MINUTES OF THE
SENATE COMMITTEE ON TAXATION

Seventy-third Session
April 14, 2005

The Senate Committee on Taxation was called to order by Chair Mike McGinness at 1:38 p.m. on Thursday, April 14, 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 Bob Beers, Clark County Senatorial District No. 6
Senator Dina Titus, Clark County Senatorial District No. 7

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Helen A. Foley, Western Ethanol Company, Limited Liability Company
Richard Burdette, Energy Advisor, Office of the Governor; Director, Nevada State Office of Energy
Ronald E. Stoller, Nevada Silver Haired Legislative Forum
Howard J. Saxauer, Certified Senior Advisor
Carole Vilardo, Nevada Taxpayers Association

Christina Dugan, Las Vegas Chamber of Commerce
Samuel P. McMullen, Las Vegas Chamber of Commerce
William R. Uffelman, Nevada Bankers Association
Michael Pennington, Reno-Sparks Chamber of Commerce
Greg Ferraro, Nevada Resort Association
Mary Lau, Executive Director, Retail Association of Nevada
Raymond Bacon, Nevada Manufacturers Association
Dino DiCianno, Deputy Executive Director, Department of Taxation
George W. Treat Flint, Nevada Brothel Owners Association
Jim Endres, Independent Gaming Operator Coalition; Albertson's Incorporated
Robert E. Shriver, Secretary/Executive Director, Commission on Economic Development
Dennis K. Neilander, Chairman, State Gaming Control Board
Alfredo Alonso, Nevada Beer Wholesalers Association
Robin H. Joyce, Las Vegas Clean Cities Coalition; Truckee Meadows Clean Cities Coalition
Bjorn Selinder, Churchill County; Eureka County Commissioners
Ellen Allman, Caithness Operating Company, Limited Liability Company
Renny Ashleman, Southern Nevada Home Builders Association
Van Mouradian, Division of Insurance, Department of Business and Industry

CHAIR MCGINNESS:
We will open the hearing on Senate Bill (S.B.) 362.

SENATE BILL 362: Provides for separate rate of tax on alternative renewable fuel. (BDR 32-1249)

HELEN A. FOLEY (Western Ethanol Company, Limited Liability Company):
We had a hearing last week on S.B. 362. What it would do is define a new classification of alternative renewable fuels, not just the alternative fuels. There was a roadblock with the Nevada Department of Transportation. They were concerned about revenue for the Highway Fund. There is a serious issue of equity, not to mention the issue of incentives for people to use alternative fuels. It does not appear, at this time, it would be appropriate to move forward with the bill without further study.

In discussing this with Richard Burdette from the Nevada State Office of Energy, he has come up with a proposal we would like to share with you.

RICHARD BURDETTE (Energy Advisor, Office of the Governor; Director, Nevada State Office of Energy):
The Nevada State Office of Energy has been concerned for the past year over two particular issues which we intend to combine into a summit workshop in the July-August time frame of this year. The purpose is twofold, first to deal with the State's fuel reliability problems. Nevada has substantial fuel reliability problems, and there are some options. The second issue we are concerned with is substantial opportunities in the area of alternative, and in particular, renewable fuels. We have options other states do not have. We have the ability to generate ethanol using renewable energy as an energy source that has both economic development advantages as well as energy advantages for the State.

We would be pleased to prepare a report for the Legislative Commission based on the results of that summit. The Nevada State Office of Energy will prepare recommendations to the Governor as to how to deal with both of those problems.

CHAIR MCGINNESS:
Mr. Burdette, we thank you for your testimony. You addressed many of the concerns Senator Coffin voiced during the last Committee meeting.

SENATOR COFFIN:
I like Mr. Burdette's proposal. I have been getting information from the National Conference of State Legislatures (NCSL) on how other states fund their Highway Fund. Everybody wants to defend their Highway Fund because they have to keep the roads going. People are starting to face up to the fact we are going to have diminishing returns on any of the present taxing procedures on fuel.

CHAIR MCGINNESS:
A report from your summit conference to the Legislative Commission or, perhaps, even the chairs of the transportation committees in both Houses would be a good idea. We appreciate your help with this important issue, Ms. Foley and Mr. Burdette.

We will close the hearing on S.B. 362 and open the hearing on S.B. 176.

SENATE BILL 176: Eliminates premium tax on annuities. (BDR 57-1010)

RONALD E. STOLLER (Nevada Silver Haired Legislative Forum):
I am here in support of S.B. 176 and would like to explain my personal situation to this Committee. I have a copy of my prepared testimony for each Committee member (Exhibit C).

HOWARD J. SAXAUER (Certified Senior Advisor):
It is unfair to tax these annuities. Annuities primarily provide an income stream for retired individuals and their spouses. When there is a tax like this, which does not exist on other investments, people may decide not to invest in annuities. The individuals it hurts the most are members of the middle class, who have saved money, but do not have a lot of money. It is these people who struggle to make ends meet after retirement.

Some states, like Washington, do not have any taxes if you annuitize a contract. Nevada has the highest rate of tax for these annuities. I understand the State has to struggle constantly to pay for everything as the fastest-growing state in this country, but this seems like an unfair tax. Most people getting taxed by this are the ones with the least amount of money. Individuals who have a lot of money have no reason to annuitize a contract.

After the stock market crashed in 2000, a lot of people have gotten out of investing in stocks, and they have also lost a lot of money. These individuals are now in a situation where annuities look good to them, but they are going to get taxed at 3.5 percent. If you annuitize a contract, the interest you have earned is spread out over a certain amount of time, so you are not paying taxes on all of that money in the first few years. It is spread out so the federal taxes are lower. This is another way of paying more taxes to the federal government. It is a catch-22 situation.

CHAIR MCGINNESS:
We are going to close the hearing on S.B. 176 and open the hearing on Senate Joint Resolution (S.J.R.) 7.

SENATE JOINT RESOLUTION 7: Proposes to amend Nevada Constitution to provide for a lower rate of property tax for single-family residence occupied by owner. (BDR C-1305)

SENATOR DINA TITUS (Clark County Senatorial District No. 7):
I am passing out a graph (Exhibit D) prepared by NCSL which gives you some summary of property tax relief measures which exist in other states. The resolution I have before you today would be a constitutional amendment, so it would have to pass two sessions and then go on the ballot. This is not an attempt to change the compromise property-tax-relief package that was passed out of both Houses. This is just an attempt to try and make constitutional what we did last Session.

We passed the compromise 3-percent and 8-percent caps with some other minor adjustments on the notion we needed immediate relief, and it would be a quick fix. This would give us time to study the problem in the interim and to eventually enact some constitutional amendments which would justify what we had done. Part of our argument for stretching the Constitution was it would be short term and we would be putting things in place that would take care of any of those types of challenges. We have to do this or else the measure we passed could be seen as unconstitutional.

One thing I wanted to do is this amendment; as you see, it is very simple. The only change is page 3 of the resolution. The last line takes out the severe economic-hardship provision and says, “The Legislature may provide by law for an abatement of tax upon … a single family residence occupied by the owner.” We already stated this in the bill passed by our committees; anybody who paid a property tax and lived in their own home has an economic hardship. I feel this is another stretch of the Constitution. Number one, it creates split rolls, and secondly, saying economic hardship is to pay taxes at all. This would take care of that problem. My intent was not to set up split rolls between businesses and residents when I started with this idea. I have been talking about this a long time, but that needs further study. My intent was to charge a different rate to people who live in their home from those who have a second home or do not live in Nevada at all, but buy condominiums like the new high rises being built in Las Vegas or vacation homes in other parts of the State. With this constitutional amendment, you would be able to charge different rates to those different kinds of residences, and that was the intent.

CAROLE VILARDO (Nevada Taxpayers Association):
I am speaking in opposition to S.J.R. 7. I agree with what Senator Titus said. The existing provision, which calls for severe economic hardship, was somewhat ignored. A 3-percent increase in property tax does not constitute a

severe economic hardship, particularly when you have instances of the voters, such as what happened in Eureka County last November, approving a tax increase that was over 7 percent. The bigger concern with this is the fact that, as Senator Titus stated, it would allow the Legislature in the future to make these distinguishing points. That is not only splitting the rolls between the residents and commercial properties. If we did what Senator Titus is suggesting, you would be classifying residential properties. While I understand the Senator's intent, and I agree with her, there is no owner-occupied requirement in the bill, only primary residence. If you put this resolution through on top of that bill, you will have future Legislators with the ability to classify, if you will, the different types of residences. In effect, you will also have split the roll. If you reduce the home owner-occupied residences, you are going to look at potentially higher rates for everybody else. Somebody subsidizes somebody else in a situation like this, unless you do a tax replacement. Having a split roll and identifying it in this manner sends a bad signal for purposes of economic development. Those are some of the reasons we oppose this bill.

