on page 23 of the mock-up. The amendment on page 25 deals with problems having to do with the type of evidence. Some of the people did not like the word "substantial," so we have reworked the wording to read, "The

county board of equalization may not reduce the assessment of the county assessor unless the preponderance of evidence shows that the valuation established by the county assessor exceeds full cash value or is inequitable." We want to take the burden away from the appellant and just say the board or the appellant can bring forth the evidence.

In section 15 on page 26, subsection 2, paragraphs (d) and (e) have been deleted. Originally, we had the appraisal date "on the lien date of the fiscal year for which the taxes are levied," which would have been July 1. We had a recommendation from the Legal Division of the LCB to change that to "January 1 proceeding the fiscal year for which the taxes are levied." On page 29, in section 17, subsection 4, we have deleted paragraphs (c) through (e). On page 30, we have added some wording after "48 hours," which now reads, "after the filing deadline or receipt of the petition, whichever is later." This will allow someone who wants to appeal his or her property, and needs to get authorization from the owner of the property, an additional 48 hours after he or she has submitted the appeal. On the same page, under section 19, the protest must be "in the form of a separate signed statement from the property owner." We have changed that from "notarized," and are now just requesting a separate signed statement.

On pages 37 and 38 of the mock-up, sections 25 and 26 are the issues dealing with corrections to the tax roll. A lot of people took issue with this. We thought it was a fairly simple change, trying to combine some statutes and make it clearer. However, talking with some of those who had the issues, we decided to just delete these entire sections and go back to the original language. We did the same to sections 30, 31 and 32 on pages 44 to 48.

Finally, on page 54, in section 40, NRS 361.765 was initially going to be repealed because it related to the new changes we were going to put in the bill regarding tax-roll corrections. Since we are removing those new sections, we had to un-repeal the section addressing the clerical errors.

SENATOR TIFFANY MOVED TO AMEND AND DO PASS AS AMENDED S.B. 394.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR MCGINNESS:
Senate Bill 389 allows the creation of tax-increment areas.

SENATE BILL 389: Creates chapter relating to tax increment areas. (BDR 22-815)

CHAIR MCGINNESS:
There were a couple of proposed amendments. Have all the parties agreed on these?

MARY C. WALKER (Carson City; Douglas County; Lyon County):
Yes, we all worked on it, including John Swenseid. Ms. Vilardo had one more amendment.

MS. VILARDO:
I support tax-increment financing. The problem I have is there has not been a definition. There are a series of conditions for redevelopment law, which is tax-increment financing. Many of us have hoped we could clean up redevelopment law and set up some conditions that would fit, specifically, for economic development as well as for infrastructure financing. I understand the need for the bill, and I know Carson City wants to use it. It was originally written so all counties could take advantage of it. My concern with the larger counties, who have the bulk of the redevelopment districts, is if we come in next Session and if bonds have been sold, we will not be able to clean up some of the provisions. A number of us want to work to clean up these areas. It is a major policy issue because it went out available to all counties. Since it was really a bill needed by Carson City, I would ask that it be capped, so it could not be used by Clark or Washoe Counties at this point. Barring that, without those counties having had the opportunity to identify this, I would be willing to work with some of these changes on the other side if you wish to process the bill. The concerns I have appear to have been addressed, for the most part, in the amendment. We need to come back next Session with major clean-ups in these areas. However you want to proceed with this, I can continue to work with these interested groups and see if we can accomplish anything in the Assembly.

MS. WALKER:
When we first heard this bill, Ms. Vilardo came in with a list of items she wanted cleaned up. This includes all of those items as well as some other clean-up language from Mr. Swenseid and from Mr. Alastuey. This is really a rural economic-development bill, which is the reason for our interest in it. We do not have the resources the larger entities have to attract and pay for economic development. It is going to be very valuable for the rural counties. We do not have the millions of dollars to spend for infrastructure improvements to try to attract good businesses.

SENATOR RHOADS:
Is there a population cap?

MS. WALKER:
There is not a population cap in the bill, which is what Ms. Vilardo is requesting. However, counties under 100,000 could use this for economic development. For counties over 100,000, it could be used more for noneconomic-development types of activities.

SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 389.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR MCGINNESS:
Senate Bill 391 is the bill that came out of the interim study on S.B. No. 8 of the 20th Special Session. This can be either a rerefer or a do pass and rerefer.

SENATE BILL 391: Revises provisions governing liability for tax on financial institutions. (BDR 32-716)

SENATOR TIFFANY MOVED TO DO PASS AND REREFER S.B. 391 TO SENATE COMMITTEE ON FINANCE.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR CARE VOTED NO. SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR MCGINNESS:
If you recall, S.B. 482 was discussed by the City of Sparks, Washoe County and the City of Reno. Sparks wants to work with Washoe County and the Washoe County Regional Transportation Commission. Katy Singlaub, Manager, who is the Washoe County Manager, has said she would continue her local effort to work with the two cities as long as the Senate Committee on Taxation can provide a clear direction to study, review and recommend changes to the Statewide, tier-2 fuel distribution. If it is okay with the Committee, we will put together a letter outlining that.

SENATE BILL 482: Revises provisions governing allocation of certain taxes levied on motor vehicle fuel. (BDR 32-530)

SENATOR TIFFANY:
We send letters of intent from the Committee on Finance all the time. This is a win for the county by sending it back and studying it again. The reason the cities brought it to us is because they keep getting "stiff-armed," basically, by the county. The county wins by not doing anything. The testimony was that the majority of the roads are in the two cities, not in the county. The county is keeping the lion's share of the money, and then the cities have to go out for other methods to repair the roads. What bothers me is if we send it back for two more years, we still do not have any more guarantees anything will change. Just working on it does not mean they will come up with a solution. It means they will talk about it, but I would like something a little more concrete to effectuate some change. I do not want to see it worked on. I do not want to have them come back here in two years and have exactly the same thing with exactly the same frustration.

CHAIR MCGINNESS:
We will put the letter together and bring it back to the Committee and make it as strong as you wish.

SENATOR LEE:
I have had my issues with the Legislative Committee for Local Government Taxes and Finance, created by S.B. No. 557 of the 71st Session (557 Committee) on what does not happen there. I guess my point is I do not care about a letter either. Why do we not just vote this bill up or down? If it dies, it is dead, and if it passes, it moves on. We are going to review it in the next two years, anyway. No matter what happens here, it is going to come back, and I would like to put on record who is in support of this bill and who is not.

SENATOR LEE MOVED TO DO PASS S.B. 482.

SENATOR TIFFANY SECONDED THE MOTION.

SENATOR LEE:
The 557 Committee needs to be restructured. It needs to be made fairer. If one person votes against something, and another person votes for it, then they should nullify each other. If our Nevada Constitution worked the same way, we would be a dictatorship, now.

SENATOR RHOADS:
I am going to vote against it. The State should not tell the local governments what to do. Also, they have asked for a letter, and I think we should write them a letter. I have seen letters, when written to the right people and in the right way, have more effect than asking that a bill be passed.

THE MOTION CARRIED. (SENATORS RHOADS AND McGINNESS VOTED NO. SENATOR TOWNSEND WAS ABSENT FOR THE VOTE.)

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CHAIR MCGINNESS:
There is no further business before this Senate Committee on Taxation. We are adjourned at 7:20 p.m.

RESPECTFULLY SUBMITTED:

Ardyss Johns,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: