

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON TAXATION**

**Seventy-Fourth Session
May 17, 2007**

The Committee on Taxation was called to order by Chair Kathy McClain at 1:11 p.m., on Thursday, May 17, 2007, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/74th/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblywoman Kathy McClain, Chair
Assemblyman David R. Parks, Vice Chair
Assemblywoman Francis Allen
Assemblyman Morse Arberry, Jr.
Assemblyman Mo Denis
Assemblyman Tom Grady
Assemblyman William Horne
Assemblyman John W. Marvel
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Peggy Pierce
Assemblywoman Valerie E. Weber

STAFF MEMBERS PRESENT:

Russell J. Guindon, Senior Deputy Fiscal Analyst
Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary
Gillis Colgan, Committee Assistant
Marge Griffin, Committee Manager



OTHERS PRESENT:

Dino DiCianno, Executive Director, Department of Taxation
Mary Walker, representing Carson City, Douglas County, Lyon County,
and Storey County

Chair McClain:

[Roll was called.] We have some bills on work session today. Let us start with Senate Bill 74 (1st Reprint).

Senate Bill 74 (1st Reprint): Revises provisions governing expenditure of money in infrastructure fund of certain counties. (BDR 32-255)

Michael Nakamoto, Deputy Fiscal Analyst:

This bill expands the allowable uses for revenues within the infrastructure fund such that a county imposing the sales tax for infrastructure pursuant to *Nevada Revised Statutes* (NRS) 377B.100 may also use those proceeds for road and highway construction, maintenance, and repair as well as the acquisition, establishment, construction, expansion, improvement, or equipping of facilities relating to safety or to cultural, recreational, or judicial functions.

The Committee heard testimony in support of S.B. 74 (R1) from Mary Walker, who indicated that most rural counties do not currently impose the optional infrastructure rate because of its limited uses, and that expanding the uses authorized would help the counties solve critical needs. Robert Hadfield from Lyon County also testified in support, as did John McCormick, the Rural Courts Coordinator for the Administrative Office of the Courts. The testimony generally indicated that expanding the uses would allow rural counties to become more self-sufficient regarding their revenue and infrastructure needs.

ASSEMBLYMAN MARVEL MOVED TO DO PASS
SENATE BILL 74 (1st REPRINT).

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMEN ARBERRY AND
MORTENSON WERE ABSENT FOR THE VOTE.)

Chair McClain:

We will now go to Senate Bill 147.

Senate Bill 147: Revises provisions governing the use in certain counties of taxes on motor vehicle fuel. (BDR 32-938)

Michael Nakamoto, Deputy Fiscal Analyst:

This bill was sponsored by Senator McGinness and was heard on May 3, 2007. The bill revises the definition of "project" for the purpose of determining the allowed uses for county optional fuel taxes imposed pursuant to NRS 373.030. This bill changes the population threshold in the definition from 50,000 to 100,000 such that all counties with a population of less than 100,000 may use proceeds from the fuel tax for street and highway maintenance, repair, and construction. This is currently allowed only for counties with populations less than 50,000.

Testimony in support of S.B. 147 was received from Mary Walker, who noted that Carson City is currently reaching its built-out phase. This bill would allow Carson City to dedicate its fuel tax revenues to maintenance and repair rather than just new construction as the new construction needs for Carson City dissipate.

Linda Ritter, the City Manager for Carson City, testified in support of S.B. 147, verifying that Carson City was indeed reaching its built-out phase and would be taking over Carson Street in the near future, once the Carson Freeway reaches Fairview Drive. That would increase the city's road maintenance and repair needs.

Testimony in support was also received from Robert Hadfield of Lyon County, who indicated Lyon County's population would soon reach that 50,000-population threshold, so the change would help address their needs in the future. They are currently allowed to use that revenue for maintenance and repair, but if the status quo is maintained, the potential exists that they would not be able to do so.

No testimony was received in opposition, and no amendments were presented.

ASSEMBLYMAN GRADY MOVED TO DO PASS SENATE BILL 147.

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS ABSENT FOR THE VOTE.)

Chair McClain:

Our next bill is Senate Bill 502 (1st Reprint).