SENATOR RHOADS:
What did you mean about a tax replacement?

MS. VILARDO:
Taxes are levied for an expectation of revenue. If I expect to get $100 million from a tax source and exempt part of that source, there is still the expectation of the amount of $100 million. Take, for instance, one group of taxed individuals provided with a tax-relief reduction. There has to be another group of individuals who will have increased taxes to offset the group that got the tax reduction.

SENATOR COFFIN:
We have a duty to do something for relief on this issue. What do you think could be done to make this bill adhere to the principle that was implied in the passage of the temporary legislation?

MS. VILARDO:
Because of the increase in taxes, particularly in Clark County, and the amount of press received, an expectation was created on the part of property owners that they would be getting some sort of tax relief. It was implied, and it was promised. When the Legislative Session began, it became fact. The question was, how were the taxpayers going to be given property-tax relief? Because of

the uniform and equal provision in the Constitution, the one out was the use of Article 10, section 1, subsection 10, which is the severe economic hardship. I have a proprietary feeling about this because it was originally the recommendation of the Nevada Taxpayers Association to add that change. It was put in place to truly help individuals who had a hardship.

The following statement is made without the authority or knowledge of my board, but it might go down easier if you took out the word "severe." If it was used again in the future, then have statements, findings of fact and a declaration as to why it was an economic hardship.

I would benefit from this since I am a senior citizen. A retiree has access to a lot of benefits. That does not mean I cannot afford my taxes. Nationally, our effective tax rate is still lower than California. On a residential property, we are at 1.06 percent. We rank between 35 and 38 in state rankings with the impact of property tax. The problem that occurred this time around was the increases in assessed value were exacerbated by market conditions and speculators. The relief provided has to be balanced so there is a basis in fact.

My concern is the way this bill reads: it will be used politically in the future. That is the history in any state with a split roll. I can appreciate Senator Titus's sentiments for doing it this way; however, history of the other states shows there is an increased burden on nonresidential properties.

SENATOR TIFFANY:
Ms. Vilardo, will you agree with these provisions if this resolution passes and the Taxpayer's Bill of Rights (TABOR) law passes on the ballot and are implemented at the same time?

MS. VILARDO:
Not necessarily so. Are you telling me TABOR will contain this amendment or this amendment will contain TABOR? If you put them both on the ballot and the TABOR does not pass, you have not solved the problem.

SENATOR TITUS:
The first point has to do with the tax replacement. We reduce the taxes for the people who are residents and raise taxes on nonresidents. I do not believe the people who live in Nevada would mind if the nonresidents were charged a higher rate to make up the difference for those people and corporations that

own condominiums and fly in for a weekend every now and then. These are not residents who put down roots, go to school in the community and have jobs here in the State. I do not think the Nevada public would mind this type of tax replacement.

The second thing I find frustrating about the property tax debate is now that we want to put it into the Constitution to make it legitimate, it has become a problem. Everything we put into that bill for property-tax relief is unsatisfactory for the individuals who were happy with it two weeks ago. I do not know what has changed. Prior to this, we could not live with the freeze, and now another bill is coming out to freeze certain things. We need some consistency and leadership. We need a handle on what the tax policy is going to be. If they could live with a 3-percent cap and an 8-percent cap 2 weeks ago, why is it such a huge problem to amend the Constitution to make this legitimate?

CHRISTINA DUGAN (Las Vegas Chamber of Commerce):
We are here today in opposition of S.J.R. 7. We shared a number of our concerns on the issue of a split roll at a meeting of the Joint Committee of the Assembly Committee on Growth and Infrastructure and the Senate Committee on Taxation that was held on March 29, 2005.

Our concern is all properties should be treated equally. Certainly, this provision would allow for differential rates with respect to owner-occupied properties and the rest of the properties on the tax roll. Given the current situation, with an overabundance of tax revenue in a scenario where the taxes passed last Session were primarily on the backs of the business community, we feel to again single them out through property taxes is not fair or something we would support.

Additionally, one of our general concerns, with respect to government, is the local government expenditure levels. A number of the property taxes go specifically to paying for local governments. As we mentioned before and will continue to discuss, we believe these budgets need to be tightened up. Finding ways to provide property-tax relief for taxpayers is a wonderful way to accommodate this issue; however, we need to make sure the relief is uniform and equal across the board.

SAMUEL P. MCMULLEN (Las Vegas Chamber of Commerce):
We always have to worry about the messages we are sending in terms of tax policy. One of the messages we are concerned about is breaking the uniform-and-equal provision of the Constitution through other amendments. Different taxpayer components give different messages. When you refer to nonowner-occupied housing, it sends a message we ought to be careful about. It affects economic development and other issues like this. When you are considering this resolution, think through these policy issues.

This is one of the broadest-based and most stable taxation bases we have in Nevada. Our concern is this resolution politicizes this unduly, but also can have an interesting effect on destabilizing this tax. I understand there are issues when they are policy-driven and driven by facts with some relief. If they are driven by the politics of giving someone relief because it is good this year to do something for certain people who vote, that is another issue. We should be careful about having our tax policy adjusted by those concerns and not on merit. Unfortunately, there is some temptation to do that when you break the categories as you have in this resolution.

Technically, a couple of other issues need to be thought through. You only allowed the taxes to be abated, and that gives you one option. In this language, you have taken away the opportunity for a hardship to be allowed or granted in terms of tax abatement for individual property owners. You need to be extremely careful about that issue. We wanted to make sure this was on the record.

SENATOR COFFIN:
Rental properties seem to be the eyesores in a neighborhood and usually require more attention from the local services such as police and fire departments. Therefore, should not these properties be taxed more since they use the local entities more?

MS. DUGAN:
Senator Lee talked about that subject in previous meetings regarding renters and passing these costs on with the differential in an owner-occupied dwelling versus other forms of residential property. Certainly, it would seem individuals who tend to use public services more should pay for them. We would argue fee-based situations are beneficial in terms of those public services and their use, although it is difficult in the aggregate to say what renters do or do not do

in terms of their actions as it relates to the services they need. You could have an elderly woman who gets social security and does not need the additional assistance or you could have some younger, noisier tenants who are causing trouble and having the police at their door every night. It is a difficult question, depending on the scenario you are talking about, and one that would be on a case-by-case basis.

SENATOR COFFIN:
If someone owns rental properties, they are reaping a profit from these rentals. It may not be a lot of money, but they still make a profit and should pay more in taxes. Is it possible businesses like strip malls cause a greater need for public service than residences in the area?

MR. MCMULLEN:
That question is extremely difficult to answer because you are stating there is an absolute general rule that applies in every situation. I do not know that answer, but it would be hard to believe owner-occupied residences cost less in servicing than nonowner-occupied or that businesses cost more or less than any other property.

SENATOR TITUS:
I want to remind you of the concerns of the business owners. They are afraid their rates will go up to compensate for the property owners. Now, there is an argument against the split roll even though they were able to live with this a few weeks ago and said they would not challenge it in court.

Remember, the 3- and 8-percent caps we passed do not have a sunset. That was not a short-term fix. There was immediate relief, but the notion of having a short-term fix to further study this was thrown out, and we went with the permanent fix. That is in the statute, there is no sunset. This amendment would not change those caps. The Legislature would have to come back and raise those rates. I do not see the Legislature raising the rates either for home owners or for businesses. They are already protected by those caps. This is just making legitimate what was already agreed to and completed.

MR. MCMULLEN:
The other issue I would like to emphasize is all of these cause some sort of competing policy consideration. If you are talking about owner-occupied versus nonowner-occupied, you directly confront the issue of affordable housing and

passing higher taxes to nonowner-occupied housing. It is not an easy issue to deal with; there are a lot of policy considerations you need to think about before you pass a bill dealing with this issue.

I would like to add this Legislature found the way to ease the tax burden, and there is no indication the bill passed is invalid.

SENATOR TITUS:
Nothing in this constitutional amendment raises any rates. It just allows you to do that. It would take two Legislatures and a vote of the people before it goes into effect. You have a long time to study this issue. Remember also, the bill we passed had a cap at 3 percent for the low-rent places which fit that category of affordable housing. There is no reason to think, if this passed, the Legislature would come in and raise rates on affordable housing. That is a red herring. It gives the Legislature the ability to look at all of the issues Mr. McMullen suggested we need to study over the course of the next five years. It will show the courts, if challenged, this bill was temporary, but we are moving to make it legitimate. This is important to the issue.

WILLIAM R. UFFELMAN (Nevada Bankers Association):
We have some deep concerns about S.J.R. 7. I have lived and worked in other places where there are split rolls. I have also been on teams deciding where we should locate a new business, and one of the factors we look at is the property tax structure and how it would affect our business. If this is used as a tool in the future to change the business climate for the State of Nevada, I would suggest we are on the wrong track.

