

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

**Seventy-Fourth Session
March 22, 2007**

The Committee on Taxation was called to order by Chair Kathy McClain at 1:38 p.m., on Thursday, March 22, 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:

Michael Nakamoto, Deputy Fiscal Analyst
Mary Garcia, Committee Secretary
Gillis Colgan, Committee Assistant



OTHERS PRESENT:

Robert Crowell, representing Nevada Association of Mortgage Professionals

Cathie Jackson, Member and Past President, Nevada Association of Mortgage Professionals, and Branch Manager, Mortgage Options, Inc.

Tom Summers, Deputy Director, Department of Taxation

John Sande, representing Nevada Bankers Association

Chair McClain:

[Meeting was called to order at 1:38 p.m. Roll was called.] Today we have one bill, Assembly Bill 290, sponsored by Assemblyman Parks.

Assembly Bill 290: Revises provisions governing taxes imposed on mortgage brokers. (BDR 32-198)

Assemblyman David Parks, Assembly District 41:

Assembly Bill 290 removes businesses licensed under Chapter 645B of *Nevada Revised Statutes* (NRS) from the definition of financial institutions.

Robert Crowell, representing Nevada Association of Mortgage Professionals:

I handed out a summary of my remarks ([Exhibit C](#)). The Nevada Association of Mortgage Professionals was created in late 2004. It is a nonprofit corporation designed to facilitate and educate mortgage brokers in the State of Nevada. It consists of mortgage brokers who are licensed under Chapter 645B of NRS. As Mr. Parks said, A.B. 290 would reduce the tax on mortgage brokers from the 2 percent they currently pay to 0.65 percent. The reason mortgage brokers pay 2 percent now is that they are included under the definition of financial institutions under Chapter 363A of NRS. This bill, as drafted, would remove them from that definition and cause mortgage brokers to be taxed under the same 0.65 percent rate as other businesses.

The reason for this request is that in 2003 mortgage brokers were regulated and defined as financial institutions under Title 55 of NRS. In 2003, when the Legislature enacted the Modified Business Tax (MBT), the mortgage brokers were removed from financial institutions to Title 54 of NRS and regulated by the Mortgage Lending Division of the Nevada Department of Business and Industry. As you know, Title 54 of NRS covers the regulation and definition of businesses, professions, and occupations in general, including architects, contractors, engineers, accountants, physicians, real estate agents, escrow

agents, appraisers, and pawnbrokers. Those entities are currently taxed at 0.65 percent and not 2 percent.

There is one entity, the mortgage banker, under Chapter 645E of NRS, who is taxed at 2 percent as a financial institution. This bill does not address whether mortgage bankers should be included in the definition of financial institutions. If you enacted this legislation, mortgage bankers would continue to pay the same tax they currently pay.

Chair McClain:

Could you explain the difference between a mortgage broker and a mortgage banker?

Cathie Jackson, Member and Past President, Nevada Association of Mortgage Professionals, and Branch Manager, Mortgage Options, Inc.:

A mortgage banker, by definition, is someone who lends his own money, usually a subsidiary of a bank. A mortgage broker, on the other hand, is typically a small business owner. In fact, there are probably about 10,000 licensed mortgage agents right now, and there are about 900 licensed mortgage broker companies. The average mortgage broker has fewer than ten people. There are probably six to ten companies in Las Vegas that might have 200–300 people working for them. If you take away those companies, most of the others are “mom and pop shops” with fewer than five people.

Chair McClain:

So the mortgage banks actually deal with money—lending, collecting payments, and such—but a mortgage broker does the paperwork to get the transaction to that point.

Cathie Jackson:

Yes, a mortgage banker has his own money. A mortgage broker is basically a third-party originator who packages the transaction and delivers it to the bank for a fee.

Robert Crowell:

I have included an example of the financial impact of the 2 percent tax versus the 0.65 percent on the typical mortgage broker with two or fewer employees. Using Ms. Jackson’s payroll of \$300,000, the tax at 2 percent on that payroll is \$6,000. If A.B. 290 were passed, her tax would be reduced to \$1,950, which is a difference of more than \$4,000. That is not insignificant to the individual paying the tax.

I have also talked, in my handout, about the economic impact on the State of Nevada. The fiscal note attached to this bill shows that to be about \$12.9 million. That, too, is not an insignificant amount, and we do not mean to minimize that amount. However, while we have every confidence in the Nevada Department of Taxation to run the calculations on these numbers, we find that we cannot agree on the level of impact to the State. I have attached a copy of the spreadsheet [page 4 of ([Exhibit C](#))] that shows how the Department of Taxation looked at this number. They listed gross wages under mortgage brokers and non-mortgage brokers as \$395,540,859. I believe the Department of Taxation gets that information from the Employment Security Department.

The representative from the Department of Taxation indicated that they cannot break that number down to find out if it represents just the discrete group of Chapter 645B licensees or if it includes more. Our concern is that the amount may be overstated when it applies strictly to Chapter 645B companies. We are also concerned by the fact that if you look at the month-to-date figures from 2005 to 2006 on that sheet, you will see that there was an 85 percent decline in gross taxable wages for that line item as opposed to the escalation in wages that the fiscal note predicts will happen over the biennium. We have some concerns about whether the fiscal note accurately projects what the impact of this bill would be, should you pass it.