Senate Bill 502 (1st Reprint): Revises various provisions governing sales and use taxes to ensure continued compliance with the Streamlined Sales and Use Tax Agreement and repeals certain obsolete provisions for the administration of those taxes. (BDR 32-556)

Michael Nakamoto, Deputy Fiscal Analyst:

This is the Department of Taxation's bill regarding the Streamlined Sales and Use Tax Agreement. The bill makes various changes governing the administration of sales and use tax to reflect changes that have been made to the agreement since the 2005 Session. The bill also provides for a ballot question in the 2008 General Election that would, if passed, allow the Legislature to make administrative changes to the Sales and Use Tax Act of 1955 without voter approval. The ballot question would also ask for the removal of an exemption for aircraft parts that was deemed to be unconstitutional.

Testimony in support of S.B. 502 (R1) was provided by Dino DiCianno, Executive Director of the Department of Taxation. Mr. DiCianno provided background on the history of the Agreement and stressed the necessity for the provisions of the bill as a means of maintaining compliance with the Agreement. He noted Nevada is currently a nonvoting associate member, and passage of this bill is required for Nevada to become a full voting member of the Agreement as long as the provisions are enacted before January 1, 2008.

Questions were raised about certain provisions of the bill, such as the addition of dietary supplements to the definition of food. Mr. DiCianno indicated the change was part of the requirement for the Agreement and would mean that dietary supplements would not be considered as food but would be taxable. Ms. Pierce raised questions about the integrity of software used by registered sellers or certified service providers. Mr. DiCianno indicated the states are still responsible for certifying service providers and that the states have the power to audit the software accordingly. He noted the states would take appropriate action against persons who altered software for the purpose of avoiding tax liability.

Ernie Adler, representing the Reno-Sparks Indian Colony, testified with respect to amendments added to the bill in the Senate designed to assist Indian reservations and colonies with the collection of sales taxes. He indicated the bill would greatly increase the amount of revenues received by Indian tribes and colonies.

Carole Vilaro from the Nevada Taxpayers Association also spoke in support of the bill with the proposed amendment. She noted that the ballot question, if

enacted, would allow the Legislature to react to administrative provisions necessary under the Agreement rather than having to wait for the next general election.

There was no testimony received in opposition to the bill. There was an amendment from Carole Vilardo that would specify, on the proposed ballot question, that voter approval would still be required for any proposal that would increase the sales tax rate under the Sales and Use Tax Act of 1955. Mr. DiCianno indicated he had no issues with that amendment.

Assemblyman Horne:

I am still not comfortable with the issue of dietary supplements. When we say dietary supplements, are we including everything from children's vitamins to Geritol to glucosamine, or is it broken down? Is there a definition of that?

Dino DiCianno, Executive Director, Department of Taxation:

There is a definition for dietary supplements in the glossary of the Streamlined Sales and Use Tax Agreement. I do not have that with me, but I believe it would include a number of those items. Vitamins are not currently considered food; they are taxable.

Assemblyman Horne:

What would be the effect if we took out dietary supplements?

Dino DiCianno:

We would not be in compliance with the Agreement.

Assemblyman Horne:

What would be the effect of not being in compliance with the Agreement?

Dino DiCianno:

Nevada would no longer be able to participate with the Streamlined Agreement. Also, we would not be able to share in the revenues that would come from the sales of products over the Internet.

Chair McClain:

Perhaps once we are a full-blown member we could work on changing some of those provisions. We would have more say in it then.

Dino DiCianno:

That is absolutely correct. The State of Nevada would have direct input in amending the Streamlined Agreement in order to address these very issues. We currently cannot vote on anything because we are not a full member.

Assemblyman Horne:

That concerns me because people often use these dietary supplements as part of their healthy lifestyles and to avoid having to move to prescription drugs and the like. I hope for those very reasons that they will not be taxed in the future. I was curious if that was possible.

Dino DiCianno:

If the ballot measure passes, you will have the opportunity to bring that forward to this Body in 2009.

Chair McClain:

The proposed amendment is the language Ms. Vilardo wants included on the ballot question.

Michael Nakamoto:

I emailed the language to all the members. The amendment would add the following language to the ballot question: "Approval of this question will still require voter approval of any rate increase proposed to the Sales and Use Tax Act of 1955."