MICHAEL PENNINGTON (Reno-Sparks Chamber of Commerce):
A few weeks ago we came before this Committee relative to the proposals in the property tax issue. We wanted to continue to echo our concerns regarding the equality among property taxpayers. We do not support the bifurcation of that whether it were between residential and commercial. We would express some concerns whether or not you would want to set different rates on the residential as well as where that might proceed from the commercial standpoint.

GREG FERRARO (Nevada Resort Association):
I had an opportunity yesterday to speak to Senator Titus regarding this issue. Our member companies decided this was a good time for the industry to weigh in on the subject of a split roll. We did not participate actively in the creation of

a compromise in the property tax issue. We held our opinion on that subject since we recognized the necessity for a short-term remedy, expectation and need in this area.

Our view is this Legislature will revisit this area, and we are experiencing spiking which will probably, and most likely over time, flatten out again. For 141 years, equal and uniform, in our judgment, has met certainty and predictability in our tax rate. We see no reason to begin the process of amending our Constitution when the smart minds and hard work who forged the compromise a couple of weeks ago are still available and can continue to look at alternatives yet to be developed. These individuals are available to work through any tax problems without, or short of, having to amend our Constitution. We are not taking a position on this measure, but we felt this is the time to be on record for this Session and into the interim that we have concerns about splitting the roll.

For the past 20 years, this State has worked hard to try and recruit new business to our State. If we now decide we are going to split the tax rolls, we will be signaling to the businesses considering a move to Nevada to look in other states for tax breaks. We have tried hard to diversify and develop our economy aside from a single, large industry-based State. If we amend our Constitution, over time, it is going to cause even more problems.

MARY LAU (Executive Director, Retail Association of Nevada):
We are concerned about the possibility of considering a split roll in Nevada. We did not enter into conversation when this body was dealing with the difficult issue of temporary relief. We viewed it as temporary relief, and we honor your decision. We respect what you did and feel it was sincere. We know there were efforts made to address concerns that are temporary; however, we are in opposition to changing the Constitution in that manner.

RAYMOND BACON (Nevada Manufacturers Association):
We echo the comments of Ms. Lau, Ms. Vilardo and Mr. Ferraro. I would like to remind this Committee to really look at the issue before you. Not only do we have a tax problem in this State, but we also have a lack of available land. At some point in time, we need to acquire more usable land.

CHAIR MCGINNESS:
We will close the hearing on S.J.R. 7 and open the hearing on the work session until Senator Beers is here to testify on his bill. The first bill we are going to look at is S.B. 127.

SENATE BILL 127: Expands exemption for certain small businesses from requirements for state business license. (BDR 32-689)

We have a memo from Senator Titus concerning this bill (Exhibit E) that states:

> If the Senate Taxation Committee is disinclined to process my small business tax exemption bill (S.B. 127), would you please consider at least exempting home owners' associations? Here is how this can be done: add subparagraph (e) of S.B. 127 to NRS 360.765, paragraph 2: "A unit-owners' association organized under NRS 116.3101 as a non-profit entity."

SENATOR TOWNSEND:
The three members who sit on the Senate Committee on Commerce and Labor have probably heard more about home-owners associations than we want to admit. I do not know what the fiscal note is on this bill, but if we use Senator Titus's request to deal with home-owners associations, if we did nothing else, this would go a long way in dealing with an anomaly of the tax bill. I cannot speak to the rest of the bill, but I do know this was not part of what we were trying to capture. These are nonprofit for the membership. I want to make sure, at the very least, if we can salvage that part of this, it would be helpful to a most unique and growing entity.

SENATOR LEE:
Before we get into the amendment, I would like to make a motion.

> SENATOR LEE MOVED TO DO PASS AND REREFER S.B. 127 TO THE SENATE COMMITTEE ON FINANCE.
>
> SENATOR COFFIN SECONDED THE MOTION.

SENATOR TIFFANY:
Would this be considered a hardship since the bill mentions you must earn less than you earned the prior year?

CHAIR MCGINNESS:
I do not believe this is a hardship bill. It states anybody who earns two-thirds of the average wages, if they qualify on that standard, is qualified. Charles Chinnock, Executive Director, Department of Taxation, stated he was comfortable with the fiscal note of $19 million for the biennium.

SENATOR TIFFANY:
It is an annual wage. Is the business tax $100?

CHAIR MCGINNESS:
Yes, that is correct.

SENATOR TIFFANY:
We are saving $100 for a small business if it meets certain wage conditions.

CHAIR MCGINNESS:
As Mr. Chinnock stated, 220,000 small businesses were registered, and 300,000 to 400,000 businesses out there may or may not have registered.

SENATOR TIFFANY:
Is it correct that this bill exempts a certain class of businesses?

CHAIR MCGINNESS:
That is correct.

SENATOR TIFFANY:
I would like to amend this and have it exempted. This $100 business license is truly a problem. I get more calls on this business tax than any other issue. The reason we put this into the statutes was to capture the small businesses that were not captured through an audit because it cost too much. Once they are captured, we would go after sales and use taxes. I would like to amend the motion to exempt the $100 business tax.

CHAIR MCGINNESS:
Senator Tiffany would like to amend this bill to eliminate the State business license fee.

SENATOR CARE:
It does not say anywhere in the bill about this being just small businesses. We are operating under that assumption because of the language about two-thirds of the annual wage. I was astounded when the fiscal note was almost $20 million over the biennium, and the sponsor of the bill thought we were talking only about home-owner associations.

I do not know if we are necessarily talking about a small business in this bill. I would like to see us amend this to include home-owner association and refer it to the Senate Committee on Finance.

SENATOR TIFFANY:
Is Senator Care's suggestion just to add home-owner associations or to add the 66.67 percent as well as home-owner associations?

SENATOR CARE:
I understood the amendment for home-owner associations would not disturb the 66.67-percent language already in the bill.

SENATOR TIFFANY:
Are you talking about both?

SENATOR CARE:
My understanding is the language would stay the same. I just want to make it clear this exemption would not put a bite on home-owner associations. These may overwhelmingly be small businesses, but nobody established that issue, and I do not believe this Committee has time to do that.

CHAIR MCGINNESS:
On the do-pass issue, would the home-owner associations be included in that?

DINO DICIANNO (Deputy Executive Director, Department of Taxation):
My understanding of the amendment by Senator Titus was to include an additional exemption for home-owners' associations that would be qualified as a 501(c) tax exempt organization. On page 2, line 17, the original bill would expand the exemption to all businesses that earn not more than 66.67 percent of the average annual wage. If you leave that language there, plus the unit-owner association, it is more than the original bill.

SENATOR TITUS:
When I originally talked to Jan K. Needham, Committee Counsel, Legislative Counsel Bureau (LCB), about this amendment and told her I wanted to make sure home-owner associations would be included, she thought they would be covered by the way it was originally drafted. Some home-owner associations had doubts and wanted to make sure they were not included. That prompted the amendment to specifically say home owners. I do not think you are talking about a larger pool. They are already going to come under the exemption the way the bill was originally written, but to be sure, this language was suggested as a possibility.

SENATOR TIFFANY:
Mr. DiCianno, we just implemented this business license for the $100 last Session. As far as you know, are there any other exemptions? Are we carving out exemptions on taxes again?

MR. DICIANNO:
The best way I can explain this is, if the unit-owner association is a 501(c) (3), they are already excluded within the language that exists.

SENATOR TIFFANY:
Okay, so that is not a carve out.

MR. DICIANNO:
If they are truly 501(c) (3) tax-exempt organizations, they would already be excluded.

SENATOR TIFFANY:
But the 66.67 percent is a new exemption, correct?

MR. DICIANNO:
Removing the language “from his home” would be an additional exemption.

SENATOR TITUS:
I do not see that as an additional exemption. I see it as an expansion of the exemption to cover all small businesses that make such a small amount, whether it is in the home or outside of the home.

Part of the problem with the home-owner associations is, as you may recall, notices went out to a lot of individuals, some ended up not having to pay, and some did have to pay. There was a lot of confusion at that point. They needed some clarification.

MR. DICIANNO:
If that organization is exempt, they should be refunded their money. That is what the Nevada Tax Commission decided. We will refund their money.

SENATOR TOWNSEND:
The problem Senator Titus is so ably trying to help with is most small home-owner associations do not classify themselves because they have not applied for 501(c) (3) status. That is the issue. The Commission has, in fact, ruled those that qualify do get exempted. If they happen to get caught up, they apply back and get the refund.