We do not mean to be critical because we are not the tax people, and we know you may be constrained to basing your decisions on fiscal notes as they are presented to you by the State and your own Fiscal Analysis Division. We understand that, and we understand it is not an insignificant amount. However, we respectfully ask that you consider the relative inequity of a tax policy that imposes a different rate of tax on similarly categorized professions as outlined in Title 54 of NRS.

We understand that you have many demands made on you, and we would pledge to work with the Legislature in any way possible to mitigate any shortfall in state revenues this legislation would incur. Anything you can do to equalize that tax policy or alleviate the resulting economic impact on people such as Ms. Jackson would be greatly appreciated.

Assemblyman Marvel:

I would like to see equity for all professional institutions.

Assemblywoman Weber:

The fiscal note lists a reduction in the MBT of \$6.2 million for the first year and \$6.8 million for the second year. What percentage is that of the total MBT? Does anyone know?

Michael Nakamoto, Deputy Fiscal Analyst, Fiscal Analysis Division, Legislative Counsel Bureau:

The Economic Forum, in its November 30, 2006, meeting, forecast approximately \$320 million in Fiscal Year (FY) 2008 and \$346 million in (FY) 2009 for both pieces of the MBT. The \$6 or \$7 million noted on the fiscal note represents just under 2 percent of the total collections.

Assemblyman Marvel:

Michael, have you had an opportunity to check this fiscal note yourself?

Michael Nakamoto:

Any analysis the Fiscal Analysis Division does is largely based on what information we get from the Department of Taxation. Our office does not have the ability to determine better numbers on what is attributable to the mortgage brokers or the non-mortgage brokers.

Tom Summers, Deputy Director, Department of Taxation:

As mentioned earlier, we get our data from the Employment Security Division of the Nevada Department of Employment, Training & Rehabilitation, which controls and writes the rules on the North American Industry Classification System (NAICS). They classify the businesses, and we get a daily feed of their new and closed accounts. I do not have a breakdown readily available on what the non-mortgage broker portion of that might be.

Chair McClain:

Are mortgage bankers included in this spreadsheet ([Exhibit C](#))? We need to know the difference between the amounts of money being paid by brokers versus mortgage bankers before we can seriously consider this.

Tom Summers:

I just glanced at that spreadsheet as I came in. I would have to research that and get back to you by tomorrow afternoon.

Assemblyman Marvel:

Are you looking for an exemption from the branch franchise fee too?

Robert Crowell:

We do not pay that. We do not have branches, so we pay just the 2 percent on wages.

Chair McClain:

Could the fact that mortgage banks have branches be the way to make the distinction between mortgage brokers and mortgage banks?

Robert Crowell:

Not necessarily.

Cathie Jackson:

I spoke to one of the people at the Mortgage Lending Division (MLD) of the Nevada Department of Business and Industry yesterday. He said there are actually a minimal amount of branches in the mortgage broker section, and they are listed on the MLD website. However, mortgage bankers have branches outside of their bank and in the bank. I do not know that they pay a franchise fee on the mortgage banker branch because to license that branch they pay a fee to the MLD. I do not know if there is a separate fee because it is technically not a bank. Many times they are considered subsidiaries of the banks.

Assemblyman Marvel:

Does the Department of Taxation capture the mortgage bankers with the franchise fee?

Tom Summers:

I will have to check that tonight when I do the other research. I will get back to you.

There are a number of bills being considered that potentially affect the MBT. The Department would request that all the MBT bills have an effective implementation date of January 1, 2008. This would allow us time to properly notify the taxpayers. Also, once we identify all the bills that may pass, we can have our programmers put together one programming package; make all the changes; open up our system one time; do their development, testing, and implementation; and give us time to get it together instead of putting it together piecemeal and in haste.

Chair McClain:

That sounds like a reasonable request. We will make sure it is on the record and, if and when any of these bills pass, we will include that as an amendment.

Assemblyman Marvel:

We need a running total of all the exemptions we are considering.

Chair McClain:

We will have staff get that information for us after we hear all the bills.

John Sande, representing Nevada Bankers Association:

I do not have any problem with what this bill proposes. I want to point out that this shows how unfair the existing law is. If you exempt mortgage brokers, banks basically do the same thing. We have employees acting as brokers. The bank I am involved in has a separate subsidiary that arranges loans. What you are doing is discriminating against financial institutions, and by that I mean banks and anyone else covered by this. This is an additional reason to consider that it might make sense, over a period of time, to eliminate the discrepancies between financial institutions and other businesses.

Assemblyman Ohrenschall:

Would the bill we looked at a few weeks ago, A.B. 82, have included the mortgage brokers and mortgage bankers, or are these two separate issues?

John Sande:

Yes, A.B. 82 would include the mortgage brokers, mortgage bankers, and all financial institutions, so their tax would be the same as any other business.

Chair McClain:

Are there are any questions? Would anyone else like to comment? [There was no response.] We are adjourned [at 2:02 p.m.].

RESPECTFULLY SUBMITTED:

Mary Garcia
Committee Secretary

APPROVED BY:

Assemblywoman Kathy McClain, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Taxation

Date: March 22, 2007

Time of Meeting: 1:38 p.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
<u>A.B. 290</u>	C	Bob Crowell / Nevada Association of Mortgage Professionals	Summary of Remarks