ASSEMBLYMAN PARKS MOVED TO AMEND AND DO PASS
SENATE BILL 502 (1st REPRINT) WITH THE AMENDMENT TO
ADD TO THE BALLOT QUESTION THE WORDS "APPROVAL OF
THIS QUESTION WILL STILL REQUIRE VOTER APPROVAL OF ANY
RATE INCREASE PROPOSED TO THE SALES AND USE TAX ACT
OF 1955."

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS
ABSENT FOR THE VOTE.)

Chair McClain:

We can now consider Senate Bill 503 (1st Reprint).

Senate Bill 503 (1st Reprint): Revises provisions governing fees and taxes administered by the Department of Taxation. (BDR 32-579)

Michael Nakamoto, Deputy Fiscal Analyst:

This bill was also brought forth by the Department of Taxation. The first reprint of the bill adds a penalty of 10 percent of the amount due, plus interest of 1 percent a month, for failure to pay the business license fee imposed for exhibitors at trade shows, craft shows, or conventions. The bill also exempts

from the tax on other tobacco products any product acquired free of charge at a trade show, convention, or exhibition where the product does not have a significant value.

Dino DiCianno, Executive Director of the Department of Taxation, testified in support of the bill, indicating the penalty provision for the business license fee was a correction of an oversight from the 2005 Session. Mr. DiCianno noted that the exemption for other tobacco products in Section 2 mirrors language found in the Streamlined Sales and Use Tax Agreement. He also pointed out that regulations could be developed to further define "acquired free of charge," if necessary. A question was raised as to whether the acquisition free of charge was by the consumer, and Mr. DiCianno indicated that was the case.

Testimony in support of the bill was also received from Peter Krueger from the Cigar Association of America, who indicated the language in Section 2 mirrored other language governing giveaways that had been enacted during the 2005 Session. Tony Sanchez, representing the Las Vegas Convention & Visitors Authority, also testified in support, noting the bill corrected an oversight from the 2005 Legislative Session.

No testimony was received in opposition to the first reprint of the bill. A proposed amendment was presented by Joe Guild, representing United States Smokeless Tobacco, which would revise the method of taxation of moist snuff from the current ad valorem rate of 30 percent of the wholesale price to a weight-based rate of \$0.75 an ounce. Mr. Guild stated the present method of taxation effectively created a subsidy of producers of low-priced tobacco products at the expense of higher-priced snuff products. He indicated the State would gain revenue from a revised tax system.

The Committee also received testimony in support of the amendment from Monte Williams, representing United States Smokeless Tobacco, and from Barbara Smith Campbell, representing United States Tobacco Public Affairs, who went through various benefits of the weight-based system versus the ad valorem system. Sam McMullen, representing Altria Corporate Services, the parent of Philip Morris USA, also testified in support of the amendment. He noted that Philip Morris does not currently sell moist snuff products in Nevada, but he believed the revenue from demand-based taxation was easier to determine and forecast than revenue generated from price-based taxation.

Testimony in opposition to the amendment was received from Ernie Adler, representing the Reno-Sparks Indian Colony, who noted the switch to the weight-based system in conjunction with an increased demand for the lightweight smokeless tobacco popular in Sweden, would cause cigarette tax

revenues to decline substantially in the long term. Alfredo Alonso, representing Conwood Tobacco, also testified in opposition to the amendment, arguing the amendment was little more than an effort to have the State subsidize premium products and help them maintain market share. He also noted that as a representative of the Beer Wholesalers Association, he believed the manufacturers of alcohol would welcome a switch from unit-based taxation to an ad valorem system. He added the weight-based system is easy to manipulate.

From the public health standpoint, the Committee received testimony in opposition from Jennifer Stoll-Hadaya from the Washoe County District Health Department and Michael Hackett, who represents the Nevada State Medical Association and the American Cancer Society. They testified regarding the public health effects of passage of this particular amendment.

Assemblywoman Weber:

Can you tell me why this requires a two-thirds majority vote? Is it because of the penalty in Section 1? [Mr. DiCianno verified that.]

Chair McClain:

There does not seem to be much appetite in this Committee for considering that amendment.

ASSEMBLYMAN DENIS MOVED TO DO PASS
SENATE BILL 503 (1st REPRINT).

ASSEMBLYMAN PARKS SECONDED THE MOTION.

Assemblywoman Weber:

I would like it on record that in future sessions we ought to look at the ad valorem versus the weight-based taxes. That might be an interesting argument for this Body to consider.