Senator Titus was trying to include home-owner associations as an entity because they are nonprofit. I do not know if this is the exact language we need, but she is trying to pick up those who do not already qualify. Mr. DiCianno was accurate in that statement.

CHAIR MCGINNESS:
Senator Lee, do you want to leave your motion as it is, or do you want to include the amended language on the home-owner associations?

SENATOR TOWNSEND:
Mr. DiCianno, you have been remarkably on target. If we look at the fiscal note with approximately $19 million in the biennium and we wanted to use the same fiscal note, what would the business-license fee be at that point?

MR. DICIANNO:
I am not a wagering type of person, and I would like to take some time to calculate that amount. I realize you are pressed for time; right now, your guess would be as good as mine.

SENATOR TOWNSEND:
I only ask because this is the policy Committee, but I would like to debate the whole issue on where the fee amount should be. If the fee ends up being $75 or $85, then we have to ask the sponsor of the bill if that is something she would

like to have her name attached to, if the Committee decides to go that way. That is a legitimate policy question. I do not know how quickly you could figure that out. What would a $16.8-million biennium reduction translate into?

SENATOR TITUS:
I will remind the Committee of Mr. Chinnock's testimony when we asked what the fiscal note would be on this bill. The $8-million figure was based on the calculation of capturing all of the businesses not being captured, and a certain percentage of those would fall into this category. That is not based on what we are capturing now or what we would lose based on what we captured in the past. He admitted in the testimony if we captured all of the businesses now captured, it will not be a hit; it will be an increase in the revenue. The fiscal note put on this bill is misleading.

SENATOR TIFFANY:
Mr. DiCianno, what amount does the business tax actually bring in per year?

MR. DICIANNO:
It was estimated at approximately $20 million.

SENATOR TIFFANY:
If you hire 3 more people and go after the other 220,000 businesses not already paying this business license fee, how much would the revenue increase?

MR. DICIANNO:
It would just be the $100 times the additional businesses that come on board.

SENATOR TIFFANY:
I will probably vote for this, but I want to go on the record saying we should eliminate this amendment because it generates $20 million, and we can afford to reduce that with the surplus we have coming in.

SENATOR LEE:
I have not been dissuaded by any of the testimony, and my motion stands.

CHAIR MCGINNESS:
Your original motion was do pass and rerefer. Senator Coffin seconded that motion. Is there any further discussion on this motion? The motion to amend and rerefer includes Senator Titus's notion to put an "exclamation point" on the

home-owner associations. It will be amend and rerefer. Senator Lee, do you want to rescind your motion?

SENATOR LEE WITHDREW HIS PREVIOUS MOTION ON S.B. 127.

SENATOR COFFIN WITHDREW HIS SECOND.

* * * * *

SENATOR LEE MOVED TO AMEND AND REREFER S.B. 127 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 127 and open the hearing on S.B. 167.

SENATE BILL 167: Proposes to authorize Legislature to prescribe temporary exemptions from sales and use taxes. (BDR 32-1086)

CHAIR MCGINNESS:
This is Senator Carlton's sales tax holiday bill. As you recall, this will go to the voters in 2006, and then the next Legislature would provide the details.

SENATOR TOWNSEND:
The mechanics could be we statutorily pass a sales tax exemption bill for a single day; it is a sales tax holiday. It could reduce the sales tax to the mandatory, constitutional voter-approved 2 percent, and then we ask the voters to get rid of the last 2 percent.

CHAIR MCGINNESS:
That is what this bill does. It asks to get rid of the last 2-percent sales tax.

SENATOR TOWNSEND:
Does that still give the public the opportunity to go in on the holiday and pay only 2 percent on certain things? I could not determine the answer to that.

CHAIR MCGINNESS:
The voters, in November 2006, would be asked to eliminate the remaining 2 percent. The Legislature could then set up a two- or three-day, even a week-long, sales-tax holiday. There is a maximum dollar amount included in this. We will close the hearing on S.B. 167 and open the hearing on S.B. 247.

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

SENATOR LEE:
I was not here last Session, and I took some time to study this bill. Some of the components I agree with and some I do not. I am not trying to abolish prostitution, but I am not willing to legitimize it any more than it already is in this statute. If you remove section 59 from the amendment, I would be willing to make a motion on this bill.

> SENATOR LEE MOVED TO AMEND AND DO PASS AS AMENDED S.B. 247 BY REMOVING SECTION 59 FROM THE AMENDMENT.
>
> SENATOR TOWNSEND SECONDED THE MOTION.

CHAIR MCGINNESS:
Senator Lee, this would remove the tax on prostitution.

GEORGE W. TREAT FLINT (Nevada Brothel Owners Association):
I have great respect for Senator Lee and understand he does not want prostitution or a house of prostitution specified within the bill. Section 10 of the bill states, “live adult entertainment means any activity provided for ….” Once you eliminate the 300-seat threshold, the brothels are in this bill anyway. Candidly, I questioned why the Senator wanted the exact industry title specified in the bill. In reality, as long as you keep the words “live entertainment” within the bill and remove the 300-seat exemption, as taken out of the original bill, the brothels are still covered.

SENATOR RHOADS:
If we do not do a thing to the original bill, the brothels are covered.

MR. FLINT:
If you pass the proposed amendment without the language of the brothels in the amendment, we will be covered.

SENATOR RHOADS:
Are we talking about this amendment or the bill?

MR. FLINT:
We are talking about this entire amendment, Senator Rhoads. Both the original bill and this amended version address anything construed as live entertainment, including the brothels. There was only one reason we would have been covered in both without the addition of section 59. We were originally amended out because the existing law from 2003 had a 300-seat exemption that took out a lot of other businesses at the same time.

SENATOR COFFIN:
I am trying to read this amendment to determine if it contains language about revenues going to the county of origin as opposed to the State of Nevada. I cannot tell who the author of this amendment is.

CHAIR MCGINNESS:
The entire amendment is sponsored by Senator Titus, correct?

SENATOR TITUS:
Yes, the amendment from the last meeting is the one I sponsored.

SENATOR COFFIN:
Most of the effort expended on servicing and maintaining law and order around the red-light districts is done by the counties. Someone indicated giving the money directly to the counties who allow prostitution will conform to State law as it is now. I do not see that language in this amendment.

MR. FLINT:
The only reason I asked to come here is because Senator Lee believed taking out section 59 would eliminate the coverage on brothels. I wanted to explain the brothels were covered in the original bill, and they are still covered in this

bill, regardless if that section stays in or not. We do not have a problem with that, but it does not accomplish what Senator Lee was hoping for.

SENATOR TIFFANY:
Section 59 does define brothels specifically because it states, "entertainment provided by the house of prostitution." Then it says, "An admission to an area of the house of prostitution," whereas the other says admission.

MR. FLINT:
It is our plan to create an admission tax through this body.

SENATOR TIFFANY:
But, that is going into the bedroom tax you were talking about.

MR. FLINT:
That is correct. Either way, the minute you pass this bill into law, we will begin to charge an admissions fee into the bedroom area. The language is a little different in the two amendments.

SENATOR TIFFANY:
This would be the easiest section to leave in the amendment if we want to keep this specific and have this particular part of the money go to local governments. In other words, not all entertainment tax would go to the local governments, but this particular section would. I believe that is what Senator Care was talking about earlier. If we keep this particular section in, that money should go to the counties.

SENATOR CARE:
Speaking on the motion before us, I think what Senator Lee means is a motion to amend and do pass. The amendment he refers to is the adoption of the amended bill offered by Senator Titus two days ago along with the deletion, not only of section 5, but anything in this bill that would recognize legalized brothels, whether the 500 capacity or fewer, that is what Senator Lee is trying to pinpoint. The amended bill could be drafted that way.

SENATOR LEE:
Yes, that is what I was talking about if there is a part taken out of this bill. I want to address Senator Coffin's comments. The amendment, as I understand, sounds like Nye County, on the other side of the Clark County line, is

encouraging more houses of prostitution in order to make more money for our county. It would be a form of generating revenue for the county. I do not want to encourage that in this bill, either. I am looking for a part taken out of this bill to allow them to still do what they do, but not encourage us to legitimize more things with reference to prostitution in our State.

MR. FLINT:
If you really want to take out the brothels, remove section 59; and, on page 2, in section 8, add a subsection explaining live adult entertainment which does not include licensed houses of prostitution.

SENATOR LEE:
I will agree to that language as long as it is acceptable to the Legal Division of the LCB.

CHAIR MCGINNESS:
For clarification, the intent of your motion is to amend section 8 of the proposed amendment by not including licensed houses of prostitution in the definition of live entertainment. To further strengthen that, we would remove section 59.