Assemblyman Marvel:

I wonder if the amendment would be veto-proof.

Chair McClain:

We are not taking that amendment.

THE MOTION PASSED. (ASSEMBLYMAN MORTENSON WAS
ABSENT FOR THE VOTE.)

Chair McClain:

Now, let us go back to Senate Bill 146 (1st Reprint).

Senate Bill 146 (1st Reprint): Authorizes the boards of county commissioners of certain counties to levy an ad valorem tax to pay the costs of operating a regional facility for the detention of children. (BDR 31-937)

Chair McClain:

The way S.B. 146 (R1) came to us is not good policy, and I think we made that clear to the people working on it. There have been several different iterations of ideas and amendments. We have one last amendment (Exhibit C). The Committee has not really had a chance to look at it yet and staff also needs some more time to work on it, so I would like to have Mary talk to you about the new amendment. Then we will recess until tomorrow so staff can do some research.

Mary Walker, representing Carson City, Douglas County, Lyon County, and Storey County:

The amendment does a couple of things. First, the bill as originally written had no abatement at all for the entire life of the \$0.08 levy for juvenile facilities. We are proposing here to look toward bringing it into compliance with some of the precedent that was set in Assembly Bill No. 489 of the 73rd Legislative Session—for example, annexations. We are proposing that the abatement kick in after the first year. The tax would be levied the first year, and then the 3 percent abatement would be back in effect.

This mirrors current tax policy regarding annexations. If, for example, the City of Reno annexes part of the unincorporated area of Washoe County, the difference in tax rates of Washoe County and Reno is about \$1.00. For the first year after the city annexes property, the whole \$1.00 is assessed without any abatement. In future years, though, the abatement is in effect.

Second, we went through Carole Vilardo's suggested amendments. She had made some excellent suggestions, many of which we attempted to incorporate here. This amendment would provide further oversight of the enactment of the property tax by requiring the boards of county commissioners in counties with populations under 100,000 to enact the tax by ordinance, thus requiring two public hearings. It could only be enacted by a two-thirds vote of the board of county commissioners, which would mirror what the Legislature does. The tax may be enacted for a public safety facility, not just for a juvenile detention facility. We tried to broaden the scope of the bill to provide a broader tax policy and a broader public policy, as Ms. Vilardo had suggested, yet this would still give us the ability to hire staff for the facility and pay for operations,

utilities, et cetera. Also, as Ms. Vilardo had suggested, the ordinance would be required to be reviewed by the board at least every ten years.

Then we heard this morning that if a county levies this tax it may, in effect, be taking revenue away from other local governments. That is not how this works if we follow the annexation model. However, just to give comfort, we added a new Section 4, which states "the increase allowed by Section 1 of this act must not have the effect of increasing the amount of the abatement or reducing the revenue of any other governmental entity that shared the combined tax rate." I just want to clarify that. We hope we have adequately addressed everyone's concerns.

Chair McClain:

Assuming this gets passed, how much money would it actually raise for you?

Mary Walker:

We need \$1 million a year between the two counties, which is the cost of operations.

Chair McClain:

Are you going to look at this backwards? Are you going to decide how much you need and set the rate accordingly?

Mary Walker:

Based on current revenues, Lyon County would need to assess a \$0.04 tax rate, while Churchill County would have to assess a \$0.06 tax rate. We asked for \$0.08 in the bill because of future growth and expenditures.

Chair McClain:

I am not too sure about the 100,000 population cap. I tend to go with the 50,000 cap so that this truly applies to the rural counties.

Mary Walker:

Actually, Lyon County is over 50,000 now.

Assemblyman Grady:

I talked to Brenda Erdoes, our legal counsel, about a 50,000 cap I had in another bill. We went with 40,000 on that because the Legal Division of the Legislative Counsel Bureau (LCB) uses the last census. So 40,000 is a good figure for Lyon County until the next census, at which time we will probably be at 55,000-60,000. Legal will then move the figures up as needed to reflect that. Right now, although we are over 50,000, LCB still uses the last census.

Chair McClain:

We will do whatever is necessary to make sure this applies only to the 14 least populated counties.

Mary Walker:

The problem is that in the next census Douglas County, Lyon County, Elko County, and maybe even Nye County will be over 50,000. Because Carson City is almost at build-out, it is not growing very much, but the others are. I think in the long term we are looking at 100,000.