> SENATOR LEE MOVED TO AMEND HIS PRIOR MOTION AND DO PASS AS AMENDED S.B. 247 BY OMITTING HOUSES OF PROSTITUTION FROM SECTION 8 AND DELETING SECTION 59 FROM THE PROPOSED AMENDMENT.
>
> SENATOR TOWNSEND SECONDED THE MOTION.

CHAIR MCGINNESS:
That is the intent of the Committee motion and we are going to ask the Legal Division of the LCB to make sure this works. Are there any questions on the motion?

SENATOR COFFIN:
Please explain the amendment again. This sounds as though we are going to be a state that permits prostitution, and our Legislature voted down a motion to tax the brothels.

CHAIR MCGINNESS:
The motion is to make sure that in section 8, live adult entertainment is worded so prostitution is not included in the language, and then to take out section 59 from this amendment which is a reference that taxes must be collected for live adult entertainment provided by any house of prostitution. It would leave everything as it is in the counties, but this would show we are not taxing them.

THE MOTION CARRIED. (SENATORS COFFIN, RHOADS AND TIFFANY VOTED NO.)

* * * * *

CHAIR MCGINNESS:
We will open the hearing on S.B. 358.

SENATE BILL 358: Revises provisions governing assessment of ad valorem taxes and special assessments upon property in common-interest community. (BDR 32-225)

CHAIR MCGINNESS:
This is Senator Beers' bill on common-interest property and special assessments upon property in common-interest communities. There is an amendment on page 2, after the bill explanation in the work session document, which is basically a rewrite of the total bill. I do not have any opposition to this bill in my notes.

SENATOR TOWNSEND:
The Senate Committee on Commerce and Labor processed the large common-interest community bill this morning. Renny Ashleman, Southern Nevada Home Builders Association, was there on behalf of a number of his clients. He was handed the responsibility to answer any of the questions. I do not know if he is in the building, but we could page him and go on to another bill; he may be knowledgeable enough to find out if this was included in the debate by the working group. I am not familiar with this, nor are Senators Tiffany and Lee. We usually deal with these issues; obviously, this belonged in the Senate Committee on Taxation.

CHAIR MCGINNESS:
When Senator Beers arrives, we will come back to S.B. 358. We will now 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)

CHAIR MCGINNESS:
This bill has some definitions we were not able to deal with, so there are some technical items included. The Independent Gaming Operator Coalition representatives also wanted to amend their concern into this bill. If the Committee wants to include that amendment, I would like to make sure we take the technical issues out of this bill and amend them into Senate Bill 392.

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

CHAIR MCGINNESS:
We need to consider the proposal from the Independent Gaming Operator Coalition on S.B. 388 to talk about the different tiers.

SENATOR TOWNSEND:
As we process these as policies and send them to the Senate Committee on Finance, is it the Chair's intent we have final determination on which amendments would be the ultimate package?

CHAIR MCGINNESS:
Yes, that is the intention of this Committee.

SENATOR TOWNSEND:
I just want to make a point this Committee is abdicating its authority and not taking responsibility. At the end of the day, depending on how many bills we are sending to Finance, there may or may not be enough revenue to deal with all of these issues. We will have to make some tough decisions.

CHAIR MCGINNESS:
As you recall, the fiscal note on this was $25 million to $26 million per year.

SENATOR TOWNSEND:
Was the fiscal note provided by Mr. Wells of the State Gaming Control Board or by our own Fiscal Analysis Division?

JIM ENDRES (Independent Gaming Operator Coalition):
With respect to S.B. 388 and the amendment, the fiscal note we passed out that was attached to the amendment was the fiscal analysis requested by Senator Raggio. That is what we based our testimony and analysis on for the Committee.

CHAIR MCGINNESS:
It is technically not a fiscal note, but it is close.

SENATOR TOWNSEND:
I do not see an amendment in our book relative to S.B. 388. If we decide to process this, are you looking to amend and rerefer? Would we only include the amendment proposed by the Independent Gaming Operator Coalition? I do not see any other amendments.

CHAIR MCGINNESS:
No, I would like to move the technical issues in S.B. 388 to S.B. 392. We would use S.B. 388 simply as their vehicle, if the Committee decides to do that.

> SENATOR TOWNSEND MOVED TO AMEND S.B. 388 IN ITS ENTIRETY BY REPLACING IT WITH THE PROPOSED AMENDMENT FROM THE INDEPENDENT GAMING OPERATOR COALITION AND REREFER TO THE SENATE COMMITTEE ON FINANCE WHEREAS THE CONTENTS OF S.B. 388 WOULD TRANSFER TO ANOTHER BILL.
>
> SENATOR TIFFANY SECONDED THE MOTION.
>
> THE MOTION CARRIED. (SENATORS COFFIN AND LEE WERE ABSENT FOR THE VOTE.)

* * * * *

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)

CHAIR MCGINNESS:
This is the recorders' bill. If you look behind the bill explanation, there are a couple of amendments from the Focus Property Group and the Nevada District Attorneys Association. Both amendments were agreed to by the recorders.

SENATOR TOWNSEND MOVED TO AMEND AND REREFER S.B. 390 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS COFFIN AND LEE WERE ABSENT FOR THE VOTE.)

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 390 and open the hearing on S.B. 392.

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

CHAIR MCGINNESS:
This is the bill from the interim study committee that captured all of the information. There were a couple of amendments from the State Gaming Control Board and the Department of Taxation. Paramount Parks also added an amendment (Exhibit F) regarding the amusement rides to make sure they were not captured just because their employees wore uniforms.

Mr. Chinnock or Mr. DiCianno, we have one page of Gaming Control Board and Department of Taxation issues; then there is a separate page from Director Chinnock on S.B. 392. Are those two pages the same or are those additional?

MR. DICIANNO:
Those are the same. There is only one proposed amendment from our Department (Exhibit G).

CHAIR MCGINNESS:
Mr. Shriver, would you come forward to testify please. You were unable to be here Tuesday.

ROBERT E. SHRIVER (Secretary/Executive Director, Commission on Economic Development):
My proposed amendment (Exhibit H) to S.B. 392 is on page 6, section 11. Starting on line 29, there was language deleted that would exempt production companies of motion pictures. We had this exemption in the original business-activity tax, and it was taken out. We feel the upcoming S.B. 493, with the amend and do pass out of the Senate Committee on Government Affairs yesterday, as well as the impact economically, sends the wrong message at the wrong time to the motion picture industry in this State.

SENATE BILL 493: Provides certain tax incentives for registered motion picture companies. (BDR 18-354)

MR. SHRIVER:
California, our neighboring state, is aggressively going after retention of the film industry. Other states around us, including Arizona and Utah, have done a great job going after motion picture productions.

The original intent of this language came from the motion picture studios themselves about the confusion with payroll tax when hiring within the State. We solved that issue at the time. By eliminating the exemption, we are creating that problem once again.

SENATOR TOWNSEND:
Why was this information not included in the testimony in the meeting last night?

MR. SHRIVER:
At the time, we were hearing S.B. 493, we probably should have heard this, but for some reason we did not. We can include this language in either bill. It is my idea to put the language back into the original bill from *Nevada Revised Statute* (NRS) 360.765, exempting businesses whose primary purpose is to make

motion pictures. Statutes dealing with motion picture production companies are under chapter 231 of the NRS.

DENNIS K. NEILANDER (Chairman, State Gaming Control Board):
We have some amendments titled "Gaming Control Board" and a separate document from the Department of Taxation. There is one issue of commonality of the two amendments where we are asking for the same thing, but there are two additional issues in our amendment as well as two additional issues in their amendment. We support both amendments going forward; the only problem is the one issue contained in both amendments, but appears as separate issues of the two departments.

CHAIR MCGINNESS:
Up for consideration is this bill with amendments from the State Gaming Control Board, Department of Taxation and Paramount Parks.

> SENATOR RHOADS MOVED TO AMEND AND REREFER S.B. 392 TO THE SENATE COMMITTEE ON FINANCE.
>
> SENATOR TIFFANY SECONDED THE MOTION.

SENATOR CARE:
I think there are enough votes for this motion to succeed. When I read a bill, I like to read the proposed amendments, sit through a hearing to let these issues ferment. This happened to me yesterday. I voted against a bill for the sole reason it came to us late with an amendment. There was some confusion, and on that basis alone, whether there was merit or not, I voted no. I am going to vote against this motion. To be asked to consider an exemption for the movie industry on payroll tax is not something I am comfortable with entertaining two minutes prior to the vote, so I am going to vote no.

CHAIR MCGINNESS:
I appreciate your comments and concerns, Senator Care. Are there any other questions on this bill?

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

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 392 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)

SENATOR RHOADS:
This bill changes the due date of these taxes from June 1 to December 31, so there is more time for them to reach their goals.

CHAIR MCGINNESS:
They currently have this exemption, but it will expire December 31 because of the Streamlined Sales Tax Project. We are basically extending this for another six months.

SENATOR RHOADS MOVED TO DO PASS S.B. 398.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS LEE AND TOWNSEND WERE ABSENT FOR THE VOTE.)

* * * * *

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)

ALFREDO ALONSO (Nevada Beer Wholesalers Association):
After the last hearing, the two sides got together and we have reached an agreement in principle. The language before you is what has been agreed to. A settlement agreement is also being sent to the Nevada Beer Wholesalers Association to sign. If there are any further problems, we will come back to you. This has all been done quickly, but we do have an agreement.

In essence, this allows a retail store to transfer within a franchise territory. If they are an affiliate, they are allowed to transfer outside that territory only if the line for the product is the same in southern and northern Nevada. They would essentially be transferring the same product, and they have that line of product in both parts of the State.

The bill does not apply to beer. For our small wholesalers in the rural counties, it protects them and the three-tier system within those areas. If there are any issues with respect to language, we will obviously come back to you for help.

SENATOR RHOADS:
What do they mean by “original packages of beer”? What is the definition for that?

MR. ALONSO:
It is my understanding in the statute the explanation is the original package the product was packed in by the manufacturer. That originates back when individuals would tear off part of a six-pack and sell the beer individually. The “original package” means whatever package in which it was originally was delivered. In most cases that is a case, 6-pack or 12-pack.

MR. ENDRES (Albertson's, Incorporated):
I appreciate the Committee taking up this bill at such a late hour with another amendment. This bill meets the interests of the parties engaged in those discussions. Albertson's, Incorporated, would appreciate your concurrence and passage of this bill from the Committee.

MS. LAU:
I want to thank the Committee and members of this panel for their effort and time put into this bill. We are happy with this amendment.

CHAIR MCGINNESS:
Has Senator Amodei seen this bill as amended? Could someone make sure he gets a copy of this bill?

SENATOR RHOADS:
What does this mean in one of my rural towns with small grocery stores? Can they sell to the grocery store with this new law?

MR. ALONSO:
If your small town is within the franchise area for that particular warehouse, they can sell to that store.

SENATOR COFFIN:
In those small towns where the wholesaler has a hard time servicing the stores, does this amendment permit the retailer to bring product into that small area?

MR. ALONSO:
In areas where product is hard to get, we will fix that internally within those franchise territories. That is more of a function of making certain those trucks get to those rural areas within the franchise area. This bill still protects the franchise area with the wholesaler.

SENATOR CARE:
In the amendment of the bill, section 1, subsection 1, paragraph (d) states, "the retail liquor store obtains a special permit for such transportation pursuant to subsection 4 of NRS 369.450." How difficult is it to obtain such a permit?

MR. ALONSO:
Albertson's and Von's, as well, are operating pursuant to this today. A simple process in place is called a cab card, and they apply to the Department of Taxation for this card. They are on record with the Department with respect to the number of trucks and other pertinent information with respect to the delivery mechanism. It is something already in place.

SENATOR CARE:
How long is this permit good for?

MR. ALONSO:
I do not know the expiration date for these cards.

SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 457.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 457 and open the hearing on S.B. 476.

SENATE BILL 476: Makes certain changes relating to tax on special fuels and registration of motor vehicles powered by electrical power or alternative fuel. (BDR 32-1301)

CHAIR MCGINNESS:
If you remember, this bill provides a 10-percent tax credit for the purchase of special fuel and limits the tax credit to a maximum of 250 vehicles per year. There is an amendment provided by Mr. Joyce.

ROBIN H. JOYCE (Las Vegas Clean Cities Coalition; Truckee Meadows Clean Cities Coalition):
In discussions with Mr. Capurro and Mr. Krueger from the Motor Carrier Division of the Department of Motor Vehicles (DMV), we have come to agreements on the amendments you see in the bill. The main item to bring to your attention is the admission-tax credit, which is actually a rebate we are asking for, and I want that on the record.

In section1, subsection 1, we have added, "the rebate shall be given after the purchase, and is limited to a total of 10 new passenger vehicles." In section 1, subsection 2, paragraph (a), we added the word passenger to limit the rebate to a maximum of 250 new passenger vehicles per year. The fourth change is in section 1, subsection 2 to add a paragraph. We recommend that following paragraph (b), which states "establishing the procedure for applying for and obtaining the tax credit" a paragraph to read "requiring purchasers of alternative fuel vehicles are Nevada residents with Nevada-based, nonapportioned license plates." Those are the changes to the amendments we had talked about in our previous testimony (Exhibit I).

CHAIR MCGINNESS:
Were the representatives at DMV and the Department of Transportation in agreement with these changes?

MR. JOYCE:
That is correct.

CHAIR MCGINNESS:
Is this the only amendment we are considering?

MR. JOYCE:
Yes, this is the only amendment we are asking for from the Committee.

SENATOR COFFIN MOVED TO AMEND AND REREFER S.B. 476 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR TIFFANY SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 476 and open the hearing on Senate Bill 481.

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

CHAIR MCGINNESS:
The only change requested is to amend subsection 1, paragraph (b) of NRS 365.565 to read, "Account for Taxes on Aviation Fuel, whichever is more." This currently reads "whichever is less" (Exhibit J).

SENATOR COFFIN MOVED TO AMEND AND DO PASS AS AMENDED S.B. 481.

SENATOR RHOADS SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

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)

CHAIR MCGINNESS:
If you look behind the bill explanation in the work session document, there is a proposed amendment from Ellen Allman of Caithness Operating Company, Limited Liability Company (Exhibit K). Page 3 states this company sells renewable energy credits or other environmental credits due to that operation constituting a renewable energy system as that term is defined in NRS 704.7815.

BJORN SELINDER (Churchill County; Eureka County):
In reviewing the proposed amendment, I am unsure as to what the impacts are other than if you look at the definition of renewable energy system as defined in NRS 704.7815 that appears on page two of my handout (Exhibit L). The excerpt from NRS indicates a facility or energy system that uses renewable energy. I will read from Exhibit L. From what I can gather, the proposed amendment does not correct the issue and completely exempts the company from the payment of net proceeds, which would be detrimental to Churchill County. The capacity payments have been on record as part of the total net proceeds since at least 2001.

SENATOR CARE:
In essence, capacity is there to produce the energy when it is needed. It is difficult for me to grasp the idea that capacity itself, even though you are paid to have capacity, is an income once you provide the energy pursuant to a power-purchase agreement.

Mr. Selinder's memo states, on the first page, "I would remind the committee that we are informed the federal government requires the inclusion of capacity revenues in the computation of royalty payments for the use of public lands." Could you explain that to the Committee?

MR. SELINDER:
That is based on a conversation I had with some individuals who are with the Department of Taxation. It was indicated the federal government does not treat capacity payments any differently than the Department of Taxation. Instead of net proceeds, we are talking about royalties for the federal government. Obviously, if a geothermal generator is occupying federal lands, they pay lease as well as their royalty on production. What we are saying is the revenue production includes the capacity payment.

ELLEN ALLMAN (Caithness Operating Company, Limited Liability Company):
The amendment I provided, Exhibit K, to try and allay the concerns the entire plant would be excluded from paying any net-proceeds tax again must have missed the mark. My intention was we were not to be taxed on revenue from the sale of renewable revenue credits or other environmental credits. This was not to exclude us from paying altogether.

A provision in S.B. No. 372 of the 71st Session allows for the sale of parasitic or auxiliary load that is consumed within the State. If it is renewable energy, we can sell those and they can satisfy the portfolio standard. The revenue a plant may receive by sales of those is what I am looking to exclude from the definition of gross proceeds. Again, I apologize for missing the mark if the language does not work.

The letter before you, written by the Department of Taxation in June, Exhibit L, does reference the fact that capacities are included in royalties. This is a net-proceeds tax that was supposed to value that which is extracted from the earth. It is different, in my view, from a royalty. The letter goes on to try to suggest the intention of the Legislature. Instead of questioning what the Legislature intended, my point today is to find out what you mean by potentially excluding capacity payments, so another renewable energy developer is not taxed differently than others, meaning geothermal differentially from other renewable energies.

SENATOR TOWNSEND:
Are you a closed-loop system?

MS. ALLMAN:
We are a flash system, not a closed-loop system.

SENATOR TOWNSEND:
Has some of this debate come from terms of the extraction issue as a net proceed on a mineral as opposed to a closed-loop system where you can have a substantially different debate?

MS. ALLMAN:
I do not believe so. Our point was for a closed loop, meaning a binary, or a flash, meaning an open. In either case, technically, we do not take anything from the ground. We borrow the water, extract the heat and put the water back into the ground. We were trying to maintain the current payments we make and not have an additional payment.