Chair McClain:

All right, leave it at 100,000. I do have another concern. I do not want to create a situation where Churchill and Lyon Counties can collect this revenue outside regular funding procedures, and then someone else decides they can fund their sheriff's office this way and not use regular funding. We need to tighten that somehow. I do not know exactly how you want to do it, but we definitely want to keep this limited to public safety only. We do not want it applying to parks and other such things.

Assemblyman Horne:

I was comfortable when this was just for the juvenile facility. I have concerns with broadening it.

Chair McClain:

My feeling is that smaller counties did not fare well with A.B. No. 489 of the 73rd Legislative Session. Some of them are growing quite rapidly while others are just hurting for money. If they need this for public safety, this would work for any of those counties, no matter what the public safety issue. If Eureka County needed a jail, they could use this option.

Assemblyman Horne:

My concern is that when this is broadened and those legitimate needs occur, history shows that the juvenile problems are the first ones neglected. Being drafted just for the juveniles protects against neglect and sends those dollars straight to the juvenile facility. However, when we start adding other options, decisions get made that other needs are more important than the juveniles.

Chair McClain:

You can also look at it the other way. If we narrowly confine this to the juvenile detention center, we will have people coming back with other needs that have to be added to it. We can create a mechanism now that will help the small counties with a variety of public safety issues. We can make sure they

have to come back and report to us next time on how this is working.
[Ms. Walker agreed.]

Assemblyman Grady:

Lyon County is in that situation now. They have a jail that was last remodeled in 1990, and it is currently overbooked. When we sat down with the commissioners there, we asked which was their priority, a juvenile detention center or a jail. They want and need both of them, but the juvenile situation is in crisis. There is nowhere to put these youths, and this is Lyon and Churchill Counties' number one priority. They need a juvenile facility in the worst way.

Assemblyman Marvel:

I have to support these people because we have a facility in Winnemucca. That facility is taking a lot of youths from other counties and is at capacity right now, too. This will take a lot of pressure off Winnemucca.

Chair McClain:

Everybody think about it and we will let staff do more research. We will take this up tomorrow morning at 11:45 or upon the call of the Chair.

Assemblyman Parks:

In the bill, we are talking about operating a regional facility for the detention of children. Are we seeking to change that to public safety? [That was verified.]

Chair McClain:

We are recessed [at 1:44 p.m.] until tomorrow morning.

[The meeting was called back to order at 11:48 a.m., May 18, 2007.] We are continuing the consideration of S.B. 146 (R1). We have had a lot of debate on this and there have been iterations of various amendments. Yesterday, we had a discussion about using the money for public safety versus only for a juvenile detention center. The mock-up ([Exhibit D](#)) will now take that floating up-to-\$0.08 language out and give \$0.04 outside the abatement for the first year only to counties under 100,000 in population. The second year it rolls back up under the abatement. It has gone back to being used only for regional juvenile detention centers. It also requires an ordinance be approved by a two-thirds vote of the county commission.

The only other thing I want to say about this is we realize you have a real crisis, and maybe the timing on taking this question to the voters was not optimal this time. In the future, though, if this turns out not to be enough, we would expect you to at least go to a vote of the people before coming back here.

Does anyone have any questions on the latest amendment? [There were none.]

ASSEMBLYMAN GRADY MOVED TO AMEND AND DO PASS
SENATE BILL 146 (1st REPRINT).

ASSEMBLYMAN MARVEL SECONDED THE MOTION.

THE MOTION PASSED. (ASSEMBLYWOMAN ALLEN AND
ASSEMBLYMEN ARBERRY AND DENIS WERE ABSENT FOR THE
VOTE.)

We are adjourned [at 11:52 a.m., May 18, 2007].

[Carole Vilardo was not able to attend, but submitted an email regarding the
proposed amendment to S.B. 146 (R1) ([Exhibit E](#)).]

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: May 17, 2007

Time of Meeting: 1:11 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
S.B. 146 (R1)	C	Mary Walker / Carson City, Douglas County, Lyon County, and Storey County	Proposed amendment
S.B. 146 (R1)	D	Assemblywoman McClain	Mock-up of final amendment
S.B. 146 (R1)	E	Carole Vilaro / Nevada Taxpayers Association	Letter concerning Mary Walker's proposed amendment