SENATOR TOWNSEND:
Having dealt with this issue for a long time and knowing it has a positive impact on the rural counties is one of the reasons I have been supportive; it is important to those rural counties and their economic development efforts. The flip side is a fiscal note on this bill, is that correct?

CHAIR MCGINNESS:
Yes, there is a fiscal note of $1.3 million.

SENATOR TOWNSEND:
I defer to you, Mr. Chair, since that is your area. I have to agree with Ms. Allman, although I am not disagreeing with the gentleman from Churchill County. I want to respect the local government and what they are struggling with since they no longer have to worry about losing their franchise fee.

CHAIR MCGINNESS:
As I mentioned, Senator Rhoads and I represent a lot of geothermal, and I have some concerns about this bill. I will look to the direction of the Committee.

SENATOR TOWNSEND:
I believe Ms. Allman's amendment language does not meet her intention. Our staff would have to work with this and correct the language. I do not want this amended with the current language but with the intent the geothermal companies continue to pay what they are currently paying, and not incur any additional payments under any proposal that would exclude their tax credits.

SENATOR TOWNSEND MOVED TO AMEND AND REREFER S.B. 487 TO THE SENATE COMMITTEE ON FINANCE.

THE MOTION FAILED FOR LACK OF A SECOND.

CHAIR MCGINNESS:
We will close the hearing on S.B. 487. We are going to open the hearing on S.B. 358.

SENATE BILL 358: Revises provisions governing assessment of ad valorem taxes and special assessments upon property in common-interest community. (BDR 32-225)

SENATOR TOWNSEND:
Mr. Ashleman and I have gone over this bill. We concluded this bill does not interfere with any issues we dealt with during the working group, and it is not problematic from the home-owner associations perspective of which we are aware. I would certainly support this.

CHAIR MCGINNESS:
Senator Beers, do you have an amendment on this bill?

SENATOR BOB BEERS (Clark County Senatorial District No. 6):
This proposed amendment already exists in NRS 116 and has been ruled unconstitutional by the Nevada Supreme Court as a violation of the fair and equitable taxation requirement. That did not dissuade me; it is unfair and inequitable to tax property twice. Here we are speaking to the Court and stating this is a different situation because this property cannot be sold. Commonly owned property is wholly tied to ownership of a unit. That is the difference.

SENATOR CARE:
Hypothetically, you have an association with 500 members who all have same square footage, 3-bedroom models and share a clubhouse and pool. Under your amendment, each of the 500 members receives a property tax. Would that cover 1/500 of community property?

SENATOR BEERS:
My premise here is that inherent in the market value of any unit in a home-owner association (HOA) community is a portion of the commonly

owned property. The commonly owned property cannot be sold or enjoyed, save for the right granted through ownership of a unit in that home-owner association. The clubhouse is a perfect example in your 500-unit development. I cannot use the pool if I do not live in that development; the right to use the pool is only extended to the people who live in that development. The only way I can transfer my right to use that pool is to transfer ownership of my property, lock, stock and barrel. The right to use that property cannot be separated and sold to someone who lives a half mile down the road. Therefore, when the property is sold, it includes the value of that commonly owned property. To put it another way, if all 500 of those units were to be sold, you would find people would pay a premium to live there, compared to the exact same house that does not have a pool available. If you sold all 500 houses at the same time, the premium total of all the houses would equal the value of that commonly owned property.

SENATOR CARE:
If your amendment becomes law, we will not have to worry. I do not know if this ever happens. A home-owner association board does not pay the property tax on the clubhouse or pool or whatever; we do not have to worry about that any longer, right?

SENATOR BEERS:
They would no longer have any property tax to pay. By taxing a unit, you are getting to the commonly owned property value.

> SENATOR RHOADS MOVED TO AMEND AND DO PASS AS AMENDED S.B. 358.
>
> SENATOR TIFFANY SECONDED THE MOTION.

RENNY ASHLEMAN (Southern Nevada Home Builders Association):
I received a telephone call from representatives of The Howard Hughes Corporation. They are of the belief that this bill increases the taxes on the home owner. The assessor will say this is what I used to tax this property, I got it from the central assessment, and now I am going to spread that out. I do not know if that is true or not, but I do not see anything in the bill to prohibit that from happening.

SENATOR BEERS:
I had an interesting conversation in my office with a group of assessors a couple of weeks ago about this bill. There are two approaches to assessing. You are the Committee on Taxation, so I defer to your knowledge in this area.

It is my understanding, in Clark County, assessed value is based on market value. The assessed value of my home is based on the market value of my model that sold in my neighborhood recently. If that is the case, then separately assessing property tax on the value of the commonly owned property is double taxation if we are looking at market value. I heard from another assessor who contends no; they look at the general land values in that area, add to that the depreciated value of the building on the land, and that becomes your assessed value. If that is the case, assuming the land block we are looking at to generalize a land value includes land in and outside of the home-owner association, it may, in fact, result in an assessed value that differs significantly from the market value. The market is always going to include the ability to participate in the commonly owned community and its assets and features in the market price. I am not sure I understand this argument. Does it apply to undeveloped land?

MR. ASHLEMAN:
No, the information I have been given relates only to a built-up community that currently gets a property tax bill for a certain amount for the value of that community property. Whether or not there is a double taxation, I do not know. I do not see anything in this bill that prevents the assessor from saying that was the value we used to have here, and now I am being told to spread it out to individuals.

SENATOR BEERS:
Were they looking at the amendment? What you are describing is the wording in the original bill. The assessors told me that bill would require them to take the assessed value of the commonly owned property, divide it by the number of units and add that to the value of each unit. That is not the case, particularly with this amendment. This makes it clear that is not the intent.

MR. ASHLEMAN:
I do not know if they have seen the amendment, but I doubt it. I have studied the amendment, and it is much improved over the original bill. I still do not see how it prevents the assessor from going through that thought process when he

calculates his taxes. Maybe, it will not happen. I do not know the answer to this question; I am simply posing it.

SENATOR BEERS:
Perhaps, with the addition of a fourth paragraph in section 1 that states, "in no case will the assessed value of a unit in a home-owner association exceed the fair market value."

CHAIR MCGINNESS:
Senator Beers, line 23 states, "must be assessed upon the common units, not upon the common interest community as a whole." In my opinion, that seems to define it pretty well.

SENATOR CARE:
I read it the same way as you, Mr. Chair. Going back to the 500-unit HOA, you have a clubhouse, pool, tennis courts and, maybe, a second swimming pool taxed now. I presume the way it works, the association itself pays those taxes, whereas every unit member pays the taxes on his or her respective unit. What would happen under this bill is only the units would pay the tax, but you still have a clubhouse, swimming pool and tennis court on real property; and someone is going to have to pick up the obligation. It would seem to me the taxes would increase on the unit owners. In theory, there should be a corresponding decrease in the dues.

SENATOR TOWNSEND:
There would, but for the fact the property exists in a development where you have access to these other benefits. It would have a certain market value; now it has a higher market value. Yet, the accoutrements, as they are, also pay an assessment. That is where they are making the differentiation. It is a function of when we break that out. It does not shift the tax from the totality over the individual unit which, I believe, is the conversation Mr. Ashleman has had. Although I do not disagree with the assessment on line 23, I am not sure it is enough protection.

SENATOR BEERS:
If the units in the community association are taxed at fair value, which is presumably higher than if that home existed outside the community association, then additionally taxing the commonly owned value is double taxation. If you eliminate it, it goes away, and the tax bill of the home owner does not change

because the fair market value already reflects the value of the commonly owned property, or one portion of it.

On the other hand, if you believe the fair market value of that unit in that community is not higher because of the inseparable access it carries to that commonly owned property, then, by eliminating the tax on the commonly owned property, you must shift it to the home owners. It never was being taxed twice. This is the heart of the philosophic debate. You will have to come up with a way to communicate this decision to the assessors, so if an assessor believes he or she is obligated to recover this revenue from the commonly owned property by increasing the tax bill on the units, that assessor is prevented from doing so.

You might add a statement to this bill that says, "under no circumstances can the assessed value exceed the fair market value." That may exist somewhere else in the law, I am not sure.

MR. ASHLEMAN:
Testimony from assessors and other individuals I have worked with recently on this issue is that no piece of property in the State of Nevada is currently taxed at more than its fair market value. If it is, you can upset that in appeals. I do not think this is a cure.

If the Committee has appetite for the bill, and it does not offend Senator Beers or this Committee, I would be happy to work to fix any perceived problems with this. I think what Senator Beers is doing is admirable. We can pick this bill up in the other House because of timing. I am perfectly satisfied with that procedure.

SENATOR BEERS:
I want to accommodate the creator of my master planned community. If we can get the concept of this bill accurately described, it will benefit every one of the people who buy their homes without harming anyone else.

SENATOR CARE:
The indication is there is a Nevada Supreme Court case that states, "the current practice is unconstitutional." If that is true, I would be curious to know why the Court simply did not say this practice is henceforth prohibited.

SENATOR BEERS:
My understanding is the Supreme Court did say that, and we have never deleted it from statute. They took this situation and decided that not taxing the commonly owned property or agreeing the market value of the units includes a portion of the commonly owned property and all the units together have enough premium to account for the commonly owned property was separate and unequal treatment of individuals who live in home-owner associations. I contend it is economic reality and, therefore, absolutely consistent and equal of all taxpayers. That is what we are trying to achieve here.

CHAIR MCGINNESS:
We have a motion on the floor to amend and do pass. Is there any discussion on this bill? The amendment is what Senator Beers proposed, a complete new bill in his mock-up (Exhibit M). Senator Beers, will the assessed value exceed the fair market value? Do you think that is helpful?

SENATOR BEERS:
It is common sense. Since this Committee deals with this area of the NRS, I will defer to the Committee's expertise.

CHAIR MCGINNESS:
It is well established. The motion is amend and do pass.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

SENATOR CARE:
Does the Committee have a desire to entertain a motion on S.B. 167? This is the sales tax-holiday bill.

CHAIR MCGINNESS:
We will close the hearing on S.B. 358 and open the hearing on Senate Bill 167.

SENATOR CARE MOVED TO DO PASS AND REREFER S.B. 167 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR TOWNSEND SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 167 and open the hearing on S.B. 176.

SENATE BILL 176: Eliminates premium tax on annuities. (BDR 57-1010)

CHAIR MCGINNESS:
We have already heard from Mr. Stoller and Mr. Saxauer in Las Vegas earlier today. They testified in favor of your bill.

SENATOR COFFIN:
I would like a short tutorial on this subject, so we know what part of the product is insurance versus what is not insurance. It depends if it is a variable or fixed annuity.

VAN MOURADIAN (Division of Insurance, Department of Business and Industry):
Could you clarify your question?

SENATOR COFFIN:
First of all, what is the fiscal impact of this bill?

MR. MOURADIAN:
The Division did a fiscal impact calculation which was $37.9 million for the year. The Department of Taxation had done another impact for the biennium, but I do not recall that number.

CHAIR MCGINNESS:
That amount was $95.9 million.

SENATOR COFFIN:
I want to make sure I am educated because I have sold annuities in the last 30 years and I know a little about them but not enough. I know some part of them is an insured product. I can understand insurance tax being paid on the insured portion.

MR. MOURADIAN:
As far as the premium tax goes, whatever amount the individual gives to the insurance company to invest, whether it is over a period of time or a onetime amount, that is what the premium taxes are set on.

SENATOR COFFIN:
Coming back on the payout, what amount of tax is collected?

MR. MOURADIAN:
It depends on whether the tax was paid up front or on the back end. If the carrier sold the product where the tax was on the front end, let us say on $10,000 invested, the amount invested would be $9,650 and the rest would be invested with the premium taxes paid. If there were multiple investments made, each time on the front end tax when the person gave the money to the insurance company, the 3.5 percent would be deducted and remitted to the Department of Taxation. On the back end, the insurance company sold you that product and the tax was paid before the first check was paid, the insurance company would keep track of the payments made; before the first time it was annuitized, 3.5 percent would have been paid on that $10,000 and what was left in the account of the original $10,000 plus whatever it earned would be remitted in payments to the annuitant.

SENATOR COFFIN:
Is there a portion of the payment coming out that is not taxed?

MR. MOURADIAN:
Yes, whatever is earned on that investment is not remitted as premium tax to the State. The principal is the only thing that is taxed, not the interest earned.

SENATOR COFFIN:
That is something we need to think about here because tax is not being paid on the entire amount being paid out.

SENATOR BEERS:
If I contracted to get $4,000 a month starting at the time I turn 65; the insurance company told me I need to make $1,500-a-month payments from now until I turn 65 and they elected to not charge the tax up front but at the back end. When I start getting my $4,000 a month payments at age 65, what is the 3.5 percent applied against?

MR. MOURADIAN:
It applies to whatever premium generated that annuity, not on what it earned. If your payments were $400,000, the premium would be remitted, before you received your first check, to the Department of Taxation, and the account would now reflect whatever it would give you for the rest of your life.

SENATOR BEERS:
How much tax would I pay on my check for $4,000? If I paid $1,500 a month for 20 years, now I will get $4,000 a month from 65 until I die.

MR. MOURADIAN:
There is no tax going to the State once you start receiving your check. The insurance company would have deducted the 3.5 percent to remit to the State from the account that is going to generate that income.

SENATOR BEERS:
At the time I turn 65, the accumulated balance of contributions and earnings is in an account with my name on it, and 3.5 percent of that total goes to the State?

MR. MOURADIAN:
No, 3.5 percent of what you remitted as premium to the insurance company to invest for you goes to the State.

SENATOR BEERS:
If I had paid this $1,500 a month over my 20 years and it came to $400,000, at the time I turned 65, the amount was $350,000 in principal and $50,000 in earning.

MR. MOURADIAN:
Then 3.5 percent of the $350,000 would be applied before you received your first check and remitted to the State.

SENATOR BEERS:
On the date I start receiving my payments, my account would go from $400,000 minus 3.5 percent of $350,000, which is approximately $10,000? At more modern interest rates, my $400,000 consisted of $390,000 of contributions and $100,000 of earnings, so I would lose all of my earnings.

SENATOR COFFIN:
There was an assumption when this bill was introduced that, somehow, people were losing 3.5 percent on their return every year which, in many cases now, is below what people can earn. The State insurance commissioner's testimony contradicts that. Some portion of it is naturally lost to the premium tax in the end, but it was taxed on what was contributed, not what is being paid. It comes out of the payment, but is not taxed on the total payment. The 3.5-percent assumption should not be made on the entire payment.

This required more time and homework, and it seems to be a Senate Commerce and Labor Committee bill, in a way. It is late in the day, and I know you want to keep the bill alive. Since it has a fiscal impact, I suggest we keep the bill alive by simply referring it to Senate Finance, and then we can get more testimony from the Insurance Commission and untangle all the mysteries occurring here. Annuities are not a bad deal as this testimony indicates, but it is not clear and it is not easy to illustrate that.

CHAIR MCGINNESS:
Senator Beers, what do you think of Senator Coffin's idea?

SENATOR BEERS:
You might want to pass S.B. 176 and rerefer it because the fact remains, if you look at this as a savings account comparable vehicle instead of an insurance product, the insurance aspect of this is whether or not you outlive your actuarial life. If you do not outlive that actuarial life, the insurance company gets to keep all the money they would have paid you each month. If you do outlive your actuarial life, the insurance company or the investment company is going to pay you more than you paid in. Is that correct?

SENATOR COFFIN:
Insurance is establishing certainty against uncertainty. The certainty would be you know you are going to get it for a period as long as you live.

SENATOR BEERS:
That would be an unfixed annuity? Is that what you called it?

SENATOR COFFIN:
There are fixed and variables, but they all work in the same way. Variables accumulate differently because they are different investment vehicles.

SENATOR BEERS:
Do these investment vehicles include a contract where you will get a defined benefit at the end? Are those taxable under this tax?

SENATOR COFFIN:
That depends on how you invest. You even have capital gains elements in some of them if there are variables, and we have not even discussed that. It is more complex than it looks.

SENATOR COFFIN MOVED TO REREFER S.B. 176 TO THE SENATE COMMITTEE ON FINANCE.

SENATOR TIFFANY SECONDED THE MOTION.

SENATOR CARE:
I will go along with the motion and maybe we can attach a little note there. We passed a bill in Senate Government Affairs yesterday that dealt with creating, in essence, a joint-venture fund that will be funded with these premiums. I do not know what impact this legislation will have on that.

THE MOTION CARRIED UNANIMOUSLY.

* * * * *

CHAIR MCGINNESS:
We will close the hearing on S.B. 176 and reopen the discussion on S.J.R. 7.

SENATOR CARE MOVED TO DO PASS S.J.R. 7.

SENATOR COFFIN SECONDED THE MOTION.

THE MOTION FAILED. (SENATORS McGINNESS, RHOADS, TIFFANY AND TOWNSEND VOTED NO.)

* * * * *

CHAIR MCGINNESS:
There being no further business to come before the Committee, the meeting is adjourned at 4:27 p.m.

RESPECTFULLY SUBMITTED:

Tanya Morrison,
Committee Secretary

APPROVED BY:

Senator Mike McGinness, Chair

DATE: